67-50.090 Disbursement of Funds, Draw Requests, and Loan Servicing.

(1) Disbursements of Funds. Construction Loan proceeds shall be disbursed in an amount that does not exceed the ratio of the Loan to the Total Development Cost and is pro-rata with all other construction financing, unless approved by the Corporation and the Credit Underwriter.

(2) Draw Requests. Ten (10) days prior to each Draw, the Applicant shall provide the Servicer with a signed, written Draw request, which includes the requested amount, documentation of liability and builder's risk insurance acceptable to the Corporation, and claims for labor and materials to date of the last inspection.

(3) Loan Servicing. The Servicer shall review the Draw request and provide the Corporation with approval of the request or an alternative amount.

(4) Five percent (5%) of the Loan funds will be held as retainage. Release of funds held as retainage for each house shall occur only after the Applicant provides:

(a) A satisfactory final inspection certificate or certificate of occupancy;

(b) A final, as-built survey;

(c) Evidence of liability and replacement cost hazard insurance acceptable to the Corporation; and

(d) A title insurance policy insuring the Corporation's interest and containing no exceptions that are unacceptable to the Corporation.

(5) In addition to the five percent (5%) retainage, the Corporation shall elect to withhold any Draw or portion of any Draw if:

(a) The actual budget cost or progress of construction is materially greater than that shown in the sources and uses statement;

(b) The percentage of progress of construction differs materially from that shown on the Draw Request; or

(c) The Draw Request cannot be supported by invoices for labor and materials.

Specific Authority 420.507(12),(23) FS. Law Implemented 420.507(18), 420.5088, 420.5089 FS. History–New _____.

67-50.100 Compliance and Monitoring.

(1) The Servicer shall inspect and monitor the Development's construction site and records, as necessary, with inspections occurring during regular business hours.

(2) The Servicer shall monitor the sale of houses and determine homebuyer eligibility at initial purchase. Failure to comply with the agreed upon set-aside requirements shall result in a retroactive interest rate adjustment from the HAP or HOME Construction Loan interest rate to the current market rate.

Specific Authority 420.507(12),(23) FS. Law Implemented 420.507(23), 420.5088, 420.5089 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bridget E. Warring, HAP Manager, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Esrone McDaniels, III, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2000, Corporation Board Meeting

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 9, 2001, Vol. 27, No. 45

# Section III
# Notices of Changes, Corrections and Withdrawals

**DEPARTMENT OF BANKING AND FINANCE**

**Division of Securities and Finance**

| RULE NOS.: | RULE TITLES: |
|---|---|
| 3E-600.001 | Application for Registration as a Dealer, Issuer/Dealer, or Investment Adviser |
| 3E-600.002 | Application for Registration as Associated Person |
| 3E-600.0021 | Investment Adviser Notification |
| 3E-600.003 | Multiple Registration |
| 3E-600.004 | Registration of Issuer/Dealers, Principals and Branch Offices |
| 3E-600.007 | Changes in Name and Successor Registration Requirements |
| 3E-600.0092 | Investment Adviser Registration Depository for Federal Covered Advisers |
| 3E-600.0093 | Investment Adviser Registration Depository for Investment Advisers |
| 3E-600.019 | Dealer, Investment Adviser, Branch Office and Associated Persons Forms |

NOTICE OF CHANGE

In accordance with subparagraph 120.54(3)(d)1., F.S., notice is hereby given that the following change has been made to the proposed rule as published in the Vol. 28, No. 17, April 26, 2002, issue of the Florida Administrative Weekly.

The change is in response to written material received on or before the date for a final public hearing.

The rule shall now read as follows:

3E-600.001 Application for Registration as a Dealer, Issuer/Dealer, or Investment Adviser.

(1)(a) Applications for initial and renewal registration of dealers, issuer/dealers, and investment advisers shall be filed on the forms prescribed by the Department in Rule 3E-301.002(7), F.A.C., and shall include all information required by such forms, any other information the Department may require, and payment of the statutory fees required by Sections 517.12(10) and 517.131, F.S. Except as otherwise provided in Rule 3E-600.0091, or Rule 3E-600.0093, F.A.C., the ~~The~~ Department shall deem an application to be received at such time as it and the appropriate fee have been date stamped by the cashier's office of the Department of Banking and Finance. For dealers that are members of the National Association of Securities Dealers (NASD), such application shall be filed with the Department through the Central Registration Depository (CRD) of the NASD in accordance with Rule 3E-600.0091, F.A.C. For investment advisers, such application may be filed with the Department through the Investment Advisor Registration Depository (IARD) of the NASD in accordance with Rule 3E-600.0093, F.A.C.

(b) A complete application must include the following exhibits or forms that are appropriate for the type of registration requested:

1. For registration as a dealer or issuer/dealer, a Uniform Application for Broker-Dealer Registration, Form BD (Revised 7/99). For dealers that are members of the NASD, such application shall be filed with the Department through the CRD in accordance with Rule 3E-600.0091, F.A.C. For registration as an investment adviser, a Uniform Application for Investment Adviser Registration, Form ADV (Revised 1/1/01) shall be filed with the Department ~~(Revised 1/99)~~. Such application may be filed with the Department through the Investment Advisor Registration Depository (IARD) of the NASD in accordance with Rule 3E-600.0093, F.A.C.

2. No change.

3. A Uniform Application for Securities Industry Registration or Transfer, Form U-4 (Revised 03/2002 ~~8/99~~), to register at least one principal as set forth in Rule 3E-600.002, F.A.C. Evidence of current membership as a dealer with the NASD shall satisfy this requirement;

4. No change.

5. Proof of effective registration for dealers with the Securities and Exchange Commission (SEC). Where required by Section 517.12(16), F.S., applicants for registration as a dealer shall also provide the Department with proof of insurance coverage by the Securities Investor Protection Corporation. Evidence of current membership as a dealer with the NASD shall satisfy this requirement;

6. through 9. No change.

(2) If the information contained in any application for registration as a dealer or investment adviser or in any amendment thereto, becomes inaccurate for any reason, the dealer or investment adviser shall ~~promptly~~ file an amendment on the Form BD or the Form ADV, respectively, correcting such information within 30 days. For applicants and registrants that are members of the NASD, each such amendment, including those required by Rule 3E-600.007, F.A.C., shall be filed with the Department through the CRD system. For investment adviser applicants and registrants who file via the IARD, each such amendment, including those required by Rule 3E-600.007, F.A.C., may be filed with the Department through the IARD system in accordance with Rule 3E-600.0093, F.A.C. All other applicants and registrants shall file such amendments, including those required by Rule 3E-600.007, F.A.C., directly with the Department.

(3) through (4) No change.

Specific Authority 517.03(1), 517.12(6) FS. Law Implemented 517.12(6),(7), 517.1205 FS. History–New 12-5-79, Amended 9-20-82, Formerly 3E-600.01, Amended 7-29-90, 8-1-91, 6-16-92, 1-11-93, 11-14-93, 4-30-96, 6-22-98, 5-10-00, 9-19-00, _____.

3E-600.002 Application for Registration as Associated Person.

(1)(a) Applications for initial, reaffiliation, and renewal registrations of a principal or associated person ~~agent~~ shall be filed on Form U-4 (Revised 3/2002), Uniform Application for Securities Industry Registration or Transfer (Revised 8/99), which hereby is incorporated by reference, and shall include all information required by such form, any other information the Department may require, and payment of the statutory fees required by Section 517.12(10), F.S. Except as otherwise provided in Rule 3E-600.0091, 3E-600.0092, or 3E-600.0093, F.A.C., the Department shall deem an application to be received at such time as it and the appropriate fee have been date stamped by the cashier's office of the Department of Banking and Finance. For dealers that are members of the National Association of Securities Dealers ("NASD"), such application shall be filed with the Department through the Central Registration Depository ("CRD") of the NASD in accordance with Rule 3E-600.0091, F.A.C. For federal covered advisers, such application shall be filed with the Department through the Central Registration Depository ("CRD") of the NASD in accordance with Rule 3E-600.0092, F.A.C. For investment adviser applicants and registrants who file via the IARD, such application may be filed with the Department through the CRD of the NASD in accordance with Rule 3E-600.0093, F.A.C.

