

2. Insurers may also submit statistical studies and analyses that have been performed by educational institutions, independent professional associations, or other reputable entities recognized in the field, that indicate that there is no disparate impact on the classes set forth in Section 626.9741(8)(c), F.S. attributable to the use of credit reports or scores. Any such studies shall be shown to be applicable to the specific proposed credit scoring model.

3. The Office will utilize generally accepted statistical analysis principles in reviewing studies submitted which support the insurer's analysis that the credit scoring model does not disproportionately impact any class based upon race, color, religion, marital status, age, gender, income, national origin, or place of residence. The Office will permit reliance on such studies only to the extent that they permit independent verification of the results.

4. A credit scoring model that has a disparate impact is not a valid predictor of insurance risk and shall not be used.

(h) The testing or validation results obtained in the course of the assessment in paragraphs (d) and (f) above.

(i) Internal Insurer data that validates the premium differentials proposed based on the scores or ranges of scores.

1. Industry or countrywide data may be used to the extent that the Florida insurer data lacks credibility. Insurers using industry or countrywide data for validation shall supply Florida insurer data and demonstrate that generally accepted actuarial standards would allow reliance on each set of data to the extent the insurer has done so.

2. Validation data including claims on personal lines residential insurance policies that are the result of acts of God shall not be used unless such acts occurred prior to January 1, 2004.

3. The mere copying of another company's system will not fulfill the requirement to validate proposed premium differentials unless the filer has used a method or system for less than 3 years and demonstrates that it is not cost effective to retrospectively analyze its own data.

(k) An explanation of how the credit scoring methodology treats discrepancies in the information that could be obtained from different consumer reporting agencies: Equifax, Experian, or TransUnion. This shall not be construed to require insurers to obtain multiple reports for each insured or applicant.(j) The credibility standards and any judgmental adjustments, including limitations on effects, that have been used in the process of deriving premium differentials proposed and validated in paragraph (i) above.

(l)1. The date that each of the analyses, tests, and validations required in paragraphs (d) through (j) above was most recently performed, and a certification that the results continue to be applicable.

2. Any item not reviewed in the previous 5 years is unacceptable.

Specific Authority 624.308(1), 626.9741(8) FS. Law Implemented 624.307(1), 626.9741 FS. History--New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Michael Milnes, Bureau of Property and Casualty Forms and Rates, Office of Insurance Regulation

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Eric Lingswiler, Chief, Bureau of Property and Casualty Forms and Rates, Office of Insurance Regulation

DATE PROPOSED RULE APPROVED BY THE AGENCY HEAD: February 18, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 31, 2003

## Section II Proposed Rules

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Division of Agricultural Environmental Services

RULE CHAPTER TITLE: Pesticides  
RULE CHAPTER NO.: 5E-2

RULE TITLE: Organo-Auxin Herbicides: Restrictions and Prohibitions  
RULE NO.: 5E-2.033

PURPOSE, EFFECT AND SUMMARY: The purpose of the rule amendment is to further qualify the restrictions placed on the use of the organo-auxin herbicide 2,4D registered in the State of Florida, providing an exemption covering its use according to label instructions as a plant growth regulator in dosages substantially less than for herbicidal use.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No SOERC has been prepared.

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

SPECIFIC AUTHORITY: 570.07(16)(b), 570.07(23) FS.

LAW IMPLEMENTED: 487.031(10), 487.031(13)(e) 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:

TIME AND DATE: 9:00 a.m., March 23, 2004

PLACE: AES Conference Room, 3125 Conner Blvd., Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mr. Dale Dubberly, Department of Agriculture and Consumer Services, 3125 Conner Blvd., Tallahassee, FL 32399-1650

THE FULL TEXT OF THE PROPOSED RULE IS:

5E-2.033 Organo-Auxin Herbicides: Restrictions and Prohibitions.

(1) through (8) No change.

(9) The application of low volatility 2,4D compounds registered in the State of Florida in accordance with label instructions for use as a growth regulator in small dosages substantially less than for herbicidal use is not subject to the use regulations and restrictions set forth in subsections (3), (4), and (5) of this rule but is subject to the record keeping requirements in subsection (6) and label instructions must be followed.

Specific Authority 487.051(4), 487.154, 570.07(16)(b), 570.07(23) FS. Law Implemented 487.031(10), 487.031(13)(e) FS. History—New 2-4-86, Amended 7-10-89, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dale Dubberly, Chief, Bureau of Compliance Monitoring  
NAME OF PERSON OR SUPERVISOR WHO APPROVED THE PROPOSED RULE: Steve Rutz, Director, Division of Agricultural Environmental Services  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 7, 2003  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 24, 2003

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Division of Consumer Services**

RULE TITLE: Denials  
RULE NO.: 5J-15.003

PURPOSE AND EFFECT: The purpose and effect of this rule is to set guidelines for the denial of a license.

SUMMARY: Sets guidelines for the denial of a license.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 507.09 FS.

LAW IMPLEMENTED: 507.09 FS.

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

TIME AND DATE: 10:00 a.m., March 23, 2004

PLACE: Department of Agriculture and Consumer Services, Division of Consumer Services, Terry L. Rhodes Building, 2005 Apalachee Parkway, Tallahassee, Florida 32399-6500

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dee Keck, Regulatory Program Administrator, Division of Consumer Services, Terry L. Rhodes Building, 2005 Apalachee Parkway, Tallahassee, Florida 32399-6500, (850)410-3679

THE FULL TEXT OF THE PROPOSED RULE IS:

5J-15.003 Denials.

The purpose of this rule is to implement Section 507.03(8), Florida Statutes. The department shall not issue an initial or renewal registration to any person, partnership or corporation applying for an intrastate moving registration if the department finds that the applicant, or any of its owners, operators, directors, officers, general partners or other individuals engaged in the management activities of the applicant, has:

(1) Been convicted of any misdemeanor crime within the past 5 years that involves racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, or any other act of moral turpitude.

(2) Been convicted of any felony within the last 7 years that involves racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, or any other act of moral turpitude.

(3) Been convicted of any crime that involves racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, or any other act of moral turpitude, and who has not successfully completed or satisfied all the conditions or terms of his or her sentence, including probation or parole.

(4) Entered against him or her, or any business which he or she has been affiliated as an owner, operator, director, officer, general partner or performed management activities, an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar administrative or court order, in any civil or administrative action, based upon conduct involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, or the use of any untrue or misleading representation in an attempt to sell or dispose of real or personal property or use of any unfair, unlawful, or deceptive trade practice, or any other act of moral turpitude and who has not satisfied all the conditions and/or terms of his or her judgment or order.

Specific Authority 507.09 FS. Law Implemented 507.09 FS. History—New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dee Keck, Regulatory Program Administrator, Division of Consumer Services, Department of Agriculture and Consumer Services

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: James R. Kelly, Director, Division of Consumer Services, Department of Agriculture and Consumer Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 7, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 23, 2004

**DEPARTMENT OF TRANSPORTATION**

RULE CHAPTER TITLE: Incorporation by Reference  
 RULE CHAPTER NO.: 14-15

RULE TITLE: Toll Facilities Description and Toll Rate Schedule  
 RULE NO.: 14-15.0081

PURPOSE AND EFFECT: The purpose of this notice rulemaking is to allow the public an opportunity to provide input to changes in the Toll Facilities Description and Toll Rate Schedule required by the construction of the Kissimmee Park Road/Florida's Turnpike interchange. Section 338.155(1), Florida Statutes, does not permit the use of the State's toll facilities without paying a toll.

SUMMARY: The toll rate public hearing is being held in conjunction with a public information meeting to allow the public an opportunity to comment on the proposed toll rate schedule for the Florida Department of Transportation's construction of a SunPass-Only partial interchange at Kissimmee Park Road and Florida's Turnpike interchange. The project is located in Osceola County. Tolls are proposed to be collected from vehicles entering and exiting the Turnpike northbound. This new interchange is approximately nine miles north of Three Lakes Toll Plaza and approximately five miles south of the existing Kissimmee/St. Cloud interchange. This public hearing is being held in conjunction with a Project Development and Environment (PD&E) public hearing for an interchange project, Financial Project Identification 411237-1. The rule development workshop was held on November 13, 2003.

SPECIFIC AUTHORITY: 334.044(2), 338.155(1) FS.

LAW IMPLEMENTED: 338.222, 338.231, 338.155 FS.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory cost has been prepared.

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

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIMES AND DATE: 6:00 p.m. – Informal Open House, 6:30 p.m. – Formal Public Hearing, March 30, 2004

PLACE: City of St. Cloud, City Hall, Council Chambers, 1300 Ninth Street, St. Cloud, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James C. Myers, Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULE IS:

14-15.0081 Toll Facilities Description and Toll Rate Schedule.

The Toll Facilities Description and Toll Rate Schedule, adopted November 15, 1987, and amended on February 8, 1988, August 1, 1988, February 2, 1989, May 10, 1989, July 1, 1991, August 1, 1991, November 6, 1991, July 11, 1993, November 28, 1993, September 18, 1994, June 6, 1995, July 9, 1995, January 1, 1996, March 31, 1996, April 28, 1996, June 2, 1996, July 28, 1996, September 23, 1997, November 24, 1997, February 12, 1998, June 30, 1998, July 29, 1998, January 6, 1999, February 9, 1999, April 29, 1999, June 21, 1999, September 4, 2001, March 26, 2002, April 10, 2003, October 1, 2003, December 11, 2003, March 7, 2004, and \_\_\_\_\_, is hereby incorporated by this rule and made a part of the rules of the Department. Copies of this Department of Transportation Toll Facilities Description and Toll Rate Schedule and any amendments thereto are available at no more than cost.

Specific Authority 334.044(2), 338.155(1) FS. Law Implemented 338.222, 338.231, 338.155 FS. History—New 11-15-87, Amended 2-8-88, 8-1-88, 2-2-89, 5-10-89, 7-1-91, 8-1-91, 11-6-91, 7-11-93, 11-28-93, 9-18-94, 6-6-95, 7-9-95, 1-1-96, 3-31-96, 4-28-96, 6-2-96, 7-28-96, 9-23-97, 11-24-97, 2-12-98, 6-30-98, 7-29-98, 1-6-99, 2-9-99, 4-29-99, 6-21-99, 9-4-01, 3-26-02, 4-10-03, 10-1-03, 12-11-03, 3-7-04, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: James Ely, Executive Director, Florida's Turnpike Enterprise

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: José Abreu, P.E., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 17, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 17, 2003

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF CORRECTIONS**

RULE TITLE: Inmate Property  
 RULE NO.: 33-602.201

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to provide procedures for handling inmate refusal to inventory legal property, to clarify provisions concerning inmate appeal of excess legal property determinations, and to revise restrictions for inmate possession of canteen items.

SUMMARY: The proposed rule provides procedures for handling inmate refusals to inventory legal property, provides detailed procedures for inmate appeal of excess legal property determinations, and revises restrictions for inmate possession of canteen items to require that quantity possessed is limited by approved storage space.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Perri King Dale, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.201 Inmate Property.

(1) through (5) No change.

(6) Storage of Excess Legal Materials

(a) through (b) No change.

(c) Storage of Excess Active Legal Material.

1. through 3. No change.

4. In the event the inmate refuses to organize and inventory his or her legal material as ordered, the inmate shall receive a disciplinary report. If the inmate refuses to comply after being ordered a second time, department shall organize and inventory the material. The inventory shall be performed in the same manner as the staff review described in subparagraph 5. below.

5. Prior to placing an inmate's active legal material into excess storage, the inmate's legal material shall be subject to a cursory review by department staff to ensure compliance with department rules regarding utilization of excess storage, approved property and contraband. This review will only be conducted in the presence of the inmate. Only the case style, signature on the document (if any) and letterhead (if any) may be read. Any material that is determined by staff to not be active legal material, shall be collected by two designated employees and placed in storage box(es) with interlocking flap

for storage pending disposition. The warden or designee shall notify the inmate on Form DC6-2007, Excessive Inactive Legal Material Disposition Determination, of the determination that the inmate has 30 days to make arrangements to have the excess inactive legal material picked up by an approved visitor or sent to a relative or friend at the inmate's expense, as provided in subparagraph (6)(c)6. or the institution will destroy it. This notification shall be provided to the inmate within three calendar days of the determination unless the inmate provides verification of a deadline that cannot be met within the three day waiting period. The 30 day limit shall not include any time that a grievance appeal is pending provided the inmate has provided the warden or the warden's designee with the written notice required in subparagraph ~~(6)(7)(c)7.6.~~ Form DC6-2007 is incorporated by reference in subsection (17) of this rule. For purposes of this subparagraph, the warden's designee may include the property room supervisor.

6. The cost of sending the inactive legal material to a relative or friend shall be collected from any existing balance in the inmate's trust fund account. If the account balance is insufficient to cover the cost, the account shall be reduced to zero. If costs remain unpaid, a hold will be placed on the inmate's account and all subsequent deposits to the inmate's account will be applied against the unpaid costs until the debt has been paid.

6. through 7. renumbered 7. through 8. No change.

9. If the inmate's grievance appeal is denied and the inmate wishes to appeal the determination to the courts and wishes to have the order to dispose of the excess inactive legal material within 30 days stayed while the court appeal is proceeding, the inmate must provide written notice to the warden on Form DC6-236, Inmate Request, that he or she intends to appeal the determination to the courts. The written notice must be filed within 30 calendar days of receipt of the response from the Office of the Secretary, must identify the court in which the appeal has been filed, must include a statement by the inmate that the inmate intends to appeal the determination, and must specifically identify the documents or papers on which the appeal is based.

8. through 11. renumbered 10. through 13. No change.

(d) Excess Inactive Legal Material. Excess inactive legal material shall be sent out of the facility by the inmate at the inmate's expense, as provided in subparagraph (6)(c)6. If the inmate does not want to pay to send the excess inactive legal material out, this material will be destroyed in accordance with this rule and Rules 33-602.201 and 33-602.203, F.A.C., regarding inmate property and contraband.

(e) through (17) No change.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—New 6-4-81, Formerly 33-3.025, Amended 11-3-87, 11-13-95, 5-20-96, 1-8-97, 6-1-97, 7-6-97, 10-15-97, 2-15-98, 3-16-98, 8-4-98, 12-7-98, Formerly 33-3.0025, Amended 11-21-00, 9-12-01, 5-16-02, 7-8-03, \_\_\_\_\_.

APPENDIX ONE  
PROPERTY LIST

This list incorporates all property authorized to be possessed by inmates in all Department institutions and facilities except community correctional centers. Except for items specified below as “exemptions”, property received must be in compliance with this list. Inmates in possession of previously approved property which meets the description of property on the list shall be allowed to retain the property.

Definitions. No change.

Exemptions. No change.

AUTHORIZED PROPERTY LIST  
CLOTHING – No change.

PERSONAL ARTICLES

<u>Quantity</u>	<u>Unit</u>	<u>Value</u>	<u>Articles</u>
*			Canteen purchases –* limited by <u>approved storage space; includes:</u>

~~—Food and drink items—limited to possession of 10 total items, food sold in packages count as one item; food that requires refrigeration must be consumed within two hours; once a food item is opened it must be consumed or thrown away, opened items cannot be stored.~~

~~—Condiments—limited to possession of 20 of each item; if sold prepackaged or bundled by the canteen, maximum not to exceed the quantity in the package or bundle.~~

~~—Tobacco items—includes cigarettes, cigars, tobacco, snuff, and chewing tobacco; limited to any combination of 5 items.~~

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Greg Drake  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: James V. Crosby, Jr.  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 16, 2004  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 19, 2003

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE:	RULE NO.:
Administrative Sanctions on Providers, Entities, and Persons	59G-9.070

PURPOSE AND EFFECT: This rule shall provide notice of administrative sanctions and disincentives imposed upon a provider, entity, or person who either directly or indirectly causes monies to be improperly expended by the Medicaid program of the sanctions that can be imposed for each violation of any Medicaid-related law, rule, provision, handbook, or policy. The Agency shall have the authority to deviate from the sanctions for the reasons stated within this rule.

SUMMARY: This rule addresses monetary and non-monetary penalties to be imposed upon a person or provider participating in the Medicaid program for each violation of Medicaid-related law, rule, provision, handbook, or policy, as set forth in Chapter 409.913, F.S. Generally, the rule provides the sanction to be imposed for each such violation, and provides for increased sanctions for repeat violations.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A statement of estimated regulatory cost has not been prepared.

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.907, 409.913, 409.9131, 812.035 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW (IF NOT REQUESTED, A HEARING WILL NOT BE HELD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kelly Bennett, 2727 Mahan Drive, MS# 6, Tallahassee, Florida 32308, (850)921-1802

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-9.070 Administrative Sanctions on Providers, Entities, and Persons.

(1) PURPOSE: The purpose of this rule is to provide notice of administrative sanctions and disincentives imposed upon a provider, entity, or person for each violation of any Medicaid-related law, rule, provision, handbook, or policy. The Agency shall have the authority to deviate from the guidelines for the reasons stated within this rule.

(2) DEFINITIONS: The terms used within this rule shall have the meanings as set forth below, or as otherwise specified in Medicaid-related law, rule, or policy.

(a) “Abuse” is as defined in Section 409.913(1)(a), F.S.

(b) “Agency” is as defined in Section 409.901(2), F.S.

(c) "Claim" is as defined in Section 409.901(15), F.S., and shall also include per diem payments and the payment of a capitation rate for a Medicaid recipient.

(d) "Complaint" is as defined in Section 409.913(1)(b), F.S.

(e) An act shall be deemed "Committed", as it relates to abuse or neglect of a patient, or of any act prohibited by Section 409.920, F.S., upon receipt by the Agency of reliable information of commission of patient abuse or neglect, or of violation of Section 409.920, F.S.

(f) "Comprehensive follow-up reviews" or "Follow-up reviews" shall have the same meaning throughout this rule, and can be used interchangeably. The two phrases mean evaluations of providers every 6 months, until the Agency determines that the reviews are no longer required. Such evaluations will result in a determination regarding whether a further compliance audit, or other regulatory action is required. The Agency's decision to discontinue the reviews does not preclude future audits of any dates of service or issues, and shall not be used by the provider in any action should the Agency later determine overpayments existed.

(g) "Conviction" is as defined in Section 409.901(7), F.S.

(h) "Corrective action plan" means the process or plan by which the provider will ensure future compliance with state and federal Medicaid laws, rules, provisions, handbooks, and policies. A corrective action plan will remain in effect until the Agency determines that it is no longer necessary, but no longer than 3 years. For purposes of this rule, the sanction of a corrective action plan shall take the form of an "acknowledgement statement", "provider education", a "self audit", a "compliance audit", or a "comprehensive quality assurance program", all of which are further described in subsection (10) of this rule.

(i) "Fine" is a monetary sanction under this rule. Unless otherwise specified, the amount of a fine shall be the maximum amount allowed under Section 409.913(15), F.S.

(j) "Fraud" is as defined in Section 409.913(1)(c), F.S.

(k) "Medical necessity" or "medically necessary" is as defined in Section 409.913(1)(d), F.S.

(l) "Medicaid-related record" is as defined in Section 409.901(19), F.S.

(m) "Overpayment" is as defined in Section 409.913(1)(e), F.S.

