

Section II
Proposed Rules

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Definition of Instructional Staff
RULE NO.: 6A-1.0501

PURPOSE AND EFFECT: The purpose is to repeal the above rule which includes language that is redundant to Section 1012.01(2), Florida Statutes, which more clearly and thoroughly establishes a definition for instructional personnel. This rule is unnecessary. The effect is a reduction of unnecessary regulation.

SUMMARY: Section 1012.01(2), Florida Statutes, establishes the definition and categories of instructional staff. This rule is not needed; thus, repeal is recommended.

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

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

SPECIFIC AUTHORITY: 228.041(9), 229.053(1) FS.

LAW IMPLEMENTED: 228.041(9) FS.

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

TIME AND DATE: 8:30 a.m., April 20, 2004

PLACE: Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Betty Coxe, Deputy Chancellor, Department of Education, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)245-0420

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.0501 Definition of Instructional Staff.

Specific Authority 228.041(9), 229.053(1) FS. Law Implemented 228.041(9) FS. History--New 7-20-73, Amended 4-19-74, Repromulgated 12-5-74, Formerly 6A-1.501, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Betty Coxe, Deputy Chancellor, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jim Warford, Chancellor K-12, Education, Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 5, 2004

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Noncertificated Instructional Personnel
RULE NO.: 6A-1.0502

PURPOSE AND EFFECT: The purpose of the rule amendment is to clarify that the requirements for employment of instructional personnel who do not hold a valid educator certificate are applicable to Florida public charter schools and that the governing boards of the charter schools shall adopt policies pursuant to this rule for the employment of such noncertificated personnel. Technical changes are also proposed. The effect is a rule that delineates the requirements for charter school governing boards for instructional personnel who do not hold a valid Florida educator certificate.

SUMMARY: The rule is revised to establish requirements and responsibilities for governing boards of charter schools relating to the employment of instructional personnel who possess expert skills or talents but who do not hold educator certification.

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

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

SPECIFIC AUTHORITY: 1002.33(12), 1012.32, 1012.55(1) FS.

LAW IMPLEMENTED: 1002.33, 1012.32, 1012.55 FS.

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

TIME AND DATE: 8:30 a.m., April 20, 2004

PLACE: Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Betty Coxe, Deputy Chancellor, Department of Education, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)245-0420

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.0502 Noncertificated Instructional Personnel.

In each school district there are persons who possess expert skill in or knowledge of a particular subject or talent but do not hold a Florida teaching certificate. These persons constitute an invaluable community resource for the education of the pupils in that district. Each school board or charter school governing board shall adopt such policies as are necessary to ensure that the principals and teachers of that district or charter school may utilize in an appropriate instructional capacity the services of such expert persons in the community. Such persons may serve as a nonpaid volunteer or as a paid member of the instructional staff to render instructional service in the individual's field of

speciality but shall not be required to hold a Florida teaching certificate. The school board or charter school governing board policies for noncertificated instructional personnel shall include, but are not limited to, the following:

(1) Health and age. Health and age requirements shall be the same as those required for certificated instructional personnel.

(2) Employment procedures. Employment procedures shall be the same as those followed for certificated instructional personnel, except that noncertificated instructional personnel shall not be entitled to a contract as prescribed by subsection 6A-1.064(1), FAC.

(3) Personnel records. The personnel records of the district or charter school shall contain information considered necessary by the school board or charter school governing board to establish the speciality of the individual, and a statement of the instructional duties assigned to and performed by such person.

(4) Salary. The official salary schedule for instructional personnel shall include a salary schedule for full-time and part-time employed noncertificated instructional personnel.

(5) Assignment, suspension and dismissal. Procedures for the assignment, suspension, and dismissal of noncertificated instructional personnel shall be adopted and provided in writing to each such employee at the time of employment.

(6) Assessment of performance. Procedures for assessing the performance of duties and responsibilities by all noncertificated instructional personnel shall ensure that each such person adequately performs the duties assigned.

(7) Pupil welfare. Procedures for assuring that each noncertificated instructional person who at any time is expected to assume responsibility for the health, safety, and welfare of pupils possesses, in advance of assuming the responsibility, a clear understanding of state rules and district or charter school rules and policies relevant to instructional responsibilities. When assigned duties require knowledge of rules or policies of a special nature, the policies shall specify that the person occupying a specifically named position is responsible to ascertain that the person possesses, in advance of assuming the duties, the necessary knowledge to perform such duties in a proper and reasonable manner.

(8) Instructional practices and policies. Procedures for assuring that each noncertificated instructional person who at any time is expected to assume responsibility for promoting pupil learning possesses, in advance of assuming this responsibility, a clear understanding of all state instructional practices and policies and district or charter school instructional practices and policies relevant to instructional responsibilities.

(9) In lieu of the requirements herein, the school board or charter school governing board may adopt special policies for those part-time personnel who are employed to teach no more than one hundred sixty (160) clock hours during a fiscal year.

(10) Notwithstanding the provisions of subsection 6A-1.0502(1) through (9), FAC., the school board or charter school governing board may employ noncertificated persons licensed by the State of Florida as occupational therapists or as physical therapists to render services to students in those areas covered by such license. The procedures for employment shall be the same as provided by law for certificated instructional personnel, and each person so employed shall be entitled to a written contract in the form prescribed pursuant to Rule 6A-1.064, FAC. Provided, however, that a noncertificated person employed to render services as an occupational therapist or as a physical therapist may not be assigned duties of an instructional nature that are not covered within the scope of the person's license as defined by law.

(11) Notwithstanding the provisions of Rule 6A-1.0502(1) through (9), FAC., the school board or charter school governing board may employ persons certified as audiologists or speech pathologists under Chapter 468, Part I, Florida Statutes, to render services to students in those areas covered by such certificate of registration. The procedures for employment shall be the same as provided by law for certificated instructional personnel, and each person so employed shall be entitled to a written contract in the form prescribed pursuant to Rule 6A-1.064, FAC. Provided, however, that a noncertificated person employed to render services as an audiologist or speech pathologist may not be assigned duties of an instructional nature that are not covered within the scope of the person's certificate of registration as defined by law.

(12) A noncertificated person employed pursuant to this section shall be accorded the same protection of the laws as that accorded the certificated teacher.

Specific Authority 1002.33(12), 1012.32, 1012.55(1) 229-053(+) FS. Law Implemented 1002.33, 1012.32, 1012.55 234-141, 234-15 FS. History—New 7-20-73, Amended 4-19-74, Repromulgated 12-5-74, Amended 6-9-81, 8-16-82, Formerly 6A-1.502, Amended 5-30-94, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Betty Coxe, Deputy Chancellor, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jim Warford, Chancellor K-12, Education, Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 5, 2004

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

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Definition of Qualified Instructional Personnel
PURPOSE AND EFFECT: The purpose of the rule amendment is to authorize the governing board of a Florida public charter school to approve the appointment of and monitor the

RULE NO.:

6A-1.0503

compliance of a charter school instructional employee who does not hold a valid Florida educator certificate in the subject(s) to which he or she may be assigned to teach. Technical changes are also proposed. The effect is a rule that delineates the requirements and responsibilities of a charter school governing board in the employment of a teacher who is deemed to be out-of-field.

SUMMARY: The rule is revised to establish the criteria and requirements for governing boards of charter schools in employing teachers who do not hold a valid Florida educator certificate in the subject(s) to which the teacher(s) is assigned to teach.

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

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

SPECIFIC AUTHORITY: 1002.33(12), 1012.32, 1012.55(1), 1012.56(6) FS.

LAW IMPLEMENTED: 1002.33, 1012.32, 1012.55, 1012.56 FS.

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

TIME AND DATE: 8:30 a.m., April 20, 2004

PLACE: Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Betty Coxe, Deputy Chancellor, Department of Education, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)245-0420

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.0503 Definition of Qualified Instructional Personnel.

A qualified instructional person is defined as an instructional staff member who meets one (1) of the following conditions:

- (1) Holds a valid Florida educator's certificate with the appropriate coverage as provided for in the Course Code Directory as adopted by reference in Rule 6A-1.09441, FAC., or
- (2) Is a selected noncertificated person employed under the provisions of Rule 6A-1.0502, FAC., or
- (3) Holds a valid Florida educator's certificate with coverage other than that deemed appropriate by subsection (1) and has been approved by the school board or charter school governing board to teach out-of-field after determination that a teacher with appropriate certification coverage is not available. All evidence of such qualifications and approval must be reflected in the individual's official personnel record; provided,

however, that such approval may be granted by the school board or charter school governing board only under one (1) of the following conditions:

(a) The individual is in the first year of employment in the out-of-field assignment and has not been granted, during any preceding year in the district or charter school, approval by either the school board or the charter school governing board ~~the Department~~ to be employed out-of-field in an area for which specific certification is otherwise required, or

(b) The individual has earned the following college credit or inservice training in an approved district add-on program or district approved subject content professional development program:

1. Out-of-field assignment other than ESOL (English to Speakers of Other Languages). A teacher out of field in a subject other than ESOL shall complete at least six (6) semester hours of college credit or the equivalent inservice toward the appropriate certification required in subsection (1) within one (1) calendar year from date of initial appointment to the out-of-field assignment and each calendar year thereafter until all ~~course~~ requirements are completed for the appropriate subject certification;

2. Out-of-field assignment in only ESOL. A teacher out of field in only ESOL shall complete at least three (3) semester hours of college credit or the equivalent inservice toward the ESOL requirements within the first two (2) calendar years from date of initial assignment to a class with limited English proficient (LEP) students and three (3) semester hours or the equivalent inservice during each calendar year thereafter until all ~~course~~ requirements for certification in ESOL are completed; or

3. Out-of-field assignment in ESOL and another subject. A teacher out of field in ESOL and another subject shall complete at least six (6) semester hours of college credit or the equivalent inservice toward the appropriate certification required by subsection (1) within one (1) calendar year from date of initial appointment to the out-of-field assignment and each calendar year thereafter until all ~~course~~ requirements are completed for the appropriate subject certification. The training shall be completed in the following manner: During the first two years, at least three (3) of the required twelve (12) semester hours or the equivalent inservice shall be completed in ESOL strategies. Beginning with the third year and each year thereafter, at least three (3) semester hours or the equivalent inservice shall be completed in ESOL strategies and at least three (3) semester hours in the other out-of-field subject requirements. When either all ESOL or all other out-of-field subject requirements are completed, a teacher shall comply with the schedule specified in subparagraphs (3)(b)1. or 2. of this rule as appropriate until all requirements are completed for both ESOL and the other out-of-field subject.

4. Waivers of college credit or inservice training in an approved district add-on or subject content professional development program may be obtained by one of the following provisions:

a. In lieu of college credit or the equivalent inservice specified in subparagraphs (3)(b)1., 2., or 3. of this rule, an individual shall provide a doctor's statement certifying to medical inability to earn such credit during the prescribed time;

b. In lieu of college credit or the equivalent inservice specified in subparagraph (3)(b)1. of this rule, the district superintendent or charter school chief administrator shall provide a statement certifying to extenuating circumstances beyond the control of the teacher to earn such credit during the prescribed time; or

c. In lieu of college credit or the equivalent inservice specified in subparagraph (3)(b)1. or the criteria in paragraph (3)(a) of this rule, the Commissioner of Education may grant to the district, ~~or~~ individual school sites, or a charter school a waiver of the requirements for a period of one (1) year on a one-time basis. The district superintendent or charter school chief administrator shall, pursuant to school board or charter school governing board approval for such waiver, show extenuating circumstances that create a hardship for the district or teachers in meeting the specified requirements, or

(4) Is a nondegreed teacher of vocational education employed under the provisions of Section 1012.39 231.1725, Florida Statutes. The requirements in Section 231.1725 1012.39(1)(c)2.a. and b., Florida Statutes, must be satisfied prior to initial appointment to the position.

Specific Authority 1002.33(12), 1012.32, 1012.55(1), 1012.56(6) 229.053(1), 231.15(1), 231.17(4) FS. Law Implemented 1002.33, 1012.32, 1012.55, 1012.56 229.053, 231.145, 231.15, 231.17 FS. History--New 4-19-74, Repromulgated 12-5-74, Amended 9-8-76, Formerly 6A-1.503, Amended 10-30-90, 10-3-91, 2-18-93, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Betty Coxe, Deputy Chancellor, Department of Education
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jim Warford, Chancellor K-12, Education, Department of Education
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 5, 2004
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 6, 2004

**DEPARTMENT OF EDUCATION
Commission for Independent Education**

RULE TITLE: Approval of Modifications
PURPOSE AND EFFECT: The Commission proposes a rule amendment to clarify the Commission's contingencies for approval of modifications sought by institutions holding an Annual License.
SUMMARY: The proposed rule amendment requires the submission of proposed catalog revisions.

RULE NO.: 6E-2.008

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

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

SPECIFIC AUTHORITY: 1005.33(2) FS.

LAW IMPLEMENTED: 1005.33(2) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Samuel L. Ferguson, Executive Director, Commission for Independent Education, 2650 Apalachee Parkway, Suite A, Tallahassee, Florida 32301

THE FULL TEXT OF THE PROPOSED RULE IS:

6E-2.008 Approval of Modifications.

(1) No licensed institution shall add new degrees, programs or majors to its offerings or alter any licensed program by more than 20 percent since its last review, change the title of a program or the credential awarded, or discontinue a program, while under a Provisional License. Modifications contemplated by institutions holding an Annual License shall receive approval from the Commission before implementation. Such approval is contingent upon:

- (a) through (d) No change.
- (e) Submission of proposed catalog revisions.
- (2) through (6) No change.

Specific Authority 1005.33(2) FS. Law Implemented 1005.33(2) FS. History--Repromulgated 12-5-74, Formerly 6E-4.01(2)(c), Readopted 11-11-75, Amended 5-7-79, 10-13-83, Formerly 6E-2.08, Amended 5-13-87, 11-29-89, 10-19-93, 4-2-96, 4-11-00, 4-2-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Commission for Independent Education
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Commission for Independent Education
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 22, 2004
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 20, 2004

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

REGIONAL PLANNING COUNCIL

Southwest Florida Regional Planning Council

RULE TITLES:	RULE NOS.:
Name and Scope	29I-1.001
Purpose	29I-1.002
Staff Functions; General Description	29I-1.003
Council Membership and Appointments, Term of Service, Vacancies, Removal from Office	29I-1.004
Officers, Term, Duties, Committees	29I-1.005
Conduct of Meetings	29I-1.006
Budget and Finances	29I-1.007
Responsibilities and Authority	29I-1.008
Amendments	29I-1.009
Information Requests	29I-1.010

PURPOSE AND EFFECT: To repeal the Organization Rule of the Council.

SUMMARY: Repeal Rules 29I-1.001-29I-1.010, F.A.C.

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: 120.536(2) FS.

LAW IMPLEMENTED: 120.536(2) 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:

TIME AND DATE: 9:30 a.m., April 15, 2004

PLACE: Southwest Florida Regional Planning Council, Conference Room, 4980 Bayline Drive, 4th Floor, North Fort Myers, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Mr. David Y. Burr, Executive Director, Southwest Florida Regional Planning Council, 4980 Bayline Drive, 4th Floor, North Fort Myers, Florida 33917

THE FULL TEXT OF THE PROPOSED RULES IS:

29I-1.001 Name and Scope.

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 163.01, 380.06(7)(a),(b), 380.06(8), 380.07 FS. History–New 2-9-76, Formerly 29I-1.01, Repealed.

29I-1.002 Purpose.

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 160.02, 163.02, 380.06(7), 380.07(2) FS. History–New 2-9-76, Amended 7-18-82, Formerly 29I-1.02, Amended 5-7-92, Repealed.

29I-1.003 Staff Functions: General Description.

Specific Authority 120.53(1), 163.01(5) FS. Law Implemented 120.53(1), 163.01(5), 380.06(7)(a),(b), 380.06(8), 380.07 FS. History–New 2-9-76, Formerly 29I-1.03, Amended 5-7-92, Repealed.

29I-1.004 Council Membership and Appointments, Term of Service, Vacancies, Removal from Office.

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 186.501, 186.502, 186.503, 163.01 FS. History–New 2-9-76, Amended 2-20-77, 7-18-82, Formerly 29I-1.04, Amended 5-4-88, 3-1-95, Repealed.

29I-1.005 Officers, Term, Duties, Committees.

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 163.01 FS. History–New 2-9-76, Amended 2-20-77, Formerly 29I-1.05, Repealed.

29I-1.006 Conduct of Meetings.

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 160.02(1),(6), 163.01, 380.06(7),(8), 380.07, 837 FS. History–New 2-9-76, Amended 2-20-77, 7-18-82, Formerly 29I-1.06, Amended 5-7-92, Repealed.

29I-1.007 Budget and Finances.

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 186.502, 163.01 FS. History–New 2-9-76, Amended 7-18-82, Formerly 29I-1.07, Amended 5-4-88, Repealed.

29I-1.008 Responsibilities and Authority.

Specific Authority 120.53(1), 160.02 FS. Law Implemented 120.53(1), 160.02, 380.06(7)(a),(b), 380.06(8) FS. History–New 2-9-76, Amended 7-18-82, Formerly 29I-1.08, Amended 5-7-92, Repealed.

29I-1.009 Amendments.

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 163.01 FS. History–New 2-9-76, 2-20-77, Formerly 29I-1.09, Repealed.

29I-1.010 Information Requests.