(b) A complete initial application must include the following exhibits or forms that are appropriate for the type of registration requested:

1. Uniform Application for Securities Industry Registration or Transfer, Form U-4 (Revised 3/2002 ~~8/99~~). As used on the Form U-4 (Revised 3/2002), the term "Office of Employment Address" shall mean the location where the person seeking registration will regularly conduct business on

behalf of the dealer or investment adviser. For dealers that are members of the NASD, such application shall be filed with the Department through the CRD of the NASD.

2. Statutory fee in the amount of $40, for each registration sought, as required by Section 517.12(10), F.S.

3. through 5. No change.

(c) If the information contained in any Uniform Application Form U-4 (Revised 3/2002) becomes inaccurate for any reason before or after the associated person becomes registered, the associated person through the dealer or investment adviser, as applicable, shall be responsible for correcting the inaccurate information in thirty (30) days. If the information being updated relates to the applicant's or registrant's disciplinary history, in addition to updating the Uniform Application Form U-4 (Revised 3/2002), the associated person through the dealer or investment adviser shall also provide the Department with notice and copies of each civil, criminal or administrative action initiated against the associated person as provided in Rule 3E-600.010, F.A.C. For associated persons who have filed by using the CRD of the NASD, such amendments shall be made through the CRD of the NASD.

(2) No change.

Specific Authority 517.03(1), 517.12(6) FS. Law Implemented 517.12(6),(7),(10), 517.1205 FS. History–New 9-20-82, Formerly 3E-301.02, Amended 10-15-86, 10-4-88, 6-24-90, 7-29-90, 10-14-90, 8-1-91, 6-16-92, 6-28-93, 11-14-93, 3-13-94, 4-30-96, 12-29-96, 6-22-98, 5-10-00, 9-19-00, _____.

3E-600.0021 Investment Adviser Notification.

Specific Authority 517.03 FS. Law Implemented 517.12(4) FS. History–New 9-20-82, Formerly 3E-600.021, Amended 5-5-94, Repealed _____.

3E-600.003 Multiple Registration.

(1) A dealer registered in Florida who receives separate compensation for investment advisory services may render investment advice upon registration with the Department as an investment adviser pursuant to Rule 3E-600.001, F.A.C., or satisfaction of the notification requirements pursuant to Rule 3E-600.0092, F.A.C.

(2)~~(1)~~ An applicant for registration as an associated person may apply to be registered as an associated person of more than one dealer, issuer/dealer, federal covered adviser or investment adviser, or any combination thereof, by the filing of separate applications by each registered dealer, issuer/dealer, federal covered adviser or investment adviser, and payment of separate application fees as required.

(3)~~(2)~~ A person registered with the Department as an associated person of an investment adviser ~~firm or a dually registered dealer/investment adviser~~ shall not be required to register as an associated person of any other investment adviser ~~firm~~ on whose behalf such person solicits, refers, offers or negotiates advisory services, provided each of the following conditions are met:

(a) All compensation received by the associated person is paid by the investment adviser ~~firm or dually registered dealer/investment adviser~~ with which the associated person is registered;

(b) All customer funds and securities are maintained by the dealer, investment adviser, ~~dually registered dealer/investment adviser~~ or a clearing dealer;

(c) The investment adviser ~~firm or the dually registered dealer/investment adviser~~ shall ensure that all associated persons comply with the provisions of Chapter 517, F.S., and the administrative rules promulgated thereunder; and

(d) Each investment adviser ~~firm~~ must be registered with the Department and the advisory services must be approved by the investment adviser ~~firm or dually registered dealer/investment adviser~~ the associated person is registered with prior to any services being recommended.

(3) Associated persons exempted from the examination requirements as provided by paragraph 3E-600.004(1)(b), F.A.C., may not be registered with more than one (1) issuer/dealer at the same time.

Specific Authority 517.03 FS. Law Implemented 517.12(1),(4), 120.53 FS. History–New 12-5-79, Amended 9-20-82, Formerly 3E-600.03, Amended 8-1-91, 5-5-94, _____.

3E-600.004 Registration of Issuer/Dealers, Principals and Branch Offices.

(1) through (2) No change.

(3)(a) No change.

(b) A complete application must include the following exhibits or forms that are appropriate for the type of registration requested:

1. Branch Office Registration Form under Rule 3E-301.002 ~~3E-600.019~~, F.A.C.

2. Statutory fee in the amount required by Section 517.12(10), F.S.

3. Manager and resident agent as appropriate in this Rule must be registered as set forth in Rule 3E-600.002, F.A.C.

4. Evidence of registration with the Florida Secretary of State as a foreign corporation.

(c) through (d) No change.

Specific Authority 517.03(1), 517.12(6) FS. Law Implemented 517.12(5),(6),(10) FS. History–New 12-5-79, Amended 9-20-82, Formerly 3E-600.04, Amended 10-14-90, 6-16-92, 1-11-93, 11-7-93, 11-14-93, 12-29-96, 10-20-97, 6-10-99, 8-19-99, 5-27-01, _____.

3E-600.007 Changes in Name and Successor Registration Requirements.

(1) No change.

(2) Where there is a change in legal entity of a proprietary, partnership, or corporate registrant, the successor entity shall file with the Department an amendment to Form BD, Uniform Application for Broker-Dealer Registration (Revised 7/99) or Form ADV, Uniform Application for Investment Adviser Registration (Revised 01/01/01) ~~(Revised 1/99)~~ within thirty

(30) calendar days of the date of such change. For registrants who are a member of the NASD, such amendment shall be filed with the Department through the CRD System pursuant to subsection 3E-600.001(2), F.A.C. Any amendments to organizational documents, accompanying letters of explanation, or current financial statements of the successor shall be promptly submitted directly to the Department when specifically requested by the Department.

(3) Merger Situations: Where there is a merger of dealer or investment adviser registrants involving (a) the assumption by the successor of substantially all assets and liabilities of the merged entities, and (b) the continuation of the activities of the merged entities successor entity, the merging entities successor shall file notification with the Department denoting such changes as are applicable within thirty (30) calendar days prior to the date of such change. The successor entity shall file an amendment to Form BD (Revised 7/99) or Form ADV (Revised 01/01/01) denoting such changes as are applicable within thirty (30) calendar days of date of such change. For registrants who are a member of the NASD, each such amendment shall be filed with the Department through the CRD System pursuant to Rule 3E-600.001(2), F.A.C. A copy of the plan of merger/merger agreement, amended organizational documents, accompanying letters of explanation, or current financial statements of the successor (merged) entity shall be promptly provided to the Department when specifically requested by the Department.

(4) Change of Control:

(a) Where a person or a group of persons directly or indirectly or acting by or through one or more persons, proposes to acquire a controlling interest in a dealer or investment advisor registrant, and where the acquiror is currently registered with the Department, or where the acquiror has not within the preceding 10 years committed any reportable act as defined in Rule 3E-200.001, F.A.C., the resulting entity shall ~~prior to such acquisition~~ file with the Department an amendment to Form BD (Revised 7/99) or Form ADV (Revised 01/01/01) denoting such changes as are applicable thirty (30) calendar days prior to the date of such acquisition. Any amended organizational documents, accompanying letters of explanation, or financial statements of the resulting entity shall be promptly filed directly with the Department when specifically requested by the Department.

(b) through (c) No change.

(5) For the purposes of subsections ~~(1),~~ (2) and~~,~~ (3)~~, and paragraph (4)(a)~~ of this Rule, in the event that a person(s) succeeds to and continues the business of a Florida registered dealer or investment adviser, the registration of the predecessor shall be deemed to remain effective as the registration of the successor for a period of thirty (30) calendar days after such succession, provided that an amendment to Form BD (Revised 7/99) or Form ADV (Revised 01/01/01) Application for Registration, together with the accompanying documents as prescribed heretofore, is filed by the successor within thirty (30) calendar days after such succession.

(6) No change.