(n) "Patient Record Request" means a request by the Agency to a provider, entity, or person for Medicaid-related documentation or information. Such requests are not limited to Agency audits to determine overpayments or violations. Each requesting document constitutes a single Patient Record Request. The Agency is not limited to making one Patient Record Request at a time to a provider, entity, or person. Each request shall be considered separate and distinct for purposes of this rule.

(o) "Pattern" is defined as follows:

1. As it relates to paragraph (7)(d) of this rule (generally: failing to maintain Medicaid-related records), a pattern is sufficiently established if within a single Agency action:

a. There are five or more claims within a patient record for which supporting documentation is not maintained; or

b. There is more than one patient record for which no supporting documentation is maintained.

2. As it relates to paragraph (7)(e) of this rule (generally: failure to comply with the provisions of Medicaid laws and policies), a pattern is sufficiently established if within a single Agency action:

a. The number of individual claims found to be in violation is greater than ten-percent of the total claims that are the subject of the Agency action;

b. The number of individual claims found to be in violation is greater than ten-percent of the claims in a sample that are the subject of the Agency action, where a sample was used to determine the appropriateness of the claims to Medicaid;

c. The number of individual claims found to be in violation is greater than twenty;

d. The overpayment determination by the Agency is greater than ten-percent of the amount paid for the total claims that are the subject of the Agency action; or

e. The overpayment determination by the Agency is greater than ten-percent of the amount paid for the claims in a sample that are the subject of the Agency action, where a sample was used to determine the appropriateness of the claims to Medicaid.

3. As it relates to paragraph (7)(g) of this rule (generally: failing to provide goods or services that are medically necessary), a pattern is sufficiently established if within a single Agency action:

a. The number of individual claims found to be in violation is greater than one-percent of the total claims that are the subject of the Agency action;

b. The number of individual claims found to be in violation is greater than one-percent of the claims in a sample that are the subject of the Agency action, where a sample was used to determine the appropriateness of the claims to Medicaid;

c. The number of individual claims found to be in violation is greater than five;

d. The overpayment determination by the Agency is greater than one-percent of the amount paid for the total claims that are the subject of the Agency action; or

e. The overpayment determination by the Agency is greater than one-percent of the amount paid for the claims in a sample that are the subject of the Agency action, where a sample was used to determine the appropriateness of the claims to Medicaid.

4. As it relates to paragraph (7)(h) of this rule (generally: submitting erroneous claims), a pattern is sufficiently established if within a single Agency action:

a. The number of individual claims found to be erroneous is greater than ten-percent of the total claims that are the subject of the Agency action;

b. The number of erroneous claims identified is greater than ten-percent of the claims in a sample that are the subject of the Agency action, where a sample was used to determine the appropriateness of the claims to Medicaid;

c. The number of erroneous claims identified is greater than twenty claims that are the subject of the Agency action;

d. The overpayment determination by the Agency, as a result of the erroneous claims, is greater than ten-percent of the amount paid for the total claims that are the subject of the Agency action; or

e. The overpayment determination by the Agency, as a result of the erroneous claims, is greater than ten-percent of the amount paid for the claims in a sample that are the subject of the Agency action, where a sample was used to determine the appropriateness of the claims to Medicaid.

(p) "Person" is as defined in Section 409.913(1)(f), F.S.

(q) "Provider" is as defined in Section 409.901(16), F.S. and may include one or more locations.

(r) "Provider Group" – individual providers, practicing under the same tax identification number, enrolled in the Medicaid program as a group for billing purposes, and having one or more locations.

(s) "Sanction" shall be any monetary or non-monetary penalty imposed upon a provider, entity, or person (e.g., a provider, entity, or person being suspended from the Medicaid program.) A monetary sanction under this rule may be referred to as a "fine." A sanction may also be referred to as a disincentive.

(t) "Suspension" shall preclude participation in the Medicaid program for one year, unless otherwise specified in this rule, from the date of the Agency action, and is described further in subsection (10) of this rule. Suspension precludes any action that results in a claim for payment to the Medicaid program as a result of furnishing, supervising a person who is furnishing, or causing a person to furnish goods or services.

(u) "Termination" shall preclude participation in the Medicaid program for twenty years from the date of the Agency action, may be with or without cause, and is described further in subsection (10) of this rule. Termination precludes any action that results in a claim for payment to the Medicaid program as a result of furnishing, supervising a person who is furnishing, or causing a person to furnish goods or services.

(v) "Violation" means any omission or act performed by a provider, entity, or person that is contrary to any applicable federal or state law, rule, provision, handbook, or Medicaid policy.

1. For purposes of this rule, the following shall be considered "separate violations":

a. Each day that an ongoing violation continues;

b. Each instance or date of improper billing of a Medicaid recipient;

c. Each instance of including an unallowable cost on Medicaid cost report after having been advised that the cost is not allowable;

d. Each instance of furnishing goods or professional services that are inappropriate or of inferior quality;

e. Each instance of knowingly submitting a materially false or erroneous Medicaid provider enrollment application, request for prior authorization for Medicaid services, or cost report;

f. Each instance of inappropriately prescribing drugs for a Medicaid recipient; or

g. Each false or erroneous Medicaid claim leading to an overpayment to a provider.

2. For purposes of determining first, second, third, fourth, fifth, or subsequent violations under paragraph (10)(c) of this rule:

a. A violation means a determination by the Agency, whether resolved by repayment of an overpayment, settlement agreement, or other means, wherein the person, provider, or entity is found to have violated a provision of state or federal Medicaid laws, rules, provisions, handbooks, or policies.

b. The same violation means a subsequent determination by the Agency, wherein the person, provider, or entity is determined by the Agency to be in violation of the same provision of state or federal Medicaid laws, rules, provisions, handbooks, or policies. For purposes of violations of paragraph (7)(e) of this rule (generally, failing to comply with the provision of Medicaid policies), the same violation means a subsequent determination by the Agency that the person, provider, or entity is found to be in violation of the same provision of state or federal Medicaid-related law, rule, provision, handbook, or policy as in a prior Agency action.

(3) VIOLATIONS AND SANCTIONS: Unless otherwise set forth in this rule, sanctions will be imposed as set forth in subsection (10) of this rule. The identification of violations given herein is descriptive only. The full language of each statutory provision cited must be consulted in order to determine the conduct included.

(4) FACTORS TO BE USED IN DETERMINING LEVEL OF SANCTION: Except for the mandatory suspension and termination provision in subsection (6) of this rule, when determining the type, amount, and duration of the sanction to be applied, the Agency shall consider each of the factors set forth in Section 409.913(16), F.S., in conjunction with subsection (10) of this rule. This rule does not give any one listed factor greater importance or weight over any other. However, the Agency shall have the discretion to rely upon the circumstances of the violation or violations in conjunction with any one or all of the listed factors to determine the sanction that

is ultimately applied. These factors will also be utilized for any deviation by the Agency from the sanctions for each violation, as set forth in subsection (10) of this rule.

(5) APPLICATION TO INDIVIDUALS OR LOCATIONS RATHER THAN TO A PROVIDER GROUP:

(a) Based upon the circumstances present in each individual matter, the Agency shall have the discretion to take action to sanction a particular Medicaid provider, entity, or person working for a Medicaid provider group, and may suspend or terminate participation in the Medicaid program at a specific location, rather than, or in addition to, taking action against an entire Medicaid provider group.

(b) If the Agency chooses to sanction a particular (individual) provider, entity, or person working with a Medicaid provider group or in a particular location, the other members of the Medicaid provider group and the providers in the other locations must fully cooperate in the audit or investigation conducted by the Agency, and the Agency must determine if:

1. The individual provider, entity, or person working with the Medicaid provider group is directly responsible for the violation(s);

2. The Medicaid provider group was unaware of the actions of the individual provider, entity, or person; and,

3. The Agency has not previously taken a preliminary or final Agency action against the group provider for the same violation(s) within the past five years from the date of the violation, unless the Agency determines that the individual provider, entity, or person was responsible for the prior violation.

(6) MANDATORY TERMINATION OR SUSPENSION: If the provider has been suspended or terminated from participation in the Medicaid or Medicare program by the federal government or any state or territory, the Agency shall immediately suspend or terminate, as appropriate, the provider's participation in the Florida Medicaid program for a period no less than that imposed by the federal government or any other state or territory, and shall not enroll such provider in the Florida Medicaid program while such foreign suspension or termination remains in effect. Additionally, all other remedies provided by law, including all civil remedies, and other sanctions, shall apply. [409.913(13), F.S.]

(7) MANDATORY SANCTIONS: Sanctions shall be imposed for the following:

(a) The provider's license has not been renewed, or has been revoked, suspended, or terminated, by the licensing agency of any state. [409.913(14)(a), F.S.];

(b) Failure to make available or refuse access to all Medicaid-related records sought by any investigator. [409.913(14)(b), F.S.];

(c) Failure to make available or furnish all Medicaid-related records, to be used by the Agency in determining whether Medicaid payments are or were due, and what the appropriate corresponding Medicaid payment amount should be. [409.913(14)(c), F.S.];

(d) Failure to maintain contemporaneous Medicaid-related records and prior authorization records, if prior authorization is required, that demonstrate both the necessity and appropriateness of the good or service rendered. [409.913(14)(d), F.S.];

(e) Failure to comply with the provisions of the Medicaid provider publications and handbooks, applicable federal, or state laws, rules or regulations, the requirements and provisions in the provider's Medicaid provider agreement, or the certification found on claim forms or transmittal forms for electronically submitted claims by the provider or authorized representative. [409.913(14)(e), F.S.];

(f) Furnishing or ordering goods or services that are inappropriate, unnecessary or excessive, of inferior quality, or that are found to be harmful to the recipient. [409.913(14)(f), F.S.];

(g) A pattern of failure to provide goods or services that are medically necessary. [409.913(14)(g), F.S.];

(h) Submitting, or causing to be submitted, a single false Medicaid claim, or a pattern of erroneous Medicaid claims, that results in an overpayment finding or that results in actual payment exceeding what is appropriate under the Medicaid program. [409.913(14)(h), F.S.];

(i) Submitting, or causing to be submitted, a Medicaid provider enrollment application or renewal forms, a request for prior authorization for Medicaid services, or a Medicaid cost report containing information that is either materially false or materially incorrect. [409.913(14)(i), F.S.];

(j) Collecting or billing a recipient or a recipient's responsible party for goods or services improperly. [409.913(14)(j), F.S.];

(k) Including costs in a cost report that are not allowed under a Florida Title XIX (Medicaid) reimbursement plan, even though the provider or authorized representative had previously been advised via an audit exit conference or audit report that the costs were not allowable. [409.913(14)(k), F.S.];

(l) Being charged, whether by information or indictment, with fraudulent billing practices. [409.913(14)(l), F.S.];

(m) A finding or determination that a provider, entity, or person is negligent for ordering or prescribing a good or service to a patient, which resulted in the patient's injury or death. [409.913(14)(m), F.S.];

(n) During a specific audit or review period, failure to demonstrate sufficient quantities of goods, or sufficient time in the case of services, that support the corresponding billings or claims made to the Medicaid program. [409.913(14)(n), F.S.];



(o) Failure to comply with the notice and reporting requirements of Section 409.907, F.S. [409.913(14)(o), F.S.];

(p) Committing patient abuse or neglect, or any act prohibited by Section 409.920, F.S. [409.913(14)(p), F.S.];

(q) Failure to comply with any of the terms of a previously agreed-upon repayment schedule. [409.913(14)(q), F.S. and, 409.913(24)(b), F.S.];

(8) ADDITIONAL VIOLATIONS SUBJECT TO TERMINATION: In addition to the termination authority, the Agency shall have the authority to concurrently seek civil remedies or impose other sanctions.

(a) The Agency shall impose the sanction of termination for each violation of:

1. Section 409.913(12)(a), F.S. (generally, a provider is convicted of a criminal offense related to the delivery of any health care goods or services);

2. Section 409.913(12)(b), F.S. (generally, a provider is convicted of a criminal offense relating to the practice of the provider's profession); or

3. Section 409.913(12)(c), F.S. (generally, a provider is found to have neglected or physically abused a patient).

(b) For non-payment or partial payment where monies are owed to the Agency, and failure to enter into a repayment agreement, in accordance with Section 409.913(24)(b), F.S. (generally, a provider who has a debt to the Agency, who has not made full payment, and who fails to enter into a repayment schedule), the Agency shall impose the sanction of a \$5,000 fine; and, where the provider remains out of compliance for 60 days, suspension; and, where the provider remains out of compliance for more than one year, termination.

(c) For failure to reimburse an overpayment, in accordance with Section 409.913(29), F.S. (generally, a provider that fails to repay an overpayment within 35 days after the date of a final order), the Agency shall impose the sanction of a \$5,000 fine; and, where the provider remains out of compliance for 60 days, suspension; and, where the provider remains out of compliance for more than one year, termination.

(9) REPORTING SANCTIONS: The Agency shall report sanctions in accordance with Section 409.913(23), F.S.

(10) GUIDELINES FOR MANDATORY SANCTIONS.

(a) The Agency's authority to impose sanctions on a provider, entity, or person shall be in addition to the Agency's authority to recover a determined overpayment, other remedies afforded to the Agency by law, appropriate referrals to other agencies, and any other regulatory actions against the provider.

(b) In all instances of violations of Medicaid laws, rules, and policies that are subject to this rule, the Agency shall have the authority to impose liens against provider assets, including, but not limited to, financial assets and real property, not to exceed the amount of fines or recoveries sought, including fees and costs, upon entry of an order determining that such moneys are due or recoverable.

(c) A violation is considered a:

1. First Violation – If, within the five years prior to the alleged violation date(s), the provider, entity, or person has not been deemed by the Agency in a prior Agency action to have committed the same violation;

2. Second Violation – If, within the five years prior to the alleged violation date(s), the provider, entity, or person has once been deemed by the Agency in a prior Agency action to have committed the same violation.

3. Third Violation – If, within the five years prior to the alleged violation date(s), the provider, entity, or person has twice been deemed by the Agency in prior Agency actions to have committed the same violation.

4. Fourth Violation – If, within the five years prior to the alleged violation date(s), the provider, entity, or person has three times been deemed by the Agency in prior Agency actions to have committed the same violation.

5. Fifth Violation – If, within the five years prior to the alleged violations date(s), the provider, entity, or person has four times been deemed by the Agency in prior Agency actions to have committed the same violation.

6. Subsequent Violation – If, within the five years prior to the alleged violation date(s) the provider, entity, or person has, five or more times, been deemed by the Agency in prior Agency actions to have committed the same violation.

(d) Multiple violations shall result in an increase in sanctions such that:

1. In the event the Agency determines in a single Agency action that a provider, entity, or person has committed violations of more than one section of this rule, the Agency shall cumulatively apply the sanction guideline associated with each section violated.

2. In the event the Agency determines in a single action that a provider, entity, or person has committed multiple violations of one section of this rule, the Agency shall cumulatively apply the applicable sanctions for each separate violation of the section. However, the Agency shall not apply multiple violations to increase the level of violation (e.g., – from First Violation to Second Violation).

3. In the event the Agency determines that a provider, entity, or person committed violations of more than one provision of this rule in at least three separate Agency actions within the past five years, the Agency shall cumulatively apply the sanctions. Additionally, if the cumulative sanctions do not otherwise result in a suspension of the provider, entity, or person for at least 1 year, the sanction shall also include a 1-year suspension. This sanction shall be in addition to the applicable sanctions and disincentives set forth in this rule.

(e) For purposes of this rule, as used in the table below, a "corrective action plan" shall be a written document, submitted to the Agency, and shall either be an "acknowledgement

statement”, “provider education”, “self audit”, “compliance audit”, or a “comprehensive quality assurance program”. The Agency will specify the type of corrective action plan required.

1. An “acknowledgement statement” shall be a typed document submitted within 30 days of the date of the Agency action that brought rise to this requirement. The Agency will confirm receipt of the statement and either accept or deny it as complying with this rule. If the acknowledgement statement is not acceptable to the Agency, the provider, entity, or person will be advised regarding the deficiencies. The provider will have 10 days to amend the statement. The statement shall:

a. Identify the areas of non-compliance as determined by the Agency in the Agency action; and

b. Acknowledge a requirement to adhere to the specific state and federal Medicaid laws, rules, provisions, handbooks, and policies that are at issue in the Agency action.

2. “Provider Education” shall be successful completion of an educational course or courses that address the areas of non-compliance as determined by the Agency in the Agency action.

a. The provider, entity, or person will identify one or more individuals who are the key Medicaid policy compliance individuals, and must include appropriate treating providers as well as billing staff, who must successfully complete the course(s).

b. The provider, entity, or person will, within 30 days of the date of the Agency action that brought rise to this requirement, submit for approval the name of the course, contact information, and a brief description of the course intended to meet this requirement.

c. The Agency will confirm receipt of the course information and either accept or deny it as complying with this rule. If the course is denied by the Agency, the provider, entity, or person will be advised regarding the reasons for denial. The provider will have 10 days to submit additional course information.

d. Proof of successful completion of the provider education must be submitted to the Agency within 180 days of the date of the Agency action that brought rise to this requirement.

3. A “self audit” is an audit of the provider’s claims to Medicaid for a specified period of time (the audit period) performed by the provider.

a. A self-audit is a detailed and comprehensive evaluation of the provider’s claims to Medicaid. The audit may be focused on particular issues or all state and federal Medicaid laws, rules, provisions, handbooks, and policies. The Agency will specify the audit period as well as issues to be addressed. A self-audit must be completed within 180 days of the date of the Agency action that brought rise to this requirement.

b. The provider is required to submit a detailed listing of paid claims found to be out of compliance with the specified state and federal Medicaid laws, rules, provisions, handbooks,

and policies. The listing shall include the date of service, type of service (e.g., procedure code), treating provider, pay-to provider, date the claim was paid, transaction control number (TCN) for the claim, description of non-compliance, and any other information that would allow the Agency to verify the claim(s). The provider is also required to submit a detailed description regarding the audit methodology and overpayment calculation. The Agency will evaluate the self-audit and determine whether it is a valid evaluation of the provider’s claims.

c. If the self audit is accepted by the Agency, the provider shall be deemed to have been overpaid by the determined amount, and shall be required to repay that amount in full, or enter in and adhere to a repayment plan with the Agency, within 30 days of the date of the acceptance of the self audit.

d. If the self-audit is not accepted, the provider will be advised regarding the reasons for denial. The provider will have 30 days to submit additional information to correct the deficiencies.

4. A “compliance audit” will consist of annual audits conducted by an accounting firm that is not affiliated with or related to the provider, entity, or person subject to the audit.

a. Within 30 days of the date of the Agency action that brought rise to this requirement, the provider, entity, or person shall submit in writing a request for approval of the accounting firm. The request shall include contact information so that the Agency may verify the credentials of the company as well as affiliations. The request shall also include a brief description of the anticipated audit.

b. The Agency will confirm receipt of the audit information and either accept or deny it as complying with this rule. If the accounting firm or proposed audit process is denied by the Agency, the provider, entity, or person will be advised regarding the reasons for denial. The provider will have 30 days to submit additional audit information.

c. All draft, preliminary, and final reports prepared by the accounting firm shall be submitted to the Agency within 10 days of the report issuance. The final report must be submitted to the Agency within 180 days of the date of the Agency action that brought rise to this requirement. All reports must identify any discrepant Medicaid claims, and include the date of service, type of service (e.g., procedure code), treating provider, pay-to provider, date the claim was paid, transaction control number (TCN) for the claim, description of non-compliance, and any other information that would allow the Agency to verify the claim(s).