Specific Authority 120.53(1) FS. Law Implemented 119.01, 120.53(1), 120.53(2) FS. History–New 2-9-76, Formerly 29I-1.10, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: David Y. Burr, Executive Director

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Southwest Florida Regional Planning Council

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 5, 2004

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facility and Agency Licensing

RULE TITLE:	RULE NO.:
HMO and PHC Penalty Categories	59A-12.0073

PURPOSE AND EFFECT: The purpose and effect of the rule amendment is to correct the rule to comply with statutory authority by removing the language dealing with the Agency having the authority to charge examination or investigative costs in addition to assessing fines.

SUMMARY: The amendment of subsections (6)(a) and (7) of this rule will bring the rule into compliance with statutory authority regarding the assessment of examination or investigative fees by the Agency under Chapter 641, F.S.

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 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: 641.56 FS.

LAW IMPLEMENTED: 641.57 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: 9:00 a.m., April 12, 2004

PLACE: AHCA, 2727 Mahan Drive, Building 1, Room 316, Tallahassee, FL 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Hazel Greenberg, Medical Health Care Program Analyst, Agency for Health Care Administration, Bureau of Managed Health Care, Data Analysis Unit, 2727 Mahan Drive, Mail Stop Code 26, Tallahassee, FL 32308, (850)414-9444

THE FULL TEXT OF THE PROPOSED RULE IS:

59A-12.0073 HMO and PHC Penalty Categories.

(1) through (5)(g) No change.

(6) Mitigating Factors. The following mitigating factors are considered in determining penalties for violations not listed in this rule, and, as to listed violations, the placement of the penalty within the range specified:

(a) Whether corrective activities were actually and substantially initiated (not just planned) and implemented by the HMO or PHC before the violation was noted by or brought to the attention of the Agency and before the HMO or PHC was made aware that the Agency was investigating the alleged violation. Such corrective activities must be implemented to assure that the violation does not recur and ~~may shall~~ include but are not limited to the following: personnel changes, reorganization or discipline, and making any injured party whole as to harm suffered in relation to the violation.

(b) through (d) No change.

(7) Penalty Categories and Fines Assessed. Violations are divided into three categories. Category I violations are the most serious and Category III violations are the least serious. Category I violations are violations that will cause harm to the subscriber; Category II violations are violations that have the potential to cause harm to the subscriber; and, Category III violations are violations that would cause no harm to the subscriber. The Agency will use the factors in subsections (5) and (6) above, and any similar or analogous violation listed in this rule, if applicable, to determine, within the penalty ranges specified below, the fine for each violation within a category. ~~The penalty amount does not include any examination or investigative costs that may be assessed in addition to the fine.~~

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

Specific Authority 641.56 FS. Law Implemented 641.52, 641.511, 641.55, 641.58 FS. History--New 12-9-03, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Hazel Greenberg

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tom Warring, Bureau Chief

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 24, 2004

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

DEPARTMENT OF MANAGEMENT SERVICES

State Technology Office

RULE CHAPTER TITLE: Florida Strategic Information Technology Alliance

RULE CHAPTER NO.: 60DD-3

RULE TITLES: Enterprise Technology Services Desk;

RULE NOS.:

Purpose 60DD-3.001

Definitions 60DD-3.002

Enterprise Technology Services Desk Functions 60DD-3.003

User Responsibilities; Service Agreements 60DD-3.004

User Committee 60DD-3.005

PURPOSE, EFFECT AND SUMMARY: The purpose and effect of this rulemaking is to promulgate a rule on Enterprise Technology Service Desk functions, including user responsibilities and service agreements. The Enterprise Technology Services Desk User Committee is also defined.

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: 282.102(16), 282.23(2), 287.057(24)(d) FS.

LAW IMPLEMENTED: 282.102(3)-(10),(17), 282.23(2), 282.3032, 287.057(24)(d) FS.

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

TIME AND DATE: 9:00 a.m., Monday, April 19, 2004

PLACE: Shared Resource Center, 2585 Shumard Oak Boulevard, Tallahassee, Florida 32399-0950

Pursuant to the Americans with Disabilities Act, persons needing special accommodations to participate in this meeting should advise the State Technology Office at least 2 calendar days before the workshop, by contacting: Julie Shaw, (850)487-3423.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: David Farber, Chief, Enterprise Technologies, State Technology Office, Department of Management Services, 4030 Esplanade Way, Suite 115M, Tallahassee, Florida 32399-0950, (850)488-1320, David.Farber@MyFlorida.com

THE FULL TEXT OF THE PROPOSED RULES IS:

60DD-3.001 Enterprise Technology Services Desk Purpose.

The purpose of Rules 60DD-3.001-3.005, Florida Administrative Code, is to establish the framework for the Enterprise Technology Services Desk, including the basic functions of the Enterprise Technology Services Desk, the responsibilities of the Enterprise Technology Services Desk provider, and the requirements for utilization of the Enterprise Technology Services Desk by service users.

Specific Authority 282.102 (16), 282.23(2), 287.057(24)(d) FS. Law Implemented 282.102(3)-(10), (17), 282.23, 282.3032, 287.57(24) FS. History—New _____.

60DD-3.002 Definitions.

For the purposes of Rules 60DD-3.001-3.005, Florida Administrative Code, the following terms shall be defined as set forth herein:

(1) “Business day” means 7:00 a.m. through 6:00 p.m. EST, Monday through Friday, excluding state holidays (cite statute).

(2) “Case” means a unique End User problem requiring ETSD Services.

(3) “Closed case” means all Tier 0 or Tier 1 cases that have been resolved through the ETSD and all cases escalated to Tiers 2, 3 or 4 that have either been resolved through the ETSD or which have been withdrawn.

(4) “Customer Relationship Manager” means an employee of the State Technology Office assigned to manage the portfolio of one or more Eligible Users.

(5) “Eligible User” means an entity or organization authorized to utilize ETSD Services.

(6) “End User” means individuals authorized by an eligible user to receive and use ETSD Services.

(7) “Enterprise Technology Service Desk Services” or “ETSD Services” means those services provided to Eligible Users via the ETSD as agreed by contract between the State Technology Office and the ETSD Service Provider and in Service Agreements between State Technology Office and Eligible Users.

(8) “Enterprise Technology Services Desk” or “ETSD” means the system through which information technology services are provided to eligible users, as described in Rules 60DD-3.001-3.005, Florida Administrative Code.

(9) “Enterprise Technology Services Desk Provider” or “ETSD Provider” means the entity that operates the Enterprise Technology Services Desk.

(10) “Help Desk Professional” or “ETSD Professional” means an individual who opens, attempts to resolve, and closes Tier 1 cases.

(11) “Knowledge base” means repository of information in an organized and structured format populated with solutions to problems or questions posed by eligible users.

(12) “Knowledge manager” means an individual who provides support for the resolution of Tier 2 through Tier 4 cases.

(13) “Product manager” means an individual employed by the State Technology Office who is responsible for contract management, oversight, strategic direction, and decision making regarding Enterprise Technology Services Desk Services.

(14) “Self Service ePortal” means web-enabled support services that provide for the resolution of cases without human interaction.

(15) “Service Agreement” means a written agreement, executed by the State Technology Office and the User or End User that describes the ETSD Services that will be provided to the User or End User and the specific responsibilities of the State Technology Office, the ETSD Provider, and the User or End User.

(16) “Tier” means the designation of cases, as Tier 0 through Tier 4, with Tier 0 indicating those Cases resolved without the necessity of human interaction between the End User and Tier indicating those Cases that require human support but can be resolved without the input of a Knowledge Manager. Tiers 2 through 4 refer to increasing levels of input and support from the Knowledge Manager in order to resolve the Case.

(17) “User” means an Eligible User that elects to use ETSD Services and that enters into a Service Agreement.

Specific Authority 282.102(16), 282.23(2), 287.057(24)(d) FS. Law Implemented 282.102(3)-(10),(17), 282.23, 282.3032, 287.57(24) FS. History—New _____.

60DD-3.003 Enterprise Technology Services Desk Services.

(1) The Enterprise Technology Services Desk offers information technology services as a part of the Florida Strategic Information Technology Alliance.

(2) The full range of available Enterprise Technology Services Desk Services shall be established by contract between the State Technology Office and the Enterprise Technology Services Desk Provider. However, the Enterprise Technology Services Desk shall include the following services:

- (a) Self Service ePortal;
- (b) Password Management;
- (c) Knowledge Management;
- (d) Case Management;
- (e) Change Management;
- (f) Work Order Management;
- (g) Asset Management;
- (h) Configuration Management;
- (i) Help Desk Professional services for resolution of Tier 1 Cases, including live telephone, e-mail, and facsimile support for eligible users technology services or products;
- (j) Migration of Users to ETSD Services;
- (k) Tracking, logging, and monitoring of Cases;
- (l) Best practice training and certification for helpdesk professionals, field support technicians and knowledge managers.

Specific Authority 282.102(16), 282.23(2), 287.057(24)(d) FS. Law Implemented 282.102(3)-(10),(17), 282.23, 282.3032, 287.57(24) FS. History—New _____.

60DD-3.004 User Responsibilities; Service Agreements.
All users shall:

- (1) Enter into a Service Agreement which shall address:
 - (a) The term of the agreement;
 - (b) The eligible user’s obligation to supply all information needed to support, maintain, and implement ETSD services;
 - (c) Periodic review of information supplied by Eligible User;
 - (d) Service Provider obligations;
 - (e) Procedures relating to changes to any hardware or software that affect technology resources supported by the ETSD;
 - (f) Methods for Eligible User to contact Service Provider, including self service access with prompt to allow case to be opened, telephone contact, voice mail contact, electronic mail contact and facsimile contact;
 - (g) ETSD call procedures;
 - (h) Cost of service;
 - (i) Service level performance standards;
 - (m) Recourse if service level performance standards are not achieved;
 - (k) Procedures for regularly assessing User satisfaction;
 - (l) Case closing procedures;
 - (m) Procedures for operational status reports;
 - (n) Emergency procedures;
 - (o) Any other matters agreed between the ETSD Service Provider and the Eligible User.
- (2) Manage and monitor End User utilization of ETSD Services for Tier 1 Cases;
- (3) Provide support for Cases that are escalated to Tier 2 or for Cases that are escalated to Tier 3;
- (4) Update the Knowledge Base with current data;

- (5) Assume the responsibility for all toll, remote access, or remote connectivity charges relating to access to the ETSD;
- (6) Install and configure workstation software necessary for Tier 2 or Tier 3 support.

Specific Authority 282.102(16), 282.23(2), 287.057(24)(d) FS. Law Implemented 282.102(3)-(10),(17), 282.23, 282.3032, 287.57(24) FS. History—New _____.

60DD-3.005 User Committee.
(1) The State Technology Office shall establish an ETSD User Committee, which shall consist of the following:

- (a) Representatives of the ETSD Provider;
- (b) The ETSD Product Manager;
- (c) Representatives of Eligible Users acceptable to both the STO and the ETSD Provider;
- (d) State Technology Office Project Management Office.
- (2) The User Committee shall provide recommendations and comments to the State Technology Office and the ETSD Service Provider on at least a quarterly basis, relating to:
 - (a) ETSD Operations;
 - (b) Identification of new User and Eligible User requirements;
 - (c) Prioritizing possible ETSD enhancements;
 - (d) User and Eligible User surveying;
 - (e) Communications with Users and Eligible Users; and
 - (f) Any other matters relating to ETSD Services.

Specific Authority 282.102(16), 282.23(2), 287.057(24)(d) FS. Law Implemented 282.102(3)-(10),(17), 282.23, 282.3032, 287.57(24) FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
David Farber, Chief, Enterprise Technologies, State Technology Office
NAME OF SUPERVISOR OR PERSON WHO APPROVED PROPOSED RULE: Foyt Ralston, Acting Chief Information Officer, State Technology Office
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 10, 2004
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 19, 2003

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
RULE TITLE: Exemption of Spouses of Members of Armed Forces from Licensure Renewal Provisions
RULE NO.: 61-20.0025
PURPOSE AND EFFECT: The Council proposes to exempt spouses of members of Armed Forces from licensure renewal provisions.
SUMMARY: The Council specifies the criteria for the exemption of spouses of members of the Armed Forces from licensure renewal provisions.

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

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

SPECIFIC AUTHORITY: 455.02(2), 468.4315(3) FS.

LAW IMPLEMENTED: 455.02(2) FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

61-20.0025 Exemption of Spouses of Members of Armed Forces from Licensure Renewal Provisions.

A licensee who is the spouse of a member of the Armed Forces of the United States and was caused to be absent from the state of Florida because of the spouse's duties with the armed forces shall be exempt from all licensure renewal provisions under these rules during such absence. The licensee must show proof to the Council of the absence and the spouse's military status.

Specific Authority 455.02(2), 468.4315 FS. Law Implemented 455.02(2) FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Julie Malone, Executive Director, Regulatory Council of Community Association Managers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Regulatory Council of Community Association Managers

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

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Florida Land Sales, Condominiums and Mobile Homes

RULE TITLE: RULE NO.:

Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies 61B-23.0028

PURPOSE AND EFFECT: To update the procedural rules governing recall arbitration proceedings conducted under Section 718.112(2)(j), Florida Statutes, and address certain substantive issues regarding recall by written agreement.

SUMMARY: Updates procedural rules governing recall arbitration in condominiums and cooperatives.

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

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

SPECIFIC AUTHORITY: 718.112(2)(j) FS.

LAW IMPLEMENTED: 718.112(2)(j) 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: 10:30 a.m., April 12, 2004

PLACE: Warren Building, Conference Room #B03, 201 W. Bloxham Street, Tallahassee, Florida

THOSE PERSONS WHO CANNOT ATTEND IN PERSON MAY SUBMIT THEIR COMMENTS IN WRITING TO: Sharon A. Elzie, Senior Management Analyst II, Division of Florida Land Sales, Condominiums and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-1030, within 21 days of this notice. Written comments received after the hearing may not be considered.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/hearing/meeting is asked to advise the agency at least 48 hours before the workshop/hearing/meeting by contacting: Sharon A. Elzie, Senior Management Analyst II, (850)488-1631. If you are hearing or speech impaired, please contact the agency by calling 1(800)955-8771.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sharon A. Elzie, Senior Management Analyst II, Division of Florida Land Sales, Condominiums and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32311-1030, (850)488-1631

THE FULL TEXT OF THE PROPOSED RULE IS:

61B-23.0028 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more members of the board of administration shall:

- (a) List by name each board member sought to be recalled;
- (b) Provide spaces by the name of each board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained;

(c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement board members as there are board members subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement members shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are board members sought to be recalled. A space shall be provided and designated for write-in votes. The failure to comply with the requirements of this subsection shall not effect the validity of the recall of a board member or members;

(d) through (f) No change.

(g) The written agreement or a copy shall be served on the board by certified mail or by personal service. Service on the board after 5:00 p.m. on a business day or on a Saturday, Sunday or legal holiday, as prescribed by Section 110.117, Florida Statutes, shall be deemed effective as of the next business day that is not a Saturday, Sunday, or legal holiday. Service of the written agreement on an officer, association manager, board member or the association's registered agent will be deemed effective service on the association. Service upon an attorney who has represented the association in other legal matters will not be effective on the association unless that attorney is a board member, the association's registered agent, or has otherwise been retained by the association to represent it in the recall proceeding. Personal service shall be effected in accordance with the procedures set out in Chapter 48, Florida Statutes, and the procedures for service of subpoenas as set out in Rule 1.410(c), Florida Rules of Civil Procedure; and,

(h) Become an official record of the association upon service upon the board.

(i) Written recall ballots in a recall by written agreement may be reused in one subsequent recall effort. Written recall ballots do not expire through the passage of time, however, written recall ballots become void with respect to the board member sought to be recalled where that board member is elected during a regularly scheduled election.

(j) Written recall ballots may be executed by an individual holding a power of attorney or limited proxy given by the unit owner(s) of record.

(k) Any rescission or revocation of a unit owner's written recall ballot or agreement must be done in writing and must be delivered to the board prior to the board being served the written recall agreements.

(2) No change.

(3) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement within five full business days after service of the written agreement

upon the board. It shall be presumed that service of a written agreement to recall one or more board members shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) No change.

(b) Non-certification of Recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. through 4. No change.

5. A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a board member, regardless of any provision to the contrary in the condominium documents.

6. The failure of the association to enforce a voting certificate requirement in past association elections and unit owner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement.

(4) No change.

(5) After service of a written agreement on the board:

(a) Any written rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

(b) Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(6) through (7) No change.

(8) Computation of Five Full Business Days. In computing the five full business days prescribed by Section 718.112(2)(j)(~~k~~), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in Section ~~110.117 683-01~~, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in Section ~~110.117 683-01~~, Florida Statutes, shall be included.