~~(7) The changes described in this rule shall be filed with the Department on the following forms:~~

~~(a) Uniform Application for Broker-Dealer Registration (Form BD) (Revised 7/99).~~

~~(b) Uniform Request for Broker-Dealer Withdrawal (Form BDW) (Revised 8/99).~~

~~(c) Uniform Application for Investment Adviser Registration (Form ADV) (Revised 1/99).~~

~~(d) Notice of Withdrawal from Registration as Investment Adviser (Form ADV-W) (Revised 1/99).~~

~~(e) Uniform Application for Securities Industry Registration or Transfer (Form U-4 (Revised 8/99).~~

~~(f) Uniform Termination Notice for Securities Industry Registration (Form U-5) (Revised 8/99).~~

Specific Authority 517.03(1), 517.12(13) FS. Law Implemented 517.12(13) FS. History–New 12-5-79, Amended 9-20-82, Formerly 3E-600.07(4), Amended 10-15-86, 12-8-87, 8-1-91, 6-16-92, 1-11-93, 8-9-98, 5-10-00, _____.

3E-600.0092 Investment Adviser Registration Depository for Federal Covered Advisers.

Wherever the Rules of this Department require the filing of applications, fees, and other documents with the Department, in lieu thereof, all federal covered advisers shall file such items as specified below:

(1) All federal covered advisers making, renewing, or terminating a notice filing in this state shall file the appropriate Form ADV (Revised 01/01/01) or ADVW (Revised 01/99) and the assessment fee required by Sections 517.1201(1) or (2), F.S., with the Investment Adviser Registration Depository ("IARD") of the NASD. When requested by the Department, Form ADV (Revised 01/01/01), Part 2, and all responses to any other request for additional information, shall be filed directly with the Department.

(2) Any notice filing made by a federal covered adviser with the Department through the IARD shall be deemed received by the Department upon receipt of the Form ADV (Revised 01/01/01) and the filing fee. The filing fee shall be deemed received by the Department on the "payment date" reflected on the CRD "disbursement detail" report.

(3) All amendments to the Form ADV (Revised 01/01/01), shall be filed with the Department through the IARD system.

(4) All federal covered advisers who notice file in this state and who request initial registration, renewal, reaffiliation or termination of an associated person of such federal covered adviser shall file the appropriate Form U-4 (Revised 3/2002) or U-5 (Revised 3/2002) and the assessment fee required by Sections 517.12(10) or (11), F.S., with the CRD of the NASD. However, any response to any request for additional information shall be filed directly with the Department.

(5) Any application for registration as an associated person of a federal covered adviser which is filed with the Department by way of the CRD shall be deemed received by the Department on the date designated in the "Status Date" field on the line notated "FL" with a "Registration Status" of "pending" as indicated on the CRD "Registrations with Current Employers" screen.

(6) All federal covered advisers currently registered with the Department shall transition the Florida registration of their associated persons onto the CRD before June 30, 2002. All associated persons who transition onto the CRD shall file a complete Form U-4 (Revised 3/2002) through the CRD within 30 days of the transition date, unless the associated person has a current and complete Form U-4 (Revised 3/2002) on the CRD with the federal covered adviser filing such transition.

Specific Authority 517.03, 517.12(6), 517.12(15), 517.1201 FS. Law Implemented 517.1201(1),(2),(15) FS. History–New _____.

3E-600.0093 Investment Adviser Registration Depository for Investment Advisers.

Wherever the Rules of this Department require the filing of applications, fees, and other documents with the Department, in lieu thereof, investment advisers may file such items as specified below:

(1) All investment advisers requesting initial registration, renewal or termination of registration in this state may file the appropriate Form ADV (Revised 01/01/01) or ADVW (Revised 01/99) and the assessment fee required by Sections 517.12(10) or (11), F.S., with the Investment Adviser Registration Depository ("IARD") of the NASDR. Form ADV (Revised 01/01/01), Part 2, and all responses to other requests for additional information, shall be filed directly with the Department.

(2) Any application for registration as an investment adviser filed with the Department through the IARD shall be deemed received by the Department upon receipt of the Form ADV (Revised 01/01/01) and the filing fee. The filing fee shall be deemed received by the Department on the "payment date" reflected on the CRD "disbursement detail" report.

(3) All investment advisers registered in this state by the IARD requesting initial registration, renewal, reaffiliation or termination of an associated person of such investment adviser may file the appropriate Form U-4 (Revised 3/2002) or U-5 (Revised 3/2002) and the assessment fee required by Sections 517.12(10) or (11), F.S., with the CRD of the NASD. However, all responses to any requests for additional information shall be filed directly with the Department.

(4) All investment advisers currently registered with the Department who register their associated persons by the CRD shall transition the Florida registrations of their associated persons onto the CRD. All associated persons who transition onto the CRD shall file a complete Form U-4 (Revised 3/2002) through the CRD within 30 days of the transition date, unless the associated person has a current and complete Form U-4 (Revised 3/2002) on the CRD with the investment adviser filing such transition.

(5) Any application for registration as an associated person of an investment adviser filed with the Department by the CRD shall be deemed received by the Department on the date designated in the "Status Date" field on the line notated "FL" with a "Registration Status" of "pending" as indicated on the CRD "Registrations with Current Employers" screen.

Specific Authority 517.03, 517.12(6), 517.12(15) FS. Law Implemented 517.12(10),(11),(15) FS. History–New _____.

3E-600.019 Dealer, Investment Adviser, Branch Office and Associated Persons Forms.

Specific Authority 517.03(1) FS. Law Implemented 517.12 FS. History–New 12-5-79, Amended 9-20-82, Formerly 3E-600.19, Amended 8-1-91, 6-16-92, 1-11-93, 6-22-98, 6-10-99, 5-10-00, Repealed _____.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Pamela P. Epting, Financial Examiner/Analyst Supervisor, Department of Banking and Finance, 101 East Gaines Street, 6th Floor, The Fletcher Building, Tallahassee, Florida 32399-0350, (850)410-9805

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Division of Agricultural Environmental Services**

| RULE NO.: | RULE TITLE: |
|---|---|
| 5E-2.0311 | Pesticides |

NOTICE OF CORRECTION

The Florida Department of Agriculture and Consumer Services, Division of Agricultural Environmental Services, announces a correction to the Notice of Negotiated Rulemaking regarding Rule 5E-2.0311, F.A.C., which appeared in the April 26, 2002 issue of the Florida Administrative Weekly, Vol. 28, No. 17.

Specifically, the locations of the meetings in Orlando were listed with the wrong street and zip code. The correct location of the meetings to be held on May 29, July 25, August 20, and September 10, 2002, is 400 West Robinson Street, Hurston South Tower, Orlando, Florida 32801.

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Division of Standards**

| RULE NOS.: | RULE TITLES: |
|---|---|
| 5F-2.001 | Standards |
| 5F-2.014 | Adoption of the General Code and the Codes of Liquid-Measuring Devices, Liquefied Petroleum Gas and Anhydrous Ammonia Liquid-Measuring Devices, Hydrocarbon Gas Vapor-Measuring Devices, |

Vehicle-Tank Meters, and
Vehicle Tanks Used as Measures
of National Institute of
Standards and Technology
Handbook 44

NOTICE OF CORRECTION

The following information was omitted from the Notice of Proposed Rulemaking published in Vol. 28, No. 20, May 17, 2002 issue of the FAW.

NAME OF PERSON ORIGINATING PROPOSED RULE: Eric Hamilton

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ben Faulk, Director, Division of Standards

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 7, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 19, 2002

**DEPARTMENT OF EDUCATION**

**State Board of Education**

| RULE NO.: | RULE TITLE: |
|---|---|
| 6A-6.03019 | Special Instructional Services for Students Who are Gifted |

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 28, No. 16, April 19, 2002, issue of the Florida Administrative Weekly.

The rule was approved as follows:

6A-6.03019 Special Instructional Programs for Students Who are Gifted.

(1) Gifted. One who has superior intellectual development and is capable of high performance.

(2) Criteria for eligibility. A student is eligible for special instructional programs for the gifted if the student meets the criteria under paragraph (2)(a) or (b) of this rule.

(a) The student demonstrates:

1. Need for a special program.

2. A majority of characteristics of gifted students according to a standard scale or checklist, and

3. Superior intellectual development as measured by an intelligence quotient of two (2) standard deviations or more above the mean on an individually administered standardized test of intelligence.

(b) The student is a member of an under-represented group and meets the criteria specified in an approved school district plan for increasing the participation of under-represented groups in programs for gifted students.