5. A “comprehensive quality assurance program” shall monitor the efforts of the provider, entity, or person in their internal efforts to comply with state and federal Medicaid laws, rules, provisions, handbooks, and policies.

a. The program shall contain at a minimum the following elements: identification of the physical location where the provider, entity, or person takes any action that may cause a

claim to Medicaid to be submitted; contact information regarding the individual or individuals who are responsible for development, maintenance, implementation, and evaluation of the program; a separate process flow diagram that includes a step-by-step written description or flow chart indicating how the program will be developed, maintained, implemented, and evaluated; a complete description and relevant time frames of the process for internally maintaining the program, including a description of how technology, education, and staffing issues will be addressed; a complete description and relevant time frames of the process for implementing the program; and a complete description of the process for monitoring, evaluating, and improving the program.

b. A process flow diagram regarding the development of the program must be submitted to the Agency within 30 days from the date of the Agency action and must be updated every 30 days until the comprehensive quality assurance program is approved by the Agency. A process flow diagram regarding the maintenance, implementation, and evaluation of the program must be submitted to the Agency within 90 days from the date of the Agency action and must be updated every 30 days until the comprehensive quality assurance program is approved by the Agency.

c. The evaluation process must contain processes for conducting internal compliance audits, which include reporting of the audit findings to specific individuals who have the authority to address the deficiencies, and must include continuous improvement processes. The plan must also include the frequency and duration of such evaluations.

d. The Agency will review the process flow diagram and description of the development of the program and either approve the program or disapprove the program. If the Agency disapproves the program, specific reasons for the disapproval will be included, and the provider, entity, or individual shall have 30 days to submit an amended development plan.

e. Upon approval by the Agency of the development process of the program, the provider, entity, or person shall have 45 days to implement the program. The provider shall provide written notice to the Agency indicating that the program has been implemented.

f. The program must remain in effect for the time period specified in the Agency action and the provider must submit written progress reports to the Agency every 120 days, for the duration of the program.

6. Failure to timely comply with any of the timeframes set forth by the Agency, or to maintain the corrective action plan in accordance with this section, shall result in a \$1000 fine per day of non-compliance. If a provider remains out of compliance for 30 days, the provider shall also be suspended from the Medicaid program until the provider is in compliance. If a provider remains out of compliance for one year, the provider shall be terminated from the Medicaid program. The termination may be with or without cause. The program must remain in effect for the time period specified in the Agency action and the provider must submit written progress reports to the Agency every 120 days, for the duration of the program.

(f) For purposes of this rule, as used in the table below, a "suspension" shall preclude participation in the Medicaid program for one year from the date of the Agency action. A provider(s) that is suspended shall not resume participation in the Medicaid program until the completion of the one-year term. To resume participation, the provider must submit a written request to the Agency, Bureau of Medicaid Program Integrity, to be reinstated in the Medicaid program. The request must include a copy of the notice of suspension issued by the Agency, and a written acknowledgement regarding whether the violation(s) that brought rise to the suspension has been remedied. The provider may not resume participation in the Medicaid program until they receive written confirmation from the Agency indicating that participation in the Medicaid program has been authorized.

(g) For purposes of this rule, as used in the table below, a "termination" shall preclude participation in the Medicaid program for twenty years from the date of the Agency action. "Termination" shall be with or without cause. A provider(s) who is terminated (regardless of whether with or without cause) shall not resume participation in the Medicaid program until the completion of the twenty-year term. To resume participation, the provider must submit a complete and accurate provider enrollment application, which will be accepted or denied in the standard course of business by the Agency. In addition to the application, the provider must include a copy of the notice of termination issued by the Agency, and a written acknowledgement regarding whether the violation(s) that brought rise to the termination has been remedied.

(h) Sanctions and disincentives shall apply in accordance with this rule, as set forth in the table below:

<u>Violation Type/ Section of Rule</u>	<u>First violation</u>	<u>Second violation</u>	<u>Third violation</u>	<u>Fourth violation</u>	<u>Fifth and Subsequent violations</u>
<u>For each violation of Medicaid laws, rules or policies not otherwise listed in this rule:</u>	<u>A \$1,000 fine; and submission of a corrective action plan.</u>	<u>A \$2,000 fine; and submission of a corrective action plan.</u>	<u>A \$3,000 fine; and suspension. Upon expiration of the suspension, submission of a corrective action plan.</u>	<u>A \$4,000 fine; and suspension. Upon expiration of the suspension, submission of a corrective action plan.</u>	<u>Termination.</u>
<u>(7)(a) The provider's license has not been renewed by the licensing agency of any state; or the license has been revoked, suspended, or terminated, by the licensing agency of any state. [409.913(14)(a), F.S.];</u>	<u>For licensure suspension: suspension from the Medicaid program for the duration of the licensure suspension; however, if the licensure suspension is to exceed 1 year and for all other violations: termination.</u>	<u>For licensure suspension: suspension from the Medicaid program for the duration of the licensure suspension; however, if the licensure suspension is to exceed 1 year and for all other violations: termination.</u>	<u>Termination.</u>	<u>Termination.</u>	<u>Termination.</u>
<u>(7)(b) Failure, upon demand, to make available or refuse access to, Medicaid-related records [409.913(14)(b), F.S.];</u>	<u>A \$1,000 fine per record request or instance of refused access; if after 60 days, the provider is still in violation, suspension until the records are made available or access is granted; if after one year, the provider is still in violation, termination.</u>	<u>A \$2,500 fine per record request or instance of refused access; if after 60 days, the provider is still in violation, suspension until the records are made available or access is granted; if after one year, the provider is still in violation, termination.</u>	<u>A \$5,000 fine per record request or instance of refused access; if after 60 days, the provider is still in violation, suspension until the records are made available or access is granted; if after one year, the provider is still in violation, termination.</u>	<u>A fine for each record request or instance of refused access; if after 60 days, the provider is still in violation, suspension until the records are made available or access is granted; if after one year, the provider is still in violation, termination.</u>	<u>A fine for each record request or instance of refused access; if after 60 days, the provider is still in violation, suspension until the records are made available or access is granted; if after one year, the provider is still in violation, termination.</u>
<u>(7)(c) Failure to furnish records, within time frames established by the Agency. [409.913(14)(c), F.S.];</u>	<u>A \$500 fine per record request; if after 60 days, the provider is still in violation, suspension until the records are made available; if after one year, the provider is still in violation, termination.</u>	<u>A \$1,000 fine per record request; if after 60 days, the provider is still in violation, suspension until the records are made available; if after one year, the provider is still in violation, termination.</u>	<u>A \$2,500 fine per record request; if after 60 days, the provider is still in violation, suspension until the records are made available; if after one year, the provider is still in violation, termination.</u>	<u>A \$5,000 fine per record request; if after 60 days, the provider is still in violation, suspension until the records are made available; if after one year, the provider is still in violation, termination.</u>	<u>A fine for each record request; if after 60 days, the provider is still in violation, suspension until the records are made available; if after one year, the provider is still in violation, termination.</u>

<p><u>(7)(d) Failure to maintain contemporaneous Medicaid-related records.</u> [409.913(14)(d), F.S.];</p>	<p><u>A \$100 fine per claim for which supporting documentation is not maintained. For a pattern: a \$1,000 fine per patient record for which any of the supporting documentation is not maintained; and submission of a corrective action plan.</u></p>	<p><u>A \$200 fine per claim for which supporting documentation is not maintained. For a pattern: a \$2,000 fine per patient record for which any of the supporting documentation is not maintained; and submission of a corrective action plan.</u></p>	<p><u>A \$3,000 fine per patient record for which any of the supporting documentation is not maintained; and suspension.</u></p>	<p><u>Termination.</u></p>	<p><u>Termination.</u></p>
<p><u>(7)(e) Failure to comply with the provisions of Medicaid policies, procedures, or law.</u> [409.913(14)(e), F.S.];</p>	<p><u>A \$500 fine per provision. For a pattern: a \$1,000 fine per provision.</u></p>	<p><u>A \$1,000 fine per provision. For a pattern: a \$2,000 fine per provision; and submission of a corrective action plan.</u></p>	<p><u>A \$2,000 fine per provision. For a pattern: a \$3,000 fine per provision; submission of a corrective action plan; and suspension.</u></p>	<p><u>A \$3,000 fine per provision. For a pattern: a \$4,000 fine per provision; submission of a corrective action plan; and suspension.</u></p>	<p><u>A \$5,000 fine per provision; and suspension. For a pattern: termination.</u></p>
<p><u>(7)(f) Furnishing or ordering goods or services that are inappropriate, unnecessary or excessive, of inferior quality, or that are harmful.</u> [409.913(14)(f), F.S.];</p>	<p><u>For harmful goods or services: a fine for each instance, and suspension. For all others: a \$1,000 fine for each individual instance and submission of a corrective action plan.</u></p>	<p><u>For harmful goods or services: a fine for each instance, and termination. For all others: a \$2,000 fine for each individual instance and submission of a corrective action plan.</u></p>	<p><u>For harmful goods or services: a fine for each instance, and termination. For all others: a \$3,000 fine for each individual instance and suspension.</u></p>	<p><u>Termination.</u></p>	<p><u>Termination.</u></p>
<p><u>(7)(g) A pattern of failure to provide goods or services that are medically necessary.</u> [409.913(14)(g), F.S.];</p>	<p><u>A fine and submission of a corrective action plan.</u></p>	<p><u>A fine for each instance; and suspension.</u></p>	<p><u>A fine for each instance; and suspension.</u></p>	<p><u>Termination.</u></p>	<p><u>Termination.</u></p>
<p><u>(7)(h) Submitting false Medicaid claims, or a pattern of erroneous Medicaid claims.</u> [409.913(14)(h), F.S.];</p>	<p><u>For false claims: termination. For a pattern of erroneous claims: a \$1,000 fine for each claim in the pattern; and submission of a corrective action plan;</u></p>	<p><u>For false claims: Termination. For a pattern of erroneous claims: A \$2,000 fine for each claim in the pattern; suspension; and upon the conclusion of the suspension, submission of a corrective action plan.</u></p>	<p><u>Termination.</u></p>	<p><u>Termination.</u></p>	<p><u>Termination.</u></p>
<p><u>(7)(i) Submitting certain documents containing information that is either materially false or materially incorrect.</u> [409.913(14)(i), F.S.];</p>	<p><u>A fine for each separate violation; and suspension.</u></p>	<p><u>Termination.</u></p>	<p><u>Termination.</u></p>	<p><u>Termination.</u></p>	<p><u>Termination.</u></p>

(7)(j) Collecting or billing a recipient improperly. [409.913(14)(j), F.S.];	<u>A \$1,000 fine for each instance.</u>	<u>A \$2,500 fine for each instance.</u>	<u>A \$5,000 fine for each instance; and suspension.</u>	<u>A fine for each instance; and suspension.</u>	<u>Termination.</u>
(7)(k) Including unallowable costs after having been advised. [409.913(14)(k), F.S.];	<u>A fine.</u>	<u>A fine</u>	<u>A fine for each unallowable cost.</u>	<u>A fine for each unallowable cost.</u>	<u>A fine for each unallowable cost.</u>
(7)(l) Being charged with fraudulent billing practices. [409.913(14)(l), F.S.];	<u>Suspension for the duration of the indictment. If the provider is found guilty, termination.</u>	<u>Suspension for the duration of the indictment. If the provider is found guilty, termination.</u>	<u>Suspension for the duration of the indictment. If the provider is found guilty, termination.</u>	<u>Suspension for the duration of the indictment. If the provider is found guilty, termination.</u>	<u>Suspension for the duration of the indictment. If the provider is found guilty, termination.</u>
(7)(m) Negligently ordering or prescribing, which resulted in the patient's injury or death. [409.913(14)(m), F.S.];	<u>Termination.</u>	<u>Termination.</u>	<u>Termination.</u>	<u>Termination.</u>	<u>Termination.</u>
(7)(n) Failure to demonstrate sufficient quantities of goods or sufficient time to support the corresponding billings or claims made to the Medicaid program. [409.913(14)(n), F.S.];	<u>A \$1,000 fine and submission of a corrective action plan.</u>	<u>A \$2,500 fine and submission of a corrective action plan.</u>	<u>A \$5,000 fine and suspension.</u>	<u>Termination.</u>	<u>Termination.</u>
(7)(o) Failure to comply with the notice and reporting requirements of s. 409.907. [409.913(14)(o), F.S.];	<u>A \$1,000 fine.</u>	<u>A \$2,000 fine.</u>	<u>A \$3,000 fine.</u>	<u>A \$4,000 fine.</u>	<u>A \$5,000 fine.</u>
(7)(p) Committing patient abuse or neglect, or any act prohibited by s. 409.920. [409.913(14)(p) and 409.913(24)(b), F.S.];	<u>A fine per instance, and suspension.</u>	<u>Termination.</u>	<u>Termination.</u>	<u>Termination.</u>	<u>Termination.</u>
(7)(q) Failure to comply with an agreed-upon repayment schedule. [409.913(14)(q), F.S.];	<u>A \$1,000 fine; and, where the provider remains out of compliance for 60 days, suspension; and, where the provider remains out of compliance for more than one year, termination.</u>	<u>A \$2,000 fine; and, where the provider remains out of compliance for 60 days, suspension; and, where the provider remains out of compliance for more than one year, termination.</u>	<u>A \$3,000 fine and suspension until in compliance; where the provider remains out of compliance for more than one year, termination</u>	<u>A \$4,000 fine and suspension until in compliance; where the provider remains out of compliance for more than one year, termination</u>	<u>A \$5,000 fine and suspension until in compliance; where the provider remains out of compliance for more than one year, termination</u>

Specific Authority 409.919 FS. Law Implemented 409.907, 409.913, 409.9131, 812.035 FS. History--New \_\_\_\_\_.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 3, 2004

NAME OF PERSON ORIGINATING PROPOSED RULE: Kelly A. Bennett

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 9, 2003

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Timothy L. Byrnes

**DEPARTMENT OF MANAGEMENT SERVICES****Agency for Workforce Innovation**

RULE TITLES:    RULE NOS.:  
Annual Filing    60BB-2.0255  
Public Use Forms    60BB-2.037

PURPOSE AND EFFECT: A) The purpose of proposed new Rule 60BB-2.0255, F.A.C. (Annual Filings), is to implement the provisions of Section 50 of Chapter 2002-218, Laws of Florida. B) The purpose of the revisions to Rule 60BB-2.037, F.A.C. (Public Use Forms), is to adopt new and revised unemployment compensation tax forms

SUMMARY: A) Proposed new Rule 60BB-2.0255, F.A.C. (Annual Filings), establishes simplified procedures that may be used to report and remit unemployment compensation tax on an annual basis by employers who only employ persons that perform domestic services. B) The proposed changes to Rule 60BB-2.037, F.A.C. (Public Use Forms), update references to several unemployment compensation tax forms that are new or have been revised.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: 443.131(1), 443.171(2)(a) FS.

LAW IMPLEMENTED: 443.036(19)(g),(34), 443.131, 443.171(1) FS.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:30 a.m., March 22, 2004

PLACE: Room 435, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Department is asked to advise the Department at least 48 hours before such proceeding by contacting: Larry Green, (850)922-4830. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

The Department's proposed rules are available on the Department's web site: [www.myflorida.com/dor/rules](http://www.myflorida.com/dor/rules).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Michael Metz, Senior Attorney, Office of the General Counsel, Department of Revenue, P. O. Box 6668, Tallahassee, Florida 32314-6668, (850)922-4830, e-mail: [metzm@dor.state.fl.us](mailto:metzm@dor.state.fl.us)

THE FULL TEXT OF THE PROPOSED RULES IS:

60BB-2.0255 Annual Filing.

(1) Application.

(a) Employers who employ only employees performing domestic services and who elect the option of reporting wages and paying taxes annually pursuant to Section 443.131, Florida Statutes, shall complete application form UCT-7A (revised, June 2003) and file it with the Department no later than December 1 of the year preceding the calendar year the optional election begins. The Department shall issue written notification to employers of the approval or rejection of the application within 30 consecutive calendar days of the Department's receipt of a completed application. Eligible employers whose application has been approved by the Department do not need to resubmit an application for any subsequent years.

(b)1. Employers who are approved by the Department shall report wages and pay taxes annually by filing form UCT-7 (new, May 2004) in accordance with the instructions contained on the form.

2. However, employers required to file by electronic means shall file form UCT-7 by electronic means and pay taxes by electronic means in accordance with Rules 60BB-2.025 and 60BB-2.027, F.A.C.

(2) Disqualification or Termination. If, at any time, an employer ceases to qualify for the annual reporting wages and paying taxes program or determines that it desires to discontinue participation in the annual reporting wages and paying taxes program or, due to the failure to timely furnish wage information, loses the privilege of participating in the annual reporting wages and paying taxes program, the employer shall file with the Department, no later than the last day of the month following the calendar quarter in which the disqualification or termination occurred, all quarterly wage and tax reports due for all completed calendar quarters in the current calendar year and pay all the amounts due thereon. All requests to change the employer's status as a program participant with the Department must be submitted in writing by the employer.

(3) Reapplication.

(a) All employers of domestic employees who have been disqualified from participating in the annual reporting wages and paying taxes program may, after one complete calendar year during which the employer timely furnished any requested wage information during the period that annual reporting was denied, reapply by completing form UCT-7A and filing it with the Department as required by paragraph (1)(a) to be considered for the annual reporting of wages and paying taxes program commencing January 1 of the following calendar year.

(b) All employers of domestic employees who have ceased, pursuant to their written request, to participate in the program may, after one complete calendar year, reapply by

completing form UCT-7A and filing it with the Department no later than December 1 to be considered for the annual reporting of wages and paying taxes program commencing January 1 of the following calendar year.

(4) Forms. The forms referred to in this rule are incorporated by reference and are available from the Agency through its designee, the Department of Revenue, as provided in Rule 60BB-2.037, F.A.C.

Specific Authority 443.131(1) FS. Law Implemented 443.131(1) FS. History—New \_\_\_\_\_

60BB-2.037 Public Use Forms.

(1) The following forms and instructions are used by the Department of Revenue in its dealings with the public in the administration of the unemployment compensation tax, and are hereby incorporated by reference in this rule.

(a) Form DR-1, Application to Collect and/or Report Tax in Florida (Rev. 08/01).

(b) LES Form UCS-2A, Questionnaire for Voluntary Election of Unemployment Compensation Coverage (Rev. 09/01).

(c) Form UCS-1S, Report to Determine Succession and Application for Transfer of Experience Rating Records (Rev. 12/01).

(d) Form UCS-2, Voluntary Election to Become an Employer Under the Florida Unemployment Compensation Law (Rev. 08/01).

(e) Form UCS-3, Florida Department of Revenue Employer Account Change Form (Rev. 08/01).

(f) Form UCS-6, Employers Reciprocal Coverage Election (Rev. 12/00).

(g) Form UCS-6061, Independent Contractor Analysis (Rev. 01/01).

(h) Form UCS-70, Application for Common Paymaster (Rev. 08/01).

(i) Form UCT-1, Notice of Benefits Paid (Rev. 12/00).

(j) Form UCT-6, Employer's Quarterly Report (Rev. 12/01).

