TIME AND DATE: 11:30 a.m., November 27, 2001

PLACE: The District Office, 1314 Marcinski Road, Jupiter, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Mark Crosley, Assistant Executive Director, Florida Inland Navigation District, 1314 Marcinski Road, Jupiter, Florida 33477, Telephone Number (561)627-3386

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

Section II
Proposed Rules

DEPARTMENT OF STATE

Division of Elections

RULE TITLE: RULE NO.:

Requirements of Counties Before Approval of Electronic or Electromechanical Voting Systems 1S-2.007

PURPOSE AND EFFECT: The statutory authority for this rule no longer exists.

SUMMARY: The Department of State is repealing rules regarding the requirements of counties before approval of electronic and electromechanical voting systems.

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: 101.28 FS.

LAW IMPLEMENTED: 101.5607 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE NEXT AVAILBLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Amy K. Tuck, Assistant General Counsel, Division of Elections, Department of State, Room 1801, The Capitol, Tallahassee, Florida 32399-0250, (850)488-1402

THE FULL TEXT OF THE PROPOSED RULE IS:

1S-2.007 Requirements of Counties Before Approval of Electronic or Electromechanical Voting Systems.

Specific Authority 101.28 FS. Law Implemented 101.5607 FS. History–New 8-7-74, Repromulgated 1-1-75, Formerly 1C-7.07, 1C-7.007, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Amy K. Tuck, Assistant General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: L. Clayton Roberts

DATE OF PROPOSED RULE APPROVED BY AGENCY HEAD: October 22, 2001

DEPARTMENT OF STATE

Division of Elections

RULE TITLE: RULE NO.:

Testing of Voting Systems 1S-2.012

PURPOSE AND EFFECT: This rule must be repealed due to statutory provisions for the testing of voting systems. Accordingly, the rules no longer serve a purpose for the Department of State, Division of Elections.

SUMMARY: The Department of State is repealing rules regarding the testing of voting systems.

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: 101.35 FS.

LAW IMPLEMENTED: 101.35 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Amy K. Tuck, Assistant General Counsel, Division of Elections, Department of State, Room 1801, The Capitol, Tallahassee, Florida 32399-0250, (850)488-1402

THE FULL TEXT OF THE PROPOSED RULE IS:

1S-2.012 Testing of Voting Machines.

Specific Authority 101.35 FS., as amended by Ch. 81-29, Laws of Florida. Law Implemented 101.35 FS., as amended by Ch. 81-29, Laws of Florida. History–New 12-15-81, Formerly 1C-7.12, 1C-7.012, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Amy K. Tuck, Assistant General Counsel, Division of Elections

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: L. Clayton Roberts

DATE OF PROPOSED RULE APPROVED BY AGENCY HEAD: October 22, 2001

DEPARTMENT OF BANKING AND FINANCE

Division of Accounting and Auditing

RULE TITLES:	RULE NOS.:
Payroll Preparation Manual	3A-31.108
Wage Payments from Revolving Funds	3A-31.226
Retirement Code Use	3A-31.231

PURPOSE AND EFFECT: The purpose is to update the rules of the Bureau of State Payrolls and to implement the on demand payroll process.

SUMMARY: Rule 3A-31.108 is amended to allow state agencies to obtain the Payroll Manual on the Department's website. Rule 3A-31.226 is amended to implement the on demand payroll process. Rule 3A-31.231 is amended to provide that the appropriate agency will be responsible for making corrections using the on-line retirement system.

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.

SPECIFIC AUTHORITY: 17.03, 17.14, 17.29, 216.271 FS.

LAW IMPLEMENTED: 17.03, 17.04, 17.06, 17.075, 17.08, 17.09, 17.14, 17.20, 17.27, 17.28, 110.116, 121.051, 121.061, 121.071, 121.081, 122.04, 216.271 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., November 26, 2001

PLACE: Room 364, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Cynthia Langley, Bureau of State Payrolls, Room 364, Fletcher Building, Tallahassee, Florida 32399-0350, (850)410-9416

THE FULL TEXT OF THE PROPOSED RULES IS:

3A-31.108 Payroll Preparation Manual.

The Bureau of State Payrolls maintains a Payroll Preparation Manual for the use by State agencies. This manual contains general information, schedules, tables and codes used in the payroll system, and instructions for preparing and submitting payroll and employee data in accordance with these rules. In the absence of specific rules to the contrary, the procedures and instructions in the Payroll Manual are to be used by state agencies. Copies of the Manual can be obtained on-line at the Department's website on the Internet at http://www.dbf.state.fl.us/bosp/BOSP_MANUAL.pdf. ~~Copies of the manual are available free of charge to personnel having payroll responsibilities for State agencies whose employees' wages are processed by the Bureau, upon written request to the Bureau of State Payrolls, Department of Banking and Finance, Room 364, Fletcher Building, Tallahassee, Florida 32399-0350.~~

Specific Authority 17.14, 17.29 FS. Law Implemented 17.03, 17.04, 17.06, 17.075, 17.08, 17.09, 17.14, 17.20, 17.27, 17.28, 110.116 FS. History–New 4-22-83, Amended 2-4-98, _____.

3A-31.226 Wage Payments from Revolving Funds.

(1) An agency may disburse wage payments from a revolving fund only after receipt of written approval from the Bureau. The written request must be accompanied by:

(a) A copy of the revolving fund approval document from the Bureau of Accounting, Office of the Comptroller.

(b) A copy of the agency's policy regarding wage payments from a revolving fund.

(2) Policy. The criteria applied by the Bureau in reviewing an agency's policy will be:

(a) That use of the revolving fund for wage payments is limited to emergencies caused by administrative error. Except in emergencies, caused by administrative error, the revolving fund should not be used to:

1. Pay overtime or other supplemental compensation.

2. Pay wages in advance of the regularly scheduled payroll date.

3. Pay an additional amount due an employee as part of a regular wage payment which has been made unless the amount is greater than twenty percent of the total wages which were due.

4. Pay an employee when a regular salary warrant has been issued but is in error because the employee was on leave without pay which caused the amount of the warrant to be in excess of the actual wages due.

~~(b) Balances owing the employee should be kept at a minimum, however, consideration of tax issues should be a factor when paying from revolving funds. Therefore, the amount which may be paid through the revolving fund shall not leave a balance owing to the employee of less than ten percent (up to fifty dollars) or ten dollars, whichever is greater.~~

(b)~~(c)~~ Revolving fund wage payments must not include Criminal Justice Incentive Pay.

(c)~~(d)~~ Revolving fund wage payments to an employee must not be recurring in nature.

(d)~~(e)~~ Each payroll record submitted for the purpose of recording the payment and reimbursing the revolving fund must be submitted through the On-Demand Payroll process ~~as a separate record and must not be combined with other payments~~.

~~(f) The revolving fund reimbursement record must be submitted to the Bureau in time for the reimbursement warrant to be issued in the same calendar year as the payment to the employee from the revolving fund. For example: A revolving~~

~~fund wage payment must not be made on December 27th of one year if the revolving fund reimbursement warrant is to be dated January 3rd of the next year.~~

(3) An agency may not change the purpose and uses of a revolving fund without the prior approval of the Office of the Comptroller.

(4) No fund may be established or increased in amount unless approved by the Bureau of Accounting.

(5) The agency should report revolving funds that are no longer needed to the Office of Comptroller.

Specific Authority 17.03, 17.14, 17.29, 216.271(5) FS. Law Implemented 216.271 FS. History–New 4-22-83, Amended 1-25-96, 6-1-97, 2-4-98, _____. Cf. Department of Banking and Finance Rule Chapter 3A-23, F.A.C.

3A-31.231 Retirement Code Use.

(1) The Bureau maintains the Retirement Code Table. The Table contains each authorized retirement contribution code. The Bureau and the Department of Management Services, Division of Retirement, are responsible for assignment of a code to each type of retirement contribution in the Table.

(2) Florida Statutes require that each State employee filling an authorized, established position be a member of one of the State retirement systems (generally the Florida Retirement System). The Bureau is authorized to deduct the employee's retirement contribution, if any, from the employee's gross wage and to disburse the employer's retirement contribution according to the rates established by the appropriate retirement plan administrator. Employee and/or employer retirement contributions are computed for all wage payments except:

(a) Acts of the legislature.

(b) Rules of the Department of Management Services, Division of Retirement.

(3) Every employee must have a retirement contribution code which corresponds to the code assigned to the employee's Department of Management Service, Division of Retirement, Form M-10 filed with the Division of Retirement. Codes indicating no membership are available in cases where the employee is ineligible to participate in a retirement plan.

(4) Refund of Erroneous Deductions. If an erroneous deduction has been made or an amount in excess of the required contribution has been disbursed, ~~either~~ the appropriate agency ~~Department of Management Services, Division of Retirement, or the Bureau~~ will make the necessary corrections and refunds utilizing the on-line Retirement System ~~to the appropriate agency~~.

(5) Any change in the retirement contribution rate must be in the form of a written notification to the Bureau from the retirement plan administrator. The written notification must cite the administrator's authority to make the rate change.

Specific Authority 17.14, 17.29 FS. Law Implemented 121.051, 121.061, 121.071, 121.081, 122.04, 123.02 FS. History–New 4-22-83, Amended 1-25-96, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Cynthia Langley, Division of Accounting and Auditing

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Doug Darling, Director, Division of Accounting and Auditing

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 17, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 5, 2001

DEPARTMENT OF INSURANCE

RULE TITLE: RULE NO.:

Reports of Information by Workers' Compensation Insurers Required 4-189.005

PURPOSE AND EFFECT: This rule was made obsolete by HB 1803 (2001), therefore it needs to be repealed.

SUMMARY: To repeal Rule 4-189.005.

SPECIFIC AUTHORITY: 624.308(1), 627.914(1) FS.

LAW IMPLEMENTED: 624.308(1), 627.914(1) FS.

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

Any person who wishes to provide informaiton 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 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: 9:00 a.m., Thursday, November 29, 2001

PLACE: Room 312C, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sherry Marson, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0331, (850)413-5372

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 Yvonne White, (850)413-4214.

THE FULL TEXT OF THE PROPOSED RULE IS:

4-189.005 Reports of Information by Workers' Compensation Insurers Required.

Specific Authority 624.308(1), 627.914(1) FS. Law Implemented 624.307(1), 627.914 FS. History–New 1-16-83, Amended 7-1-85, Formerly 4-59.05, 4-59.005, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Sherry Marson, Department of Insurance, Bureau of Property and Casualty Forms and Rates

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jim Watford, Department of Insurance, Bureau of Property and Casualty Forms

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 14, 2001

DEPARTMENT OF INSURANCE

RULE TITLES:	RULE NOS.:
Purpose and Scope	4-211.029
Definitions	4-211.030
Effect of Law Enforcement Records on Applications for Licensure	4-211.031
Purpose and Scope	4-211.040
Definitions	4-211.041
Effect of Law Enforcement Records on Applications for Licensure	4-211.042

PURPOSE AND EFFECT: The purpose of the proposed rulemaking is to implement the Department's duty under Section 624.307(1), Florida Statutes, to enforce Sections 626.611(7) and (14), and 626.621(8) and (11), Florida Statutes, by establishing standards for granting licensure applications described in those statutory sections, and interpreting provisions in those sections as they relate to penalties imposed upon applicants.

SUMMARY: The proposed rules establish standards for granting insurance agent licensure applications.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No SERC 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: 624.308 FS.

LAW IMPLEMENTED: 112.011, 624.307 (1), 626.161, 626.171, 626.201, 626.211, 626.291, 626.601, 626.611(7),(14), 626.621(8), 626.631, 626.641, 626.681, 626.691, 648.34, 648.37 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: 9:30 a.m., November 29, 2001

PLACE: Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Audrey Huggins, Bureau Chief, Bureau of Licensing, Division of Agent and Agency Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0319, (850)413-5405

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 above.

THE FULL TEXT OF THE PROPOSED RULES IS:

PART IV LAW ENFORCEMENT RECORDS

4-211.029 Purpose and Scope.

Specific Authority 624.308 FS. Law Implemented 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.211, 626.291, 626.601, 626.611(7),(14), 626.621(8), 626.631, 626.641, 648.34, 648.37 FS. History–New 2-2-95, Amended 8-15-00, Repealed _____.

4-211.030 Definitions.

Specific Authority 624.308 FS. Law Implemented 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.211, 626.291, 626.601, 626.611(7),(14), 626.621(8), 626.631, 626.641 FS. History–New 2-2-95, Repealed _____.

4-211.031 Effect of Law Enforcement Records on Applications for Licensure.

Specific Authority 624.308 FS. Law Implemented 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.211, 626.291, 626.601, 626.611(7),(14), 626.621(8), 626.631, 626.641 FS. History–New 5-2-93, Amended 2-2-95, Repealed _____.

4-211.040 Purpose and Scope.

(1) The purpose of this rule part is to implement the Department's duty under Section 624.307(1), Florida Statutes, to enforce Sections 626.611(7) and (14), and 626.621(8), Florida Statutes, by establishing standards for granting licensure applications described in those statutory sections, and interpreting provisions in those sections as they relate to penalties imposed upon applicants specified in subsection (2) below.

(2) This rule part applies to applications for licensure as an agent, adjuster, sales representative, or other licensure under the Florida Insurance Code. This rule part does not apply to the licensure of bail bondsmen, or limited surety agents under Chapter 648, Florida Statutes.

Specific Authority 624.308 FS. Law Implemented 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.211, 626.291, 626.601, 626.611(7),(14), 626.621(8), 626.631, 626.641, 626.681, 626.691 FS. History–New _____.

4-211.041 Definitions.

For purposes of this rule part, the following definitions shall apply.

(1) "Application" refers to an application for licensure procedurally processed under Chapter 626, Florida Statutes.

(2) "Charge" or "charges" refer to the official document in any criminal proceeding, whether styled an "Information," "Indictment," or otherwise, which document specifies the charges against the defendant, and which document is filed in any court of Florida, another state or country, or the U.S. government.

(3) "Crime of Moral Turpitude" refers to each felony crime identified in subsection 4-211.042(23), F.A.C.

(4) "Criminal record," for purposes of this rule part, includes any felony charge filed against the applicant in the courts of any state or federal district or territory, or other country, on any subject matter whether related to insurance or not, concerning which charge the applicant was found guilty, or pled guilty, or pled no contest, regardless of whether or not there was an adjudication by the court, and regardless of whether the matter is under appeal by the applicant. The phrase includes such charges even where the crime was subsequently pardoned or civil rights have been restored. The phrase does not include criminal convictions which were finally reversed or vacated on appeal; nor does it include charges of which the applicant was found not guilty, or which were finally dismissed; nor does it include matters as to which at time of application an order of sealing or expungement has been issued by a court of competent jurisdiction.

(5) "Felony" means and includes any crime of any type, whether or not related to insurance, which crime is designated as a "felony" by statute in the state of prosecution, or designated as a "felony" in the charges, or which crime is punishable under the law of the prosecuting jurisdiction by imprisonment of more than one year regardless of how classified in the charges or statutes. If a crime is a felony in the state of prosecution, it shall be treated as a felony under this rule part notwithstanding that it is not a felony in Florida. The term "felony" includes felonies of all degrees.

(6) "Insurance related misdemeanor" means and includes any misdemeanor charges which allege violation of any part of the insurance regulatory laws of Florida or any other state or the federal government; or which allege any criminal conduct involving any aspect of insurance, such as crimes in the nature of misapplication or theft of premium money or claims payment money, or dishonesty in any aspect of insurance claims practice.

(7) "Law enforcement record," for purposes of this rule part, includes:

(a) The applicant's criminal record as defined in this rule part;

(b) Any pre-trial intervention program the applicant is participating in at the time of application, or was participating in at any time in the 12 months next preceding the time of application; and

(c) All pending criminal charges against the applicant as of the time of application. The phrase "pending criminal charges" includes all criminal charges against the applicant, whether by information or other charging document filed in court, or by indictment, under the jurisdiction of any state or the federal government or any other country, concerning which charges there has at the time of application been no finding of guilty or not guilty, nor dismissal of charges, nor formal statement of nolle prosse by the prosecuting authority; and

(d) All arrests on any misdemeanor or felony charge of any type whether or not related to insurance, which arrests were made by law enforcement authorities in any state or by federal authorities, or by law enforcement authorities in another country, and which arrest occurred within the 12 months next preceding the time of application, and regardless of whether there have been or will be any subsequent criminal proceedings connected therewith.

(8) "Misdemeanor" means and includes any crime of any type, whether or not related to insurance, which crime is designated as a "misdemeanor" by statute in the state of prosecution, or is so designated in the charges, or is punishable under the law of the prosecuting jurisdiction by imprisonment of one year or less. The term includes misdemeanors of all degrees.

(9) "Pre-trial Intervention" refers to a program operated under Section 948.08, Florida Statutes, or a similar program in another state.

(10) "Time of application" is the date an application is received by the Department or received on behalf of the Department by sources utilized by the Department in its licensure process.

(11) "Trigger Date" is the date on which an applicant was found guilty, or pled guilty, or pled no contest to a crime; or, where that date is not ascertainable, the date of the charges or indictment.

(12) "True Copy" or "Certified true copy" means a copy of a court or government agency paper which bears an original certification of the clerk or other official of the court or agency to the effect that the paper(s) are accurate copies of records of the court or agency.

Specific Authority 624.308 FS. Law Implemented 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.211, 626.291, 626.601, 626.611(7),(14), 626.621(8), 626.631, 626.641 FS. History–New .

4-211.042 Effect of Law Enforcement Records on Applications for Licensure.

(1) General Policy Regarding Conduct Prior to Licensure. The Department is concerned with the law enforcement record of applicants for the purpose of ascertaining from those records whether the person would represent a significant threat to the public welfare if licensed under Chapter 626, Florida Statutes. It is no part of the Department's responsibilities, and the Department does not attempt, to "penalize", "discipline", or "punish" any person concerning any conduct prior to licensure.