1. For the purpose of this rule, under-represented groups are defined as groups:

~~a. Whose racial/ethnic backgrounds are other than white non-hispanic, Asian/Pacific Islander, or~~

a.~~b.~~ Who are limited English proficient, or

b.~~c.~~ Who are from a low socio-economic status family.

2. The Department of Education is authorized ~~through 1999~~ to approve school district plans for increasing the participation of students from under-represented groups in special instructional programs for the gifted, provided these plans include the following:

a. A district goal to increase the percent of students from under-represented groups in programs for the gifted and the current status of the district in regard to that goal;

b. Screening and referral procedures which will be used to increase the number of these students referred for evaluation;

c. Criteria for determining eligibility based on the student's demonstrated ability or potential in specific areas of leadership, motivation, academic performance, and creativity;

d. Student evaluation procedures, including the identification of the measurement instruments to be used;

e. Instructional program modifications or adaptations to ensure successful and continued participation of students from under-represented groups in the existing instructional program for gifted students;

f. An evaluation design which addresses evaluation of progress toward the district's goal for increasing participation by students from under-represented groups.

(3) Procedures for student evaluation. The minimum evaluations for determining eligibility are the following:

(a) Need for a special instructional program,

(b) Characteristics of the gifted,

(c) Intellectual development, and

(d) May include those evaluation procedures specified in an approved district plan to increase the participation of students from under-represented groups in programs for the gifted.

Specific Authority 229.053(1), 230.23(4)(m) FS. Law Implemented 228.041(18),(19), 229.565(2)(b),(c), 230.23(4)(m) FS. History–New 7-1-77, Formerly 6A-6.3019, Amended 10-10-91, 5-19-98, _____.

**WATER MANAGEMENT DISTRICTS**

**South Florida Water Management District**

| RULE CHAPTER NO.: | RULE CHAPTER TITLE: |
|---|---|
| 40E-2 | Consumptive Use |
| RULE NOS.: | RULE TITLES: |
| 40E-2.091 | Publications Incorporated by Reference |
| 40E-2.301 | Conditions for Issuance of Permits |

NOTICE OF CHANGE

In accordance with subparagraph 120.54(3)(d)1., Fla. Stat., notice is hereby given that the following changes have been made to the proposed rules published in Vol. 28, No. 5, of the February 1, 2002, issue of the Florida Administrative Weekly. The changes are in response to comments received from the

staff of the Joint Administrative Procedures Committee, are technical in nature, or are in response to written comments discussed and received at the public rulemaking hearing on May 9, 2002.

When adopted, the first sentence of paragraph (1) of Rule 40E-2.301 will read as follows:

(1) In order to obtain a permit, permit renewal, or permit modification under this chapter, an applicant must give reasonable assurances that the proposed water use~~:~~ at the time the permit application is deemed complete:

When adopted, paragraph (1)(g) of Rule 40E-2.301 will read as follows:

(g) Is in accordance with water transport provisions of Sections 373.223(3) and 373.229(3), and the Water Resource Implementation Rule ~~on water transport pursuant to Rule~~ 62-40.422, F.A.C.;

When adopted, paragraph (1)(h) of Rule 40E-2.301 will read as follows:

(h) Makes use of a reclaimed water source unless the applicant, in any geographic location, demonstrates that its use is either not economically, environmentally or technically feasible; or in areas not designated as Water Resource Caution Areas ~~Critical Water Supply Problem Areas~~ pursuant to Chapter 40E-23, F.A.C., the applicant demonstrates reclaimed water is not readily available;

When adopted, subparagraph 3. of paragraph (4)(a) of Rule 40E-2.331 will read as follows:

3. Does not potentially interfere with any presently existing legal use of water, cause ~~adverse~~ environmental harm ~~impacts~~, saltwater intrusion, pollution of the water resources, harm ~~adverse impacts~~ to offsite land uses, or does not otherwise raise issues requiring a Staff determination of whether such impacts would occur pursuant to the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District," incorporated by reference in Rule 40E-2.091; and,

When adopted, the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District" (hereinafter "Basis of Review") incorporated by reference in Rule 40E-2.091, will be modified as follows:

The first sentence of subparagraph 3. of the second paragraph of Section 2.5.1 of the Basis of Review will read as follows:

3. Will not occur within 100 feet of a wastewater treatment plant rapid-rate land application system permitted under Part IV of Chapter 62-610, F.A.C. ~~percolation pond~~.

The third sentence of the third paragraph of Section 2.5.3 of the Basis of Review will read as follows:

~~Due to uncertainty and variability associated with dewatering withdrawals,~~ Staff shall not specify maximum monthly or annual withdrawal volumes in the recommended permit conditions presented to the Governing Board.

The second sentence of the first paragraph of Section 3.4 of the Basis of Review will read as follows:

Harmful saline water intrusion occurs when ~~includes~~:

Paragraph A. of Section 3.4 of the Basis of Review will read as follows:

A. Withdrawals ~~that~~ result in the further movement of a saline water interface to a greater distance inland toward a freshwater source, except as ~~than has historically occurred as~~ a consequence of seasonal fluctuations; climatic conditions, such as drought; or operation of the Central and Southern Flood Control Project, secondary canal systems, or stormwater systems ~~or~~.

Paragraph B. of Section 3.4 of the Basis of Review will read as follows:

B. Withdrawals ~~that~~ result in the sustained upward movement of saline water ~~more than one-third the distance separating the bottom of the screened or open hole interval of a production well from the historic position of the saline water interface within the aquifer. The historic position of the saline water interface shall be determined using the oldest water quality data representative of the site that predates the proposed water use~~. Sustained upward movement is the level of movement that persists when the withdrawals have ceased. When the saline interface occurs beneath the point of withdrawal, the maximum amount of pumpage from any well shall be constrained as follows:

---

Where: Q is the maximum safe yield of well

b is the thickness of fresh water

*l* is the distance between top of aquifer and well screen

p is the density of fresh water

????? is the change in density of fresh water

K is the hydraulic conductivity of the aquifer

Paragraph B. 2. of the second paragraph of Section 3.4 of the Basis of Review will read as follows:

2. A hydrologic analysis of groundwater flow demonstrates that there will be no further net inflow of groundwater from the saline water source toward the withdrawal point; except as a consequence of seasonal fluctuations; climatic conditions, such as drought; or operation of the Central and Southern Flood Control Project, secondary canal systems, or stormwater systems, or

The second, third, and fourth sentences of the first paragraph of Section 3.4.1 of the Basis of Review will read as follows:

The use of saline water is permitted by the District as a source of supply for all uses. The use of saline water may cause limited increases in salinity but not to the extent of interfering with any presently existing legal use of water, ~~or~~ otherwise harming water resources, or rendering the resource no longer usable by the Permittee ~~or the Applicant's proposed use~~. In order

to provide reasonable assurances that harmful increases in salinity will not occur in violation of this section, the Applicant must demonstrate that:

Subparagraph i. of paragraph C. of the first paragraph of Section 3.4.1 of the Basis of Review will read as follows:

i. The affected receiving water body is ~~not a potential supply source due to its~~ non-productive or low yielding in nature (hydrologic conductivity of less than 10 feet per day);

Subparagraph iv. of paragraph C. of the first paragraph of Section 3.4.1 of the Basis of Review will read as follows:

iv. The impacts of the saline water use are compatible with surrounding land uses ~~and are consistent with the public interest~~.

The last sentence of the last paragraph of Section 3.4.1 of the Basis of Review is added and will read as follows:

This rule is not intended to allow the District to consider disposal of concentrate resulting from desalination of saline water in determining compliance with the consumptive use permit conditions for issuance.

The second sentence of the third paragraph of Section 4.1 of the Basis of Review will read as follows:

Permittees, whose full demands are met through a combination of their own withdrawals or other sources, such as reclaimed water or water sales agreements ~~who are dependent on other sources of water supply, such as reclaimed water or water sale agreements to meet a portion of their demands~~ shall report the monthly totals supplied from sources other than their own withdrawals, unless the use of those sources are reported to another state agency, in which case the District shall obtain the water use information from said agency ~~all sources used, including those not contained in the permit, to the District~~.