(k) Form UCT-7, Florida Department of Revenue Employer's Unemployment Tax Annual Report for Employers of Domestic Employees Only (N. 12/03).

(l) Form UCT-7A, Application to Select Filing Period for Employers Who Employ ONLY Employees Who Perform Domestic Services (N. 07/02).

~~(m)(k)~~ Form UCT-8A, Correction to Employer's Quarterly Report (UCT-6) (Rev. 4/01).

~~(n)(h)~~ Form UCT-18, Notice of Tax Lien (Rev. 12/00).

~~(o)(m)~~ Form UCT-29, Unemployment Compensation Reimbursement Invoice (Rev. 03/01).

~~(p)(n)~~ Form UCT-50T, Florida Department of Revenue Magnetic Media Reporting Transmittal (Rev. 01/01).

~~(q)(e)~~ Form UCT-FL06A, Incomplete Report Notice (Rev. 05/01).

~~(r)(p)~~ Form UCT-FL13A, Missing Wage Report (Rev. 05/01).

~~(s)(e)~~ Form UCT-62, Power of Attorney for Unemployment Tax (Rev. 11/01).

~~(t)(r)~~ Form UCS-8, Firm's Statement of Claimant's Work and Earnings (Rev. 03/01).

(2) Copies of forms. Forms incorporated in this rule are available, without cost, from the Agency through its designee, the Department of Revenue, by one or more of the following methods:

(a) Writing to the Florida Department of Revenue, ~~Forms~~ Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or,

(b) Faxing a request to the ~~Forms~~ Distribution Center at (850) 922-2208; or,

(c) Visiting any local Department of Revenue Service Center to personally obtain a copy; or,

(d) Calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or,

(e) Downloading selected forms from the Department of Revenue's Internet site (www.myflorida.com/dor);

(f) Dialing the TDD number for the Department of Revenue at 1(800)367-8331 for persons with hearing or speech impairments.

Specific Authority 443.171(2)(a) FS. Law Implemented 443.036(19)(g),(34), 443.131, 443.171(1) FS. History—New 1-19-03. Amended \_\_\_\_\_

NAME OF PERSON ORIGINATING PROPOSED RULE: Michael Metz, Senior Attorney, Office of the General Counsel, Department of Revenue, P. O. Box 6668, Tallahassee, Florida 32314-6668, (850)922-4830, e-mail: metzm@dor.state.fl.us

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Bruce Hoffmann, General Counsel, Department of Revenue, P. O. Box 6668, Tallahassee, Florida 32314-6668, (850)488-0712

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 17, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Proposed new Rule 60BB-2.0255, F.A.C., was noticed for a rule development workshop in the Florida Administrative Weekly (FAW) on November 26, 2003 (Vol. 29, No. 48, pp. 4693 through 4694). The workshop was held on December 11, 2003. The proposed changes to Rule 60BB-2.0237, F.A.C., were noticed for a rule development workshop in the FAW on January 2, 2004 (Vol. 30, No. 1, pp. 1 and 2), and the workshop was held on January 20, 2004. No one attended the rule development workshops, and no one submitted written comments. After the workshop for Rule 60BB-2.0255, F.A.C., the Department changed the rule to delete language concerning how a taxpayer can obtain unemployment compensation tax forms and instructions from the agency (a similar provision already exists in Rule 60BB-2.037, F.A.C.)



**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Department of Environmental Protection are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF HEALTH**

**Board of Clinical Laboratory Personnel**

RULE TITLES:	RULE NOS.:
Supervisor	64B3-5.002
Technologist	64B3-5.003
Technician	64B3-5.004
Director; Limitations and Qualifications	64B3-5.007
Public Health Laboratory Personnel	64B3-5.008

PURPOSE AND EFFECT: The Board proposes to update the existing rule text.

SUMMARY: The Board is clarifying provisions, reducing to 5 years histology experience for supervision requirements, adding the andology and embryology categories for all levels, adding histocompatibility requirements for technologists, and reorganizing the placement of provisions.

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

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

SPECIFIC AUTHORITY: 483.051, 483.805(4), 483.811(2), 483.823 FS.

LAW IMPLEMENTED: 381.0034, 483.041(5), 483.051(1), 483.800, 483.809, 483.811(2), 483.815, 483.823, 483.824 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Clinical Laboratory Personnel, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B3-5.002 Supervisor.

Qualifications and Responsibilities.

(1) Qualification. Degrees or semester hours of academic credit required in this section shall be obtained at a regionally accredited college or university or by foreign education equated pursuant to subsection 64B3-6.002(6), F.A.C. In order to be licensed as a supervisor, an applicant shall be licensed or meet the requirements for licensure as a technologist and complete a Board approved examination or complete 25 hours of Board approved continuing education in the area of

administration and supervision, which includes examination(s) accumulated over no longer than five years prior to application for licensure, shall have one hour of Board approved HIV/AIDS continuing education, a Board approved 2-hour course relating to the prevention of medical errors, which shall include root-cause analysis, error reduction and prevention, and patient safety, and one of the following:

(a) through (c) No change.

~~(d) In the categories of cytogenetics, cytology, radioassay, and molecular genetics, the experience required in paragraphs (a), (b) and (c) must be in the specific category for which licensure is sought.~~

~~(d)(e)~~ For the category of blood gas analysis only, an associate degree in cardiopulmonary function technology or respiratory care, five years of pertinent clinical laboratory experience and be licensed or meet the requirements for licensure as a technologist in the category of Blood Gases, or as a respiratory care practitioner certified in critical care services or a respiratory therapist pursuant to Chapter 468, Part V, F.S.

~~(e)(f)~~ For the category of Cytology only, a baccalaureate degree which shall include 16 semester hours of academic science, have completed an accredited or Board approved training program in cytology, be licensed or qualified as a clinical laboratory technologist and have five years of pertinent clinical laboratory experience in cytology. If ASCP (American Society of Clinical Pathologists) certified prior to 1985, have an associate degree or equivalent, national certification by the American Society of Clinical Pathologists, and 10 years of pertinent clinical laboratory experience within the past 15 years.

~~(g) In lieu of one year of experience required by paragraphs 64B3-5.002(1)(b) and (c), F.A.C., an applicant may use Board certification obtained by examination in one or more of the laboratory specialties through the Board of Registry of the American Society of Clinical Pathologists, National Certification Agency of Medical Laboratory Personnel, National Registry of Clinical Chemistry, American Academy of Microbiology, American Medical Technologists, American Board of Bioanalysis, American Board of Clinical Chemistry, American Board of Medical Microbiology, American Board of Medical Genetics, American Board of Medical Laboratory Immunology, or American Board of Histocompatibility and Immunogenetics. This certification shall not substitute for the one year of pertinent clinical laboratory experience in an individual category for which licensure is sought.~~

~~(f)(h)~~ In the category of histology, one of the following:

1. Board certification gained by examination in histology through the Board of Registry of the American Society of Clinical Pathologists (ASCP) ~~certification~~ at the Histotechnologist (HTL) level and five years of pertinent experience.

2. Board certification gained by examination in histology through the Board of Registry of the ~~ASCP American Society of Clinical Pathologists certification~~ at the Histotechnician (HT) level, ~~five~~ 10 years of pertinent clinical laboratory experience post-certification, and ~~an additional 23~~ 48 hours continuing education in administration and supervision within five years prior to application for licensure.

3. Florida licensure or meeting the requirements for licensure as a histology technologist, ~~five~~ 10 years of pertinent clinical laboratory experience, and ~~an additional 23~~ 48 hours continuing education in administration and supervision within five years prior to application for licensure.

(g) In the category of andrology or embryology, applicants who are currently working in either of these fields and meeting all other requirements shall not be required to have a previous license as a technologist as long as they are licensed by the end of January 2006.

~~(i) Be licensed in a specialty as a technologist, meet the education and experience requirements under paragraph 64B3-5.002(1)(a), (b) or (c), F.A.C., and completes 25 hours of Board approved continuing education in the area of administration and supervision, which includes examination(s), accumulated over no longer than five years prior to application for licensure. Course content must include the guidelines set forth in subsection 64B3-3.003(7), F.A.C. This continuing education may not be used to satisfy biennial renewal requirements.~~

(2) In lieu of one year of experience required by paragraphs 64B3-5.002(1)(b) and (c), F.A.C., an applicant may use Board certification obtained by examination in one or more of the laboratory specialties through the Board of Registry of the ASCP, National Credentialing Agency of Laboratory Personnel, National Registry of Clinical Chemistry, American Academy of Microbiology, American Medical Technologists, American Board of Bioanalysts, American Board of Clinical Chemistry, American Board of Medical Microbiology, American Board of Medical Genetics, American Board of Medical Laboratory Immunology, or American Board of Histocompatibility and Immunogenetics. This certification shall not substitute for the one year of pertinent clinical laboratory experience in an individual category for which licensure is sought.

~~(3)(2)~~ Adding Categories to an Active Supervisor's License. Licensed supervisors may add a category or categories by passing a technologist level examination and by providing proof of one year's experience for each category to be added.

(4) The Board approved Supervision and Administration examinations, in lieu of the required 25 hours of supervision and administration required in (1) are:

1. The Diplomate in Laboratory Management examination on general supervision administered by the American Society for Clinical Pathology (ASCP).

2. The Specialist in Blood Banking administered by ASCP for Blood Banking and Immunohematology.

3. The Specialist in Cytotechnology administered by ASCP for licensure by endorsement as a supervisor in Cytology.

4. The Specialist in Chemistry administered by ASCP for licensure by endorsement for supervisors in Clinical Chemistry.

5. The Specialist in Hematology administered by ASCP for licensure by endorsement for supervisors in Hematology.

6. The Clinical Laboratory Supervisor administered by the National Credentialing Agency for Laboratory Personnel (NCA).

7. The Certified Histocompatibility Specialist Examination (CHS) administered by the American Board of Histocompatibility and Immunogenetics (ABHI).

8. The Specialist in Andrology or Embryology Examination administered by the American Board of Bioanalysts.

Specific Authority 483.805(4), 483.823 FS. Law Implemented 381.0034, 483.800, 483.809, 483.815, 483.823 FS. History--New 12-6-94, Amended 7-12-95, 12-4-95, Formerly 590-5.002, Amended 5-26-98, 1-11-99, 6-10-99, 3-11-01, 9-19-01, 5-23-02, 10-14-02, 9-16-03, \_\_\_\_\_.

64B3-5.003 Technologist.

(1) Technologist Qualifications. Degrees or semester hours of academic credit required in this section shall be obtained at a regionally accredited college or university or, if foreign education, equated pursuant to subsection 64B3-6.002(6), F.A.C. All associate degrees used to qualify shall include, at a minimum, 60 semester hours of academic credit including a total of 16 semester hours of academic biological and/or chemical science. Applicants for technologist licensure in the categories of microbiology, serology/immunology, chemistry, hematology, immunohematology, radioassay, histocompatibility, blood banking and blood gas analysis, cytology, cytogenetics, molecular genetics, histology, andrology and embryology shall have one hour of Board approved HIV/AIDS continuing education, a Board approved 2-hour course relating to the prevention of medical errors, which shall include root-cause analysis, error reduction and prevention, and patient safety and at a minimum have one of the following:

(a) through (c) No change.

(d) A baccalaureate degree in a chemical or biological science, Florida licensure as a technician, and proof of completion of an accredited and/or Board approved clinical laboratory training program at the technician level.

(d) through (j) renumbered (e) through (k) No change.

(k) Individuals with a baccalaureate degree in a chemical or biological science, Florida licensure as a technician, and proof of completion of an accredited and/or Board approved clinical laboratory training program at the technician level, may qualify for a technologist license.

~~(l)(2)~~ Qualifications for Cytology Technologist. For the specialty of cytology, applicants for technologist shall possess a baccalaureate degree in cytology and be nationally certified in cytology by the American Society for Clinical Pathology. ~~Applicants shall have one hour of Board approved HIV/AIDS continuing education as stated in Rule 64B3-11.005, F.A.C., or in subsequent rule of the Department.~~

~~(m)(3)~~ Qualifications for Histology Technologist. For the category of histology, applicants for technologist licensure shall have a high school diploma or its equivalent ~~one hour of Board approved HIV/AIDS continuing education as stated in Rule 64B3-11.005, F.A.C., or in subsequent rule of the Department,~~ and have one of the following:

1.(a) Board certification gained by examination in histology through the Board of Registry of the American Society for Clinical Pathology (ASCP) ~~certification~~ at the Histotechnologist (HTL) level.

2.(b) Board certification gained by examination in histology through the Board of Registry of the ASCP American Society for Clinical Pathology certification at the Histotechnician (HT) level, 48 contact hours of continuing education in immunohistochemistry/advanced histologic techniques and five years of pertinent clinical laboratory experience.

3.(c) Graduation from a NAACLS approved associate degree histotechnology program and Board certification gained by examination in histology through the Board of Registry of the ASCP American Society for Clinical Pathology certification at the Histotechnician (HT) level.

4.(d) Board certification gained by examination in histology through the Board of Registry of the ASCP American Society for Clinical Pathology certification at the Histotechnician (HT) level and Qualification in Immunohistochemistry (QIHC).

5.(e) Florida licensure as a histology technician, 48 contact hours of continuing education in immunohistochemistry/advanced histologic techniques and five to years of pertinent clinical laboratory experience.

~~(n)(4)~~ Qualifications for Cytogenetics Technologists. In the category of cytogenetics, applicants for technologist licensure shall have a minimum of a baccalaureate degree in clinical laboratory, chemical or biological science, successfully passed the Cytogenetics examination given by the National Credentialing Agency for Laboratory Personnel (NCA) ~~one hour of Board approved HIV/AIDS continuing education~~ and have one of the following:

1.(a) No change.

2.(b) One year of pertinent clinical laboratory experience in cytogenetics.

~~(c) Successfully passed the cytogenetics examination given by NCA (National Certification Agency for Medical Laboratory Personnel).~~

~~(o)(5)~~ Qualifications for Blood Banking Technologists. In the category of blood banking, applicants for technologist licensure shall have ~~one hour of Board approved HIV/AIDS continuing education,~~ a minimum of a baccalaureate degree in a clinical laboratory, chemical or biological science, certification by the ASCP Board of Registry in blood banking and have one of the following:

1.(a) No change.

2.(b) Documentation of graduation from an accredited Specialist in Blood Banking Program ~~and national certification by the American Society of Clinical Pathologists Board of Registry as a specialist in blood banking.~~

~~(p)(6)~~ Qualifications for Molecular Genetics Technologist. For the specialty of molecular genetics, applicants for technologist licensure shall have a minimum of a baccalaureate degree, which shall include 16 semester hours of academic science, successfully passed the molecular biology examination given by NCA and successfully one hour of Board approved HIV/AIDS continuing education as stated in Rule 64B3-11.005, F.A.C., or in subsequent rule of the Department, ~~and one of the following:~~(a) Successfully completed a technologist level accredited or Board approved program in molecular genetics.

~~(b) One year of pertinent clinical laboratory experience in molecular genetics; or~~

~~(c) Successfully passed the molecular biology examination given by NCA (National Certification Agency for Medical Laboratory Personnel).~~

(q) Qualifications for Histocompatibility. Individuals working toward the eligibility requirement for application to take the Board approved certification exam in histocompatibility must be currently licensed as technologists or technicians in either serology/immunology or immunohematology. They must meet the requirements for eligibility to take the Board approved examinations in histocompatibility by receiving at least one year's notarized, documented relevant full-time work experience in an American Board of Histocompatibility and Immunogenetics (ABHI) approved laboratory performing histocompatibility testing. They are eligible to apply for licensure in histocompatibility by endorsement.

(r) Qualifications for Andrology or Embryology Technologist. For the specialties of andrology and embryology, applicants for technologist licensure shall have a minimum of an associate of arts degree, which shall include 24 hours of academic science and documentation of successful completion of one of the following:

1. A technologist level accredited or board approved program in andrology or embryology.

2. A baccalaureate degree and one year of pertinent clinical laboratory experience in the area of andrology or embryology.

3. An associate of arts degree and three years of pertinent clinical laboratory experience in the area of andrology or embryology.

(2) Approved examinations for licensure as a technologist:

(a) An examination in one or more of the following specialties: microbiology, serology/immunology, clinical chemistry, hematology, immunohematology, blood banking/immunohematology, histology prepared by the ASCP, the American Medical Technologists (AMT), the NCA, or the American Association of Bioanalysis (AAB); or

(b) In the specialty of cytology, the Cytotechnologist Examination prepared by the Board of Registry of the ASCP; or

(c) In the specialty of cytogenetics, the Clinical Laboratory Specialist in Cytogenetics Examination prepared by the NCA; or

(d) In the specialty of histocompatibility, the Certification Examination for Histocompatibility Technologists, prepared by ABHI; or

(e) In the specialty of radioassay, the Certification Examination in Radioassay, prepared by the Clinical Ligand Assay Society Certification Board; or

(f) In the specialty of blood gas analysis, either the Cardiovascular Science Examination, prepared by Cardiovascular Credentialing International, or the Advanced Pulmonary Function Technologist Examination, prepared by the National Board of Respiratory Care; or

(g) In the specialty of blood banking/immunohematology, the Technologist Certification Examination in Blood Banking, or the Specialist in Blood Banking Certification Examination, prepared by the Board of Registry of ASCP are also acceptable in addition to the options stated in paragraph (2)(a) above; or

(h) In the specialty of andrology or embryology, the Examination in andrology or embryology prepared by AAB.

Specific Authority 483.805(4), 483.811(2), 483.823 FS. Law Implemented 381.0034, 483.800, 483.809, 483.811(2), 483.815, 483.823 FS. History—New 12-6-94, Amended 7-12-95, 9-10-95, 12-4-95, Formerly 59O-5.003, Amended 5-26-98, 1-11-99, 7-5-01, 3-24-02, 10-29-02, \_\_\_\_\_.

64B3-5.004 Technician.

(1) General Qualifications. Degrees or semester hours of academic credit required in this section shall be obtained at a regionally accredited college or university, or by foreign education equated pursuant to subsection 64B3-6.002(6), F.A.C.

(2) Qualifications for General Laboratory Technicians. In order to be licensed as a general laboratory technician, which includes the categories of microbiology, serology/immunology, chemistry, hematology, and immunohematology, histology, molecular genetics, andrology and embryology, an applicant shall have one hour of Board approved HIV/AIDS continuing education, a Board approved 2-hour course relating to the prevention of medical errors, which shall include root-cause

analysis, error reduction and prevention, and patient safety, a minimum of a high school diploma or a high school equivalency diploma and one of the following:

(a) through (d) No change.

(e) An earned baccalaureate degree in medical technology ~~Medical Technology~~ which includes didactic and practical instruction in the areas of microbiology, serology/immunology, chemistry, hematology and immunohematology.

~~(f)(3)~~ Qualifications for Histology Technicians. For the category of histology, applicants for technician licensure shall have certification ~~one hour of Board approved HIV/AIDS continuing education, a minimum of a high school diploma or its equivalent, examination in histology by the American Society of Clinical Pathologists, and one of the following:~~

(a) Successful completion of a Board approved histology training program.

~~(b) Successful completion of an accredited histology program.~~

~~(c) Successful completion of a military histology training program consisting of 1500 clock hours of study within 12 calendar months.~~

~~(d) Certification~~ by the American Society for Clinical Pathology (ASCP) at the histotechnician (HT) level.