(2) Duty to Disclose Law Enforcement Record. Every applicant shall disclose in writing to the Department the applicant's entire law enforcement record on every application for licensure, as required therein, whether for initial, additional, or reinstatement of licensure. This duty shall apply even though the material was disclosed to the Department on a previous application submitted by the applicant.

(3) Policy Specifically Concerning Effect of Criminal Records.

(a) The Department interprets Sections 626.611(14), and 626.621(8), Florida Statutes, which subsections relate to criminal records, as applying to license application proceedings. The Department interprets those statutes as not limiting consideration of criminal records to those crimes of a business-related nature or committed in a business context. More specifically, it is the Department's interpretation that these statutes include crimes committed in a non-business setting, and that such crimes are not necessarily regarded as less serious in the license application context than are crimes related to business or committed in a business context.

(b) Fingerprint delays. The Department shall not delay licensure due to processing of fingerprint cards; provided, however, that the Department interprets Section 626.211(1), Florida Statutes, to mean that Department delays based on the applicant's failure to supply the Department with a properly executed and readable fingerprint card are not delays such as are prohibited by that statute. The Department shall not process an application for which fingerprints are required, except upon receipt of a readable and properly executed fingerprint card.

(c) General Procedure. The applicant shall supply the Department with required documentation, as specified in this rule, as to all matters appearing on the law enforcement record or shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The application shall be addressed as set forth in Rule 4-211.0035, F.A.C. All documentation shall be completely legible. Required documentation includes:

1. For arrests, the police arrest affidavit or arrest report or similar document (need not be certified true copy).

2. The charges (certified true copy).

3. Plea, judgment, and sentence (certified true copy).

4. Order of entry into pre-trial intervention, and where applicable the order of termination of pre-trial intervention showing dismissal of charges (all certified true copies).

(4) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The Department finds that all matters that are part of an applicant's law enforcement record are material elements of the application, and finds that the omission of any part of the law enforcement record required to be disclosed on the application is a material misrepresentation or material misstatement in and of itself. The applicant shall have violated Section 626.611(2) or 626.621(1), Florida Statutes, if the applicant fails to provide the Department with the documentation required by this rule.

(b) The Department finds failure to fully reveal the entire law enforcement record as called for by the application to reflect adversely on the character, fitness, or trustworthiness of the applicant, and the more recent the omitted element was, the more adversely it reflects on the applicant. Therefore, in instances where the applicant failed to fully and properly disclose the law enforcement record on the application, the Department finds it generally necessary to impose a waiting period, or to extend a waiting period otherwise specified in this rule, during which period licensure shall be denied, to provide some assurance that the applicant has overcome any weakness or tendency that led to the omission. The waiting period specified herein runs from the later of the date the Department issues a letter denying the application, or the end of any waiting period otherwise specified in this rule. The waiting period attributable to omissions is as set out below.

1. Class A or B crime omitted, where the trigger date was more than 10 years before time of application, add 1 year. If the trigger date was 10 years prior, or less than 10 years prior, to the time of application, add 2 years.

2. Class C crime omitted, add 1 year.

3. Omission of any arrest, pending criminal charges, pre-trial intervention, or other part of the law enforcement record required to be disclosed on the application, add 1 year.

(c) An applicant whose application is denied under this subsection shall resubmit another application and applicable fee as set forth in Section 624.501, Florida Statutes, on the application form respective to the type and class of license sought.

(d) After the waiting period has elapsed, the Department shall consider the application if it is resubmitted in good form with applicable fees, and licensure shall be granted if the licensee then meets all the requirements and criteria for licensure as set out in the then applicable rules and statutes.

(e) Formal Record to Be Made. The Department finds that submission of an application that is inaccurate as to law enforcement history is a matter of such weight that a formal record of the application shall be made and preserved by Department order for reference and consideration should the applicant subsequently become licensed and violate any portion of the insurance code. To this end, applicants are required to execute a settlement acknowledging the inaccuracy as a prerequisite to becoming licensed after all waiting periods have elapsed and the applicant is otherwise eligible for licensure.

(5) Misdemeanor Crimes.

(a) Application for licensure shall not be denied or delayed based solely on the fact that an applicant was found guilty of, or pled guilty or no contest to, a misdemeanor, unless the misdemeanor is an insurance-related misdemeanor or a misdemeanor involving breach of trust or dishonesty; provided further, that repeated misdemeanors, or a misdemeanor in

combination with other conduct shall merit denial of licensure if they reflect on an applicant's character, fitness, or trustworthiness to engage in the business of insurance.

(b) The Department finds that an insurance-related misdemeanor or a misdemeanor involving breach of trust or dishonesty demonstrates a lack of fitness or trustworthiness to be licensed to engage in the business of insurance and constitutes grounds for denial of licensure, pursuant to Section 626.611(7), Florida Statutes. The Department finds that the waiting period necessary to overcome the demonstrated lack of fitness and trustworthiness is equivalent to the waiting period imposed for a class "A" felony, and therefore, an applicant whose law enforcement record includes such a misdemeanor is subject to the same waiting period as a class "A" crime.

(c) The Department shall not impose any waiting period pursuant to this rule where the only crime in an applicant's law enforcement record is a single misdemeanor crime that results from the applicant's passing of a worthless check, or obtaining property in return for a worthless check, and the amount of the check or checks involved in the single misdemeanor crime is $500 or less. However, this subparagraph shall not apply where a misdemeanor crime resulting from the applicant's passing of a worthless check, or obtaining property in return for a worthless check is not the only crime in an applicant's law enforcement record.

(6) Probation. The Department shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving a probationary term on any felony crime, or any misdemeanor crime, except for those crimes specified in Chapter 316, Florida Statutes, which are not punishable by imprisonment. The Department shall not substantively consider an application until the applicant has successfully completed his or her probationary term.

(7) Classification of Felony Crimes.

(a) The Department makes a general classification of felony crimes into three classes: A, B, and C, as listed in subsections (23), (24), and (25) of this rule. The lists refer only to such crimes when they are felonies, since certain of the crimes could be misdemeanors in some jurisdictions and felonies in other jurisdictions.

(b) These classifications reflect the Department's evaluation of various crimes in terms of moral turpitude, and of the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by someone who would commit such a crime.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes to crimes bearing the exact name or description stated.

(d) The lists are not all-inclusive. Where a particular crime involved in an application is not listed in this rule, the Department has the authority to analogize the crime to the most similar crime that is listed. No inference is to be drawn from the absence of any crime from this list, to the effect that said crime is not grounds for adverse action under this rule.

(e) In evaluating law enforcement records, the Department shall use the highest classification into which the crime fits, where "A" is the highest classification.

(f) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(8) Required Waiting Periods For A Single Felony Crime. The Department construes Sections 626.611 and 626.621, Florida Statutes, to require that an applicant whose law enforcement record includes a single felony wait for a period of time before becoming eligible for licensure in order to assure that the criminal tendency or weakness has been overcome. The Department finds it necessary for an applicant whose law enforcement record includes a single felony crime to wait the time period specified below (subject to the mitigating factors set forth elsewhere in this rule) before licensure, so that licensure is granted without undue risk to the public welfare. All waiting periods run from the trigger date.

(a) Class A Crime. The applicant will not be granted licensure until 15 years have passed since the trigger date.

(b) Class B Crime. The applicant will not be granted licensure until 7 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.

(d) The Department shall not impose any waiting period pursuant to this rule where the only crime in an applicant's law enforcement record is a single felony crime that results from the applicant's passing of a worthless check, or obtaining property in return for a worthless check, and the amount of the check or checks involved in the single felony crime is $500 or less. However, this subparagraph shall not apply where a felony crime resulting from the applicant's passing of a worthless check, or obtaining property in return for a worthless check is not the only crime in an applicant's law enforcement record.

(9) Applicants With Multiple Crimes.

(a) The Department construes Sections 626.611 and 626.621, Florida Statutes, to require that an applicant whose law enforcement record includes multiple felony crimes wait longer than those whose law enforcement record includes only a single felony crime before becoming eligible for licensure in order to assure that such applicant's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Department finds it necessary that a longer waiting period be utilized in such instances, before licensure can safely be granted. Accordingly, where the applicant has been found guilty or pled guilty or pled no contest to more than one felony or to a felony and one or more misdemeanors, or to a combination of misdemeanors and felonies, the Department shall add 5 years to the waiting period for each additional

felony or insurance-related misdemeanor, or misdemeanor involving a breach of trust or dishonesty, and one year each for all other misdemeanors.

(b)1. The additional periods are added to the basic waiting period for the one most serious crime, and the combined total waiting period then runs from the trigger date of the most recent misdemeanor or felony crime.

2. Example: In June 1953, the applicant was convicted of assault with a deadly weapon; and in 1985, of simple battery. The more serious crime is the assault, which is a class "A" crime, for which the waiting period is 15 years. Since there is one additional felony, an additional 5 years of waiting period is required. The combined 20 year waiting period runs from the most recent 1985 crime trigger date. The extended waiting period is subject to being shortened pursuant to the usual mitigating factor procedures set forth in this rule.

(d) Classification as "Single Crime" versus "Multiple Crimes." Multiple criminal charges arising out of the same act, or related acts performed over a relatively short period of time and in a concerted course of conduct, are treated by the Department as one crime for application of this rule. The Department will generally process the one most serious of the charges as if it were the only crime. However, charges describing separate but similar acts are treated as multiple crimes.

1. Example 1: Applicant gets drunk in public (public drunkenness), and while drunk starts a fight (assault), breaks some private property (criminal mischief), and resists the arresting officer. This would be treated as one crime.

2. Example 2: Applicant assaults a civil rights demonstrator, and is prosecuted by state officials for assault, and by federal officials for deprivation of civil rights. This would be treated as one crime.

3. Example 3: Applicant has a history of getting drunk and starting fights, and has done this on 3 separate occasions, resulting in 3 separate criminal proceedings and convictions over the last 10 years. These would be treated as three separate crimes.

4. Example 4: In one criminal court proceeding applicant is charged and convicted of 6 separate counts of mail fraud. The applicant ran mail-order advertisements offering for sale goods that did not exist, and on 6 occasions upon receipt of orders with payment, the applicant kept the money and made no attempt to fill the order. These 6 orders were placed at various times over a 24-month period. These would be treated as multiple crimes.

5. Example 5: Over the course of several days, the applicant stole a credit card; the applicant altered a driver's license to assist in using the credit card; and the applicant used the credit card to obtain goods fraudulently. These are all prosecuted in a single proceeding alleging 3 counts of criminal conduct. The Department would treat these as one crime.

(10) Mitigating Factors.

(a) The usual waiting period specified above shall be shortened upon proof of one or more of the following as are pertinent. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual waiting period; provided that an applicant shall not be permitted an aggregate mitigation of more than 4 years for the following factors.

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as an agent or other insurance representative.

2. One year is deducted if restitution or settlement has been made for all crimes wherein restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year is deducted if the applicant was under age 21 when the crime was committed, if there is only one crime on the applicant's law enforcement record. This mitigating factor shall not be applicable to an applicant who qualifies for 3 years of mitigation pursuant to mitigating factor 4 immediately below.

4. Three years are deducted if the applicant was under age 21 when the crime was committed, if there is only one crime on the applicant's law enforcement record, and if that single crime is not insurance-related and does not involve moral turpitude or a breach of trust or dishonesty.

5. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

(b) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(11) Circumstances Not Constituting Mitigation.

(a) The Department finds that no mitigating weight exists in the provisions of Sections 626.611 and 626.621, Florida Statutes, and none will be given, for the following factors:

1. Type of Plea. The Department draws no distinction among types of pleas; i.e., found guilty; pled guilty; pled nolo contendere.

2. Collateral Attack on Criminal Proceedings. The Department will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results wherein the applicant was found guilty or pled guilty or no contest. Thus the Department will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

3. The Department finds that subjective factors involving state of mind, generally have no mitigating weight. Examples include such assertions that the crime was the result of the emotional stress of a divorce proceeding, or the financial stress of a failing business.

(12) Other Mitigating Factors. An applicant is permitted to submit any other factor which the applicant believes should decrease the waiting period before licensure is allowed. The Department will shorten the usual waiting period based on the other factors if those other factors evidence a significant diminution in the applicant's propensity to violate the law. The amount by which the usual waiting period will be reduced will be commensurate with the degree to which the factor or factors evidence the diminution in the applicant's propensity to violate the law. However, the Department finds, based on Department experience, that the mitigating factors specified and given weight in this rule are generally the only factors sufficiently verifiable, objective, and meaningful, as to merit a shortening of the usual waiting period.

(13) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Department interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or no contest, regardless of whether an appeal is or is allowed to be taken. The Department will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Department's adverse action.

(b) If on appeal the conviction is reversed, the Department shall immediately drop the said crime as grounds for denial of license, but shall, if supported by clear and convincing evidence, notwithstanding the reversal, consider the acts alleged in the criminal proceeding as reflecting on an applicant's character, trustworthiness, and fitness for licensure. If the conviction is later reinstated, the Department shall again count the "crime" itself as grounds for denial of licensure.

(14) General Policy Regarding Law Enforcement Matters Not Resulting in a Finding or Plea of Guilt or No Contest.

(a) Fitness and Trustworthiness. The Department interprets Section 626.611(7), Florida Statutes, relating to demonstrated lack of fitness or trustworthiness, as being applicable to license application proceedings. Furthermore, the Department interprets said section as not limiting the evidence demonstrating the unfitness or untrustworthiness to evidence arising in an insurance context. For example, if an applicant is shown to have seriously abused the trust of customers in a former role as a securities broker, this evidence, if clear and convincing, might merit denial of an insurance agent license application.

(b) Character. The Department interprets Section 626.171(2)(f), Florida Statutes, as imposing upon the Department a duty to evaluate the "character" of an applicant, and to deny licensure to an applicant who has serious flaws as to such character. The Department interprets "character" to mean the applicant's demonstrated adherence to commonly accepted norms and standards of conduct in society.

(c) Charges Acquitted, Dismissed: General Policy. The Department finds that it is authorized by Section 626.611(7), Florida Statutes, to inquire into the facts underlying any criminal charge of which the applicant was acquitted or which was dismissed in appropriate cases, to deny licensure where such facts in context show a lack of fitness, trustworthiness, or character. A dismissal or acquittal might reflect true innocence, procedural problems peculiar to the criminal justice system, or the extremely high standard of proof in criminal proceedings. Evidence insufficient to support a finding of criminal guilt might be sufficient to support administrative action because of the differing burdens of proof and evidentiary and procedural rules for administrative proceedings versus criminal proceedings.

(d) Arrests, Pending Charges, and Pre-trial Interventions: General Policy.

1. The Department finds that information as to arrests and pre-trial interventions occurring within 12 months of time of application and all pending criminal charges as of time of application to be necessary and pertinent disclosures on the application, pursuant to Section 626.171(2)(f), Florida Statutes. The Department finds that such matters often supply particularly timely evidence of an applicant's current character, fitness, and trustworthiness, and in some instances reveal criminal court proceedings underway which have not yet reached final disposition in the criminal justice system.

2. The Department shall generally not draw any adverse inference against the applicant solely on the basis that the applicant was arrested, or is the subject of pending criminal charges. However, the Department is authorized to inquire into the facts underlying the arrest or pending criminal charges, and where there is clear and convincing evidence that a serious impropriety was committed by the applicant, the Department shall in appropriate cases deny licensure where such facts in context show a substantial lack of fitness, trustworthiness, or character.

(15) Pre-Trial Intervention: Specific Policy.

(a) It is the Department's interpretation of Section 948.08, Florida Statutes, relating to Pre-trial Intervention, that same, and similar programs in other states, are a matter of legislative grace to save persons who are guilty of a non-violent, first-time felony from incurring a criminal record; and that entry into Pre-trial Intervention is conclusive evidence that the criminal charges involved were meritorious, even though ultimately dismissed after the successful conclusion of the pre-trial intervention.

(b) The Department will not grant licensure to any person who at time of application is participating in a pre-trial intervention program. The Department finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed, before licensure will be considered.

(c) The Department shall generally not deny licensure to an applicant where the only law enforcement record consists of a successfully completed pre-trial intervention. However, where the law enforcement record includes matters in addition to the pre-trial intervention, whether previous or subsequent, the Department will consider adverse to the applicant the matters involved in the pre-trial intervention, because those matters reflect on the applicant's character, fitness, or trustworthiness.

(16) Effect of Sealing or Expunging of Criminal Record.

(a) An applicant is not required to disclose or acknowledge and is permitted in fact to affirmatively deny, any arrest or criminal proceeding, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Department.

(b)1. The Department interprets the legislative intent in allowing a matter to be sealed or expunged to be that the matter thus sealed or expunged not be permitted to be held against the subject as a "crime" per se, and that the matter not be permitted to be proved against the subject by reference to the court's findings or verdict.

2. However, the Department shall consider the facts underlying a sealed or expunged criminal record against the applicant as they reflect on fitness, character, or trustworthiness, if the facts are provable by the Department independent of use of the court record. The Department is permitted to use the same or different evidence as was used in the court proceeding. As a practical matter, due to Department resource limitations and the difficulty of establishing such matters independent of the court record, the Department does not generally attempt to pursue or follow-up on matters that are part of a sealed or expunged court record, except in unusual circumstances, which include:

a. There appears to be more than one sealed or expunged case involving the applicant.

b. The order of sealing or expungement appears to the Department to have been obtained by misleading the court.

c. The crime was particularly pertinent to the practice of insurance.

d. Any member of the public, including the victim of the crime, upon learning of the application for license, asks that the Department further consider the matter.

e. The applicant failed to reveal the matter in his or her application and the matter was not then sealed or expunged, having been sealed or expunged subsequent to the application's being submitted.