The first and second sentences of the first paragraph of Section 4.3 of the Basis of Review will read as follows:

The purpose of pollution source monitoring is to ensure withdrawals do not cause harmful movement of contaminants in violation of state water quality standards. Movement of contaminants consistent with a state approved remediation plan is not considered harmful ~~pollutants into water resources that are not polluted~~.

Paragraph C. of Section 4.4 of the Basis of Review will read as follows:

C. Uncertainty in computer modeling or ~~If insufficient~~ data exists to define the drawdown resulting from withdrawals from ground water or surface water sources and to ensure that existing legal uses, offsite land use, water resources, and wetland and surface water functions are not harmed by withdrawals.

Paragraph H. of Section 5.1 of the Basis of Review will read as follows:

H. Permittee shall mitigate~~, to the satisfaction of the District,~~ harm to existing legal uses caused~~, in whole or in part,~~ by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify ~~curtail~~ withdrawal rates or mitigate the harm. Harm, as determined through reference to the conditions for permit issuance, ~~will be determined by the District and may,~~ includes:

Paragraph I. of Section 5.1 of the Basis of Review will read as follows:

I. Permittee shall mitigate~~, to the satisfaction of the District,~~ harm to existing off-site land uses caused~~, in whole or in part,~~ by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify ~~curtail~~ withdrawal rates or mitigate the harm. Harm, as determined through reference to the conditions for permit issuance, ~~will be determined by the District and may~~ includes:

Paragraph J. of Section 5.1 of the Basis of Review will read as follows:

J. Permittee shall mitigate~~, to the satisfaction of the District,~~ harm to the natural resources caused~~, in whole or in part,~~ by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify ~~curtail~~ withdrawal rates or mitigate the harm. Harm, as determined through reference to the conditions for permit issuance ~~will be determined by the District and may~~ includes:

Subparagraph B) of paragraph J. of Section 5.1 of the Basis of Review will read as follows:

B) Reduction in water levels that harm the hydroperiod of ~~protected~~ wetlands ~~environments~~,

Subparagraph D) of paragraph J. of Section 5.1 of the Basis of Review will read as follows:

D) Harmful movement of contaminants in violation of state water quality standards ~~pollutants into the water resource~~, or

Paragraph K. of Section 5.1 of the Basis of Review will read as follows:

K. If any condition of the permit is violated, the permit shall be subject to review and ~~possible~~ modification, enforcement action, or revocation pursuant to Chapter 373.

Paragraph A. of Section 5.2.1 of the Basis of Review will read as follows:

A. Permittee shall notify the District within 30 days of any change in service area boundary that results in a change in demand that affects its permitted allocation. ~~If the change in the service area results in a change in demand that affects the allocation, t~~The allocation shall be modified to effectuate such change ~~subject to modification~~.

Paragraph F. of Section 5.2.1 of the Basis of Review will read as follows:

F. Within two years of permit issuance, the Permittee shall submit a long-term water supply plan to the District for the purpose of assessing future water supply development activities within the water supply planning region. Prior to (board date + 1 year), the Permittee shall submit to the District an outline of the proposed plan. At a minimum, the plan shall address

~~include~~ consideration, by the Permittee of resource protection, water supply alternatives, ~~compliance with applicable well protection ordinances,~~ plans for water shortages or wellfield failures, and conservation measures ~~to reduce overall demands~~.

Subparagraph (4) of paragraph A. of Section 5.2.2 of the Basis of Review will read as follows:

(4) Other ~~appropriate~~ site-specific issues related to the protection of the resources or other existing legal users.

The last sentence of paragraph A. of Section 5.2.2 of the Basis of Review will read as follows:

A site visit can be scheduled by contacting: (water use permitting staff member).

Paragraph E. of Section 5.2.2 of the Basis of Review will read as follows:

E. Permittee shall not lower the water table below _____ feet NGVD, which is _____ feet below ground surface. The depth of the excavation shall not exceed _____ feet below ground surface. (blanks filled in based on project specifications).

Paragraph J. of Section 5.2.2 of the Basis of Review will read as follows:

J. Permittee shall conduct dewatering activities in adherence to the following operating plan: (determined based on project specifications)

The last sentence of paragraph C. of Section 5.2.5 of the Basis of Review will read as follows:

The permittee is required to request a permit modification when ~~Reclaimed water is considered available when~~ an agreement has been executed between both parties, the transmission lines are constructed to the project site, and the necessary on-site modifications and authorizations are obtained.

The first sentence of the first paragraph of Section 5.2.6 of the Basis of Review will read as follows:

One of the ~~When warranted, the~~ following Special Conditions shall be added to require monitoring when necessary to ensure the use of water authorized in the permit is not causing harm to the resource, the user, or other existing legal users:

Paragraph E. of Section 5.2.7 of the Basis of Review will read as follows:

E. Within six months of permit issuance, the Permittee shall plug and abandon the following wells in accordance with Chapters 40E-3 or 40E-30, F.A.C.: (individual wells identified based on project specifications).

The last sentence of paragraph F. of Section 5.2.7 of the Basis of Review will read as follows:

This survey shall be submitted for the following wells within six months of permit issuance: (individual wells identified based on project specifications).

The third sentence of paragraph G. of Section 5.2.7 of the Basis of Review will read as follows:

Permittee shall submit step drawdown test information for the following wells to the District within one month of completion of the test: (individual wells identified based on project specifications).

The second sentence of paragraph A. of Section 5.2.8 of the Basis of Review will read as follows:

This survey shall be submitted for the following wells within six months of permit issuance: (individual wells identified based on project specifications).

The first sentence of paragraph D. of Section 5.2.9 of the Basis of Review will read as follows:

D. Permittees, who are dependent on other sources of water supply such as reclaimed water or water sale agreements to meet a portion of their demands, shall include the monthly volumes from all other sources in the report to the District, unless the use of those sources is reported to another state agency, in which case the District will obtain the water use information from said agency.

Paragraph E. of Section 5.2.9 of the Basis of Review will read as follows:

E. Permittee shall maintain records of the calibrated daily withdrawals from each withdrawal facility. These records shall be available for review upon request by District staff. ~~Monthly withdrawals for each withdrawal facility shall be reported to the District quarterly. The water accounting method and means of calibration shall be stated on each report.~~

The first sentence of paragraph E. of Section 5.3 of the Basis of Review will read as follows:

E. Permittee will ~~may~~ be responsible for mitigation to domestic uses, including but not limited to those shown in the District staff report for this permit, in the event that declining water levels result in domestic uses suffering a loss of water supply and the event is confirmed by application of the following factors by District staff.

## AGENCY FOR HEALTH CARE ADMINISTRATION

### Health Care Cost Containment Board

| RULE NOS.: | RULE TITLES: |
|---|---|
| 59E-5.101 | Definitions |
| 59E-5.102 | Florida Hospital Uniform Reporting System |
| 59E-5.103 | Reporting Requirements |
| 59E-5.201 | Prior Year Report Requirements |
| 59E-5.205 | Notice of Violation and Response |
| 59E-5.605 | Public Medical Assistance Trust Fund Assessments |

NOTICE OF WITHDRAWAL

Notice is hereby given that the amendments to the above rules, as noticed in Vol. 28, No. 12, March 22, 2002 and Vol. 28, No. 13, March 29, 2002, Florida Administrative Weekly have been withdrawn.

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Medicaid**

RULE NO.: RULE TITLE:
59G-4.250 Prescribed Drug Services Coverage, Limitations and Reimbursement Handbook

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the handbook incorporated by reference in the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., as published in Vol. 28 No. 8, February 22, 2002, issue of the Florida Administrative Weekly.

Chapter 2, page 2-4, Enrollment Forms.