~~(g)(4)~~ Qualifications for Molecular Genetics Technicians. To be licensed as a molecular genetics technician, an applicant shall have ~~one hour of Board approved HIV/AIDS continuing education,~~ a minimum of a high school diploma or high school equivalent, and be licensed as a clinical laboratory technologist or technician in any specialty area.

(h) Qualifications for Andrology or Embryology Technician. For the category of andrology or embryology, applicants for technician licensure shall have documentation of successful completion of one of the following:

1. A technician level accredited or board accredited program in andrology or embryology.

2. A board approved technician level clinical laboratory training program.

3. A military clinical laboratory personnel training program, which shall consist of 1500 clock hours of study within 12 calendar months.

4. A baccalaureate degree and six months of pertinent clinical laboratory experience in andrology or embryology.

5. Five years of pertinent clinical laboratory experience in andrology or embryology.

~~(2)(5)~~ Qualifications for Technicians who perform High Complexity Testing. Technicians performing high complexity testing as defined in 42 C.F.R. 493.5 and 493.17, and who have been licensed after September 1, 1997, shall meet the minimum educational and training qualifications provided in 42 C.F.R. 493.1489 (March, 1999), incorporated herein by

reference, including a minimum of an associate degree in laboratory science, medical laboratory technology, or equivalent education and training.

**(6) Responsibilities of Technicians. The technician shall:**

~~(a) Perform tests classified as highly complex pursuant to 42 CFR 493.17 (September 7, 1999), incorporated by reference herein, only when under direct supervision of a licensed technologist, supervisor, or director unless the technician meets the minimum qualifications contained in 42 CFR 493.1489 (September 7, 1999), incorporated by reference herein and the requirements contained in subsection 64B3-5.004(5), F.A.C.~~

~~(b) Follow the clinical laboratory's procedures for specimen handling, processing, test analyses, and reporting and maintaining records of patient test results.~~

~~(c) Notify a licensed technologist or supervisor whenever test systems are not within the clinical laboratory's defined acceptable levels of performance.~~

~~(d) Adhere to the clinical laboratory's quality control policies and document quality control activities, instrument and procedural calibrations and maintenance performed.~~

~~(e) Identify problems that may adversely affect test performance or reporting of test results and immediately notify a licensed technologist or supervisor.~~

~~(f) Document the corrective actions taken when test systems deviate from the clinical laboratory's established performance specifications.~~

**(3) Approved examinations for licensure as a technician:**

(a) The applicant shall qualify for licensure in the specialties of microbiology, serology/immunology, clinical chemistry, hematology, immunoematology, andrology, and embryology upon passage of the generalist examination of the American Society for Clinical Pathology (ASCP), the National Credentialing Agency for Laboratory Personnel (NCA), the American Medical Technologists (AMT), or the American Association of Bioanalysis (AAB) medical laboratory technician or medical technologist generalist examination; or

(b) In the specialty of histology upon passage of the histotechnician or histotechnologist examination administered by ASCP.

(c) There is no technician level radioassay, blood banking, blood gas analysis, cytology, histocompatibility or cytogenetics examination.

Specific Authority 483.805(4), 483.811(2), 483.823 FS. Law Implemented 381.0034, 483.800, 483.809, 483.811(2), 483.815, 483.823 FS. History—New 12-6-94, Amended 7-12-95, 12-4-95, Formerly 590-5.004, Amended 5-26-98, 9-20-98, 1-11-99, 8-31-99, 9-27-00, 12-26-00, 4-29-02, 10-29-02, 2-11-03,

64B3-5.007 Director; Limitations and Qualifications.

(1) Limitations.

(a) through (d) No change.

(e) The category of molecular genetics shall be directed by a director licensed in the category of molecular genetics as specified in Rule 64B3-10.005, F.A.C., ~~or until January 1, 2003, by a director licensed in clinical chemistry.~~

(f) No change.

(2) Qualifications – Physician Directors. A physician licensed pursuant to Chapter 458 or 459, F.S., is eligible to direct a clinical laboratory in the category of certification or experience without obtaining a director's license by meeting one of the following requirements:

(a) Is certified by the American Board of Pathology in ~~anatomical or~~ clinical pathology.

(b) Is certified by the American Osteopathic Board of Pathology in ~~anatomical or~~ clinical pathology.

(c) Is certified in one of the laboratory specialties by an agency recognized by the U.S. Department of Education which includes the American Board of Internal Medicine, American Osteopathic Board of Internal Medicine, American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Nuclear Medicine, American Osteopathic Board of Nuclear Medicine, the American Board of Medical Genetics, the American Board of Bioanalysts Bioanalysis, the American Board of Medical Laboratory Immunology, the American Board of Histocompatibility and Immunogenetics, the American Board of Internal Medicine's certification in Hematology and Medical Oncology, and American Osteopathic Board of Internal Medicine's Certification of Special Qualifications in Hematology and Oncology.

(d) through (f) No change.

(3) No change.

(4) Qualifications – Non-Physician Directors. Degrees or semester hours of academic credit required in this section shall be obtained at an accredited college or university or by foreign education equated pursuant to subsection 64B3-6.002(6), F.A.C. Currently licensed directors who no longer meet the provisions ~~herein, of Rule 64B3-5.007, F.A.C.;~~ can retain and renew their director's license. In order to be licensed as a director, an applicant shall have one hour of Board approved HIV/AIDS continuing education, a Board approved 2-hour course relating to the prevention of medical errors, which shall include root-cause analysis, error reduction, prevention, and patient safety, and shall meet the following requirements: holds an earned doctoral degree with a chemical, biological or

clinical laboratory science as a major and is certified in one of the laboratory specialties by an agency recognized by the U.S. Department of Education or the U.S. Department of Health and Human Services which includes the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Medical Genetics, the American Board of Bioanalysts Bioanalysis, the American Board of Medical Laboratory Immunology, and the American Board of Histocompatibility and Immunogenetics.

(5) Approved examinations for licensure as a director:

An applicant who qualifies for licensure as a director herein is required to pass a supervision and administration examination covering the subject matter of subsection 64B3-3.003(7), F.A.C., the Clinical Laboratory Director examination administered by the National Credentialing Agency for Laboratory Personnel (NCA), the examination for High Complexity Laboratory Director (HCLD) or one of the following:

(a) In the specialty of microbiology including public health laboratory directors, the examination in clinical microbiology prepared by the American Board of Medical Microbiology.

(b) In the specialty of serology/immunology, the examination in clinical immunology prepared by the American Board of Medical Laboratory Immunology.

(c) In the specialty of clinical chemistry including public health laboratory directors, the examination prepared by the American Board of Clinical Chemistry. If a director performs only the subspecialty of toxicology, the examination in toxicological chemistry prepared by the American Board of Clinical Chemistry.

(d) In the specialty of hematology, the hematology examination for high complexity clinical laboratory directors prepared by the American Board of Bioanalysis.

(e) In the specialty of cytogenetics, the specialty examination in clinical cytogenetics prepared by the American Board of Medical Genetics.

(f) In the specialty of molecular genetics, the specialty examination in molecular genetics prepared by the American Board of Medical Genetics.

(g) In the specialty of histocompatibility, the laboratory director examination in histocompatibility prepared by the American Board of Histocompatibility and Immunogenetics.

(h) In the specialty of andrology or embryology, the specialty examination in andrology or embryology prepared by the American Board of Bioanalysts.

(6) A licensed director is eligible to add a specialty by passing one of the specialty examinations specified in subsection (5).

Specific Authority 483.051, 483.805(4) FS. Law Implemented 483.041(5), 483.051(1), 483.811(2), 483.823(1), 483.824 FS. History—New 6-6-85, Formerly 10D-41.67, Amended 3-11-90, Formerly 10D-41.067, Amended 7-1-97, Formerly 59O-5.007, Amended 5-26-98, 3-2-99, 3-24-02, 10-14-02, \_\_\_\_\_.

64B3-5.008 Public Health Laboratory Personnel.

(1) Applicants for director level licensure in the category of public health who are registered by the National Registry in ~~of~~ Clinical Chemistry Certification or the American Society for ~~of~~ Microbiology shall pass the supervision and administration examination provided by subsection 64B3-7.001(1), F.A.C.

(2) Applicants for supervisor level licensure in the category of public health who are registered by the National Registry in ~~of~~ Clinical Chemistry Certification or the American Society for ~~of~~ Microbiology at the technologist level shall pass the supervision and administration examination provided by subsection 64B3-7.001(2), F.A.C.

(3) No change.

Specific Authority 483.805(4) FS. Law Implemented 483.809(2), 483.812 FS. History—New 5-26-98, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Clinical Laboratory Personnel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Clinical Laboratory Personnel

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 23, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 26, 2003

**DEPARTMENT OF HEALTH**

**Board of Medicine**

RULE TITLE: Standards of Practice  
 RULE NO.: 64B8-44.007

PURPOSE AND EFFECT: The Board proposes the rule amendment to clarify an exemption for federally funded programs administered by the state so long as the program conforms to federal statutes and applicable rules.

SUMMARY: The proposed rule amendment exempts federally funded programs from the requirement for clinician/client face-to-face nutritional assessments.

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

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

SPECIFIC AUTHORITY: 468.503(4), 468.507, 468.516(1)(a),(2)(a) FS.

LAW IMPLEMENTED: 468.503(4), 468.516, 468.517, 468.518 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Dietetics and Nutrition Practice Council, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-44.007 Standards of Practice.

Licenses, under Chapter 468, Part X, F.S., shall comply with the following standards in their professional practice and conduct, which reflect the ethical principles of the dietetic/nutrition professional and outline obligations of the licensee to self, client, society and the profession.

(1) through (20) No change.

(21) Except as excepted herein The licensee's initial nutritional assessment of a patient must be done in a face-to-face setting, and may not be done by telephone, fax, internet, or by any other means in which the patient is not physically present with the licensee. Communication between the patient and the licensee subsequent to the initial nutritional assessment may be accomplished either face-to-face or by other means, in the reasonable clinical judgment of the licensee. Federal programs that are federally funded are exempt from this subsection, so long as the administration of the program follows the dictates of the federal statutes and rules applicable to the program.

Specific Authority 468.503(4), 468.507, 468.516(1)(a),(2)(a) FS. Law Implemented 468.503(4), 468.516, 468.517, 468.518 FS. History--New 6-22-94, Formerly 61F6-50.007, Amended 2-20-96, Formerly 59R-44.007, Amended 7-14-03,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Medicine

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 6, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 23, 2004

**DEPARTMENT OF HEALTH**

**Board of Medicine**

RULE TITLE: Continuing Education Requirements RULE NO.: 64B8-52.001

PURPOSE AND EFFECT: The Board proposes the rule amendment to establish certain continuing education courses as requirements for licenses' initial biennial renewal.

SUMMARY: The proposed rule amendment sets forth requirements for continuing education courses in prevention of medical errors and blood-borne diseases.

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

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

SPECIFIC AUTHORITY: 478.43(4), 478.50(2),(4)(a),(b) FS.

LAW IMPLEMENTED: 478.50(4)(a),(b) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Electrolysis Council/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-52.001 Continuing Education Requirements.

(1) through (2) No change.

(3) Those persons certified for licensure during the second year of a biennium are exempt from the continuing education requirements for their first renewal except for the two hour prevention of medical errors course required by Section 456.013, F.S., and subsection 64B8-52.003(4), F.A.C., and the two hour blood-borne disease course including one hour on HIV/AIDS education as required by subsection 64B8-52.003(3), F.A.C. Continuing education requirements must be met for each biennium thereafter.

Specific Authority 478.43(4), 478.50(2),(4)(a),(b) FS. Law Implemented 478.50(4)(a),(b) FS. History--New 6-1-93, Formerly 21M-77.001, 61F6-77.001, Amended 5-11-95, Formerly 59R-52.001, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Medicine

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 5, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 30, 2004

**DEPARTMENT OF HEALTH**

**Board of Nursing Home Administrators**

RULE TITLES: Criteria for Approved Continuing Education RULE NOS.: 64B10-15.002

Approved Providers 64B10-15.0021

PURPOSE AND EFFECT: To update and clarify existing language and promulgate a new subsection containing criteria for providers who offer alternate programs or courses.

SUMMARY: The Board proposes to revise sections of these rules to correct the implication of the meaning of the rules and to introduce new language to clarify attendance in programs or

courses and set forth the requirements in the event providers offer different programs or courses other than initially submitted to the Board.

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

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

SPECIFIC AUTHORITY: 468.1685, 468.1685(1), 468.1715(3), 468.1725 FS.

LAW IMPLEMENTED: 456.013, 468.1715, 468.1725 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Danna Droz, Executive Director, Board of Nursing Home Administrators, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULES IS:

64B10-15.002 Criteria for Approved Continuing Education.

(1) through (5) No change.

(6) To satisfy the requirements of this rule, attendance in the programs or courses of continuing education include personal presence at a live presentation or videoconferencing offering. Other means of obtaining continuing education hours may include a A maximum of 10 hours credit in any biennium for correspondence courses, home study courses, tape and/or video cassette courses; ~~or internet courses, or teleconferencing courses~~ in the domains of practice ~~will be accepted~~ provided the course requires passing a test to be graded by the provider and the passing score is verified by the provider of the course. Video cassette courses shall not exceed 5 hours per subject and must be in one of the domains of practice listed in paragraphs 64B10-15.002(1)(a) through (f), F.A.C. A validation form shall be signed by the vendor and the licensee verifying the specific domains of practice covered in the video cassette course and total viewing time. Such verification/validation shall clearly indicate the course is a "correspondence course," "home study course," "tape or video cassette course," ~~or "teleconferencing course,"~~ "internet course" and that the licensee passed the course; in order to be accepted as proof of attendance.

(7) through (10) No change.

Specific Authority 468.1685(1), 468.1715(3) FS. Law Implemented 456.013, 468.1715, 468.1725 FS. History—New 12-11-80, Amended 2-20-83, Formerly 21Z-15.02, Amended 6-22-87, 2-26-89, 12-6-89, 11-11-92, Formerly 21Z-15.002, 61G12-15.002, 59T-15.002, Amended 10-12-97, 12-2-02, 8-11-03, \_\_\_\_\_.

64B10-15.0021 Approved Providers.

(1) through (3)(g) No change.

(h) Explanation of how the provider intends to maintain a roster of course attendees; ~~and~~

(i) Curriculum vitae of the course speakers or instructors; ~~and-~~

(j) Agenda for the program or course given to the participants.

(4) Those applying for approved provider status shall pay an initial approval fee of \$100.00. A provider seeking to renew approved provider status, shall pay a biennial ~~biannual~~ renewal fee of \$100.00.

(5) No change.

(6) During the applicable biennium, an approved provider may offer additional programs or courses different than the one initially approved by the board if an outline is submitted in advance to the Board before its use or presentation. The outline shall contain an agenda, the course learning objectives, the applicable Domains of Practice covered by the course or program, the number of continuing education hours that will be earned, a sample program evaluation form, the method of presentation and the curriculum vitae of the course or program speakers or instructors. This additional course or program outline may be submitted through electronic format to the Board.

~~(7)~~(6) No change.

~~(8)~~(7) The Board shall periodically monitor and review at random or upon the filing of a complaint, all continuing education programs and shall rescind the provider status or reject individual programs offered by a provider if the provider disseminates any false or misleading information in connection with the continuing education programs, fails to conform to rules of the Board, or if the provider or its faculty member(s) are found to be in violation of any of the provisions of Chapter 468, Part II or 456, F.S.

Specific Authority 468.1685, 468.1725 FS. Law Implemented 468.1715, 468.1725 FS. History—New 2-20-83, Amended 7-31-84, Formerly 21Z-15.021, Amended 3-5-89, 3-15-90, Formerly 21Z-15.0021, 61G12-15.0021, 59T-15.0021, Amended 11-15-99, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Nursing Home Administrators

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Nursing Home Administrators

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 6, 2004

DATE NOTICES OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 18, 2003 and October 31, 2003



**DEPARTMENT OF HEALTH**

**Board of Osteopathic Medicine**

RULE TITLE: Advertising  
 RULE NO.: 64B15-6.006

PURPOSE AND EFFECT: The proposed rule is intended to address appropriate advertising by physician assistants.

SUMMARY: The proposed rule sets forth criteria for appropriate advertising by physician assistants.

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

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

SPECIFIC AUTHORITY: 459.022(13) FS.

LAW IMPLEMENTED: 458.015(1)(d) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Pamela King, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-6.006 Advertising.

(1) Advertising by physician assistants is permitted so long as such information is in no way false, deceptive, or misleading.

(2) Physician assistant advertisements shall disclose the name of the primary supervising physician of the physician assistant advertising his or her services.

(3) Physician assistants may not claim any type of specialty board certification.

(4) Only physician assistants certified by the National Commission on Certification of Physician Assistants (NCCPA) may claim certification and employ the abbreviation "PA-C" next to his or her name.

(5) Failure to abide by the provisions of this rule shall constitute a violation of Section 459.015(1)(d) and (pp) and Section 456.072(1)(cc), Florida Statutes.

Specific Authority 459.022(13) FS. Law Implemented 458.015(1)(d) FS. History—New.

NAME OF PERSON ORIGINATING PROPOSED RULE: Council on Physician Assistants

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Osteopathic Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 6, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 6, 2004

**DEPARTMENT OF HEALTH**

**Board of Physical Therapy Practice**

RULE TITLE: Fees For Application, Re-Application and Initial Licensure  
 RULE NO.: 64B17-2.001

PURPOSE AND EFFECT: The Board proposes to make revisions and additions to the current rule text.

SUMMARY: The rule specifies the application fee and validity of the application for one year, provides the fee for the laws and rules examination, an initial licensure fee and an unlicensed activity fee.

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

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

SPECIFIC AUTHORITY: 486.025, 486.041(1), 486.081(2) FS.

LAW IMPLEMENTED: 456.013, 456.065, 486.041, 486.061, 486.081, 486.103, 486.106, 486.107 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Board Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-2.001 Fees For Application, Re-Application and Initial Licensure Fees for Physical Therapists.

(1) Each applicant for licensure shall pay an application fee in the form of a check or money order payable to the Department of Health. The application fee is nonrefundable and may not be used for more than one year from the original submission of the application. After one year from the date of the original submission of an application and application fee, a new application and new fee shall be required from any applicant who desires to be considered for licensure.

(2) The application fee Endorsement—An applicant for licensure by endorsement is shall remit a fee of \$175 to the Department of Health with the application.

(3)(2) The application fee Examination—An applicant for licensure by taking the national examination is shall remit an application fee of \$100.

(4) The applicant is responsible for the \$25 application fee for taking the Florida laws and rules examination as prescribed by Rule 64B-1.016, F.A.C.

(5) When the Board certifies the applicant to sit for the examination, it is the applicant's responsibility to complete the examination process with the national vendor. In compliance with the Americans with Disabilities Act, any applicant requesting special accommodations shall comply with the Department of Health's Rule 64B-1.005, F.A.C.

(6) The initial licensure fee is \$100.

(7) The unlicensed activity fee is \$5.00. This fee is in addition to the initial licensure fee.

(8) If an applicant fails to pass the national examination and/or the laws and rules examination, the applicant is responsible to meet the same requirements as prescribed in subsection (2) through (5) of this rule where applicable.