Specific Authority 718.112(2)(j)5. FS. Law Implemented 718.112(2)(j) FS. History--New 12-20-92, Formerly 7D-23.0028, Amended 12-20-95, 2-19-01,

NAME OF PERSON ORIGINATING PROPOSED RULE:
Karl Scheuerman, Senior Attorney, Division of Florida Land Sales, Condominiums and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-1030

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Diane Carr, Secretary, Department of Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 27, 2004

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Florida Land Sales, Condominiums and Mobile Homes

RULE TITLES:	RULE NOS.:
Scope, Organization, Forms, Purpose, and Title	61B-45.001
Communication with Arbitrator	61B-45.007
Computation of Time; Service by Mail	61B-45.009
Filing; Service of Papers; Signing	61B-45.010
Motions; Temporary or Interim Injunctive or Emergency Relief	61B-45.011
Expedited Procedure for Determination of Jurisdiction	61B-45.016
Answer and Defenses	61B-45.019
Defaults and Final Orders on Default	61B-45.020
Discovery	61B-45.024
Informal Arbitration; Waiver of Formal Hearing	61B-45.031
Notice of Final Hearing; Scheduling; Venue; Continuances	61B-45.033
Withdrawal or Voluntary Dismissal of Petition; Settlement	61B-45.035
Final Orders; Appeals; Stays	61B-45.043
Motions for Rehearing	61B-45.044
Claim for Costs and Attorney's Fees	61B-45.048

PURPOSE AND EFFECT: To update the procedural rules of the Division regarding mandatory nonbinding arbitration proceedings conducted pursuant to Section 718.1255, Florida Statutes. Revises and renumbers certain forms.

SUMMARY: Updates the procedural rules relating to mandatory nonbinding arbitration in condominiums and cooperatives.

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

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

SPECIFIC AUTHORITY: 718.501(1)(f), 718.1255(4) FS.

LAW IMPLEMENTED: 718.1255(4) 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: 10:30 a.m., April 12, 2004

PLACE: Warren Building, Conference Room #B03, 201 W. Bloxham Street, Tallahassee, Florida

THOSE PERSONS WHO CANNOT ATTEND IN PERSON MAY SUBMIT THEIR COMMENTS IN WRITING TO: Sharon A. Elzie, Senior Management Analyst II, Division of Florida Land Sales, Condominiums and Mobile Homes, 1940

North Monroe Street, Tallahassee, Florida 32399-1030, within 21 days of this notice. Written comments received after the hearing may not be considered.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/hearing/meeting is asked to advise the agency at least 48 hours before the workshop/hearing/meeting by contacting: Sharon A. Elzie, Senior Management Analyst II, (850)488-1631. If you are hearing or speech impaired, please contact the agency by calling 1(800)955-8771.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Sharon A. Elzie, Senior Management Analyst II, Division of Florida Land Sales, Condominiums and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32311-1030, (850)488-1631

THE FULL TEXT OF THE PROPOSED RULES IS:

61B-45.001 Scope, Organization, Forms, Purpose, and Title.

(1) through (2) No change.

(3) In order to file a petition for arbitration, a petitioner must use DBPR form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated herein by reference and effective ~~2-17-98~~. In order for someone who is not a member of the Florida Bar to represent a party in a proceeding, the person must file a completed DBPR form ARB ~~6000-002~~ ~~96-002~~, QUALIFIED REPRESENTATIVE APPLICATION, incorporated herein by reference and effective ~~12-10-96~~. An answer to a petition for arbitration must be filed using DBPR form ARB 6000-003, ANSWER TO PETITION, incorporated herein by reference and effective 2-17-98. A request for an expedited determination of whether jurisdiction exists to hear a particular dispute shall be filed on DBPR form ARB ~~6000-004~~ ~~96-004~~, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated herein by reference and effective ~~6-19-96~~. Copies of the forms referenced in these rules may be obtained by writing: Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes, Arbitration Section, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1029; ~~4524 Oak Fair Boulevard, Suite 200, Tampa, Florida 33610-7356; or 1700 N.W. 64th Street, Suite 500, Fort Lauderdale, Florida 33309.~~ All forms may be obtained online at <http://www.state.fl.us/dbpr/lsc/arbitration/index.shtml>

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History--New 4-1-92, Amended 2-2-93, Formerly 7D-45.001, Amended 6-19-96, 12-10-96, 2-17-98, _____.

61B-45.007 Communication with Arbitrator.

(1) While a case is pending and within 15 days of entry of a final order, no party or other person directly or indirectly interested in an arbitration proceeding nor anyone authorized to act on behalf of a party or other interested person shall communicate verbally or in writing in the absence of all parties with an arbitrator or with the Department of Business and Professional Regulation relative to the merits of the arbitration proceeding, threaten an arbitrator, or offer an arbitrator any reward.

(2) No change.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.007, Amended 6-19-96, _____.

61B-45.009 Computation of Time; Service by Mail.

(1) In computing any period of time prescribed or allowed for the filing or service (i.e., mailing) of any document, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, Florida Statutes, in which event the period shall run until the end of the next business day. When the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, “legal holiday” means those days that state government offices are closed.

(2) Additional Time After Service By Mail. Unless otherwise ordered by the arbitrator, during the pendency of a case, when a party is required or permitted by these rules or by order of the arbitrator to do an act within a prescribed period after the service of a document and that document is served by regular U.S. mail, five days shall be added to the prescribed period. No additional time shall be added to the prescribed period if service is made by hand, facsimile transmission, or other electronic transmission. No additional time is added for filing a motion for rehearing that must be filed (e.g., received by the agency) within 15 days of entry of a final order, or a motion for costs and attorney’s fees that must be filed within 45 days of entry of the final order as required by Rule 61B-45.048, Florida Administrative Code. Also, no additional time is added by operation of this rule for the filing of a complaint for trial de novo which must be filed in the courts within 30 days of the date of rendition of a final arbitration order as required by Section 718.1255(4)(k), Florida Statutes.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.009, Amended 6-19-96, _____.

61B-45.010 Filing; Service of Papers; Signing.

(1) through (3) No change.

(4) “Filing” shall mean receipt by the Division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or

facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or other correspondence has actually been filed with the arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the Division received the document. A facsimile copy is not filed within the meaning of this rule when the facsimile copy of the document until the original is received by the Division, unless authorized in advance by the arbitrator. No pleadings shall be faxed that exceed 30 pages in length including attachments. When a party files a facsimile document with the arbitrator, the party shall also provide a facsimile copy to the other party if the fax number is available. If a party desires to receive orders via e-mail, the party must provide its e-mail address to the arbitrator assigned to the case.

(5) through (6) No change.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.010, Amended 9-21-94, 12-20-95, 6-19-96, _____.

61B-45.011 Motions; Temporary or Interim Injunctive or Emergency Relief.

(1) An application to the arbitrator for an order shall be made by motion which shall be made in writing, unless made during a hearing, shall state in detail with particularity the grounds for the relief requested and shall set forth the relief or order sought. The arbitrator shall conduct such proceedings and make such orders as are deemed necessary to dispose of issues raised by motion. Other parties may, within 7 ~~10~~ days of service of a written motion, file serve a written response in opposition to the motion.

(2) A party may, either with the original petition for arbitration, or any time before entry of a final order, file a motion for emergency relief or temporary injunction, which motion or accompanying argument shall demonstrate a clear legal right to the relief requested, that irreparable harm or injury exists or will result, that no adequate remedy at law exists, and that the relief or injunction would not be adverse to the public interest. An evidentiary hearing on a motion for emergency relief shall be scheduled and held as soon as possible after the filing of the motion and supporting petition for arbitration. The hearing will be held upon due notice after the petition for arbitration and motion are served on the opposing party and may be held prior to the filing of the answer.

(3) No temporary injunction shall be entered unless a bond is given by the movant in an amount the arbitrator upon testimony taken deems sufficient, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Formerly 7D-45.011, Amended 6-19-96, 12-10-96, _____.

61B-45.016 Expedited Procedure for Determination of Jurisdiction.

(1) Any party who is in doubt as to whether a controversy falls within the jurisdiction of the division may file with the division a request for expedited determination of jurisdiction by filing a completed DBPR Form ARB 6000-004 96-004, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated in subsection 61B-45.001(3), F.A.C. A request for expedited determination of jurisdiction shall be accompanied by a completed DBPR Form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated in subsection 61B-45.002(3), F.A.C., which shall include the \$50 filing fee provided by Section 718.1255, Florida Statutes.

(2) If the determination of jurisdiction is subject to reasonable dispute, wWithin 10 days of the assignment of a request for relief pursuant to this rule, the arbitrator shall deliver by U.S. mail to all other persons involved with the dispute, a copy of the request for relief, and shall provide such persons an opportunity to serve a response on the issue of whether the dispute falls within the jurisdiction of the division.

(3) No change.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History--New 4-1-92, Amended 2-2-93, Formerly 7D-45.016, Amended 9-21-94, 6-19-96, _____.

61B-45.019 Answer and Defenses.

(1) After a petition for arbitration is filed and assigned to an arbitrator, the respondent will be mailed a copy of the petition by the arbitrator, and will be given an opportunity to answer the petition. Unless a shorter time is ordered by the arbitrator in cases where the health, safety, or welfare of the resident(s) of a community is alleged to be endangered, a A respondent shall file the answer with the arbitrator, and shall mail a copy to the petitioner, within 20 days after receipt of the petition. The answer shall include all defenses and objections, and shall be filed on DBPR form ARB96-003, ANSWER TO PETITION, incorporated in subsection 61B-45.001(3), F.A.C. The answer shall not include a request for relief (counterclaim) against the petitioner. Any claim or request for relief must be filed as a new petition following the procedure provided in Rule 61B-45.017, F.A.C.

(2) The service of any motion under these rules does not alter the period of time in which to file an answer, except that service of a motion in opposition to the petition ~~or a motion contesting the jurisdiction of the division~~ postpones the time for filing of the answer until 20 days after the arbitrator's ruling on the motion. ~~Motions in opposition to a petition include motions to dismiss, motions to strike, and motions for a more definite statement.~~ The following defenses shall be made by motion in opposition to the petition: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4) insufficiency of service of process, (5) failure to state a cause of action, and (6) failure to

join indispensable parties. A motion making any of these defenses shall be made before the filing of the answer. The grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion. Any ground not stated in the motion shall be deemed to be waived except any ground showing that the division lacks jurisdiction of the subject matter may be made at any time.

(3) Every defense in law or fact to a claim for relief in a petition shall be asserted in the answer. Unless otherwise determined by the arbitrator, any ground or defense not stated in the answer shall be deemed to be waived except any ground showing that the arbitrator lacks jurisdiction of the subject matter. Each defense shall be separately stated and shall include an identification of all facts upon which the defense is based. The defense of selective enforcement shall contain all examples of selective enforcement upon which the respondent depends, shall indicate the unit(s) to which each example pertains, shall identify the unit owner(s), how long the violation has existed, and shall indicate whether the board knew of the existence of the violation(s). The defense that the petitioner has failed to provide the pre-arbitration notice required by Section 718.1255, Florida Statutes, is deemed waived if not asserted by motion to dismiss set forth in (2) above or in the answer.

(4) No change.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History--New 4-1-92, Amended 2-2-93, Formerly 7D-45.019, Amended 9-21-94, 6-19-96, _____.

61B-45.020 Defaults and Final Orders on Default.

(1) When a party fails to file or serve any responsive document in the action or has failed to follow these rules or a lawful order of the arbitrator, the arbitrator shall enter a default against the party where the failure is deemed willful, intentional, or a result of neglect. No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them shall be served in the manner provided for service of the original petition for arbitration.

(2) through (3) No change.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History--New 4-1-92, Amended 2-2-93, Formerly 7D-45.020, Amended 6-19-96, 12-10-96, _____.

61B-45.024 Discovery.

(1) No change.

(2) Except as may be modified herein, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. However, a unit owner desiring to obtain copies of official association records for use in the proceeding shall utilize the

owner's right of access to the official records as provided by Section 718.111(12), Florida Statutes, in lieu of formal discovery.

(3) No change.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History--New 4-1-92, Amended 2-2-93, Formerly 7D-45.024, Amended 9-21-94, 6-19-96, _____.

61B-45.031 Informal Arbitration; Waiver of Formal Hearing.

~~Even where disputed issues of material fact exist, the parties may agree to waive a formal hearing, and may agree to the presentation of evidence through depositions, affidavits, and other documentary evidence, and to proceed on the basis of argument and representations of counsel, the parties, or their representatives. In such cases, the parties may ask to be relieved of any requirements of these rules which are unnecessary or unduly onerous. The arbitrator shall provide all parties with an opportunity to submit written statements or legal argument in support of their positions.~~

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History--New 4-1-92, Amended 2-2-93, Formerly 7D-45.031, Amended 6-19-96, Repealed.

61B-45.033 Notice of Final Hearing; Scheduling; Venue; Continuances.

(1) through (2) No change.

(3) In the arbitrator's discretion, a continuance of a hearing may be granted for good cause shown ~~or upon stipulation of all parties~~. Requests for continuance shall be made in writing. Except in cases of emergency, requests for continuance must be made at least 10 days prior to the date noticed for the final hearing.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History--New 4-1-92, Amended 2-2-93, Formerly 7D-45.033, Amended 6-19-96, _____.

61B-45.035 Withdrawal or Voluntary Dismissal of Petition; Settlement.

(1) through (2) No change.

(3) The petitioner may request that the arbitration be dismissed based on a settlement of the dispute. ~~The settlement is not subject to approval by the arbitrator or the division.~~ Except as otherwise provided by subsection 61B-45.048(8), Florida Administrative Code, or by the terms of a settlement agreement, the settlement of a dispute shall not preclude the filing of a petition for costs and attorney's fees pursuant to Rule 61B-45.048, Florida Administrative Code.

(4) No change.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History--New 4-1-92, Amended 2-2-93, Formerly 7D-45.035, Amended 9-21-94, 6-19-96, _____.

61B-45.043 Final Orders; Appeals; Stays.

(1) through (6) No change.

(7) A final order of the arbitrator does not constitute final agency action and therefore is not appealable to the district courts of appeal as otherwise provided by Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Appeals, if taken, shall be by trial de novo as described in subsection (4) above. ~~A final arbitration order entered by an independent arbitrator does not bind the Division or necessarily reflect Division policy.~~

(8) through (9) No change.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History--New 4-1-92, Amended 2-2-93, Formerly 7D-45.043, Amended 9-21-94, 6-19-96, 12-10-96, _____.

61B-45.044 Motions for Rehearing.

(1) No change.

(2) The arbitrator shall not modify the substance of the final order except upon a showing that the decision is based on a clear error of law or fact. A motion that is timely filed pursuant to this rule shall suspend the operation of the final order, and the time for filing a complaint for trial de novo, a motion seeking to recover prevailing party costs and attorney's fees, or a petition for enforcement under Sections 718.1255 and 719.1255, Florida Statutes, shall not commence until the arbitrator either denies the motion or enters an amended final order. An untimely filed motion for rehearing does not toll or otherwise stop the time provided for the filing of a motion for prevailing party costs and attorney's fees or the time provided for the filing of a petition for trial de novo in the courts.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History--New 4-1-92, Amended 2-2-93, Formerly 7D-45.044, Amended 9-21-94, 6-19-96, _____.

61B-45.048 Claim for Costs and Attorney's Fees.

(1) No change.

(2) A prevailing party seeking an award of costs and attorney's fees shall file a motion seeking the award not later than 45 days after rendition of the final order, regardless of whether the underlying final order has been appealed to the courts. The filing of an appeal by trial de novo does not stay the time for filing a motion for costs and attorney's fees. The motion is considered "filed" when it is received by the division. The motion shall:

(a) State the basis for the petition and the total attorney's fees and costs that are claimed;

(b) Specify the hourly rate claimed;

(c) Include an affidavit by the attorney who performed the work that: (1) states the number of years in which the attorney has been practicing law, (2) indicates each activity for which compensation is sought, and (3) states the time spent on each activity. In a case involving multiple issues which are separate and distinct from each other, the affidavit shall identify the specific issue for which each activity was performed; and

(d) If an award of costs is sought, attach receipts or other documents that provide evidence of the costs claimed. The arbitrators shall follow Florida case law and the Statewide Uniform Guidelines For Taxation of Costs In Civil Actions in awarding costs. The cost of personal service by an authorized process server is only a recoverable cost if such personal service is either authorized or required by the arbitrator. The cost of attending a hearing by a court reporter is a recoverable cost; the cost of preparing a transcript of the hearing is only a recoverable cost if the transcript, or a portion thereof, is filed with the arbitrator prior to rendition of the final order.

(3) through (6) No change.

(7) The prevailing party in a proceeding brought pursuant to Section 718.1255, Florida Statutes, is entitled to an award of reasonable costs and attorney's fees. A prevailing party is a party that obtained a benefit from the proceeding and includes a party where the opposing party has voluntarily provided the relief requested in the petition, in which case it is deemed that the relief was provided in response to the filing of the petition. The factors to be considered by the arbitrator in determining a reasonable attorney's fees include the following:

(a) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;

(b) The likelihood that the acceptance of the particular employment will preclude other employment by the attorney.

(c) The fee customarily charged in the locality for similar legal services;

(d) The amount involved and the results obtained;

(e) The time limitations imposed by the client or by the circumstances;

(f) The nature and length of the professional relationship with the client; and

(g) The experience, reputation, and ability of the attorney or attorneys performing the services.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History--New 4-1-92, Amended 2-2-93, Formerly 7D-45.048, Amended 9-21-94, 6-19-96, 2-17-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Karl Scheuerman, Senior Attorney, Division of Florida Land Sales, Condominiums and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-1030

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Diane Carr, Secretary, Department of Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 27, 2004

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Florida Land Sales, Condominiums and Mobile Homes

RULE TITLES:	RULE NOS.:
Scope, Organization, Procedure, and Title	61B-50.101
Initiation of Recall Arbitration	61B-50.105
Computation of Time	61B-50.106
Parties	61B-50.107
Who May Appear; Criteria for Other Qualified Representatives	61B-50.108
Communication with an Arbitrator	61B-50.110
Withdrawal of Petition	61B-50.112
Filing; Service of Papers; Signing	61B-50.115
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Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact	61B-50.119
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Notice of Final Hearing; Scheduling; Venue; Continuances	61B-50.136
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Technical Corrections; Rehearing	61B-50.140
Motions for Attorney's Fees and Costs	61B-50.1405

PURPOSE AND EFFECT: To update the procedural rules governing recall arbitration proceedings conducted under Section 718.112(2)(j), Florida Statutes, and address certain substantive issues regarding recall by written agreement.

SUMMARY: Updates procedural rules governing recall arbitration proceedings in condominiums and cooperatives.

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

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

SPECIFIC AUTHORITY: 718.501(1)(f), 719.106(1)(f) FS.

LAW IMPLEMENTED: 718.112(2)(j),(k), 719.106(1)(f), 718.1255, 719.1255 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: 10:30 a.m., April 12, 2004

PLACE: Warren Building, Conference Room #B03, 201 W. Bloxham Street, Tallahassee, Florida

THOSE PERSONS WHO CANNOT ATTEND IN PERSON MAY SUBMIT THEIR COMMENTS IN WRITING TO: Sharon A. Elzie, Senior Management Analyst II, Division of Florida Land Sales, Condominiums and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-1030, within 21 days of this notice. Written comments received after the hearing may not be considered.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/hearing/meeting is asked to advise the agency at least 48 hours before the workshop/hearing/meeting by contacting: Sharon A. Elzie, Senior Management Analyst II, (850)488-1631. If you are hearing or speech impaired, please contact the agency by calling 1(800)955-8771.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sharon A. Elzie, Senior Management Analyst II, Division of Florida Land Sales, Condominiums and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32311-1030, (850)488-1631

THE FULL TEXT OF THE PROPOSED RULE IS:

61B-50.101 Scope, Organization, Procedure, and Title.

(1) This chapter shall be entitled "The Rules of Procedure Governing Recall Arbitration" and shall govern the arbitration of a recall of one or more members of a board of administration of a condominium or cooperative association. These rules shall be construed to secure the just, speedy and inexpensive determination of every proceeding. Specifically, this chapter applies to all proceedings held pursuant to Sections 718.112(2)(j)(~~k~~) or 719.106(1)(f), Florida Statutes. The provisions of Chapter 682, Florida Statutes, and Chapter 61B-45, Florida Administrative Code, do not apply.

(2) All petitions and other papers filed with the division for recall arbitration pursuant to Sections 718.112(2)(j)(~~k~~) and 719.106(1)(f), Florida Statutes, and these rules, shall be filed at the official headquarters of the Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes, Arbitration Program, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1030.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j)(~~k~~), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.01, Amended 7-27-88, Formerly 7D-50.001, Amended 1-17-93, Formerly 7D-50.101, Amended 1-19-97, _____.

61B-50.105 Initiation of Recall Arbitration.

(1) When one or more members of a board of administration of a condominium or cooperative association have been recalled, the board of administration may initiate a recall arbitration by filing a petition for recall arbitration with the division, as follows:

(a) Recall at a Unit Owner Meeting. Where the unit owners attempt to recall ~~If one or more members of a board are recalled~~ at a unit owner meeting, and the board does not certify the recall, the board shall file a petition for arbitration with the division within five full business days after adjournment of the board meeting at which the board determined not to certify the recall.

(b) Recall by Written Agreement. Where the unit owners attempt to recall ~~If one or more members of a board are recalled~~ by written agreement of a majority of the voting interests, and the board does not certify the written agreement to recall, the board shall file a petition for arbitration with the division within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

(2)(~~e~~) ~~The time periods contained in Sections 718.112(2)(j)(~~k~~) and 719.106(1)(f), Florida Statutes, operate, for purposes of these arbitration rules and not for enforcement purposes under Section 718.501, Florida Statutes, in the manner of statutes of limitation and are therefore subject to equitable considerations. However, where the board fails to timely comply with these rules relating to the filing of the petition for recall arbitration, the board must provide legitimate justification and must demonstrate that its actions or inactions were taken or based in good faith. The board's claims of Mere excusable neglect or the inability to identify defects in the recall effort within the time provided, for or other unremarkable excuses will not be considered as proper defenses suffice. The failure of an association to timely file a petition for recall arbitration within the time limits imposed under these rules or Chapters 718 and 719, Florida Statutes, will result in the certification of the recall and the immediate removal of the board members subject to recall; however, the failure of the association to timely file a petition for recall arbitration will not validate a written recall that is otherwise void at the outset for failing to obtain a majority of the voting interests or is deemed fatally defective for failing to substantially comply with the provisions of Rule 61B-23.0028, Florida Administrative Code.~~

(3) Only the board of an association may file a petition for recall arbitration. Where the board fails to file a petition for recall arbitration as required by these rules and Chapters 718 and 719, Florida Statutes, the unit owners seeking to challenge the board's decision not to file for recall arbitration may file a petition for arbitration pursuant to Sections 718.1255(1)(b) or 719.1255, Florida Statutes.

(4)(~~2~~) Form of Petition. The term "petition" as used in this rule includes any application or other document that which expresses a request for arbitration of a recall of one or more board members. The petition shall comply with the provisions of this rule, and be printed, typewritten or otherwise duplicated in legible form on one side of the paper only with lines double-spaced.

~~(5)(3)~~ All petitions for arbitration of a recall shall be signed by either a duly authorized board member, a member of the Florida Bar, or a qualified representative who has been retained by the board. Each petition shall contain:

(a) The name and address of the association and the number of voting interests;

(b) The name or names of the board member or members who were recalled;

(c) The name and address of the unit owner representative selected, pursuant to subparagraph 61B-23.0027(3)(b)2. or paragraph 61B-23.0028(1)(f), Florida Administrative Code, or subparagraph 61B-75.007(3)(b)2. or paragraph 61B-75.008(1)(f), Florida Administrative Code, to receive pleadings, notices, or other papers on behalf of the recalling unit owners;

(d) A statement of whether the recall was by vote at a meeting of the membership or by written agreement.

~~(e)~~ If the recall was by vote at a meeting, the petition shall state the date of the meeting of the membership and the time the meeting was adjourned; if the recall was by written agreement, the petition shall state the date and time of receipt of the written agreement by the board, and a copy of the written agreement to recall shall be attached to the petition;

~~(f)(e)~~ The petition shall state the date of the board meeting at which the board determined not to certify the recall, and the time the meeting was called to order.

~~(g)(f)~~ A copy of the minutes of the board meeting at which the board determined not to certify the recall;

~~(h)(g)~~ Each specific basis upon which the board based its determination not to certify the recall, including the unit number and specific defect to which each challenge applies. Any specific reason upon which the board bases its decision not to certify the recall that is stated in the petition for recall arbitration, but absent from the board meeting minutes or attachments thereto, shall be ineffective and shall not be considered by the arbitrator. A board member may be recalled with or without cause. The fact that a unit owner may have received misinformation is not a valid basis for rejecting a recall agreement and shall not be considered by the arbitrator.

~~(i)(h)~~ Any relevant sections ~~Complete copies~~ of the bylaws, articles of incorporation, the declaration of condominium, cooperative documents, and rules, including all amendments thereto, as well as any or other documents which are pertinent to the petition; and

~~(j)(i)~~ Any other ~~Other~~ information which the petitioner contends is material.

~~(6)(4)~~ If, during the pendency of a recall arbitration, the unit owners in ~~the that~~ condominium or cooperative attempt another recall effort and the board files another petition for arbitration, the newly filed petition shall be consolidated with the pending case.

~~(7)(5)~~ Upon receipt and review of a petition for arbitration of a recall of one or more board members, the division shall either accept or deny the petition. If the petition is accepted, within 10 days the arbitrator shall serve the respondent unit owners by mailing a copy of the petition and an order allowing answer by United States certified mail to the representative of the recalling unit owners identified in the petition.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j)(~~k~~), 719.106(1)(f) FS. History—New 1-17-93, Formerly 7D-50.105, Amended 11-15-95, _____.

61B-50.106 Computation of Time.

(1) In computing the five full business days prescribed by Sections 718.112(2)(j)(~~k~~), and 719.106(1)(f), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, Florida Statutes, in which event the period shall run until the end of the next business day. Intervening days which are a Saturday, Sunday, or legal holiday as designated in Section 683.01, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday or legal holiday as designated in Section 683.01, Florida Statutes, shall be included.

(2) Additional Time After Service By Mail. Unless otherwise ordered by the arbitrator, during the pendency of a case, when a party is required or permitted by these rules or by order of the arbitrator to do an act within a prescribed period after the service of a paper upon that party and the paper is served by regular United States mail, five days shall be added to the prescribed period. This provision does not apply to the filing of the petition for recall arbitration. No additional time shall be added to the prescribed period if service is made by hand, facsimile transmission, or other electronic transmission.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j)(~~k~~), 719.106(1)(f) FS. History—New 7-1-82, Formerly 7D-50.02, 7D-50.002, Amended 1-17-93, Formerly 7D-50.106, Amended 11-15-95, _____.

61B-50.107 Parties.

(1) Parties in any proceeding conducted in accordance with Section 718.112(2)(j)(~~k~~) or Section 719.106(1)(f), Florida Statutes, are petitioners or respondents.

(2) The A ~~petitioner shall be the is a~~ board of administration of an association ~~that which~~ files a petition for binding arbitration of a recall of one or more members of the board.

(3) The A ~~respondent shall be is~~ the group of members of an association who voted at a meeting, or who executed a written agreement, to recall one or more members of the board.

(4) All parties ~~parties~~ shall receive copies of all pleadings, motions, notices, orders, and other matters filed in arbitration proceedings in the manner provided by Rule 61B-50.115, Florida Administrative Code.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(i)(k), 719.106(1)(f) FS. History—New 7-1-82, Formerly 7D-50.03, Amended 7-27-88, Formerly 7D-50.003, Amended 1-17-93, Formerly 7D-50.107, Amended _____.

61B-50.108 Who May Appear; Criteria for Other Qualified Representatives.

(1) Any person who appears before any arbitrator has the right, at that person's own expense, to be accompanied, represented and advised by a member of the Florida Bar or by a qualified representative who is not a member of the Florida Bar, but who shall demonstrate his or her familiarity with and understanding of the arbitration rules of procedure, and with any relevant portions of Chapters 718 or 719, Florida Statutes, and the rules promulgated by the Division does not need to be an attorney.

(2) If a person wishes to be represented by a qualified non-attorney representative, the arbitrator shall make diligent inquiry of the prospective representative during a non-adversarial proceeding, under oath, to assure that the prospective representative is qualified to appear in the arbitration proceedings and is capable of representing the rights and interests of the person. In lieu of the above, the arbitrator may consider the prospective representative's sworn affidavit setting forth the representative's qualifications.

(3) If the arbitrator is satisfied that the prospective non-attorney representative has the necessary qualifications to render competent and responsible representation of the unit owner's interest in a manner that will not impair the fairness of the proceedings or the correctness of the action to be taken, the arbitrator shall authorize the prospective non-attorney representative to appear in the pending arbitration. The arbitrator shall authorize the prospective non-attorney representative to appear in the pending arbitration proceedings if the arbitrator is satisfied that the prospective non-attorney representative has the necessary qualifications to render competent and responsible representation of the person's interests in a manner which will not impair the fairness of the proceedings or the correctness of the action to be taken.

(4) through (7) No change.

(8) Standards of Conduct.

(a) A representative shall exercise due diligence in the filing and argument of any motion or pleading. All motions or pleadings shall be to ensure that the motions or pleading is filed and argued in good faith.

(b) The signature of a representative upon any motion or pleading shall constitute a certificate that the representative has read the motion or pleading, that to the best of the representative's knowledge it is supported by good faith grounds and that it has not been presented solely for the purpose of delay.

(c) A representative shall advise the client to observe and to obey the law.

(d) A representative shall not:

1. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of the arbitration process;

2. File a pleading, assert a position, conduct a defense, delay an arbitration proceeding or take other action on behalf of the client when such action would serve merely to harass or maliciously injure another;

3. Handle a legal or factual matter which the representative knows or should know that the representative is not competent to handle without associating an attorney or another qualified representative; or handle a legal or factual matter without adequate preparation;

4. State or imply that he or she is able to improperly influence the arbitrator or any agency or public official;

5. Communicate or cause another to communicate with an adverse party regarding matters at issue in the arbitration proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative;

6. Disregard or advise the client to disregard a rule or statute of an agency or a ruling of an arbitrator made in the course of an arbitration proceeding;

7. Conceal or knowingly fail to disclose that which one is bound to reveal by law;

8. Knowingly use perjured testimony or false evidence, or withhold suppress any evidence that the representative or the client should produce;

9. Knowingly make a false statement of law or fact;

10. Advise or cause a person to secret himself or leave the jurisdiction of any agency for the purpose of making the person unavailable as a witness therein; pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case; counsel or advise a witness to provide other than honest testimony.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(i)(k), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.04, Amended 7-27-88, Formerly 7D-50.004, Amended 1-17-93, Formerly 7D-50.108, Amended 2-13-97, _____.

61B-50.110 Communication with an Arbitrator.

(1) While a case is pending, no ~~no~~ party or other person directly or indirectly interested in an arbitration proceeding nor anyone authorized to act on behalf of a party or other interested person shall communicate verbally or in writing in the absence of all parties with an arbitrator or with the Department of Business and Professional Regulation concerning relative to the merits of the arbitration proceeding, threaten an arbitrator, or offer an arbitrator any reward with respect to the conduct or outcome of a proceeding.

(2) No change.

Specific Authority 718.501(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(i)(k), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 1-17-93, Formerly 7D-50.110, Amended 1-19-97, _____.

61B-50.112 Withdrawal of Petition.

(1) A petition for arbitration of a recall may be withdrawn at any time prior to the commencement of the scheduled final hearing. Such withdrawal shall be in writing and directed to the arbitrator. Withdrawal may be made by telephone, but must be subsequently confirmed in writing, or by an order certifying the recall entered by the arbitrator if the petitioner fails to file written notice subsequently.

(2) Withdrawal of a petition for arbitration of a recall shall be with prejudice. If the board withdraws the petition, the recall shall be deemed certified and the board members effectively recalled. The board member or members recalled shall turn over all association records in his or their possession within five full business days after the withdrawal is filed (i.e., received by the division).

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j)(k), 718.1255, 719.106(1)(f), 719.1255 FS. History--New 1-17-93, Formerly 7D-50.112, Amended 11-15-95, _____.

61B-50.115 Filing; Service of Papers; Signing.

(1) Filing. Unless specifically ordered, every pleading or other paper filed in the proceedings, including the initial petition, shall also be served on each party. A pleading or other paper is considered "filed" when it is received by the division.

(2) Method and Proof of Service.

(a) When service is to be made upon a party represented by an attorney or by a qualified representative, service shall be made upon the attorney or representative unless service upon the party is ordered by the arbitrator. Service shall be made by delivering or mailing, by United States mail postage prepaid, a copy of the document to the attorney, representative, or party at that person's last known address.

(b) When the unit owners have not designated a unit owner representative to represent their interest in a recall proceeding or when the unit owner representative cannot be ascertained, the arbitrator shall require that the association post a copy of the petition for recall arbitration and the order allowing answer on the condominium property in a conspicuous location as a means of notifying the unit owners of the recall arbitration.

~~(c)~~ Certificate of Service. When any attorney, representative, or unrepresented party signs a certificate of service such as the following, the certificate of service shall be taken as evidence of service in compliance with these rules:

"I certify that a copy hereof has been furnished to (here insert name or names and address or addresses) by U.S. mail this ___ day of ___, 20___ 19___.

Signature

(3) Number of Copies. Only the original of all pleadings shall be filed with the arbitrator; no copies shall be filed. However, the initial petition for recall arbitration shall be accompanied by one (1) copy for the respondents.

(4) "Filing" shall mean receipt by the Division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or other correspondence has actually been filed with the arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the Division received the document. A facsimile copy is not filed within the meaning of this rule when the facsimile copy of the document until the original is received by the Division, unless authorized in advance by the arbitrator. No pleadings shall be faxed that exceed 30 pages in length including attachments. When a party files a facsimile document with the arbitrator, the party shall also provide a facsimile copy to the other party if the fax number is available. If a party desires to receive orders via e-mail, the party must provide its e-mail address to the arbitrator assigned to the case.

(5) Any pleading or other document received after 5:00 p.m. shall be deemed to be filed as of 8:00 a.m. on the next regular business day.

(6) No change

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j)(k), 718.1255, 719.106(1)(f), 719.1255 FS. History--New 7-1-82, Formerly 7D-50.09, 7D-50.009, Amended 1-17-93, Formerly 7D-50.115, Amended 1-19-97, _____.

61B-50.117 Motions.

An application to the arbitrator for an order shall be made by written motion shall be made in writing, unless made during a hearing. The motion, shall state in detail with particularity the grounds for the relief requested and shall set forth the relief or order sought. The arbitrator shall conduct such proceedings and render make such orders as are deemed necessary to dispose of issues raised by motion. Other parties may, within 7 ~~10~~ business days of service of a written motion, file serve a written response in opposition to the motion.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j)(k), 718.1255, 719.106, 719.1255 FS. History--New 7-1-82, Formerly 7D-50.12, 7D-50.012, Amended 1-17-93, Formerly 7D-50.117, Amended 1-19-97, _____.

61B-50.119 Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.

(1) through (3) No change.

(4) No formal evidentiary hearing as described by Rule 61B-50.131, Florida Administrative Code, shall be conducted for arbitrations determined pursuant to this rule. The arbitrator shall decide the dispute based solely upon the pleadings and evidence filed by the parties.

(5) Any party may move for summary final order whenever there are no disputed issues of material fact. The motion shall be accompanied by supporting affidavits if

necessary. All other parties may, within 7 days of service of the motion, file a response in opposition, with or without supporting affidavits.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j),(k),(t), 718.1255, 719.106, 719.1255 FS. History—New 1-17-93, Formerly 7D-50.119, Amended 2-13-97, _____.

61B-50.120 Informal Arbitration; Waiver of Formal Hearing.

~~Even where disputed issues of material fact exist, the parties may agree to waive a formal hearing, and may agree to the presentation of evidence through depositions, affidavits, and other documentary evidence, and to proceed on the basis of argument and representations of counsel, the parties, or their representatives. In such cases, the parties may ask to be relieved of any requirements of these rules which are unnecessary or unduly onerous. The arbitrator shall provide all parties with an opportunity to submit written statements or legal argument in support of their positions.~~

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(k),(l), 718.1255, 719.106 FS. History—New 1-17-93, Formerly 7D-50.120, Amended 1-19-97, Repealed _____.

61B-50.124 Discovery.

(1) ~~The It is intended that the~~ discovery process shall be used sparingly and only for the discovery of those things ~~that~~ which are necessary for the proper disposition of the petition. Parties may obtain discovery only upon the prior approval of the arbitrator. A motion to conduct discovery shall describe with specificity the subject matter of the discovery and the method(s) by which discovery will be sought. The arbitrator may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

(2) Except as otherwise specified ~~may be modified~~ herein, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. However, a unit owner desiring to obtain copies of official association records for use in the proceeding shall utilize the owner's right of access to the official records as provided by Sections 718.111(12) and 719.104(2), Florida Statutes, in lieu of formal discovery.

(3) No change.

(4) At any time after the filing of the petition for arbitration, the arbitrator may enter an order requiring the parties to submit supplemental information, evidence or affidavits in support of or refuting the reason(s) listed in the petition as grounds for failing to certify the recall.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j),(k),(t), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.15, 7D-50.015, Amended 1-17-93, Formerly 7D-50.124, Amended 1-19-97, _____.

61B-50.127 Subpoenas and Witnesses; Fees.

(1) A subpoena requiring the attendance of witnesses or the production of documents, whether for purposes of discovery or for purposes of a final hearing, may be served by

any person authorized by law to serve process or by any person who is not a party and who is of majority age, as provided in Rule 1.410, Florida Rules of Civil Procedure (1996), or as that rule may subsequently be renumbered. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(2) All witnesses, other than public employees subpoenaed to appear in their official capacity, appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as set forth in Section 92.142, Florida Statutes, or as that statute may subsequently be renumbered. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement; and, in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(3) Any party or any person upon whom a subpoena is served or to whom a subpoena is directed may file a motion to quash or for protective order.

(4) Subpoenas shall be issued from the arbitrator in blank except for the case style, the case number, the name, address and telephone number of the attorney or party requesting issuance of the subpoena and the signature of the arbitrator assigned. Subpoenas shall be completed and served by the party requesting issuance of the subpoenas.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j),(k),(t), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.19, 7D-50.019, Amended 1-17-93, Formerly 7D-50.127, Amended 1-19-97, _____.

61B-50.130 Stenographic Record and Transcript.

(1) Any party wishing to obtain a stenographic record shall make such arrangements directly with the court reporter for such services and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall bear all pay the costs cost of obtaining such a record.

(2) No change.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j),(k),(t), 718.1255, 719.106, 719.1255 FS. History—New 1-17-93, Formerly 7D-50.130, Amended 1-19-97, _____.

61B-50.131 Conduct of Formal Hearing; Evidence.

(1) through (3) No change.

(4) Unless otherwise ordered by the arbitrator, the petitioner shall present its evidence and witnesses. Thereafter, then the respondent may shall present its evidence and witnesses.

(5) Evidence.

(a) An arbitration proceeding is less formal than a court proceeding. The arbitrator shall admit any ~~Any~~ relevant evidence ~~shall be admitted~~ if it is the kind of evidence on which reasonable, prudent persons rely in the conduct of their affairs. Reliable, relevant evidence may be presented by the parties. Facts are to be proven through the testimony testimony

of witnesses under oath at the final hearing and through documents admitted into evidence at the request of a party. Hearsay evidence (i.e., statements not made at the final hearing under oath, used to establish the truth of the matter asserted) may be used to supplement or explain other evidence, but ~~is shall~~ not be sufficient ~~in itself~~ to support a finding, unless the hearsay evidence would be admissible ~~admissible over objection~~ in a court of law civil action. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. Irrelevant and unduly repetitious evidence shall not be admitted into evidence ~~excluded~~.

(b) All exhibits shall be identified as petitioner’s exhibits, respondent’s exhibits, or as joint exhibits. The exhibits and shall be ~~so~~ marked in the order that they are received and made a part of the record.

(c) Documentary evidence may be received in the form of a photocopy.

(6) No change.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j)(~~k~~)(4), 718.1255, 719.106(1)(f), 719.1255 FS. History–New 7-1-82, Formerly 7D-50.22, 7D-50.022, Amended 1-17-93, Formerly 7D-50.131, Amended 1-19-97,_____.

61B-50.136 Notice of Final Hearing; Scheduling; Venue; Continuances.

(1) The arbitrator shall set the time and place for all final hearings. The arbitrator shall serve written notice of the final hearing by regular mail on all parties of record.

(2) All hearings shall be held in the state of Florida. Whenever possible, hearings shall be held in the area of residence of the parties and witnesses or at the place most convenient to all parties as determined by the arbitrator. ~~Hearings shall be held within the state.~~

(3) In the arbitrator’s discretion, a continuance of a hearing shall be granted for good cause shown ~~or upon stipulation of all parties~~. Requests for continuance shall be made in writing. Except in cases of emergency, requests for continuance must be made at least 10 days prior to the date noticed for the final hearing.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j)(~~k~~)(4), 718.1255, 719.106(1)(f), 719.1255 FS. History–New 7-1-82, Formerly 7D-50.24, 7D-50.024, Amended 1-17-93, Formerly 7D-50.136, Amended 1-19-97,_____.

61B-50.139 Final Orders.

(1) Unless waived, a final order shall be entered within 30 ~~45~~ days after any final ~~the~~ hearing, receipt by the arbitrator of the hearing transcript if one is timely filed, or receipt of any post-hearing memoranda, whichever is applicable. The final order shall be in writing and shall include a statement of whether or not the recall was certified. Failure to render a decision within such time period shall not invalidate the decision.

(2) through (3) No change.

(4) A final order certifying the recall of one or more board members takes effect upon the mailing of the final order. As of the moment of mailing, those board members found to be recalled cease to be authorized board members and shall not exercise the authority of the association.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j)(~~k~~)(4), 718.1255, 719.106(1)(f), 719.1255 FS. History–New 7-1-82, Formerly 7D-50.25, 7D-50.025, Amended 1-17-93, Formerly 7D-50.139, Amended 1-19-97,_____.

61B-50.140 Technical Corrections; Rehearing.

(1) No change.

(2) The arbitrator may on his or her own motion initiate entry of a corrected order as described by subsection (1) above within 60 days of the entry of the final order.

(3) No change.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j)(~~k~~)(4), 718.1255, 719.106, 719.1255 FS. History–New 1-17-93, Formerly 7D-50.140, Amended 1-19-97,_____.

61B-50.1405 Motions for Attorney’s Fees and Costs.

No party shall be entitled to recover its costs and attorney’s fees in a recall proceeding initiated pursuant to Sections 718.112(2)(j) or 719.106(1)(f), Florida Statutes.

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Karl Scheuerman, Senior Attorney, Division of Florida Land Sales, Condominiums and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-1030

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Diane Carr, Secretary, Department of Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 27, 2004

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Funeral Directors and Embalmers

RULE TITLE: Inspection Criteria (Funeral Establishments) RULE NO.: 61G8-21.003

PURPOSE AND EFFECT: The Board proposes to require inspectors to verify that the appropriate containers for transport of bodies are available.

SUMMARY: The Board proposes to harmonize the inspection requirements with Rule 61G8-22.002, F.A.C., requiring gasketed metal containers.

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

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

SPECIFIC AUTHORITY: 470.005(3), 470.024(10) FS.

LAW IMPLEMENTED: 470.005(3), 470.024(10) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Juanita Chastain, Executive Director, Board of Funeral Directors and Embalmers, 1940 North Monroe Street, Northwood Centre, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G8-21.003 Inspection Criteria (Funeral Establishments).

The Department shall inspect funeral establishments on the basis of the following:

(1) through (5) No change.

(6) The funeral establishment shall have on site or immediately available sufficient gasketed metal sealed containers of a type required for the transportation of bodies which is adequate to prevent the seepage or emission of offensive fluids or odors.

(7) through (8) No change.

Specific Authority 470.005(3), 470.024(10) FS. Law Implemented 470.005(3), 470.024(10) FS. History--New 2-13-80, Amended 5-21-81, 9-28-83, 3-26-84, Formerly 21J-21.03, Amended 3-30-94, 2-20-95, 3-24-98, 6-14-00, 1-30-02, 4-15-02, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Juanita Chastain, Executive Director, Board of Funeral Directors and Embalmers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: The Board of Funeral Directors and Embalmers

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

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

DEPARTMENT OF HEALTH

Board of Medicine

RULE TITLE: Applications RULE NO.: 64B8-4.009

PURPOSE AND EFFECT: The proposed rule amendment is intended to delete subsection (10) of the rule.

SUMMARY: The proposed rule amendment deletes subsection (10) of the rule regarding application withdrawal.

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

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

SPECIFIC AUTHORITY: 120.53, 456.031, 456.033, 458.309, 458.311, 458.3137 FS.

LAW IMPLEMENTED: 120.53, 456.013(7), 456.031, 456.033, 458.311, 458.3124, 458.313, 458.3145, 458.315, 458.316, 458.3165, 458.317 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Larry McPherson, Jr., Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-4.009 Applications.

(1) through (9) No change.

~~(10) An applicant who has filed an application may withdraw that application without action by the Board so long as there has been no action by or on behalf of the Board scheduling the applicant for a hearing before the Board, its Credentials Committee, or some other special Credentials Committee of the Board or scheduling the application for special consideration by the Board, its Credentials Committee or some other special Credentials Committee and if there has not been a communication by staff, verbally, or in writing, that there is some issue within the application which may give rise to an unfavorable ruling or increased scrutiny by the Board. Once special action has been taken by the staff, the Board, or any of the Board's committees, then an applicant can withdraw the application only with the approval of the Board.~~

Specific Authority 120.53, 456.031, 456.033, 458.309, 458.311, 458.3137 FS. Law Implemented 120.53, 456.013(7), 456.031, 456.033, 458.311, 458.3124, 458.313, 458.3145, 458.315, 458.316, 458.3165, 458.317 FS. History--New 3-31-80, Amended 12-4-85, Formerly 21M-22.09, Amended 9-7-88, 3-13-89, 1-1-92, 2-21-93, Formerly 21M-22.009, Amended 11-4-93, Formerly 61F6-22.009, Amended 11-15-94, 2-15-96, Formerly 59R-4.009, Amended 7-10-01, 1-31-02, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 7, 2004
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 20, 2004

DEPARTMENT OF HEALTH

Board of Optometry

RULE TITLES: RULE NOS.:
Range of Penalties for Administrative Violations 64B13-15.003
Range of Penalties for Patient Care Violations 64B13-15.004

PURPOSE AND EFFECT: Board proposes these amendments to the rules to update the range of penalties and citations.

SUMMARY: The proposed rule amendments increase the penalties for violations of the practice act.

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

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

SPECIFIC AUTHORITY: 456.079 FS.

LAW IMPLEMENTED: 456.079 FS.

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

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

THE FULL TEXT OF THE PROPOSED RULES IS:

64B13-15.003 Range of Penalties for Administrative Violations.

(1) For Minor Administrative Violations the range of penalties are as follows:

(a) First violation – administrative fine of not less than \$ 500.00 nor more than \$3,000.00 \$1,500.00 per count or offense and/or a reprimand.

(b) Second violation – administrative fine of not less than\$ 750.00 nor more than \$5,000.00 \$2,500.00 per count or offense and, if appropriate, a period of probation of not less than 3 months nor longer than 6 months.

(c) Third violation – administrative fine of not less than \$1,500.00 nor more than \$8,000.00 \$4,000.00 per count or offense and, if appropriate, a period of suspension of not less than 6 months nor longer than 12 months.

(2) For Major Administrative Violations the range of penalties are as follows:

(a) First violation – administrative fine of not less than \$1,000.00 nor more than \$4,000.00 \$2,000.00 per count or offense and, if appropriate, a period of probation or suspension of not less than 6 months nor longer than 12 months.

(b) Second violation – administrative fine of not less than \$2,000.00 nor more than \$6,000.00 \$3,000.00 per count or offense and, if appropriate, a period of suspension of not less than 12 months nor more than 18 months.

(c) Third violation – administrative fine of not less than \$3,000.00 nor more than \$10,000.00 \$5,000.00 per count or offense and a period of suspension of not less than 6 months or revocation.

Specific Authority 456.079 FS. Law Implemented 456.079 FS. History--New 2-24-87, Formerly 21Q-15.003, 61F8-15.003, 59V-15.003, Amended 2-7-01,

64B13-15.004 Range of Penalties for Patient Care Violations.

(1) For Minor Patient Care Violations the range of penalties are as follows:

(a) First first violation – administrative fine of not less than \$ 750.00 nor more than \$5,000.00 \$2,500.00 per count or offense and, if appropriate, a period of probation of not less than 6 months nor more than 12 months.

(b) Second second violation – administrative fine of not less than \$1,000.00 nor more than \$6,000.00 \$3,000.00 per count or offense and a period of probation of not less than 12 months nor more than 18 months.

(c) Third third violation – administrative fine of not less than \$2,000.00 nor more than \$10,000.00 \$5,000.00 per count or offense and a period of suspension of not less than 3 months nor more than 12 months.

(2) For Major Patient Care Violations the range of penalties are as follows:

(a) First first violation – administrative fine of not less than \$1,000.00 nor more than \$5,000.00 \$2,500.00 per count or offense and, if appropriate, a period of probation of not less than 12 months nor more than 18 months.

(b) Second second violation – administrative fine of not less than \$2,000.00 nor more than \$10,000.00 \$5,000.00 per count or offense and a period of probation and, if appropriate, a period of suspension of not less than 12 months nor more than 24 months.

(c) Third third violation – administrative fine of not less than \$3,000.00 nor more than \$10,000.00 \$5,000.00 per count or offense and revocation.

Specific Authority 456.079 FS. Law Implemented 456.079 FS. History--New 2-24-87, Formerly 21Q-15.004, 61F8-15.004, 59V-15.004, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Optometry
NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Board of Optometry
DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: January 30, 2004
DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: February 20, 2004

DEPARTMENT OF HEALTH

Board of Optometry

RULE TITLE: Citations
RULE NO.: 64B13-15.009

PURPOSE AND EFFECT: The Board's proposed rule amendment is intended to remove language that is duplicative and to provide a time limit to comply with citations.

SUMMARY: The proposed rule amendment removes duplicate language and specifies time limits to comply with citations.

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

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

SPECIFIC AUTHORITY: 456.077, 463.005 FS.

LAW IMPLEMENTED: 456.077 FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B13-15.009 Citations.

(1) Definitions.

(a) "Citation" means an instrument which meets the requirements set forth in Section ~~465.617, 455-617~~, F.S., and which is served upon a subject for the purpose of assessing a penalty in an amount established by this rule;

(b) No change.

(2) In lieu of the disciplinary procedures contained in Section ~~456.073, 457.073~~, F.S., the Department is hereby authorized to dispose of any violation designated herein by issuing a citation to the subject within six months after the filing of the complaint which is the basis for the citation.

(3) The procedures described herein apply only for an initial offense of the alleged violation. Subsequent violation(s) of the same rule or statute shall require the procedures of Section ~~456.073, 457.073~~, F.S., to be followed. In addition, should an initial offense for which a citation could be issued occur in conjunction with violations not described herein, then the procedures of Section ~~456.621, 457.073~~, F.S., shall apply.

(4) Pursuant to Section 456.077, F.S., the Board sets forth below those violations for which there is no substantial threat to the public health, safety, and welfare; ~~or, if there is a substantial threat to the public health, safety, and welfare, such potential for harm has been removed prior to the issuance of the citation.~~

(a) The Board hereby designates the following as citation violations which shall result in a penalty of two hundred and fifty dollars (\$ 250.00):

1. Failure to include in an advertisement for free or discounted services the statement required by Section 456.062, F.S. The licensee shall come into compliance within fifteen (15) days after receipt of the citation.

2. Failure to conspicuously display a license, entrance sign, and other signs at each office and branch office location as required by Section 463.011, F.S., and Rules 64B13-3.005 and 64B13-3.006, F.A.C. The licensee shall come into compliance within fifteen (15) days after receipt of the citation.

3. Failure to conspicuously display a license at a branch office location as required per Section 463.011, F.S. The licensee shall come into compliance within fifteen (15) days after receipt of the citation.

4. Failure to display license and required practice information as specified in Rule 64B13-3.006, F.A.C. The licensee shall come into compliance within fifteen (15) days after receipt of the citation.

5. Failure to document having obtained the continuing education required by Section 463.007, F.S., and Rule Chapter 64B13-5, F.A.C. In addition to paying the fine, the licensee must complete continuing education hours not documented, plus an additional hour for each hour missed. The licensee shall come into compliance within ninety (90) days after receipt of the citation.

6. Failure to respond to a continuing education audit as required by Rule 64B13-5.001, F.A.C. The licensee shall come into compliance within fifteen (15) days after receipt of the citation.

(b) No change.

(5) No change.

Specific Authority 456.077, 463.005 FS. Law Implemented 456.077 FS. History--New 1-1-92, Formerly 21Q-15.009, 61F8-15.009, 59V-15.009, Amended 3-21-00, 4-17-01, 12-26-01, 5-1-02, 7-15-02, _____.

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 30, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 20, 2004

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE TITLE: Continuing Education for Biennial Renewal RULE NO.: 64B15-13.001

PURPOSE AND EFFECT: The proposed rule amendments are intended to clarify criteria for continuing education.

SUMMARY: The proposed rule amendments delete the requirements for managed care and clarifies additional continuing education criteria.

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

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

SPECIFIC AUTHORITY: 459.005, 459.008(4) FS.

LAW IMPLEMENTED: 456.013(5),(6),(7), 459.008, 459.008(4) FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-13.001 Continuing Education for Biennial Renewal.

(1)(a) Every person licensed pursuant to Chapter 459, F.S., except those licensed as physician assistants pursuant to Section 459.022, F.S., shall be required to complete forty (40) hours of continuing medical education courses approved by the Board in the twenty-four (24) months preceding each biennial renewal period as established by the Department. Seven of the continuing medical education hours required for renewal shall be one hour HIV/AIDS course, one hour Domestic Violence, one hour Risk Management Course, one hour Florida Laws and Rules, one hour on the laws regarding the use and abuses of controlled substances ~~Managed Care Course~~, and two hours Prevention of Medical Errors Course.

(b) No change.

(2) At least twenty (20) of the forty (40) hours of the continuing medical education required under this rule shall be American Osteopathic Association approved Category I-A continuing education related to the practice of osteopathic medicine or under osteopathic auspices.

(3)(a) For purposes of this rule, risk management means the identification, investigation, analysis, and evaluation of risks and the selection of the most advantageous method of correcting, reducing, or eliminating identifiable risks and domestic violence as defined in Section 741.30, F.S.

(b) ~~The seven (7) hours of continuing medical education found in paragraph 64B15-13.001(1)(a), F.A.C., with regard to Risk Management, Florida Laws and Rules, controlled substances and the prevention of medical errors shall be obtained by the completion of live, participatory attendance courses. However the continuing medical education found in paragraph 64B15-13.001(1)(a), F.A.C., with regard to HIV/AIDS, domestic violence, or the alternative end-of-life/palliative care as set forth in subsection (7) of this rule may be obtained by the completion of non-live/participatory attendance as provided in (4) of this rule.~~

~~(c) For purposes for this rule, managed care means a discussion on quality assurance; utilization review; chart documentation; contracting with medical organizations; conflicts with the medical practice act; and ethical, moral and legal issues as it relates to the physician's ability to impact on the patient's health, safety and welfare.~~

(d) through (f) renumbered (c) through (e) No change.

(4) No change.

(5) Home study hours up to a maximum of eight (8) hours per biennium may be utilized toward continuing education requirements for renewal, ~~excluding the seven hours listed in paragraph 64B15-13.001(1)(a), F.A.C.~~ In order to be acceptable, said home study hours must be approved by the AOA, the AMA, the Board, or approved for credit as a college or university extension course with approved grading and evaluation standards.

(6) through (8) No change.

Specific Authority 459.005, 459.008(4) FS. Law Implemented 456.013(5),(6),(7), 459.008, 459.008(4) FS. History--New 10-23-79, Amended 1-29-86, Formerly 21R-13.01, Amended 12-5-89, 4-8-91, 2-16-92, Formerly 21R-13.001, Amended 1-10-94, Formerly 61F9-13.001, Amended 10-25-95, Formerly 59W-13.001, Amended 1-19-98, 6-3-98, 4-14-99, 5-26-02,

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: February 21, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 1, 2003

DEPARTMENT OF HEALTH

Board of Psychology

RULE TITLE: RULE NO.:

Continuing Psychological Education Credit 64B19-13.003

PURPOSE AND EFFECT: The Board proposes to amend the existing rule to address the number of continuing psychological education credits.

SUMMARY: The rule will be revised to address the number of continuing education credits.

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

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

SPECIFIC AUTHORITY: 456.013(7), 490.004(4), 490.0085(4) FS.

LAW IMPLEMENTED: 456.013(7), 490.007(2), 490.0085(1),(3) FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B19-13.003 Continuing Psychological Education Credit.

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

(f) Attainment of diplomate status in a specialty area from the American Board of Professional Psychology, for which ~~thirty-seven (37) thirty-nine (39)~~ continuing psychological education credits, not including the one-hour continuing education course on domestic violence required by Section 456.031, Florida Statutes, and the two-hour continuing education course on the prevention of medical errors required by Section 456.013(7), Florida Statutes, will be allowed only during the biennium during which the diplomate is first awarded;

(g) through (4) No change.

Specific Authority 456.013(7), 490.004(4), 490.0085(4) FS. Law Implemented 456.013(7), 490.007(2), 490.0085(1),(3) FS. History—New 1-28-93, Amended 7-14-93, Formerly 21U-13.0042, Amended 6-14-94, Formerly 61F13-13.0042, Amended 2-8-96, 11-18-96, Formerly 59AA-13.003, Amended 1-10-01, 8-5-01, 5-21-02, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Psychology

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 30, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 10, 2003

DEPARTMENT OF FINANCIAL SERVICES

Division of Workers' Compensation

RULE TITLE: RULE NO.:

Florida Workers' Compensation Medical

Services Billing, Filing and Reporting Rule 69L-7.602

PURPOSE AND EFFECT: This rule provides detailed procedures for provider billing and filing, and insurer reporting of workers' compensation claims, in conformity with Chapter 440, Florida Statutes.

SUMMARY: The rule adopts a new Florida Workers' Compensation Uniform Medical Treatment/Status Reporting Form (DFS-F5-DWC-25) and other forms relating to billing and reporting on workers' compensation medical claims. The rule also establishes billing formats and timeframes, as well as reporting procedures.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Department has considered the regulatory costs of the rule. It is believed that the costs involved are out-weighed by the cost savings and other benefits of the rule.

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: 440.13(4), (16), 440.15(3)(b),(d), 440.185(5),(9), 440.20 (15)(f),(17), 440.525(2), 440.591, 440.593(5) FS.

LAW IMPLEMENTED: 440.09, 440.13(2)(a),(3),(4),(6), (11),(12),(14),(16), 440.15(3)(b),(d), 440.20(6), 440.185(5),(9) 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., April 14, 2004

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed below.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Don Davis, Division of Workers' Compensation, Office of Data Quality and Collection, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4226, (850)413-1711

THE FULL TEXT OF THE PROPOSED RULE IS:

69L-7.602 Florida Workers' Compensation Medical Services Billing, Filing and Reporting Rule Procedures for Non-Hospital Medical Services.

(1) Definitions. As used in this rule:

(a) "Accurately Complete" or "Accurately Completed" means the form submitted contains the information necessary to meet the requirements of Chapter 440, F.S., and this rule "Carrier is defined in Section 440.13(1)(e), Florida Statutes.

(b) "Agency" means the Agency for Health Care Administration as Division is defined in Section 440.02(3)(12), F.S Florida Statutes.

(c) "Billing" means the process by which a health care provider submits a claim to an insurer to receive reimbursement for medical services provided to an injured employee "Emergency services and care" is defined in Section 395.002(9), Florida Statutes.

(d) "Catastrophic Event" means the occurrence of a qualifying event such as a natural disaster, an act of terrorism (including but not limited to cyber terrorism) or a telecommunications failure, in which recovery time will prevent an insurer from meeting the filing requirements of Chapter 440, F.S. and this rule "Physician" is defined in Section 440.13(1)(r), Florida Statutes.

(e) "Charges" means the dollar amount billed "Health care provider" means a physician or any recognized practitioner who provides skilled services pursuant to a prescription or under the supervision or direction of a physician and who has been certified by the division as a health care provider. The term "health care provider" includes a health care institution licensed under Chapter 400, Florida Statutes, but does not include any hospital licensed under Chapter 395, Florida Statutes.

(f) "Charge Master" means a comprehensive coded list developed by a hospital or an ambulatory surgical center representing its usual charges for specific services "Health care facility" means any health care institution licensed under Chapter 400, Florida Statutes, but does not include any hospital licensed under Chapter 395, Florida Statutes.

(g) "Claims Handling Entity" means any insurer, third-party administrator, claim administrator, servicing company, self-serviced self-insured employer or fund, or managing general agent, at any location, who is engaged in the adjusting or processing medical claims or submitting workers' compensation reports to the division.

(h) "Claims Handling Entity Code Number" means the number the division assigns each third party administrator, claims administrator or servicing company.

(i) "Claims Handling Entity File Number" means the number assigned to the claim file by the insurer or insurer agent for purpose of internal tracking.

(j) "Current Dental Terminology (CDT-4)" (CDT) means the American Dental Association reference document containing descriptive terms to identify codes for billing and reporting dental procedures.

(k) "Date Insurer Paid" means the date the insurer or insurer agent mails, transfers or transmits payment to the health care provider.

(l) "Date Insurer Received" means the date that Forms DFS-F5-DWC-9, DFS-F5-DWC-10 (or insurer pre-approved alternate form), DFS-F5-DWC-11, DFS-F5-DWC-90 or the electronic form equivalent is delivered to, and date stamped by, the insurer or insurer agent from a provider.

(m) "Deny" means to determine that no payment is to be made for a specific procedure code or other service, reported by a health care provider to an insurer on a bill.

(n) "Division" means the Division of Workers' Compensation as defined in Section 440.02(14), F.S.

(o) "Disallow" means to determine that no payment is to be made for a specific procedure code or other service reported by a health care provider to an insurer for reimbursement, based on identification of a billing error, inappropriate utilization or over utilization, use of an incorrect billing form, only one line-item billed and the bill has an invalid code, or required information is illegible.

(p) "Electronic Filing" means the computer exchange of medical data from an insurer to the division in the standardized format defined in the Medical EDI Implementation Guide, 2004.

(q) "Electronic Form Equivalent" means the format provided in the Medical EDI Implementation Guide, 2004, to be used when an insurer transmits required data to the division. Electronic form equivalents do not include transmission by facsimile, data file(s) attached to electronic mail, or computer-generated paper-forms.

(r) "Electronically Filed with the Division" means the date an electronic filing has been received by the division and has successfully passed structural and data-quality edits.

(s) "Explanation of Bill Review" (EOBR) means the codes and written explanation of an insurer's reimbursement decision sent to the health care provider.

(t) "Healthcare Common Procedure Coding System National Level II Codes (HCPCS)" (HCPCS) means the Centers for Medicare and Medicaid Services' (CMS) reference document listing descriptive codes for billing and reporting professional services, procedures, and supplies provided by health care providers.

(u) "Health Care Provider" is defined in Section 440.13(1)(h), F.S.

(v) "Hospital" means any health care institution licensed under Chapter 395, F.S.

(w) “ICD-9-CM International Classification of Diseases” (ICD-9) is the U.S. Department of Health and Human Services’ reference document listing the official diagnosis and inpatient-procedure code sets.

(x) “Insurer” is defined in Section 440.02(38), F.S.

(y) “Insurer Agent” means an insurer-authorized vendor or any other entity who performs services on behalf of an insurer for the purposes of meeting the requirements of Chapter 440, F.S., or this rule.

(z) “Insurer Code Number” means the number the division assigns each individual insurer, self-insured employer or self-insured fund.

(aa) “Itemized Statement” means a detailed listing of hospital provided services and supplies, including the quantity and charges for each service or supply.

(bb) “Medical EDI Implementation Guide, 2004” is the Florida Division of Workers’ Compensation’s reference document containing the specific electronic formats required for insurer reporting of medical data to the division.

(cc) “Medically Necessary” or “Medical Necessity” is defined in Section 440.13(1)(l), F.S.

(dd) “NDC number” means the National Drug Code (NDC) number, assigned under Section 510 of the Federal Food, Drug, and Cosmetic Act, that identifies the drug product labeler/vendor, product, and trade package size.

(ee) “Paper-Form Filed with the Division” means the date a paper document is accurately completed, postmarked and mailed pre-paid to the Department of Financial Services as a required filing under this rule.

(ff) “Physician” is defined in Section 440.13(1)(q), F.S.

(gg) “Physician’s Current Procedural Terminology (CPT®)” (CPT) means the American Medical Association reference document (HCPCS Level I) containing descriptive terms to identify codes for billing and reporting medical procedures and services.

(hh) “Principal Physician” means the treating physician responsible for the oversight of medical care, treatment and attendance rendered to an injured employee, to include recommendation for appropriate consultations or referrals.

(ii) “Report” means any form related to medical services rendered, in relation to a workers’ compensation injury, that is required to be filed with the division under this rule.

(jj) “UB-92, National Uniform Billing Data Element Specifications as Adopted by the Florida State Uniform Billing Committee” (UB-92 manual) is the reference document providing billing and reporting completion instructions for the Form DFS-F5-DWC-90 (HCFA-1450/UB-92).

(2) Forms for Medical Billing, Filing and Reporting Emergency Services and Care.

(a) Form DFS-F5-DWC-9 (CMS-1500 Health Insurance Claim Form, Rev. 12/90), Form DFS-F5-DWC-10 (Statement of Charges for Drugs and Medical Supplies Form, Rev. 2004),

Form DFS-F5-DWC-11 (American Dental Association Dental Claim Form, Rev. 2002), Form DFS-F5-DWC-25 (Florida Workers’ Compensation Uniform Medical Treatment/Status Reporting Form, 2004) and Form DFS-F5-DWC-90 (HCFA-1450 Hospital Uniform Bill/UB-92, Rev. October 2003) and completion instructions for these forms are hereby incorporated by reference into this rule. In all cases in which a health care provider provides emergency services and care, the health care provider shall notify the carrier by the close of the third business day after providing such emergency services and care. If the emergency services and care results in admission of the employee to a health care facility, the health care provider shall notify the carrier of same within the 24 hours after initial treatment; or if the carrier is not open for business within that 24 hour period, then within the next 24 hour period of the time that the carrier is open for business.

1. A copy of the Form DFS-F5-DWC-9 can be obtained from the CMS web site: <http://cms.hhs.gov/forms/>. Completion instructions can be obtained from the DFS/DWC web site: <http://www.fldfs.com/WC/forms.html#7>.

2. A copy of the Form DFS-F5-DWC-10 and completion instructions can be obtained from the DFS/DWC web site: <http://www.fldfs.com/WC/forms.html#7>.

3. A copy of the Form DFS-F5-DWC-11 can be obtained by contacting the American Dental Association. Completion instructions can be obtained from the DFS/DWC web site: <http://www.fldfs.com/WC/forms.html#7>.

4. A copy of the Form DFS-F5-DWC-25 can be obtained from the DFS/DWC web site: <http://www.fldfs.com/WC/forms.html#7>.

5. A copy of the Form DFS-F5-DWC-90 can be obtained from the CMS web site: <http://cms.hhs.gov/forms/>. Completion instructions can be obtained from the DFS/DWC web site: <http://www.fldfs.com/WC/forms.html#7>.

(b) In lieu of submitting a Form DFS-F5-DWC-10, when billing for drugs or medical supplies, alternate billing forms are acceptable if The health care provider shall maintain or be able to generate a written record of the above communications, including:

1. An insurer has approved the alternate billing form(s) prior to submission by a health care provider, Date; and

2. The form provides all information required on the Form DFS-F5-DWC-10. Forms DFS-F5-DWC-9, DFS-F5-DWC-11 or DFS-F5-DWC-90 shall not be submitted as an alternate form. Time; and

3. Identity of person sending the communication; and

4. Identity of person or entity receiving the communication; and

5. The mode or method of communication; and

6. The substance of the communication.

(3) Materials Adopted for Reference. The following publications are incorporated by reference herein: Medical bills submitted under the Health Care Provider Reimbursement

Schedule, the Ambulatory Surgical Center Reimbursement Schedule, or the Work Hardening or Pain Program Reimbursement Schedule, which schedules are contained within the manuals adopted by reference in Rules 69L-7.020, 69L-7.100 and 69L-7.900, F.A.C., respectively, shall comply with the requirements of this rule.

(a) UB-92, National Uniform Billing Data Element Specifications as Adopted by the Florida State Uniform Billing Committee (Rev. February 2004) Responsibilities of Health Care Providers.

1. ~~Form DWC 8, known as "Notification of Initial Treatment," shall be furnished by the physician, but not by other health care providers, to the carrier within three business days following the injured employee's first treatment. This notice, which may be furnished by facsimile transmission, shall contain the injured employee's identifying information, the date of first visit, preliminary diagnosis, and initial plan of treatment, the injured employee's work status and date of next appointment, the physician's name and DBPR identification number.~~

2. ~~Providers of medical services shall submit to the carrier a properly completed bill, form DWC 9, known as "Health Insurance Claim Form," or form DWC 11, known as "Dental Health Claim Form," as follows:~~

a. ~~Within 15 calendar days following the first treatment, accompanied by all medical notes, reports or records.~~

b. ~~At least every 21 calendar days thereafter for follow up treatment.~~

e. ~~Within 21 calendar days following the date of maximum medical improvement.~~

(b) The Florida Workers' Compensation Medical EDI Implementation Guide, 2004. The Medical EDI Implementation Guide, 2004 can be obtained from the DFS/DWC web site: http://www.fldfs.com/WC/edi_med.html. Responsibilities of Carriers.

1. ~~Carriers shall accept, date stamp on the document front side upon receipt, and within 45 calendar days of receipt pay or deny a legible and complete medical services bill.~~

2. ~~Carriers shall submit the billing form, DWC 9 or DWC 11, to the Division within 30 calendar days, after the bill has been paid. The filing of bills includes the filing of bills for "lost time" and "medical only" cases.~~

3. ~~Carriers shall retain any attachment submitted with a DWC 9 or DWC 11, and shall not file any attachment with the Division unless specifically requested.~~

(c) The Healthcare Common Procedure Coding System National Level II Codes (HCPCS), Centers for Medicare and Medicaid Services, Copyright 2003, American Medical Association.

(d) The Physician' Current Procedural Terminology (CPT®), Copyright 2003, American Medical Association.

(e) The Current Dental Terminology (CDT-4), Fourth Edition, Copyright 2002, American Dental Association.

(f) The ICD-9-CM International Classification of Diseases, 9th Revision, Clinical Modification, Copyright 2003, American Medical Association.

(4) Health Care Provider Responsibilities Pharmacy and Medical Supplier Bills.

(a) Insurers and providers shall utilize only the Form DFS-F5-DWC-25 for physician reporting of the injured employee's medical treatment /status, and. Any other reporting forms may not be used in lieu of or supplemental to the Form DFS-F5-DWC-25. Responsibilities of Pharmacists and Medical Suppliers.

1. The Form DFS-F5-DWC-25 does not replace physician notes, medical records or division-required medical billing reports. All pharmacists and medical suppliers who furnish drugs or other medical supplies to an injured worker under the provisions of Chapter 440, Florida Statutes, shall bill the carrier on form DWC 10, known as "Statement of Charges for Drugs and Medical Supplies," or on the pharmacist/medical suppliers' usual billing form. Pharmacist/medical suppliers' usual billing form shall contain all the information required on the DWC-10 and shall not be used for billing purposes until approved by the Division.

a. Required information for pharmacists and medical suppliers includes:

i. The employer's name and address; and

ii. The injured employee's name and social security number; and

iii. The date of accident; and

iv. The carrier's name and address if the employer is not self-insured; and

v. The carrier's case file number, if known; and

vi. The name and address of the pharmacy or other supplier; and

vii. The date of the billing; and

viii. The total charges of billing form; and

ix. The identity of the pharmacist or medical supplier.

b. Required information for pharmacists billing for prescribed drugs includes: dispensing date, new or refill, prescription number, medication name and strength, National Drug Control (NDC) number, quantity dispensed, number of days supplied, reason for use of non-generic drug when applicable, prescribing physician's name and DBPR license number, and usual charge for each medication billed.

e. Required information for pharmacists or medical suppliers billing for medical supplies includes: description of the product or supply, quantity, name(s) of prescribing physician(s) and DBPR license number(s), purchase date and usual charge for each item billed.

2. All information submitted on physician notes, medical records or division-required medical billing reports must be consistent with information documented on the Form DFS-F5-DWC-25. Pharmacists and medical suppliers shall use

the applicable Florida Workers' Compensation Reimbursement Manual for instructions in the completion of the pharmacy and medical supply bills.

3. Pharmacists and medical suppliers shall submit a bill within 30 calendar days of the date the service was provided.

(b) Special Billing Requirements Responsibilities of Carriers.

1. When anesthesia services are billed on a Form DFS-F5-DWC-9, completion of the form must include the CPT code and the "P" code (physical status modifier), which correspond with the procedure performed, in Field 24D. Anesthesia health care providers shall enter the date of service and the 5-digit qualifying circumstance code, which corresponds with the procedure performed, in Field 24D on the next line. if applicable Carriers shall accept, date stamp upon receipt and within 30 calendar days of receipt pay or deny a legible and complete pharmacy or medical supplier bill.

2. When an Advanced Registered Nurse Practitioner (ARNP) provides services as a Certified Registered Nurse Anesthetist, he/she shall bill on a Form DFS-F5-DWC-9 for the services rendered and enter his/her Florida Department of Health license number in Field 33, regardless of the employment arrangement under which the services were rendered, or the party submitting the bill. Carriers shall submit the DWC-10 or other billing form or invoice containing the required information in their case file to the Division within 30 calendar days after the bill has been paid.

3. When a licensed physician or licensed non-physician healthcare provider, including physician assistant or ARNP (not providing an anesthesia-related service) renders direct billable services for which reimbursement is sought from an insurer, he/she shall enter his/her Florida Department of Health license number in Field 33 on the Form DFS-F5-DWC-9, regardless of the employment arrangement under which the services were rendered or the party submitting the bill.

4. For hospital billing, the following special requirements apply:

a. Inpatient billing – hospitals shall, in addition to filing a Form DFS-F5-DWC-90, attach an itemized statement with charges based on the facility's Charge Master.

b. Outpatient billing:

I. Hospitals shall enter the CPT, HCPCS, or unique workers' compensation code (provided in the Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2004), in Locator 44 on the Form DFS-F5-DWC-90, to bill treatments.

II. Hospitals shall enter the date of service on Form DFS-F5-DWC-90, in Locator 45, for outpatient billing.

III. Hospitals shall bill supplies by filing a Form DFS-F5-DWC-90 and attaching an itemized statement with charges based on a facility's Charge Master if there is no line item detail shown on the Form DFS-F5-DWC-90.

5. Licensed physician assistants and certified first nurse assistants who provide surgical assistance on procedures with codes permitting an assistant surgeon-physician shall bill on a Form DFS-F5-DWC-9 entering the CPT code(s) plus modifier(s), which represent the service(s) rendered, in Field 24D, and must enter their Florida Department of Health license number in Field 33.

6. Ambulatory Surgical Centers (ASCs) shall bill on a Form DFS-F5-DWC-9.

7. Federal Facilities shall bill on their usual form.

8. Dental Services.

a. Dentists shall bill for services on a Form DFS-F5-DWC-11.

b. Oral surgeons shall bill for oral and maxillofacial surgical services on a Form DFS-F5-DWC-9. Non-surgical dental services shall be billed on a Form DFS-F5-DWC-11.

9. Pharmaceutical and Medical Supplies.

a. Pharmacists and medical suppliers shall bill on a Form DFS-F5-DWC-10 or on an insurer pre-approved alternate form. Forms DFS-F5-DWC-9, DFS-F5-DWC-11 or DFS-F5-DWC-90 shall not be submitted as an alternate form.

b. Pharmacists shall complete Field 9, on a Form DFS-F5-DWC-10, by entering the word "COMPOUND" when medicinal drugs are compounded and the formulation prescribed is not commercially available.

c. Dispensing physicians shall bill on a Form DFS-F5-DWC-9 when supplying commercially available medicinal drugs (commonly known as legend or prescription drugs) and shall enter the NDC number in Field 24D. When administering or supplying injectable drugs the physician shall bill on a Form DFS-F5-DWC-9 and enter the appropriate HCPCS "J" code in Field 24D.

d. Dispensing physicians shall complete Field 24D, on a Form DFS-F5-DWC-9, by entering the unique workers' compensation code 96371 when medicinal drugs are compounded and the formulation prescribed is not commercially available.

e. Dispensing physicians shall bill by entering code 99070 in Field 24D, on a Form DFS-F5-DWC-9, when supplying over-the-counter drugs and shall submit an invoice indicating the name, dosage, package size and cost of the drug.

f. Physicians and other licensed health care providers providing medical supplies shall bill on a Form DFS-F5-DWC-9 and attach an invoice indicating the cost of the supply, including shipping and handling, and taxes, where applicable, shall be submitted with the Form DFS-F5-DWC-9.

g. Health care providers rendering health care services reimbursable under workers' compensation, whose billing requirements are not otherwise specified in this rule, shall bill on their invoice or business letterhead.

(c) Bill Completion.

1. Bills shall be legibly and accurately completed by all health care providers, regardless of location or reimbursement methodology, as set forth in this paragraph.

2. Billing elements required by the division to be completed by a health care provider are as follows:

a. Physician and Non-Physician/Certified Provider Billing – Form DFS-F5-DWC-9.

(I) Field 1a Injured employee's social security number or division-assigned number (obtained from the Insurer).

(II) Field 2 Injured employee's name: Last, First, Middle initial, if applicable.

(III) Field 14 Date of current accident, illness or injury.

(IV) Field 16 Dates injured employee is unable to work, as applicable.

(V) Field 21(1) Diagnosis of primary injury or illness (Include decimal in ICD-9 code, as applicable).

(VI) Field 21 (2-4) Additional diagnoses (Include decimal in ICD-9 code, as applicable).

(VII) Field 24A Date(s) of service: 'From' and 'To' date. Multiple dates of service are billable on a single line only if the dates are consecutive. If there is a single date of service, enter the same date in both 'From' and 'To' fields.

(VIII) Field 24B Place of service (as listed in the CPT manual).

(IX) Field 24D Procedure, service or supply code (CPT, CDT-4, HCPCS, NDC or unique workers' compensation code plus modifier, as required for reimbursement).

(X) Field 24E Diagnosis code reference numbers: '1', '2', '3', '4' refer to corresponding diagnoses listed in Field 21 (1, 2, 3, 4).

(XI) Field 24F Total dollar charges for units billed per line.

(XII) Field 24G Number of days, hours, units, or quantity of drug or supply must be entered in whole numbers. Total length of anesthesia service time must be entered in minutes.

(XIII) Field 25 Federal tax identification number.

(XIV) Field 32 Address where services were rendered including zip code.

(XV) Field 33(PIN#) License number of the health care provider rendering direct billable service(s): shall enter their Florida Department of Health provider license or other facility number assigned by the professional regulatory board, licensing authority or state regulatory agency.

(A) Work Hardening/Pain Programs enter "WC" for required alpha characters (i.e. WC3#####).

(B) Ambulatory Surgical Centers enter "ASC" for required alpha characters (i.e. ASC### or ASC#####).

(C) Independent Laboratories enter "IL" for required alpha characters (i.e. IL8000##### or IL80000##### or IL800000#####).

(D) Advanced Registered Nurse Practitioners enter "ARNP" for required alpha characters (i.e. ARNP##### or ARNP##### or ARNP#####).

(E) Radiology or Other Facilities (providing only the technical component) enter "XX" for required alpha characters and 99999 for required numeric characters (i.e. XX99999).

b. Pharmaceutical/Medical Supplier Billing – Form DFS-F5-DWC-10.

(I) Form DFS-F5-DWC-10 Section 1 - Fields required to be completed by Pharmacy and Medical Supply providers:

(A) Field 1 Injured employee's name: Last, First, Middle Initial, if applicable.

(B) Field 2 Injured employee's social security number or division-assigned number (obtained from the insurer).

(C) Field 3 Date of current accident, injury or illness in MM/DD/CCYY format.

(II) Form DFS-F5-DWC-10 Section 2 – Fields required to be completed by pharmacy providers only:

(A) Field 6 Medication/drug name and strength.

(B) Field 7 Number of tablets, capsules, suppositories, milliliters of liquid, grams of ointment or units of injectable medication.

(C) Field 8 Estimated number of days that medication will last according to prescription dosage and administration instructions.

(D) Field 9 National Drug Code number: manufacturer number, item number, package number; enter "COMPOUND" if a compounded drug is dispensed.

(E) Field 10 Pharmacy's internal number assigned to the prescription.

(F) Field 15 Pharmacy's usual charges for the drug. When field 13 is coded, enter the usual charges for the generic equivalent.

(III) Form DFS-F5-DWC-10 Section 3 – Fields required to be completed by Medical Supplier or Pharmacy providing medical supplies:

(A) Field 16 Description or name of item supplied; quantity and size, when applicable.

(B) Field 17 Prescriber's license number assigned by the professional regulatory board or licensing authority.

(C) Field 18 Purchase date in MM/DD/CCYY format.

(D) Field 19 Medical supplier's usual charge for item(s) supplied.

(IV) Form DFS-F5-DWC-10 Section 4 – Fields required to be completed by Pharmacy and Medical Supply providers:

(A) Field 20 Total charges appearing on this statement.

(B) Field 22 Date pharmacy or medical supplier submits statement to insurer for payment in MM/DD/CCYY format.

(C) Field 23 Pharmacist's license number assigned by professional regulatory board or licensing authority.

(D) Field 24 Pharmacy's or medical supplier's federal employer identification number.

c. Dental Billing – Form DFS-F5-DWC-11.

(I) Field 20 Injured employee's name: Last, First, Middle initial, if applicable.

- (II) Field 8 Injured employee's social security number or division-assigned number (obtained from the insurer).
- (III) Field 51 Federal tax identification number.
- (IV) Field 55 Dentist's Florida Department of Health license number (i.e. DN#### or DN#####).
- (V) Field 38 Place of treatment (check appropriate box):
 - (A) Office.
 - (B) Hospital.
 - (C) Extended Care Facility.
 - (D) Other.
- (VI) Field 56 Address where services were rendered, including zip code.
- (VII) Field 46 Date of current accident, injury or illness.
- (VIII) Field 24 Date treatment/service performed.
- (IX) Field 29 'Procedure Code' Procedure, service or supply code (CPT, CDT-4 or HCPCS 'D' code).
- (X) Field 31 Total dollar charges per line item.
 - d. Hospital Billing – Form DFS-F5-DWC-90 (Hospitals are to use the UB-92 manual for billing guidelines).
- (I) Locator 1 Hospital's location zip code.
- (II) Locator 4 Type of bill.
- (III) Locator 5 federal tax identification number.
- (IV) Locator 6 Date statement covers period from/through.
- (V) Locator 12 Injured employee's name: Last, First, Middle initial, if applicable.
- (VI) Locator 17 Admission date.
- (VII) Locator 18 Admission hour.
- (VIII) Locator 19 Type of Admission/Visit.
- (IX) Locator 21 Discharge hour, if applicable.
- (X) Locator 32 Date of accident, injury or illness.
- (XI) Locator 38 Insurer name, address and location zip code.
- (XII) Locator 42 Revenue code.
- (XIII) Locator 44 CPT, HCPCS or unique workers' compensation code and modifier(s), as required for reimbursement.
- (XIV) Locator 45 Date of Service required for outpatient billing.
- (XV) Locator 46 Number of service units.
- (XVI) Locator 47 Total dollar charges billed by revenue code.
- (XVII) Locator 60A Injured employee's social security number or division-assigned number (obtained from the insurer).
- (XVIII) Locator 67 Principal diagnosis code (ICD-9 code).
- (XIX) Locators 68-75 Other diagnosis codes (ICD-9 codes), as applicable.
- (XX) Locator 79 Procedure coding method.
- (XXI) Locator 80 Principal procedure code, as applicable.

- (XXII) Locator 81(A, B, C, D, E) Other procedure codes, as applicable.
- (XXIII) Locator 82 Attending physician's Florida Department of Health license number.
 - 3. An insurer can require a health care provider to complete additional data elements that are not required by the division on Forms DFS-F5-DWC-9 or DFS-F5-DWC-11.
 - (d) Provider Bill Submission/Filing and Reporting Requirements.
 - 1. All medical claim forms related to services rendered for a compensable injury shall be submitted by a health care provider to the insurer as a requirement for billing.
 - 2. Medical claim form(s) or bill(s) may be electronically filed by a health care provider to the insurer provided the insurer agrees.
 - 3. Billing shall be filed with an insurer according to the following requirements:
 - a. Health Care Providers (excluding hospitals):
 - Within 30 calendar days of initial or additional service or treatment and accompanied by required documentation that supports medical necessity. This requirement includes Pharmacies, Medical Suppliers, and Ambulatory Surgical Centers.
 - b. Hospitals:
 - (I) Within 30 calendar days following emergency room or initial outpatient treatment.
 - (II) Within 30 calendar days of an injured employee's discharge from an in-patient hospital stay or follow-up outpatient treatment.
 - (5) Insurer Responsibilities ~~Other Health Care Treatment Bills.~~
 - (a) An insurer is responsible for meeting its obligations under this rule, regardless of any business arrangements, contracts or subcontracts entered into by an insurer with an insurer agent responsibilities of Nursing Homes and Home Health Agencies.
 - 1. Nursing homes and home health agencies shall submit to the carrier a properly completed bill on their usual billing form. This form shall contain the injured employee's name, social security number, and date of accident and be sent as follows:
 - a. Within 45 calendar days after admission or the first service is provided; and
 - b. At least every 30 calendar days thereafter until such time as the injured employee is discharged; and
 - e. Within 21 calendar days of final service.
 - 2. Home health agencies shall submit documentation of each visit billed with their usual billing form.

(b) At the time of authorization for medical service(s), an insurer shall notify a health care provider of additional requirements that are necessary for reimbursement in excess of the requirements set forth in this rule Responsibilities of Other Authorized Health Care Providers or Facilities.

1. Other authorized health care providers or facilities shall submit to the carrier a properly completed bill on their usual billing form. This billing form shall contain the injured employee's name, social security number and date of accident and must be sent as follows:

a. Within 15 calendar days following the first treatment or admission.

b. At time intervals designated by the carrier for follow up treatment.

c. Within 21 calendar days following the final treatment.

2. Federal Facilities. Federal facilities are exempt from all billing guidelines and shall submit their charges for services rendered on their usual billing form.

(c) At the time of authorization for medical service(s) an insurer shall inform an out-of-state health care provider of the specific billing and submission requirements of this rule.

Responsibilities of Carriers.

1. Carriers shall accept, date stamp on the document front side upon receipt, and within 45 calendar days of receipt pay or deny a legible and complete bill.

2. Carriers shall retain all bills in the category of "other health care treatment bills" and shall not file them with the Division unless specifically requested.

(d) Insurers and providers shall utilize only the Form DFS-F5-DWC-25 for physician reporting of injured employee's medical treatment /status, and any other reporting forms may not be used in lieu of or supplemental to the Form DFS-F5-DWC-25.

(e) Required data elements on Forms DFS-F5-DWC-9, DFS-F5-DWC-10, DFS-F5-DWC-11, and DFS-F5-DWC-90, for both medical only and lost-time cases, shall be filed with the division within 45 calendar days of insurer payment, adjustment and payment, disallowance or denial. This 45 calendar day requirement includes initial submission, and correction and re-submission of all errors identified in the Claims Processing Reports.

(f) An insurer shall be responsible for the accurately completed required data filed with the division, pursuant to the Medical EDI Implementation Guide, 2004 and sub-paragraph (4)(c)2. of this rule.

(g) When an injured employee does not have a social security number or division-assigned number, the insurer must contact the division via information provided on the following website: <http://www.fldfs.com/WC/organization/odgc.html> (under Records Management) to obtain a division-assigned number prior to submitting the report to the division.

(h) An insurer shall attach an accurately completed cover sheet to each paper-form batch submitted to the division.

(i) An insurer must report to the division the procedure, diagnosis or modifier code(s) or amount(s) charged, as billed by the health care provider.

(j) An insurer shall date stamp Forms DFS-F5-DWC-9, DFS-F5-DWC-10 (or insurer pre-approved alternate form), DFS-F5-DWC-11, DFS-F5-DWC-90 or date stamp the electronic form equivalent with the date insurer received.

(k) An insurer shall return any bills to the provider, with a written explanation, when: services are billed on an incorrect billing form; an invalid code is used and is the only line-item billed; or required information is illegible or not provided.

(l) An insurer shall pay, adjust and pay, disallow or deny billed charges within 45 calendar days from the date insurer received, pursuant to Section 440.20(2)(b), F.S.

(m) An insurer, when reporting paid medical claims data to the division, shall report the actual dollar amount paid to the health care provider or reimbursed to the employee. On disallowed charges, the dollar amount should be reported as \$0.00.

(n) An insurer, filing electronically, shall submit to the division the Explanation of Bill Review (EOBR) code(s), relating to the adjudication of each line item billed and:

1. Maintain the EOBR in a format that can be legibly reproduced, and

2. Use the EOBR codes and descriptors as follows:

a. 01 Services not authorized, as required.

b. 02 Services denied as not related to the compensable work injury.

c. 03 Services related to a denied work injury: Form DFS-F2-DWC-12 on file with the division.

d. 04 Services billed are listed as not covered or non-covered ("NC") in the applicable reimbursement manual.

e. 05 Documentation does not support the level, intensity or duration of service(s) billed. (Insurer must specify to the provider.)

f. 06 Location of service(s) is not consistent with the level of service(s) billed.

g. 07 Reimbursement equals the amount billed.

h. 08 Reimbursement is based on the applicable reimbursement schedule.

i. 09 Reimbursement is based on the contracted amount.

j. 10 Reimbursement is based on charges exceeding the stop-loss point.

k. 11 Reimbursement is based on insurer re-coding. (Insurer must specify to the provider.)

l. 12 Charge(s) are included in the per diem reimbursement.

m. 13 Reimbursement is included in the allowance of another service. (Insurer must specify procedure to the provider.)

n. 14 Hospital itemized statement not submitted with billing form.

o. 15 Invalid procedure code. (Use when other valid procedure codes are present.)

p. 16 Documentation does not support that services rendered were medically necessary.

q. 17 Required supplemental documentation not filed with the bill. (Insurer must specify required documentation to the provider.)

r. 18 Duplicate Billing: Service previously paid, adjusted and paid, disallowed or denied on prior claim form or multiple billing of service(s) billed on same date of service.

s. 19 Other: Unique EOBR code description. Use of EOBR code "19" is restricted to circumstances when a listed EOBR code does not explain the reason for adjustment, disallowance or denial of payment. When using EOBR code "19", an insurer must include the specific explanation of the code and maintain a standardized EOBR code description list.

(o) An insurer shall make available to the division and to the Agency, upon request and without charge, a legibly reproduced copy of Forms DFS-F5-DWC-9, DFS-F5-DWC-10 (or insurer pre-approved alternate form), DFS-F5-DWC-11, DFS-F5-DWC-25, DFS-F5-DWC-90, supplemental documentation, proof of payment, EOBR and/or standardized EOBR code "19" description list.

(p) An insurer shall submit to the health care provider an Explanation of Bill Review, utilizing the EOBR codes listed above, including the insurer name and specific insurer contact information.

(6) Insurer Medical Report (Electronic Format or Paper-form) Filing To The Division Bills Prepared by Billing Services.

(a) Effective February 14, 2005, all required medical reports shall be electronically filed with the division by all insurers. In meeting this requirement an insurer shall comply with the following implementation schedule, as applicable: Responsibilities of the Authorized Health Care Provider. Any health care provider using a billing service shall comply with all applicable sections of this rule.

1. Insurers who are electronically filing any medical reports with the division, as of the effective date of this rule, must complete a test transmission and be approved by the division for production transmission that meets the requirements set forth in the Medical EDI Implementation Guide, 2004 according to the following schedule:

a. July 1 through August 13, 2004, implementation of the test transmission to production transmission processes for all electronic form equivalents, will include insurers or insurer agents with names beginning with the letters A through E.

b. August 16 through September 30, 2004, implementation of the test transmission to production transmission processes for all electronic form equivalents, will include insurers or insurer agents with names beginning with the letters F through Z.

2. Insurers who are not electronically filing any medical reports with the division, as of October 1, 2004, must complete a test transmission and be approved by the division for production transmission that meets the requirements set forth in the Medical EDI Implementation Guide, 2004 according to the following schedule:

a. October 1 through November 12, 2004 implementation of the test transmission to production transmission processes for all electronic form equivalents will include insurers with division-assigned insurer code numbers 102 through 538 or insurer agents with names beginning with A through D – and that are submitting for multiple carrier numbers.

b. November 15 through December 31, 2004 implementation of the test transmission to production transmission processes for all electronic form equivalents will include insurers with division-assigned insurer code numbers 539 through 7999 or insurer agents with names beginning with E through S and that are submitting for multiple carrier numbers.

c. January 1 through February 11, 2005 implementation of the test transmission to production transmission processes for all electronic form equivalents will include insurers with division-assigned insurer code numbers 8000 through 9999 or insurer agents with names beginning with T through Z and that are submitting for multiple carrier numbers.

(b) ~~Special Conversion to Electronic Reporting Responsibilities of the Billing Service. The form used for billing completed by the billing service shall comply with all applicable sections of this rule.~~

1. Insurers or insurer agents who have implemented electronic filing of any medical reports with the division within 120 days prior to the effective date of this rule shall be scheduled for test transmission to production transmission processes, for all electronic form equivalents, to comply with requirements set forth in the Medical EDI Implementation Guide, 2004, beginning January 1 through February 11, 2005.

2. The Division may approve insurers or insurer agents that volunteer complete test transmission to production transmission processes earlier than the designated schedule denoted above. Each voluntary insurer or insurer agent shall have six weeks to complete test transmission to production transmission processes, for all electronic form equivalents, to comply with requirements set forth in the Medical EDI Implementation Guide, 2004.

(c) Required data elements shall be submitted in compliance with the instructions and formats as set forth in the Medical EDI Implementation Guide, 2004. ~~Responsibilities of Carriers.~~

~~1. Carriers shall accept, date stamp on the document front side upon receipt, and pay or deny a legible and complete bill in accordance with all applicable sections of this rule.~~

~~2. Carriers shall retain the billing form or submit to the Division in accordance with all applicable sections of this rule.~~

(d) The division will notify the insurer on the Claim Processing Report of the corrections necessary for rejected medical reports to be "electronically filed with the division". An insurer shall correct and re-file all rejected medical claim reports to meet the filing requirements of paragraph (5)(e) of this rule.

(e) Catastrophic events resulting in data-transmission or total system failure after February 14, 2005 may qualify an insurer to file paper-forms to meet division-reporting requirements for a period not to exceed 30 calendar days. Prior to insurer initiation of paper-form filing, written approval must be obtained from the Division's Office of Data Quality and Collection, 200 E. Gaines Street, Tallahassee, Florida 32399-4226.

(f) Between the effective date of this rule and February 14, 2005 required medical reports may be paper-form filed with the division by an insurer as follows:

1. With the insurer code number accurately and legibly entered in the upper-right corner on the form.

2. With the date insurer paid legibly stamped on the front of the form. Payments of \$0.00 are valid amounts on disallowed charges.

3. With the required data elements as set forth in record layout sections of the Medical EDI Implementation Guide, 2004. An insurer shall submit to the division the listed information, legibly entered on the paper-form, as follows:

a. Form DFS-F5-DWC-9.

I. "Procedure, Service or Supply Code" (as paid by the insurer, if different from billed code) – entered in Field 24D₁ without obscuring the billed code;

II. "Procedure, Service or Supply Code Modifier" (as paid by the insurer, if different from billed modifier) – entered in Field 24D₂ without obscuring the billed modifier;

III. "Insurer Payment per Line" entered in Field 24K.

IV. Additional data elements required pursuant to the Medical EDI Implementation Guide, 2004 may be entered on the form, location to be determined by the insurer.

b. Form DFS-F5-DWC-10.

I. "Insurer Payment per Line" – written above the 'Usual Charge' in Field 15 or 19, respectively;

II. Additional data elements required pursuant to the Medical EDI Implementation Guide, 2004 may be entered on the form, location to be determined by the insurer.

c. Form DFS-F5-DWC-11.

I. "Insurer Payment per Line" – entered in Field 30 following description;

II. Additional data elements required pursuant to the Medical EDI Implementation Guide, 2004 may be entered on the form, location to be determined by the insurer.

d. Form DFS-F5-DWC-90.

I. "HCPCS/RATE" code (as paid by the insurer, if different from billed code) enter the reimbursed code above the billed code;

II. "HCPCS/RATES" code modifier (as paid by the insurer, if different from billed modifier) enter the reimbursed modifier above the billed modifier;

III. "Insurer Payment per Line" entered in Locator 49;

IV. Additional data elements required pursuant to the Medical EDI Implementation Guide, 2004 may be entered on the form, location to be determined by the insurer.

4. In order to facilitate the division's responsibility to determine the timeliness of health care provider reimbursement and submission of medical reports to the division, reports submitted in paper-form must be submitted in batches and each batch must be accompanied with a cover sheet and the following requirements:

a. Forms DFS-F5-DWC-9, DFS-F5-DWC-10 (or insurer pre-approved alternate form), DFS-F5-DWC-11 or DFS-F5-DWC-90 forms shall be separated by Form category into 100-count batches prior to submitting to the division. Insurers processing less than 100 forms in 30 calendar days shall separate Form category and submit batches of less than 100.

b. Within each submitted paper-form batch, the insurer shall separate and band into groups, medical reports as being untimely paid to a provider or untimely reported to the division pursuant to Section 440.20(6)(b), F.S. and paragraph (5)(e) of this rule, respectively.

c. Every submitted paper-form batch shall be accompanied by a cover sheet providing the following information:

I. The title shall read "Medical Paper-Form Submission Cover Sheet".

II. The date the batch was submitted to the division shall be specified.

III. The insurer name, address including zip code of the medical claim office submitting the batch, and division-assigned number shall be specified.

IV. The insurer contact name, telephone number and email address shall be specified.

V. The report type (Forms DFS-F5-DWC-9, DFS-F5-DWC-10, DFS-F5-DWC-11 or DFS-F5-DWC-90) shall be specified.

VI. The total number of medical reports in each batch submitted to the division shall be specified.

VII. The total number of medical reports filed with the division more than 45 calendar days after the insurer payment, adjustment and payment, disallowance or denial shall be specified.

VIII. The total number of medical reports reflecting medical bills that were paid to the provider more than 45 calendar days from the date insurer received.

d. Every paper batch which is not accompanied by an accurately completed cover sheet will be returned to an insurer or an insurer agent, and considered not in compliance with paragraph (5)(e) of this rule, until re-filed with an accurately completed cover sheet.

5. All required medical reports (Forms DFS-F5-DWC-9, DFS-F5-DWC-10, DFS-F5-DWC-11 or DFS-F5-DWC-90) shall be submitted to the division at.

Department of Financial Services
Division of Workers' Compensation
Office of Data Quality and Collection,
Medical Data Management Section
200 East Gaines Street
Tallahassee, FL 32399-4226.

(7) Insurer Administrative Penalties and Administrative Fines Co-Payments. Except for emergency services and care, after the injured employee has reached overall maximum medical improvement, the injured employee is obligated to pay a co-payment of \$10 per visit for medical services. The co-payment is not in addition to any applicable maximum reimbursement allowance, but displaces or offsets \$10 from the reimbursement amount otherwise reimbursed by the carrier.

(a) Insurer Administrative Penalties for Untimely Provider-Payment or Disposition of Medical Bills. The department shall impose insurer administrative penalties for failure to comply with the payment, adjustment and payment, disallowance, or denial requirements pursuant to Section 440.20(6)(b), F.S. Timely performance standards for timely payments, adjustments and payments, disallowances or denials, reported on Forms DFS-F5-DWC-9, DFS-F5-DWC-10, DFS-F5-DWC-11 and DFS-F5-DWC-90, shall be calculated and applied on a monthly basis for each separate Form category that was received within a specific calendar month.

(b) Insurer Administrative Fines for Failure to Submit, Untimely Submission, Filing and Reporting of Medical Data Requirements. Pursuant to Section 440.185(9), F.S., the department shall impose insurer administrative fines for failure to comply with the submission, filing or reporting requirements of this rule. Insurer administrative fines shall be:

1. Calculated on a monthly basis for each separate Form category (Forms DFS-F5-DWC-9, DFS-F5-DWC-10, DFS-F5-DWC-11, DFS-F5-DWC-90) received and accepted by the division within a specific calendar month; and

2. Imposed for each un-filed, rejected and not re-submitted, or rejected and re-submitted untimely medical data report according to the following schedule:

a. 1 – 15 days late \$10.00

b. 16 – 30 days late \$20.00

c. 31 – 45 days late \$30.00

d. 46 – 60 days late \$40.00

e. 61 – 75 days late \$50.00

f. 76 – 90 days late \$100.00

g. 91 days or greater \$500.00

(8) If the carrier is submitting forms DWC-9, DWC-10, and/or DWC-11 to the Division on electronic media, and retaining the forms on electronic media, the carrier is not required to retain paper copies of those forms, but may treat the electronic media as the original documentation.

(9) On forms DWC-9, DWC-10, and DWC-11, the carrier shall be responsible for the legibility, accuracy and completeness of only the social security number, date of accident, and those areas of the form that the carrier completes. The carrier shall not be penalized for the legibility, accuracy or completeness of any area of the form completed by the employer, injured employee, or health care provider.

(10) Forms DWC-8, DWC-9, DWC-10, and DWC-11 are hereby incorporated into this rule and Rule Chapter 4L-7 by reference. Forms DWC-8, DWC-10, and DWC-11 shall bear the date September 1, 1994 in the lower right hand corner of the forms and shall become effective on the effective date of this rule. Form DWC-9 shall bear the date December 1990 in the lower right hand corner of the form and shall become effective on the effective date of this rule. A copy of forms DWC-8, DWC-9, DWC-10, and DWC-11 may be obtained by sending a request to the Division of Workers' Compensation, Medical Data Section, 200 East Gaines Street, Tallahassee, Florida 32399-4230.

Specific Authority 440.13(4)(a),(b),(16), 440.15(3)(b),(d), 440.185(5),(9), 440.20(15)(f),(17), 440.525(2), 440.591, 440.593(5) FS. Law Implemented 440.09, 440.13(2)(a),(3),(4),(6),(7),(11),(12),(14),(16), 440.15(3)(b),(d), 440.20(6), 440.185(5),(9) FS. History—New 1-23-95, Formerly 38F-7.602, 4L-7.602, Amended _____.

Section III Notices of Changes, Corrections and Withdrawals

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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