(c) Matters Sealed or Expunged Subsequent to Application. Occasionally an applicant will have a matter sealed or expunged after submitting his or her application. In such situations the Department policy is as follows:

1. If the applicant properly revealed the matter on the application, and thereafter has the record sealed or expunged, the Department will cease to consider the matter as a "crime" per se, and will further pursue the matter only under the unusual conditions described above.

2. If the applicant did not reveal the matter on the application, the Department will, if the Department finds that the applicant would pose an undue threat to the public welfare if licensed, take one of the following courses of action, depending on Department resources available: petitioning the court to re-open the record in view of the false application; or denying the application or seeking revocation on the ground that the failure to reveal the matter shows deceit and reflects adversely on the character, fitness, or trustworthiness of the applicant.

(d) Sealing or Expunging Department Records.

1. It is the Department's interpretation of Florida statutes regarding sealing or expunging records that the Department is only required to expunge its records of references to the subject criminal proceedings upon receipt of a copy of the Court's Order of Sealing or Expunction of such records.

2. The Department generally interprets a Court's Order of Sealing or Expunction only to apply to references to the court proceedings and copies of court records relating to those proceedings in the Department's possession, and not to apply to references in the Department's records to the underlying matter where those references appear in the Department's records via evidence other than the court proceedings or record.

3. When required to seal or expunge its records, the Department interprets the law to allow the Department to require payment of a reasonable fee by the applicant or licensee to cover the estimated actual cost to the Department, to include staff time, supplies, and other necessary activities. Failure to pay the fee will be considered a disciplinary violation or cause to deny licensure.

4. Where the Department seals or expunges its records, the following procedures are used by the Department as to microfilm records. It is Department policy not to physically delete or mask documents from microfilm records. Instead, the

Department deletes reference to the documents from the microfilm index, thus effectively eliminating the records. It is Department policy that this satisfies a sealing or expungement order unless otherwise expressly directed by a court. The Department's licensure records generally exist only on hundreds of rolls of microfilm, with thousands of documents covering thousands of licensees, per microfilm roll. The Department does not have the equipment to edit and splice the microfilm, and in any event splicing the film would shorten the life and dependability of the film, endangering the only records relating to thousands of licensees. It is not feasible to expunge certain documents on a roll, by printing all the documents on the roll, then deleting those to be expunged, and then re-microfilming the remainder; same is not feasible both because the quality of the re-microfilmed material would be so poor as to render much of it unreadable when subsequently printed out, and the Department does not have the resources to perform this task.

(17) Effect of a Pardon.

(a) Pardoned crimes must be reported on the application as part of the law enforcement record. However, the applicant shall clearly indicate that a pardon has been granted for the crime, and attach supporting paperwork. The burden of proof shall be on the applicant to prove the pardon by certified true copy of the pardon and related documents.

(b) A pardoned crime generally will not be considered against the applicant by the Department.

(c) However, this general policy is subject to the following exceptions, in which case the pardoned crime will not be ignored by the Department:

1. The applicant has subsequently been found guilty, or pled guilty or no contest, to any felony or misdemeanor; or

2. The pardoned crime directly involved the business of insurance.

(d) When any crime falls within either of these two exceptions, the Department shall apply the usual waiting periods and mitigating factors set out in this rule unless the Department finds that due to extraordinary reasons the applicant would still pose an undue threat to the public welfare if licensed.

(e) The Department will not withhold or stay denial of a license application pending action on requests for pardon.

(18) Effect of Restoration of Civil Rights.

(a) This subsection relates to restoration of civil rights under Section 112.011, Florida Statutes.

(b) A crime as to which civil rights have been restored remains part of the law enforcement record and must be revealed on the application.

(c) With regard to a crime in an applicant's law enforcement record as to which civil rights have been restored, the Department finds that apart from their criminal nature, the acts underlying such crimes demonstrate a lack of fitness, or trustworthiness of an applicant to be licensed to engage in the business of insurance. The Department finds that the waiting period necessary to overcome the demonstrated lack of fitness or trustworthiness is equivalent to the waiting period imposed for the corresponding felony class. For example, a robbery as to which civil rights have been restored would require a 15 year waiting period which is equivalent to the waiting period for the corresponding class A felony; i.e., robbery at paragraph (23)(ii) below. In such instances the Department does not deny licensure because of the crime, but because of the nature of the underlying acts.

(d) The Department will recognize restoration of civil rights by other states or the federal government when evidenced by a certified true copy of the court or administrative order restoring the rights.

(e) The burden is upon the applicant to prove restoration of civil rights by certified true copy of government or court records reflecting said action.

(19) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Department treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; Adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosse; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Department will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(20) Application of 2-Year Re-Application Period; Moral Turpitude.

(a) The Department interprets Section 626.641, Florida Statutes, as setting a 2-year time period in which the Department is not required to consider or process an application for re-licensure after revocation. However, after the 2 years have elapsed, although the Department cannot refuse to process and in good faith consider an application, Section 626.641, Florida Statutes, does not establish any right to licensure or re-licensure after the expiration of 2 years, but rather ensures only the good-faith consideration of an application for licensure.

(b) Section 626.641, Florida Statutes, on its face applies only to revocations and suspensions. However, to the extent the section is by inference applicable to denial of applications, the Department interprets it as follows. The Department shall

deny an application for licensure if the applicant's law enforcement record includes a crime of moral turpitude with a trigger date less than 2 years prior to the date of application, which is mandatory grounds for denial or revocation of license. After the passage of 2 years, such an applicant has a right to have the application received and considered in good faith by the Department. Any person whose crime was not one of moral turpitude has a right to apply for licensure and have the application considered in good faith even immediately following the crime.

(c) It is the Department's policy that this rule complies with and implements the intent of Section 626.641, Florida Statutes, in that there are listed and made available in this rule sufficient meaningful mitigating factors, such that any single crime, notwithstanding the "waiting periods" specified herein, can be overcome as a bar to licensure within a reasonable period of time after commission of the crime.

(d) The Department interprets Section 626.611(14), Florida Statutes, as literally requiring compulsory denial of an application for licensure of any applicant whose law enforcement record includes a crime of moral turpitude. However, the Department's interpretation of said subsection is that, notwithstanding its literal wording, it is not intended to be a permanent ban of licensure concerning such persons. The Department interprets said subsection to require denial until it is very clear that the person would no longer pose a threat to the public welfare if licensed. This rule, and the waiting periods and mitigating factors set out herein, comprise the Department's finding as to how long such a period should be.

(21) Imprisoned Persons. Notwithstanding any provision to the contrary in this rule, the Department shall not license any applicant under Chapter 626, Florida Statutes, while the applicant is imprisoned, under arrest, or serving a sentence for any crime. Further, the Department shall not license any applicant who has been released from imprisonment until the later of the period otherwise set out in these rules or 1 year from release. The Department finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least one year on good behavior, before licensure can safely be granted without undue risk to the public welfare.

(22) Effect of Waiting Periods. The waiting periods established in this rule do not give a licensee a right to licensure after any set period of time if the Department finds additional evidence that the applicant still possesses a criminal propensity which poses an undue threat to the public welfare.

(23) Class "A" Crimes include all those listed in this subsection, where such crimes are felonies, and all are of equal weight notwithstanding from which subparagraph they are drawn. The Department finds that each felony crime listed in this subsection is a crime of moral turpitude.

(a) Submitting false insurance claims or applications.

(b) Crimes relating to workers' compensation insurance;

(c) Theft or other dishonest dealings with premiums or claims money;

(d) Making false reports to insurance regulatory officials;

(e) Theft or embezzlement from an insurance company or agency;

(f) Armed Robbery (face-to-face theft by threat of force or force).

(g) Extortion.

(h) Bribery.

(i) Misuse of public office.

(j) Obstructing justice.

(k) Treason against the United States, or a state, district, or territory thereof.

(l) Abuse of elderly or disabled persons.

(m) Altering public documents.

(n) Forgery.

(o) Perjury.

(p) Racketeering.

(q) Witness tampering.

(r) Child abuse.

(s) Theft

(t) Larceny.

(u) Burglary.

(v) Breaking and entering.

(w) Fraud.

(x) Embezzlement.

(y) Tax evasion.

(z) Defrauding an innkeeper.

(aa) Passing worthless check(s).

(bb) Failure to pay tax.

(cc) Buying, receiving, concealing, or possessing stolen property.

(dd) Fraudulent obtaining of food stamps or other welfare fraud.

(ee) Shoplifting.

(ff) Adulteration or poisoning of drugs or food.

(gg) Illegal possession of a firearm.

(hh) Impersonating or attempting to impersonate a law enforcement officer.

(ii) Robbery.

(jj) Unlawful possession of a postal key.

(kk) Securities fraud.

(ll) Sale of unregistered securities.

(mm) Sale of securities by an unregistered dealer.

(nn) Postal fraud.

(oo) Obtaining controlled substance by fraud.

(pp) Not paying required tax as a transferee of a controlled substance.

(qq) Uttering a forged check.

(rr) Forgery of a deed.

(ss) Defrauding the government.

(tt) Criminal possession of a forged instrument.

(uu) Credit card fraud.

(vv) Conspiracy.

(ww) Carrying a concealed weapon /firearm.

(xx) Murder in all degrees.

(yy) Aggravated Assault (e.g., as with a deadly weapon).

(zz) Aggravated Battery (e.g., as with a deadly weapon).

(aaa) Rape.

(bbb) Sexually molesting any minor.

(ccc) Sexual battery.

(ddd) Arson.

(eee) Aircraft piracy/hijacking.

(fff) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.

(ggg) Deriving income from another person's prostitution activities.

(hhh) Running a gambling establishment.

(iii) Unlawful placing, throwing, or discharging a bomb.

(jjj) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.

(kkk) Kidnapping.

(lll) Incest.

(24) Class "B" Crimes include the following felony crimes:

(a) Manslaughter.

(b) Simple Assault.

(c) Simple Battery.

(d) Gambling.

(e) Possession of burglary tools.

(f) Resisting arrest with violence.

(g) Damage to Property.

(h) Criminal mischief.

(25) Class "C" Crimes include the following felony crimes:

(a) Public drunkenness.

(b) Driving while intoxicated.

(c) Trespassing.

(d) Resisting arrest without force.

(e) Disorderly conduct.

(f) Solicitation of prostitution.

(g) Prostitution.

(h) Obscenity.

(i) Bigamy.

(j) Sale of fireworks.

(k) Criminal trespass.

(l) Cruelty to animals.

(m) Personal use of controlled substances (illegal drugs).

(n) Possession of controlled substances (illegal drugs) for personal use.

(o) Possession of drug paraphernalia for personal use.

(p) Domestic disturbance not involving violence.

(q) Violation of fish and game laws.

(r) Crimes of civil disobedience relating to matters of conscience (e.g., burning of draft cards; nonviolent resisting of arrest at protests).

(s) Illegal possession of weapon.

(t) Fleeing arrest or fleeing a law enforcement officer.

(u) Escape.

(26) Foreign Law Enforcement Records. In the event that a law enforcement record includes convictions, charges, or arrests outside the United States, the Department shall consider the following factors to reduce, eliminate, or apply a waiting period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.

Specific Authority 624.308 FS. Law Implemented 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.211, 626.291, 626.601, 626.611(7),(14), 626.621(8), 626.631, 626.641 FS. History–New .

NAME OF PERSON ORIGINATING PROPOSED RULE: Audrey Huggins, Bureau Chief, Bureau of Licensing, Division of Agent and Agency Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: John Hale, Director, Division of Agent and Agency Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 19, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 29, 2001

DEPARTMENT OF INSURANCE

RULE TITLES:	RULE NOS.:
Purpose	4-231.010
Scope	4-231.020
Definitions	4-231.030
Penalties for Violation of Section 626.611	4-231.080
Criminal Proceedings	4-231.150

PURPOSE AND EFFECT: The purpose of the proposed rulemaking is to implement the Department's duty under Section 624.307(1), Florida Statutes, to enforce sections 626.611, 626.621, 626.631, 626.641, 626.681, and 626.691, Florida Statutes, by establishing standards for penalties

described in those statutory sections, and interpreting provisions in those sections as they relate to penalties imposed upon licensees.

SUMMARY: The proposed rules establish standards for penalties and interpret provisions in the referenced statutes as they relate to penalties imposed upon licensees.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No SERC 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: 624.308 FS.

LAW IMPLEMENTED: 624.307(1), 626.601, 626.611, 626.621, 626.631, 626.641, 626.681, 626.691 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: 9:30 a.m., November 29, 2001

PLACE: Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Phil Fountain, Bureau Chief, Bureau of Agent and Agency Investigations, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0319, (850)413-5600

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 above.

THE FULL TEXT OF THE PROPOSED RULES IS:

4-231.010 Purpose.

The purpose of this rule chapter is to implement the Department's duty under Section 624.307(1), Florida Statutes, to enforce Sections 626.611, 626.621, 626.631, 626.641, 626.681, and 626.691, Florida Statutes, by establishing standards for penalties described in those statutory sections, and interpreting provisions in those sections as they relate to penalties imposed upon licensees specified in Rule 4-231.020, F.A.C. ~~give notice of the penalties which will normally be imposed against specified licensees for violation of particular provisions of the Insurance Code, and rules and orders of the Department~~.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.611, 626.621, 626.631, 626.641, 626.681, 626.691 FS. History–New 7-13-93, Amended _____.

4-231.020 Scope.

(1) No change.

(2) This rule chapter does not apply to title insurance agents, insurance administrators, surplus lines agents, or managing general agents ~~or health care risk managers~~.

~~(3) This rule chapter does not apply to crimes described in section 18 U.S.C. 1033.~~

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.611, 626.621, 626.681, 626.691 FS. History–New 7-13-93, Amended 8-15-00, _____.

4-231.030 Definitions.

The following definitions shall apply for purposes of this rule chapter.

(1) through (3) No change.

(4) "Crimes involving moral turpitude" means each felony crime identified in subsection 4-211.042(23), F.A.C.

(4) through (8) renumbered (5) through (9) No change.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.611, 626.621, 626.681, 626.691 FS. History–New 7-13-93, Amended _____.

4-231.080 Penalties for Violation of Section 626.611.

If it is found that the licensee has violated any of the following subsections of Section 626.611, Florida Statutes, for which compulsory suspension or revocation is required, the following stated penalty shall apply:

(1) No change.

(2) s. 626.611(2), Florida Statutes

(a) Suspension 12 ~~3~~ months if, had the license application been accurate, the application would have been granted, based on the Department licensing rule applicable to the application at the time the Department issued the license, and the documentation in the applicant's file at the time the Department issued the license.

(b) Revocation if, had the license application been accurate, the application would have been denied, based on the Department licensing rule applicable to the application at the time the Department issued the license.

(3) through (15) No change.

(16) s. 626.611(16), F.S. – suspension 12 months.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.611, 626.621, 626.681, 626.691 FS. History–New 7-13-93, Amended _____.

4-231.150 Criminal Proceedings.

(1) If it is found that a licensee has violated either section 626.611(14) or 626.621(8), Florida Statutes, the following stated penalty shall apply:

(a)~~(1)~~ If the licensee is convicted by a court of a violation of the Insurance Code or a felony (regardless of whether or not such felony is related to an insurance license), the penalty shall be revocation.

(b)~~(2)~~ If the licensee is not convicted of, but has been found guilty of or has pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of ~~one~~ ~~(1)~~ year or more under the law of the United States of America or of any state thereof or under the law of any other country, which

involves moral turpitude and is a crime involving breach of trust or dishonesty, the penalty shall be revocation. ~~penalties are as follows:~~

~~(a) If the conduct directly relates to activities involving an insurance license, the penalty shall be a twenty-four (24) month suspension.~~

~~(b) If the conduct indirectly involves insurance or has a bearing on an agent's fitness or trustworthiness to hold an insurance license, the penalty shall be a twelve (12) month suspension.~~

(c) If the licensee is not convicted of, but has been found guilty of or has pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, which involves moral turpitude or is a crime involving breach of trust or dishonesty, the penalties are as follows:

1. If the conduct directly relates to activities involving an insurance license, the penalty shall be a 24 month suspension.

2. If the conduct indirectly involves insurance or has a bearing on an agent's fitness or trustworthiness to hold an insurance license, the penalty shall be a 12 month suspension.

3. If the conduct is not related to insurance license, the penalty shall be a ~~six (~~6~~)~~ month suspension.

(d)~~(3)~~ If the licensee is not convicted of, but has been found guilty of or has pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of ~~one (~~1~~)~~ year or more under the laws of the United States of America or of any state thereof or under the law of any other country, which does not involve moral turpitude and is not a crime involving breach of trust or dishonesty, the penalties are as follows:

1.~~(a)~~ If the conduct directly relates to activities involving an insurance license, the penalty shall be a 24 month suspension.

2.~~(b)~~ If the conduct indirectly involves insurance or has a bearing on an agent's fitness or trustworthiness to hold an insurance license, the penalty shall be a 12 month suspension.

3.~~(c)~~ If the conduct is not related to insurance license, the penalty shall be a 3 ~~two (2)~~ month suspension.

(2) Foreign Law Enforcement Records. In the event that a law enforcement record includes convictions, charges, or arrests outside the United States, the Department shall consider the following factors to reduce, eliminate, or apply a waiting period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.601, 626.611, 626.621, 626.631, 626.631(1), 626.681, 626.691 FS. History–New 7-13-93, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Phil Fountain, Bureau Chief, Bureau of Agent and Agency Investigations, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: John Hale, Director, Division of Agent and Agency Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 19, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 29, 2001

ADMINISTRATION COMMISSION

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Land Planning Regulations for the Florida Keys Area of Critical State Concern – City of Marathon	28-18
RULE TITLES:	RULE NOS.:
Purpose and Effect	28-18.100
Comprehensive Plan	28-18.200

PURPOSE, EFFECT AND SUMMARY: To specify the conditions under which the City of Marathon Transitional Comprehensive Plan will be superceded and amend the Work Program set forth at Policy 101.2.13 of the Marathon Comprehensive Plan to increase the annual residential permitting cap and encourage the increase to be dedicated to affordable housing, specify the point at which nutrient reduction credits can be earned when a central sewer system will be built, establish the date for the next report to the Administration Commission, extend the due date for local governments to implement the carrying capacity study, and allow Residential Rate of Growth allocations and nutrient reduction credits to be transferred across sub-areas and jurisdictions for purposes of affordable housing.

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

Any person who wishes to provide informaiton 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: 380.0552(9) FS.

LAW IMPLEMENTED: 380.0552 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: 5:00 p.m. – 7:00 p.m., November 28, 2001

PLACE: Marathon Government Center, 2798 Overseas Highway, Second Floor, Emergency Operations Center, Marathon, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Ann Lazar, Planning Consultant, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-4545 at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Mike McDaniel, Growth Management Administrator, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-4545

THE FULL TEXT OF THE PROPOSED RULES IS:

(The following rule section was advertised in the Rule Development Notice as 28-18.001. The number is being changed as follows:)

28-18.100 Purpose and Effect.

(1) The purpose of this Chapter is to amend the Transitional Comprehensive Plan and Land Development Regulations of the City of Marathon within the Florida Keys Area of Critical State Concern, pursuant to Section 380.0552(9), F.S.

(2) As provided in Section 380.05(10) and 380.0552(7), F.S., the Transitional Comprehensive Plan and Land Development Regulations of the City adopted herein shall be superseded by amendments which are proposed by the City and approved by the Department of Community Affairs pursuant to Section 380.05(6) and 380.0552(9), F.S. The City Transitional Comprehensive Plan and Land Development Regulations shall be superseded by the new City Comprehensive Plan and new City Land Development Regulations upon approval by the Department of Community Affairs pursuant to Section 380.05(6) and 380.0552(9), F.S.

Specific Authority 380.0552(9) FS. Law Implemented 380.0552 FS. History–New .

(The following rule section was advertised in the Rule Development Notice as 28-18.002. The number is being changed as follows:)

28-18.200 Comprehensive Plan.

The Transitional Comprehensive Plan of the City of Marathon established by Chapter 99-427, Laws of Florida, is amended as follows:

(1) Policy 101.2.14. Notwithstanding any other provisions of the Transitional Comprehensive Plan of the City of Marathon, the following shall apply:

(a) The number of permits issued for new residential development under the rate of growth ordinance shall not exceed a total unit cap of 30 new residential units per year. The restored permits (6) are encouraged to be dedicated to affordable housing. This allocation represents the total number of new permits for development that may be issued during a ROGO year. No exemptions or increases in the number of new permits, other than that which may be expressly provided for in the comprehensive plan or for which there is an existing agreement for affordable housing between the Department and the local government, shall be allowed. For Year 5, the interim Permit Allocation System shall allow a minimum of 11 new residential permits. If fewer than 11 nutrient reduction credits are earned in Year 5, the deficit shall be made up in Year 6 prior to issuance of any new permits.

(b) Notwithstanding any other provision of the comprehensive plan, ROGO allocations and nutrient reduction credits utilized for affordable housing projects may be pooled and transferred between ROGO subdistricts and between local government jurisdictions within the Florida Keys ACSC. Any such transfer between local government jurisdictions must be accomplished through an interlocal agreement between the sending and receiving local governments.

(c) Nutrient reduction credits earned by construction of a central sewer system using best available technology or advanced wastewater treatment shall be earned at the time that a wastewater construction permit is issued by DEP for each phase of the project and a design/build or construction contract has been executed.

(d) Beginning August 1, 2002, and each year of the work program (set out in policy 101.2.13) thereafter, the City and the Department of Community Affairs shall report to the Administration Commission documenting the degree to which the work program objectives for that year have been achieved.

(e) The Work Program in Policy 101.2.13 for Year 4, Year 5, Year 6, and Year 7 shall be modified as follows:

YEAR FOUR (July 13, 2000 through July 12, 2001)

A. Complete Storm Water Master Plan. Identify priority projects for implementation and seek funding for plan implementation.

Agencies: City, DCA, DEP, DOT, SFWMD, EPA and WQSC.

B. Complete Phase II of the carrying capacity study (data analysis) and present initial recommendations to review agencies.

Agencies: City, DCA, DEP, DOH, DOT, FFWCC, SFWMD, WQSC, SFRPC, EPA, USFWS, Army COE, and other interested parties to include representatives of environmental organizations and development interests.

C. Continue efforts to secure funding for the Marathon Facility, initiate construction of Little Venice wastewater treatment facility. Establish baseline water quality for surface and groundwater quality potentially impacted by Little Venice project.

Agencies: City, DCA, DEP, FKAA, WQSC and EPA.

YEAR FIVE (July 13, 2001 through July 12, 2002)

A. Execute interagency agreements to define construction schedule for selected storm water improvement projects. Complete land acquisition and final design for selected treatment strategies for Storm Water Master Plan.

Agencies: City, DCA, DEP, DOT, WQSC and SFWMD.

B. Complete final draft of the carrying capacity study including acceptance by review agencies.

Agencies: City, FKAA, DCA, DEP, DOH, DOT, FFWCC, SFWMD, WQSC, SFRPC, EPA, USFWS, Army COE, and other interested parties to include representatives of environmental organizations and development interests.

C. Secure funds for Phase II (to be determined) of the Marathon Facility and continue construction of Little Venice facility.

Agencies: City, FKAA, DEP, DCA, EPA and WQSC.

D. Continue eliminating cesspits and inoperative septic tanks in areas outside of Hot Spots.

Agencies: City, DOH, FKAA and WQSC.

YEAR SIX (July 13, 2002 through July 12, 2003)

A. Initiate construction of selected projects as identified in the Storm Water Master Plan.

Agencies: County, SFWMD, DEP, DCA, DOT, EPA and WQSC.

B. Implement the carrying capacity study by, among other things, the adoption of all necessary plan amendments to establish a rate of growth and a set of development standards that ensure that any and all new development does not exceed the capacity of the county's environment and marine system to accommodate additional impacts. Plan amendments will include a review of the City's Future Land Use Map series and changes to the map series and the "as of right" and "maximum" densities authorized for the plan's future land use categories based upon the natural character of the land and natural resources that would be impacted by the currently authorized land uses, densities and intensities.

Agencies: City, FKAA, FFWCC, DCA, DEP, DOH, DOT, SFWMD, SFRPC, EPA, Army COE, WQSC, and USFWS, and other interested parties to include representatives of environmental organizations and development interests.

C. Initiate construction of Phase II of the Marathon Facility and complete construction and begin operating the Little Venice Facility.

Agencies: City, FKAA, DCA, DEP, EPA and WQSC.

D. Complete the elimination of all cesspits in areas outside of Hot Spots.

Agencies: City, FKAA, DOH and WQSC.

YEAR SEVEN (July 13, 2003 through July 12, 2004)

A. Continue implementing selected projects as identified in the Storm Water Master Plan.

Agencies: City, DCA, DEP, DOT, SFWMD, EPA and WQSC

B. Continue construction of the Marathon Facility.

Agencies: City, FKAA, DCA, DEP, EPA and WQSC.

Specific Authority 380.0552(9) FS. Law Implemented 380.0552 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mike McDaniel, Growth Management Administrator, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-4545

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: The Administration Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 15, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 1, 2001

ADMINISTRATION COMMISSION

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Land Planing Regulations for the Florida Keys Area of Critical State Concern – Monroe County 28-20

RULE TITLE: RULE NO.:
Comprehensive Plan 28-20.100

PURPOSE, EFFECT AND SUMMARY: To amend the Work Program set forth at Policy 101.2.13 of the Monroe of the County Comprehensive Plan to increase the annual residential permitting cap and encourage the increase to be dedicated to affordable housing, specify the point at which nutrient reduction credits can be earned when a central sewer system will be built, establish the date for the next report to the Administration Commission, extend the due date for local governments to implement the carrying capacity study, extend the time frame for wastewater improvements, and allow Residential Rate of Growth allocations and nutrient reduction credits to be transferred across sub-areas and jurisdictions for purposes of affordable housing.

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

Any person who wishes to provide informaiton 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: 380.05(8), 380.0552(9) FS.

LAW IMPLEMENTED: 380.0552 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: 5:00 p.m. – 7:00 p.m., November 28, 2001

PLACE: Marathon Government Center, 2798 Overseas Highway, Second Floor, Emergency Operations Center, Marathon, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Ann Lazar, Planning Consultant, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-4545 at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mike McDaniel, Growth Management Administrator, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-4545

THE FULL TEXT OF THE PROPOSED RULE IS:

(This rule was originally proposed as 28-20.101 as outlined in 28-20.019, Florida Administrative Code, but now we have returned to the original number of 28-20.100 to avoid confusion and misunderstandings since only a small section of the overall rule is changed. Therefore, although the entire rule was underlined in the original advertisement the proposed rule is shown in the coded style of underline and strike-through.

The Monroe County Comprehensive Plan Policy Document ~~and Map Atlas, which are adopted by Monroe County Ordinance 016-1993~~ as the same exists on May 15, 2001, is hereby amended as follows:)

28-20.100 Comprehensive Plan.

Monroe County shall establish an interim Permit Allocation System for new residential development. The interim Permit Allocation System shall supersede Policy 101.2.1 and remain in place until such time as Monroe County determines its future growth capacity based on hurricane evacuation, public safety and environmental needs including water quality and habitat protection, and amends its plan consistent with such determination, based on the results of the work program as set forth below. DEP, DOH, DCA and Monroe County shall develop a coordinated permit review process that will insure that no state agency shall issue a wastewater disposal permit that would allow development in excess of the number of permits that Monroe County may issue under this interim policy. Similarly, Monroe County shall not issue development permits under this interim policy in excess of wastewater disposal permits that DEP or DOH may issue. For Years 3 and 4 of the Work Program, the interim Permit Allocation System shall allow a minimum of 88 new residential permits per year which may be used to address the backlog of ROGO allocations. Additional new residential permits will be allowed but limited to the number of nutrient reduction credits earned within the same unincorporated ROGO area. Nutrient reduction credits shall be earned consistent with Table 1 below. Nutrient reduction credits earned by construction of a central sewer system using best available technology or advanced wastewater treatment shall be earned at the time that a wastewater construction permit is issued by DEP for each phase of the project and a design/build or construction contract has been executed. Nutrient reduction credits earned using funds provided by the State and matched by the County in fiscal years 1997-98 and 1998-99 will be used to offset the nutrient impacts of the 88 new residential permits per year, but may not be used for additional new residential permits until such time as these funds generate more than 88 nutrient reduction credits for Years 3 and 4. For Year 5, the interim Permit Allocation System shall allow a minimum of 77 ~~88~~ new residential permits. If fewer than 77 ~~88~~ nutrient reduction credits are earned in Year 5, the deficit shall be made up in Year 6 prior to issuance of any new permits. For Year 6 and beyond, the interim permit allocation system shall limit the number of permits issued for new residential development to the number of nutrient reduction credits earned within the same unincorporated ROGO area. For all years the number of permits issued for new residential development under the Rate of Growth Ordinance shall not exceed a total unit cap of 197 ~~182~~ new residential units per year. The restored permits (39) are encouraged to be dedicated to affordable housing. This allocation represents the total number of new permits for development that may be issued during a ROGO year. No exemptions or increases in the number of new permits, other than that which may be expressly provided for in the comprehensive plan or for which there is an existing agreement for affordable housing between the Department and the local government in the critical areas, may be allowed. Monroe County shall develop a tracking system for monitoring the nutrient reduction credits earned. The tracking system shall commence upon the effective date of this rule and the number of nutrient reduction credits earned shall be cumulative and may be applied to future years of the interim Permit Allocation System.

Table 1

Nutrient Reduction Credits

	Treatment System Upgraded To			
	On-site Treatment OWNR or Equivalent	Centralized System		
	On-site Treatment and Disposal Systems	Secondary Treatment	Best Available Treatment (BAT)	Advanced Wastewater Treatment (AWT)
Cesspit	1 EDU Credit	1 EDU Credit	1.0 EDU Credit	1.5 EDU Credit
Substandard OSTDS	0.5	0.5	1.0	1.5
Approved OSTDS	0.5	0	1	1.5
Secondary Treatment	n/a	n/a	1	1.5

Additionally, the unit cap for new residential development shall be linked to the following work program which identifies actions necessary to correct existing wastewater and storm water problems, as well as actions necessary to determine appropriate future growth. Beginning August 1, 2002 ~~2000~~, and each year of the work program thereafter, Monroe County and the Department of Community Affairs shall report to the Administration Commission documenting the degree to which the work program objectives for that year have been achieved. The Commission shall consider the findings and recommendations provided in those reports and shall determine whether substantial progress has been achieved toward accomplishing the tasks of the work program. If the Commission determines that substantial progress has not been made, the unit cap for new residential development shall be reduced by at least 20 percent for the following year. If the Commission determines that substantial progress has been made, then the Commission shall increase the unit cap for new residential development for the following year up to a maximum of 197 ~~227~~ units. Other agencies identified in the work program, or any interested persons, may likewise report and make recommendations for consideration by the Commission. Notwithstanding any other dates set forth in this plan, the dates set forth in the work program shall control where conflicts exist. For each task in the work program, the Department of Community Affairs shall request of all relevant and appropriate federal, state, regional, and local agencies that they contribute any relevant data, analysis and recommendations, and that they take an active role in assisting the county in completing the task. Each such agency shall prepare, in coordination with the county, a section to be included in Monroe County's reports which indicates the agency's actions relative to the work plan. The Department of Community Affairs shall specifically request that the Florida Keys National Marine Sanctuary Water Quality Protection Program Steering Committee (Water Quality Steering Committee) take an active role in coordinating with Monroe County, and relevant state and federal agencies, in the implementation of the tasks related to water quality, wastewater and storm water facilities, and in the development and implementation of the carrying capacity study. The Steering Committee will provide technical assistance and substantive comments and recommendations to ensure that the county's wastewater and storm water master plans and the carrying capacity study are consistent with the objectives of the FKNMS Water Quality Protection Program. The Steering Committee will make recommendations on wastewater systems and Hot Spot priorities prior to implementation by the County. It is the intent of this rule to accelerate the pace, and increase the effectiveness of the current cesspit replacement effort through both a regulatory and an incentive-based program. No later than August, 1999 Monroe County shall engage in a public education program to ensure that the public understands that the County is committed to the swift identification and replacement of cesspits, as a full partner with the Department of Health. The public education program shall explain the role of cesspit removal in the overall context of the Work Plan and Wastewater Master Plan. The County and the state shall request the participation of the Steering Committee in the public education program as well as the Florida Keys Aqueduct Authority.

WORK PROGRAM

YEAR ONE (ending December 31, 1997)

A. Complete Phase I (data collection) for the Wastewater and Storm Water Master Plans, and secure funding for plan completion. (Ref. County obj. 901.4)

Agencies: County, DCA, DEP, DOH and SFWMD.

B. Complete a conceptual plan or scope of work to develop a carrying capacity. The carrying capacity analysis shall be designed to determine the ability of the Florida Keys ecosystem, and the various segments thereof, to withstand all impacts of additional land development activities. The analysis shall be based upon the findings adopted by the Administration Commission on December 12, 1995, or more recent data that may become available in the course of the study, and shall be based upon the benchmarks of, and all adverse impacts to, the Keys land and water natural systems, in addition to the impact of nutrients on marine resources. The carrying capacity analysis shall consider aesthetic, socioeconomic (including sustainable tourism), quality of life and community character issues, including the concentration of population, the amount of open space, diversity of habitats, and species richness. The analysis shall reflect the interconnected nature of the Florida Keys' natural systems, but may consider and analyze the carrying capacity of specific islands or groups of islands and specific ecosystems or habitats, including distinct parts of the Keys' marine system. (Ref. 1991 Stip. Settlement Agreement)

Agencies: County, DCA, DEP, DOH, DOT, GFC, SFWMD, NMS, SFRPC, EPA, USFWS, Army COE, and other interested parties to include representatives of environmental organizations and development interests.

C. Complete AWT/OSDS demonstration study and initiate rulemaking for new standards for OSDS. (Ref. County pol. 901.4.3)

Agencies: DOH.

D. Complete Marathon Facilities Plan and secure funding for the facility site(s). The wastewater facilities plan should implement the most cost effective method of collecting, treating, and disposing of wastewater, and shall include an investigation of the feasibility of using alternative nutrient-stripping on-site disposal systems. The development of the facilities plan shall be a component of the Wastewater Master Plan as that Plan is developed.

Agencies: County, DCA and DEP.

E. Continue cesspit elimination process with identification of Hot Spots as first priority in accordance with Objective 901.2, and seek funding for cesspit identification. Enter into an

interlocal agreement with DOH to specify the responsibilities and procedures for the OSDS inspection/compliance program as required by Policy 901.2.3. Adopt an ordinance which specifies the implementation procedures for the OSDS inspection/compliance program. The ordinance shall include authorization for DOH to inspect wastewater treatment systems on private property as required by Policy 901.2.3. (Ref. County obj. 901.2)

Agencies: County, DCA and DOH.

F. Submit status of CARL and ROGO land acquisition to the Administration Commission.

Agencies: County, Land Authority and DEP.

G. Revise the Habitat Evaluation Index (HEI) based on peer review.

Agencies: County, DCA, DEP, GFC and Federal agencies.

YEAR TWO (ending December 31, 1998)

A. Complete the Wastewater and Storm Water Master Plans and execute interagency agreements to define construction schedule by phases. Document that significant reduction in nutrients will be achieved each year thereafter within each of the sub-areas. The Master Plans shall include facility plans for all proposed treatment strategies, and determine retrofit and funding requirements for Hot Spots and cesspits identified in D. below.

Agencies: County, DCA, DEP and DOH.

B. Secure funding for the carrying capacity study and initiate Phase I (data collection) of the study.

Agencies: County and DCA.

C. Complete final design for Marathon Facilities Plan and secure facility site(s).

Agencies: County, DCA and DEP.