Specific Authority 486.025, 486.041(1), 486.081(2) FS. Law Implemented 456.013, 456.065, 486.041(+), 486.061, 486.081, 486.103, 486.106, 486.107 FS. History--New 12-13-83, Amended 5-29-85, Formerly 21M-7.25, Amended 6-20-89, Formerly 21M-7.025, 21MM-2.001, 61F11-2.001, 59Y-2.001, Amended 2-1-99,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Physical Therapy Practice  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Physical Therapy Practice  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 12, 2003  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2004

**DEPARTMENT OF HEALTH**

**Board of Physical Therapy Practice**

RULE TITLE: RULE NO.:  
Biennial Renewal and Inactive Status;  
Delinquency; Reactivation; and  
Change of Status Fees 64B17-2.005

PURPOSE AND EFFECT: The Board proposes to make revisions and additions to the current rule text.

SUMMARY: This rule specifies the fees pertinent to licensees in all degrees of status for both physical therapists and physical therapy assistants. It explains a statutory provision regarding licenses going null.

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

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

SPECIFIC AUTHORITY: 486.025, 486.085 FS.

LAW IMPLEMENTED: 456.036(4),(6), 486.085, 486.108(1) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Board Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-2.005 Biennial Renewal and Inactive Status; Delinquency; Reactivation; and Change of Status Fees Fee for Physical Therapists and Physical Therapist Assistants.

~~Each licensed physical therapist and physical therapist assistant shall submit a biennial fee for the renewal of his or her license no later than the last day of each biennial period, as defined by the Department.~~

(1) The biennial renewal fee for an active license is for physical therapists shall be \$100.

(2) The biennial renewal fee for an inactive license is \$50. Inactive status automatically revokes the privilege to practice in Florida physical therapist assistants shall be \$100.

(3) A license which is not renewed at the end of the biennium as prescribed by the Department shall automatically revert to delinquent status. Delinquent status automatically revokes the privilege to practice in Florida. The delinquency fee is \$55.

(4) The unlicensed activity fee is \$5.00. This fee is in addition to the active or inactive licensure renewal fee.

(5) The fee for reactivation is \$50.

(6) The change of status fee is \$40.

(7) Failure by a delinquent licensee to become active or inactive before the expiration of the current licensure cycle renders the license null without further action by the board or the Department. Any subsequent licensure shall be as a result of applying for and meeting all requirements at the time of application.

Specific Authority 486.025, 486.085(+) FS. Law Implemented 456.036(4),(6), 486.085, 486.108(1) FS. History--New 8-6-84, Formerly 21M-8.10, Amended 9-22-87, 6-20-89, Formerly 21M-8.010, Amended 10-17-90, Formerly 21MM-2.005, 61F11-2.005, 59Y-2.005, Amended 12-6-01,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Physical Therapy Practice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Physical Therapy Practice  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 12, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2004

**DEPARTMENT OF HEALTH**

**Board of Physical Therapy Practice**

RULE TITLE: Examination Security and Sanctions  
for Subversion  
RULE NO.: 64B17-3.006

PURPOSE AND EFFECT: The Board proposes to update the existing rule text.

SUMMARY: The Board includes “licensee” as subject to this exam security rule.

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

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

SPECIFIC AUTHORITY: 486.023(4), 486.025 FS.

LAW IMPLEMENTED: 456.017(1)(d) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Board Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-3.006 Examination Security and Sanctions for Subversions.

(1) The Board incorporates Department Rule 64B-1.004, F.A.C., relating to the security of examinations.

(2) An applicant, licensee, or examinee who is found by the Board, prior to, during, or after the administration of an examination, to have engaged or to have attempted to engage in conduct that subverts or undermines the integrity of the examination process shall be disqualified from taking the examination and from licensure as a physical therapist, and shall receive a failing grade on the examination if applicable.

Specific Authority 486.023(4), 486.025 FS. Law Implemented 456.017(1)(d) FS. History—New 6-12-03, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Physical Therapy Practice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Physical Therapy Practice

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 12, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2004

**DEPARTMENT OF HEALTH**

**Board of Physical Therapy Practice**

RULE TITLE: Examination Security and Sanctions  
for Subversion  
RULE NO.: 64B17-4.006

PURPOSE AND EFFECT: The Board proposes to update the existing rule text.

SUMMARY: The Board includes “licensee” as subject to this exam security rule.

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

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

SPECIFIC AUTHORITY: 486.023(4), 486.025 FS.

LAW IMPLEMENTED: 456.017(1)(d) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Board Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-4.006 Examination Security and Sanctions for Subversions.

(1) The Board incorporates Department Rule 64B-1.004, F.A.C., relating to the security of examinations.

(2) An applicant, licensee, or examinee who is found by the Board, prior to, during, or after the administration of an examination, to have engaged or to have attempted to engage in conduct that subverts or undermines the integrity of the examination process shall be disqualified from taking the examination and from licensure as a physical therapist assistant, and shall receive a failing grade on the examination if applicable.

Specific Authority 486.023(4), 486.025 FS. Law Implemented 456.017(1)(d) FS. History—New 6-17-03, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Physical Therapy Practice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Physical Therapy Practice

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 12, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2004

**DEPARTMENT OF HEALTH**

**Board of Physical Therapy Practice**

RULE TITLE: Exemption of Spouses of Members of  
Armed Forces from Licensure  
Renewal Provisions

RULE NO.: 64B17-5.002

PURPOSE AND EFFECT: The Board proposes to update the existing rule text.

SUMMARY: Military spouses must notify the Board of a change in status and are exempt from requirements during the second half of a biennium.

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

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

SPECIFIC AUTHORITY: 456.024(2), 486.025 FS.

LAW IMPLEMENTED: 456.024(2) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Board Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-5.002 Exemption of Spouses of Members of Armed Forces from Licensure Renewal Provisions.

A licensee who is the spouse of a member of the Armed Forces of the United States shall be exempt from all licensure renewal provisions for any period of time which the licensee is absent from the State of Florida due to the spouse's duties with the Armed Forces. The licensee must document the absence and the spouse's military status to the Board. The licensee is required to notify the Board of a change in status within six months of the licensee's return to the State of Florida or the spouse's discharge from active duty. If the change of status occurs within the second half of the biennium, the licensee is exempt from the continuing education requirement for that biennium.

Specific Authority 456.024(2), 486.025 FS. Law Implemented 456.024(2) FS. History--New 5-18-00, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Physical Therapy Practice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Physical Therapy Practice

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 12, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2004

**DEPARTMENT OF HEALTH**

**Board of Physical Therapy Practice**

RULE TITLE: Minimum Standards of Physical  
Therapy Practice

RULE NO.: 64B17-6.001

PURPOSE AND EFFECT: The Board proposes to delete language from the current rule text.

SUMMARY: The Board is removing a reference to temporary permit holders.

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

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

SPECIFIC AUTHORITY: 486.025 FS.

LAW IMPLEMENTED: 483.021(6),(9),(10),(11), 486.123, 486.125(1)(b),(d),(e),(f),(i),(j), 486.135, 486.151(1)(d) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Board Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-6.001 Minimum Standards of Physical Therapy Practice.

(1) Definitions – For purposes of this rule only, the words and phrases listed below are defined in the following manner:

(a) through (e) No change.

~~(f) Supervision of temporary permit holders— Direct Supervision by a licensed physical therapist.~~

(g) through (j) renumbered (f) through (i) No change.

(2) through (8) No change.

Specific Authority 486.025 FS. Law Implemented 483.021(6),(9),(10),(11), 486.123, 486.125(1)(b),(d),(e),(f),(i),(j), 486.135, 486.151(1)(d) FS. History--New 8-6-84, Formerly 21M-9.30, Amended 9-22-87, Formerly 21M-9.030, Amended 9-5-90, 3-5-92, 3-24-93, Formerly 21MM-6.001, 61F11-6.001, Amended 8-16-95, Formerly 59Y-6.001, Amended 1-8-98, 1-11-99, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Physical Therapy Practice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Physical Therapy Practice

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 12, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 23, 2004

**DEPARTMENT OF HEALTH**

**Board of Physical Therapy Practice**

RULE TITLE: Citations RULE NO.: 64B17-7.002

PURPOSE AND EFFECT: The Board proposes to make revisions and additions to the current rule text.

SUMMARY: Citation violations must be corrected within 60 days except continuing education violations may be corrected in 6 months. The Board specifies amounts and corrects clerical errors.

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

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

SPECIFIC AUTHORITY: 456.077, 486.025 FS.

LAW IMPLEMENTED: 456.077 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Board Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-7.002 Citations.

(1) "Citation" means an instrument which meets the requirements set forth in Section 456.077, F.S., and which is served upon a licensee for the purpose of assessing a penalty in an amount established by this rule. All citations will include a requirement that the subject correct the violation, if remediable, within a specified period of time not to exceed 60 days, and impose whatever obligations will remedy the offense, except that up to six months shall be permitted with regard to the completion of continuing education credit hours. If the violation is not corrected, or is disputed, the Department shall follow the procedure set forth in Section 456.073, F.S.

(2) No change.

(3) ~~The citation may be served upon the licensee by hand delivery or certified mail at the licensee's last known home address. If service by certified mail fails because the licensee has relocated without leaving a forwarding address, then the Department shall endeavor to give the subject actual or constructive notice of the pending disciplinary action as permitted by law.~~

(3)(4) The Board designates the following as citation violations:

(a) Advertising for discounted services (Section 456.062, F.S.) – A fine of \$250 for first offense.

(b) Failure to turn over patient records (Section 456.057, F.S.) – ~~If corrected, a citation and a fine of \$100; if not corrected, referral to probable cause.~~

(c) ~~First time failure of the licensee to satisfy AIDS education coursework (Rule 64B17-8.001, F.A.C.) – If coursework completed, \$250 fine. If not completed, \$500 fine and sixty days to complete coursework or matter will be referred to probable cause.~~

(c)(d) ~~Obtaining a license by issuing a bad check (Section 456.072(1)(h), F.S.) – A fine of If the check and bad check fee are paid, \$100 fine.~~

(d)(e) ~~Failure to report in writing to the Board within 30 days after criminal conviction of licensee (Section 456.072(1)(w), F.S.) – A fine of If reported within six months of conviction, \$250 fine.~~

(e)(f) ~~Failure First time failure of the licensee to satisfy continuing education requirements established by the Board (Rule 64B17-9.001, F.A.C.) – If the licensee rectifies the deficiencies within six months after notification of audit deficit, \$500 fine.~~

1. Failure to complete less than 9 hours, a fine of \$300.
2. Failure to complete between 9 and 16 hours, a fine of \$600.
3. Failure to complete between 17 and 24 hours, a fine of \$1,000.

(f)(g) ~~Failure to notify the Board office in writing within 60 days of a change of address (Rule 64B17-6.004, F.A.C.) = A fine of \$250 fine.~~

(g)(h) ~~Failure to comply with a continuing education audit request (Section 486.109(4) and 486.125(k), F.S.), – A fine of \$250 within 30 days of the request fine.~~

(h)(i) ~~Failure to pay required fees and/or fines in a timely manner; (Rule 64B17-7.0025, F.A.C.).~~

(5) In addition to the penalties established in this rule, the Department shall recover the costs of investigation in accordance with its rules. The penalty specified in the citation shall be the sum of the penalty established by this rule plus the Department's cost of investigation.

(6) If the subject does not dispute ~~disputes~~ any matter contained in the citation, within thirty days after service, ~~the Department shall follow the procedure set forth in Section 456.073, F.S. Otherwise,~~ the citation shall become a final order of the Board.

Specific Authority 456.077, 486.025 FS. Law Implemented 456.077 FS. History–New 1-19-92, Formerly 21MM-7.003, Amended 10-28-93, Formerly 61F11-7.003, 59Y-7.003, Amended 1-6-99, 1-6-02, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Physical Therapy Practice  
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Physical Therapy Practice  
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 12, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: January 16, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: January 16, 2004

**DEPARTMENT OF HEALTH**

**Board of Physical Therapy Practice**

RULE TITLE: Mediation  
RULE NO.: 64B17-7.004

**DEPARTMENT OF HEALTH**

**Board of Physical Therapy Practice**

RULE TITLE: Notice of Noncompliance  
RULE NO.: 64B17-7.005

PURPOSE AND EFFECT: The Board proposes to make revisions and additions to the current rule text.

PURPOSE AND EFFECT: The Board proposes to create a new rule.

SUMMARY: The Board is adding change of address and bad check violations to those subject to mediation when the licensee has an opposing point of view as to what occurred

SUMMARY: This rule specifies that for a change of address or bad check, the penalty will be a notice of noncompliance if corrected within 15 days of receipt of the notice.

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

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

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

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

SPECIFIC AUTHORITY: 486.025, 456.078 FS.

SPECIFIC AUTHORITY: 120.695, 456.073(3), 486.025 FS.

LAW IMPLEMENTED: 456.078 FS.

LAW IMPLEMENTED: 120.695, 456.073(3) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Board Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Board Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-7.004 Mediation.

64B17-7.005 Notice of Noncompliance.

The Board finds that mediation is an acceptable resolution of the following violations that are economic in nature or can be remedied by the licensee, where the licensee has a differing view from the complainant as to the nature or extent of the violation:

In accordance with Section 456.073, F.S. and Section 120.695, F.S., the Board shall issue a notice of noncompliance as a first response to a minor violation of a rule. Failure of a licensee to take action to correct the violation within 15 days shall result in either the issuance of a citation when appropriate or the initiation of regular disciplinary proceedings. The minor violations which shall result in a notice of noncompliance are:

(1) Failure to respond timely to a continuing education audit as required by Section 486.109(4), F.S.

(1) Failure to notify of a change of address within 60 days as required by Rule 64B17-6.004, F.A.C.

(2) Failure to notify the Department of a change of address as required by Rule 64B17-6.004, F.A.C. ~~Failure to renew the license timely, if renewed within six months of expiration.~~

(2) Non-intentional issuance of a bad check to the Department under Section 486.125(1)(k), Florida Statutes.

(3) Issuance of a bad check to the Department under Section 486.125(1)(k), F.S.

Specific Authority 120.695, 456.073(3), 486.025 FS. Law Implemented 120.695, 456.073(3) FS. History—New \_\_\_\_\_.

Specific Authority 486.025, 456.078 FS. Law Implemented 456.078 FS. History—New 12-22-94, Formerly 59Y-7.005, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Physical Therapy Practice

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Physical Therapy Practice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Physical Therapy Practice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Physical Therapy Practice

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 12, 2003

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 12, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: January 16, 2004

## DEPARTMENT OF HEALTH

### Board of Podiatric Medicine

RULE TITLE: Penalties  
RULE NO.: 64B18-14.002

PURPOSE AND EFFECT: The Board proposes the rule amendments in order to maintain the fiscal responsibility of the Board's trust fund.

SUMMARY: The proposed rule amendments raise penalty fines.

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

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

SPECIFIC AUTHORITY: 456.072, 456.073(3), 456.079, 461.003, 461.005, 461.013 FS.

LAW IMPLEMENTED: 456.033, 456.053, 456.062, 456.063, 456.067, 456.072, 456.073(3), 456.079, 461.012, 461.013 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Podiatric Medicine/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B18-14.002 Penalties.

(1) Unless mitigating or aggravating factors are demonstrated when the Board finds an applicant or licensee whom it regulates under Chapter 461, F.S., has committed any of the acts set forth in either Section 461.012 or 456.072, F.S., it shall issue a final order imposing appropriate penalties, plus costs based upon the severity and repetition of the offense within the ranges recommended in the following disciplinary guidelines:

(a) Practicing or attempting to practice podiatric medicine or advertising podiatric services in this State without an active license to practice podiatric medicine pursuant to Chapter 461, F.S., or with a license fraudulently obtained. In the case of an applicant, the Board shall deny the application and impose a \$10,000 fine. In the case of a licensee who has obtained or attempted to obtain a license by fraud, the Board shall impose probation to revocation and a fine of \$10,000. In the case of a licensee who has practiced, attempted to practice, or advertised

while holding an inactive or delinquent license, the Board shall impose a reprimand with or without a period of suspension and a fine of \$10,000.

(b) through (d) No change.

(e) Using the name or title "Podiatrist," "Doctor of Podiatry," "Doctor of Podiatric Medicine," or using the phrase "foot clinic," "foot doctor," "Podiatric Technician," or any other name, title, or phrase which would lead the public to believe that such person is engaging in the practice of podiatric medicine, unless such person is licensed as a podiatric physician podiatrist in this State. The Board in the case of a licensee shall impose a penalty ranging from a reprimand to suspension, and a fine of \$1,000 to \$10,000. In the case of an applicant, the Board shall deny the application. If fraud, making a false or fraudulent representation is alleged and shown, a \$10,000 fine shall be imposed in addition to other actions.

(f) Knowingly concealing information relative to a violation of Chapter 461, F.S. The Board in the case of a licensee shall impose a penalty ranging from a reprimand to probation, and an administrative fine from \$500 to \$2,000 ~~\$250 to \$1,000~~. In the case of an applicant, the Board shall deny the application.

(2) Unless mitigating or aggravating factors are demonstrated when the Board finds an applicant or licensee whom it regulates under Chapter 461, F.S., has committed any of the acts set forth in either Section 461.013(1), 456.013(7), 456.033, 456.053, 456.062, 456.067 or 456.072, F.S., it shall issue a final order imposing appropriate penalties based on the severity and repetition of the offense within the ranges recommended in the following disciplinary guidelines:

(a) through (b) No change.

(c) Being convicted or found guilty, including any plea of nolo contendere, regardless of adjudication, of a crime in any jurisdiction which directly related to the practice of podiatric medicine or the ability to practice podiatric medicine. In the case of a licensee, the Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000, depending upon the nature of the offense and the substantiating evidence. In the case of an applicant, the Board shall deny the application.

(d) through (e) No change.

(f) Failing to report to the Department any person the licensee knows to be in violation of Chapter 461, F.S., or the rules of the Board or Department. The Board shall impose a penalty of a reprimand and a fine of \$500 to \$2,000 ~~\$250 to \$1,000~~.

(g) No change.

(h) Failing to perform any statutory or legal obligation placed upon a licensed podiatric physician podiatrist. The Board shall impose a penalty ranging from reprimand to suspension and a fine of \$5,000 ~~\$250~~ to \$10,000.

(i) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed podiatric physician ~~podiatrist~~. If negligent, the Board shall impose a penalty ranging from reprimand to probation and a fine of \$2,500 to \$10,000. If fraud, the Board shall impose a penalty ranging from probation to revocation and a fine of \$10,000.

(j) Paying or receiving any commission, bonus, kickback, rebate or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to hospitals, nursing homes, clinical laboratories, ambulatory surgical centers or pharmacies. The Board shall impose a penalty ranging from reprimand to suspension and a fine of \$1,000 to \$10,000 ~~\$5,000~~.

(k) through (l) No change.

(m) Failing to keep written medical records justifying the course of treatment of the patient. The Board shall impose a penalty ranging from reprimand to probation and a fine of \$500 to \$2,000 ~~\$250 to \$1,000~~.

(n) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party. The Board shall impose a penalty ranging from probation to suspension and a fine of \$1,000 to \$10,000 ~~\$5,000~~.

(o) No change.

(p) Prescribing, dispensing, administering, mixing or otherwise preparing a legend drug, including all controlled substances, other than in the course of the podiatric physician's ~~podiatrist's~~ professional practice. The Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000.