~~New applications must submit a current pharmacy department inventory. The inventory must be complete, current, and legible, including, but not limited to, all legend drugs and any products that require refrigeration. The inventory must be documented according to the following format from left to right: the quantity by number of packages, the package size, the name of the drug, strength, dosage form and the eleven digit national drug code (NDC) of the product. Each page of the inventory must be numbered and the total number of pages identified. The inventory must include the name and address of the pharmacy, the pharmacy license number issued by the Department of Health, the date the inventory was taken, a statement affirming the truth, accuracy, and completeness of the inventory, the printed name, printed title, Department of Health pharmacist license number, and the original signature of the pharmacist who completed and affirmed the inventory.~~

New applicants must submit a pharmacy department descriptive inventory taken by the pharmacy department manager who must affirm the inventory. The inventory must be complete, current (performed within 90 days of submission), and legible, including, all legend drugs and any products that require refrigeration. The inventory must be documented according to the following format from left to right: the quantity by number of packages, the package size, the name of the drug, strength, dosage form and the eleven digit national drug code (NDC) of the product. Each page of the inventory must be numbered and the total number of pages identified. For Example:

XYZ Pharmacy

| Qty | Package Size | Name/Str./Dosage Form | NDC |
|---|---|---|---|
| 2-1/3 | 100 | Diazepam 5 mg Tabs | 00182-1756-01 |
| 6 | 15 gm | Lotrimin 1% Cream | 00085-0613-02 |
| 1 | 16 oz | Phenergan Syrup | 00008-0231-01 |
| 1 | 10 ml | Humulin N Vial | 00002-8315-01 |

Round to nearest 1/3 bottle.

Page 1 of 10

A cover page must accompany the inventory and must include the name and address of the pharmacy, the pharmacy license number issued by the Department of Health, the date the inventory was taken, a statement affirming the truth, accuracy, and completeness of the inventory, the printed name, printed title, Department of Health pharmacist license number, and the original signature of the pharmacist who completed and affirmed the inventory.

~~Annual inventory records are considered financial records and must be maintained and available to AHCA for five years. Failure to maintain and/or provide annual inventories and purchase invoices will result in immediate cancellation of provider agreements.~~

For new and existing providers, annual inventory records that are kept in the usual course of a provider's business are financial records and must be maintained and available to AHCA for five years.

Chapter 2, page 2-8, Denying Provider Enrollment.

Per Section 409.907(9)(b), F.S., AHCA may deny an applicant's application for enrollment if AHCA finds that it is in the best interest of the Medicaid program to do so, specifying the reasons for denial. AHCA may consider the following factors, as well as any other factor that could affect the effective and efficient administration of the program, including, ~~but not limited to~~ for example, the current availability of medical care, services, or supplies to recipients, taking into account geographic location and reasonable travel time.

Chapter 2, page 2-9, Additional Reasons for Denial.

Per Section 409.907(9), F.S., AHCA may deny enrollment for any factor that could affect the effective and efficient administration of the program, including the following ~~if~~:

- Applicant is not fully operational. Fully operational is determined by~~, but not limited to,~~ the following: a going concern, being properly licensed and in compliance with all current laws, pharmacy department open during established business hours according to license with a pharmacist on duty, sufficient pharmacy department inventory obtained in accordance with Florida law, receiving prescriptions and dispensing medications, established accounts with licensed pharmaceutical wholesalers, and accepting multiple forms of third party payers.

Chapter 2, page 2-10, Additional Reasons for Denial (continued).

- Applicant has no established pharmacy inventory prior to acceptance into the Medicaid program (beginning inventory must be provided in the enrollment package);
- Applicant has a limited or restricted inventory for service in a single area (e.g., inhalation medications) to an extent that the applicant could not serve the average number of recipients for the area;
- Physical site is inaccessible to patients, either able or disabled, or the size and facilities do not meet the legal requirements of space available for the average number of patients attending pharmacies in the area;
- Geographical location is in an area that has sufficient pharmacies to serve the number of recipients in the area, (Section 409.912 (37)(a)4, F.S.);

- Applicant has financial statements that show insolvency, continuing negative net profit or income, or a negative net worth ~~equal to less than the estimated amount billed for one year~~;
- Pharmacy is not providing patient counseling;
- ~~Applicant has no established business or history;~~
- Applicant is not able to demonstrate that they own the real estate or have a valid lease with a security deposit for their business venue;
- Applicant is unable to pass a background check of the pharmacy manager, key personnel, or owners of five percent or more;
- Applicant or affiliated persons has a history of involvement in fraudulent activities or incidents of over-billing or over-payment(s) related to Medicaid, Medicare, or other publicly funded programs;
- Applicant, key personnel, or owners of five percent or more have been involved in wrongful practices as defined by the professional boards for medicine or pharmacy;
- Applicant is unable to demonstrate that their computer system can accept the required recording of data or provide the required reports;
- The pharmacy's hours listed with the Board of Pharmacy (or in the appropriate place as designated by the Board) are proven not to be the actual hours of operation; or

Applicant has failed to respond to the requests by AHCA or the fiscal agent for information.

Chapter 2, Page 2-10, Delete entire section. ~~Appeals of Denied Enrollment Applicants do not have appeal rights, in accordance with Chapter 120, F.S., on being denied enrollment in the Medicaid program.~~

Chapter 2, page 2-12, Delete entire section. ~~Surety Bond~~

~~Effective July 1, 2002, a surety bond is required for each Pharmacy provider for which there has been, within the past five years, any administrative action against the provider or principals of the provider pursuant to Section 409.913, F.S., or Chapter 59G, Florida Administrative Code. This requirement is applicable to future terminations or sanctions of a pharmacy provider.~~

~~Surety bonds required by this policy shall be in an amount "not to exceed $50,000 or the total amount billed by the provider to the program during the current or most recent calendar year, whichever is greater" as specified in Chapter 409.907(7), F.S.~~

~~All new providers are required to obtain and maintain surety bonds for five years. For the purpose of this policy, the term "new providers" shall include new owners resulting from a change of ownership.~~

~~Exemptions to the surety bond include providers without sanctions as described above for the past 5 years or providers that are owned and operated by a government entity.~~

Chapter 2, page 2-21, Add a new section.

Requirements for Prescription Records

All prescription records must be in compliance with Chapters 465 and 893, F.S. and 64B-16, Florida Administrative Code. Specifically, Medicaid requires the following:

Prescription Hard Copy.

The original prescription, physician's order, or monthly documentation signed by the physician or an agent acting at the direction of the physician that validates the prescriber's authorization for continuation of the original prescriber's order must be maintained in its original paper form or as an exact front and back scanned image. The paper document original prescription, physician's order, or monthly documentation that authorizes continuance of the prescriber's order shall be made contemporaneous with the prescriber's order, be physically filed (e.g., in a filing cabinet), be stored, remain under immediate control of the pharmacy provider, be readily retrievable, and furnished as needed or requested. The existence of or storing of data respecting the original prescription, physician's order, monthly documentation that validates the prescriber's authorization for continuance, or dispensing information in a computer database or reports generated thereof, is not sufficient for compliance.

Additional Refills.

The authorization of additional refills on an existing prescription must be noted by either creating a new original prescription, or if legally appropriate, adding the additional authorized refills to the original prescription or prescriber's order by noting at least the date of authorization, number of additional refills, and the prescriber or prescriber's agent authorizing the refills. This notation must be retained on the original prescription hard copy (paper form) or prescriber's order (paper form), or in the computer database and readily retrievable. Adding additional refills without documenting the above information is not sufficient for compliance.

Chapter 2, page 2-27, Relevant Web Sites for Information.

Providers, prescribers, and vendors can find relevant information at web sites for the following entities:

- Department of Health at www.myflorida.com/myflorida/ (select the Department of Health);
- Agency for Health Care Administration at www.myflorida.com/myflorida/ (select AHCA); or
- Bureau of Pharmacy Services at www.myflorida.com/myflorida/ (select AHCA, then Medicaid, and finally the ~~Prescribed Drug~~ Pharmacy Services.

Chapter 5, page 5-11, Diverted Pharmaceuticals Pilot Program.

Effective April 15, 2002, a pilot program will be implemented to address a growing concern of diverted pharmaceuticals in the South Florida area. All Miami-Dade, Broward, Monroe and Palm Beach County pharmacies will be required to perform at least one of the following functions when dispensing prescription drugs to a Medicaid patient:

- Place in pharmacy vial;
- Use a black indelible marker to inscribe a "M" on the out-

side of the original manufacturers packaging;
- Remove the manufacturer's seal~~.~~; ~~or~~
- ~~Repackage items in sealed containers other that the original manufacturer packaging.~~

The pilot program will last 12 months, with a review of data that will analyze costs and utilization at the end of the first nine months. If the pilot is successful in identifying and reducing diverted pharmaceuticals, then the program will be expanded statewide.