D. Complete cesspit ID process in Hot Spots, excluding the Marathon area.

Agencies: County, DCA and DOH.

E. Submit status of CARL and ROGO land acquisition to the Administration Commission.

Agencies: County, Land Authority, GFC and DEP.

F. Document the extent and quality of the fresh groundwater lens system on Big Pine Key; delineate the associated recharge areas; and determine the safe yield of the system. (Ref. County pol. 103.1.5)

Agencies: County, DCA, SFWMD, USFWS.

YEAR THREE (January 1, 1999 through July 12, 2000)

A. Complete and begin implementation of Wastewater Master Plan. Utilizing the findings of the Wastewater Master Plan and recommendations of the Water Quality Steering Committee relating to Hot Spots do the following: refine and prioritize areas identified as Hot Spots, determine retrofit and funding requirements for priority Hot Spots and cesspit replacement for areas outside those areas identified for central or cluster wastewater collection systems, and begin developing facility plans for priority Hot Spots. Execute interagency agreements to define facility plan, design and construction schedules for each Hot Spot facility. Establish a water quality monitoring program to document the reduction in nutrients as a result of these facilities. Complete a wastewater treatment finance plan and a service area implementation plan, and continue efforts to secure funding for Wastewater Master Plan implementation, with priority given to Hot Spots. Determine the feasibility and legal ramifications of establishing an escrow account as a means of providing long-term funding for replacing cesspits or substandard onsite sewage systems. Establish a mechanism such as special assessments, impact fees, infrastructure surcharge, or other dedicated revenues, to fund the local share of wastewater improvements in Years Four and Five. Seek to provide comparable subsidies for both wastewater collection systems and individual cesspit replacement.

Agencies: County, FKAA, DCA, DEP, DOH, SFWMD, EPA and Water Quality Protection Program Steering Committee (WQSC).

B. Secure funding for Storm Water Master Plan development, contract selected firm for development of Master Plan, and complete Phase I (data collection). Determine the feasibility of providing nutrient reduction credits for stormwater improvements.

Agencies: County, DCA, DOT, SFWMD, EPA and WQSC.

C. Conclude acquisition of North Key Largo Hammocks CARL project. Make offers to 33% of remaining private owners with property located in other CARL project boundaries.

Agencies: County, Land Authority and DEP.

D. Secure remaining funds for the carrying capacity study, conduct workshops as outlined in the Scope of Work, select prime contractor, and initiate Phase I (data collection) of the study.

Agencies: County, DCA, DEP, DOH, DOT, FFWCC, SFWMD, WQSC, SFRPC, EPA, USFWS, Army COE, GFC, DOT, and other interested parties to include representatives of environmental organizations and development interests.

E. Continue efforts to secure funding for the Marathon Facility. Complete Little Venice construction design, secure lands needed for Little Venice facility, and begin bid process and selection of construction firm. Design a water quality monitoring program to document Little Venice project impacts.

Agencies: County, FKAA, DCA, DEP, WQSC, and EPA.

F. Continue cesspit identification by providing notice to all property owners with unknown systems, outside of Hot Spots. Initiate replacement of cesspits outside of Hot Spots. Award financial assistance grants to qualified applicants using FY 1997-98 state funds to ensure a minimum of 70 cesspit replacements. Develop a low interest loan and grant program to assist all residents in replacing cesspits, with priority of funds going, in order of preference, to very low-, low- and

moderate-income households. Investigate the appropriateness of transferring credits among ROGO areas and awarding nutrient reduction credits for future committed water quality treatment facilities.

Agencies: County, DCA, FKAA, WQSC and DOH.

G. Document the extent and quality of the fresh groundwater lens system on Big Pine Key; delineate the associated recharge areas; and determine the safe yield of the system. (Ref. County pol. 103.1.5)

Agencies: County, FKAA, DEP, DCA, SFWMD, EPA, WQSC and USFWS.

H. Develop an integrated funding plan for the purchase of land from ROGO applicants who have competed unsuccessfully for four consecutive years and applied for administrative relief.

Agencies: County.

I. The County, in conjunction with DCA, shall assess the feasibility of applying the nutrient reduction credit requirement to new commercial development.

Agencies: County and DCA.

YEAR FOUR (July 13, 2000 through July 12, 2001)

A. Continue implementation of Wastewater Master Plan, execute interagency agreements to define construction schedule by phases, and continue developing facility plans for selected ~~priority~~ Hot Spots in each ROGO area. Secure funding to implement the Wastewater Master Plan. Document that reduction in nutrients has been achieved within each of the sub-areas.

Agencies: County, FKAA, DCA, DEP, DOH, EPA and WQSC.

B. Complete Storm Water Master Plan. Identify priority projects for implementation and seek funding for plan implementation.

Agencies: County, DCA, DEP, DOT, SFWMD, EPA and WQSC.

C. Make offers to 50% of remaining private owners with property located in CARL project boundaries.

Agencies: County, Land Authority and DEP.

D. Complete Phase II of the carrying capacity study (data analysis) and present initial recommendations to review agencies.

Agencies: County, DCA, DEP, DOH, DOT, FFWCC, SFWMD, WQSC, SFRPC, EPA, USFWS, Army COE, and other interested parties to include representatives of environmental organizations and development interests.

E. ~~Continue efforts to secure funding for the Marathon Facility, initiate construction of Little Venice wastewater treatment facility.~~ Establish baseline water quality for surface and groundwater quality potentially impacted by Little Venice project.

Agencies: County, DCA, DEP, FKAA, WQSC and EPA.

F. Complete cesspit identification and continue cesspit replacement outside of Hot Spots, with a priority of funds going, in order of preference, to low- and moderate-income households; ensure that a minimum of 88 cesspits are replaced.

Agencies: County, FKAA, WQSC and DOH.

YEAR FIVE (July 13, 2001 through July 12, 2002)

A. Continue implementation of the Wastewater Master Plan pursuant to executed interagency agreements. Begin construction of wastewater facilities in selected ~~priority~~ Hot Spots.

Agencies: County, FKAA, DCA, DOH, DEP, EPA, and WQSC.

B. Execute interagency agreements to define construction schedule for selected ~~priority~~ storm water improvement projects. Complete land acquisition and final design for selected treatment strategies for Storm Water Master Plan.

Agencies: County, DCA, DEP, DOT, WQSC and SFWMD.

C. Conclude negotiations with all willing owners with property within CARL project boundaries. Acquire a total-to-date of 45% of the Key Deer/Coupon Bight project and 25% of the Florida Keys Ecosystems project from willing sellers.

Agencies: County, Land Authority, and DEP.

D. Complete final draft of the carrying capacity study including acceptance by review agencies. ~~Implement the carrying capacity study by, among other things, the adoption of all necessary plan amendments to establish a rate of growth and a set of development standards that ensure that any and all new development does not exceed the capacity of the county's environment and marine system to accommodate additional impacts. Plan amendments will include a review of the County's Future Land Use Map series and changes to the map series and the "as of right" and "maximum" densities authorized for the plan's future land use categories based upon the natural character of the land and natural resources that would be impacted by the currently authorized land uses, densities and intensities.~~

Agencies: County, FKAA, DCA, DEP, DOH, DOT, FFWCC, SFWMD, WQSC, SFRPC, EPA, USFWS, Army COE, and other interested parties to include representatives of environmental organizations and development interests.

~~E. Secure funds for Phase II (to be determined) of the Marathon Facility and continue construction of Little Venice facility.~~

~~Agencies: County, FKAA, DEP, DCA, EPA and WQSC.~~

E.~~F.~~ Continue eliminating cesspits and inoperative septic tanks in areas outside of Hot Spots.

Agencies: County, DOH, FKAA and WQSC.

YEAR SIX (July 13, 2002 through July 12, 2003)

A. ~~Finalize~~ Continue construction of ~~and begin operating~~ wastewater facilities in Hot Spots begun in previous year. Contract to design and construct additional wastewater

treatment facilities in Hot Spots in accordance with the schedule of the Wastewater Master Plan. Continue implementation of Wastewater Master Plan with emphasis on Hot Spots.

Agencies: County, FKAA, DEP, DOH, DCA, EPA and WQSC.

B. Initiate construction of selected ~~priority~~ projects as identified in the Storm Water Master Plan.

Agencies: County, SFWMD, DEP, DCA, DOT, EPA and WQSC.

C. ~~Continue implementation of the carrying capacity study.~~ Implement the carrying capacity study by, among other things, the adoption of all necessary plan amendments to establish a rate of growth and a set of development standards that ensure that any and all new development does not exceed the capacity of the county's environment and marine system to accommodate additional impacts. Plan amendments will include a review of the County's Future Land Use Map series and changes to the map series and the "as of right" and "maximum" densities authorized for the plan's future land use categories based upon the natural character of the land and natural resources that would be impacted by the currently authorized land uses, densities and intensities.

Agencies: County, FKAA, FFWCC, DCA, DEP, DOH, DOT, SFWMD, SFRPC, EPA, Army COE, WQSC, and USFWS, and other interested parties to include representatives of environmental organizations and development interests.

~~D. Initiate construction of Phase II of the Marathon Facility and complete construction and begin operating the Little Venice Facility.~~

~~Agencies: County, FKAA, DCA, DEP, EPA and WQSC.~~

D.~~E.~~ Complete the elimination of all ~~cesspits in areas~~ outside of Hot Spots.

Agencies: County, FKAA, DOH and WQSC.

YEAR SEVEN (July 13, 2003 through July 12, 2004)

A. Finalize construction and begin operating wastewater facilities in Hot Spots. Continue implementation of Wastewater Master Plan with continued emphasis on Hot Spots.

Agencies: County, FKAA, DEP, DCA, DOH, EPA and WQSC

B. Continue implementing selected ~~priority~~ projects as identified in the Storm Water Master Plan.

Agencies: County, DCA, DEP, DOT, SFWMD, EPA and WQSC

~~C. Continue construction of the Marathon Facility.~~

~~Agencies: County, FKAA, DCA, DEP, EPA and WQSC.~~

(2) Policy 901.1.1

Monroe County shall ensure that, at the time a development permit is issued, adequate sanitary wastewater treatment and disposal facilities, including wastewater treatment facilities and onsite sewage treatment and disposal systems, are available to support the development at the adopted level of service standards, concurrent with the impacts of such development. [9J-5.011(2)(c)2.]

Permanent Level of Service Standards.

(A) The permanent level of service standards for wastewater treatment in Monroe County are as provided in Chapter 99-395, Laws of Florida.

(B) The County and the State shall actively engage in an educational program to reduce demand for phosphate products.

(C) The County shall require mandatory pump-out of septic tanks and require regular reports from qualified contractors to ensure proper septage disposal.

(2) Policy 101.2.14 is created to read:

Notwithstanding any other provision of the comprehensive plan, ROGO allocations and nutrient reduction credits utilized for affordable housing projects may be pooled and transferred between ROGO subdistricts and between local government jurisdictions within the Florida Keys ACSC. Any such transfer between local government jurisdictions must be accomplished through an interlocal agreement between the sending and receiving local governments.

Specific 380.05(8), 380.0552(9) FS. Law Implemented 380.0552 FS. History–New 1-2-96, Amended 7-17-97, 7-26-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mike McDaniel, Growth Management Administrator, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-4545

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE : The Administration Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 15, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 1, 2001 (advertised as 28-20.101)

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facility and Agency Licensing

RULE TITLES:	RULE NOS.:
Classification of Hospitals	59A-3.202
Licensure Procedure	59A-3.203
Investigations and License, Life Safety and Validation Inspections	59A-3.204

PURPOSE AND EFFECT: The purpose and the effect of the rule will be to amend sections of Chapter 59A-3 Hospital Licensure rule to incorporate by reference *Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care in Hospitals* dated November 2001.

SUMMARY: Sections of Chapter 59A-3 Hospital Licensure rule is being amended to incorporate by reference *Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care in Hospitals*, dated November 2001, which defines minimum criteria and the scope of services that differentiate levels of inpatient care for children in hospitals.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The agency has prepared a Statement of Estimated Regulatory Costs pursuant to section 120.541, Florida Statutes that shall be provided upon request.

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: 395.1055 FS.

LAW IMPLEMENTED: 395.001, 395.003, 395.004, 395.0161, 395.104, 395.1055 FS.

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

TIME AND DATE: 10:00 a.m. – 12:00 p.m., November 27, 2001

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room D, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Debby Walters, Senior Health Policy Analyst, Office of Health Policy, Building 3, 2727 Mahan Drive, Tallahassee, Florida

THE FULL TEXT OF THE PROPOSED RULES IS:

59A-3.202 Classification of Hospitals.

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

(c) Class I or general hospitals and class II specialty hospitals that provide inpatient pediatric care shall be designated as having an inpatient pediatric primary care program, an inpatient pediatric secondary care program, an inpatient pediatric secondary care program with expanded services, an inpatient pediatric tertiary care program, an inpatient pediatric tertiary care program with expanded services, or an inpatient pediatric quaternary care program. Designation shall be based on meeting specific criteria as set forth in *Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care* document, dated November 2001, for program designation, which is hereby incorporated by reference and available from the Agency for Health Care Administration Building 3, 2727 Mahan Drive, Tallahassee, Florida. The main telephone number for the Agency is: 850-410-2433. Hospitals that elect not to provide inpatient pediatric care, but provide emergency services and are not classified as a rural hospital shall at a minimum meet the standards established for primary care pediatric emergency services as provided in *Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care in Hospitals* dated November 2001.

(d)~~(c)~~ Class III specialty hospitals offering a restricted range of services appropriate to the diagnosis, care, and treatment of patients with specific categories of medical or psychiatric illnesses or disorders which include:

1. through 4. No change.

(e)~~(d)~~ Class IV specialty hospitals restricted to offering Intensive Residential Treatment Programs for Children and Adolescents, pursuant to s. 395.002(16), F.S.

(2) through (5) No change.

Specific Authority 395.1055 FS. Law Implemented 395.001, 395.002, 395.1055,408.035, 408.036 FS. History–New 9-4-95, Amended _____.

59A-3.203 Licensure Procedure.

(1) through (2) No change.

(a) Each hospital applying for a license shall be designated by a distinctive name, and the name shall not be changed without first notifying the licensing agency, and receiving approval in writing. Duplication of an existing hospital name is prohibited in new hospitals. Each hospital providing inpatient pediatric care shall have on its license designation as an inpatient pediatric primary care program, an inpatient pediatric secondary care program, an inpatient pediatric secondary care program with expanded services, an inpatient pediatric tertiary care program, an inpatient pediatric tertiary care program with expanded services or an inpatient pediatric quaternary care program. The following documents shall be prepared at the time of the initial application, and shall be available for review by the agency at the initial licensure inspection:

1. through 6. No change.

(b) No change.

1. through 5. No change.

6. Approval for licensure from the agency's Office of Plans and Construction; ~~and~~

7. Evidence of medical malpractice insurance through the Patient Compensation Fund or other means of demonstrating financial responsibility as provided for under Chapter 766, F.S.; and

8. Each hospital having an inpatient pediatric program shall submit to the agency's Bureau of Health Facility Regulation a completed Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care Checklist, Form ### November 2001, and Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care Designation Certification Form ### 2001, certifying that the hospital meets all of the standards as set forth in *Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care* document, dated November 2001, for the selected designation.

(c) All currently licensed Class I and Class II hospitals that provide inpatient pediatric care shall within 90 days of the effective date of this rule submit to the agency's Bureau of Health Facility Regulation a completed Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care Checklist Form ### 2001 and Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care Designation Certification Form ###, 2001 certifying that the hospital meets

all of the standards as set forth in *Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care* document, dated November 2001, for the selected designation.

(d)~~(c)~~ All applications for change of ownership shall include:

1. through 6. No change.

(e)~~(d)~~ An application for biennial licensure renewal must be accompanied by:

1. through 2. No change.

3. An updated Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care Checklist, Form ###, 2001 and Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care Designation Certification Form ###, 2001 certifying that the hospital meets all of the standards as set forth in *Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care* document dated November 2001 for the selected designation for those hospitals providing pediatric emergency and inpatient pediatric services.

(f)~~(e)~~ An application for the addition of beds or off-site outpatient facilities to a hospital's license must include:

1. through 2. No change.

(g)~~(f)~~ Evidence of medical malpractice insurance through the Patient Compensation Fund or other means of demonstrating financial responsibility as provided for under Chapter 776, F.S., must be submitted annually to the agency.

(h)~~(g)~~ Upon receipt of a completed initial application the agency shall conduct a survey of the facility to determine compliance with Chapter 395, F.S., Part I, and Rules 59A-3.077-3.093 and 59A-3.200-3.232.

(i)~~(h)~~ When the applicant and hospital are in compliance with Chapter 395, F.S., Part I and Rules 59A-3.077 through 3.093 and 59A-3.200 through 3.232, F.A.C., and have received all approvals required by law, the agency shall issue a license.

(j)~~(i)~~ A single license will be issued to a licensee for facilities located on separate premises, upon request of the applicant. The license will specifically state the location of the facilities, their services and the license beds available on each separate premise. Such a license shall also specifically identify the general or specialty classification of hospitals located on separate premises. For those hospitals providing inpatient pediatric care the inpatient pediatric program designation shall be listed separately for each premise.

(3) through (12) No change.

Specific Authority 395.003, 395.004, ~~455.239~~ 395.0161, 395.1055 FS. Law Implemented 395.001, 395.003, 395.004, 395.0161, 395.1055,408.035, 408.036~~, 455.239~~ FS. History–New 9-4-95, Amended 6-18-96, _____.

59A-3.204 Investigations and License, Life Safety and Validation Inspections.

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

(c) To respond to licensure, life safety, and emergency access complaints; ~~or~~

(d) To protect the public health and safety~~.~~; or

(e) To assure compliance with *Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care in Hospitals* dated November 2001.

(2) NON-ACCREDITED HOSPITALS – Hospitals which are not accredited by a hospital accrediting organization will be subject to a scheduled annual licensure inspection survey. Compliance with *Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care in Hospitals*, dated November 2001, shall be included in the annual survey for those hospitals providing pediatric emergency and inpatient pediatric care.

(a) through (d) No change.

(3) through (6) No change.

(7) VALIDATION INSPECTIONS – Each year, the agency shall conduct validation inspections on a minimum of five percent of those hospitals that have undergone a full accreditation inspection from a hospital accrediting organization, within 60 days of the accreditation survey, to determine ongoing compliance with licensure requirements. Compliance with *Florida's Standards for Pediatric Emergency and Inpatient Pediatric Care in Hospitals*, dated November 2001, shall be included in the survey for those hospitals designated as providing pediatric emergency and inpatient pediatric care.

(a) through (d) No change.

(8) through (11) No change.

Specific Authority 395.0161, 395.1055 FS. Law Implemented 395.001, 395.003, 395.004, 395.0161, 395.1055, 408.035, 408.036 FS. History–New 9-4-95, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Debby Walters, Senior Health Policy Analyst, Office of Health Policy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rhonda Medows, MD, FAAFP, Secretary, Agency for Health Care Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 24, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 28, 2000

AGENCY FOR HEALTH CARE ADMINISTRATION

Division of Managed Care and Health Quality

RULE TITLES:	RULE NOS.:
Licensure, Administration and Fiscal Management	59A-4.103
Facility Policies	59A-4.106
Risk Management and Quality Assurance	59A-4.123
Evaluation of Nursing Homes and Licensure Status	59A-4.128

PURPOSE AND EFFECT: The Agency proposes to amend Rules 59A-4.103, 59A-4.106, 59A-4.123, and 59A-4.128 consistent with provisions of Section 400.062, F.S., Section 400.147, F.S., and Section 400.23, F.S., which became effective May 15, 2001. The amendments to Rule 59A-4.103

specifies the various documents used for reporting purposes by a nursing home as well as the establishment of an annual license fee; the amendment to Rule 59A-4.106 relates to documentation required in transfer and discharge notices; the amendments to Rule 59A-4.123 cites risk management and assurance requirements and documentation relating to those requirements; and the amendments to Rule 59A-4.128 reflects the adoption of a licensure status system.

SUMMARY: Amends rules pertaining to minimum standards for nursing homes.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None prepared.

The proposed rule does not establish any new standards of the nursing homes beyond that which is required by public law.

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: 400.147 FS.

LAW IMPLEMENTED: 400.147(13) 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., November 26, 2001

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building #3, Conference Room C, Tallahassee, FL 32303

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Richard Kelly, Long Term Care Unit, 2727 Mahan Drive, Tallahassee, Florida, or call (850)488-5861

THE FULL TEXT OF THE PROPOSED RULES IS:

59A-4.103 Licensure, Administration and Fiscal Management.

(1) The licensee or prospective licensee shall make application for an initial, renewal or change of ownership license to operate a nursing home facility and shall provide all of the information required by ~~section 400.071, F.S.~~ this rule and Chapter 400, Part II, F.S., on AHCA Form 3110-6001, October, 2001, "Application for Nursing Home Licensure", which is incorporated by reference and AHCA Forms 3110-0011, 3110-0011A, 3110-0011B, 3110-0011C, and 3110-0011D, August, 2001, "Controlling Interest Affidavit for Nursing Homes", and AHCA Form 1332-0001, October, 2001, "Proof of Financial Ability Schedule", available from the Agency for Health Care Administration, Long Term Care Unit, 2727 Mahan Drive, Tallahassee, Florida 32308.

(2) The licensure fee shall be included with the application. An ~~The~~ annual fee is $50 per bed required as ~~calculated to cover the cost of licensure is $33.00 per bed,~~ described in Section 400.062(3), F.S., plus the resident protection fee of $.25 per bed and the Data Collection and Analysis ~~Health Care Board~~ Assessment of $6.00 per bed as authorized by Section 408.20(1)(b), F.S. Costs of Nursing Home Statistical Unit, March 9, 1994. ~~The calculation for this assessment is incorporated by reference, for a total of $39.25 per bed.~~ The Data Collection and Analysis ~~Health Care Board~~ Assessment is waived for facilities having a certificate of authority under Chapter 651, F.S.

(3) Single copies of AHCA forms incorporated by reference within this chapter may be obtained from the AHCA, Long Term Care Section, 2727 Mahan Drive MS 33, Tallahassee, Florida 32308.

(4) Administration.

(a) The licensee of each nursing home shall have full legal authority and responsibility for the operation of the facility.

(b) The licensee of each facility shall designate one person, who is licensed by the Agency for Health Care Administration, Board of Nursing Home Administrators under Chapter 468, Part II, F.S., as Administrator who oversees the day to day administration and operation of the facility.

(c) Each nursing home shall be organized according to a written Table of Organization.

(d) The licensee shall submit a monthly vacant bed report which is incorporated by reference by using AHCA Form 3110-0013, October, 2001, "Nursing Home Monthly Bed Vacancy Report", as authorized by Section 400.141, F.S. This form is available from the Agency for Health Care Administration, Long Term Care Unit, 2727 Mahan Drive, MS 33, Tallahassee, FL 32308.

(e) Submit Nursing Home Staffing Report which is incorporated by reference by using AHCA Form 3110-0012, October, 2001, "Nursing Home Staffing Report", as authorized by Section 400.141, F.S. This form is available from the Agency for Health Care Administration, Long Term Care Unit, 2727 Mahan Drive, MS 33, Tallahassee, FL 32308.

(5) Fiscal Management.

(a) The licensee, for each nursing home it operates, shall maintain fiscal records in accordance with the requirements of Chapter 400, Part II, F.S., and these rules.

(b) An accrual or cash system of accounting shall be used to reflect transactions of the business. Records and accounts of transactions, such as, general ledgers and disbursement journals, shall be brought current no less than quarterly and shall be available for review by authorized representatives of appropriate State and Federal agencies.

(c) A licensee shall obtain a surety bond as required by Chapter 400, Part II, F.S. It shall be based on twice the average monthly balance in the resident trust fund during the prior fiscal year or $5,000, whichever is greater. A licensee who owns more than one nursing home may purchase a single surety bond to cover the residents' funds held in nursing homes located within the same AHCA service district. A surety bond shall contain substantially the same language as is found in

AHCA Form 3110-6002, July, 2001 ~~Aug. 1993~~, Surety Bond, which is incorporated by reference. The surety bond AHCA 3110-6002, July, 2001 ~~Aug. 1993~~ may be obtained from, and shall be filed with the AHCA, 2727 Mahan Drive, Tallahassee, Florida 32308.

(d) A self-insurance pool, which may be an interest bearing account, may be established to provide compensation to any resident suffering financial loss in accordance with the provisions of 400.162(5)(c), F.S., as the result of one or more of the member licensees violating any of the provisions of Section 400.162, F.S.

1. Such self-insurance pool shall be administered under the direction of an elected board of trustees. The membership of the board of trustees shall be composed of one representative from each participating licensee.

2. An application for establishing a self-insurance pool shall be made by the trustees to the AHCA. Such application shall contain the following information: the names, complete addresses, and affiliation of the trustees; the name and complete address of each licensee participating in the pool; the total dollar amount of the pool; and the name and complete address of the bank in which the account is maintained and the account number. The application shall be accompanied by:

a. An individual application from each licensee applying for membership in the self-insurance pool. Such application shall contain the following information: the name, telephone number, and complete address of the facility; the name, telephone number, and complete address of the licensee; the name of the facility's administrator, manager or supervisor, his license and renewal number; the names of all employees involved in the administration of the resident trust fund account; the average monthly balance in the resident trust fund account during the prior year; the total dollar amount the licensee has deposited in the self-insurance pool; and the name and complete address of the bank in which the account is maintained and the account number.

b. Prima facie evidence showing that each individual member of the pool has deposited an amount equal to twice the average monthly balance of the trust fund account or $5,000.00 dollars, whichever is greater, in a separate account maintained by the board of trustees in the name of the self-insurance pool in a chartered commercial bank in the State of Florida to secure performance of payment of all lawful awards made against any member or members of the self-insurance pool. 400.162(5), F.S., and these rules.

3. After the inception date of the pool, prospective new members of the pool shall submit an application for membership to the board of trustees. Such application shall contain the information specified in subparagraph (5)(b)2. The trustees may approve the application for membership in accordance with these rules. If so approved, the application for membership in accordance with these rules shall be filed with the AHCA. Participation in a pool by a particular licensee shall be approved by the AHCA if the licensee indicates in its application that it does meet the requirements of Section 400.162(5), F.S., and these rules and verification is provided to document the financial status indicated on the application.

4. The amount deposited in such an account shall be maintained at all times.

(e) If, at any time during the period for which a license is issued, a licensee who has not purchased a surety bond or entered into a self-insurance agreement is requested to hold funds in trust as provided in Section 400.162(5), F.S., the licensee shall notify the AHCA, in writing, of the request, and make application for a surety bond or for participation in a self-insurance agreement within seven days of the request, exclusive of weekends and holidays. Copies of the application, along with written documentation of related correspondence with an insurance agency or group, shall be maintained and shall be available for review. All notices required by this rule provision shall be sent to the AHCA, 2727 Mahan Drive, Tallahassee, Florida 32308.

Specific Authority 400.23 FS. Law Implemented 400.022, 400.0225, 400.071, 400.102, 400.111, 400.1183, 400.121, 400.141, 400.147, 400.151, 400.162, 400.179, 400.18, 408.20 FS. History–New 4-1-82, Amended 4-1-84, 8-1-85, 1-1-86, 11-12-89, 12-25-90, 10-6-91, Formerly 10D-29.103, Amended 4-18-94, 2-6-97, _____.

59A-4.106 Facility Policies.

(1) Admission, retention, transfer, and discharge policies:

(a) Each resident will receive, at the time of admission and as changes are being made and upon request, in a language the resident or his representative understands:

1. A copy of the residents' bill of rights conforming to the requirements in 400.022, F.S.;

2. A copy of the facility's admission and discharge policies; and

3. Information regarding advance directives.

(b) Each resident admitted to the facility shall have a contract in accordance with s. 400.151, F.S., which covers:

1. A list of services and supplies, complete with a list of standard charges, available to the resident, but not covered by the facility's per diem or by Title XVIII and Title XIX of the Social Security Act and of bed reservation and refund policies of the facility.

2. When a resident is in a facility offering continuing care, and is transferred from independent living or assisted living to the nursing home section, a new contract need not be executed; an addendum may be attached to describe any additional services, supplies or costs not included in the most recent contract that is in effect.

(c) No resident who is suffering from a communicable disease shall be admitted or retained unless the medical director or attending physician certifies that adequate or appropriate isolation measures are available to control transmission of the disease.

(d) Residents may not be retained in the facility who require services beyond those for which the facility is licensed or has the functional ability to provide as determined by the Medical Director and Director of Nursing in consultation with the facility administrator.

(e) Residents shall be assigned to a bedroom area and shall not be assigned bedroom space in common areas except in an emergency. Emergencies shall be documented and shall be for a limited, specified period of time.

(f) All resident transfers and discharges shall be in accordance with the facility's policies and procedures, provisions of s. 400.022, F.S., and s. 400.0255, F.S., this rule, and other applicable state and federal laws and will include notices provided to residents which are incorporated by reference by using AHCA Form 3120-0002, 3120-0002A, Revised, May, 2001, "Nursing Home Transfer and Discharge Notice," and 3120-0003, Revised, May, 2001, "Fair Hearing Request For Transfer or Discharge From a Nursing Home," and 3120-0004, Revised, May, 2001, "Long-Term Care Ombudsman Council Request for Review of Nursing Home Discharge and Transfer." These forms may be obtained from the Agency for Health Care Administration, Long Term Care Unit, 2727 Mahan Drive, MS 33, Tallahassee, FL 32308. The Department of Children and Family Services will assist in the arrangement for appropriate continued care, when requested.

(2) Each nursing home shall adopt, implement, and maintain written policies and procedures governing all services provided in the facility.

(3) All policies and procedures shall be reviewed at least annually and revised as needed with input from, at minimum, the facility Administrator, Medical Director, and Director of Nursing.

(4) Each facility shall maintain policies and procedures in the following areas:

(a) Activities;

(b) Advance directives;

(c) Consultant services;

(d) Death of residents in the facility;

(e) Dental services;

(f) Staff education, including HIV/AIDS training;

(g) Diagnostic services;

(h) Dietary services;

(i) Disaster preparedness;

(j) Fire prevention and control;

(k) Housekeeping;

(l) Infection control;

(m) Laundry service;

(n) Loss of power, water, air conditioning or heating;

(o) Medical director/consultant services;

(p) Medical records;

(q) Mental health;

(r) Nursing services;

(s) Pastoral services;

(t) Pharmacy services;

(u) Podiatry services;

(v) Resident care planning;

(w) Resident identification;

(x) Resident's rights;

(y) Safety awareness;

(z) Social services;

(aa) Specialized rehabilitative and restorative services;

(bb) Volunteer services; and

(cc) The reporting of accidents or unusual incidents involving any resident, staff member, volunteer or visitor. This policy shall include reporting within the facility and to the AHCA.

(5) Staff Education.

(a) Each nursing home shall develop, implement, and maintain a written staff education plan which ensures a coordinated program for staff education for all facility employees. The staff education plan shall be reviewed at least annually by the quality assurance committee and revised as needed.

(b) The staff education plan shall include both pre-service and in-service programs.

(c) The staff education plan shall ensure that education is conducted annually for all facility employees, at a minimum, in the following areas:

1. Prevention and control of infection;

2. Fire prevention, life safety, and disaster preparedness;

3. Accident prevention and safety awareness program;

4. Resident's rights;

5. Federal law, 42 CFR 483, Requirements for Long Term Care Facilities, September 26, 1991, which is incorporated by reference, and state rules and regulations, Chapter 400, Part II, F.S., and this rule;

6. The Florida "Right to Know" Hazardous Materials, Chapter 442, Florida Statutes;

(d) The staff education plan shall ensure that all nonlicensed employees of the nursing home complete an initial educational course on HIV/AIDS. If the employee does not have a certificate of completion at the time they are hired, they must have two hours within six months of employment or before the staff provides care for an HIV/AIDS diagnosed resident. All employees shall have a minimum of one hour biennially.

(6) Advance Directives.

(a) Each nursing home shall have written policies and procedures, which delineate the nursing home's position with respect to the state law and rules relative to advance directives. The policies shall not condition treatment or admission upon whether or not the individual has executed or waived an advance directive. In the event of conflict between the

facility's policies and procedures and the individual's advance directive, provision should be made in accordance with Section 765.308, Florida Statutes.

(7) The facility's policy shall include:

(a) Providing each adult individual, at the time of the admission as a resident, with a copy of "Health Care Advance Directives – The Patients' Right to Decide," as prepared by the Agency for Health Care Administration, 2727 Mahan Drive, MS 33, Tallahassee, FL 32308, effective 1-11-93, which is hereby incorporated by reference, or with a copy of some other substantially similar document which is a written description of Florida's state law regarding advance directives;

(b) Providing each adult individual, at the time of the admission as a resident, with written information concerning the nursing home's policies respecting advance directives; and

(c) The requirement that documentation of the existence of an advance directive be contained in the medical record. A nursing home which is provided with the individual's advance directive shall make the advance directive or a copy thereof a part of the individual's medical record.

Specific Authority 400.141, 400.141(7), 400.23, 765.110 FS. Law Implemented 400.022, 400.0255, 400.102, 400.141, 400.141(7), 400.151, 400.23, 765.110 FS. History New 4-1-82, Amended 4-1-84, Formerly 10D-29.106, Amended 4-18-94, 1-10-95, 2-6-97, _____.

59A-4.123 ~~Quality Assessment~~ Risk Management and Quality Assurance.

(1) The facility shall maintain a risk management ~~quality assessment~~ and quality assurance committee as required in section 400.147, F.S. ~~consisting of the facility Administrator, Director of Nursing, Medical Director and at least three other members of the facility's staff.~~

(2) The facility shall use AHCA Form 3110-0009, Revised, October, 2001, "Confidential Nursing Home Initial Adverse Incident Report – 1 Day," and AHCA Form 3110-0010, 3110-0010A, and 3110-0010B, Revised, October, 2001, "Confidential Nursing Home Complete Adverse Incident Report – 15 Day," which are incorporated by reference when reporting events as stated in Section 400.147, F.S. These forms may be obtained from the Agency for Health Care Administration, Long Term Care Unit, 2727 Mahan Drive, MS 33, Tallahassee, FL 32308 ~~quality assessment and assurance committee shall meet at least quarterly to develop and review facility policies and procedures, to identify issues to which quality assessment and assurance activities are necessary and to develop plans of action to correct identified quality deficiencies~~.

(3) Each facility shall use AHCA Form 3110-0008, and AHCA Form 3110-0008A, Revised, October, 2001, "Nursing Home Monthly Liability Claim Information", which are incorporated by reference when reporting liability claims filed against it as required by Section 400.147 (9), F.S. These forms may be obtained from the Agency for Health Care Administration, Long Term Care Unit, 2727 Mahan Drive, MS 33, Tallahassee, FL 32308.

Specific Authority 400.23 FS. Law Implemented 400.022, 400.102, 400.141, 400.147, 400.23 FS. History–New 4-1-82, Amended 9-5-82, 4-1-84, 8-1-85, 7-10-91, Formerly 10D-29.123, Amended 4-18-94, _____.

59A-4.128 Evaluation of Nursing Homes and Licensure Status ~~Rating System~~.

(1) The agency shall, at least every 15 months, evaluate and assign a licensure status ~~rating~~ to every nursing home facility. The evaluation and licensure status ~~rating~~ shall be based on the facility's compliance with the requirements contained in ~~Sections 59A-4.100 through 59A-4.128, of~~ this rule, and Chapter 400, Part II, F.S. ~~and the requirements contained in the regulations adopted under the Omnibus Budget Reconciliation Act (OBRA) of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV (Medicare, Medicaid, and Other Health Related Programs), Subtitle C (Nursing Home Reform), as amended and incorporated by reference~~.

(2) The evaluation shall be based on the most recent licensure survey report, investigations conducted by the AHCA and those persons authorized to inspect nursing homes under Chapter 400, Part II, Florida Statutes.

(3) The licensure status ~~rating~~ assigned to the nursing home facility will be either conditional or~~,~~ standard ~~or superior~~. The licensure status ~~rating~~ is based on the compliance with the standards contained in this rule and Chapter 400, Part II, F.S. ~~the standards contained in the OBRA regulations.~~ Non-compliance will be stated as deficiencies measured in terms of scope and severity. ~~For rating purposes, the following deficiencies are considered equal in severity: Class I deficiencies; Class II deficiencies; and those Substandard Quality of Care deficiencies which constitute either immediate jeopardy to resident health or safety or a pattern of or widespread actual harm that is not immediate jeopardy. Further for rating purposes, the following deficiencies are considered equal in severity: Class III deficiencies; and those Substandard Quality of Care deficiencies which constitute a widespread potential for more than minimal harm to resident health or safety, but less than immediate jeopardy with no actual harm.~~

~~(a) Class I deficiencies are those which present either an imminent danger, a substantial probability of death or serious physical harm and require immediate correction. Class II deficiencies are those deficiencies that present an immediate threat to the health, safety, or security of the residents of the facility and the AHCA establishes a fixed period of time for the elimination and correction of the deficiency. Substandard Quality of Care deficiencies are deficiencies which constitute either: immediate jeopardy to resident health or safety; a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm.~~

~~(b) Class III deficiencies are those which present an indirect or potential relationship to the health, safety, or security of the nursing home facility residents, other than Class I or Class II deficiencies.~~

~~(4) A conditional rating shall be assigned to the facility:~~
~~(a) if at the time of relicensure survey, the facility has one or more of the following deficiencies: Class I; Class II; or Substandard Quality of Care deficiencies which constitute either immediate jeopardy to resident health or safety or a pattern of or widespread actual harm that is not immediate jeopardy; or~~

~~(b) If at the time of the relicensure survey, the facility has Class III deficiencies, or Substandard Quality of Care deficiencies which constitute a widespread potential for more than minimal harm to resident health or safety, but less than immediate jeopardy, with no actual harm and at the time of the follow-up survey, such deficiencies are not substantially corrected within the time frame specified by the agency and continue to exist, or~~

~~(c) New class I or class II or Substandard Quality of Care deficiencies which constitute either immediate jeopardy to resident health or safety or a pattern of or widespread actual harm that is not immediate jeopardy are found at the time of the follow-up survey.~~

~~(d) A facility receiving a conditional rating at the time of the relicensure survey shall be eligible for a standard rating if:~~

~~1. All Class I deficiencies, Class II deficiencies, and those Substandard Quality of Care deficiencies which constitute either immediate jeopardy to resident health or safety or a pattern of or widespread actual harm that is not immediate jeopardy are corrected within the time frame established by the AHCA; and~~

~~2. All Class III deficiencies and those Substandard Quality of Care deficiencies which constitute a widespread potential for more than minimal harm to resident health or safety, but less than immediate jeopardy, with no actual harm are substantially corrected at the time of the follow-up survey. A facility receiving a conditional rating at the time of the relicensure survey shall not be eligible for a superior rating until the next relicensure survey.~~

~~(5) A standard rating shall be assigned to a facility, if at the time of the relicensure survey, the facility has:~~

~~(a) No class I or class II deficiencies and no Substandard Quality of Care deficiencies which constitute either immediate jeopardy to resident health or safety or a pattern of or widespread actual harm that is not immediate jeopardy, and~~

~~(b) Corrects all class III deficiencies and those Substandard Quality of Care deficiencies which constitute a widespread potential for more than minimal harm to resident health or safety, but less than immediate jeopardy, with no actual harm within the time frame established by the AHCA.~~

~~(6) A superior rating shall be assigned to a facility, if at the time of the relicensure survey, the facility has received a standard rating and meets criteria for a superior rating through enhanced programs and services as contained in (7) of this section.~~

~~(7) In order to qualify for a superior rating, the nursing facility must provide at least three enhanced programs or services which encompass the following areas:~~

~~(a) Nursing services.~~

~~(b) Dietary or nutritional services.~~

~~(c) Physical environment.~~

~~(d) Housekeeping and maintenance.~~

~~(e) Restorative therapies and self help activities.~~

~~(f) Social services.~~

~~(g) Activities and recreational therapy.~~

~~In order to facilitate the development of special programs or facility wide initiatives and promote creativity, these areas may be grouped or addressed individually. In establishing the facility's qualification for a superior rating, the AHCA survey team will use the Rating Survey and Scoring Sheet, Form No. AHCA 3110-6007, Nov., 1994, incorporated by reference, and may be obtained from the Agency for Health Care Administration.~~

~~(8) Upon initial licensure, a licensee can receive no higher than a standard license. After six months of operation, the new licensee may request that the agency evaluate the facility to make a determination as to the degree of compliance with minimum requirements under Chapter 400, Part II, F.S., and this rule to determine if the facility can be assigned a higher rating.~~

~~(9) Nursing facilities will be surveyed on this section of the rule beginning March 1, 1995.~~

Specific Authority 400.23 FS. Law Implemented 400.102, 400.19, 400.23 FS. History–New 4-1-82, Amended 4-1-84, 9-26-85, 7-21-87, Formerly 10D-29.128, Amended 8-15-94, 2-28-95, 10-13-96, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard F. Kelly, Health Services and Facilities Consultant, Managed Care and Health Quality

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rhonda M. Medows, MD, FAAFP, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 19, 2001

DATE NOTICE OR PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 27, 2001

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facility and Agency Licensing

RULE TITLES:	RULE NOS.:
Definitions	59A-23.002
Quality Assurance	59A-23.004
Medical Records and Case Files	59A-23.005
Grievance Procedures	59A-23.006

PURPOSE AND EFFECT: The Agency for Health Care Administration is proposing to amend Rules 59A-23.002, F.A.C., Definitions; 59A-23.004, Quality Assurance; Rule 59A-23.005, F.A.C., Medical Records and Case Files; Rule 59A-23.006, F.A.C., and Grievance Procedures, F.A.C.; and to implement subsection (25) of Section 440.134, Florida Statutes. The effect of the proposed changes will include the following: renumber two paragraphs to include substantive rule provisions; clarify "delegated entity"; delete vague phrases in the rule provisions; delete wording that is not supported by statutory authority; add a form that describes the format required by the rule.

SUMMARY: Section 440.134(25), Florida Statutes, mandates that the Agency for Health Care Administration adopt rules specifying procedures for: requirements and procedures for case management, utilization management, and peer review; requirements and procedures for quality assurance and medical records; requirements and procedures for dispute resolution; requirements and procedures for reporting data regarding grievances, and provider networks; and clarification of workers' compensation managed care arrangement definitions.

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.

SPECIFIC AUTHORITY: 440.134(25) FS.

LAW IMPLEMENTED: 440.134 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., November 19, 2001

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Room 3, Tallahassee, Florida 32308-5403

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Betty Jean Cettie, Health Services and Facilities Consultant, Bureau of Managed Health Care, Agency for Health Care Administration, (850)414-8981

THE FULL TEXT OF THE PROPOSED RULES IS:

59A-23.002 Definitions.

(1) through (3) No change.

(4) "Delegated entity" means a unit or single organization authorized by written agreement to act on behalf of the insurer to provide managed care services.

(4) through (18) renumbered (5) through (19) No change.

Specific Authority 440.134 FS. Law Implemented 440.134(1)(g), (5)(a),(6)(b),(c),(c) 4.,6.-9., (9),(10),(14)(b),(d),(16),(17),(25)(b),(c),(d),(g) FS. History–New 9-12-94, Amended 10-8-01, _____.

59A-23.004 Quality Assurance.

(1) Each insurer or delegated entity shall have an ongoing quality assurance program designed to objectively and systematically monitor and evaluate the quality of patient care, based upon the prevailing standards of medical practice in the community.

(1) through (6) renumbered (2) through (7) No change.

(8)~~(7)~~ Utilization Management. The insurer or delegated entity shall have written policies and procedures for approving or denying requests for care in accordance with the agency's practice parameters ~~where applicable,~~ and with nationally recognized standards based on medical necessity. The program shall evaluate quality of care and services, and provide review prospectively, concurrently, and retrospectively including pre-certification mechanisms for elective admissions and non-emergency surgeries.

(a)1. through 11. No change.

(b)1. through 4. No change.

(9)~~(8)~~ No change.

Specific Authority 440.134(25) FS. Law Implemented 440.134(6)(c)1.-8.,11., (7),(9),(10)(d),(11),(14)(a),(d),(15) FS. History–New 9-12-94, Amended 10-8-01, _____.

59A-23.005 Medical Records and Case Files.

(1) The insurer or delegated entity shall implement a system for managing electronic and paper medical information necessary to promote the prompt delivery of medical services in order to return the injured employee to work as soon as medically feasible.

(2)~~(1)~~ Provider Medical Records. The insurer or delegated entity shall maintain or assure that its providers maintain a medical records system, which is consistent with professional standards, pursuant to Section 456.057 ~~455.667~~, F.S. The insurer or delegated entity shall develop and implement policies and procedures that:

(a) through (d) No change.

(e) Identify the patient as follows:

1. Name;

2. Social Security, alien identification number, or other identification number ~~(if applicable)~~;

3. through 5. No change.

(f)1. through 11. No change.

(g) Require the insurer or delegated entity to request written consent of patients for release of medical records that are subject to the limitations in Section 381.004 ~~381.044~~ and

456.057 ~~455.241~~, F.S. and for obtaining and sharing all documents and medical records from providers necessary to carry out the provisions of Section 440.134, F.S.; and

(h) No change.

(3)~~(2)~~ Case Files. The insurer or delegated entity shall maintain electronic or paper medical information necessary to ensure the efficient functioning of the care coordination process. The insurer or delegated entity shall develop and implement a policy and procedure that protects the confidentiality and security of case file information including the transfer and storage of paper and electronic information, and the handling of information on HIV, substance abuse, and mental health. Case files shall contain necessary information for the coordination of quality patient care between providers, insurers, employees, and employers including:

(a) through (e) No change.

(f) Efforts toward rehabilitation and reemployment of the injured employee~~, when applicable~~.

(4)~~(3)~~ Audits of provider records. The insurer or delegated entity shall implement an ongoing process for conducting medical record audits to determine compliance with the medical record standards specified under paragraphs (2)~~(1)~~(d),(e), and (f). The insurer or delegated entity shall have a written methodology for determining the size and scope of the medical record audits that shall reflect the volume and complexity of services provided by the provider network. The insurer or delegated entity shall develop and implement an annual work plan for the medical record audits. The results of the audits shall be reported quarterly to the quality assurance committee and shall include the following:

(a) through (e) No change.

Specific Authority 440.134(25) FS. Law Implemented 440.134(5)(c), (6)(c)1.-4.,8.,(7),(8) FS. History–New 9-12-94, Amended 10-8-01, _____.

59A-23.006 Grievance Procedures.

(1) through (3) No change.

(4) The grievance procedure shall include the following:

(a) Requests for services. The insurer or delegated entity shall implement a procedure to address initial requests for services. Initial requests for services, such as a request for medical services, second opinions, or a change in providers, are not considered a complaint or grievance. The insurer or delegated entity shall evaluate requests for medical services within seven calendar days of receipt and shall notify the injured employee of the decision to grant the request, to deny it, or to request additional information. When the insurer or delegated entity denies a request it shall notify the injured employee in writing of the denial and the right to file a grievance. The insurer or delegated entity shall provide the employee with a copy of AHCA Form No. 3160-0019 (November 2000) which is incorporated by reference.~~:~~ If the insurer or delegated entity fails to respond within seven calendar days of receipt of the request, the injured employee may make a complaint or file a written grievance; ~~request shall be deemed denied and the insurer or delegated entity shall notify the injured employee in writing of the right to make a complaint or file a written grievance.~~

(b) No change.

(c) Written Grievance. The procedure for written grievances shall commence upon receipt of a signed grievance form AHCA Form No. 3160-0019 (November 2000) by the insurer or delegated entity, from the injured employee, provider, or their designated representative. A written grievance may be submitted or withdrawn at any time. The injured employee or provider is not required to make a complaint prior to filing a written grievance. The procedure shall include notice to the employer when a grievance has been filed. The insurer or delegated entity shall notify the injured employee and employer in writing of the resolution of the written grievance, and the reasons therefore within seven days of the final determination.

1. through 2. No change.

3. The grievance committee shall consist of not less than three individuals, of whom at least one must be a physician other than the injured employee's treating physician, who is licensed under Chapter 458 or 459, F.S., and has professional expertise relevant to the issue. The committee shall review information pertaining to the issues being grieved and render a determination within 30 calendar days of receipt of the grievance by the committee unless the grieving party and the committee mutually agree to an extension that is documented in writing. If the grievance involves the collection of additional information from outside the service area, the insurer or delegated entity will have 14 additional calendar days to render a determination. The insurer or delegated entity shall notify the employee in writing within seven days of receipt of the grievance by the committee if additional information is required to complete the review of the grievance. ~~A maximum of 58 calendar days will be allowed for the resolution of the written grievance.~~

4. The insurer or delegated entity may allow but may not require arbitration as part of the grievance process. A grievance which is arbitrated pursuant to Chapter 682, F.S., is permitted an additional time limitation not to exceed 210 calendar days from the date the insurer or delegated entity receives a written request for arbitration from the injured employee. Arbitration provisions in a workers' compensation managed care arrangement shall not preclude the employee from filing a request for assistance with the Division of Workers' Compensation relating to non-medical issues.

5. An injured employee or provider grievance shall be submitted on AHCA Form No. 3160-0019, (November 2000). The insurer or delegated entity shall provide assistance to an injured employee unable to complete the grievance form and to those persons who have improperly filed a grievance.

~~6. The grievance process shall not address issues relating to indemnity benefits, vocational benefits, maximum medical improvement, impairment, medical mileage reimbursement, provider payments, attorney's costs and fees, compensability, and causation.~~

6.~~7.~~ The claimant or provider shall be considered to have exhausted all managed care grievance procedures if a determination on a grievance has not been rendered within the required timeframe specified in this section or other timeframe, as mutually agreed to in writing by the grieving party and the insurer or delegated entity.

7.~~8.~~ Upon completion of the grievance procedure, the insurer or delegated entity shall provide written notice to the employee of the right to file a petition for benefits with the Division pursuant to Section 440.192, F.S.

(5) through (12) No change.

(13) An annual report of all grievances filed by employees and providers shall be submitted to the Agency pursuant to paragraph 440.134(15)(g), F.S. The report shall list the number, nature, and resolution of all written employee and provider grievances. This report shall be submitted no later than March 31 for grievances filed during the previous calendar year in a format prescribed by the Agency on AHCA Form No. 3160-0012 (July 1997). This form is hereby incorporated by reference and is available by contacting AHCA, 2727 Mahan Drive, Tallahassee, Florida 32308, Bureau of Managed Health Care, Workers Compensation Managed Care Unit. It is also available at www.fdhc.state.fl.us/Managed Health Care/WCMC.

Specific Authority 440.134(25) FS. Law Implemented 440.134(1),(b),(d),(5),(c),(e),(6),(b),(c),(7),(8),(10),(c),(14),(d),(15) FS. History–New 9-12-94, Amended 10-8-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Thomas H. Warring, Agency for Health Care Administration, Acting Unit Manager

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rhonda M. Medows, MD. Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 24, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The notice of Rule Development for 59A-23.002, Definitions; 59A-23.004, Quality Assurance; 59A-23.005, Medical Records and Case Files; 59A-23.006, Grievance Procedures; was published in Vol. 27, No. 7, Florida Administrative Weekly, February 16, 2001 edition

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE:	RULE NO.:
Payment Methodology for Nursing Home Services	59G-6.010

PURPOSE AND EFFECT: The purpose of the proposed amendment is to incorporate changes to the Florida Title XIX Long-term Care Reimbursement Plan (the Plan) payment methodology, effective January 1, 2002.

1. There will be direct care and indirect care subcomponents of the patient care component of the per diem rate. These two subcomponents together shall equal the patient care component of the per diem rate. Separate cost-based ceilings shall be calculated for each patient care subcomponent. The direct care subcomponent of the per diem rate shall be limited by the cost-based class ceiling and the indirect care subcomponent shall be limited by the lower of the cost-based class ceiling, by the target rate class ceiling or by the individual provider target. The Agency will adjust the patient care component effective January 1, 2002. The cost to adjust the direct care subcomponent shall be net of the total funds previously allocated for the case mix add-on. The agency shall make the required changes to the nursing home cost reporting forms to implement this requirement effective January 1, 2002.

2. The direct care subcomponent shall include salaries and benefits of direct care staff providing nursing services including registered nurses, licensed practical nurses, and certified nursing assistants who deliver care directly to residents in the nursing home facility. This excludes nursing administration, MDS, and care plan coordinators, staff development, and staffing coordinator.

3. All other patient care costs shall be included in the indirect care cost subcomponent of the patient care per diem rate. There shall be no costs directly or indirectly allocated to the direct care subcomponent from a home office or management company.

4. There will be an adjustment to the direct care component to adjust for the increased staffing requirements effective January 1, 2002. The Agency will compute an add-on to each provider's reimbursement rate for direct care to account for the additional costs incurred to comply with the minimum staffing requirements. The Plan will detail the requirements for obtaining an adjusted rate prior to January 1, 2002 for the increased staffing.

The effect of the proposed amendment is the creation of direct care and indirect care subcomponents of the patient care component of the per diem rate. These two subcomponents together shall equal the patient care component of the per diem rate. Separate cost-based ceilings shall be calculated for each patient care subcomponent. The direct care subcomponent of the per diem rate shall be limited by the cost-based class ceiling and the indirect care subcomponent shall be limited by the lower of the cost-based class ceiling, by the target rate class ceiling or by the individual provider target. The Agency will adjust the patient care component effective January 1, 2002. The cost to adjust the direct care subcomponent shall be net of the total funds previously allocated for the case mix add-on.

The agency shall make the required changes to the nursing home cost reporting forms to implement this requirement effective January 1, 2002.

The direct care subcomponent shall include salaries and benefits of direct care staff providing nursing services including registered nurses, licensed practical nurses, and certified nursing assistants who deliver care directly to residents in the nursing home facility. This excludes nursing administration, MDS, and care plan coordinators, staff development, and staffing coordinator. All other patient care costs shall be included in the indirect care cost subcomponent of the patient care per diem rate. There shall be no costs directly or indirectly allocated to the direct care subcomponent from a home office or management company. There will be an adjustment to the direct care component to adjust for the increased staffing requirements effective January 1, 2002. The Agency will compute an add-on to each provider's reimbursement rate for direct care to account for the additional costs incurred to comply with the minimum staffing requirements. The Plan will detail the requirements for obtaining an adjusted rate prior to January 1, 2002 for the increased staffing.

SUMMARY: The proposed amendment to rule number 59G-6.010 incorporates revisions to the Florida Title XIX Long-term care Reimbursement Plan by adjusting the patient care component of the nursing facilities per diem rate and the creation of direct care and indirect care subcomponents. The Agency is adjusting the patient care component effective January 1, 2002.

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

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED 409.908 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: 9:00 a.m., November 27, 2001

PLACE: 2727 Fort Knox Boulevard, Building 3, Conference Room C, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Owens, Medicaid Program Analysis, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Room 2120B, Mail Stop 21, Tallahassee, Florida 32308

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-6.010 Payment Methodology for Nursing Home Services.

Reimbursement to participating nursing homes for services provided shall be in accord with the Florida Title XIX Long-term Care Reimbursement Plan, Version XXI ~~XX~~ Effective Date _____ and incorporated herein by reference. A copy of the Plan as revised may be obtained by writing to the Deputy Secretary for Medicaid, 2727 Mahan Drive, Mail Stop 8, Tallahassee, Florida 32308. The plan incorporates Provider Reimbursement Manual (CMS Pub. 15-1).

Specific Authority 409.919 FS. Law Implemented 409.908 FS. History–New 7-1-85, Amended 10-1-85, Formerly 10C-7.482, Amended 7-1-86, 1-1-88, 3-26-90, 9-30-90, 12-17-90, 9-15-91, 3-26-92, 10-22-92, 4-13-93, 6-27-93, Formerly 10C-7.0482, Amended 4-10-94, 9-22-94, 5-22-95, 11-27-95, 11-6-97, 2-14-99, 10-18-99 1-11-00, 4-24-00, 9-20-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. John Owens

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr. Bob Sharpe

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 23, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 31, 2001

DEPARTMENT OF HEALTH

Board of Occupational Therapy Practice

RULE TITLE: RULE NO.:
Citations 64B11-4.005

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

SUMMARY: The Board proposes to update its citation rule in accordance with current statutory requirements regarding contents.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY: 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, 468.204 FS.

LAW IMPLEMENTED: 456.077 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT A TIME, DATE AND PLACE TO BE PUBLISHED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B11-4.005 Citations.

(1) through (3) No change.

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

(a) Working on an inactive license or unlicensed activity, up to six months, for which the Board shall impose a $100 per month penalty.

(b) Working on a license that was not timely renewed, up to six months, for which the Board shall impose a $100 per month penalty.

(c) Failure to provide satisfaction including cost incurred within 45 days from the receipt of the Department's notification of receipt of check dishonored due to insufficient funds, for which the Board shall impose a penalty of $100. ~~Falsely certifying timely completion of required continuing education courses for renewal or initial licensure, if completed by the time the citation is to be issued, $100 per contact hour wrongfully claimed.~~

(d) First time failure to complete required continuing education hours, which may also consist of or include required HIV/AIDS or end of life/palliative health care, during the biennial licensure period. For failure to complete less than 10 hours, the Board shall impose a penalty of $500. For failure to complete 10 or more hours, the Board shall impose a penalty of $1,000. In Addition, licensees shall take one additional hour of continuing education for each of the continuing education deficiencies, which shall not count towards meeting the continuing education renewal requirements for the next biennium.

(5) ~~In addition to the penalties established in this rule, the Department may recover the costs of investigation in accordance with its rules. When the Department intends to assess the costs of investigation, the~~ 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) No change.

Specific Authority 456.077, 468.204 FS. Law Implemented 456.077, 456.072(3) FS. History–New 1-1-92, Formerly 21M-15.005, 61F6-15.005, Amended 11-13-96, Formerly 59R-63.005, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Occupational Therapy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 25, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 10, 2001

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE TITLES:	RULE NOS.:
Osteopathic Physician Office Incident Reporting	64B15-14.0075
Requirement for Osteopathic Physician Office Registration; Inspection or Accreditation	64B15-14.0076
Approval of Osteopathic Physician Office Accrediting Organizations	64B15-14.0077

PURPOSE AND EFFECT: The purpose of these rule notices is to set forth language for the reporting of office incidents, requirements for osteopathic physicians office registration, inspection or accreditation, definitions, application information standards for accreditation, and renewal of approval of accrediting organizations.

SUMMARY: The Board is promulgating three new rules. Rule 64B15-14.0075 will address the reporting of office incidents. Rule 64B15-14.0076 will set forth the requirements for osteopathic physicians office registration; inspection or accreditation. Rule 64B15-14.0077 will set forth the definitions, application information standards for accreditation, and renewal of approval of accrediting organizations.

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: 459.005(1), 459.026(6) FS.

LAW IMPLEMENTED: 459.005(2), 459.026 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

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

THE FULL TEXT OF THE PROPOSED RULES IS:

64B15-14.0075 Osteopathic Physician Office Incident Reporting.

(1) Definitions.

(a) "Adverse incident" for purposes of reporting to the department, is defined in Section 459.026, F.S., as an event over which the osteopathic physician or other licensee could exercise control and which is associated in whole or in part with a medical intervention, rather than the condition for which such intervention occurred, and which results in the following patient injuries:

1. The death of a patient.

2. Brain or spinal damage to a patient.

3. The performance of a surgical procedure on the wrong patient.

4. The performance of a wrong-site surgical procedure; the performance of a wrong surgical procedure; or the surgical repair of damage to a patient resulting from a planned surgical procedure where the damage is not a recognized specific risk as disclosed to the patient and documented through the informed-consent process and if one of the listed procedures in this paragraph results in: death; brain or spinal damage; permanent disfigurement not to include the incision scar; fracture or dislocation of bones or joints; a limitation of neurological, physical or sensory function; or any condition that required transfer of the patient.

5. A procedure to remove unplanned foreign objects remaining from a surgical procedure.

6. Any condition that required the transfer of a patient to a hospital licensed under Chapter 395, Florida Statutes, from any facility or any office maintained by an osteopathic physician for the practice of medicine which is not licensed under Chapter 395, Florida Statutes.

(b) "Licensee" for purposes of this rule, includes an osteopathic physician or physician assistant issued a license, registration, or certificate, for any period of time, pursuant to Chapter 459, Florida Statutes.

(c) "Office maintained by an osteopathic physician" as that term is used in Section 459.026(1), F.S., is defined as a business location where the osteopathic physician delivers medical services regardless of whether other physicians are practicing at the same location or the business is non-physician owned.

(2) Incident Reporting System. An incident reporting system shall be established for each osteopathic physician office.

(a) Incident Reports. The incident reporting system shall include the prompt, postmarked and sent by certified mail within 15 calendar days after the occurrence of the adverse incident, reporting of incidents to the Agency for Health Care Administration, Consumer Services Unit, Post Office Box 14000, Tallahassee, Florida 32317-4000. The report shall be made on the (INCORPORATE FORM) Physician Office Adverse Incident Report. The report must be submitted by every licensee who was involved in the adverse incident. If multiple licensees are involved in the adverse incident, they may meet this requirement by signing off on one report; however, each signee is responsible for the accuracy of the report. This report shall contain the following information:

1. The patient's name, locating information, gender, age, diagnosis, date of office visit, and purpose of office visit.

2. A clear and concise description of the incident including time, date, and exact location within the office.

3. A listing of all persons then known to be involved directly in the incident, including license numbers and locating information, and a description of the person's exact involvement and actions.

4. A listing of any witnesses not previously identified in 3.

5. The name, license number, locating information, and signature of the osteopathic physician or licensee submitting the report, along with date and time that the report was completed.

(b) Incident Report Review and Analysis. Evidence of compliance with this paragraph will be considered in mitigation in the event the Board takes disciplinary action.

1. The osteopathic physician shall be responsible for the regular and systematic reviewing of all incident reports filed by the osteopathic physician or physician assistant under the osteopathic physician's supervision, for the purpose of identifying factors that contributed to the adverse incident and identifying trends or patterns as to time, place, or persons. The osteopathic physician shall implement corrective actions and incident prevention education and training indicated by the review of each adverse incident and upon emergence of any trend or pattern in incident occurrence.

2. Copies of incident reports shall be maintained in the osteopathic physician office.

(3) Death reports. Notwithstanding the provisions of this rule and Section 459.026, Florida Statutes, an adverse incident which results in death shall be reported immediately to the medical examiner pursuant to Section 406.12, Florida Statutes.

Specific Authority 459.005(1), 459.026(6) FS. Law Implemented 459.026 FS. History–New _____.

64B15-14.0076 Requirement for Osteopathic Physician Office Registration; Inspection or Accreditation.

(1) Registration.

(a) Every Florida licensed osteopathic physician who holds an active Florida license and performs Level II surgical procedures in Florida with a maximum planned duration of five (5) minutes or longer or any Level III office surgery, as fully defined in Rule 64B15-14.007, F.A.C., shall register with the Board of Osteopathic Medicine. It is the osteopathic physician's responsibility to ensure that every office in which he or she performs Levels II or III surgical procedures as described above is registered, regardless of whether other physicians are practicing in the same office or whether the office is non-physician owned.

(b) In order to register an office for surgical procedures, the osteopathic physician must provide to the Board of Osteopathic Medicine, his or her name, mailing address, Florida license number, and a list of each office where the covered surgical procedures are going to be performed by the osteopathic physician. The list shall also include each office name, address, telephone number, and level of surgery being performed at that location by the osteopathic physician; and if

more than one physician is practicing at that location, a list of all physicians and levels of surgery being performed must be provided. The list shall also include the name of each physician assistant, ARNP and CRNA involved in the office surgery or anesthesia; copies of any protocols necessary for the supervision of any ARNP or CRNA; and any transfer agreements with local hospitals. In addition, the osteopathic physician shall submit a statement of compliance with Rule 64B15-14.007, F.A.C., when registering with the Department.

(c) The osteopathic physician must immediately notify the Board Office, in writing, of any changes to the registration information.

(d) The registration shall be posted in the office.

(2) Inspection.

(a) Unless the osteopathic physician has previously provided written notification of current accreditation by a nationally recognized accrediting agency or an accrediting organization approved by the Board the osteopathic physician shall submit to an annual inspection by the Department. Nationally recognized accrediting agencies are the American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF), Accreditation Association for Ambulatory Health Care (AAAHC), Joint Commission on Accreditation for Ambulatory Healthcare Organizations (JCAHO), American Osteopathic Association (AOA), and AOA Healthcare Facilities Accreditation Program (HFAP). All nationally recognized and Board-approved accrediting organizations shall be held to the same Board-determined surgery and anesthesia standards for accrediting Florida office surgery sites.

(b) The initial inspection conducted pursuant to this rule shall be announced at least one week in advance of the arrival of the inspector(s).

(c) The Department shall determine compliance with the requirements of Rule 64B15-14.007, F.A.C.

(d) If the office is determined to be in noncompliance, the osteopathic physician shall be notified and shall be given a written statement at the time of inspection. Such written notice shall specify the deficiencies. Unless the deficiencies constitute an immediate and imminent danger to the public, the osteopathic physician shall be given 30 days from the date of inspection to correct any documented deficiencies and notify the Department of corrective action. Upon written notification from the osteopathic physician that all deficiencies have been corrected, the Department is authorized to reinspect for compliance.

(e) The deficiency notice and subsequent documentation shall be reviewed for consideration of disciplinary action. Documentation of corrective action shall be considered in mitigation of any offense.

(f) Nothing herein shall limit the authority of the Department to investigate a complaint without prior notice.

(3) Accreditation.

(a) The osteopathic physician shall submit written notification of the current accreditation survey of his or her office(s) from a nationally recognized accrediting agency or an accrediting organization approved by the Board in lieu of undergoing an inspection by the Department.

(b) An osteopathic physician shall submit, within thirty (30) days of accreditation, a copy of the current accreditation survey of his or her office(s) and shall immediately notify the Board of Osteopathic Medicine of any accreditation changes that occur. For purposes of initial registration, an osteopathic physician shall submit a copy of the most recent accreditation survey of his or her office(s) in lieu of undergoing an inspection by the Department.

(c) If a provisional or conditional accreditation is received, the osteopathic physician shall notify the Board of Osteopathic Medicine in writing and shall include a plan of correction.

Specific Authority 459.005(1),(2) FS. Law Implemented 459.005(2) FS. History–New _____.

64B15-14.0077 Approval of Osteopathic Physician Office Accrediting Organizations.

(1) Definitions.

(a) "Accredited" means full accreditation granted by a Board approved accrediting agency or organization. "Accredited" shall also mean provisional accreditation provided that the office is in substantial compliance with the accrediting agency or organization's standards; any deficiencies cited by the accrediting agency or organization do not affect the quality of patient care, and the deficiencies will be corrected within six months of the date on which the office was granted provisional accreditation.

(b) "Approved accrediting agency or organization" means nationally recognized accrediting agencies: American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF), Accreditation Association for Ambulatory Health Care (AAAHC) and Joint Commission on Accreditation of Healthcare Organizations (JCAHO), American Osteopathic Association (AOA), and AOA Healthcare Facilities Accreditation Program (HFAP). Approved organizations also include those approved by the Board after submission of an application for approval pursuant to this rule.

(c) "Department" means the Department of Health.

(2) Application. An application for approval as an accrediting organization shall be filed with the Board office at 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256, and shall include the following information and documents:

(a) Name and address of applicant;

(b) Date applicant began to operate as an accrediting organization;

(c) Copy of applicant's current accreditation standards;

(d) Description of accreditation process, including composition and qualification of accreditation surveyors; accreditation activities; criteria for determination of compliance; and deficiency follow-up activities.

(e) A list of all osteopathic physician offices located in Florida that are accredited by the applicant, if any. If there are no accredited Florida physician offices, but there are accredited offices outside Florida, a list of the accredited offices outside of Florida is required.

(f) Copies of all incident reports filed with the state.

(g) Statement of compliance with all requirements as specified in this rule.

(3) Standards. The standards adopted by an accrediting organization for surgical and anesthetic procedures performed in a physician office shall meet or exceed provisions of Chapters 456 and 459 and rules promulgated thereunder. Standards shall require that all health care practitioners be licensed or certified to the extent required by law.

(4) Requirements. In order to be approved by the Board, an accrediting organization must comply with the following requirements:

(a) The accrediting agency must have a mandatory quality assurance program approved by the Board of Osteopathic Medicine.

(b) The accrediting agency must have anesthesia-related accreditation standards and quality assurance processes that are reviewed and approved by the Board of Osteopathic Medicine.

(c) The accrediting agency must have ongoing anesthesia-related accreditation and quality assurance processes involving the active participation of anesthesiologists.

(d) Accreditation periods shall not exceed three years.

(e) The accrediting organization shall obtain authorization from the accredited entity to release accreditation reports and corrective action plans to the Board. The accrediting organization shall provide a copy of any accreditation report to the Board office within 30 days of completion of accrediting activities. The accrediting organization shall provide a copy of any corrective action plans to the Board office within 30 days of receipt from the physician office.

(f) If the accrediting agency or organization finds indications at any time during accreditation activities that conditions in the physician office pose a potential immediate jeopardy to patients, the accrediting agency or organization will immediately report the situation to the Department.

(g) An accrediting agency or organization shall send to the Board any change in its accreditation standards within 30 calendar days after making the change.

(h) An accrediting agency or organization shall comply with confidentiality requirements regarding protection of patient records.

(5) Renewal of Approval of Accrediting Organizations. Every accrediting organization approved by the Board pursuant to this rule is required to renew such approval every 3 years. Each written submission shall be filed with the Board at least three months prior to the third anniversary of the accrediting organization's initial approval and each subsequent renewal of approval by the Board. Upon review of the submission by the Board, written notice shall be provided to the accrediting organization indicating the Board's acceptance of the certification and the next date by which a renewal submission must be filed or of the Board's decision that any identified changes are not acceptable and on that basis denial of renewal of approval as an accrediting organization.

(6) Any person interested in obtaining a complete list of approved accrediting organizations may contact the Board of Osteopathic Medicine or Department of Health.

Specific Authority 459.005(2) FS. Law Implemented 459.005(2) FS. History–New .

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Osteopathic Medicine

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 21, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 31, 2001

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF STATE

Division of Elections

RULE NOS.:	RULE TITLES:
1S-2.027	Clear Indication of Voter's Choice on a Ballot
1S-2.031	Recount Procedures

NOTICE OF ADDITIONAL HEARING

ADDITIONAL HEARINGS WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 4:00 – 7:00 p.m., November 15, 2001

PLACE: 240 South Military Trail, West Palm Beach, Florida 33415

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Amy K. Tuck, Assistant General Counsel, Division of Elections, Department of State, Room 1801, The Capitol, Tallahassee, Florida 32399-0250, (850)488-1402