(q) Prescribing, dispensing, or administering any medicinal drug appearing on any schedule set forth in Chapter 893, F.S., by the podiatric physician ~~podiatrist~~ to himself except those prescribed, dispensed or administered to the podiatric physician ~~podiatrist~~ by another practitioner authorized to prescribe, dispense or administer them. The Board shall impose a penalty ranging from probation to suspension and a fine of \$1,000 to \$10,000.

(r) No change.

(s) Being unable to practice podiatric medicine with reasonable skill and safety to patients by reason of illness, or use of alcohol, drugs, narcotic, chemicals or any other type of material or as a result of any mental or physical condition. The Board shall impose a penalty of suspension until such time as the licensee demonstrates rehabilitation followed by probation

under such terms and conditions as set by the Board and a fine from \$500 to \$2,500 ~~\$250 to \$500~~. If the individual is an applicant, the Board shall deny the application.

(t) Gross or repeated malpractice or the failure to practice podiatric medicine at a level of care, skill, and treatment which is recognized by a reasonably prudent podiatric physician ~~podiatrist~~ as being acceptable under similar conditions and circumstances. The Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000, depending on the severity of the offense.

(u) No change.

(v) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform. The Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000 ~~\$5,000~~, depending on the severity of the offense.

(w) through (y) No change.

(z) Prescribing, ordering, dispensing, administering, supplying, selling or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (CG), or other hormones for the purpose of muscle building or to enhance athletic performance. The Board shall impose a penalty ranging from probation to suspension and a fine of \$5,000 to \$10,000 ~~\$1,000 to \$5,000~~.

(aa) No change.

(bb) Failure to report to the Department any licensee under Chapter 458 or 459, F.S., for violations of disciplinary provisions of their laws and rules. In the case of a licensee, the Board shall impose a penalty of a reprimand and an administrative fine of \$500 to \$2,000 ~~\$250 to \$1,000~~.

(cc) No change.

~~(dd) Entering a plea of nolo contendere to a crime which relates to the practice of, or the ability to practice podiatric medicine. In the case of a licensee, the Board shall impose a penalty of probation to revocation and an administrative fine of \$500 to \$1,000. In the case of an applicant, the Board shall deny the application.~~

(ee) through (ff) renumbered (dd) through (ee) No change.

~~(ff)(gg) Engaging or attempting to engage a patient or client in verbal or physical sexual activity. The Board shall impose a penalty ranging from probation to revocation and a fine of \$5,000 to \$10,000~~ ~~\$500 to \$1,000~~.

~~(gg)(hh) No change.~~

~~(hh)(ii) Failure to report a criminal conviction or plea to the Board in writing within 30 days. The Board shall impose a penalty ranging from reprimand and a \$500 to \$1,000 administrative fine up to probation and a \$500 to \$1,000 administrative fine.~~

(jj) through (ll) renumbered (ii) through (kk) No change.



~~(ll)(mm)~~ Performing health care services on the wrong patient, wrong site, wrong or unauthorized procedure. The Board shall impose a penalty ranging from reprimand and probation to suspension, require continuing medical education, and impose a fine of \$1,000 to \$10,000 ~~\$5,000~~.

~~(mm)(nn)~~ Leaving a foreign object in patient. The Board shall impose a reprimand to probation and a fine of \$1,000 to \$10,000 ~~\$5,000~~.

(oo) through (pp) renumbered (nn) through (oo) No change.

~~(pp)(qq)~~ Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding. The Board shall impose a penalty ranging from suspension to revocation and a fine of ~~up to \$1,000~~ to \$10,000.

~~(qq)(rr)~~ Failure to report sexual misconduct. The Board shall impose a reprimand and a fine of \$1,000 to \$10,000 ~~\$5,000~~.

Specific Authority 456.072, 456.073(3), 456.079, 461.003, 461.005, 461.013 FS. Law Implemented 456.033, 456.053, 456.062, 456.063, 456.067, 456.072, 456.073(3), 456.079, 461.012, 461.013 FS. History--New 11-21-79, Amended 8-31-81, Formerly 21T-14.02, Amended 10-14-86, 12-8-88, 1-19-92, 4-26-93, Formerly 21T-14.002, 61F12-14.002, Amended 2-25-96, 5-29-97, Formerly 59Z-14.002, Amended 11-17-97, 8-24-00, 8-13-02, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Podiatric Medicine  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Podiatric Medicine  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 6, 2004  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2004

**DEPARTMENT OF HEALTH**

**Board of Podiatric Medicine**

RULE TITLES: Citations  
Mediation

RULE NOS.: 64B18-14.010  
64B18-14.011

PURPOSE AND EFFECT: The Board proposes the amendments in response to requests from the Department of Health to consider changes to the citations/mediation rules in an effort to provide for cost savings where there is no potential for harm to patients.

SUMMARY: The proposed rule amendments update violations and penalties.

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

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

SPECIFIC AUTHORITY: 456.077, 456.078, 461.005 FS.  
LAW IMPLEMENTED: 456.057, 456.062, 456.072, 456.077, 456.078, 461.012, 461.013(7) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Joe Baker, Jr., Executive Director, Board of Podiatric Medicine/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULES IS:

64B18-14.010 Citations.

(1) through (2) No change.

(3) The following violations may be disposed of by the Department by citation with the specified penalty:

VIOLATIONS	PENALTY
(a) CME violations. (Section 456.077(2) and 461.013(1)(w), F.S.).	Within <u>one year</u> <del>six months</del> of the date the citation is issued, Respondent must submit certified documentation of completion of all CME requirements for the period for which the citation was issued; prior to renewing the license for the next biennium, Respondent must document compliance with the CME requirements for the relevant period; AND <u>\$500 fine per category</u> <del>\$200 fine</del>
1. Failure to document required <u>two (2) hour</u> <del>medical errors</del> , HIV/AIDS, Florida laws and rules, or risk management CME.	
<del>2. Failure to document required HIV/AIDS, Florida laws and rules and risk management CME.</del>	<del>\$300 fine</del>
<del>2.3.</del> Documentation of some, but not all 40 hours of required CME for license renewal.	<u>\$50</u> <del>\$25</del> fine for each hour not documented
<del>3.4.</del> Failure to document any of the required hours.	<u>\$5,000 fine and reprimand</u> <del>1. \$1,000 fine</del> <del>2. Reprimand</del>

- 5. Failure to complete 2 hour course on medical errors. \$300 fine
- (b) Practice on a delinquent an inactive status license for a period of up to three months. \$500 fine  
(Sections 461.012(1)(a) and 461.013(1)(w), F.S.).
- (c) Failure to notify Department of change of current mailing address and place of practice. \$500 \$200 fine  
(Sections 461.013(1)(h) and 456.035(1), F.S.).
- (d) through (e) No change.
- (f) Soliciting patients. \$500 \$300 fine  
(Sections 456.072(1)(x), 456.077(2), 461.013(1)(k), and 461.013(1)(w), F.S.)
- (g) Failure to comply with the requirements of profiling or credentialing. \$500 \$1,000 fine  
(Section 456.072(1)(v) and 456.077(2), F.S.)
- (h) Failure to pay required costs fees and fines. \$2,500 fine and compliance of outstanding costs and fines within sixty days  
(Section 456.077(2), F.S.)
- (i) Failure to comply with Sections 381.026 and 381.0261, F.S., referencing patients bill of rights. \$250 fine and compliance within sixty days  
(Section 456.077(2), F.S.)
- (4) No change.
- (5) The Department of Health shall, at the end of each calendar quarter, submit a report to the Board of the citations issued, ~~which report shall contain the name of the subject, the violation, fine imposed, and the number of subjects offered citations who chose to follow the procedures of Section 456.073, F.S.~~
- (6) No change.

Specific Authority 456.077, 461.005 FS. Law Implemented 456.057, 456.062, 456.072, 456.077, 461.012, 461.013(7) FS. History—New 1-19-92, Formerly 21T-14.010, 61F12-14.010, Amended 3-26-95, 2-25-96, 6-17-97, Formerly 59Z-14.010, Amended 11-23-00, 8-13-02,\_\_\_\_\_.

64B18-14.011 Mediation.

The Board of Podiatric Medicine has determined that the following violations are defined as mediation offenses:

- (1) Failure to supply copies of patient records in a timely manner when requested by a patient or a patient's representative; Failure of the licensee to pay any assessed administrative fines or costs on time; assuming payment of the fine and the costs has been made, and

(2) Failure to post the patient's bill of rights as required by Sections 381.026 and 381.0261, Florida Statutes; Failure of the licensee to respond to a continuing education audit on time, assuming a response has been made.

(3) Failure to update profiling requirements on a timely basis; and,

(4) Failure to provide proof of proper financial responsibility.

Specific Authority 456.078, 461.005 FS. Law Implemented 456.078 FS. History—New 3-26-95, Amended 6-17-97, Formerly 59Z-14.011, Amended 8-24-00,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Podiatric Medicine

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Podiatric Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 6, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2004

**DEPARTMENT OF HEALTH**

**Board of Psychology**

RULE TITLE: Examination  
RULE NO.: 64B19-11.001

PURPOSE AND EFFECT: The Board proposes to amend the rule to address the content of the examination.

SUMMARY: A rule will be amended to address the content of the examination.

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

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

SPECIFIC AUTHORITY: 456.017(1)(b),(c), 490.004(4) FS.

LAW IMPLEMENTED: 456.017(1)(b),(c),(d), 490.005 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton , Executive Director, Board of Psychology/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B19-11.001 Examination.

(1)(a) through (c) No change.

(2)(a) The second part of the licensure examination is an ~~written~~ examination consisting of forty (40) objective questions which test knowledge of Florida Statutes and rules relevant to the practice of psychology in this State. The content of the examination is as follows:

SUBJECT	NO. OF QUESTIONS
1. Chapter 490, F.S. (Psychological Services Act)	<u>9</u> <del>13</del>
2. Section 90.503, F.S. (Psychotherapist-patient privilege)	<u>1</u> <del>3</del>
3. Chapter 394, Part I, F.S. (Florida Mental Health Act)	<u>7</u> <del>8</del>
4. Chapter 415, F.S. (Protection From Abuse, Neglect, and Exploitation)	<u>1</u> <del>3</del>
5. Chapter 64B19, F.A.C. (Board of Psychology)	<u>12</u> <del>13</del>
<u>6. Chapter 456, F.S.</u> (Health Professions and Occupations: General Provisions)	<u>8</u>
<u>7. Chapter 39, F.S.</u> (Proceeding Relating to Children)	<u>2</u>

(b) A raw score of thirty-two (32) correct answers (80%) is necessary to pass the second part of the licensure examination.

~~(c) The Department may administer this part of the examination, on a quarterly basis, by distributing and collecting it through the mail as an open book exam.~~

~~(d) If the applicant does not return the examination scan sheet/answer sheet by the deadline date that is set by the Department, the applicant will be required to repay the examination fee and retake the open book exam.~~

(3) through (4)(c) No change.

Specific Authority 456.017(1)(b),(c), 490.004(4) FS. Law Implemented 456.017(1)(b),(c),(d), 490.005 FS. History—New 4-4-82, Amended 7-11-84, Formerly 21U-11.03, Amended 2-19-86, 12-30-86, 3-10-87, 11-21-88, 3-5-90, 1-16-92, Formerly 21U-11.003, Amended 6-14-94, Formerly 61F13-11.003, Amended 1-7-96, 6-26-97, Formerly 59AA-11.001, Amended 2-21-99, 5-1-00, 1-10-01, 8-5-01, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Psychology  
NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Board of Psychology  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: January 30, 2004  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: January 9, 2004

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**Economic Self-Sufficiency Program**

RULE TITLES:	RULE NOS.:
Definitions	65A-1.701
Special Provisions	65A-1.702
Family-Related Medicaid Coverage Groups	65A-1.703
SSI-Related Medicaid Coverage Groups	65A-1.710
SSI-Related Medicaid Resource Eligibility Criteria	65A-1.712
SSI-Related Medicaid Income Eligibility Criteria	65A-1.713

PURPOSE AND EFFECT: This proposed rule amendment implements the Statewide Inpatient Psychiatric Program (SIPP) Waiver. The amendment also provides criteria for Hearing Officers to approve an increase in the community spouse resource or income allowances for the institutional care program. This amendment repeals the Qualified Medicare Reimbursement Only (QI2) program that ended December 31, 2002 by federal law.

SUMMARY: Rule 65A-1.701, F.A.C., clarifies the definition for Share of Cost. Rule 65A-1.702, F.A.C., repeals the Qualified Medicare Reimbursement Only (QI2) program that ended December 31, 2002. This rule amendment also implements the Statewide Inpatient Psychiatric Program (SIPP) waiver for individuals under age 18 who are at high risk of inpatient mental health services. Medically Needy and Medicare recipients are not eligible for this program.

The proposed rule amendment also provides for the actions that may be taken by a hearing officer during special spousal impoverishment fair hearings. The rule specifies the conditions under which a hearing officer may increase the spouse's income or resource allowances.

Rule 65A-1.703, F.A.C., is amended to include a cross reference to clarify income criteria for the Medically Needy Program.

Rule 65A-1.710, F.A.C., amendment incorporates by reference the redetermination form (CF-ES 2937) used for the Ron Silver Senior Drug Program and deletes the CF-ES form 103 Notice of Case Action, 06 2002, which is not used by this program.

Rule 65A-1.712, F.A.C., amendment adds language to clarify how policy will be applied for the purchase of a personal services contract and defines the criteria for fair compensation required by the contract.

This amendment clarifies that the policy of spousal impoverishment also applies to individuals receiving Medicaid under the Home and Community-Based Services Assisted Living Waiver program. The rule amendment incorporates by reference the current version of the CF-ES 2504, Assignment of Rights to Support, May 2003.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: This statement was not prepared.

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

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

TIME AND DATE: 9:00 p.m., March 22, 2004  
PLACE: Building 3, Room 439, 1317 Winewood Boulevard, Tallahassee, FL 32399-0700

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Nathan Lewis, Program Administrator, 1317 Winewood Boulevard, Building 3, Room 448, Tallahassee, FL 32399-0700, (850)414-5927

THE FULL TEXT OF THE PROPOSED RULES IS:

65A-1.701 Definitions.

(1) through (29) No change.

(30) Share of Cost (SOC): SOC represents the amount of recognized medical expenses that a Medically Needy enrolled individual or family must incur ~~be responsible to pay~~ each month before becoming eligible to receive Medicaid benefits for medical expenses incurred during the remainder of the month.

(31) through (36) No change.

Specific Authority 409.919 FS. Law Implemented 409.902, 409.903, 409.904, 409.906, 409.919 FS. History—New 10-8-97, Amended 2-15-01, 4-1-03,

65A-1.702 Special Provisions.

(1) through (12)(d) No change.

~~(e) Qualified Medicare Reimbursement Only (QI2). Under QI2 coverage, individuals are only entitled to a one-time, annual payment of a small part of their Medicare premium. (This is a federally funded program and funding is limited to the amount of an annual allocation.)~~

(13) Determining Share of Cost (SOC). The SOC is determined by deducting the Medically Needy income level from the an individual's or family's income.

(14) through (15) No change.

(16) Statewide Inpatient Psychiatric Program (SIPP) waiver. This program provides inpatient mental health treatment and comprehensive case management planning to enable discharge to less restrictive settings in the community for children under the age of 18 who are placed in an inpatient psychiatric program. Those who are Medically Needy and those who are Medicare recipients are excluded from this program. Services must be received from a designated provider selected by AHCA. This program provides an exception to provisions that residents of an institution for mental disease (IMD) are not eligible for Medicaid.

(17) Special Spousal Impoverishment Fair Hearings. In the Institutional Care, institutional Hospice and HCBS Assisted Living Waiver, community spouse income and resource allowances may be adjusted as follows during the fair hearing process.

(a) Income. A hearing officer may increase the community spouse's income allowance if either spouse establishes that the community spouse has exceptional circumstances resulting in significant financial duress, and the income allowance previously calculated by the Department is not sufficient to meet the community spouse's monthly needs as determined by the hearing officer.

1. Exceptional circumstances are those that are severe and unusual and that:

a. Prevent the community spouse from taking care of his or her activities of daily living; or

b. Directly threaten the community spouse's ability to remain in the community; or

c. Involve the community spouse's ability to provide constant and essential care for his or her disabled child, sibling or other immediate relative (other than the institutionalized spouse).

2. Significant financial duress is an expense or set of expenses that:

a. Directly arises from the exceptional circumstances described in subparagraph 1. above; and

b. Is not already factored in the minimum monthly maintenance income allowance (MMMIA); and

c. Cannot reasonably be expected to be met by the community spouse's own income and assets.

3. Expenses that are factored in the MMMIA and thus do not generally qualify as causing significant financial duress, include, but are not limited to:

a. Shelter costs, such as rent or mortgage payments;

b. Utility costs;

c. Condominium fees;

d. Real estate and personal property taxes;

e. Real estate, life and medical insurance;

f. Expenses for the upkeep of a home, such as lawn maintenance, replacement of roof, furnace or appliances;

g. Medical expenses reflecting the normal frailties of old age.

4. In order to increase the MMMIA, the hearing officer must find that the community spouse's significant financial duress is a direct result of the exceptional circumstances that affect him or her.

(b) Resources. The Community Spouse Resource Allowance in Florida is set at the maximum allowed by federal law. A hearing officer may grant exceptions to the Community Spouse Resource Allowance and raise it above the maximum when either spouse can verify that the Community Spouse Resource Allowance is not adequate to generate income the community spouse needs to meet the Minimum Monthly Maintenance Income Allowance (MMMIA). The amount of resources adequate to provide the community spouse the MMMIA shall be based on the cost of a single premium lifetime annuity with monthly payments equal to the difference between the MMMIA at the time of the fair hearing and the amount the community spouse's income is expected to be upon approval of institutional care benefits for the institutional spouse. In making this determination, the hearing officer considers the community spouse's actual income at the time of the fair hearing and any income that would be available from the institutional spouse upon approval of institutional care

benefits. This ensures that all income that will actually be available to the community spouse is considered before the resource allowance is revised. Upon approval by the hearing officer, the estimated cost of an annuity shall be substituted for the Community Spouse Resource Allowance when the amount of resources previously attributed to the community spouse is equal to or less than the estimated cost of an annuity. If the amount of resources previously attributed for the community spouse is greater than the estimated cost of an annuity, there will be no substitution granted by the hearing officer. The applicant shall not be required to purchase an annuity as a condition of Medicaid eligibility.

Specific Authority 409.919 FS. Law Implemented 409.902, 409.903, 409.904, 409.906, 409.919 FS. History—New 10-8-97, Amended 4-22-98, 2-15-01, 9-24-01, \_\_\_\_\_.

#### 65A-1.703 Family-Related Medicaid Coverage Groups.

(1) through (5) No change.

(6) Medically Needy. To be eligible for this coverage group the individual must meet the general requirements prescribed in Rule 65A-1.705 F.A.C.

(a) No change.

(b) The following provisions apply to Medically Needy.

1. The individual or family must have income equal to or less than the respective Medically Needy income standards prescribed in subsection 65A-1.716(2), F.A.C. If income exceeds the Medically Needy income standards refer to Rule 65A-1.707(2), F.A.C. Refer to Rule 65A-1.713, F.A.C., for additional income criteria applicable to the Medically Needy Program.

2. No change.

Specific Authority 409.919, 409.1451(8) FS. Law Implemented 409.902, 409.903, 409.904, 409.906, 409.919, 409.1451(5)(b), 409.1451(5)(c), 409.1451(7) FS. History—New 10-8-97, Amended 9-28-98, 2-15-01, \_\_\_\_\_.

#### 65A-1.710 SSI-Related Medicaid Coverage Groups.

The department covers all mandatory coverage groups and the following optional coverage groups:

(1) through (5) No change.

(6) Ron Silver Senior Drug Program. A coverage group as defined in subsection 59G-12.002(4), F.A.C. AHCA sets an enrollment ceiling for this program as specified in Rule 59G-12.003, F.A.C. Four forms specific to the program are used in the eligibility determination process for this program. The application form is CF-ES Form 2935, Silver Saver (Application), Sept 2002 (~~incorporated by reference~~), and the eligibility notices are CF-ES Form 2936, Silver Saver Drug Program Notice of Case Action, Sept 2002, CF-ES Form 2936A, Ron Silver Senior Drug Program “Silver Saver” Notice of Case Action, October 2002, and CF-ES 2937 “Silver Saver” Redetermination Notice, Feb 2004 Form 103, Notice of Case Action, 06-2002 (all ~~four~~ three forms are incorporated by reference).

(7) No change.

(8) ~~Single copies~~ Copies of the forms incorporated by reference in this rule may be obtained from the Department of Children and Family Services, Economic Self-Sufficiency Program Office, 1317 Winewood Boulevard, Tallahassee, Florida 32399-0700.

Specific Authority 409.919 FS. Law Implemented 409.902, 409.903, 409.904, 409.906, 409.919 FS. History—New 10-8-97, Amended 1-27-99, 4-1-03, \_\_\_\_\_.

65A-1.712 SSI-Related Medicaid Resource Eligibility Criteria.

(1) through (3)(b) No change.

(c) No penalty or period of ineligibility will be applied for the purchase of a personal services contract if the contract provides for fair compensation. Fair compensation is considered received when all of the following criteria are met:

1. The contract is legally binding under the Laws of Florida; and

2. The contract is actuarially sound; and

3. The hourly rate is equal to or less than the amount normally charged by a professional; and

4. The delivery of care services is clearly measurable and on a fixed schedule; and

5. The contracted services do not duplicate services already provided; and

6. the services are of a type commonly paid for.

(c) through (g) renumbered (d) through (h) No change.

(4) Spousal Impoverishment. The department follows 42 U.S.C. §1396r-5 for resource allocation and income attribution and protection when an institutionalized individual, including a hospice recipient residing in a nursing facility, has a community spouse. Spousal impoverishment policies also apply to an individual residing in an assisted living facility under an approved HCBS Assisted Living Waiver (ALW) program. Spousal impoverishment policies are not applied to individuals applying for, or receiving, HCBS waiver services with the exception of the previously noted program. The following paragraphs [(a) through (e)] apply to individuals residing in ALW facilities approved under an ALW program unless specified differently within the individual paragraph.

(a) through (d) No change.

~~(e) If either spouse can verify that the community spouse resource allowance provides income that does not raise the community spouse's income to the State's MMMIA, the resource allowance may be revised through the fair hearing process to an amount adequate to provide such additional income as determined by the hearing officer.~~

~~(f) Either spouse may appeal the amount of the income allowance through the fair hearing process and the allowance may be adjusted by the hearing officer if the couple presents proof that exceptional circumstances resulting in significant inadequacy of the allowance to meet their needs exist.~~

(e)(g) No change.

1. No change.

2. The institutional spouse assigns to the State any rights to support from the community spouse by submitting the CF-ES 2504, Assignment of Rights to Support Rights form, May 2003, (incorporated by reference) referenced in Rule 65A-1.400, F.A.C. This form must be signed by the institutionalized spouse or their representative; and

3. through 4. No change.

(5) Single copies of the form incorporated by reference in this rule may be obtained from the Department of Children and Family Services, Economic Self-Sufficiency Program Office, 1317 Winewood Boulevard, Tallahassee, Florida 32399-0700.

Specific Authority 409.919 FS. Law Implemented 409.902, 409.903, 409.904, 409.906, 409.9065, 409.919 FS. History--New 10-8-97, Amended 1-27-99, 4-1-03.

65A-1.713 SSI-Related Medicaid Income Eligibility Criteria.

(1) Income limits. An individual's income must be within limits established by federal or state law and the Medicaid State Plan. The income limits are as follows:

(b) through (c) No change.

(d) For ICP, gross income cannot exceed 300 percent of the SSI federal benefit rate after consideration of allowable deductions set forth in subsection 65A-1.713(2), F.A.C. Individuals with income over this limit may qualify for institutional care services by establishing an income trust which meets criteria set forth in paragraph 65A-1.702(15)(14)(a), F.A.C.

(e) through (l) No change.

(3) through (4) No change.

Specific Authority 409.919 FS. Law Implemented 409.902, 409.903, 409.904, 409.906, 409.9065, 409.919 FS. History--New 10-8-97, Amended 1-27-99, 4-1-03.

NAME OF PERSON ORIGINATING PROPOSED RULE: Robi Olmstead, Government Operations Consultant II

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Nathan Lewis, Program Administrator, Public Assistance Policy Bureau – Policy Unit

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 18, 2004

DATE NOTICES OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 27, 2002 and January 31, 2003

DEPARTMENT OF FINANCIAL SERVICES

Division of Workers' Compensation

RULE TITLES:

Definitions
Requesting Assistance

RULE NOS.:

69L-26.002
69L-26.004

PURPOSE AND EFFECT: The purpose of the rules is to implement Section 440.185(12), Florida Statutes, relating to the availability of employee assistance officer.

SUMMARY: Rule 69L-26.002, F.A.C., is being amended to correct a statutory citation [Section from 440.191(2)(d) to 440.191(2)(a), Florida Statutes] in subsection 69L-26.002(2), F.A.C., and to include in the rule the form and manner of written notice of the availability of services from the Employee Assistance Office that the employer or carrier must provide the employee, pursuant to Section 440.185(12), Florida Statutes. Rule 69L-26.004, F.A.C., is being amended to delete the requirement in subsection 69L-26.004(1), F.A.C., that an injured party or any other party to a dispute involving a workers' compensation issue shall contact and request assistance from the Employee Assistance Office before filing a petition for a hearing before a Judge of Compensation Claims.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: Regulatory costs are not expected to be significant.

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

SPECIFIC AUTHORITY: 440.185(12), 440.191(1)(b), 440.591 FS.

LAW IMPLEMENTED: 440.185(12), 440.191(2) FS.

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

TIME AND DATE: 2:00 p.m., March 23, 2004

PLACE: Room 104J, Hartman Building, 2012 Capitol Circle, Southeast, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed below.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Andrew Sabolic, Policy Coordinator, Division of Workers' Compensation, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4220, (850)488-2514

THE FULL TEXT OF THE PROPOSED RULES IS:

69L-26.002 Definitions.

For the purposes of these rules, the following definitions shall apply:

(1) "Carrier" means any insurance carrier, or any individually self-insured employer licensed as such pursuant to Section 440.38, Florida Statutes, or group self-insurance fund

licensed as such pursuant to Section 624.462, Florida Statutes, providing workers' compensation insurance and including the servicing agent and servicing company of any of the above.

(2) "Contact" as that term is used in Ch. 93-415, Section 24, Laws of Florida. [creating Section 440.191(2)(a)(4), Florida Statutes] means a party to a workers' compensation dispute has made "contact" with the EAO if he or she has done any of the following:

(a) Submitted to the EAO a Request for Assistance form (EAO-1 dated 6/17/94 and hereby incorporated by reference) which meets all the requirements set out in these rules; or

(b) Personally telephoned the EAO, spoken to an EAO representative, requested the assistance of the EAO, and as a result, the EAO has completed a Request for Assistance form (EAO-1) on behalf of the party so requesting.

(c) In the case of a minor or incompetent person, written or oral correspondence in accord with paragraph (2)(a) or (b), above requesting assistance from the EAO on behalf of the minor or incompetent person by his or her legally appointed guardian, shall constitute "contact" with the EAO for the purposes of these rules.

(d) In the case of a deceased person, written or oral correspondence in accord with paragraph (2)(a) or (b) above requesting assistance from the EAO on behalf of a deceased person by his or her personal representative shall constitute "contact" with the EAO for the purposes of these rules.

(e) The following will not be accepted by the EAO as a request for assistance and do not constitute "contact" with the EAO for purposes of these rules:

1. Written requests for assistance not submitted in accordance with these rules and on a Request for Assistance form (EAO-1); or

2. Written requests for assistance transmitted to the EAO by fax; or

3. Written requests for assistance not signed by the party to a workers' compensation dispute; or if the party to a dispute has retained an attorney, not signed by that attorney on behalf of the party; or if the party to a dispute is a minor or incompetent person, not signed by his or her legal guardian; or if the party to a dispute is deceased, not signed by his or her personal representative; or if the requestor is a health care provider that has provided authorized treatment to an injured worker, not signed by the health care provider; or

4. Telephone calls of an attorney to the EAO made on behalf of a party to a workers' compensation dispute, unless the attorney is the party to a dispute and is requesting assistance on his or her own behalf.

(3) "Division" means the Division of Workers' Compensation.

(4) "EAO" means the Employee Assistance and Ombudsman Office created by Ch. 93-415, Section 24, Laws of Florida [creating Section 440.191, Fla. Stat.]. Information or documentation requested or required by the EAO shall be

submitted only to the address and during the regular business hours of the EAO as contained in this rule. The address for the EAO shall be as follows:

(a) For filing of Requests for Assistance: Post Office Box 8010, Tallahassee, Florida 32314-8010.

(b) For responding to requests for information by the EAO: To the address specified by the EAO in the request.

(c) For all other purposes: 200 East Gaines Street Tallahassee, FL 32399-4224.

The telephone number shall be (850)488-5201 or 1(800)342-1741. The normal business hours for the EAO shall be 8:00 a.m. to 5:00 p.m., Eastern Standard Time, Monday through Friday (working days).

(5) "Fax" or "Faxed" means any written communication transmitted by facsimile or telecopy machine.

(6) "Good Faith Effort" means cooperating with the division's efforts to resolve disagreements between the parties. The division shall consider the following factors in determining whether a party or party's attorney has cooperated with the division's efforts:

(a) Whether the party or the party's attorney has telephoned or written to the employer or carrier and communicated that party's complaint or disputed issue(s) to the employer or carrier before requesting assistance from the EAO with that (those) same issue(s).

(b) Whether a party or the party's attorney has provided complete and "specific" (as that term is defined herein) information on a Request for Assistance form (EAO-1), or by telephone, in the event the EAO has completed the form for a party pursuant to a telephoned request for assistance from that party to the EAO.

(c) Whether a party or the party's attorney has timely provided documents in his or her possession or under his or her control to the EAO. The production of documents shall be timely if any documents requested by the EAO which are in the possession or under the control of the party from whom they are requested are submitted to the EAO within five (5) working days of the EAO's request for the documents.

(d) Whether a party or the party's attorney has timely participated in a conference requested by the EAO. Timely means that if feasible and practical, the parties shall: participate in a telephone conference within three (3) working days of a request by the EAO for a telephone conference; or, the parties shall participate in an in-person conference within five (5) working days of a request by the EAO for an in-person conference.

(e) Whether the party or party's attorney has provided true and complete information to the best of his or her ability and knowledge. Every party and attorney participating in the EAO's dispute resolution proceedings shall have an affirmative obligation to correct errors or omissions in information he or she has provided when an error is discovered, and to update all

receivers of previously submitted information as soon as it is discovered by the sender that the information previously submitted is no longer accurate or complete.

(7) "Informal Dispute Resolution" means the procedures established by these rules whereby the EAO, in response to a request for assistance in resolving a dispute regarding workers' compensation benefits, conducts an investigation and attempts to facilitate a resolution of any disputed issues.

(8) "JCC" means a Judge of Compensation Claims as that term is defined by Chapter 440, Florida Statutes.

(9) "Party" or "Person" includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(10) "Requestor" means the person requesting the assistance of the EAO. The requestor may be an actual party to a workers' compensation dispute, or an attorney representing a party to a workers' compensation dispute, or a legal guardian of an incompetent or minor person who is a party to a workers' compensation dispute or the personal representative of a deceased person who is a party to a workers' compensation dispute. The requestor may also be a health care provider that has provided treatment to an injured worker, where the employer or carrier has authorized the treatment by telephone or by fax and subsequently fails or refuses to pay for the treatment authorized.

(11) "Servicing Agent" or "Servicing Company" means any entity which has obtained approval pursuant to Florida law and administrative rule to contract with self-insurers for the purpose of providing all services necessary to plan and maintain an approved self-insurance program.

(12) "Specific" means:

(a) If a disputed issue is indemnity benefits, then in order to make a "specific" request for assistance, the requestor must state on the Request for Assistance form (EAO-1) a classification for each benefit sought, such as: temporary total disability, temporary partial disability, wage loss, permanent total disability, impairment benefit, or supplemental benefits. The requestor must state for each benefit sought and allegedly not paid, the time period for which the injured worker asserts he was eligible to receive the benefits.

(b) If the disputed issue is authorization for a particular health care provider or a particular health care service, then in order to make a "specific" request for assistance, the requestor must state the type of service or name of the health care provider that has been requested, and a justification for any health care services requested and not provided.

(c) If the disputed issue is payment of health care bill(s), then in order to make a "specific" request for assistance, the requestor must state the name and address of the health care provider, the date(s) of service and the amount(s) of the bill(s) for which payment is sought; and, if the requestor is a health care provider, the requestor must provide evidence that the

treatment was authorized by the employer or carrier, and that more than 45 days have elapsed since the bill(s) was (were) submitted for payment.

(d) If the disputed issue is mileage or prescription reimbursement, then in order to make a "specific" request for assistance, the requestor must state the drug or product prescribed, the name of the prescribing physician, the dollar amount requested and the date each reimbursement request was submitted to the employer or carrier. Legible copies of each mileage request or prescription, as applicable, must be attached to the Request for Assistance form (EAO-1) or timely provided to the EAO if requested by the EAO.

(13) "Working Day" means a day which is neither a Saturday, Sunday, or legal holiday observed by the State of Florida.

Specific Authority 440.591 FS. Law Implemented 440.191 FS. History--New 9-29-94, Amended 11-25-96, Formerly 38F-26.002, Amended \_\_\_\_\_.

#### 69L-26.004 Requesting Assistance.

(1) An injured worker or any other party to a dispute involving a workers' compensation issue shall contact and request assistance from the EAO, and make a good faith effort to participate in the informal dispute resolution proceedings of the EAO, ~~before filing a petition for a hearing before a JCC regarding the disputed issue(s).~~

(2) A request for assistance shall be accepted by the EAO and shall constitute contact with the EAO only if the request for assistance is submitted on a completed Request for Assistance Form (EAO-1) and is otherwise in accordance with these rules.

(3) The EAO shall, if requested to do so by an injured worker, or his or her legal guardian if the injured worker is a minor or is incompetent, or the personal representative of a deceased injured worker, or a health care provider that has provided authorized treatment to an injured worker when an employer or carrier fails or refuses to pay for the authorized treatment, complete a Request for Assistance form (EAO-1) for or on behalf of the party so requesting.

(4) An attorney representing an injured worker may submit a Request for Assistance form (EAO-1) on behalf of his or her client. An attorney wishing to file a Request for Assistance on behalf of another shall sign the form as the requestor on behalf of the client and mail or hand deliver the completed Request for Assistance form to the EAO at the address and during the business hours specified herein.

(5) Faxed copies of a Request for Assistance form (EAO-1) shall not be accepted by the EAO.

(6)(a) In order to facilitate requesting assistance, employers or carriers must provide the notice required by Section 440.185(12), Florida Statutes. For the purpose of that section, the form and manner determined by the department is providing, by mail or hand-delivery, the following notification to the injured employee:



Dear Injured Employee:

Your employer's insurance carrier is providing this information to you on behalf of the Employee Assistance Office of the Division of Workers' Compensation.

The Employee Assistance Office of the Division of Workers' Compensation is a state bureau within the Florida Department of Financial Services. We provide the following services:

- Serves as a resource for injured workers and employers by providing information about the workers' compensation system.
- Educates and informs injured workers, employers, carriers, health care providers, and managed care arrangements about their responsibilities under the law.
- Provides assistance in avoiding any problems or disputes regarding your claim.

Within three (3) days after receiving notice that you have been injured, the workers' compensation insurance carrier will mail you an informational brochure explaining your rights and responsibilities, as well as the carrier's obligations. It contains valuable information you need to know about the workers' compensation system. You may have received the informational brochure along with this letter. You can also obtain the brochure by calling us at: 1(800)342-1741 or e-mailing us at: wceao@dfs.state.fl.us.

You can also visit one of our local Employee Assistance Offices to receive personal, one-on-one service. To locate the office nearest you, call the toll free 1-800 number above or visit the Division's website at: [www.fldfs.com/WC/](http://www.fldfs.com/WC/) and click on "About Us".

Sincerely,

Tanner Holloman

Director, Division of Workers' Compensation

(b) This notification shall be mailed to the injured employee within three (3) days after the carrier receives notice of the employee's injury. This notification shall be on Department of Financial Services letterhead and shall be of original or print quality. The notification is available in MS Word format at [www.fldfs.com/WC/publications](http://www.fldfs.com/WC/publications) and is identified as the "Employee Notification Letter."

Specific Authority 440.185(12), 440.591 FS. Law Implemented 440.185(12), 440.191 FS. History—New 9-29-94, Amended 11-25-96, Formerly 38F-26.004, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Andrew Sabolic, Policy Coordinator, Division of Workers' Compensation, Department of Financial Services

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dan Sumner, Deputy Division Director, Division of Workers' Compensation, Department of Financial Services

DATE PROPOSED RULE APPROVED BY THE AGENCY HEAD: September 19, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 26, 2003

### Section III Notices of Changes, Corrections and Withdrawals

**DEPARTMENT OF REVENUE**

**Property Tax Administration Program**

RULE NO.:	RULE TITLE:
12D-8.0082	Florida Uniform Market Area Guidelines

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule as originally noticed for a public hearing held on November 21, 2003, in the Florida Administrative Weekly of October 31, 2003 (Vol. 29, No. 44, pp. 4324-4326), and as subsequently noticed for a second hearing held on January 16, 2004, in the Weekly of January 2, 2004 (Vol. 30, No. 1, p. 126), and for which a notice of change was published in the Weekly of January 2, 2004 (Vol. 30, No. 1, pp. 115-116), has been withdrawn.

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF CORRECTIONS**

RULE NO.:	RULE TITLE:
33-501.302	Copying Services for Inmates

FOURTH NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 29, No. 39, (September 26, 2003), Vol. 29, No. 44, (October 31, 2003), Vol. 29, No. 51, (December 19, 2003) and in Vol. 30, No. 3, (January 16, 2004) issues of the Florida Administrative Weekly:

33-501.302 Copying Services for Inmates.

(1) All institutions and facilities shall provide photographic copying services to inmates submitting legal documents and accompanying evidentiary materials to courts and administrative bodies. No provision of this section shall be implemented in such a way as to conflict with any rule or order of court.

(2) through (4) No change.

(5) Filing or service in actions challenging convictions, sentences, or prison conditions. Inmates who are without funds shall not be denied copying services for documents and