Findings from initial audits will be shared with the pharmacy during the audit and the pharmacy will receive additional instruction of dispensing requirements. Pharmacies having deficiencies greater than 10.0% in a first re-audit may be fined in the amount of $1,000 per violation. Pharmacies that have deficiencies of greater than 10.0% in a second re-audit may be terminated.

Failure to comply with the dispensing requirements will result in sanctions as allowed in Section 409.913, Florida Statutes, or Chapter 59G, Florida Administrative Code.

Chapter 7, page 7-1, Drug Prior Authorization – Introduction

There are three programs in place that may require a provider to obtain a prior authorization: the Four Brand Name Drug Limit, the Preferred Drug List, and Clinical Prior Authorization for certain drugs identified to be abused or misused.

Chapter 7, page 7-2, Preferred Drug List (second paragraph).

Drugs on the Florida Negative Formulary, as well as products from drug categories which are exempt by statute, are included on the list to inform clinicians of cost effective choices. However, ~~all family planning drugs,~~ antipsychotics, antidepressants, anticonvulsants and HIV related antiretroviral agents are exempt from prior authorization restrictions. Generic drugs with federal or state pricing limits are included on the PDL.

Chapter 7, page 7-3, Prior Authorization for Four Brand Name Limit and the Preferred Drug List.

The prescriber may request prior authorizations from the four brand name drug limit and the preferred drug list through the ACS Therapeutic Consultation Program.

Prior authorization can be sought by an institutional or community pharmacy for nursing home residents and other institutionalized adults ~~for four brand name exceptions for those drugs listed on the preferred drug list~~ when the four brand limit is exceeded.

Community pharmacies may obtain a prior authorization for a drug exceeding the four brand limit when the drug is on the PDL. Otherwise, a prior authorization for a drug exceeding the four brand limit which is not on the PDL must be sought by the prescriber.

Drugs listed on the preferred drug list are not exempt from the four brand name limit.

Prior authorizations can be obtained by calling the Therapeutic Consultation Program at (877)553-7481 (toll-free). This number is available from Monday through Friday from 8am to 8pm eastern time, Saturday from 10am to 4pm eastern time, and closed on Sundays.

Pharmacies will be reimbursed for the ingredient cost only for a 72-hour emergency supply and only two instances of emergency supplies are permitted for any prescription.

Chapter 7, page 7-3, ACS Therapeutic Consultation Program (last bullet point).

- ~~Drug justification – justification required of the patient's need for the drug~~. Description of the reason for drug selection.

Chapter 7, page 7-4, How Requests are Processed (last paragraph).

Once the required information is received, the exceptions ~~may~~ will be approved for periods of one to twelve months. ACS staff approves ~~or denies~~ prior authorization requests within 24 hours of receipt.

Chapter 7, page 7-4, Add a new section.

How PDL Requests are Processed.

During calls to the Therapeutic Consultation Program, the prescriber will be asked to provide their license identification number, the relevant diagnosis(es) or explanation.

Following the discussion between the prescriber and the clinical pharmacist, if the prescriber would like to continue with the non-PDL drug, the request is granted immediately and approved for 12 months.

If the PA call is made by someone other than the prescriber (office staff, nurse, etc) and if the clinical information is provided then the request will be granted immediately.

If no clinical information is provided then a 30-day PA is granted. A form is then faxed to the prescriber asking them to review the patient's drug profile and PDL alternatives. If the physician elects to continue with the non-PDL drug, then he notes that on the form and faxes it back to the TCP. A 12-month PA is then granted.

Chapter 7, page 7-5, Drugs Requiring a Clinical Prior Authorization.

The following drugs require prior authorization:
- Albumin
- Botox®
- Cytogam®
- Food Supplements
- Growth Hormone for HIV/AIDS Wasting in Adults-Serostim®
- Leukine® (See Neupogen®)
- Myobloc®
- Neupogen® (See Leukine®)
- Neutrexin®
- Nexium®
- Panretin®
- Procrit®

- Proleukin®
- Provigil®
- Regranex® in long term care facilities
- Targretin® Gel and Capsules
- Xenical® Demonstration Project
- Oxycontin®
- Intravenous Immune Globulin (IVIG)

Chapter 7, page 7-5, Title change only, How to Request a Clinical Prior Authorization for Specific Drugs.

Chapter 7, page 7-14, Add a new section.

Justification for Oxycontin®.

Florida Medicaid will allow one strength of Oxycontin® per 30-day period and a maximum of four tablets per day within a 30-day period of the following strengths: 10mg, 20mg, 40mg and 80mg. Doses greater that four tablets per day of these strengths will require prior authorization.

Doses greater than two tablets per day of the 160mg within a 30-day period will require prior authorization.

Changes in strengths within a 30-day period will require prior authorization.

Prior authorizations will be given up to six months depending on medical diagnosis.

Note: Therapy exceeding these limits must be prior authorized by ACS. See Appendix G for a copy of the Prior Authorization Form.

Chapter 7, page 7-14, Add a new section.

Justification for Intravenous Immune Globulin (IVIG).

Effective January 2, 2002, Florida Medicaid will cover IVIG for the following conditions based on specific requirements:

Immunodeficiency Disorders.

- Primary Humoral Immunoldeficiency Syndromes.
  - CVID (Common Variable Immunodeficiency)
  - X-linked Agammaglobulinemia
  - SCID (Severe Combined Immunodeficiency)
  - IgM (X-linked Immunodeficiency with Hyperimmunoglobulin)
  - Wiskott-Aldrich Syndrome
  - Idiopathic Thrombocytopenic Purpura (ITP)
  - Pediatric Human Immunodeficiency Virus (HIV) Infection
- Neurological Disorders
  - Guillian-Barre' Syndrome
  - Relapsing-Remitting Multiple Sclerosis
  - Chronic Inflammatory Demyelinating Polyneuropathy
  - Myasthenia Gravis
  - Polymyositis and Dermatomyositis
- Other Disorders
  - Chronic Lymphocytic Leukemia
  - Bone Marrow Transplantation (BMT)
  - Kawasaki Disease (Mucocutaneous Lymph Node Syndrome)
  - Autoimmune Hemolytic Anemia
  - Autoimmune Neutropenia

Note: These therapies must be prior authorized by ACS. See Appendix G for complete requirements and the Pharmacy – Miscellaneous – Prior Authorization Form.

Chapter 9, page 9-9, Service Limitations, Drugs Requiring Prior Authorization.

In order to be reimbursed by Medicaid, providers must obtain prior authorization before dispensing the following drugs:

- Albumin;
- Botox®;
- Cytogam®;
- Food Supplements;
- Growth Hormone for HIV/AIDS Wasting-Serostim®;
- Intravenous Immune Globulin (IVIG);
- Leukine®
- Myobloc®
- Neupogen®
- Neutrexin®;
- Oxycontin®;
- Panretin®;
- Procrit®;
- Proleukin®;
- Provigil®;
- Regranex® in long term care facilities;
- Targretin® Gel and Capsules;
- Brand name drugs in excess of the four brand-name limit; and
- Other drugs requiring prior authorization by AHCA.

Note: See Chapter 7 for information and procedures to request prior authorization.

Appendix G, page 15, Add new prior authorization form

Florida Medicaid – OxyContin Prior Authorization Form®

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Medicaid**

| RULE NO.: | RULE TITLE: |
|---|---|
| 59G-8.100 | Medicaid Contracts for Prepaid Health Plans |

NOTICE OF CHANGE

Notice is hereby given that changes have been made to the proposed material incorporated by reference in subsection 59G-8.100(17), F.A.C., as published in Vol. 28, No. 13, March 29, 2002 issue of the Florida Administrative Weekly. The changes to the referenced material entitled "Agency for Health Care Administration, Payment Methodology for Participating Medicaid Managed Care Plans, 2002", have been made in response to comments received at and subsequent to the public hearing held on April 22, 2002. The amended text clarifies that capitation rates for providing comprehensive behavioral health programs are added to the capitation rates for HMOs calculated pursuant to this rule; the amended text specifies that the Florida Management Information System maintains the data base for

amounts spent for children served by the Children's Medical Services (CMS); it clarifies that the CMS data base contains the eligibility file for children services by CMS; it modifies the definition of capitation payment; it amends the definition of payment limit; it makes technical changes to the definitions of factors used in the payment limitation calculation, and it amends the definition of third party liability adjustment. No changes have been made to the actual methodology for calculating the capitation payment. A copy of the revised referenced document may be obtained by writing to the Chief of the Bureau of Managed Health Care, 2727 Mahan Drive, Building 1, Mailstop 26, Tallahassee, Florida 32308.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m. – 1:00 p.m., June 25, 2002

PLACE: Agency for Health Care Administration, Building 3, First Floor Conference Room E, 2727 Mahan Drive, Tallahassee, FL 32308

Pursuant to the provision of the American with Disability Act, any person requiring special accommodations to participate in the hearing, please advise the Agency at least 5 calendar days before the hearing by contacting Jane Ross, (850)922-6830.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Elfie Stamm, Bureau of Managed Health Care, 2727 Mahan Drive, Building 1, Mail Stop 26, Tallahassee, Florida 32308, Phone (850)922-6830

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

| RULE NO.: | RULE TITLE: |
|---|---|
| 61-20.504 | Fees |

NOTICE OF CHANGE

Pursuant to subparagraph 120.54(3)(d)1., F.S., notice is hereby given that the following changes have been made to the proposed rule, as published in Vol. 28, No. 13, March 29, 2002, issue of the Florida Administrative Weekly. The changes are in response to comments from the Joint Administrative Procedures Committee and the Board meeting held on May 10, 2002.

Subsection (7) of Rule 61-20.504, F.A.C., shall now read:

61-20.504 Fees.

(7) Renewal fees.

(a) The biennial renewal fee for a licensee renewing as active $100.00.

(b) The biennial renewal fee for a licensee renewing as inactive $100.00

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Julie Baker, Executive Director, Regulatory Council of Community Association Managers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

| RULE NOS.: | RULE TITLES: |
|---|---|
| 61-20.5081 | Continuing Education Provider Approval |
| 61-20.5082 | Continuing Education Course Approval |
| 61-20.510 | Prelicensure Education Provider Approval |

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rules, as noticed in Vol. 28, No. 8, February 22, 2002, Florida Administrative Weekly have been withdrawn.

**DEPARTMENT OF HEALTH**

**Board of Nursing**

| RULE NOS.: | RULE TITLES: |
|---|---|
| 64B9-15.001 | Definitions |
| 64B9-15.002 | Certified Nursing Assistant Authorized Duties |
| 64B9-15.003 | Application for Certification |
| 64B9-15.004 | Eligibility for Certification |
| 64B9-15.005 | Standards for Certified Nursing Assistant Training Programs |
| 64B9-15.006 | Standardized Curriculum |
| 64B9-15.007 | Approval of Certified Nursing Assistant Training Programs |

CORRECTED NOTICE OF PUBLIC HEARING

The Board of Nursing hereby gives notice that there is a change of address at the public hearing on the above-referenced rules to be held on Wednesday, June 12, 2002 at 4:00 p.m.

The Notice of Public Hearing was originally published in Vol. 28, No. 21 of the May 24, 2002 issue of the Florida Administrative Weekly, and the rules were originally published in Vol. 28, No. 15, of the April 12, 2002 issue of the Florida Administrative Weekly. The correct address and telephone number of the public hearing is Embassy Suites Hotel, 1100 S. E. 17th Street, Ft. Lauderdale, Florida 33316, (954)527-2700.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dan Coble, Executive Director, Board of Nursing/MQA, 4052 Bald Cypress Way, Tallahassee, FL 32399

**DEPARTMENT OF HEALTH**

**Board of Orthotists and Prosthetists**

| RULE NO.: | RULE TITLE: |
|---|---|
| 64B14-5.002 | Continuing Education Requirement |

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule In accordance with subparagraph 120.54(3)(d)1., F. S., published in the Vol. 28, No. 3, January

18, 2002, issue of the Florida Administrative Weekly. The changes are in response to comments received from the Joint Administrative Procedures Committee and from comments received at the Board meeting held on April 12, 2002.

The rule shall now read as follows:

64B14-5.002 Continuing Education Requirement.

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

(c) For each biennium ending after May 31, 2001, each licensee's continuing education must include one hour of continuing education on cardiopulmonary resuscitation; one hour on infectious diseases including HIV/AIDS, two hours of continuing education relating to prevention of medical errors which shall include a study of root-cause analysis, error reduction and prevention, and patient safety and two hours on Chapter 456, 468, Part XIV, F.S., and Rule Chapter 64B14, F.A.C. The two hour course relating to the prevention of medical errors shall count toward the total number of continuing education hours required and shall be a course approved by the Board or Department.

(2) through (5)(a) No change.

(b) Courses offered for continuing education by FAOP and those approved by ABC or BCP for their respective professions.

(c) through (d) No change.

(6) through (8) No change.

Specific Authority 468.802, 468.806 FS. Law Implemented 456.024, 456.013, 468.806 FS. History–New 7-1-98, Amended 5-18-00_____.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Orthotists and Prosthetists, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3259

# Section IV
# Emergency Rules

**DEPARTMENT OF LEGAL AFFAIRS**

RULE TITLE: RULE NO.:

Deleting Specified Uses of 1,4-Butanediol From the Substances Scheduled Under Section 893.03, Florida Statutes 2ER02-1

SPECIFIC REASON FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: 1,4-Butanediol was placed on Schedule I of Section 893.03, Florida Statutes, pursuant to Laws of Florida Chapter 2001-57, s. 5, effective July 1, 2001. As a substance listed on Schedule I and as provided in Section 893.01(1)(d), Florida Statutes, the possession in Florida of any material, compound, mixture, or preparation which contains any quantity of 1,4-Butanediol is subject to the appropriate penalties provided in Section 893.13, Florida Statutes. 1,4-Butanediol is not, however, listed as a controlled substance under the provisions of the Code of Federal Regulations as promulgated by the United States Drug Enforcement Administration. As a result, the use of 1,4-Butanediol in manufacturing has not been exempted by the DEA from the penalties that would otherwise adhere to its possession under Section 21 C.F.R. 1308.23, no has it been placed on the list of Exempt Chemical Preparations as found in Section 21 C.F.R. 1308.24. Therefore, under present Florida Law, manufacturers that use 1,4-Butanediol as part of their legitimate manfacturing activities are not able to use the substance in any form insofar as no exemption which would allow for its use in manufacturing exists under Florida law.

1,4-Butanediol has numerous legitimate industrial uses, both as an intermediate for the chemical and textile industries and in the manufacture of polyurethanes, polybutyleneterephthalantes and engineering grade thermoplastics and thermosetting plastics. 1,4-Butanediol is also used in the production of cellular plastics, thermoplastic polyesters, hot-melt adhesives and plasticizers. Thus, unless immediate action is taken to permit the use of 1,4-Butanediol in industrial activities, many legitimate businesses will likely suffer irreparable injury, including but not limited to, severe restrictions on present activities or even forced closure.

The Office of the Attorney General has reviewed the legislative history underlying the addition of 1,4-Butanediol to the list of Schedule I controlled substances set forth in Section 893.03, Florida Statutes. That review has resulted in no evidence that the Legislature intended that 1,4-Butanediol could not be used in industrial, chemical and other manufacturing activities even though possession of 1,4-Butanediol was clearly intended to be banned when its intended use was for human consumption.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: It is apparent that treating 1,4-Butanediol as a controlled substance intended for human consumption or use and therefore banning its use under all circumstances would result in an extreme hardship to numerous legitimate industries with no corresponding benefit to public health and safety. As a result, only by immediately permitting the use of 1,4-Butanediol in industrial, chemical and manufacturing activities can the plainly unintended consequence of dislocating and disrupting entire industries be forestalled.

SUMMARY OF THE RULE: The rule exempts from the prohibitions of Chapter 893 certain legitimate industrial, manufacturing and chemical uses of 1,4-Butanediol.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: John Rimes, Assistant Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, Florida 32399-1050

THE FULL TEXT OF THE EMERGENCY RULE IS: