

Section II Proposed Rules

DEPARTMENT OF LEGAL AFFAIRS

RULE TITLE: RV Mediation and Arbitration Program;
 Qualification, Reporting, Disqualification,
 Manufacturer Conduct

RULE NO.: 2-41.001

PURPOSE AND EFFECT: The purpose of the proposed rule is to implement the statutory responsibilities of the Department of Legal Affairs for the qualification of a manufacturer-sponsored mediation and arbitration program for recreation vehicles, delineate circumstances that may result in a program not being qualified or in the disqualification of a qualified program, and implement the reporting requirements set forth in the statute for the program.

SUMMARY: The RV Mediation and Arbitration Program is a manufacturer-sponsored informal dispute resolution program to which consumers of new recreation vehicles are required to resort to obtain relief under Florida's "Lemon Law," provided such program is qualified by the Department of Legal Affairs. Prior to amendment by the 2005 Legislature, the program operated on a pilot basis. The rule is proposed to implement the statutory responsibilities of the Department related to qualification of a program, including establishing requirements for disqualification of a qualified program, and to delineate instances of manufacturer conduct that may result in the disqualification of a qualified program. The program is required by statute to report certain information to the Department and the proposed rule sets forth the information to be reported and the reporting intervals.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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: 681.1096, 681.1097, 681.118 FS.

LAW IMPLEMENTED: 681.1096, 681.1097 FS.

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

TIME AND DATE: 10:00 a.m. – 11:00 a.m., March 10, 2006

PLACE: Office of the Attorney General, The Leroy Collins Building, Room G19, 107 West Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Janet L. Smith, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050, (850)414-3300, email: jan_smith@oag.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

2-41.001 RV Mediation and Arbitration Program; Qualification, Reporting, Disqualification, Manufacturer Conduct.

For the purpose of implementation and application of Sections 681.1096 and 681.1097, F.S., the following shall apply:

(1) An informal dispute resolution program seeking to become qualified under Section 681.1096, F.S., and if qualified, to retain such qualification, shall, at a minimum, provide or demonstrate to the department the following:

(a) At least one established office, located in the state of Florida, where a full-time program administrator and other support staff as may be necessary to carry out all program functions shall be situated, and the records of the program shall be maintained and be available to the department for review upon request.

(b) The program must be reachable by toll-free telephone number, and must provide a mailing address and facsimile number for the receipt of all claims and correspondence. The program may also offer a web site and an Email address as additional modes of communication.

(c) A copy of the proposed or executed contract between the program and sponsoring manufacturer(s) evidencing the means by which the program will be funded.

(d)1. The program shall develop and provide to the department for review all forms, publications, filing systems and databases it intends to utilize to carry out its eligibility screening, administrative/recordkeeping, mediation and arbitration functions under Sections 681.1096, .1097, F.S.

2. Program forms should be clear, understandable and designed to obtain or communicate all information necessary to a full and fair consideration of the dispute.

(e) The program shall publish its rules and procedures and shall provide such publication to consumers and manufacturers participating in the program each time a consumer claim is determined to be eligible. Such publication should be written in a manner that explains the program's procedures in plain language so as to assist all parties in understanding and following the procedures. The publication may be made available to the general public upon request, or may be posted on a program web site.

(f) The program shall insure that the program administrator and staff have access to independent legal advice.

(g) Program employees and the independent legal advisor cannot be employed by or be a contractor for any manufacturer or its subsidiary, distributor, authorized service agent or trade association, except as provided by applicable statute.

(h) A list of all program mediators and arbitrators, including verification by the Program that each meets the certification and training requirements of Section 681.1096, F.S., and the date each commenced service in the Program. An

updated list shall be provided by the Program each time a mediator or arbitrator is discontinued from or added to the Program.

(i) The program shall provide to all participating mediators and arbitrators copies of the following:

1. The rules and procedures of the Program;
2. Chapter 681, F.S. (2005), and rules promulgated thereunder by the department, and as amended;

3. The Model Standards of Conduct for Mediators issued by the American Arbitration Association, the Dispute Resolution Section of the American Bar Association and the Association for Conflict Resolution, formerly known as the Society of Professionals in Dispute Resolution;

4. The Code of Ethics for Arbitrators in Commercial Disputes published by the American Arbitration Association and the American Bar Association in 1977 and as amended.

(j) The program shall supply the department with advance notice of the dates and locations of any scheduled trainings, along with a copy of the training program and materials and a list of all attending mediators and arbitrators.

(k) The program shall provide to the department its plan for monitoring the performance of the mediators and arbitrators as required by Section 681.1096(3)(j), F.S.

(l)1. The program shall maintain a record of locations throughout the state for the holding of mediation conferences and arbitration hearings in locations reasonably convenient for consumers. The program shall insure that the arbitration hearings are conducted in locations that are normally open and accessible to the public. Mediation conferences and arbitration hearings shall not be conducted at dealerships or other locations under the direct or indirect control of the manufacturers or their authorized service agents. A consumer shall not be required to travel more than 120 miles from a point of origin within this state to attend a mediation conference or an arbitration hearing.

2. If the consumer is a resident of this state, the point of origin shall be the consumer's Florida residence. If the consumer is not a resident of this state, the point of origin shall be the city in Florida where the recreation vehicle was purchased.

(m) The program shall provide or demonstrate to the department its plan or procedure for complying with the document gathering and dissemination requirements set forth in Section 681.1096(3)(k), F.S.

(2) In addition to the information specified in this rule chapter, the program shall report the following to the department at the intervals specified:

(a) On a weekly basis a schedule of all mediation conferences and arbitration hearings, including identification of the claims scheduled, the date each claim was filed, the dates, times and locations of the mediations and arbitrations and identification of the assigned mediators and arbitrators.

(b) On a weekly basis, the following information regarding settlements and decision awards where one or more manufacturers have agreed or been directed to reacquire a recreation vehicle:

1. The claim number and caption or style of the claim;
2. The date the claim was filed with the Program;
3. The name(s) of the consumer(s);
4. The name(s) of the manufacturer(s) which agreed to, or were determined liable to reacquire the vehicle;

5. The year, make, model and vehicle identification number (VIN) of the vehicle to be reacquired;

6. The date of compliance with the settlement or decision award.

(c) Copies of all settlements and decisions no later than 30 days after the date of such settlements and decisions.

(d) On a quarterly basis, by no later than the last day of the month following the end of each quarter, a report containing, at a minimum, the following information for each claim filed with the Program:

1. The date of filing;
2. The name(s) of the consumer(s);
3. The name(s) of each involved manufacturer;
4. Whether the claim was determined eligible, and if rejected, the reason for rejection;

5. Whether the consumer(s) was represented by an attorney;

6. Whether the manufacturer(s) was represented by an attorney, and if multiple manufacturers, which manufacturers were so represented;

7. The date of the mediation conference, if applicable, and the name of the assigned mediator;

8. The date of the arbitration hearing, if applicable, and the name of the assigned arbitrator;

9. How the claim was resolved:
a. Voluntarily withdrawn by the consumer prior to any resolution, and the reason(s) for withdrawal;

b. Settled prior to, during or after mediation (but before arbitration), the type of settlement and with which manufacturer(s);

c. Impasse at mediation and involving which manufacturer(s);

d. Resolved via an arbitration decision, the nature of the decision and any relief awarded, if applicable, as to each involved manufacturer;

e. Settled after arbitration, the type of settlement and with which manufacturer(s).

10. Whether the claim was appealed, the party or parties filing the appeal, the date the Program was notified of the appeal;

11. The date of settlement or decision compliance by the manufacturer(s);

12. Whether the consumer was required to seek enforcement of a settlement or confirmation of a decision award in court, and the outcome of any such court proceeding, if known.

(d) On an annual basis (calendar year), by no later than January 30 of the year following the year for which the report is issued, the following information for each participating manufacturer:

1. Number of claims filed;

2. Number of claims determined eligible;

3. Number of claims rejected as ineligible for mediation or arbitration;

4. Number of claims voluntarily withdrawn by consumers without resolution;

5. Number of claims in which the manufacturer agreed to expand the scope of mediation;

6. Number of claims in which the manufacturer agreed to expand the scope of arbitration;

7. Number of claims resolved via settlement and types of settlement (e.g., component repair/replacement; cash reimbursement without repurchase; extended warranty; full refund (vehicle repurchased); replacement vehicle; any combination of the foregoing):

a. Before mediation;

b. During mediation;

c. After mediation, but before arbitration;

d. After arbitration;

8. Number of claims submitted to arbitration:

a. As a result of mediation impasse;

b. As a result of failure to comply with settlement;

9. Number of claims dismissed by arbitration decision;

10. Number of arbitration awards and types of awards;

11. Number of arbitration awards for which court confirmation was filed by consumers;

12. Number of claims appealed to the circuit court.

(e) The weekly reports specified in paragraphs (a) and (b) can be combined into a single report. The program may use computer or electronic technology to transmit or make accessible to the department the information required to be reported by statute and this rule.

(3) The department may revoke the qualification of a program as to one or more participating manufacturers for conduct that includes, but is not limited to, the following:

(a) Failure to adequately fund the program as demonstrated by:

1. Failure to pay the costs charged by the program in accordance with the contract or agreement entered into between the Program and the sponsoring manufacturer(s). The program administrator shall notify the department of a manufacturer's failure or refusal to make payment.

2. A consistent failure to pay the costs charged by the program within the time for payment specified by the program. The program administrator shall notify the department of a manufacturer's failure to make timely payment(s).

(b) Any attempt by a manufacturer, either directly, or indirectly, to exert undue influence or pressure upon the program administrator or staff in the performance of their duties, including, but not limited to, interference in the eligibility screening process, the determination of hearing locations, the initial assignment of mediators and arbitrators, except as provided by statute.

(c) Failure to provide documents requested by the program administrator under Section 681.1096(1)(k), F.S.

(d) Any attempts to condition consent to expand the scope of a mediation conference or an arbitration hearing upon the limitation or waiver of rights a consumer may have under a manufacturer warranty, Chapter 681, F.S., or any other law.

(e) Consistent failure to be represented at mediation conferences by persons with settlement authority as required by Section 681.1097(4), F.S. For purposes of the application of Section 681.1097(4), F.S. and this rule, "settlement authority" means the manufacturer shall send a representative with full and binding authority to enter into a full and complete compromise and settlement without further consultation.

(f) Consistent failure, without good cause, to appear at mediation conferences or arbitration hearings scheduled by the program.

(g) Failure to timely comply with settlement agreements.

(h) Failure to timely comply with arbitration awards.

(5) Determinations of statutory coverage remain within the purview of the arbitrator, and failure or unwillingness of a party to consent to the mediation or arbitration of any particular alleged defect shall not preclude such determinations.

(6) The program shall provide the form by which the parties may agree to expand the scope of arbitration pursuant to Sections 681.1097(5)(c), F.S. A copy of the completed consent form shall be provided to each party and to the assigned arbitrator before the arbitration hearing. Such form shall, at a minimum, obtain the following information:

(a) The name(s) of the participating consumer(s);

(b) The name(s) of the participating manufacturer(s) and the term of each manufacturer's express warranty applicable to the subject recreation vehicle;

(c) The program's case or claim number;

(d) A general description by the consumer(s) of all alleged defects consented to be the subject of the arbitration, and the date each alleged defect was first reported to the manufacturer or its authorized service agent;

(e) A statement or acknowledgment by each manufacturer setting forth whether it consents to arbitration of all alleged defects described by the consumer, or if not all, specifying the alleged defects to which the manufacturer's consent applies.

Specific Authority 681.1096, 681.1097, 681.118 FS. Law Implemented 681.1096, 681.1097 FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Janet L. Smith
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: L. Clayton Roberts
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 31, 2006
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 10, 2005

**DEPARTMENT OF EDUCATION
Commission for Independent Education**

RULE TITLE: Actions Against a Licensee; Penalties
PURPOSE AND EFFECT: The Commission proposes the amendment to the rule to clarify who may serve on the panel and review reconsideration of probable cause.
SUMMARY: The proposed rule amendment clarifies who may serve on the panel and review reconsideration of probable cause.

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: 1005.37(1)(e), 246.071 FS.
LAW IMPLEMENTED: 1005.32(7), 1005.34(3), 1005.38 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-2.0061 Actions Against a Licensee; Penalties.

(1) through (6) No change.

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

(c) Reconsideration of probable cause in any given case shall be performed by the members of the panel who initially found probable cause in that case. Whenever an original panel member is not available, current member(s) shall hear the reconsideration. If a Commission member has reviewed a case as a member of the probable cause panel, that member, if available, shall be on the panel for reconsideration of that case if reconsideration is necessary.

(8) through (10) No change.

Specific Authority 1005.37(1)(e), 246.071 FS. Law Implemented 1005.32(7), 1005.34(3), 1005.38 FS. History--New 10-13-83, Formerly 6E-2.061, Amended 5-20-87, 1-27-88, 11-29-89, 12-10-91, 10-19-93, 1-7-03, 5-4-04, 5-26-04, 7-20-04, 3-11-05, _____.

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: March 11, 2005
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 1, 2005

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."

FLORIDA PAROLE COMMISSION

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Commission Operations	23-21
RULE TITLES:	RULE NOS.:
General	23-21.001
Definitions	23-21.002
Commission Organization	23-21.003
Commission Meetings	23-21.004
Full Commission Reviews	23-21.0051
Panel Reviews	23-21.0052
Initial Interview Procedure	23-21.006
Salient Factor Scoring	23-21.007
Serenity of Offense Behavior	23-21.008
Decisions Outside the Matrix Time Range	21-21.010
Calculating Time in Custody	23-21.011
Inmate Initiated Review of Presumptive Parole Release Date	23-21.012
Subsequent Interview Procedure	23-21.013
Special Interviews	23-21.014
Effective Parole Release Date Interview Procedure	23-21.015
Extraordinary Review Procedure	23-21.0155
Extraordinary Interview Procedure	23-21.0161
Conditions of Parole	23-21.0165
Review of Term and Conditions of Parole	23-21.017
Disposition of Cases Involving Parole Ineligible Sentences	23-21.018
Parole Rescission	23-21.019
Early Termination of Parole	23-21.020
Warrant and Arrest	23-21.021
Revocation of Parole; Preliminary Hearings; Final Hearings	23-21.022

PURPOSE AND EFFECT: The Commission proposes to make changes to this rule to remove unnecessary language and clarify existing Commission practices.

SUMMARY: The proposed rule clarifies Commission practices at meetings, the interviewing of parole-eligible inmates, factors considered in arriving at presumptive and effective parole release dates, and actions to be taken upon violation of parole.

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

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

SPECIFIC AUTHORITY: 947.07, 947.071, 947.20 FS.

LAW IMPLEMENTED: 947.04, 947.06, 947.071, 947.13, 947.16, 947.168, 947.172, 947.173, 947.174, 947.1745, 947.1746, 947.1747, 947.18, 947.19, 947.21, 947.22, 947.23, 947.24 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: Susan Schwartz, Assistant General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399-2450

THE FULL TEXT OF THE PROPOSED RULE IS:

23-21.001 General.

(1) The Commission shall be known as the Florida Parole Commission and Control Release Authority. There is no right to parole or control release in the State of Florida. Pursuant to Article IV, Section 8, Florida Constitution, the Commission may grant paroles or conditional releases to persons under sentence for crimes who are eligible for consideration. The Commission can also, as the Control Release Authority, establish control release dates for statutorily eligible inmates. The Commission can also require periods of supervision in conjunction with any release ordered by the Commission including Conditional Medical Release. The Commission may rescind an unexecuted order granting parole, and may revoke paroles, conditional releases, control releases, compulsory conditional releases, addiction recovery or conditional medical releases based upon violation of any of the specified conditions of release.

(2) Gender-specific language includes the other gender and neuter. ~~The headquarters of the Commission is located at 1309 Winewood Boulevard, Tallahassee, Florida 32399-2450, with business hours Monday through Friday from 8:00 a.m. to 5:00 p.m. The mailing address where the public may obtain information or make submissions or requests is as follows:~~

Florida Parole Commission
1309 Winewood Boulevard
Building B, 3rd Floor
Tallahassee, Florida 32399-2450

~~(3) Requests for agendas of Commission meetings may be sent to the address in subsection (1) above.~~

~~(4) All Commission rules, regulations, agendas, directives, and minutes are open for public viewing during the course of normal business hours at the Commission headquarters.~~

~~(5) Any interested citizen is encouraged to direct information bearing on the consideration for parole, conditional release, control release, or conditional medical release of any inmate to the Commission at its headquarters.~~

~~(6)(a) Guidelines for fair treatment of victims and witnesses in the criminal justice system are addressed in Chapter 960, F.S. The objectives contained in the law are designed to ensure appropriate involvement of victims and witnesses in criminal justice system proceedings. Consistent with the legislative objectives, the Commission hereby adopts the following guidelines pertinent to the proceedings it conducts:~~

~~(b) Notification of availability of protection—In cases where intimidation is alleged, the Commission shall provide to the affected victim or witness, referral information on contacting the appropriate state attorney or law enforcement agency to obtain protection from intimidation.~~

~~(c) Scheduling changes—All victims and witnesses who have been notified of and scheduled to appear at Commission meetings, or who have been subpoenaed to attend and give testimony in revocation proceedings shall be promptly notified by the Commission of any scheduling changes which will affect their appearances.~~

~~(d) Victim input into Commission decisions.~~

~~1. A victim, relative of a minor who is a victim, relative of a homicide victim, or victim representative, or victim advocate (hereinafter referred to as victims) shall receive prompt advance notification any time a parole case is placed on the docket for Commission action regarding that inmate or parolee. Victims shall be notified at the address found in the police report or other criminal report or at a more current address if such has been provided to the agency.~~

~~2. Victims of any crime committed by an inmate or parolee shall be permitted to appear or speak, or victims can submit a written statement regarding their views.~~

~~3. Victims are permitted to read from a prepared text or speak with the use of notes. Any prepared text can be entered into the inmate's record following the victim's oral presentation. Victims will be allowed to use photographs and other aids in making a presentation. Victims who prefer shall be permitted to play a tape or present a video presentation in lieu of or in addition to a personal presentation, provided the total time required does not exceed the allotted time. Prepared texts, letters, notes, or other written information submitted by~~

victims at Commission meetings, or prior to Commission meetings, to be included in the Department of Corrections inmate file shall be stamped confidential and excluded from file reviews under the public records law.

4. ~~Victims who choose not to appear at meetings or make a written statement, but wish only to be notified of the action taken by the Commission, will be notified of such action at a reasonable time after the meeting.~~

5. ~~Victims who appear at a meeting or submit a written statement will likewise be notified of action taken by the Commission at the meeting within a reasonable period of time.~~

6. ~~Victims who appear and speak shall be advised that their testimony submitted at Commission meetings shall become public record.~~

~~(7) Community Control. The Commission has authority to require an inmate be placed in the Community Control Program of the Department of Corrections, as a special condition of parole. The term of community control supervision shall not exceed six (6) months. The Commission is also authorized to impose a term of community control following a revocation of parole. In every case in which the Commission decides to place an inmate on community control as a special condition of parole, the Commission shall provide a written explanation of the reasons for its decision.~~

Specific Authority 120.53, 947.06, 947.07, 947.20, 960.001(1)(d)3. FS. Law Implemented 120.53, 947.23, 947.06, 960.001 FS. History--New 9-10-81, Formerly 23-21.01, Amended 1-26-93, 1-5-94, 8-16-94, _____.

23-21.002 Definitions.

The following definitions are provided for the clarification of all terms used throughout Chapter 23, F.A.C.:

(1) Aggravate means to add a number of months to the upper month limit of the matrix time range.

(2) Aggregation means a process to separate multiple criminal episodes and score each single episode by determining the salient factor score, severity of offense behavior, presence of aggravating or mitigating circumstances and assess a number of months of incarceration for each scored episode. The total of months for each scored episode is then aggregated (added together) for the establishment of a presumptive parole release date.

(3) Burglary and Breaking and Entering are defined as they are found in the Florida Statutes on the dates the crimes are committed.

(4) Chair means the Chair of the Florida Parole Commission who, as selected by the Governor and Cabinet ~~the duly selected Chair~~, is authorized to call and preside over meetings of the Commission.

(5) Commission Meeting means a called public meeting of the Commission.

(6) Commission Secretary means the Commissioner elected to a one year term or until a successor is elected by the Commission whose duties encompass serving notice and publishing information concerning Commission meetings,

preparation and distribution of the agendas, maintenance of the official minutes, and recorder of the minutes at all scheduled and emergency Commission meetings.

(7) Vice-Chair means the duly selected Commission Vice-Chair who is authorized to serve in the absence of the Chair.

(8) Competent and Persuasive means that:

(a) The information is specific as to the behavior alleged to have taken place; and

(b) The source of the allegation appears to be reliable.

~~(9) Compulsory Conditional Release means the release of an inmate from incarceration, as if on parole, as a result of a state of emergency in the state correctional system pursuant to Section 944.598, F.S., and by virtue of a decision by a quorum.~~

~~(9)(10) County jail time credit means the time awarded by the Court for time spent in custody prior to sentencing.~~

~~(10)(11) Conditional Medical Release means the release of an inmate from incarceration by the Commission as set forth in Section 947.149, F.S., under conditions of release and supervision, as a result of being referred by the Department as permanently incapacitated or terminally ill.~~

~~(11)(12) Criminal Episode means the commission of one or more criminal offenses ending with the imposition of a court sanction. Any offense committed after a court sanction or pronouncement of disposition will be considered a subsequent criminal episode and subject to aggregation.~~

(12) Department means the Florida Department of Corrections.

(13) Early Termination of Parole means a Commission Order of Discharge from the terms and conditions of parole prior to the expiration date of parole as set forth on the Parole Certificate.

(14) Effective Parole Release Date (EPRD) means the actual parole release date, when authorized by the Commission as set forth in Section 947.1745 and Section 947.1746, F.S. The Commission's consideration for authorization of the EPRD is occasioned by the approach of the PPRD, which determines the initial point in time the Commission considers the requirements under Florida law that no person be placed on parole until and unless the Commission can find that there is reasonable probability that, if the inmate is placed on parole, he will live and conduct himself as a respectable and law-abiding person, that his release will be compatible with his own welfare and the welfare of society, and that he will either be suitably employed in self-sustaining employment or will not become a public charge.

(15) Element of a Crime means that which was specifically contained in the statutory definition of the crime on the date the crime was committed.

(16) Escape is defined as it was found in the Florida Statutes on the date the crime was committed.

(17) Exceptional Circumstances are those circumstances which are out of the ordinary.

(18) Extend means to increase the presumptive parole release date.

(19) Extraordinary Review means a further ~~an~~ examination by the Commission of the entire record in an inmate's case following the Commission's decision declining to determine whether to authorize an Effective Parole Release Date.

(20) Final Revocation Hearing means a fact-finding quasi-judicial hearing held by the Commission, a Commissioner, or the Commission's duly authorized representative for the purpose of determining whether a parolee has violated the conditions of the parole and if so, what recommendation should be made to the Commission.

(21) Good Cause means factors legally sufficient that justify action taken and which are not arbitrary, capricious, irrational, or unreasonable.

(22) Individual Particularity means case-specific, factual material or references related only to the inmate concerned.

(23) Initial Date of Confinement in Execution of the Judgment of the Court means the initial date of incarceration in the Department of Corrections or in the instance of a county jail sentence, receipt at the county jail.

(24) Inmate means any person under Florida Court Commitment to incarceration in any state or federal correctional facility, the Department or to a county jail for a cumulative sentence of 12 months or more.

(25) Juvenile Sanction means a court-imposed punishment on a minor for an act which, if committed by an adult, would have been criminal.

(26) Matrix Time Range means the appropriate range of months found where the offender's salient factor score total intersects with the offender's severity of offense behavior.

(27) Meeting means an officially called Commission meeting.

(28) Mitigate means to reduce below the matrix time range's lower month limit or below the previously established presumptive parole release date.

(29) New Information means knowledge acquired subsequent to the initial interview or the establishment of the presumptive parole release date.

(30) Nullification of Parole means the Commission action voiding the grant of parole when an inmate refuses to accept parole.

(31) PPRD means presumptive parole release date.

~~(32)(30)~~ Parole means the release of an inmate, prior to the expiration of the inmate's sentence, with a period of supervision to be successfully completed by compliance with the enumerated conditions and terms of the release agreement as ordered by the Commission. The decision of the Commission to parole an inmate shall represent an act of grace of the state and shall not be considered a right.

~~(33)(31)~~ Parolee means an inmate placed on parole.

~~(34)(32)~~ Parole examiner, which is synonymous with hearing examiner, means a Commission employee authorized to:

(a) Conduct an initial, subsequent ~~biennial~~, effective or special interview;

(b) Provide professional case analyses and recommendations to the Commission;

(c) Conduct investigations for the Commission;

(d) Hold preliminary, bond, final revocation and rescission hearings in order to make recommendations to the Commission;

(e) Perform other duties as assigned by the Chair.

~~(35)(33)~~ Preliminary Hearing means an informal quasi-judicial, hearing held after a parolee has been arrested, pursuant to a Commission warrant to determine whether there is probable cause to believe that violations of the conditions of parole have occurred.

~~(36)(34)~~ Present Commitment means the total of court sentences to incarceration, including expired individual sentence or sentences contained therein, resulting from a single criminal offense or multiple offenses involved in a single criminal episode. An offender may have more than one present commitment for computation purposes. Further, Court sentences of sixty days or more are considered as commitments to incarceration, including sentences to time served as provided in subsection 23-21.007(2), F.A.C.

~~(37)(35)~~ Present Offense of Conviction means the offense or offenses resulting in conviction in a single criminal episode. At least one of the convictions must result in a sentence to incarceration for sixty days or more, including sentences to time served of sixty days or more.

~~(38)(36)~~ Prior Criminal Record means an offense or offenses which result in the imposition of a judicial sanction. Both the consummation of the criminal offense(s) and the imposition of the judicial sanction(s) must obtain at some date earlier in time than the offense(s) resulting in commitment to incarceration for the present offense of conviction. For the purpose of scoring in this category, prior offenses resulting in probation with adjudication of guilt withheld will be counted.

~~(39)(37)~~ Probation means the release of a defendant for a period of supervision to be successfully completed by compliance with the enumerated conditions and terms of the release agreement as ordered by the trial court.

~~(40)(38)~~ Quorum means a majority of the Commission that when duly assembled is legally competent to transact business. ~~the following:~~

~~(a) Two Commissioners appointed by the Chair shall constitute a quorum for the purposes of:~~

~~1. Setting presumptive parole release dates;~~

~~2. Reviewing presumptive parole release dates;~~

~~3. Determining unsatisfactory institutional conduct;~~

~~4. Reviewing terms and conditions of parole;~~

~~5. Approving, rejecting, returning for renegotiation or cancelling Mutual Participation Program agreements;~~

~~6. Releasing inmates on compulsory conditional release pursuant to Section 944.598, F.S.;~~

~~7. Rescinding and nullifying paroles and grants of compulsory conditional release;~~

~~8. Ordering alleged parole and compulsory conditional release violators returned for a final revocation hearing following a preliminary hearing;~~

~~9. Ordering an alleged parole or compulsory conditional release violator released from custody and restored or discharged following a preliminary hearing;~~

~~10. Ordering a conditional releasee or control releasee, charged with a violation, to be revoked and returned to custody or released from custody and restored or discharged following a final revocation hearing;~~

~~11. Reviewing warrant requests submitted by a single Commissioner or Commission staff as provided in Rule 23-21.021, F.A.C.;~~

~~12. Granting or denying requests for early termination from parole, control release, compulsory conditional release, and conditional release supervision; and~~

~~13. Deleting special conditions of parole, control release, compulsory conditional release, and conditional release supervision.~~

~~14. Direct an initial interview earlier than scheduled except in cases where the inmate is serving a mandatory minimum term.~~

~~(b) A majority of the Commission shall constitute a quorum for authorization and decisions relating to all full Commission reviews.~~

~~(41)(39) Recidivist Criminal Factor means four or more prior adult felony convictions, from four or more separate criminal episodes, at least two of which resulted in incarceration.~~

~~(42)(40) Rescission of Parole means the withdrawal of order withdrawing an unexecuted grant order of parole.~~

~~(41) Record During Confinement Is Good means that within the three months preceding the initial interview, an inmate has:~~

~~(a) Neither pending nor processed disciplinary actions which may result in the loss of gain time or placement in disciplinary confinement. For the purpose of this section, pending means a formal disciplinary report document has been created by the Department; and~~

~~(b) No pending court prosecutions in any Florida court. For purposes of this section detainees are not to be considered a pending court prosecution; and~~

~~(c) No reclassification actions raising custody classification, transferring to a higher custody or level institution, transferring to close management status; and~~

~~(d) No terminations of community work release for cause; and~~

~~(e) No pending revocation proceedings or entries of a Commission order revoking parole.~~

~~(42) Request for Review means a statement in writing from an inmate or his representative for a quorum to review a decision as to the initial establishment of that inmate's presumptive parole release date.~~

~~(43) Revocation of Parole means the order of the Commission entered after a parolee has been found to have violated one or more conditions of parole, and requires the parolee's return to prison to resume service of the sentence the order of the Commission entered after a parolee has been found to have violated the conditions of his parole, returning the inmate to custody.~~

~~(44) Salient Factors are the indices of the offender's present and prior criminal behavior and related factors found by experience to be predictive in regard to parole outcome.~~

~~(45) Satisfactory Release Plan means a release plan that meets all of the following requirements:~~

~~(a) A residence confirmed by field investigation to be sufficient to meet the living needs of the individual seeking parole, or sufficient financial resources or assistance to secure adequate living accommodations with the approval of the parole supervisor.~~

~~(b) Self-sustaining employment or financial support sufficient to preclude the parolee from becoming a public charge which has been confirmed by field investigation.~~

~~(c) Both paragraphs (a) and (b) available in a community that does not represent individual, collective, or official resentment or hostility to an extent that it impairs the opportunity for lawful and peaceful existence of the parolee or any individual within that community.~~

~~(d) If the individual seeking parole is a convicted sexual offender, the proposed residence and employment must not pose an undue risk to children under the age of eighteen.~~

~~(e) The occupants of the proposed residence must not pose an undue risk to the inmate's ability to reintegrate into society.~~

~~(f) The proposed residence must not contain any firearms.~~

~~(46) Severity of Offense Behavior means the statutorily assigned degree of felony or misdemeanor for the present offense of conviction.~~

~~(47) Subpoena (Subpoena Duces Tecum) means a document signed by a member of the Commission or an authorized Commission representative which compels the attendance of a person at Commission proceedings and may require the person so compelled to bring with him designated items as specified on the document.~~

~~(48) Unsatisfactory Institutional Conduct includes behavior which:~~

(a) Results in pending or processed disciplinary actions which may result in the loss of gain-time or placement in disciplinary confinement (for the purposes of this subsection, pending means a formal disciplinary report document has been created by the Department; processed means that a written decision has been rendered at the institution);

(b) Results in a pending or completed court prosecution;

(c) Results in a reclassification action (raising custody classification, transferring to a higher custody or level institution, or transferring to close management status);

(d) Results in the Commission finding that there is competent and persuasive evidence in the form of an admission against interest by the inmate;

(e) Results in the Commission determining through competent and persuasive independent knowledge of an action pending either in court or in the Department's disciplinary hearing process.

(49) Vacate means to set aside a previously established date or order.

(50) Warrant means a document executed by a member of the Commission which will cause the incarceration of a parolee or releasee pending final action by the Commission.

(51) Work Release means the Department of Correction's Community Work Release program.

~~(52) Workshop means a conference held by the Commission for the purpose of meeting to determine the means by which policy-making decisions and projects shall be implemented.~~

Specific Authority 947.07, 947.149, 947.174(5)(b) FS. Law Implemented 947.1745 FS. History--New 9-10-81, Amended 10-1-82, 8-1-83, 7-1-84, Formerly 23-21.02, Amended 7-9-87, 1-29-93, 1-5-94, 8-19-04, _____.

23-21.003 Commission Organization.

Specific Authority 120.53, 947.07, 947.135 FS. Law Implemented 947.01, 947.04, 947.06, 947.135, 947.165, 947.22, 947.23 FS. History--New 9-1-81, Amended 10-1-82, 8-1-83, Formerly 23-21.03, Amended 1-26-93, 1-5-94, Repealed _____.

23-21.004 Commission Meetings.

(1) All Commission meetings are open to the public. However, due to the nature of the various proceedings, the following procedures are followed relative to persons wishing to address the Commission. Persons requesting permission to speak concerning the setting or reviewing of an inmate's presumptive or effective parole release date, parole supervision review, or conditional medical release consideration date must obtain prior written approval to do so from the Chair. Those request(s) should be sent to:

Chair
 Florida Parole Commission
2601 Blair Stone Road, Building C
~~1309 Winewood Blvd., Bldg. B~~
 Tallahassee, Florida 32399-2450
 ATTN: Request to Appear

(2) When, as a result of a visitor presentation, a panel of Commissioners requests additional information be secured and returned to the Commission for review, upon receipt, the new information shall be placed on the docket for consideration by the panel of Commissioners which requested it.

(3) No testimony is entertained at Commission meetings regarding revocations unless stipulated on the record at the time the final revocation hearing is conducted and with the prior written approval of the Chair. ~~Persons requesting permission to speak to the Commission at a parole revocation hearing must obtain prior written approval of the Chair to the above address and shall then be subject to the subpoena power of the Commission. Because the parolee may not be present at the Commission headquarters in Tallahassee, no testimony is entertained at those meetings unless stipulated on the record at the time of the conduct of the final revocation hearing.~~ The public is welcome to attend and observe the meetings.

(4) ~~Persons requesting permission to speak to the Commission at a Parole Rescission Hearing must obtain prior written approval of the Chair at the above address and shall then be subject to the subpoena power of the Commission. In that~~ Because the inmate may not be present at ~~the Commission meetings headquarters in Tallahassee,~~ no testimony is entertained at those meetings regarding rescission matters, unless stipulated on the record at the time ~~of the conduct of the rescission hearing~~ and with the prior written approval of the Chair. The public is welcome to attend and observe the meetings.

Specific Authority 947.07 FS. Law Implemented 947.172, 947.174, 947.16, 947.173, 947.149 FS. History--New 9-10-81, Formerly 23-21.04, Amended 1-26-93, 1-5-94, 8-16-94, _____.

23-21.0051 Full Commission Reviews.

The Commission, consisting of three Commissioners, appointed by the Chair, shall vote the following types of cases:

(1) Extraordinary Review cases shall automatically be placed on the docket by staff ~~for full Commission review;~~

(2) In any case where a panel agrees to set or reduce a Presumptive Parole Release Date or Mutual Participation Program parole release date which would place or continue to place that date within the period of retained jurisdiction by a court, the case shall be referred to the full Commission for consideration of that action;

(3) Upon receipt of significant information impacting on parole decision-making, a single Commissioner can have a case placed on the docket for a full Commission vote;

(4) A panel of Commissioners is authorized to refer a case originally placed on the docket for its consideration to the full Commission. Should a panel split in their vote to refer a case to the full Commission, the Chair will cast the deciding vote. If the Chair agrees that the case should be referred to the full Commission, the member of the panel who voted to refer will be responsible for preparing the memorandum;

(5) When a panel is unable to agree and the case is referred to the Chair, the Chair shall either concur with one of the voting panel members or refer the case to the full Commission;

(6) Whenever a panel of Commissioners reviews a case which is on a docket for consideration and the panel determines that new information has been gathered which suggests modification of the established presumptive parole release date in excess of sixty (60) months, the panel shall make its recommendation for such modification and refer the case to the full Commission. The panel's recommendation regarding the new information shall include a statement of the specific reason for its recommendation;

(7) In any case where a panel agrees to set or modify a Mutual Participation Program parole release date ~~an MPP Date~~ sixty (60) months or more, below the established PPRD, the panel shall make its recommendation for such modification and refer the case to the full Commission for decision;

(8) Cases for which notice has been provided to the sentencing court, under the provision of Section 947.1745(4), F.S., and for which the court has submitted a written objection to parole release, ~~shall be placed on the docket for the full Commission;~~

(9) All parole and conditional medical release violation ~~revocation~~ cases following final hearing ~~shall be placed on the docket for full Commission review;~~

(10) All effective and extraordinary interviews ~~shall be placed on the docket for full Commission review;~~

(11) Decisions on granting conditional medical release.

(12) Reports of improved medical condition or requests to modify a condition in a Conditional Medical Release case;

(13) Reviewing terms and conditions for Conditional Medical Release cases;

(14) Setting presumptive parole release dates for capital felony offenders whose sentence includes a 25-year mandatory minimum term.

(15) Reviewing presumptive parole release dates for capital felony offenders whose sentence includes a 25-year mandatory minimum term.

(16) Directing an early initial parole interview, except in cases where the inmate is serving a mandatory minimum term;

(17) Parole cases in which the Department of Corrections is making a recommendation, separately from any other scheduled action;

(18) Cases in which the presumptive parole release date is within the retained jurisdiction period of the court;

(19) Rescinding or nullifying a parole granted by the Commission;

(20) Reviewing the term and conditions of parole as outlined in Rule 23-21.017, F.A.C.

(21) When the Commission cannot reach a majority vote, the action of the Commission is no action.

Specific Authority 947.07, 947.20 FS. Law Implemented 947.06, 947.07, 947.149, 947.173, 947.18, 947.20 FS. History—New 1-26-93, Amended 1-5-94.

23-21.0052 Panel Reviews.

A panel consisting of two Commissioners, appointed by the Chair, shall vote the following types of cases:

(1) Establishing presumptive parole release dates, unless the sentence includes a 25-year mandatory minimum term.

(2) Inmate initiated reviews of presumptive parole release date, unless the sentence includes a 25-year mandatory minimum term.

(3) Reviewing subsequent parole interviews for possible modification of presumptive parole release dates;

(4) Determining unsatisfactory institutional conduct for establishing eligibility for the setting of presumptive parole release dates;

(5) Reviewing the term and conditions of parole, control release, conditional release and addiction recovery supervision cases;

(6) Approving, rejecting, returning for renegotiation or canceling Mutual Participation Program agreements;

(7) Ordering an alleged parole violator returned for a final hearing following a preliminary hearing;

(8) Ordering an alleged parole violator released from custody or discharged following a preliminary hearing;

(9) Ordering a conditional releasee, addiction recovery releasee or control releasee, charged with a violation, to be revoked and returned to custody or released from custody and restored to or discharged from supervision following a final revocation hearing;

(10) Reviewing warrant requests submitted by a single Commissioner as provided in Rule 23-21.021, F.A.C.;

(11) Establishing, extending, advancing or vacating control release dates;

(12) Granting or denying requests for early termination from parole, control release, addiction recovery and conditional release supervision;

(13) Modifying or deleting special conditions of parole, control release, addiction recovery and conditional release supervision;

(14) Ordering release on recognizance (ROR) following a hearing;

(15) Establishing the term and conditions for control releasees, conditional releasees and addiction recovery releasees; and

(16) Referring a case for a Full Commission review, with good cause.

Specific Authority 947.07, 947.20 FS. Law Implemented 947.06, 947.13, 947.135, 947.1405, 947.141, 947.146, 947.149, 947.172, 947.173, 947.174, 947.1745, 947.1746, 947.18, 947.19, 947.20, 947.23, 947.24 FS. History—New

23-21.006 Initial Interview Procedure.

(1) Upon receipt of notice that an inmate has been committed to the Department or to a county jail for a parole eligible cumulative sentence of 12 months or more, the ~~Commission Director of Parole Grant~~ shall schedule an initial interview for the inmate. Inmates shall be eligible for parole consideration on all sentences which were not imposed pursuant to Sentencing Guidelines. An inmate currently serving a sentence imposed pursuant to Sentencing Guidelines shall not be eligible for parole consideration upon a consecutive non-guidelines sentence until service of the latter sentence has begun. The following criteria shall be used in determining parole eligibility:

(a) Is the inmate confined solely as a result of a sentence or sentences imposed under Sentencing Guidelines? If the answer is yes, the inmate is not eligible for parole consideration. If the answer is no, then:

(b) Where the inmate is confined as a result of multiple sentences, at least one of which is a sentence imposed under Sentencing Guidelines, whether concurrent or consecutive, the inmate shall be eligible for parole consideration, and can be paroled to the incarceration portion of the sentence(s) imposed under Sentencing Guidelines.

(2) Inmates received into the custody of the Department of Corrections with sentences imposed under Sentencing Guidelines will be identified by the Department. Staff located in the Commission's central office will then make parole eligibility determinations and assign parole interview dates.

(a) The initial parole interview date for a person whose parole is revoked shall be set by the Commission within six months of the revocation.

(b) The initial parole interview date for a parole violator returned to the Department's custody with any new sentence(s) not imposed under Sentencing Guidelines shall be assigned by staff according to current interview scheduling procedures set forth in subsection (3) herein.

(c) In the event an inmate is scheduled for an initial or ~~subsequent biennial (subsequent)~~ interview and is not in the Department's custody at that time, the examiner shall prepare a transaction sheet reflecting same and the case shall be rescheduled for the appropriate interview within 90 days ~~in four (4) months~~.

(d) If the inmate exits the system while still under the service of an active commitment and is returned to the Department's custody with a new sentence(s), the following action will be taken by the examiner at the time of interview:

1. New sentence(s) imposed solely under Sentencing Guidelines. If no PPRD was established prior to the inmate exiting the system, the inmate shall be afforded an initial interview at the next regularly scheduled interview date. In establishing a recommended PPRD, the sentence(s), including sentences to time served of 60 days or more, imposed under Sentencing Guidelines shall not be scored, but may be treated

as information for possible use as aggravation. If a PPRD was established prior to the inmate exiting the system, the existing PPRD shall be vacated and an initial interview shall be provided herein.

2. New sentences imposed, one of which is a sentence imposed under Sentencing Guidelines. If no PPRD was established prior to the inmate exiting the system, the inmate shall be afforded an initial interview at the next regularly scheduled interview date. In calculating a recommended PPRD, the examiner shall apply current rules of aggregation on sentences that are not imposed under Sentencing Guidelines. Sentences of 60 days or more, including sentences of time served, imposed under Sentencing Guidelines qualify as information for use as possible aggravation. If a PPRD was established prior to the inmate exiting the system, the existing PPRD shall be vacated and an initial interview shall be provided herein.

(3) Parole revocation with a new felony or misdemeanor conviction: Inmates whose parole is revoked after conviction for a new felony or misdemeanor offense, and who are committed to a jail, stockade or correctional institution will be considered under these guidelines as a new admission and the Commission can use concurrent new commitments as aggravation or aggregation in the establishment of a presumptive parole release date. If the inmate is found to be eligible for consideration for parole on the ensuing sentence(s) the Commission shall aggregate. Further, the Commission shall aggravate or aggregate each consecutive sentence.

(4) Conviction for crimes committed while incarcerated: Escape or any other crime committed during incarceration with an ensuing conviction and sentence vacates any previously established presumptive parole release date and shall cause the inmate to be considered a new admission. If the inmate is found to be eligible for consideration for parole on the ensuing sentence(s) the Commission shall aggregate. If the inmate's ensuing sentence(s) are not parole eligible, the Commission can use these new commitments as aggravation in the establishment of a new presumptive parole release date.

~~(5)(3)~~ Initial interviews for parole eligible inmates shall be scheduled as follows:

(a) For inmates convicted on or before April 19, 1982, in order to meet statutory time frames, inmates serving an indeterminate sentence or a sentence of 5 years or less shall be scheduled for initial interview not later than the end of the 5th month from the initial date of confinement in execution of the judgment of the Court and inmates serving sentences in excess of 5 years shall be scheduled for initial interview not later than the end of the 10th month from the initial date of confinement in execution of the judgment of the Court. Any inmate may freely and voluntarily waive in writing before a parole examiner or Department's classification officer the initial interview.

(b) For inmates convicted on or after April 20, 1982, the following schedule shall apply:

1. Inmates sentenced to an indeterminate term or a term of 3 or less years or who have been sentenced under the provisions of the Youthful Offender Act or are determined to be youthful offenders by the Department shall have their initial interview scheduled within 7 months of the initial date of confinement in execution of the judgment of the Court.

2. Inmates sentenced to a term in excess of 3 years but not more than 6 years shall have their initial interview scheduled within 13 months of the initial date of confinement in execution of the judgment of the Court.

3. Inmates sentenced to a term in excess of 6 years but other than a life term shall have their initial interview scheduled within 23 months after the initial date of confinement in execution of the judgment of the Court.

4. Inmates sentenced for a term of life shall have their initial interview scheduled within 59 months after the initial date of confinement in execution of the judgment of the Court.

5. Inmates sentenced to serve a mandatory minimum sentence shall be scheduled for an initial interview from the initial date of confinement in execution of the judgment of the Court as follows:

a. Inmates serving a minimum mandatory term of 7 years or less shall be scheduled for an initial interview within 6 months of the expiration of the mandatory portion of the term;

b. Inmates serving a minimum mandatory term in excess of 7 years but less than 15 years shall be scheduled for an initial interview within 12 months of the expiration of the mandatory portion of the term;

c. Inmates serving a minimum mandatory term of 15 years or more shall be scheduled for an initial interview within 18 months of the expiration of the mandatory portion of the term.

6. Inmates designated mentally disordered sex offenders shall be scheduled for an initial interview within 90 days of receiving written notification from the Department of the need for such interview and that all investigative reports deemed necessary by the Commission are available for examination in the inmate's file.

7. Any inmate who is adjudicated incompetent pursuant to statutes shall be scheduled for an initial interview within 90 days of the date the Commission receives written notice from the Court that mental competency has been restored.

~~8. Inmates serving sentences imposed by a court of this state in a facility outside the confines of this state shall not be scheduled for any interview but, when the Chair is made aware of that situation, he shall cause a parole examiner to request the summary of information from the inmate's file from the other jurisdiction for the purpose of recommending a presumptive or effective parole release date and the Commission shall establish the dates based on the written recommendation and pertinent file information. The Commission, at its discretion, may react to supplemental written information on any inmate~~

~~serving a sentence in another jurisdiction with regard to mitigating or extending an established presumptive parole release date or may concur with the parole release decision of the jurisdiction granting parole and accepting supervision.~~

~~8.9.~~ The Commission may, by a vote of a quorum, request an initial interview earlier than scheduled except in cases where the inmate is serving a minimum mandatory term.

~~(6)(4)~~ Postponement or deferral of initial interview, for inmates convicted on or after April 20, 1982.

(a) A regularly scheduled initial interview may be postponed for a period not to exceed 90 days for good cause which shall include but not be limited to securing from the Department a copy of the inmate's presentence or postsentence investigation report, a parole or probation violation report or whatever other information is deemed necessary to conduct the initial interview. The reasons for postponement shall be noted in writing, included in the offender's institution file and forwarded to the Commission Headquarters for subsequent rescheduling and to be included in the Department's central office offender's file.

(b) A regularly scheduled initial interview may be deferred as follows:

1. Inmates who are out to court when the initial interview is scheduled. Upon notification by the Department that the inmate has been returned from Court without a new commitment, the initial interview shall be conducted no later than 90 days from the date of receipt of the written notification of return. Inmates who have received a new commitment shall be scheduled for an initial interview pursuant to these rules.

2. Initial interviews for inmates who are confined in any appropriate treatment facility by virtue of transfer by the Department may be deferred and shall result in the rescheduling of the initial interview no later than 90 days after receipt of written notice from the Department that the inmate has been returned to their custody. Inmates designated Mentally Disordered Sex Offenders are not included in this deferral procedure.

~~(7)(5)~~ Inmates convicted of capital crimes on or before April 19, 1982, shall be interviewed as follows:

(a) Inmates serving life sentences for capital crimes with twenty-five years minimum mandatory sentences will be interviewed within the last eighteen months before the expiration of the mandatory portion of the sentence. To calculate the interview date, begin with the most recent date of sentence for the capital felony, add twenty-five years representing the mandatory portion of the sentence, subtract the jail credit awarded by the court, add in any out time for post-conviction bond or escape and then subtract 18 months. The inmate will not be interviewed before the resulting date.

(b) Inmates serving sentences for capital crimes who do not have minimum mandatory sentences will be interviewed within one year of receipt by the Department or when they may be statutorily eligible for parole consideration.

(c) Inmates under death sentences will not be interviewed nor considered for parole.

~~(8)(6)~~ Inmates convicted of capital crimes on or after April 20, 1982, shall be scheduled for an initial interview as provided in these rules.

~~(9)(7)~~ The initial interview shall be in two parts. In Part I, the parole examiner shall determine whether the inmate is eligible for consideration for parole. The determination shall be based upon the following matters:

(a) Is the inmate confined in execution of the judgment and sentence of the court; that is, is there a judgment and sentence in the inmate's Department file which indicates a sentence of twelve months or more or which indicates an indeterminate sentence? If the answer is no, then the parole examiner shall postpone the interview for sixty days and notify the Commission Director of Parole ~~Grant by telephone and within twenty-four hours by mail~~ the reason for postponement. If the answer is yes, then,

(b) For inmates subject to incarceration as a condition of probation, the following matters shall be determined:

1. Is the inmate confined solely as the result of a commitment where his incarceration is a condition of probation? If the answer is yes, the inmate shall be advised that he is not eligible for consideration for parole. If the answer is no, then,

2. Where the inmate has multiple commitments, at least one of which is a concurrent commitment where his current incarceration is a condition of probation, and at least one of which is a non-probationary commitment which will expire subsequent to the expiration of the condition of incarceration, the inmate shall not be ineligible for parole on that account, but shall have a presumptive parole release date established beyond the expiration date of the condition of probation.

3. Where the inmate has multiple commitments, at least one of which is a consecutive commitment where his incarceration is a condition of probation, the inmate shall not be ineligible for parole to the incarceration portion of his probation on that account.

(c) Is the inmate's record during confinement good? If the answer is no, then the interview is at an end. The recommendation of the parole examiner shall be to reschedule the initial interview within six months; if the answer is yes, then, proceed with part II of the initial interview as set forth in subsection 23-21.006(8), F.A.C. Record during confinement is good means that within the three months preceding the initial interview, an inmate has:

1. Neither pending nor processed disciplinary actions which may result in the loss of gain-time or placement in disciplinary confinement. For the purpose of this section, pending means a formal disciplinary report document has been created by the Department; and

2. No pending court prosecutions in any Florida court. For purposes of this section, detainers that are not being actively pursued are not to be considered a pending court prosecution; and

3. No reclassification actions raising custody classification, transferring to a higher custody or level institution, transferring to close management status; and

4. No terminations of community work release for cause; and

5. No pending revocation proceedings or entries of a Commission order revoking parole.

~~(10)(8)~~ Part II of the initial interview. The parole examiner shall explain to the inmate the scoring of the inmate's salient factor score and the severity of his offense behavior. The parole examiner shall discuss the inmate's individualized institutional conduct record and explain the requirements of a satisfactory release plan for parole supervision and how those factors can impact on his parole release. The parole examiner will record any direct input offered by the Department's representative, if present during the interview. The parole examiner shall discuss any aggravating or mitigating factors with the inmate. The parole examiner shall explain the calculation of time in custody. At the close of the interview, the inmate shall be orally informed of the examiner's final recommendation and that only a quorum may establish his or her presumptive parole release date. The inmate shall be requested to sign a statement which is an acknowledgment that the inmate was present during the initial interview and was verbally advised of the recommendation in his case.

~~(11)(9)~~ The parole examiner shall reduce the oral recommendation for parole, salient factor score, severity of offense behavior, aggravation, mitigation, time in custody calculation and the recommended presumptive parole release date to writing and, within 10 days of the initial interview, forward those written recommendations to the Commission's headquarters.

(12) Inmates serving parole-eligible sentences imposed by a court of this state in a facility outside the confines of this state shall not be scheduled for an in-person initial interview with a Florida parole examiner, but are entitled to establishment of a presumptive parole release date in accordance with the same time frames provided for inmates confined in Florida.

(a) If the inmate was sentenced in Florida, but was transferred to another state before entering the custody of the Department of Corrections, the Commission will not be aware of the parole eligible sentence unless the inmate or another individual or entity notifies the Commission. Upon such notification, the Commission shall obtain the commitment package from the sentencing court in Florida and begin the parole review process. Inmates who are received into the custody of the Florida Department of Corrections and later transferred to another state will have had a Commission review of parole eligibility upon their commitment in Florida.

(b) At the time the out-of-state inmate would have been scheduled for an initial interview if confined in Florida, the parole examiner will request a summary of information from the inmate's file from the other jurisdiction. The examiner will review the inmate's commitment papers and institutional progress. If the examiner determines that the inmate is presently eligible for consideration for parole, the examiner will record recommendations for the inmate's salient factor score, severity of offense behavior, and any aggravating/mitigating factors. The parole examiner's recommendation will be forwarded to the case manager of the prison where the inmate is incarcerated with a request that the inmate be called out and allowed to review the parole examiner's recommendation. The inmate should be asked to sign an acknowledgment of the interview and give an input statement for consideration by the Commission. If questions arise about the formulation of the PPRD, the case manager is encouraged to contact the examiner directly. If prison regulations permit, the parole examiner may choose to discuss the PPRD recommendation directly with the inmate by telephone. The parole examiner must telephonically notify any inmate convicted on or before April 19, 1982, of the PPRD recommendation. Within 10 days of the parole examiner receiving the acknowledgment of interview signed by the inmate or witnessed by the case manager, the parole examiner will forward the recommendation along with acknowledgment of interview and any input statement to the Commission's headquarters.

(13)(10) Upon receipt of the parole examiner's recommendations, the Chairman or designee shall assign them to a quorum for decision making.

(14)(11) Within ninety days of the initial interview, the quorum shall reach a decision and notify the inmate of each recommendation made by a parole examiner and shall, based upon competent and persuasive evidence, determine whether the inmate is eligible for consideration for parole.

(a) If the parole examiner's recommendation was that the inmate was not eligible for consideration for parole, and, as a result, the parole examiner did not forward a written recommendation for a presumptive parole release date, the quorum may remand the matter to the parole examiner for immediate consummation of the initial interview and written recommendation for a presumptive parole release date.

(b) If the parole examiner's recommendation was that the inmate was eligible for consideration for parole and the parole examiner forwarded a written recommendation for a presumptive parole release date, the quorum shall:

1. Either establish a presumptive parole release date and inform the inmate in writing of its decision regarding the salient factor score, severity of offense behavior, aggravating or mitigating factors with individual particularity, calculation of time, and the established presumptive parole release date; or,

2. Determine that the inmate is not eligible for consideration for parole, and inform the inmate in writing as to the reasons for ineligibility and reschedule an initial interview for the inmate at an appropriate time.

(15) Presumptive Parole Release Date exceeds expiration of sentence: Pursuant to these rules, the Commission shall establish a presumptive parole release date for inmates found to be eligible for parole consideration. If the established presumptive parole release date exceeds the expiration of sentence date, that date shall not incarcerate the inmate past the expiration of his sentence.

Specific Authority 947.07 FS. Law Implemented 947.002, 947.16, 947.165, 947.172 FS. History--New 9-10-81, Amended 10-1-82, 8-1-83, Formerly 23-21.06, Amended 1-26-93, 1-5-94, _____.

23-21.007 Salient Factor Scoring.

Salient factors (1) through (6) shall be calculated on the inmate's criminal record.

(1) NUMBER OF PRIOR CRIMINAL CONVICTIONS:

(a) Juvenile offenses, juvenile incarcerations, and misdemeanor convictions do not constitute criteria to be used in determining Recidivist Criminal Factor. Further, individual felony convictions within a single criminal episode result in the entire criminal episode being considered one prior felony conviction when computing the Recidivist Criminal Factor. Inmates who meet the criteria of the Recidivist Criminal Factor shall not be scored on the remaining six factors as the inmate automatically falls within the Recidivist Criminal Factor time ranges on the matrix. Once an inmate is found to meet the criteria to be scored in the Recidivist Criminal Factor time ranges, all rescoring on subsequent incarcerations must also fall in the Recidivist Criminal Factor time ranges.

(b) For purposes of scoring this item, do not count vagrancy, loitering, disorderly conduct, disturbing the peace, public drunkenness, disorderly intoxication, violations of local ordinances which would not constitute violations of State Law and noncriminal traffic infractions as prior criminal record. Convictions for prowling, trespassing, criminal mischief, malicious mischief, criminal contempt of court and failure to appear, shall be counted. Serious vehicular convictions which shall include but not be limited to driving while intoxicated or hit and run, shall be counted as prior criminal record.

(c) Count all prior juvenile sanctions which would have been criminal if committed by an adult. Do not count "status offenses," for example runaway, truancy, habitual disobedience, as prior criminal record. This does not, however, preclude a Hearing Examiner nor a quorum from considering such behavior as a negative indicant of parole prognosis.

(d) Count all prior military criminal convictions which would have been subject to civilian criminal law. Do not count military convictions for strictly military type offenses. However, this does not preclude considering serious misconduct as a negative indicant of parole prognosis.

(e) Count all pleas of guilty, pleas of nolo contendere or convictions which result from criminal offenses committed while on bail or probation for the present offense of conviction. Conduct resulting in diversion from the judicial process without a plea of guilty or a plea of nolo contendere or a specific finding of guilt, deferred prosecution, pretrial intervention, probation without plea, is not counted in scoring this item.

(f) Do not count the present state conviction or conviction resulting from the present offense behavior as a prior criminal record.

(g) Do not count offenses when adjudication is withheld, unless a sanction is imposed.

~~(h)~~(g) Setting aside or removal of juvenile or youth convictions or adjudications is normally for civil purposes. Such convictions or adjudications are to be counted as prior criminal record when assessing parole risk. Adult convictions which were set aside or pardoned on grounds of innocence are not to be counted. Convictions which were reversed on appeal or via post-conviction relief are not to be counted unless a retrial resulted in conviction or convictions.

~~(i)~~(h) If an inmate has maintained a conviction-free record in the community and has not been incarcerated or under court ordered or post release supervision for a period of ten consecutive years, the criminal record prior to the ten-year period shall not be counted for any salient factor. This shall not prevent consideration of such behavior as a negative indicant of parole prognosis. A substantial conviction-free period in the community not amounting to ten years may be considered as a positive indicant of parole prognosis.

(2) NUMBER OF PRIOR INCARCERATIONS:

- Recidivist Criminal Factor as defined = RCF
- Three or more prior convictions = 2 Points
- One or Two prior convictions = 1 Point
- No prior convictions = 0 Points
- Two or more prior incarcerations = 2 Points
- One prior incarceration = 1 Point
- No prior incarceration = 0 Points

(a) For purposes of this item, count only imposed incarcerations of sixty days or more.

(b) Count all prior incarcerations, including commitments and placements in residential juvenile facilities resulting from a sentence imposed for a conviction.

(c) Count only incarcerations that were actually imposed; do not count confinement pending trial or adjudication as an incarceration unless the sentence was specifically to "time served." Concurrent or consecutive sentences for offenses in the same criminal episode are to be counted as a single incarceration.

(d) Count only incarcerations which were imposed and served prior to the receipt by commitment for the present offense of conviction. Incarcerations which were imposed after the commission of the present offense of conviction are not counted for purposes of this item; unless the incarceration resulted from a criminal offense committed while on bail or probation for the present offense of conviction. This does not preclude considering the commission of additional offenses as a negative indicant of parole prognosis.

(e) Incarcerations resulting from convictions which were set aside or pardoned on grounds of innocence are not to be counted nor are incarcerations imposed as a condition of probation.

(3) TOTAL TIME SERVED IN YEARS:

- Two or more years served = 2 Points
- Up to two years served = 1 Point
- No time previously served = 0 Points

(a) Count all time imposed for all prior incarcerations for 60 days or more. Months or days should be aggregated to form years or fractions thereof.

(b) Score 2 if the total time served for all prior incarcerations is 2.0 years or longer.

(c) Score 1 if the total time served for all prior incarcerations is less than 2.0 years but more than 60 days.

(d) Score 0 if there are no prior incarcerations.

(e) Do not count time served on a conviction which was later set aside or pardoned on grounds of innocence or was an incarceration imposed as a condition of probation.

(4) AGE AT OFFENSE WHICH LED TO THE FIRST INCARCERATION:

- 17 Years or younger = 2 Points
- 18 – 25 Years = 1 Point
- 26 Years or older = 0 Points

(a) Score 2 points if the inmate was less than 18 years of age at the time of the offense which led to the inmate's first incarceration.

(b) Score 1 point if the inmate was 18 through 25 years old at the time of the offense which led to the inmate's first incarceration.

(c) Score 0 points if the inmate was 26 years old or older at the time of the offense which led to the inmate's first incarceration.

(d) For purposes of this item, count only commitments in which the sentence imposed was for 60 days or more.

(e) For the purposes of this item, if the inmate was placed on probation which later was revoked, use the age of the inmate on the date of the behavior leading to revocation. Do not use the age of the defendant at the time of the offense which led to the probation.

(f) Do not consider age at time of commission of any offense for which conviction was later set aside or pardoned on grounds of innocence when computing this factor.

(5) NUMBER OF PROBATION, PAROLE OR MCR REVOCATIONS:

One or more revocations = 1 Point

No revocation = 0 Points

(a) For purposes of this item, “parole” includes mandatory conditional release (MCR), conditional release, control release, conditional medical release, addiction recovery supervision, and compulsory conditional release (CCR).

(b) Score 1 if the inmate has ever had parole revoked or if the inmate has ever had an adult probation revoked. However, do not count probation revocations which do not result in a sentence to incarceration for the offense for which probation was being served.

(c) Score 0 if the inmate has never had parole or probation revoked; if the inmate has only had juvenile probation revoked; or if the inmate’s only adult probation revocation did not result in a sentence to incarceration.

(d) Do not consider any parole revocation on a conviction which was later set aside or pardoned on grounds of innocence.

(e) More than one revocation of probation, parole, CCR or MCR shall be considered as a negative indicant of parole prognosis, and may be used as an aggravating factor.

(6) NUMBER OF PRIOR ESCAPE CONVICTIONS:

One or more prior escape conviction(s) = 1 Point

No prior escape conviction = 0 Points

(a) Score 1 if the inmate has ever been convicted of escape prior to the present offense of conviction.

(b) Score 0 if the inmate has no prior escape conviction.

(7) BURGLARY OR BREAKING AND ENTERING AS THE PRESENT OFFENSE OF CONVICTION:

Present Offense of Conviction includes a conviction for burglary or breaking and entering = 1 point

Otherwise = 0 Points

(a) Score 1 if the present offense of conviction for which the inmate has been convicted includes burglary or breaking and entering, whether or not a sentence to incarceration was imposed. Such conviction shall not form the basis for a decision outside the matrix time range.

(b) Score 0 if the present offense of conviction is not burglary or breaking and entering. Do not point convictions for entering without breaking, attempted burglary, attempted breaking and entering or possession of burglary tools.

(c) More than one conviction for burglary or breaking and entering may be considered as the basis for a decision outside the matrix time range as a negative indicant of parole prognosis.

(d) Do not score 1 point if the conviction of burglary or breaking and entering is a consecutive sentence. Such consecutive sentence shall be considered a negative indicant of parole prognosis and the basis for a decision outside of the matrix time range.

Specific Authority 947.07, 947.165 FS. Law Implemented 947.002, 947.13, 947.165 FS. History–New 9-10-81, Amended 10-1-82, 8-1-83, 7-1-84, Formerly 23-21.07, Amended 1-26-93, 1-5-94, _____.

23-21.008 Severity of Offense Behavior.

The severity of offense behavior shall reflect the present offense of conviction’s degree of felony or misdemeanor. If the present offense of conviction involved multiple separate offenses, the severity of offense behavior shall be established for the most serious of the separate offenses which resulted in a sentence to incarceration or in a sentence to 60 days or more when aggregation is utilized, including sentences of 60 days or more to time served. The other offenses may ~~can~~ be used as aggravating factors whether those commitments are active or expired. This shall be applied to both offenses that led to either consecutive or concurrent sentences and convictions resulting in sentence disposition other than to incarceration. If the actual offense behavior was more or less severe than the present offense of conviction, a decision outside the matrix time range may be considered.

Specific Authority 947.07, 947.165 FS. Law Implemented 947.002, 947.165 FS. History–New 9-10-81, Amended 10-1-82, 8-1-83, Formerly 23-21.08, Amended 1-5-94, _____.

23-21.010 Decisions Outside the Matrix Time Range.

(1) The Commission may render a decision outside the matrix time range based on any competent and persuasive evidence relevant to aggravating or mitigating circumstances if the inmate is furnished a written explanation of such a decision. The requirements of competent and persuasive evidence are:

(a) That the information is specific as to the behavior alleged to have taken place, and

(b) The source of the allegation appears to be reliable.

(2) Information (for example information supporting a count of an indictment that was dismissed as a result of a plea agreement) may be relied upon as aggravating or mitigating circumstances provided it meets the competent and persuasive criteria. However, the following aggravating factors shall not be used:

(a) Any element of the crime;

(b) Information included in calculating the salient factor score;

(c) Information included in the severity of offense behavior; or

(d) Charges for which a person was acquitted after trial.

(3) The Commission shall use as an aggravating factor all existing consecutive sentences, including parole ineligible sentences. In so doing, a specific number of months shall be assessed for each consecutive sentence(s), even if one of such sentences is for the most serious offense as defined in these rules.

(4) The parole examiner must state in writing with individual particularity why the specific aggravation or mitigation factor(s) was recommended. This does not mean

that those are the only situations in which a recommendation of aggravation or mitigation may be considered by a parole examiner, nor does it mean that a recommendation of aggravation or mitigation is mandated for every such case. The Commission's adoption of a parole examiner's recommendation without change adopts the parole examiner's explanation of aggravation or mitigation. Additionally, the Commission is free to consider and apply aggravation or mitigation regardless of whether the parole examiner's recommendation included the same and the Commission is free to disregard any recommendation by the parole examiner and independently recompute the Salient Factor Score, Severity of Offense Behavior and apply any aggravation or mitigation deemed necessary as long as the inmate receives in writing an explanation of such decision with individual particularity.

(5) Following are examples of situations in which a parole examiner or the quorum may wish to consider a recommendation of aggravation or mitigation. However, these are only examples and the Commission is not limited to only these examples as long as a written explanation of the factor is provided to the inmate:

(a) Aggravation – Decisions above the matrix time range:

1. Reasons related to aggravation of the severity of offense behavior can include:

- a. The offense involved the use of a firearm or dangerous weapon;
 - b. The offense resulted in great bodily injury or pecuniary loss;
 - c. The offense involved multiple victims or knowingly created a great risk of bodily injury or death to many people;
 - d. The offense involved exceptionally brutal or heinous behavior indicative of wanton cruelty;
 - e. The offense was part of a large-scale organized scheme of criminal conspiracy;
 - f. The offense was committed against a victim known to be particularly vulnerable, such as elderly persons, physically or mentally handicapped persons, children;
 - g. The offense was committed in an unusually sophisticated manner;
 - h. Any additional offenses: ~~The offense involved multiple separate offenses;~~
 - i. The inmate committed an offense while holding public office and the offense was related to his conduct in office;
 - j. The inmate committed an offense using his professional reputation or position in the community to effectuate the offense or to afford him an easier means of perpetrating it;
 - k. The inmate committed an offense for the purpose of avoiding or preventing a lawful arrest or effecting an escape;
2. Reasons related to likelihood of favorable parole outcome, negative indicants of parole prognosis can include:
- a. The offense was committed while on bond, after bond was entreated or on release on recognizance;

- b. The inmate has a history of alcohol or narcotics abuse;
- c. The inmate has a history of assaultive or violent behavior;

d. The inmate has failed or refused to make restitution when he was able to do so;

(b) Mitigation – Decisions below the matrix time range:

1. Reasons related to mitigation of severity of offense behavior can include:

- a. The crime neither caused nor threatened serious harm to persons nor property, or the inmate did not contemplate it would do so;
 - b. The inmate committing the crime was of such a young age as to diminish his capacity to fully understand the seriousness of his action and its direct consequences;
 - c. The victim of the crime induced or facilitated the offense;
 - d. There is substantial evidence tending to excuse or justify the crime, though failing to establish a defense;
 - e. The inmate acted under strong provocation or duress;
 - f. The inmate had only a peripheral role in the crime;
 - g. The inmate had diminished mental capacity to contemplate the seriousness of the offense;
 - h. There is confirmed evidence that the inmate attempted to withdraw prior to completion of the offense or attempted to make restitution prior to the discovery of the offense;
 - i. The inmate genuinely believed he had a claim of right (property offenses only);
2. Reasons related to likelihood of favorable parole outcome, positive indicants of parole prognosis can include:
- a. The inmate has led a law-abiding life for a substantial period before commission of the crime;
 - b. The inmate's past offenses were of a trivial nature;
 - c. The inmate has the availability of extremely strong community resources;
 - d. The inmate has made restitution to the victim of this crime for the injury, damage, or loss sustained;
 - e. The inmate has a poor medical prognosis;
 - f. The inmate has provided substantial cooperation to the government which has been otherwise unrewarded;
 - g. The inmate has served, or faces a substantial period of incarceration for other offenses;
 - h. The inmate has made a record of clearly exceptional program achievement; (This factor would normally not be applied at the time of the initial interview but may be applicable after a substantial period of incarceration)
 - i. The inmate is an alien and faces deportation under a deportation order or detainer which has been formally entered by the United States Immigration and Naturalization Service;
 - j. The inmate has spent a long period of incarceration in another jurisdiction(s).

Specific Authority 947.07, 947.165 FS. Law Implemented 947.002, 947.13, 947.165 FS. History—New 9-10-81, Formerly 23-21.10, Amended 1-26-93, 1-5-94, _____.

23-21.011 Calculating Time in Custody.

Time in custody means only time in actual physical custody for the present offense of conviction. Time out of incarceration shall be part of the calculation of time in custody. Time out shall include but not be limited to bail, supersedeas bond, escape, unauthorized absence from official custody, parole or MCR not credited by the Commission, or Federal Witness Protection and must be considered before a presumptive parole release date is established. Following are the procedures to be followed in calculating time in custody for single conviction commitments, multiple conviction commitments and cases where aggregation applies:

(1) Single Conviction Commitments:

(a) From the inmate's judgment and sentence document, determine the date of sentencing of the present offense of conviction.

(b) From the judgment and sentence document, determine the amount of county jail credit the Court awarded the inmate.

(c) Subtract from the date of sentence the Court awarded county jail credit. This will reflect the date the inmate was in actual physical custody as determined by the Court.

(d) Subtract any credit awarded by the Commission.

~~(e)(d)~~ Determine if the inmate spent any time out of incarceration. Time out of incarceration shall include for example, mandatory conditional release, supersedeas bond, escape, grant of reprieve or parole. If the inmate was out of incarceration, ascertain the exact number of days out of incarceration and add those days to the date found in paragraph (c) above. This computation will produce the "TIME BEGINS" date.

~~(f)(e)~~ Determine the total number of months for incarceration and add that time to the "TIME BEGINS" date, as determined in Paragraph ~~(e)(d)~~ above. The resulting date will be either the recommended (by a parole examiner) or the established (by quorum) presumptive parole release date.

(2) Multiple Conviction Commitments:

(a) Examine all the judgment and sentence documents and determine the amount of county jail credit for each conviction that actually reflects the total time spent in custody. Subtract from the date of each sentence the Court awarded county jail credit for that sentence and use the earliest date computed. ~~(Care must be taken in computing this time so that the inmate does not receive duplicate credit nor is the inmate to be denied authorized county jail time credit).~~

(b) Subtract any credit awarded by the Commission.

~~(c)(b)~~ Determine if the inmate spent any time out of incarceration. Time out of incarceration shall include, for example, mandatory conditional release, supersedeas bond, escape, grant of reprieve or parole. If the inmate was out of incarceration, add those days to the date found in paragraph (a)

above. If the inmate is paroled to a non-parole eligible sentence(s), the time served on those sentences may be considered for the purposes of computing the time begins date. This computation will produce the "TIME BEGINS" date.

~~(d)(e)~~ Determine the total number of months for incarceration for the multiple conviction commitments and add that time to the "TIME BEGINS" date, as determined in paragraph (b) above. The resulting date will be either the recommended (by a parole examiner) or the established (by quorum) presumptive parole release date.

(3) Aggregation is intended to serve as a mechanism for uniformly evaluating criminal episodes which occur prior to discharge from incarceration or parole. When an examiner finds at an initial interview that an inmate has more than one criminal episode which occurred prior to his discharge from incarceration or parole, the examiner shall aggregate each applicable criminal episode's present commitment. Inasmuch as all sentences must be considered for parole consideration, when an inmate has expired commitments without intervening periods of discharge from incarceration or parole, including sentences to "time served," resulting from previous criminal episodes, such expired commitments shall be considered present commitments for purposes of aggregation.

In the event the Commission does not revoke parole, such present commitment or commitment on which the inmate was paroled shall not be subject to aggregation.

Specific Authority 947.07 FS. Law Implemented 947.002, 947.165 FS. History—New 9-10-81, Amended 8-1-83, Formerly 23-21.11, Amended 1-26-93, _____.

23-21.012 Inmate Initiated Review of Presumptive Parole Release Date.

(1) An inmate can request one review of each initial presumptive parole release date established according to Section 947.173(1), F.S., if the inmate shows cause in writing, with individual particularities, within sixty (60) days after the date the inmate is notified of the establishment of decision on the presumptive parole release date. In that request for review, the inmate must address every matter with which he takes issue or exception. The Commission shall accept the request for review either from the inmate, from the inmate's attorney or from a person with a power of attorney from the inmate. The request for review may be submitted on form PCG-5, which is hereby incorporated by reference. However, the ~~The~~ Commission shall not require any particular form for the request for review. The ~~but the~~ following matters must be included:

(a) Inmate name and Department of Corrections Prison Number;

(b) Inmate's established presumptive parole release date;

(c) The case specific materials of which the inmate is requesting review:

1. Salient Factor Scoring;

2. Severity of Offense Behavior;

3. Aggravating or Mitigating Factors;

4. Calculation of Time in Custody.

(d) The relief sought by the inmate.

(e) The inmate can submit any written or printed evidence purporting to be an official court record. However, any such evidence shall be verified by the Commission and if verification proves any portion of the printed evidence to be invalid or false, the Commission shall inform the proper State Attorney.

(2) The Commission shall not entertain requests for review on any other Commission action ~~review on any action regarding any action on biennial, effective, or special interviews.~~

~~(3) The Commission shall not entertain administrative review requests of full Commission actions declining to authorize effective parole release dates.~~

Specific Authority 947.07 FS. Law Implemented 947.173 FS. History—New 9-10-81, Amended 10-1-82, Formerly 23-21.12, Amended 1-26-93, 1-5-94,

23-21.013 Subsequent Biennial Interview Procedure.

(1) The Commission Director of Parole Grant shall schedule a subsequent biennial interview for every eligible inmate as follows: within 2 years of the month of the inmate's initial interview. ~~Subsequent interviews will be scheduled every 22 months, unless otherwise specified by a panel or full Commission~~

(a) For any inmate, except an inmate convicted of an offense enumerated in paragraph (b), whose presumptive parole release date falls more than 2 years after the date of the initial interview, the Commission shall schedule a subsequent interview to take place within 2 years after the initial interview and at least every 2 years thereafter.

(b) For any inmate convicted of murder, attempted murder, sexual battery, attempted sexual battery, or who has been sentenced to a 25-year minimum mandatory sentence as previously provided in Section 775.082, F.S., and whose presumptive parole release date is more than 5 years after the date of the initial interview, the Commission shall schedule a subsequent interview to take place within 5 years after the initial interview and at least every 5 years thereafter if the Commission finds that it is not reasonable to expect that parole will be granted at a hearing during the following years and states the bases for the finding in writing.

(2) The parole examiner shall review the inmate's institutional file to ~~and~~ determine if there is new information since the previous interview whether or not new information has been added since the date of the initial interview. ~~Such~~ New information shall include new court actions; successful appeals of court actions; prison progress reports; disciplinary reports; psychological or psychiatric reports; gain-time and extra gain-time awards; vocational training or treatment programs successfully completed, in progress or abandoned; educational accomplishments or abandonments; work release

or terminations of work release; pardons, sentence commutations, or expunctions of record, and any other aggravating or mitigating factors which were not included in the institutional file at the time of the previous initial interview.

(3) Vacation of presumptive or effective parole release date: The exiting of an inmate from the incarceration portion of his sentence, which shall include bond, escape, expiration of sentence, or transfer to a mental health facility, shall vacate any established presumptive parole release date. Any subsequent return to incarceration shall require an initial interview to establish a presumptive parole release date. Provided, however, inmates returning to court for modification of a previously imposed sentence or as witnesses shall not have their presumptive parole release dates vacated. Inmates returning to courts outside of Florida's jurisdiction, i.e., Federal or other state, shall not have their presumptive parole release dates vacated. However, information resulting from disposition of cases in court may be used as new information in accordance with applicable law and these rules. Inmates transferred to a Mentally Disordered Sexual Offender Program shall not have their presumptive parole release dates vacated. Inmates may waive biennial interview by preparing a written statement or by appearing before the parole examiner and announcing in person their waiver. In the event an inmate waives his biennial interview the parole examiner will review the contents of the institutional file and may formulate a recommendation based on the factors that could have been considered in the conduct of the biennial interview.

(4) The parole examiner shall discuss the information with the inmate and any Departmental representative. The Department's Representative, ~~if present,~~ will be contacted and allowed to provide ~~enter~~ the Department's recommendation directly ~~on the biennial interview form and subsequently return that form~~ to the parole examiner ~~during the interview.~~ The inmate will also be allowed to provide the parole examiner comments ~~on the form~~ or may ask the examiner to attach material(s) which the inmate wants the Commission to consider. ~~Finally,~~ ~~†~~ The parole examiner shall request the inmate sign an acknowledgment that the inmate was present during the biennial subsequent interview and the examiner shall inform the inmate orally of the examiner's final recommendation. The parole examiner shall reduce the recommendation to writing and send it to the Chair within 10 days of the interview.

(5) For inmates serving parole-eligible sentences imposed by a court of this state and housed in a facility outside Florida, the Commission shall request, through the Department of Corrections' Interstate Compact Office, an inmate progress report and any additional information the Commission needs from the other state. The Department of Corrections shall forward the Commission's Inmate Input Form to the other state for the inmate to provide comments to the Commission. The inmate may include material(s) which the inmate wants the Commission to consider. The parole examiner shall reduce the

~~recommendation to writing and send it to the Chair within 10 days of receipt of the out-of-state materials. The parole examiner shall reduce to writing its determination of matters it believes to be new information and shall recommend that the new information should:~~

~~(a) have no effect on the presumptive parole release date; or~~

~~(b) Have effect on the presumptive parole release date and should add or subtract an appropriate number of months to the presumptive parole release date. The parole examiner's recommendation shall be sent to the Chair within 10 days of the biennial interview and the Chair shall assign the matter to a quorum~~

(6) Within ninety days following the subsequent biennial interview or receipt of the out-of-state materials, the quorum shall reach a decision on each biennial recommendation made by the parole examiner and notify the inmate of the decision. Based upon competent and persuasive evidence, the quorum may accept or reject the parole examiner's recommendation and may independently determine whether or not information has been gathered which affects the inmate's presumptive parole release date.

(7) Inmates may waive a subsequent interview by preparing a written statement or by appearing before the parole examiner and announcing the waiver in person. If an inmate waives his subsequent interview the parole examiner will review the contents of the institutional file and will formulate a recommendation based on the factors that could have been considered in the conduct of the subsequent interview.

Specific Authority 947.07, 947.174 FS. Law Implemented 947.174 FS. History--New 9-10-81, Amended 8-1-83, Formerly 23-21.13, Amended 1-26-93, 1-5-94, _____.

23-21.014 Special Interviews.

(1) The Commission or a quorum may instruct a parole examiner to conduct a special interview at any time during the incarceration portion of an inmate's sentence. Such instruction shall contain a written statement setting forth the reason for the special interview and shall be made a part of the inmate's Department file. The specific instruction, as well as any new information, shall be considered by the parole examiner when making a recommendation to the Commission.

(2) The recommendation of the parole examiner shall be forwarded to the Commission and ~~a~~ the quorum shall inform the inmate in writing of its decision regarding the presumptive parole release date within ninety days of the special interview.

(3) The Department of Corrections ~~may~~ can recommend a special interview or mitigation of an inmate's presumptive parole release date. If the Department makes such a recommendation, staff will docket that recommendation for the Commission's consideration be completed on an effective parole release date interview form for inmates participating in a Department of Corrections work release program. This recommendation will be made directly to the Regional

~~Administrator, who in turn will immediately schedule the recommended inmate for interview. Following the conduct of this interview, the parole examiner will submit the Department of Corrections recommendation and his interview worksheets to the Commission for action. The Commission will consider the recommendation and determine whether to notice the court of the Commission's intent to parole without an effective parole release date interview, pursuant to Section 947.1745, F.S.~~

~~(4) The Department of Corrections can recommend mitigation of an inmate's presumptive parole release date via a Department of Corrections Progress Report according to the following procedures:~~

~~(a) The Department will include in a full Progress Report specific reasons that justify a change in the present PPRD. The Progress Report will update the inmate's progress since the last parole interview and shall include:~~

~~1. What the inmate has done to benefit himself in self betterment programs;~~

~~2. The inmate's work assignments and whether the assigned work has been critical to the operation of the institution or future employment opportunities;~~

~~3. The inmate's adjustment within the institution, citing gain time earned and/or withheld with reasons for award/forfeiture;~~

~~4. The inmate's release plan including proposed residence and employment and whether the plan has been verified.~~

~~(b) Upon receipt of the Progress Report recommending mitigation of the PPRD transmitted by Department of Corrections Central Office staff, the Commission will docket the case for panel action.~~

~~(c) The panel can act upon the recommendation for mitigation without provision of a Special Interview. Under no circumstances, however, will this policy negate provision of an effective interview.~~

Specific Authority 947.07 FS. Law Implemented 947.174 FS. History--New 9-10-81, Amended 8-1-83, Formerly 23-21.14, Amended 1-26-93, 1-5-94, _____.

23-21.015 Effective Parole Release Date Interview Procedure.

(1) Within ninety (90) days before the effective parole release date interview, the Commission shall send written notice to the sentencing judge of any inmate who has been scheduled for an effective parole release date interview. If the sentencing judge is no longer serving, the notice must be sent to the chief judge of the circuit in which the offender was sentenced. The chief judge can designate any circuit judge within the circuit to act in place of the sentencing judge. Within thirty (30) days after receipt of the Commission's notice, the sentencing judge or the designee shall send to the Commission notice of objection to parole release, if the judge objects to such release. If there is objection by the judge such objection may constitute good cause in exceptional circumstances as

described in Section 947.173, F.S., and the Commission can schedule a subsequent interview per Rule 23-21.013, F.A.C. within two (2) years, extending the presumptive parole release date beyond that time. The same procedure will be followed with any subsequent review outlined herein. If the judge remains silent with respect to parole release, the Commission can authorize an effective parole release date. This procedure applies if the Commission desires to consider the establishment of an effective release date without delivery of the effective parole release date interview. Notice of the effective release date must be sent to the sentencing judge and either the judge's response to the notice must be received or the time period allowed for such response must have lapsed before the Commission can authorize an effective release date. Within ninety (90) days before an inmate's presumptive parole release date, the Commission Director of Parole Grant shall direct a Parole ~~parole~~ Examiner to interview the inmate for purposes of making a recommendation to the Commission on whether or not to authorize an effective parole release date and to establish a parole release plan.

(2) The Parole Examiner shall interview the inmate and discuss the inmate's institutional conduct. The Parole Examiner shall request the inmate to present his parole release plan but shall not comment on the acceptability or suitability of that plan. If the inmate has no plan available, the Parole Examiner shall inform the inmate that the absence of a satisfactory parole release plan may on any effective parole release date established by the Commission shall be cause for the Commission to extend ~~rescind~~ the effective parole release date up to one year until a satisfactory parole release plan has been developed ~~or cause for the parole release date to be extended not more than one year~~. At the close of the effective parole release date interview, the inmate shall be orally informed of the examiner's final recommendation and shall be requested to sign an acknowledgment of presence at the effective parole release date interview.

(3) Vacation of presumptive or effective parole release date: The exiting of an inmate from the incarceration portion of his sentence, which shall include bond, escape, expiration of sentence, or transfer to a mental health facility, shall vacate any established presumptive parole release date. Any subsequent return to incarceration shall require an initial interview to establish a presumptive parole release date. Provided, however, inmates returning to court for modification of a previously imposed sentence or as witnesses shall not have their presumptive parole release dates vacated. Inmates returning to courts outside of Florida's jurisdiction, i.e., Federal or other state, shall not have their presumptive parole release dates vacated. However, information resulting from disposition of cases in court may be used as new information in accordance with applicable law and these rules. Inmates transferred to a Mentally Disordered Sexual Offender Program shall not have their presumptive parole release dates vacated.

(4) Extension of presumptive parole release date: The pending prosecution of a criminal offense in a Florida Court, supported by information or indictment, alleged to have occurred during the service of the present sentence, may result in the extending of a presumptive or effective parole release date until resolution of the pending prosecution. The Commission shall, upon notice that the pending prosecution is completed, schedule the inmate for an interview.

(5)(3) The Parole Examiner shall reduce the recommendation regarding the inmate's institutional conduct to writing and forward the recommendation ~~those recommendations~~ to the Commission. The Parole Examiner shall inform the Commission if, at the effective parole release date interview, new information, either favorable or detrimental, was discovered which might affect the presumptive parole release date. The Parole Examiner shall forward the inmate's release plan to the Commission.

(6)(4) Within thirty (30) days after receipt of the inmate's parole release plan at the Commission headquarters, the full Commission shall determine whether to authorize the effective parole release date. The inmate must be notified of the decision in writing within thirty (30) days after the decision of the Commission panel.

(7)(5) If the full Commission panel finds that the inmate's parole release plan is unsatisfactory, this finding can constitute new information and good cause in exceptional circumstances as described in Section 947.173, F.S., under which the Commission a panel can extend a presumptive parole release date for not more than one year. The Commission panel can review any subsequently proposed parole release plan at any time.

(8)(6) The decision whether to authorize an effective parole release date requires a two-part analysis. In part I the Commission quorum shall determine whether new information has been gathered which requires modification of the presumptive parole release date. Should the Commission quorum decide to modify the presumptive parole release date it shall enter a written order extending the presumptive parole release date declining to authorize the effective parole release date, vacating the presumptive parole release date, and establishing a new presumptive parole release date. Additionally, the order shall state, with particularity, the reason or reasons for extending modifying the presumptive parole release date and shall inform the inmate of the date scheduled for his next effective parole release date interview.

(9)(7) Where the Commission quorum does not modify the presumptive parole release date during part I of the effective review process, it shall proceed to part II of the effective parole release date review. During this portion of the review, the Commission quorum shall determine whether the inmate meets the criteria for parole release under the provisions of Section 947.18, F.S. This determination is to be based upon a review of the entire official record in the inmate's case. If the inmate is

found to meet the criteria for parole release, an effective parole release date should be authorized. If the inmate is found to be ineligible for parole release, however, the Commission quorum shall enter an order declining to authorize the effective parole release date and referring the case to the Commission for extraordinary review. Such review shall in turn be conducted within thirty days after the quorum's decision declining to authorize the effective parole release date. The inmate shall be informed of the decision on extraordinary review within thirty days of the Commission's decision.

~~(10)(8)~~ If the Commission quorum establishes an effective parole release date, the Commission Director of Parole Grant shall reduce the term and conditions of the inmate's parole to writing and inform the inmate of those conditions and term.

~~(9)~~ Any release plan found to be unsatisfactory shall cause an effective parole release date to be delayed as follows:

~~(a)~~ For inmates convicted on or before April 19, 1982, their release date may be postponed for thirty days. On or before the thirty first day, the Commission shall either parole the inmate or cause a parole examiner to conduct a rescission hearing on the matter of the infraction or infractions, new information, acts or unsatisfactory release plan, as charged.

~~(b)~~ For inmates convicted on or after April 20, 1982, their release date may be postponed for sixty days. On or before the sixty first day, the Commission shall either parole the inmate or cause a parole examiner to conduct a rescission hearing on the matter of the infraction or infractions, new information, acts or unsatisfactory release plan, as charged.

~~(10)~~ Any effective parole release date authorized by the quorum is contingent upon satisfactory institutional conduct. If after the establishment of an effective parole release date, the inmate's institutional conduct becomes unsatisfactory, or new information is acquired which was not available at the time of the effective parole release date interview, the inmate's release can be rescinded.

(11) In establishing the term of parole, the Commission shall examine the inmate's sentence structure for the purpose of determining the existence of consecutive sentences. If it is discovered that consecutive sentences exist, the parole term shall be established for the maximum of the total sentence structure. In all cases, if the term of parole exceeds two years the Commission shall advise the parolee in writing of the reasons for the extended term.

(12) When new information is received by the Commission subsequent to the grant of parole, to include an unsatisfactory release plan, unsatisfactory institutional conduct, or any other new information previously not available to the Commission at the time of the effective parole release date interview that would impact the Commission's decision to grant parole, the effective parole release date may be postponed by any Commissioner as provided in Rule 23-21.019, F.A.C.

(13) If an inmate refuses parole, the Commission shall nullify the grant of parole and the presumptive parole release date may be extended up to the maximum release date. The Commission shall continue to interview the inmate per Rule 23-21.013, F.A.C. Should an inmate waive his effective interview or at the time of the effective interview the inmate indicates his unwillingness to accept parole, the presumptive parole release date may be extended up to his maximum release date. The Commission shall continue to interview the inmate per Rule 23-21.013, F.A.C.

Specific Authority 947.07, 947.20 FS. Law Implemented 947.1745, 947.24 FS. History—New 9-10-81, Amended 10-1-82, 8-1-83, Formerly 23-21.15, Amended 1-26-93, 1-5-94, 8-16-94, _____.

~~23-21.0155 Extraordinary Interview—and Review Procedures.~~

~~Where an inmate's case is referred to the Commission for extraordinary review, the following procedures shall be utilized:-~~

~~(1) The Commission shall independently review the complete official record in the inmate's case to determine whether he is eligible for parole release.~~

~~(2) If a majority of the Commission finds the inmate to be eligible for parole release, the Commission shall enter an order authorizing the inmate's effective parole release date. Thereafter, the inmate's actual release on parole shall occur on his effective parole release date subject to the provisions of law authorizing postponement or rescission of an order of parole due to an unsatisfactory release plan, unsatisfactory institutional conduct or acquisition of new information not available at the time of the effective parole release date interview.~~

(1)(3) When an inmate's case is referred for extraordinary review by the Commission, an order shall be prepared outlining the reason(s) for the Commission's decision. The order shall be acted upon by the Commission within 60 days of the decision declining to authorize the effective parole release date. If less than a majority of the Commission finds the inmate to be eligible for parole release, the Commission shall enter a written order refusing to authorize the effective parole release date and scheduling an extraordinary interview within two years from the date of the effective parole release date interview. The Commission's order shall specifically state the reasons for finding the inmate to be a poor ineligible candidate for parole release pursuant to Section 947.18, F.S., and shall identify the information relied upon in reaching this conclusion. Additionally, the order shall suspend the established presumptive parole release date until such time that the inmate is found to be a good candidate eligible for parole release. The determination, on extraordinary review, that an inmate is not eligible a good candidate for parole release shall have the effect of overriding his guideline determined presumptive parole release date however, the inmate shall

continue to receive extraordinary interviews which shall be scheduled pursuant to Rule 23-21.013, F.A.C., on a biennial basis.

(2) If upon extraordinary review, a majority of the Commission finds the inmate to be a good candidate for parole release pursuant to Section 947.18, F.S., the Commission shall enter a written order authorizing the effective parole release date and outlining the term and conditions of parole.

(4) In conducting extraordinary interviews, examiners shall follow the procedures specified in these rules for conducting effective parole release date interviews and, additionally, shall obtain information relevant to the Commission's previous determination that the inmate was ineligible for parole release. Each extraordinary interview shall be completed no later than two years after the inmate's last effective or extraordinary interview. Within thirty days after receipt of the interviewing examiner's recommendations, the Commission shall conduct an extraordinary review and shall again determine whether the inmate is eligible for parole release and whether or not to authorize an effective parole release date. The inmate shall be informed in writing of the Commission's findings on extraordinary review within thirty days of the Commission's decision.

(5) If, as a result of extraordinary interview, the Commission finds the inmate to be eligible for parole release, it shall order his release on parole to begin within sixty days from the date of the Commission's decision. Thereafter, actual release on parole is subject to the provisions of law authorizing postponement or rescission of an order of parole due to an unsatisfactory release plan, unsatisfactory institutional conduct, or acquisition of new information not available at the time of the most recent effective or extraordinary interview.

(6) If, as a result of extraordinary interview and review, the Commission finds that the inmate continues to be ineligible for parole release, the Commission shall again state the reasons and record support for this finding and shall again refuse to authorize an effective parole release date. Finally, the Commission shall schedule a subsequent extraordinary interview to be conducted no later than two years from the date of the last extraordinary interview. Thereafter, such extraordinary interviews and reviews shall be performed in accord with this rule and shall continue until the Commission finds the inmate to be eligible for parole release or he otherwise satisfies his term of incarceration.

Specific Authority 947.002, 947.07 FS. Law Implemented 947.18 FS. History—New 8-1-83, Formerly 23-21.155, Amended _____.

23-21.016 Notice to Local Agencies.

(1) Subsequent to the Commission's establishing an inmate's effective parole release date, the Director of Parole Grant shall provide written notice to the original sentencing judge, the appropriate state attorney, the original arresting law enforcement agency and the Sheriff of the county within the State of Florida to which the inmate is to be released. In the

event the original sentencing judge is no longer available, notice shall be sent to the chief judge of the circuit in which the offender was sentenced.

(2) No notice shall be required for potential parolees being released to jurisdictions outside of the State of Florida.

Specific Authority 947.20, 947.07 FS. Law Implemented 947.175 FS. History—New 9-10-81, Amended 8-1-83, Formerly 23-21.16, Amended 1-26-93, Repealed _____.

23-21.0161 Extraordinary Interview Procedure.

(1) In conducting extraordinary interviews, examiners shall follow the procedures specified in these rules for conducting effective parole release date interviews and, additionally, shall obtain information relevant to the Commission's previous determination that the inmate was not a good candidate for parole release. The Parole Examiner shall reduce his recommendation to writing and forward it to the Commission within 30 days. The Commission shall independently review the complete official record in the inmate's case. The inmate shall be informed in writing of the Commission's findings on extraordinary review within thirty days of the Commission's decision.

(2) If, as a result of extraordinary interview, the Commission finds the inmate to be a good candidate for parole release, it shall establish an effective parole release date within two years from the date of the Commission's decision and schedule a new effective interview, if needed. Thereafter, actual release on parole is subject to the provisions of law authorizing postponement or rescission of an order of parole due to an unsatisfactory release plan, unsatisfactory institutional conduct, or acquisition of any other new information not available at the time of the most recent effective or extraordinary interview and as provided in Rule 23-21.019, F.S.

(3) If, as a result of extraordinary interview, the Commission finds that the inmate continues to be a poor candidate for parole release, the Commission shall again state the reasons and record support for this finding and shall again refuse to authorize an effective parole release date. Finally, the Commission shall schedule a subsequent extraordinary interview pursuant to Rule 23-21.013, F.A.C. Thereafter, such extraordinary interviews shall be performed in accord with this rule and shall continue until the Commission finds the inmate to be a good candidate for parole release or he otherwise satisfies his term of incarceration.

Specific Authority 947.002, 947.07, 947.20 FS. Law Implemented 947.18 FS. History—New _____.

23-21.0165 Conditions of Parole.

(1) The following are the Standard Conditions of Parole:

(a) Condition 1 – Promptly upon being released on parole, I shall proceed to ____, where I shall reside. Immediately upon my arrival, I shall report by ~~mail, telephone, or~~ personal visit to

the parole ~~supervisor and probation supervisor~~ under whose supervision I am to be paroled. The parole ~~supervisor's~~ officer's ~~and probation supervisor's name and address is: ____.~~

(b) Condition 2 – I shall secure the permission of my parole officer before:

1. I change my residence or employment,
2. I leave the county of my residence or the state,
3. I post bail or accept pretrial release if I am arrested for a felony.

(c) Condition 3 – I shall submit a full and truthful report to my parole officer before the fifth day of each month in writing on the forms provided or in person.

(d) Condition 4 – I shall not:

1. Use alcohol or intoxicants of any kind ~~to excess,~~
2. Use or possess narcotics, drugs, or marijuana unless prescribed by a physician.

(e) Condition 5 – I shall not knowingly associate with any person who is engaging in any criminal activity.

(f) Condition 6 – I shall secure the permission of my parole officer before I own, carry or have in my constructive possession a firearm, knife or any other ~~item capable of being used as a weapon.~~

(g) Condition 7 – I shall obey all laws, ordinances and statutory conditions of parole.

(h) Condition 8 – I shall:

1. Submit to a reasonable search by a parole officer, of my person, residence or automobile,
2. Waive extradition back to the State of Florida if I am wanted for return as an alleged parole violator,
3. Permit my parole officer to visit me at my residence, employment or elsewhere,
4. Promptly and truthfully answer all questions and follow all instructions asked or given to me by my parole officer or the Commission.

(i) Condition 9 – I understand that I am to remain on parole until released ~~therefrom~~ by expiration or by Commission order.

(j) Condition 10 – During my parole term, I agree to submit to random testing as directed by my supervising officer or the professional staff of any treatment center where treatment is being received to determine the presence or use of alcohol or controlled substances pursuant to Section 877.111, F.S., or Chapter 893, F.S.

(k) Condition 11 – During my parole term, I agree to submit and pay for urinalysis testing to determine the presence or use of alcohol or controlled substances pursuant to Section 877.111, F.S., or Chapter 893, F.S. ~~identify drug usage~~ and understand that my failure to make such payment or participate as defined under this condition of my parole may ~~will~~ be considered grounds for revocation of parole by the Parole Commission.

~~(l) Condition 12 – I agree to pay cost of supervision and rehabilitation as calculated and assessed by the Department of Corrections as provided and required in Section 948.09, F.S.~~

(2) There can also be imposed special conditions of parole. In the event the Commission elects to order an inmate released on parole, the record of such decision shall reflect whether or not a special condition of restitution is appropriate to the case being considered. In reaching the decision, the Commission shall review the analysis provided by its parole examiner plus any other facts relevant to the issue of restitution.

(a) If restitution is ordered to become a special condition of the parole release, the Commission shall require full payment of the damage or loss sustained by the victim(s), unless reasons exist to not order full restitution. Examples of possible reasons why the Commission would order partial restitution are:

1. The inmate's employment ability is limited or the inmate is dependent on others for a livelihood.
2. The inmate cannot realistically make full restitution and concurrently provide a means of financial support for himself and for his dependents.

(b) If the Commission determines the restitution is factually supportable for a given case, it can elect not to order restitution as a special condition of parole. The election to not order restitution shall be supported by reasons which are announced on the record at the time of the decision. Examples of reasons are:

1. It has been determined that the location of the victim is not known and reasonable effort to locate the victim has transpired; therefore, payment of restitution to the victim is not possible.
2. The victim has stated that restitution is not desired.
3. The amount of restitution cannot be determined.

(c) In the event the case record reflects an absence of needed information regarding an amount of loss, location of victim or other relevant facts, the parole examiner assigned to provide the effective interview shall generate an investigation request to the appropriate Commission field office. A copy of such request will be attached to the effective interview material. Upon receipt of a restitution investigation request, the Commission field office shall promptly cause an investigation to be conducted, submitting results to the Commission's central office.

(d) In the event the Commission elects to enter into a Mutual Participation Program agreement, the terms of any agreement shall include provisions for restitution if applicable. The determination of whether restitution should be made and such amount shall be determined prior to the time of negotiation.

(e) In addition to the question of restitution, the parole examiner staff and the Commission shall provide analysis of each case regarding the existence of any "debt to the State" as defined in Section 960.17, F.S. If it is determined that such

debt exists, the Commission shall order repayment of the debt by way of special condition of parole unless reasons as in the case of restitution are applicable. The record of the Commission decision on payment of any debt to the State will be the record of the Commission meeting at the time the decision is made.

(3) The Commission is authorized to impose special conditions of parole other than those concerning restitution.

(4) The Commission has authority to require an inmate be placed in the Community Control Program of the Department of Corrections, as a special condition of parole. The term of community control supervision shall not exceed six (6) months. In every case in which the Commission decides to place an inmate on community control as a special condition of parole, the Commission shall provide a written explanation of the reasons for its decision.

Specific Authority 947.07, 947.20 FS. Law Implemented 947.20, 947.23 FS. History—New 8-1-83, Formerly 23-21.165, Amended 1-26-93, 1-5-94, _____.

23-21.017 Review of Term and Conditions of Parole.

(1) Within 30 days of the effective parole release date interview, the ~~Commission Director of Parole Grant~~ shall inform the inmate ~~of that the quorum has authorized~~ the inmate's effective parole release date. The inmate shall be provided with a certified copy of the term and conditions ~~for assigned by the quorum~~ to the inmate's individualized parole. The inmate shall be informed that his release on the effective parole release date is contingent upon a satisfactory release plan and continued satisfactory institutional conduct.

(2) The inmate can request one review of the term and conditions of the parole. ~~This Said~~ review must be initiated within 120 days of the date the ~~Commission Director of Parole Grant~~ provided a certified copy of the term and conditions ~~to the inmate of the inmate's individualized parole.~~

(3) Notwithstanding any pending request for review of term and conditions of parole, any failure by a prospective parolee to sign an official Parole Certificate constitutes refusal of parole and the inmate shall not be released on parole. During the pendency of the ~~forementioned~~ review period, the term and conditions of the parole, ~~set forth in writing,~~ will ~~apply be~~ applicable to ~~the parolee.~~ ~~No any person released on parole,~~ and ~~no~~ person will be ~~so~~ released without ~~a~~ his signed acknowledgment and acceptance of ~~the~~ ~~these~~ conditions and term.

(4) ~~The Chair shall assign the request to modify the term and conditions of parole to a quorum other than the quorum that authorized the original conditions of parole. The Commission quorum shall consider any review the request to modify the term and conditions of parole and render a written decision to continue or to modify the term and conditions of parole, specifying the reasons therefor and inform the inmate/parolee of the decision in writing within 30 days of the date of receipt of request for review. If the Commission that quorum~~

determines that the term and conditions shall not be modified, the original term and conditions remain binding on the inmate/parolee. If the ~~Commission quorum~~ determines that the term and conditions should be modified, those modified term and conditions become binding on the parolee/ inmate when those conditions and term are signed, acknowledged and accepted by the inmate/parolee.

(5) ~~The Release Services Supervisor Director of Parole Grant~~ is authorized to issue ~~a corrected an Amended~~ Certificate of Parole. This authority shall be restricted to those cases in which the special condition(s) or term of parole has been incorrectly stated in the original certificate ~~as ordered by the Commission and the amended certificate is required to correct the original certificate to reflect the proper condition(s) or term.~~

(6) The Commission has authority, at any time during the term of parole to review the previously established term or conditions of parole and order the issuance of an Amended Certificate of Parole modifying such term or conditions based on change of circumstances, or discharge the person from parole. Such modification should not impose a new or different term or condition of parole that is more restrictive than what was stated in the original certificate. More restrictive modifications may only be made during the revocation process, under Rule 23-21.022, F.A.C.

(7) The Commission shall review the progress of each person who has been placed on parole after two years of supervision in the community and not less often than every two years biennially thereafter. Such reviews must include consideration of whether to modify reporting schedules, thereby authorizing the person under supervision to submit reports quarterly, semi-annually, or annually. In the event the Commission elects to place a parolee on quarterly, semiannual or annual reporting, the following definitions will be applicable:

(a) Quarterly Reporting – One personal contact required every three months.

(b) Semiannual Reporting – One personal contact required every six months.

(c) Annual Reporting – One personal contact required every twelve months.

~~(8) The Commission shall give specific instructions reflecting whether the personal contact is to take place in a formal office setting or in a setting to be determined by the parole officer. The Commission shall also give specific instructions establishing the method of payment for cost of supervision.~~

Specific Authority 947.07, 947.20 FS. Law Implemented 947.19, 947.20 FS. History—New 9-10-81, Amended 10-1-82, Formerly 23-21.17, Amended 1-26-93, 1-5-94, _____.

23-21.018 Disposition of Cases Involving Parole Ineligible Sentences Special Types of Cases Under the Guidelines.

~~(1) Vacation of presumptive or effective parole release date: The exiting of an inmate from the incarceration portion of his sentence, which shall include bond, escape, expiration of sentence, or transfer to a mental health facility, shall vacate any established presumptive parole release date. Any subsequent return to incarceration shall require an initial interview to establish a presumptive parole release date. Provided, however, inmates returning to court for modification of a previously imposed sentence or as witnesses shall not have their presumptive parole release dates vacated. Inmates returning to courts outside of Florida's jurisdiction, i.e., Federal or other state, shall not have their presumptive parole release dates vacated. However, information resulting from disposition of cases in court may be used as new information in accordance with applicable law and these rules. Inmates transferred to a Mentally Disordered Sexual Offender Program shall not have their presumptive parole release dates vacated.~~

~~(2) Extension of presumptive parole release date: The pending prosecution of a criminal offense in a Florida Court, supported by information or indictment, alleged to have occurred during the present sentence, may result in the extending of a presumptive or effective parole release date until resolution of the pending prosecution. The Commission shall, upon notice that the pending prosecution is completed, schedule the inmate for an interview.~~

~~(3) Parole or MCR revocation with a new felony or misdemeanor conviction: Inmates whose parole is revoked after conviction for a new felony or misdemeanor offense, and who are committed to a jail, stockade or correctional institution will be considered under these guidelines as a new admission and the Commission can use concurrent new commitments as aggravation or aggregation in the establishment of a presumptive parole release date. Further, the Commission shall aggravate or aggregate each consecutive sentence.~~

~~(4) Violation of the conditions of parole for grounds other than for a new conviction: An inmate who is found guilty for a violation of the conditions of his parole on grounds other than for the commission of a new felony or misdemeanor offense may be reinstated to parole. However, that policy may be disregarded if:~~

~~(a) The preponderance of available evidence suggests that the parolee would pose a danger to public safety or would likely engage in new criminal conduct if reinstated to parole; or~~

~~(b) The parolee has multiple revocations for violations of the conditions of his parole under the current sentence; or~~

~~(c) The parole behavior demonstrates the inability or unwillingness of the parolee to conform to minimum parole restraints so as to prevent successful completion of the Court imposed sentence outside of actual confinement. Any parole or MCR violation leading to revocation is the manifestation that~~

the parolee's record during confinement was NOT good. These inmates will be scheduled for interview to determine whether or not they are eligible for consideration for parole within 6 months of the revocation.

~~(5)(a) In cases where an inmate was convicted and sentenced to a mandatory minimum sentence on or before April 19, 1982, the mandatory minimum sentence is binding; however, the Commission will schedule an initial interview within the previously authorized statutory time constraints.~~

~~(b) Cases where an inmate was convicted and sentenced to a mandatory minimum sentence on or after April 20, 1982, will be scheduled for an initial interview pursuant to paragraph 23-21.006(3)(b), F.A.C.~~

~~(6) Presumptive Parole Release Date exceeds expiration of sentence: Pursuant to these rules, the Commission shall establish a presumptive parole release date for inmates found to be eligible for parole consideration. If the established presumptive parole release date exceeds the expiration of sentence date, that date shall not incarcerate the inmate past the expiration of his sentence.~~

~~(7) Conviction for crimes committed while incarcerated: Escape or any other crime committed during incarceration with an ensuing conviction and sentence vacates any previously established presumptive parole release date and shall cause the inmate to be considered a new admission. If the inmate is found to be eligible for consideration for parole on the ensuing sentence(s) the Commission shall aggregate. If the inmate's ensuing sentence(s) are not parole eligible, the Commission can use these new commitments as aggravation in the establishment of a new presumptive parole release date.~~

~~(1)(8) Disposition of Cases Involving Parole Ineligible Sentences. Any inmate who is serving both parole eligible and ineligible sentences is eligible for parole consideration only on the eligible sentence or sentences. However, actual terms of parole service shall not be initiated until the satisfactory completion of the parole ineligible sentence and subsequent review by the Commission.~~

~~(a) If an inmate received a parole ineligible sentence under the provisions of Chapter 921, F.S., subsequent to or at the same time he received a parole eligible sentence, then he shall receive his initial interview in accordance with subsection 23-21.006(2), F.A.C. The Commission shall establish a presumptive parole release date and conduct subsequent reviews in a manner consistent with current law and administrative rules.~~

~~(b) Upon the Commission reaching a decision to authorize the establishment of an effective parole release date, an order granting parole shall be entered which shall specify that such order is applicable only to sentences which are parole eligible. The order shall contain appropriate language to ensure that all interested parties are clear as to the limited effect of such order.~~

(c) Upon the completion of the parole ineligible sentence as determined by the Department of Corrections, an interview shall be scheduled and conducted for the purpose of considering any new information and to obtain a release plan from the inmate. The inmate's case shall be placed on the Commission agenda following the interview at which time a decision shall be made regarding the inmate's release on parole.

1. If no new information is received which would negatively impact the release the decision is to release the inmate on parole, the Commission shall establish a term of parole and such conditions of parole shall be determined in a manner currently provided for by law, except that the time the inmate served subsequent to the grant of parole shall not be counted.

2. If the Commission decides not to release the inmate on parole; based on an unsatisfactory release plan, unsatisfactory institutional conduct or any other new information that would impact the release decision, the Commission shall cause a rescission hearing to be held to review the new information. Following the rescission hearing, the Commission shall either proceed with parole or rescind the parole and extend the presumptive presumption parole release date, from the date of the grant of parole. However, the time the inmate served subsequent to the grant of parole shall not be counted in the extension. A new interview date will be scheduled as necessary.

Specific Authority 947.07 FS. Law Implemented 947.13, 947.168 FS. History—New 9-10-81, Amended 10-1-82, 8-1-83, Formerly 23-21.18, Amended 1-26-93, 1-5-94, _____.

23-21.019 Parole Rescission.

(1) Any Commissioner has authority to postpone any inmate's effective parole release date based on the criteria set forth in subsection 23-21.015(12) and subsection 23-21.016(2), F.A.C. Should any person who has been voted an effective parole release date, become the subject of inmate disciplinary or classification proceedings, or become the subject of criminal arrest, information or indictment, or be terminated from work release for cause or should the release plan prove unsatisfactory prior to actual physical release from the institution of confinement, or new information is acquired which was not available at the time of the effective parole release date interview, any Commissioner has authority to postpone his release date.

(a) For inmates convicted on or before April 19, 1982, their release date may be postponed for 30 days. On or before the 31st day, the Commission shall either parole the inmate or cause a parole examiner to conduct a rescission hearing on the matter of the infraction(s), new information, acts or unsatisfactory release plan, as charged.

(b) For inmates convicted on or after April 20, 1982, their release date may be postponed for 60 days. On or before the 61st day, the Commission shall either parole the inmate or

cause a parole examiner to conduct a rescission hearing on the matter of the infraction(s), new information, acts or unsatisfactory release plan, as charged.

(2) Following the order of postponement, notice of the rescission hearing shall be provided to the inmate. The rescission hearing shall be conducted by the Commission, a Commissioner, or a duly authorized representative of the Commission.

(3) Should new information become available prior to the rescission hearing that is pertinent to the postponement, the Commission may proceed with parole and void the postponement if:

(a) Information is received that a disciplinary report(s) has been overturned or become invalid.

(b) An out-of-state plan acceptance is received.

(c) A new plan is received by the Commission that is deemed acceptable, or

(d) Other new information is received regarding the postponement issue(s).

(4)(2) At the rescission ~~sueh~~ hearing the inmate shall be afforded all due process safeguards required by the Supreme Court of Florida case of *Demar vs. Wainwright*, 354 So. 2d 366 (Fla. 1977) and shall be properly notified of the same prior to said hearing. The following rights shall be explained to the inmate regarding the rescission hearing:

(a) To appear and speak in behalf of his own defense.

(b) The opportunity to be represented by counsel, either retained or appointed, provided that such appointment is made consistent with the guidelines of the United States Supreme Court case of *Gagnon v. Scarpelli*, 411 U.S. 778.

(c) To examine and have disclosed for examination, all evidence offered against him at the hearing.

(d) To secure by subpoena and subpoena duces tecum and present at the hearing, persons and documents desired for defense, provided that the Commission is notified in writing, at least seven days prior to the hearing of the names, addresses, location, nature and description of said persons or documents.

(e) To confront and cross-examine all witnesses offered against him, unless the Commission or member thereof conducting the hearing finds good cause not to allow the same. Good cause shall be established in writing and provided to the inmate.

(5) Following the rescission hearing, the Commission shall determine whether good cause has been established to rescind parole. One of the following actions shall then be taken:

(a) Parole. If the prior effective date has not passed, the Commission shall proceed with parole. If the prior effective parole release date has passed, the Commission shall rescind the grant of parole, vacate the prior effective parole release date, and establish a new effective parole release date. New conditions to the parole may be added at this time.

(b) Extend. The Commission shall rescind the grant of parole, vacate the prior effective parole release date, and extend the presumptive parole release date from the date of grant of parole. The time served by the inmate subsequent to the grant of parole shall not be counted in the extension. In this case, a new interview date shall be set.

(c) Decline. The Commission shall rescind the grant of parole, vacate the prior effective parole release date, and decline to authorize parole in accordance with Section 947.18, F.S. In this case all time frames and procedures outlined in Rule 23-21.015, F.A.C., shall be followed.

Specific Authority 947.07 FS. Law Implemented 947.13, 947.1745 FS. History—New 9-10-81, Amended 10-1-82, 8-1-83, Formerly 23-21.19, Amended 1-26-93, 1-5-94, _____.

23-21.020 Early Termination of Parole.

(1) The Commission may terminate the period of parole at any time it is satisfied jurisdiction has been retained for sufficient length of time to evidence satisfactory rehabilitation. The Department of Corrections Secretary may request early termination of parole by written recommendation to the Commission to include a report from the supervising officer evidencing the justification for the recommendation and the counter-signature endorsing the recommendation by the parole officer's supervisor which recommendation will be considered by the Commission.

(2) The Commission shall be notified and must concur in authorizing any Florida parolee to permanently relocate where supervision under the Interstate Compact is unavailable. The Chair or his designee may authorize temporary absences for vacation and visits to locales where Interstate Compact supervision is unavailable.

Specific Authority 947.07 FS. Law Implemented 947.24, 947.13 FS. History—New 9-10-81, Amended 10-1-82, Formerly 23-21.20, Amended 1-26-93, 1-5-94, _____.

23-21.021 Warrant and Arrest.

(1) A warrant for the arrest of a parolee ~~or releasee~~ shall be issued only by a member of the Commission. The decision to issue a warrant shall be based on evidence which indicates ~~that~~ there may be probable cause or reasonable grounds to believe ~~that~~ a parolee ~~or releasee~~ has violated the conditions of the parole ~~or compulsory conditional release~~. ~~The decision shall also be based on adequate evidence which indicates a probable serious or repeated pattern of violation of parole or compulsory conditional release.~~ The issuance of a warrant is discretionary and will depend on the facts of the individual case.

(2) Warrant ~~All warrant~~ requests will be reviewed by Commission staff ~~of the Commission~~ for sufficiency of information, and if found sufficient, staff will submit the warrant request to a Commissioner will be submitted to a member of the Commission for a decision on the warrant request. ~~Authority is delegated to the Commission's revocation staff to concur with the Department of Corrections when a violation of parole is reported by the Department of~~

~~Corrections with the recommendation to continue supervision and a violation warrant is not requested. This delegation of authority is further limited to reports of violation of a technical or misdemeanor nature and does not apply to reports of felony arrests or violation of special conditions, except monetary conditions where there is no apparent ability to pay.~~

(3) Should a reviewing Commissioner elect, a warrant request may be submitted to the Commission for a decision. ~~Commission staff may elect to docket warrant requests for a Commission decision with approval of the Revocation Administrator. In the event a request for a warrant is denied, the denial may be determined only by a Commissioner or panel of no fewer than two Commissioners and the reasons for the denial shall be provided to the requester.~~

(4) Should a warrant be issued, such will be transmitted to the requesting agency for appropriate service or filing. The warrant information will be entered into the Florida Crime Information and National Crime Information databases, unless the alleged parole violator is in custody in Florida. ~~Cases who have been identified as absconders will be entered into the Florida Crime Information Center. The Commission has the authority~~ ~~if necessary, the Commission may elect~~ to pursue extradition of alleged violators from other jurisdictions.

(5) Should a warrant be issued, and a dismissal of the warrant is requested ~~by the Revocation Administrator or his designee~~, the signing Commissioner or Chair is authorized to dismiss the warrant for good cause.

Specific Authority 947.07, 947.22 FS. Law Implemented 947.22, 947.23 FS. History—New 9-10-81, Amended 7-1-84, Formerly 23-21.21, Amended 1-26-93, 1-5-94, _____.

23-21.022 Revocation of Parole ~~and Compulsory Conditional Release~~; Preliminary Hearings; Final Hearings.

(1) Preliminary Hearing. Within 30 days of service or filing of the Commission's warrant in this State, an alleged parole ~~or compulsory conditional release~~ violator will be provided a preliminary hearing. The purpose of the preliminary hearing ~~is will be~~ to determine if there ~~is may be~~ probable cause ~~to believe~~ that a violation of parole terms or conditions of the parole or compulsory conditional release has occurred.

(2) Prior to the preliminary hearing, an interview with the alleged violator will be held at which time an explanation of all rights and procedures will be afforded. The interview and preliminary hearing can be held by a Commission representative, such as a parole examiner, provided such representative is neutral and detached.

(3) The preliminary hearing will be held in or near the community where the violation is alleged to have occurred or where the parolee ~~or releasee~~ has been taken into custody on the Commission's warrant.

(4) For the preliminary hearing, the parolee ~~or releasee~~ shall be afforded the following rights:

(a) The opportunity to be present at the hearing and to present evidence in the parolee's ~~or releasee's~~ own behalf including the securing of witnesses and evidence by subpoena.

(b) The opportunity to have disclosed the evidence which shall be presented at the hearing.

(c) The opportunity to confront and cross-examine witnesses who may give adverse testimony.

(d) The opportunity to be represented by counsel provided by the parolee's ~~or releasee's~~ own initiative or by appointed counsel should the parolee ~~or releasee~~ qualify for such appointment as set forth in the guidelines enunciated in *Gagnon v. Scarpelli*, 411 U.S. 778.

(5) Prior to the preliminary hearing, the parolee ~~or releasee~~ may elect to waive such hearing, provided such waiver is executed in writing and follows a full explanation of all rights, procedures, and possible consequences. The parolee ~~or releasee~~ may also request postponement of the preliminary hearing, such postponement and the reasons thereof being reflected in the record. Should the parolee ~~or releasee~~ fail to contact the Commission and request a hearing upon the disposition of local charges resulting in a sentence to incarceration, the parolee ~~or releasee~~ has waived his right to a preliminary hearing.

(6) At least 7 days prior to the preliminary hearing, the parolee ~~or releasee~~ shall be informed in writing of the date, time, and location of the hearing. The parolee ~~or releasee~~ shall also be informed in this notice of the charges which are to be considered at the hearing and the notice shall contain all rights regarding the hearing as heretofore stated.

(7) The Commission representative who is responsible for holding the preliminary hearing shall have the authority to administer oaths to all witnesses. The Commission representative is responsible for the conduct of the hearing, evaluation of evidence presented and shall make findings based on such evidence with respect to the issue of probable cause. Following all testimony, the Commission representatives shall announce, verbally, the findings regarding probable cause issues and shall promptly provide a written statement of the findings to the parolee ~~or releasee~~ within 30 days following the hearing.

(8) Following the hearing, the Commission representative shall prepare a written summary of the hearing. The written summary, which will include recommendations for further Commission action, shall be transmitted to the Commission for action.

The written summary shall also contain any mitigating circumstances which are brought to light as a result of the proceeding and a statement on realistic alternatives to further incarceration, if any.

~~(9) Should the Commission representative not find probable cause, that representative is authorized to have the parolee or releasee released on his or her own recognizance pending final action of the Commission.~~

~~(9)(10)~~ Upon receipt of the preliminary hearing summary, the Commission shall review same and make a further decision with respect to possible restoration to parole or ~~compulsory conditional release supervision, the release and~~ discharge from further supervision ~~of the parolee or releasee~~ or the return of the parolee ~~or releasee~~ for a final revocation hearing.

~~(10)(11)~~ Any parolee ~~or releasee~~ who has been arrested pursuant to a Commission warrant may request and shall be provided a hearing on the matter of release on recognizance bond regarding the Commission warrant. Such hearing may be held by a Commission representative, who shall provide the Commission with a written report regarding the hearing after which the Commission shall make a decision and inform the parolee ~~or releasee~~. A Commissioner, ~~or Commission representative with the approval of the Director of Field Services/ Revocation of his designee,~~ is authorized to order a parolee ~~or releasee~~ released on his recognizance. However, the parolee ~~or releasee~~ must sign a written statement agreeing:

(a) To waive all time constraints to conduct the revocation hearing;

(b) To abide by all conditions of release previously imposed by the Commission;

(c) To abide by any special conditions imposed at the time of release on recognizance, and

(d) That his release on recognizance is subject to review and approval by the Commission or the Commissioner who executed the warrant, or the Chair in his absence, and that should his release on recognizance be disapproved, the parolee must surrender himself for return to custody pending disposition of the alleged violation. Failure to surrender shall result in the rearrest of the parolee ~~or releasee~~.

~~(11)(12)~~ If the Commission decides to conduct a final revocation hearing, an order shall be entered to that effect. A notice of that order shall be served upon the sheriff of the county in which the alleged parolee ~~or compulsory conditional release~~ violator is being detained. The Commission may request ~~The notice shall request~~ the immediate transfer of the alleged violator to an appropriate Department facility. The final revocation hearing shall be noticed and convened within 60 days of receipt of written notification from the Department of the return of the alleged violator to the custody of the Department. If the alleged violator is already in the custody of the Department from another jurisdiction, or has been released on recognizance, ~~or the Commission has elected not to have the violator transferred to the Department,~~ the final revocation hearing shall be noticed and convened within 60 days of the preliminary hearing, or the waiver of that hearing.

~~(12)(13)~~ Final Hearing. The parolee ~~or releasee~~ shall be informed, in writing, at least 14 days prior to the final revocation hearing of the date, time and location of such hearing. The notice of the hearing shall contain the charges of violation and shall contain a list of the rights the parolee ~~or releasee~~ shall be afforded for such hearing as follows:

(a) The opportunity to be present for the final revocation hearing.

(b) The opportunity to present evidence in his or her own behalf, including witnesses and evidence secured by subpoena or subpoena duces tecum.

(c) The opportunity to receive, prior to the hearing, disclosure of evidence that will be presented at any final hearing.

(d) The opportunity to confront and cross-examine any adverse witnesses.

(e) The opportunity to be represented by counsel, either retained or appointed, provided that such appointment is made consistent with the guidelines of the United States Supreme Court case of *Gagnon v. Scarpelli*, 411 U.S. 778.

~~(13)~~(14) Any final hearing can be waived by the parolee ~~or~~ releasee after an explanation of all rights and possible consequences of waiver. The waiver shall be in writing and can be executed before a member of the Commission or the Commission's designated representative. The parolee ~~or~~ releasee may withdraw the waiver by executing a withdrawal of waiver form and forwarding to the Commission headquarters within 14 days after the execution of the waiver. The withdrawal of waiver form and instructions regarding its use shall be provided to the parolee ~~or~~ releasee at the time of the execution of the waiver. Upon receipt of the withdrawal of waiver form, a final revocation hearing shall be convened after appropriate notice. Such hearing shall be conducted in accordance with these rules.

~~(14)~~(15) The parolee ~~or~~ releasee is entitled to request that his final revocation hearing be postponed or continued, upon a showing of good cause ~~being made~~. The request for postponement or continuance may be submitted to the Parole Examiner or Commission, in writing, prior to the convening of the hearing, provided that the reasons for the request are outlined with specificity. In the event that the final hearing has been convened, such may be postponed or continued beyond 60 days ~~on the Commission's motion~~ provided the record reflects good cause for such continuance.

~~(15)~~ The final revocation hearing is a two-part hearing with the first emphasis being placed on the factual determination as to whether or not violations have occurred. The second part of the final revocation hearing is the determination of whether or not the parole should be revoked. In reaching such a determination, the Commission shall consider all mitigating circumstances which were made known at the time of the hearing and shall consider alternatives other than reincarceration prior to making a final determination.

(16) During the course of a final revocation hearing, the person or persons conducting the hearing may entertain any arguments of counsel or the parolee ~~or~~ releasee, or other such matters. The person or persons conducting the hearing may elect to rule on such matters during the course of the hearing or may elect to withhold ruling pending consultation with

Commission counsel or individual staff members. Arguments of counsel of a legal nature must be reduced to writing. If possible, written legal arguments should be presented prior to final revocation hearings. If the person conducting the hearing elects not to address arguments of counsel or the parolee ~~or~~ releasee during the course of the hearing, such shall be made known to the interested parties. In the event a decision is made during the course of the final revocation hearing, such decision shall be reflected in the record, and then reviewed by the Commission. Pursuant to the United States Supreme Court's decision in *Pennsylvania Board of Probation & Parole v. Scott*, 524 U.S. 357 (1998), the Commission may consider evidence that has been excluded in a criminal proceeding as the result of the application of the federal exclusionary rule.

~~(17)~~ Subpoenas and subpoenas duces tecum for the parolee and State shall be issued by the Commission's duly authorized representative for both the preliminary and final revocation hearings. ~~Based on evidence presented at the hearing, the person or persons conducting the hearing shall make findings of fact regarding the alleged violations, report that to the Commission and the Commission may enter an order revoking the parole or compulsory conditional release, reinstating the parolee or releasee to supervision or other such order as deemed appropriate by the Commission. When, based on the findings of the person or persons conducting the hearing, the Commission finds that the parolee or releasee has committed one or more violations, the Commission may elect to order the parolee or releasee returned to supervision with a new term not to exceed statutorily prescribed limits and may elect to establish new conditions of the parole or release, provided the parolee or releasee agrees to each term and condition. In any event, the Commission shall make a decision in an open meeting within 45 days following the revocation hearing. Prompt notification of the decision shall be provided to the parolee or releasee and his defense attorney, unless such notification is waived by the parolee or releasee. If the decision of the Commission is to revoke, the order entered shall contain the evidence relied upon and the reasons for the revocation.~~

~~(18)~~ At both the preliminary and final revocation hearing, the accused violator may waive representation by an attorney, provided the waiver is reflected clearly in writing or in the record of the proceeding. Should the accused desire, retained counsel may represent the parolee at both hearings. In the event the parolee desires counsel and has not retained such, the following procedure shall apply:

~~(a)~~ Inquiry shall be made of the parolee's ability to retain private counsel. A conclusion shall be reached by the person or persons responsible for conducting the hearing as to the parolee's ability to retain counsel and time shall be permitted for the parolee to secure such if an affirmative conclusion is reached.

(b) If it is concluded that the parolee is unable to secure retained counsel by reason of indigency or other valid reasons, then the Commission shall attempt to secure counsel pursuant to the guidelines of *Gagnon v. Scarpelli*, 411 U. S. 778 (1973) at 790. If a request for counsel is refused, the grounds for refusal shall be stated succinctly in the record. *Gagnon*, supra, at 790-791.

(19) The person or persons conducting the hearing may elect to receive information following the revocation hearing provided the parolee agrees to the receipt of such information outside of the context of the hearing and that such agreement is reflected clearly in the record.

(20) Based on evidence presented at the hearing, the person or persons conducting the hearing shall make findings of fact regarding the alleged violations, and report that to the Commission. The Commission may enter an order revoking the parole, reinstating the parolee to supervision or enter such other order as deemed appropriate by the Commission. When, based on the findings of the person or persons conducting the hearing, the Commission finds that the parolee has committed one or more violations, the Commission may elect to order the parolee returned to supervision with a new term not to exceed statutorily prescribed limits and may elect to establish new conditions of the parole provided the parolee agrees to each term and condition. In any event, the Commission shall make a decision in an open meeting within 45 days following the revocation hearing. Prompt notification of the decision shall be provided to the parolee and his defense attorney, unless such notification is waived by the parolee. If the decision of the Commission is to revoke, the order entered shall contain the evidence relied upon and the reasons for the revocation.

(21)(18) Upon a finding that the parolee ~~or releasee~~ did commit one or more violations, the Commission may order the parolee ~~or releasee~~ placed in a community control program. Placement in community control shall be utilized by the Commission, in its judgment, for parole ~~or releasee~~ violators who are not suitable for restoration to standard supervision and would, therefore, be revoked if not for the alternative of community control placement. When ordering such placement in community control, the Commission shall specify:

(a) The proven violation or violations;

(b) The term of community control which may exceed the original term of parole ~~or releasee~~ but not exceed statutorily prescribed limits. This term may be reduced by subsequent order of the Commission;

(c) The new term of parole ~~or releasee~~ which shall not exceed statutorily prescribed limits nor be less than the term of community control;

(d) Standard community control conditions ordered to be applicable;

(e) Special community control conditions based upon individual case study of the parolee ~~or releasee~~; and

(f) Additional parole or release conditions, if any, in the event the community control term is less than the resulting parole or release term

(22) Release on Own Recognizance:

(a) At a scheduled final revocation hearing, a Commissioner can place an alleged parole violator on ROR when the final hearing is postponed or continued.

(b) During the final revocation hearing, a Commissioner may place the parolee charged with violation on ROR when:

1. The parolee was on ROR prior to the convening of the final revocation hearing.

2. Insufficient evidence is produced to sustain any violation of parole.

3. Upon finding that the parolee did violate one or more conditions of parole, the hearing officer announces his intention to recommend action other than revocation of parole.

(c) Subsequent to the final revocation hearing in which there was a finding that the parolee did violate one or more conditions of parole, the hearing officer can recommend the parole violator be placed on ROR upon receipt of pertinent favorable information. Violations of the conditions of release can cause an order to revoke the ROR to be executed by a Commissioner when reliable information is received of violation of release on recognizance. Such order shall be sufficient to cause the arrest and return of the parolee to custody.

(23) Violation of the conditions of parole for grounds other than for a new conviction: An inmate who is found guilty for a violation of the conditions of his parole on grounds other than for the commission of a new felony or misdemeanor offense may be reinstated to parole or revoked. The following information should be considered in making that determination:

(a) The preponderance of available evidence suggests that the parolee would pose a danger to public safety or would likely engage in new criminal conduct if reinstated to parole;

(b) The parolee has previous violations of the conditions of his parole under the current sentence;

(c) The parole behavior demonstrates the inability or unwillingness of the parolee to conform to minimum parole restraints so as to prevent successful completion of the Court imposed sentence outside of actual confinement. Any parole violation leading to revocation is the manifestation that the parolee's record during confinement was NOT good. These inmates will be scheduled for interview to determine whether or not they are eligible for consideration for parole within 6 months of the revocation.

(24)(19) Should the Commission decide to revoke the parole ~~or compulsory conditional release~~, the parolee ~~or releasee~~ shall be entitled to all credit for time spent in custody prior to the revocation hearing for all charges that appear on the warrant and/or notice of hearing. Time spent in other jurisdictions as a result of intervening sentences shall be

considered by the Commission. The Commission shall consider the credit for time served on parole in each case. The actual award of such credit is discretionary with the Commission. Credit for time shall be reflected in the Commission's order.

~~(20) The final revocation hearing is a two part hearing with the first emphasis being placed on the factual determination as to whether or not violations have occurred. The second part of the final revocation hearing is the determination of whether or not the parole or compulsory conditional release should be revoked. In reaching such a determination, the Commission shall consider all mitigating circumstances which were made known at the time of the hearing and shall consider alternatives other than reincarceration prior to making a final determination.~~

~~(25)(21) If the Commission's decision is to revoke the parole or compulsory conditional release, the parolee or releasee shall be scheduled for an interview by a Commission representative within six months from the date of the Commission's order revoking parole revocation, provided that the parolee or releasee has not received a commitment to the Department of Corrections. The purpose of this interview shall be to formulate a recommendation to the Commission for the setting of a presumptive parole release date consistent with appropriate statutory requirements and Commission policies and practices as reflected in these rules. Should the parolee or releasee have received a prison commitment a presumptive parole release date shall be established according to appropriate statutory requirements and Commission practices and policies as reflected in these rules regarding newly sentenced inmates.~~

~~(22) The person or persons conducting the hearing may elect to receive information following the revocation hearing provided the parolee or releasee agrees to the receipt of such information outside of the context of the hearing and that such agreement is reflected clearly in the record.~~

~~(23) Subpoenas and subpoenas duces tecum for the parolee or releasee and State shall be issued by the Commission's duly authorized representative for both the preliminary and final revocation hearings.~~

~~(24) At both the preliminary and final revocation hearing, the accused violator may waive representation by an attorney, provided the waiver is reflected clearly in writing or in the record of the proceeding. Should the accused desire, retained counsel may represent the parolee or releasee at both hearings. In the event the parolee or releasee desires counsel and has not retained such, the following procedure shall apply:~~

~~(a) Inquiry shall be made of the parolee's or releasee's ability to retain private counsel. A conclusion shall be reached by the person or persons responsible for conducting the hearing as to the parolee's or releasee's ability to retain counsel and time shall be permitted for the parolee or releasee to secure such if an affirmative conclusion is reached.~~

~~(b) If it is concluded that the parolee or releasee is unable to secure retained counsel by reason of indigency or other valid reasons, then the Commission shall attempt to secure counsel pursuant to the guidelines of *Gagnon v. Scarpelli*, 411 U. S. 778 (1973) at 790. If a request for counsel is refused, the grounds for refusal shall be stated succinctly in the record. *Gagnon*, supra, at 790-791.~~

~~(25) Release on Own Recognizance:~~

~~(a) At a scheduled final revocation hearing, a Commissioner or Commission representative can place an alleged parole violator on ROR when the final hearing is postponed or continued.~~

~~(b) During the conduct of the final revocation hearing, the hearing Commissioner or Commission representative may place the parolee charged with violation on ROR when:~~

~~1. The parolee was on ROR prior to the convening of the final revocation hearing.~~

~~2. Insufficient evidence is produced to sustain any violation of parole.~~

~~3. Upon finding that the parolee did violate one or more conditions of parole, the hearing officer announces his intention to recommend action other than revocation of parole.~~

~~(c) Subsequent to the conduct of the final revocation hearing in which there was a finding that the parolee did violate one or more conditions of parole, the hearing officer can place the parole violator on ROR upon receipt of pertinent favorable information.~~

~~Violations of the conditions of release can cause an order to revoke the ROR to be executed by a Commissioner when reliable information is received of violation of release on recognizance. Such order shall be sufficient to cause the arrest and return of the parolee to custody.~~

Specific Authority 947.07 FS. Law Implemented 947.23 FS. History—New 9-10-81, Amended 10-1-82, 7-1-84, Formerly 23-21.22, Amended 5-10-87, 1-26-93, 1-5-94,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Frederick B. Dunphy, Vice-Chairman, Florida Parole Commission

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: By vote of the Florida Parole Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 13, 2006

DEPARTMENT OF CORRECTIONS

RULE TITLE: Rules of Conduct
RULE NO.: 33-208.002

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to alter the time period in which an employee must make a written report regarding a criminal charge or arrest

or knowledge of any violation of law or rules. The time period is shortened from 3 calendar days to 24 hours or upon reporting to the next assigned shift, whichever is sooner.

SUMMARY: The time period in which an employee must make a written report regarding a criminal charge or arrest or knowledge of any violation of law or rules is shortened from 3 calendar days to 24 hours or upon reporting to the next assigned shift, whichever is sooner.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09, 944.14, 944.35, 944.36, 944.37, 944.38, 944.39, 944.47 FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

33-208.002 Rules of Conduct.

The Department of Corrections requires all employees to familiarize themselves with all rules and regulations pertaining to their positions and duties, and that employees abide by these rules and regulations. The following rules of conduct and performance standards are applicable both on and off the job to all Department of Corrections employees. Some of these rules of conduct are found again in abbreviated form in the next section titled "Range of Disciplinary Actions," however, all rules of conduct are enforceable by appropriate disciplinary action regardless of whether they are listed in the range of disciplinary actions.

(1) No change.

(2)(a) Each employee shall make a full written report of any of the following within 24 hours or upon reporting to work for his next assigned shift, whichever is sooner ~~3 calendar days of any:~~

1. Criminal charge filed against him or
2. Arrest or receipt of a Notice to Appear for violation of any criminal law involving a misdemeanor or felony, or ordinance except minor violations for which the fine or bond forfeiture is \$200 or less.
3. Knowledge of any violation of the law, rules, directives or procedures of the Department.

(b) This report shall be submitted to the warden, regional director or circuit administrator; in central office this report shall be submitted to the employee's bureau chief or director.

(3) through (26) No change.

Specific Authority ~~20-315~~, 944.09, FS. Law Implemented 944.09, 944.14, 944.35, 944.36, 944.37, 944.38, 944.39, 944.47, FS. History--New 10-8-76, Amended 10-11-77, 4-19-79, 6-18-83, Formerly 33-4.02, Amended 8-15-89, 10-20-90, 3-20-91, 1-30-96, 3-24-97, 4-19-98, Formerly 33-4.002, Amended 7-17-02, 4-5-04, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ralph Kiessig, Deputy Assistant Secretary of Human Resource Management

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Laura E. Bedard, Ph.D., Deputy Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 28, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 13, 2006

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facilities and Agency Licensing

RULE TITLES:	RULE NOS.:
Licensure Requirements, Procedures, and Fees	59A-18.004
Registration Policies	59A-18.005
Certified Nursing Assistant and Home Health Aide	59A-18.0081
Medical Plan of Treatment	59A-18.011
Clinical Records	59A-18.012
Supplemental Staffing for Health Care Facilities	59A-18.017
Emergency Management Plans	59A-18.018

PURPOSE AND EFFECT: The purpose of the proposed rule amendments is to update Chapter 59A-18, F.A.C., to conform to revisions in Chapter 400, Part IV, F.S., as amended by the 2005 Florida Legislature. A new rule is added to establish minimum criteria for nurse registry comprehensive emergency management plans and plan updates as required in Section 400.506(15) and (16), F.S. In addition, nurse registry application forms referenced in the rules are updated to conform to statutory revisions and a separate renewal application was developed to reduce the amount of information submitted by nurse registries. Other revisions are made to update the rules to current statutory requirements, update addresses, and clarify requirements for advance notification of licensee relocation and health statements.

SUMMARY: The proposed changes to Rule 59A-18.004, F.A.C., to conform to 2005 revisions in Chapter 400, Part IV, F.S., are changing the expiration date of the license from one to two years, increasing the licensure fee from \$1,000 to \$2,000 for the increased licensure period, changing the expiration date of the license from one to two years, updating the licensure application forms and updating the date for contractors to be

background screened. Other changes to Rule 59A-18.004, F.A.C., are: referencing a separate renewal application form requiring less information; referencing the Agency's updated background screening form; adding to application requirements the name of the alternate administrator and the name and license number of nurses available to meet Section 400.506(10), F.S.; changing the collection of license numbers of independent contractors to the renewal application instead of the initial application; and updating addresses including web sites to obtain referenced forms. In addition, nurse registries are required to provide advance notice to AHCA of their office relocation with evidence of compliance with local zoning for the new location and exceptions are made for emergency relocations.

Amendments are proposed to Rule 59A-18.005, F.A.C., which eliminate the mandatory tuberculin skin test, clarifies the requirements for the health statements prior to contact with patients, and specifies actions to be taken if the independent contractor has a communicable disease. Training on HIV and AIDS is required biennially, removing the specified number of hours of training in accordance with Section 381.0035, F.S.

The proposed amendments to Rule 59A-18.0081, F.A.C., replace the monthly nursing assessments with a record of requested registered nurse visits to conform to 2005 statutory changes and update the HIV and AIDS education requirement for certified nursing assistants and home health aides to a biennial course from specified hours of training. A new subsection is added permitting certified nursing assistants and home health aides to assist with self administration of medication pursuant to Section 400.488, F.S., including training requirements, nursing review of the patient's medications, receiving written consent, and clarifying the extent of assistance that can be provided.

Rule 59A-18.011, F.A.C., proposed amendments permit physicians assistants and advanced registered nurse practitioners to sign and review the plan of treatment in addition to the physicians, as stated in 2005 law changes. The proposed amendments to Rule 59A-18.017, F.A.C., require independent contractors who provide staffing service to a nursing home but have not lived in Florida for five years to have a level two background screening as required by Section 400.215, F.S.

A new Rule 59A-18.018, F.A.C., is added for emergency management plan requirements pursuant to Section 400.506(16), F.S. An emergency management plan format, developed with the concurrence of the Department of Health, is referenced in the rule. Requirements include submission of plans and plan updates for review; development of contingency plans when phone service is not available; provision of information and assistance to patients with special needs shelter registration; documentation of patients plans prior to and following an emergency; provision of continuing care for patients in private homes, adult family care homes and assisted

living facilities unless circumstances beyond the control of the independent contractor makes service provision impossible; and maintenance of a current prioritized list of registered special needs patients, and individual patient lists of medications, supplies and equipment required for continuing care and service in the event of an evacuation.

SUMMARY OF ESTIMATED REGULATORY COST: It is anticipated that costs will be less for nurse registries as a result of the reduction in the requirements in these amendments. Nurse registries have been required to have an emergency management plan since the requirement was established in law even though the rules for the plans were not promulgated.

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

SPECIFIC AUTHORITY: 400.497, 400.506 FS.

LAW IMPLEMENTED: 400.488, 400.497, 400.506, 400.512 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: Jan Benesh, Licensed Home Health Programs Unit, Bureau of Health Facility Regulation, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 34, Tallahassee, Florida 32308, e-mail: beneshj@ahca.myflorida.com

THE FULL TEXT OF THE PROPOSED RULES IS:

59A-18.004 Licensure Requirements, Procedures, and Fees.

(1) Prior to operating a nurse registry as defined under Section 400.506, F.S., the owner shall make application for a license on AHCA Form 3110-7001, Nurse Registry Application for Initial License Revised December 2005 ~~Application for Licensure Nurse Registry, revised September, 2000~~, incorporated by reference. The application shall be accompanied by a \$2,000 ~~\$1,000~~ licensure fee. The application and other pertinent information can be obtained at the AHCA website: <http://ahca.myflorida.com> under Licensing, Nurse Registry. If the requestor is unable to obtain the forms and related information from the web site, the documents may be obtained from the AHCA Licensed Home Health Programs Unit by contacting (850)414-6010 and sending a check or money order to cover the Agency's costs for copying and mailing. The receipt of a license from AHCA shall be based upon compliance with all applicable rules and regulations, as evidenced by a signed application under oath and upon the results of a survey conducted by AHCA representatives. It is unlawful to operate a registry without first obtaining from AHCA a license authorizing such operation.

(2) The license shall be displayed in a conspicuous place in public view within the licensed premises. The registry license is not transferable. Sale of the licensed nurse registry, assignment, lease or other transfer, whether voluntary or involuntary, shall require relicensure by the new owner prior to taking over the operation pursuant to Section ~~400.506(8)~~ ~~400.497(3)~~, F.S. The prospective owner shall submit, at least ~~60~~ ~~30~~ days prior to the effective date of the change, an application for a new license.

(3) No change.

(4) An initial licensure application shall include: Initial licensure – An application for an initial license to operate a nurse registry shall be submitted for a new operation or change of licensee accompanied by a non-refundable license fee of ~~\$2,000~~ ~~\$1,000~~ for each site in operation to be licensed, and must be submitted and signed under oath on AHCA Form 3110-7001, Nurse Registry Application for Initial License Revised December 2005, ~~Revised September 2000~~ “~~Application for Licensure, Nurse Registry~~”, which is incorporated by reference, provided by the agency, and shall include:

(a) through (f) No change.

(g) The name of the registry’s administrator, the alternate administrator and the name and license or certification number, ~~of current independent contractors for the registered nurse or nurses that the nurse registry has available to meet the requirements in Section 400.506(10)(c), F.S., licensed practical nurses and certified nursing assistants, and the name of current independent contractor for home health aides, homemakers and companions;~~ An application for renewal will include the same information for the administrator, alternate administrator and registered nurse or nurses available to meet the requirements in Section 400.506(10)(c), F.S., unless there has been no changes since the previous application for licensure, as well as the name and license or certification number of current independent contractors for registered nurses, licensed practical nurses and certified nursing assistants, and the name of current independent contractors for home health aides, homemakers and companions.

(h) No change.

(i) A signed affidavit from the administrator, pursuant to Section 400.512(2), F.S. stating that the administrator, the financial officer, and each contractor who was registered with the nurse registry on or after October 1, ~~2000~~ ~~1994~~, has been screened for good moral character and that the remaining contractors pursuant to Section ~~400.512(2)~~ ~~400.497(2)~~, F.S. have been continuously registered with the nurse registry since before October 1, ~~2000~~ ~~1994~~.

1. Screening for good moral character for the administrator and the financial officer shall be in accordance with level 2 standards for screening set forth in Section ~~400.506(2)~~ ~~400.471(4)~~, F.S. The fingerprint card for level 2 screening for the administrator and the financial officer can be

obtained from, and must be submitted to, the Agency for Health Care Administration, Licensed Home Health Programs Unit ~~Home Care Unit~~, 2727 Mahan Drive, Mail Stop 34, Building 1, Room 200, Tallahassee, Florida 32308. Screening processing fees for level 2 screening shall be made payable to the Agency for Health Care Administration.

2. Level 1 screening for good moral character for each contractor shall consist of:

a. Submission of the Level 1 Request for Criminal History Request Check, AHCA Form ~~form~~ 3110-002, Revised July 2005 ~~June 1998~~, incorporated by reference, to the Background Screening Unit, AHCA, 2727 Mahan Drive – Mail Stop 40, Tallahassee, Florida 32308 or to the Florida Department of Law Enforcement, Crime Information Bureau, Post Office Box 1489, Tallahassee, Florida 32302.

b. This form may be obtained at the Agency for Health Care Administration web site, http://ahca.myflorida.com, at the Background Screening Unit page from the Agency for Health Care Administration, Health Facility Regulation Licensed Home Health Programs Unit, 2727 Mahan Drive, Building 1, Room 200, Tallahassee, Florida 32308. The cost of processing the criminal records check shall be borne by the nurse registry or the contractor being screened, at the determination of the administrator of the nurse registry. The checks for level 1 screening shall be made payable to AHCA when forms are submitted to the Background Screening Unit at AHCA ~~the Florida Department of Law Enforcement~~ for the criminal records check. When forms are submitted to the Florida Department of Law Enforcement, the check shall be made payable to the Florida Department of Law Enforcement.

(j) through (m) No change.

(5) All nurse registries must apply for a geographic service area on their initial license application. Nurse registries may apply for a geographic service area which encompasses one or more of the counties within the specific AHCA area boundaries, pursuant to Section 408.032(5), F.S., and Section ~~400.497(7)(8)~~, F.S., in which the main office is located. However, any agency holding a current nurse registry license from AHCA, as of the effective date of this rule, may continue to serve clients in those counties listed on its current license.

(6) A license, unless sooner suspended or revoked, shall automatically expire 2 years ~~1 year~~ from the date of issuance and shall be renewable biennially ~~annually~~.

(7) An application for renewal of a registry license shall be submitted, as referenced in Section ~~400.506(5), F.S. subsection 59A-18.004(1), F.A.C.~~, not less than 60 days prior to expiration of the license. The submission shall be on AHCA Form 3110-7004, Nurse Registry Application for Renewal of License December 2005, incorporated by reference, and shall include a renewal fee of ~~\$2,000~~ ~~\$1,000~~. The application shall include: All of the information required by paragraphs (4)(a) through ~~(i)(m)~~ above.

(8) No change.

(9) An application for a change of ownership of a registry shall be submitted, on AHCA Form 3110-7001, Nurse Registry Application for Initial License, Revised December 05, as referenced in subsection 59A-18.004(1), F.A.C., not less than 60 days prior to the effective date of the change. The submission shall include the change of ownership licensure fee of \$2,000 ~~\$1,000~~. The application shall include all of the information required by paragraphs (4)(a) through (m) above.

(10) through (11) No change.

(12) If a change of address is to occur, the nurse registry must provide 14 days advance notice in writing to the AHCA Licensed Home Health Programs Unit in Tallahassee and the AHCA field office. The nurse registry must submit to the AHCA Licensed Home Health Programs Unit evidence of compliance with local zoning authorities for the new location. Emergency relocations must be reported within seven days, with the reason for the relocation documented. An emergency relocation can be due to any of the following situations:

(a) An eviction notice;

(b) Environmental conditions on or near the site which are not conducive to the health and well being of staff and clients, including a fire or flooding;

(c) An element near the site which would make the premises harmful or dangerous;

(d) Circumstances arising from or caused by weather conditions and/or a natural disaster; or

(e) A change in property zoning that requires the nurse registry to move.

Specific Authority 400.497, 400.506 FS. Law Implemented 400.497, 400.506, 400.512 FS. History—New 2-9-93, Amended 1-27-94, 12-24-00, _____.

59A-18.005 Registration Policies.

(1) Each nurse registry shall disseminate the following rules and statutes to each applicable independent contractor at the time of registration.

(a) Registered nurses and licensed practical nurses RN's and LPN's shall receive for their use and reference:

1. Subsection 59A-18.005(6), F.A.C., regarding health statements and communicable disease.

2. ~~1.~~ Rule 59A-18.007, F.A.C., Registered Nurses and Licensed Practical Nurses.

3. ~~2.~~ Rule 59A-18.011, F.A.C., Medical Plan of Treatment.

4. ~~3.~~ Rule 59A-18.012, F.A.C., Clinical Records.

5. ~~4.~~ Rule 59A-18.013, F.A.C., Administration of Biologicals.

6. ~~5.~~ Sections 400.506, 400.512, 400.484, 400.462, and 400.495, F.S.

(b) Certified nursing assistants C.N.A.'s and home health aides HHA's shall receive for their use and reference:

1. Subsection 59A-18.005(6), F.A.C., regarding health statements and communicable disease.

2. ~~1.~~ Rule 59A-18.0081, F.A.C., Certified Nursing Assistant and Home Health Aide.

3. ~~2.~~ Sections 400.506, 400.512, 400.484, 400.462, and 400.495, F.S.

(c) Homemakers and/ Companions shall receive for their use and reference:

1. Rule 59A-18.009, F.A.C., Homemakers or Companions.

2. Sections 400.506, 400.512, 400.484, 400.462, and 400.495, F.S.

(2) through (5) No change.

(6) Prior to contact with patients, each new independent contractor referred for client care must furnish to the registry the results of a Mantoux method tuberculin skin test (TST) performed pursuant to Section 381.0011(4), F.S. The independent contractor must also submit a statement from a health care professional licensed under Chapter 458, F.S., or Chapter 459, F.S., a physician's assistant, or an advanced registered nurse practitioner (ARNP) or a registered nurse licensed under Chapter 464, F.S., under the supervision of a licensed physician, or acting pursuant to an established protocol signed by a licensed physician, based upon an examination within the last six months, that the contractor is in reasonably good health and appears to be free from apparent signs or symptoms of a communicable disease including tuberculosis, pursuant to Section 381.0011(4), F.S. sufficient to provide services to individuals with compromised health. If any independent contractor is later found to have, or is suspected of having, a communicable disease, he or she shall immediately cease to be referred as an independent contractor. If the independent contractor later provides a statement from a health care professional that such condition no longer exists, then the nurse registry can again refer patients to the independent contractor. It is the responsibility of the independent contractor ~~nurse registry~~ to ensure that patients are not placed at risk by immediately removing him or herself as a caregiver if he or she is found to have or is suspected of having a communicable disease. In the event that an independent contractor refuses to remove him or herself, the nurse registry shall report the situation to the county health department as an immediate threat to health, welfare and safety ~~contractors with positive tuberculosis test results TST (10 or more MM's). Positive test reactors shall submit a statement from a health care professional licensed under Chapter 458, F.S., or Chapter 459, F.S., that the independent contractor does not constitute a risk of communicating tuberculosis. A new contractor who has been a contractor of another nurse registry or employed by a home health agency may provide a copy of his health care statement from the files of the former nurse registry or home health agency provided that the statement was not issued more than 1 year prior and that the contractor has not had a break in service of more than 90 days. Upon the specific written request of an individual staff member, copies of the most recent tuberculosis test result and above mentioned health statement may be released by one employer or registry and provided to another employer or registry within 2 years of the initial date of~~

~~the test results and statement. Medical information is confidential and must not be disclosed without the specific consent of the person to whom it pertains. The written request to release medical information ~~the physical examination~~ must be kept on file. If a person is found to have a communicable disease, that person shall be removed from contact with patients until a physician's statement is received.~~

(7) No change.

(8) Registration folders on each independent contractor must contain the information required in Section 400.506(12), F.S.:

(a) through (c) No change.

(d) Evidence of HIV/AIDS training specified by the respective licensing board and that each non-licensed contractor ~~received a continuing education course biennially on HIV and AIDS pursuant to Section 381.0035, F.S. a minimum of 2 hours of initial HIV/AIDS training and 1 hour biennially of continuing HIV/AIDS education units;~~

Specific Authority 400.497, 400.506 FS, Law Implemented 400.497, 400.506 FS. History--New 2-9-93, Amended 1-27-94, 12-24-00,_____.

59A-18.0081 Certified Nursing Assistant and Home Health Aide.

(1) No change.

(2) Be responsible for documenting services provided to the patient or client and for filing said documentation with the nurse registry on a regular basis. These service logs will be stored by the nurse registry in the client's file, along with a record of requested registered nurse visits ~~the monthly nurse assessments~~. The service logs shall include the name of the patient or client and a listing of the services provided;

(3) through (10) No change.

(11) C.N.A.'s and home health aides referred by nurse registries must ~~have received a continuing education course biennially on HIV and AIDS~~ minimum of 2 hours of initial training in HIV/AIDS and 1 hour biennially of HIV/AIDS training, pursuant to Section 381.0035, F.S.; and training to maintain a current CPR certification.

(12) C.N.A.'s and home health aides referred by nurse registries may assist with self-administration of medication as described in Section 400.488, F.S.

(a) Home health aides and C.N.A.'s assisting with self-administered medication, as described in Section 400.488, F.S., shall have received a minimum of 2 hours of training covering the following content:

1. Training shall cover state law and rule requirements with respect to the assistance with self-administration of medications in the home, procedures for assisting the resident with self-administration of medication, common medications, recognition of side effects and adverse reactions and procedures to follow when patients appear to be experiencing

side effects and adverse reactions. Training must include verification that each C.N.A. and home health aide can read the prescription label and any instructions.

2. Individuals who cannot read shall not be permitted to assist with prescription medications.

(b) Documentation of training on assistance with self-administered medication from one of the following sources is acceptable:

1. Documentation of 2 hours of training in compliance with subsection 59A-8.0095(5), F.A.C., from a home health agency if the home health aide or C.N.A. previously worked for the home health agency;

2. A training certificate for 4 hours of training for assisted living facility staff in compliance with subsection 58A-5.0191(5), F.A.C.

3. A training certificate for at least 2 hours of training from a career education school licensed pursuant to Chapter 1005, F.S., and Chapter 6E, F.A.C., by the Department of Education, Commission for Independent Education.

(c) Documentation of the training must be maintained in the file of each home health aide and C.N.A. that assists patients with self-administered medication.

(d) In cases where a home health aide or a C.N.A. will provide assistance with self-administered medications as described in Section 400.488, F.S., and paragraph (e) below, a review of the medications for which assistance is to be provided shall be conducted by a registered nurse or licensed practical nurse to ensure the C.N.A. and home health aide is able to assist in accordance with their training and with the medication prescription. The patient or the patient's caregiver must give written consent for a home health aide or C.N.A. to provide assistance with self-administered medications, as required in Section 400.488(2), F.S.

(e) The trained home health aide and C.N.A. may also provide the following assistance with self-administered medication, as needed by the patient and as described in Section 400.488, F.S.:

1. Prepare necessary items such as juice, water, cups, or spoons to assist the patient in the self-administration of medication;

2. Open and close the medication container or tear the foil of prepackaged medications;

3. Assist the resident in the self-administration process. Examples of such assistance include the steadying of the arm, hand, or other parts of the patient's body so as to allow the self-administration of medication;

4. Assist the patient by placing unused doses of solid medication back into the medication container.

Specific Authority 400.497, 400.506 FS, Law Implemented 400.488, 400.497, 400.506 FS. History--New 1-27-94, Amended 12-24-00,_____.

59A-18.011 Medical Plan of Treatment.

(1) No change.

(2) The licensed nurse providing care to the patient is responsible for having the medical plan of treatment signed by the physician, physician assistant, or advanced registered nurse practitioner, acting within his or her respective scope of practice, within 30 days from the initiation of services and reviewed by the physician, physician assistant, or advanced registered nurse practitioner in consultation with the licensed nurse at least every 2 months.

(3) The licensed nurse responsible for delivering care to the patient is responsible for the medical plan of treatment which shall include, at a minimum, the following:

(a) through (d) No change.

(e) Dated signature of physician, physician assistant, or advanced registered nurse practitioner.

(4) through (5) No change.

(6) The nurse registry shall inform nurse registrants that the shift nurse that communicates with the physician's office, the physician assistant or the advanced registered practitioner of the physician, about any changes in the physician's orders should update the plan of treatment.

Specific Authority 400.497, 400.506 FS, Law Implemented 400.497, 400.506 FS. History—New 2-9-93, Amended 1-27-94, 12-24-00, _____.

59A-18.012 Clinical Records.

(1) through (2) No change.

(3) Plan of treatment as required in Section 400.506(17)(15), F.S.

(4) through (7) No change.

Specific Authority 400.497, 400.506 FS, Law Implemented 400.497, 400.506 FS. History—New 2-9-93, Amended 1-27-94, 12-24-00, _____.

59A-18.017 Supplemental Staffing for Health Care Facilities

(1) through (7) No change.

(8) If a nurse registry refers contractors to provide staffing service to a nursing home and the contractor has not lived in Florida for 5 years, that contractor will be required to undergo a level 2 background screening as required by Section 400.215, F.S.

(9)(8) Each nurse registry shall maintain files in an organized manner and such files will be made available for inspection by the agency during the hours the registry is in operation.

Specific Authority 400.497, 400.506 FS, Law Implemented 400.497, 400.506 FS. History—New 2-9-93, Amended 1-27-94, 12-24-00, _____.

59A-18.018 Emergency Management Plans.

(1) Pursuant to Section 400.506(16), F.S., each nurse registry shall prepare and maintain a written comprehensive emergency management plan, in accordance with the Comprehensive Emergency Management Plan for Nurse Registries, AHCA Form 3110-1016, December 2005,

incorporated by reference. This document is available from the Agency for Health Care Administration at <http://ahca.myflorida.com> under Licensing, Nurse Registry. The plan shall describe how the nurse registry establishes and maintains an effective response to emergencies and disasters. The plan, once completed, will be sent by e-mail by multi-county nurse registries to the Office of Public Health Nursing, Department of Health or to the contact designated by the Department of Health for single county nurse registries as required in Section 400.506(16)(e), F.S.

(2) The nurse registry shall review its emergency management plan on an annual basis and make any substantive changes. Plans with any substantive changes will be forwarded for review to the entities identified in subsection (1).

(3) Changes in the telephone numbers of those administrative staff who are coordinating the nurse registry's emergency response must be reported to the county emergency management office and to the county health department. For nurse registries with multiple counties on their license, the changes must be reported to each county health department and each county emergency management office. The telephone numbers must include numbers where the coordinating staff can be contacted outside of the nurse registry's regular office hours. All nurse registries must report these changes, whether their plan has been previously reviewed or not, as defined in subsection (1).

(4) When a nurse registry goes through a change of ownership the new owner shall review the registry's emergency management plan and make any substantive changes, including changes noted in subsection (3). Those nurse registries will need to report any substantive changes in their plans to the reviewing entity in subsection (1).

(5) In the event of an emergency, the nurse registry shall implement the nurse registry's emergency management plan pursuant to Section 400.506(16), F.S. Also, the registry must meet the following requirements:

(a) All administrative staff shall be informed of responsibilities for implementing the emergency management plan.

(b) If telephone service is not available during an emergency, the registry shall have a contingency plan to support communication, pursuant to Section 400.506, F.S. A contingency plan may include cell phones, contact with a community based ham radio group, public announcements through radio or television stations, driving directly to the patient's home, and, in medical emergency situations, contact with police or emergency rescue services.

(6) Nurse registries shall make available to patients information gathered from the county emergency management offices including the procedures and documents required for assisting patients with registration for special needs shelters.

(a) Upon initial contract for services, and at a minimum on an annual basis, each nurse registry shall, pursuant to Sections 400.506(15) and 252.355, F.S., inform patients, by the best method possible as it pertains to the person's disability, and patient caregivers of the special needs registry and procedures for registration at the special needs registry maintained by their county emergency management office.

(b) If the patient is to be registered at the special needs registry, the nurse registry shall assist the patient with registering, pursuant to Section 400.506(15) and (16)(b), F.S., and must document in the patient's file if the patient plans to evacuate or remain at home; if the patient's caregiver or family can take responsibility during the emergency for services normally provided by independent contractors referred by the registry; or if the registry needs to make referrals in order for services to continue. If the patient has a case manager through the Community Care for the Elderly or the Medicaid Waiver programs or any other state funded program designated in law to help clients register with the special needs registry, then the nurse registry will check with the case manager to verify if the patient has already been registered. If so, a note will be made in the patient's file by the nurse registry that the patient's need for registration has already been reviewed and handled by the other program's case manager.

(c) The independent contractors referred by the nurse registry, or registry staff, shall inform patients registered with the special needs registry that special needs shelters are an option of last resort and that services will not be equal to what they have received in their homes.

(d) This registration information, when collected, shall be submitted, pursuant to Section 400.506(15) and (16)(b) and (c), F.S., to the county emergency management office, or on a periodic basis as determined by the registry's county emergency management office.

(7) The person referred for contract to a patient registered with the special needs registry, which shall include special needs registry patients being served in assisted living facilities and adult family care homes, shall ensure that continuous care is provided, either in the special needs shelter, or in the patient's home pursuant to Section 400.506(16)(a), F.S., unless circumstances beyond the control of the independent contractor as described in Section 400.506(16)(d), F.S., make it impossible to continue services.

(8) Upon eminent threat of an emergency or disaster the nurse registry must contact those patients needing ongoing services pursuant to Section 400.506(16)(a), F.S., and confirm each patient's plan during and immediately following an emergency. The nurse registry shall contact the assisted living facility and adult family care home patients and confirm their plans during and immediately following an emergency.

(9) If the independent contractor is unable to provide services to special needs registry patients, including any assisted living facility and adult family care home special

needs registry patients, due to circumstances beyond their control pursuant to Section 400.506(16)(d), F.S., then the nurse registry will make reasonable efforts to find another independent contractor for the patient, pursuant to Section 400.506(16), F.S.

(10) During emergency situations, when there is not a mandatory evacuation order issued by the local county emergency management office, some patients, registered pursuant to Section 252.355, F.S., may decide not to evacuate and will stay in their homes. The nurse registry must establish procedures, prior to the time of an emergency, which will delineate to what extent the registry will continue to arrange for care during and immediately following an emergency pursuant to Section 400.506(16)(a), F.S. The registry shall also make reasonable attempts to ascertain which patients remaining at home or in their assisted living facility or adult family care home will need services from the registry and which patients have plans to receive care from their family or caregivers. If the assisted living facility or adult family care home does relocate the residents to another assisted living facility or adult family care home in the geographic area served by the nurse registry, the registry will continue to provide services to the residents. If the patients relocated outside the area served by the registry, the registry will assist the assisted living facility and adult family care home in obtaining the services of another registry already licensed for that area until the patient returns back to their original location.

(11) The prioritized list of registered special needs patients maintained by the nurse registry shall be kept current and shall include information, as defined in Section 400.506(16)(b) and (c), F.S. This list also shall be furnished to county health departments and to the county emergency management office, upon request.

(12) The independent contractor from the nurse registry is required to maintain in the home of the special needs patient a list of patient-specific medications, supplies and equipment required for continuing care and service should the patient be evacuated as per Section 400.506(16)(c), F.S.. The list must include the names of all medications, their dose, frequency, route, time of day and any special considerations for administration. The list must also include any allergies; the name of the patient's physician and the physician's phone number; and the name, phone number and address of the patient's pharmacy. If the patient permits, the list can also include the patient's diagnosis.

(13) The patient record for each person registered as a special needs patient shall include the list described in subsection (12) above and information as listed in Section 400.506(16)(a) and (b), F.S.

Specific Authority 400.506 FS. Law Implemented 400.506 FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Jan Benesh

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jeffrey N. Gregg
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 28, 2006
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 1, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION

Division of Inspector General

RULE TITLE: Administrative Sanctions on Providers, Entities, and Persons

RULE NO.: 59G-9.070

PURPOSE AND EFFECT: Since implementation of the rule, the MPI management team has discussed every sanction to be imposed and has found some scenarios where the amount of the fines far exceeds what was expected. As the intent of the rule is to encourage compliance (those providers who aren't going to come into compliance or need more severe "punishment" will be recommended for other administrative action), MPI believes several areas need to have a "cap" on fines. The rule is being amended to implement these "caps". Additionally, several changes have been prepared in response to the issues that were raised in the rule challenge (and as a part of the settlement in that matter). Also, MPI found issues that needed to be changed (either due to error or for clarity) while conducting training for implementation; these changes are incorporated in the amended rule. Finally, MPI believed it was important to clarify in the rule some items that are a part of the bureau protocols but were not clarified in the rule. This will ensure continued consistency in its application.

SUMMARY: Rule 59G-9.070, F.A.C., is being amended to clarify certain terminology to ensure consistency with statutory definitions; define more clearly when and how sanctions will be imposed; and to define limits of fines in certain categories.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Not Applicable.

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

SPECIFIC AUTHORITY: 409.919 FS.

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

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

TIME AND DATE: 2:30 p.m., Tuesday, March 7, 2006

PLACE: 2727 Mahan Drive, Conference Room C, Building 3, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kimberly Noble, Medicaid Program Integrity, 2727 Mahan Drive, Building 3, Mail Stop 6, Tallahassee, Florida 32308-5407, (850)413-9290

THE FULL TEXT OF THE PROPOSED RULE IS:

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

(1) PURPOSE: The purpose of this rule is to provide notice of administrative sanctions and disincentives imposed upon a provider, entity, or person for each violation of any Medicaid-related law. The Agency shall have the authority to deviate from the guidelines for the reasons stated within this rule. Notice of administrative sanctions imposed will be by way of written correspondence and shall constitute Agency action pursuant to Chapter 120, F.S.

(2) DEFINITIONS: The following terms used within this rule shall have the meanings as set forth below:

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

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

(c) "Claim" is as defined in Section 409.901(5), F.S., and shall also include per diem payments and the payment of a capitation rate for a Medicaid recipient. For the purposes of this rule, "per diem payments" means the total monthly payment to the provider for a specific recipient.

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

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

(f) "Comprehensive follow-up reviews" or "Follow-up reviews" shall have the same meaning throughout this rule, and can be used interchangeably. The two phrases mean evaluations of providers every 6 months, until the Agency determines that the reviews are no longer required. Such evaluations will result in a determination regarding whether a further compliance audit, or other regulatory action is required.

(g) "Contemporaneous", as it relates to a provider's requirement to maintain records and produce records upon request, means records created within the standard and customary timeframe applicable to the provider's trade or profession; but not longer than any timeframe specified in Medicaid laws or the laws that govern the provider's profession.

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

~~(i)(h)~~ "Corrective action plan" means the process or plan by which the provider will ensure future compliance with state and federal Medicaid laws, the laws that govern the provider's profession, or the Medicaid provider agreement. A corrective action plan will remain in effect until the Agency determines that it is no longer necessary, but no longer than 3 years. For purposes of this rule, the sanction of a corrective action plan shall take the form of an "acknowledgement statement",

“provider education”, a “self audit”, or a “comprehensive quality assurance program”, all of which are further described in subsection (10) of this rule.

~~(j)(4)~~ An “erroneous” claim is an application for payment from the Medicaid program or its fiscal agent that contains an inaccuracy.

~~(k)(j)~~ “Fine” is a monetary sanction. The amount of a fine shall be as set forth within this rule.

~~(l)(4)~~ A “false” claim is as provided for in the Florida False Claims Act set forth in Chapter 68, F.S.

~~(m)(4)~~ “Fraud” is as defined in paragraph 409.913(1)(c), F.S.

~~(n)(m)~~ “Medical necessity” or “medically necessary” is as defined in paragraph 409.913(1)(d), F.S.

~~(o)(n)~~ “Medicaid-related record” is as defined in Section 409.901(19), F.S.

~~(p)(6)~~ “Overpayment” is as defined in Section 409.913(1)(e), F.S.

(q) “Patient Record” means the file maintained by the provider to document the delivery of goods or services; the file shall be maintained in the standard and customary practice applicable to the provider’s trade or profession; but not in a fashion that is contrary to Medicaid laws or the laws that govern the provider’s profession.

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

~~(s)(q)~~ “Pattern” is defined as follows:

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

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

b. There is more than one patient ~~record~~ patient record ~~supporting documentation~~ is maintained.

2. As it relates to paragraph (7)(e) of this rule (generally, failure to comply with the provisions of Medicaid laws, the laws that govern the provider’s profession, or the Medicaid provider agreement), a pattern is sufficiently established if within a single Agency action:

a. The number of individual claims found to be in violation is greater than 6.25 percent of the total claims that were reviewed to support ~~are the subject of~~ the Agency action; or

~~b. The number of individual claims found to be in violation is greater than 6.25 percent of the claims in a sample that are the subject of the Agency action, where a sample was used to determine the appropriateness of the claims to Medicaid;~~

~~b.e. The overpayment determination by the Agency is greater than 6.25 percent of the amount paid for the total claims that were reviewed to support ~~are the subject of~~ the Agency action; or;~~

~~d. The overpayment determination by the Agency is greater than 6.25 percent of the amount paid for the claims in a sample that are the subject of the Agency action, where a sample was used to determine the appropriateness of the claims to Medicaid;~~

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

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

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

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

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

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

a. The number of individual claims found to be erroneous is greater than 6.25 percent of the total claims that were reviewed to support ~~are the subject of~~ the Agency action; or

~~b. The number of erroneous claims identified is greater than 6.25 percent of the claims in a sample that are the subject of the Agency action, where a sample was used to determine the appropriateness of the claims to Medicaid;~~

~~b.e. The overpayment determination by the Agency, as a result of the erroneous claims, is greater than 6.25 percent of the amount paid for the total claims that were reviewed to support ~~are the subject of~~ the Agency action; or;~~

~~d. The overpayment determination by the Agency, as a result of the erroneous claims, is greater than 6.25 percent of the amount paid for the claims in a sample that are the subject of the Agency action, where a sample was used to determine the appropriateness of the claims to Medicaid;~~

~~(t)(#)~~ “Person” is as defined in Section 409.913(1)(f), F.S.

~~(u)(#)~~ “Provider” is as defined in Section 409.901(16), F.S. and for purposes of this rule, includes all of the provider’s locations that have the same base provider number (with separate locator codes).

~~(v)(#)~~ “Provider Group” is more than one individual provider practicing under the same tax identification number, enrolled in the Medicaid program as a group for billing purposes, and having one or more locations.

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

~~(x)(#)~~ “Single Agency action” means an audit or review that results in notice to the provider of violations of Medicaid laws, the laws that govern the provider’s profession, or the Medicaid provider agreement.

~~(y)(#)~~ “Suspension” is a one-year preclusion from any action that results in a claim for payment to the Medicaid program as a result of furnishing, supervising a person who is furnishing, or causing a person to furnish goods or services.

~~(z)(#)~~ “Termination” is a twenty-year preclusion from any action that results in a claim for payment to the Medicaid program as a result of furnishing, supervising a person who is furnishing, or causing a person to furnish goods or services.

~~(aa)(#)~~ “Violation” means any omission or act performed by a provider, entity, or person that is contrary to Medicaid laws, the laws that govern the provider’s profession, or the Medicaid provider agreement.

1. For purposes of this rule, each day that an ongoing violation continues and each instance of an act or omission contrary to a Medicaid law, a law that governs the provider’s profession, or the Medicaid provider agreement shall be considered a “separate violation”.

2. For purposes of determining first, second, third, fourth, fifth, or subsequent violations of this rule:

a. A violation existed even if the matter is resolved by repayment of an overpayment, settlement agreement, or other means.

b. The same violation means a subsequent determination by the Agency, that the person, provider, or entity is in violation of the same provision of state or federal Medicaid laws, the laws that govern the provider’s profession, or the Medicaid provider agreement.

(3) VIOLATIONS AND SANCTIONS: The identification of violations given herein is descriptive only. The full language of each statutory provision cited must be consulted in order to determine the conduct included.

(4) FACTORS TO BE USED IN DETERMINING LEVEL OF SANCTION:

~~(a)~~ Except for the mandatory suspension and termination provision in subsection (6) of this rule, when determining the type, amount, and duration of the sanction to be applied, the Agency shall consider each of the factors set forth in Section 409.913(17), F.S., as mitigation to the sanction set forth in conjunction with subsection (10) of this rule. This rule does not give any one listed factor greater importance or weight over any other. However, the Agency shall have the discretion to rely upon the circumstances of the violation or violations in conjunction with any one or all of the listed factors to determine the sanction that is ultimately applied. These factors will also be utilized for any deviation by the Agency from the sanctions for each violation, as set forth in subsection (10) of this rule.

~~(b)~~ For the first agency action against a provider after July 1, 2005, where a final overpayment is identified and a fine is to be imposed as a result of the violations giving rise to that overpayment, the cumulative amount of the fine shall not exceed thirty-percent of the amount of the overpayment. Where the fine does exceed thirty-percent of the amount the overpayment, the fine shall be adjusted to thirty-percent of the amount of the overpayment.

~~(c)~~ For the second agency action against a provider after July 1, 2005, where a final overpayment is identified and a fine is to be imposed as a result of the violations giving rise to that overpayment, the cumulative amount of the fine shall not exceed fifty-percent of the amount of the overpayment. Where the fine does exceed fifty-percent of the amount the overpayment, the fine shall be adjusted to fifty-percent of the amount of the overpayment.

~~(c)~~ For all subsequent agency actions against a provider after July 1, 2005, where a final overpayment is identified and a fine is to be imposed as a result of the violations giving rise to that overpayment, the cumulative amount of the fine shall not exceed the amount of the overpayment. Where the fine does exceed the amount the overpayment, the fine shall be adjusted to the amount of the overpayment.

~~(d)~~ Sanctions only apply at the final agency action.

~~(e)~~ Where the final agency action results in a final overpayment determination that is less than \$5,000, any fine that is to be imposed as a result of the violations giving rise to that overpayment shall be waived.

1. However, where waiving the fine results in no sanction being imposed, the sanction of a corrective action plan in the form of a provider acknowledgement statement shall be imposed.

2. Fines that are to be imposed as a result of violations that do not give rise to an overpayment are not waived.

~~(f)~~ Where the Agency has instituted an amnesty program pursuant to Section 409.913(25)(e), F.S., sanctions will not apply.

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

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

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

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

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

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

(6) MANDATORY TERMINATION OR SUSPENSION: Whenever a provider has been suspended or terminated from participation in the Medicaid or Medicare program by the federal government or any state or territory, the Agency shall immediately suspend (if suspended) or terminate (if terminated), the provider's participation in the Florida Medicaid program for a period no less than that imposed by the federal government or the state or territory, and shall not enroll such provider in the Florida Medicaid program while such foreign suspension or termination remains in effect. Additionally, all other remedies provided by law, including all civil remedies, and other sanctions, shall apply. [Section 409.913(14), F.S.]

(7) SANCTIONS: Except when the Secretary of the Agency determines not to impose a sanction, pursuant to Section 409.913(16)(j), F.S., sanctions shall be imposed for the following:

(a) The provider's license has not been renewed by the licensing agency in Florida, or has been revoked, suspended, or terminated, by the licensing agency of any state. [Section 409.913(15)(a), F.S.];

(b) Failure to make available within the timeframe requested by the Agency or other mutually agreed upon timeframe, or to refuse access to Medicaid-related records sought by any investigator. [Section 409.913(15)(b), F.S.];

(c) Failure to make available or furnish all Medicaid-related records, to be used by the Agency in determining whether Medicaid payments are or were due, and what the appropriate corresponding Medicaid payment amount

should be within the timeframe requested by the Agency or other mutually agreed upon timeframe. [Section 409.913(15)(c), F.S.];

(d) Failure to maintain contemporaneous Medicaid-related records and prior authorization records, if prior authorization is required, that demonstrate both the necessity and appropriateness of the good or service rendered. [Section 409.913(15)(d), F.S.];

(e) Failure to comply with the provisions of the Medicaid provider publications that have been adopted by reference as rules, Medicaid laws, the requirements and provisions in the provider's Medicaid provider agreement, or the certification found on claim forms or transmittal forms for electronically submitted claims by the provider or authorized representative. [409.913(15)(e), F.S.];

(f) Furnishing or ordering goods or services that are out of compliance with the practice standards governing the provider's profession, are excessive, of inferior quality, or that are found to be harmful to the recipient. [Section 409.913(15)(f), F.S.];

(g) A pattern of failure to provide goods or services that are medically necessary. [Section 409.913(15)(g), F.S.];

(h) Submitting, or causing to be submitted, false or a pattern of erroneous Medicaid claims. [Section 409.913(15)(h), F.S.];

(i) Submitting, or causing to be submitted, a Medicaid provider enrollment application or renewal forms, a request for prior authorization for Medicaid services, or a Medicaid cost report containing information that is either materially false or materially incorrect. [Section 409.913(15)(i), F.S.];

(j) Collecting or billing a recipient or a recipient's responsible party for goods or services improperly. [Section 409.913(15)(j), F.S.];

(k) Including costs in a cost report that are not ~~authorized~~ allowed under the Medicaid ~~state reimbursement~~ plan ~~or that~~ are authorized but were disallowed during the audit process, even though the provider or authorized representative had previously been advised via an audit exit conference or audit report that the costs were not allowable. However, if the unallowed costs are the subject of an administrative hearing pursuant to Chapter 120, F.S., sanctions shall not be imposed. Additionally, a provider is only considered to have been previously advised that the costs were not allowable if the provider was advised in writing via an audit exit conference that the cost is not allowed or has been issued an audit report, either of which were provided in the previous five years. [Section 409.913(15) (k), F.S.];

(l) Being charged, whether by information or indictment, with fraudulent billing practices. [Section 409.913(15)(l), F.S.];

(m) A finding or determination that a provider, entity, or person is negligent for ordering or prescribing a good or service to a patient, which resulted in the patient's injury or death. [Section 409.913(15)(m), F.S.];

(n) During a specific audit or review period, failure to demonstrate sufficient quantities of goods, or sufficient time in the case of services, that support the corresponding billings or claims made to the Medicaid program. [Section 409.913(15)(n), F.S.];

(o) Failure to comply with the notice and reporting requirements of Section 409.907, F.S. [Section 409.913(15)(o), F.S.];

(p) A finding or determination that a provider, entity, or person committed patient abuse or neglect, or any act prohibited by Section 409.920, F.S. [Section 409.913(15)(p), F.S.];

(q) Failure to comply with any of the terms of a previously agreed-upon repayment schedule. [Sections 409.913(15)(q), F.S.];

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

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

1. Section 409.913(13)(a), F.S. (generally, a provider is convicted of a criminal offense related to the delivery of any health care goods or services);

2. Section 409.913(13)(b), F.S. (generally, a provider is convicted of a criminal offense relating to the practice of the provider's profession); or

3. Section 409.913(13)(c), F.S. (generally, a provider is found by a court, administrative law judge, hearing officer, administrative or regulatory board, or final agency action to have neglected or physically abused a patient).

(b) For non-payment or partial payment where monies are owed to the Agency, and failure to enter into a repayment agreement, in accordance with Section 409.913(25)(c), F.S. (generally, a provider who has a debt to the Agency, who has not made full payment, and who fails to enter into a repayment schedule), the Agency shall impose the sanction of a \$5,000 fine; and, where the provider remains out of compliance for 30 days, suspension; and, where the provider remains out of compliance for more than 180 days, termination.

(c) For failure to reimburse an overpayment, in accordance with Section 409.913(30), F.S. (generally, a provider that fails to repay an overpayment or enter into a repayment agreement within 35 days after the date of a final order), the Agency shall impose the sanction of a \$5,000 fine; and, where the provider remains out of compliance for 30 days, suspension; and, where the provider remains out of compliance for more than 180 days, termination.

(9) REPORTING SANCTIONS: The Agency shall report sanctions in accordance with Section 409.913(24), F.S.

(10) GUIDELINES FOR SANCTIONS.

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

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

(c) A violation is considered a:

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

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

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

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

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

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

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

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

2. In the event the Agency determines in a single action that a provider, entity, or person has committed multiple violations of one section of this rule, unless the table in Section 10(i) specifies otherwise, the Agency shall cumulatively apply the applicable sanctions for each separate violation of the

section. However, the Agency shall not apply multiple violations to increase the level of violation (e.g., – from First Violation to Second Violation).

(e) For purposes of this rule, as used in the table below, a “corrective action plan” shall be a written document, submitted to the Agency, and shall either be an “acknowledgement statement”, “provider education”, “self audit”, or a “comprehensive quality assurance program”. The Agency will specify the type of corrective action plan required.

1. An “acknowledgement statement” shall be a typed document submitted within 15 days of the date of the Agency action that brought rise to this requirement. The document will acknowledge a requirement to adhere to the specific state and federal Medicaid laws, the laws that govern the provider’s profession, or the Medicaid provider agreement that are the subject of the Agency action. The Agency will confirm receipt of the statement and either accept or deny it as complying with this rule. If the acknowledgement statement is not acceptable to the Agency, the provider, entity, or person will be advised regarding the deficiencies. The provider will have 10 days to amend the statement.

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

a. The provider, entity, or person will identify one or more individuals who are the Medicaid policy compliance individuals for the provider, and must include treating providers involved with the areas of non-compliance as well as billing staff, who must successfully complete the required education.

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

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

d. Proof of successful completion of the provider education must be submitted to the Agency within 90 days of the date of the Agency action that brought rise to this requirement.

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

a. A self-audit is a detailed and comprehensive evaluation of the provider’s claims to Medicaid. The audit may be focused on particular issues or all state and federal Medicaid laws, the laws that govern the provider’s profession, or the Medicaid provider agreement. The Agency will specify the audit period as well as issues to be addressed. A summary of the audit work plan, including the audit methodology, must be submitted to the Agency within 30 days of the date of the Agency action that brought rise to this requirement. The self-audit must be completed within 90 days of the date of the Agency action that brought rise to this requirement, or such other timeframe as mutually agreed upon by the Agency and the provider. The self-disclosure of violations will not result in additional sanctions imposed pursuant to this rule.

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

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

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

4. A “comprehensive quality assurance program” shall monitor the efforts of the provider, entity, or person in their internal efforts to comply with state and federal Medicaid laws, the laws that govern the provider’s profession, and the Medicaid provider agreement.

a. The program shall contain at a minimum the following elements: identification of the physical location where the provider, entity, or person takes any action that may cause a claim to Medicaid to be submitted; contact information regarding the individual or individuals who are responsible for development, maintenance, implementation, and evaluation of the program; a separate process flow diagram that includes a step-by-step written description or flow chart indicating how the program will be developed, maintained, implemented, and evaluated; a complete description and relevant time frames of the process for internally maintaining the program, including a description of how technology, education, and staffing issues will be addressed; a complete description and relevant time frames of the process for implementing the program; and a complete description of the process for monitoring, evaluating, and improving the program.

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

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

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

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

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

5. Failure to timely comply with any of the timeframes set forth by the Agency, or to adhere to the corrective action plan in accordance with this section, shall result in a \$1000 fine per day of non-compliance. If a provider remains out of compliance for 30 days, the provider shall also be suspended from the Medicaid program until the provider is in compliance. If a provider remains out of compliance for 180 days, the provider shall be terminated from the Medicaid program.

(f) The Agency's decision to discontinue follow-up reviews does not preclude future audits of any dates of service or issues, and shall not be used by the provider in any action should the Agency later determine overpayments existed.

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

(h) For purposes of this rule, as used in the table below, a "termination" shall preclude participation in the Medicaid program for twenty years from the date of the Agency action. A provider who is terminated shall not resume participation in the Medicaid program until the completion of the twenty-year term. To resume participation, the provider must submit a complete and accurate provider enrollment application, which will be accepted or denied in the standard course of business by the Agency. In addition to the application, the provider must include a copy of the notice of termination issued by the Agency, and a written acknowledgement regarding whether the violation(s) that brought rise to the termination has been remedied.

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

Violation Type/ Section of Rule	First violation	Second violation	Third violation	Fourth violation	Fifth and Subsequent violations
(7)(a) The provider's license has not been renewed by the licensing agency; or the license has been revoked, suspended, or terminated, by the licensing agency of any state. [409.913(15)(a), F.S.];	For licensure suspension: suspension from the Medicaid program for the duration of the licensure suspension; however, if the licensure suspension is to exceed 1 year and for all other violations: termination.	For licensure suspension: suspension from the Medicaid program for the duration of the licensure suspension; however, if the licensure suspension is to exceed 1 year and for all other violations: termination.	Termination.	Termination.	Termination.
(7)(b) Failure, upon demand, to make available or refuse access to, Medicaid-related records [409.913(15)(b), F.S.];	A \$1,000 fine per record request or instance of refused access; if after 30 days, the provider is still in violation, suspension until the records are made available or access is granted; if after 180 days, the provider is still in violation, termination.	A \$2,500 fine per record request or instance of refused access; if after 30 days, the provider is still in violation, suspension until the records are made available or access is granted; if after 180 days, the provider is still in violation, termination.	A \$5,000 fine per record request or instance of refused access; if after 30 days, the provider is still in violation, suspension until the records are made available or access is granted; if after 180 days, the provider is still in violation, termination.	A \$5,000 fine per record request or instance of refused access; if after 30 days, the provider is still in violation, suspension until the records are made available or access is granted; if after 180 days, the provider is still in violation, termination.	A \$5,000 fine per record request or instance of refused access; if after 30 days, the provider is still in violation, suspension until the records are made available or access is granted; if after 180 days, the provider is still in violation, termination.
(7)(c) Failure to furnish records, within time frames established by the Agency. [409.913(15)(c), F.S.];	A \$500 fine per record request; if after 30 days, the provider is still in violation, suspension until the records are made available; if after 180 days, the provider is still in violation, termination.	A \$1,000 fine per record request; if after 30 days, the provider is still in violation, suspension until the records are made available; if after 180 days, the provider is still in violation, termination.	A \$2,500 fine per record request; if after 30 days, the provider is still in violation, suspension until the records are made available; if after 180 days, the provider is still in violation, termination.	A \$5,000 fine per record request; if after 30 days, the provider is still in violation, suspension until the records are made available; if after 180 days, the provider is still in violation, termination.	A \$5,000 fine per record request; if after 30 days, the provider is still in violation, suspension until the records are made available; if after 180 days, the provider is still in violation, termination.

<p>(7)(d) Failure to maintain contemporaneous Medicaid-related records. [409.913(15)(d), F.S.];</p>	<p>A \$100 fine per claim for which supporting documentation is not maintained, <u>not to exceed \$1,500 per agency action.</u> For a pattern: a \$1000 fine per patient record for which any of the supporting documentation is not maintained, <u>not to exceed \$3,000 per agency action;</u> and submission of a corrective action plan in the form of an acknowledgement statement.</p>	<p>A \$200 fine per claim for which supporting documentation is not maintained, <u>not to exceed \$3,000 per agency action.</u> For a pattern: a \$2000 fine per patient record for which any of the supporting documentation is not maintained, <u>not to exceed \$6,000 per agency action;</u> and submission of a corrective action plan in the form of provider education.</p>	<p>A \$300 fine per claim for which supporting documentation is not maintained, <u>not to exceed \$4,500 per agency action.</u> For a pattern: a \$3000 fine per patient record for which any of the supporting documentation is not maintained, <u>not to exceed \$9,000 per agency action;</u> submission of a corrective action plan in the form of a comprehensive quality assurance program; and suspension.</p>	<p>Termination.</p>	<p>Termination.</p>
<p>(7)(e) Failure to comply with the provisions of Medicaid publications that have been adopted by reference as rules. [409.913(15)(e), F.S.];</p>	<p>A \$500 fine per provision, <u>not to exceed \$1,500 per agency action.</u> For a pattern: a \$1,000 fine per provision, <u>not to exceed \$3,000 per agency action;</u> and submission of a corrective action plan in the form of an acknowledgement statement.</p>	<p>A \$1,000 fine per provision, <u>not to exceed \$3,000 per agency action.</u> For a pattern: a \$2,000 fine per provision, <u>not to exceed \$6,000 per agency action;</u> and submission of a corrective action plan in the form of provider education.</p>	<p>A \$2,000 fine per provision, <u>not to exceed \$6,000 per agency action;</u> and submission of a corrective action plan in the form of an acknowledgement statement. For a pattern: a \$3,000 fine per provision, <u>not to exceed \$9,000 per agency action;</u> and submission of a corrective action plan in the form of a comprehensive quality assurance program.</p>	<p>A \$3,000 fine per provision, <u>not to exceed \$12,000 per agency action;</u> and submission of a corrective action plan in the form of provider education. For a pattern: a \$4,000 fine per provision, <u>not to exceed \$16,000 per agency action;</u> and suspension.</p>	<p>A \$5,000 fine per provision, <u>not to exceed \$20,000 per agency action;</u> and, suspension. For a pattern: termination.</p>

<p>(7)(f) Furnishing or ordering goods or services that are inappropriate, unnecessary or excessive, of inferior quality, or that are harmful. [409.913(15)(f), F.S.];</p>	<p>For harmful goods or services: a \$5000 fine for each instance, and suspension. For all others: a \$1,000 fine for each instance and submission of a corrective action plan in the form of provider education.</p>	<p>For harmful goods or services: a \$5,000 fine for each instance, and termination. For all others: a \$2,000 fine for each instance and submission of a corrective action plan in the form of a comprehensive quality assurance program.</p>	<p>For harmful goods or services: a \$5,000 fine for each instance, and termination. For all others: a \$3,000 fine for each instance and suspension.</p>	<p>Termination.</p>	<p>Termination.</p>
<p>(7)(g) A pattern of failure to provide goods or services that are medically necessary. [409.913(15)(g), F.S.];</p>	<p>A \$5,000 fine and submission of a corrective action plan in the form of provider education.</p>	<p>A \$5,000 fine for each instance; and suspension as well as the submission of a corrective action plan in the form of a comprehensive quality assurance program.</p>	<p>A \$5,000 fine for each instance; and suspension as well as the submission of a corrective action plan in the form of a comprehensive quality assurance program.</p>	<p>Termination.</p>	<p>Termination.</p>
<p>(7)(h) Submitting false or a pattern of erroneous Medicaid claims. [409.913(15)(h), F.S.];</p>	<p>For false claims: Termination. For a pattern of erroneous claims: a \$2,500 \$1,000 fine for each claim in the pattern; and submission of a corrective action plan in the form of a comprehensive quality assurance program.</p>	<p>For false claims: Termination. For a pattern of erroneous claims: A \$5,000 \$2,000 fine for each claim in the pattern; and suspension; and upon the conclusion of the suspension, submission of a corrective action plan in the form of a comprehensive quality assurance program.</p>	<p>Termination.</p>	<p>Termination.</p>	<p>Termination.</p>
<p>(7)(i) Submitting certain documents containing information that is either materially false or materially incorrect. [409.913(15)(i), F.S.];</p>	<p>A \$10,000 fine for each separate violation; and suspension.</p>	<p>Termination.</p>	<p>Termination.</p>	<p>Termination.</p>	<p>Termination.</p>

(7)(j) Collecting or billing a recipient improperly. [409.913(15)(j), F.S.];	A \$1,000 fine for each instance.	A \$2,500 fine for each instance.	A \$5,000 fine for each instance; and suspension.	A \$5,000 fine for each instance; and suspension.	Termination.
(7)(k) Including unallowable costs after having been advised. [409.913(15)(k), F.S.];	A \$5,000 fine for each unallowable cost.	A \$5,000 fine for each unallowable cost.	A \$5,000 fine for each unallowable cost.	A \$5,000 fine for each unallowable cost.	A \$5,000 fine for each unallowable cost.
(7)(l) Being charged with fraudulent billing practices. [409.913(15)(l), F.S.];	Suspension for the duration of the indictment. If the provider is found guilty, termination.	Suspension for the duration of the indictment. If the provider is found guilty, termination.	Suspension for the duration of the indictment. If the provider is found guilty, termination.	Suspension for the duration of the indictment. If the provider is found guilty, termination.	Suspension for the duration of the indictment. If the provider is found guilty, termination.
(7)(m) Negligently ordering or prescribing, which resulted in the patient's injury or death. [409.913(15)(m), F.S.];	Termination.	Termination.	Termination.	Termination.	Termination.
(7)(n) Failure to demonstrate sufficient quantities of goods or sufficient time to support the corresponding billings or claims made to the Medicaid program. [409.913(15)(n), F.S.];	A \$5,000 fine.	A \$5,000 fine and submission of a corrective action plan in the form of a comprehensive quality assurance program.	A \$5,000 fine and suspension.	Termination.	Termination.
(7)(o) Failure to comply with the notice and reporting requirements of s. 409.907. [409.913(15)(o), F.S.];	A \$1,000 fine.	A \$2,000 fine.	A \$3,000 fine.	A \$4,000 fine.	A \$5,000 fine.
(7)(p) Committing patient abuse or neglect, or any act prohibited by s. 409.920. [409.913(15)(p), F.S.];	A \$5,000 fine per instance, and suspension.	Termination.	Termination.	Termination.	Termination.

(7)(q) Failure to comply with an agreed-upon repayment schedule. [409.913(15)(q), F.S.];	A \$1,000 fine; and, where the provider remains out of compliance for 30 days, suspension; and, where the provider remains out of compliance for more than 180 days, termination.	A \$2,000 fine; and, where the provider remains out of compliance for 30 days, suspension; and, where the provider remains out of compliance for more than 180 days, termination.	A \$3,000 fine and suspension until in compliance; where the provider remains out of compliance for more than 180 days, termination.	A \$4,000 fine and suspension until in compliance; where the provider remains out of compliance for more than 180 days, termination.	A \$5,000 fine and suspension until in compliance; where the provider remains out of compliance for more than 180 days, termination.
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Specific Authority 409.919 FS. Law Implemented 409.907, 409.913, 409.9131, 409.920, 812.035 FS. History--New 4-19-05, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kelly Bennett, Assistant Bureau Chief, Medicaid Program Integrity
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Alan Levine, Secretary, Agency for Health Care Administration
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 30, 2006
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 2, 2005

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Landscape Architecture

RULE TITLE: Fees
 RULE NO.: 61G10-12.002
 PURPOSE AND EFFECT: The Board proposes the rule amendment to add a fee for reinstated null and void licenses.
 SUMMARY: The proposed rule adds a \$450 fee for applications submitted for reinstatement of null and void licenses.
 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: 481.307, 455.271, 455.219(6) FS.
 LAW IMPLEMENTED: 481.307, 455.271, 455.219(6) 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 Landscape Architecture, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G10-12.002 Fees.
 (1) through (12) No change.
(13) The application fee for reinstatement of a null and void license is \$450.

Specific Authority 481.307, 455.271, 455.217, 455.219(6) FS. Law Implemented 481.307, 455.271, 455.217, 455.219(6) FS. History--New 2-4-80, Formerly 21K-12.02, Amended 8-19-86, 11-12-89, 2-13-92, Formerly 21K-12.002, Amended 5-3-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Landscape Architecture
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Landscape Architecture
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2006
 DATE NOTICED OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 23, 2005

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Surveyors and Mappers

RULE TITLE: Certificates of Authorization
 RULE NO.: 61G17-7.003
 PURPOSE AND EFFECT: The Board of Professional Surveyors and Mappers (hereafter "Board") is amending Rule 61G17-7.003, F.A.C. to clarify when licensed surveyors and mappers must obtain certificates of authorization.
 SUMMARY: The Board is clarifying and specifying when licensed surveyors and mappers must obtain certificates of authorization.
 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: 472.021 FS.
 LAW IMPLEMENTED: 472.021 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: John Knap, Executive Director, Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0767

THE FULL TEXT OF THE PROPOSED RULE IS:

61G17-7.003 Certificates of Authorization.

(1) Except as provided in subsection ~~(10)(5)~~ of this rule, certificates of authorization are required of all corporations, partnerships, professional associations, firms, or persons practicing under a fictitious name, who provide surveying and mapping services to the public. For the purpose of this rule, those corporations, partnerships, associations, firms, and persons shall be referred to as “business entities.”

(2) Individuals practicing surveying and mapping under their given name are not required to obtain a certificate of authorization (LB #). For the purposes of this rule, “given name” is defined as the individual’s name as it exactly appears on the individual’s birth certificate, state issued driver’s license, or Florida surveyor and mapper license.

(3) Individuals practicing surveying and mapping under the first initials of their first and/or middle names and their entire last name are not required to obtain a certificate of authorization (LB#).

(4) Individuals practicing surveying and mapping under their given name or the first initials of their first and/or middle names and their entire last name are permitted to use the following titles and abbreviations in their surveying and mapping business name without being required to obtain a certificate of authorization (LB#): licensed surveyor and mapper, registered surveyor and mapper, registered land surveyor, professional land surveyor, professional surveyor and mapper, professional surveyor, RLS, PLS, PSM, or PS.

(5) Individuals practicing surveying and mapping pursuant to subsections 2, 3, and 4 of this rule must obtain a certificate of authorization (LB#) once the individual adds Incorporated, Inc., Limited Liability Company, LLC, Partnership Association, P.A., or any other business association or business entity name, title or abbreviation to the individual’s name or business name.

(6) Individuals operating a surveying and mapping business, which is incorporated, is a limited liability corporation, is a partnership association, or is operating as any other business entity, but does not include the business entity title or abbreviation in the surveying and mapping business’s name, must obtain a certificate of authorization (LB#).

~~(7)(2)~~ Upon application to the Board, certificates of authorization shall be issued only to those business entities which:

(a) List the street address of each of its Florida offices from which surveying and mapping services are provided;

(b) Specify the name or names of its principals who are licensed surveyors and mappers as the term “principal” is defined in paragraph 61G17-2.003(1)(b), F.A.C.;

(c) Provide proof to show that the applicant is a partnership, corporation, or person practicing under a fictitious name at the time of application and that the person identified pursuant to paragraph ~~(7)~~(b) of this rule is a principal of the business entity.

~~(8)(3)~~ The Board shall penalize, deny, suspend or revoke the certificate of authorization of any business entity which fails to meet the requirements of laws or rules pertaining to the practice of surveying and mapping.

~~(9)(4)~~ Business entities shall notify the Board within one (1) month of any changes in the business entity’s location of offices, its licensed surveyors and mappers in residence, and the names of its principals, along with proof to demonstrate the change in principals.

~~(10)(5)~~ Paragraphs ~~(7)(2)~~(a) and (b) of this rule do not apply to construction offices or temporary field offices set up to serve a specific survey site.

Specific Authority 472.021 FS. Law Implemented 472.021 FS. History—New 3-22-84, Formerly 21HH-7.03, Amended 3-12-92, Formerly 21HH-7.003, Amended 5-30-95, 5-21-00, 3-25-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Professional Surveyors and Mappers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Professional Surveyors and Mappers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 14, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 6, 2006

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 Opticianry

RULE TITLE: Delinquent Status License Fee

RULE NO.: 64B12-11.0095

PURPOSE AND EFFECT: The Board proposed amending the rule to lower the fee for delinquent status licenses, in compliance with Section 456.036(7), Florida Statutes.

SUMMARY: The proposed rule amendments will lower the current \$200.00 delinquent status fee to \$150.00.

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: 456.036, 484.005 FS.

LAW IMPLEMENTED: 456.036 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, Sue Foster, Executive Director, Board of Opticianry, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B12-11.0095 Delinquent Status License Fee.

The fee for a delinquent status license shall be \$150.00 ~~\$200.00~~.

Specific Authority 456.036, 484.005 FS. Law Implemented 456.036 FS. History—New 10-24-94, Formerly 59U-11.0095, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Opticianry

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 11, 2005

DATE NOTICED OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 6, 2006

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Economic Self Sufficiency Program

RULE TITLE: Special Provisions

RULE NO.: 65A-1.702

PURPOSE AND EFFECT: The purpose of this proposed rule is to keep the subject matter of Emergency Rule 65AER05-2 in effect without interruption for the provision of Medicaid benefits to eligible evacuees of the Hurricane Katrina disaster. Medicaid for Hurricane Katrina Evacuees provides payment for medical care and treatment on a temporary basis to evacuees from Louisiana, Mississippi and Alabama.

SUMMARY: The proposed rule provides payment for emergency medical care and treatment on a temporary basis to the Hurricane Katrina evacuees. It includes provisions for Medicaid definitions, application processing, verification, disability, child support enforcement, eligibility and benefits, and the affected population.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

A statement of estimated regulatory cost was not prepared for this rule repeal. 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: 414.45 FS.

LAW IMPLEMENTED: 414.16 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: 11:30 a.m., March 6, 2006

PLACE: 1317 Winewood Boulevard, Building 3, Room 439, Tallahassee, Florida 32399-0700

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jennifer Lange, Chief, Program Policy, Economic Self-Sufficiency, (850)921-0253

THE FULL TEXT OF THE PROPOSED RULE IS:

65A-1.702 Special Provisions.

(1) through (16) No change.

(17) Medicaid for Hurricane Katrina Evacuees.

(a) Definitions.

1. Emergency Area means a geographic area or region in which a National Disaster has been declared as a result of Hurricane Katrina. For the purposes of this program, the relevant disaster is limited to affected counties or parishes in the States of Louisiana, Mississippi and Alabama declared by FEMA as requiring individual assistance.

2. Evacuee means an individual who is a resident of the emergency area, affected by a national disaster as declared by the President of the United States pursuant to the National Emergencies Act or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and has been displaced from his or her home by the emergency, and is not a non-qualified alien and meets the definition of eligible population.

3. Evacuee Status means a temporary eligibility status, not to exceed five months, during which evacuees will be able to access specified Medicaid benefits and services.

4. Home State means the state in which the national disaster has been declared and from which the evacuee has been displaced.

5. Host State means the state in which an evacuee is temporarily residing.

(b) Application Processing.

1. Applications will be accepted from August 24, 2005 through January 31, 2006, and may be retroactive to August 24, 2005. Any eligibility prior to September 1, 2005, will not count against an evacuee's eligibility period. The duration of the program is from August 24, 2005 through June 30, 2006.

2. The application process described in Administrative Rule 65A-1.205, F.A.C., will be used. The Hurricane Katrina Emergency Assistance Program for Evacuees Supplement to the Application for Assistance, Form CF-ES 2346, Sep 2005, incorporated by reference, may be attached to the application.

(c) The Host State will, to the greatest extent possible, verify circumstances of eligibility, residency, and citizenship, to prevent fraud and abuse in the program. Evacuation status can be established by self-attestation of displacement, income, and immigration status. Evacuees must be required to cooperate in demonstrating evacuee status and other eligibility requirements.

(d) Proof of disability must be requested of individuals under age 65, who do not meet family-related Medicaid criteria, and who self-attest to a disability that prevents them from working for at least twelve months. Information for Social Security Administration available on a Medicare card or via data exchange is sufficient verification. If proof of disability is not available prior to application disposition, applicants must be given or mailed a Confirmation of Disability Letter, Form CF-ES 2347, Sep 2005, incorporated by reference.

(e) Child support enforcement cooperation and the requirement to file for other benefits do not apply to applications processed under this emergency program.

(f) The population that may be certified under this rule is described in a Section 1115 waiver obtained from the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services. It consists of evacuees who are parents, pregnant women, children under age 19, individuals with disabilities, low income Medicare recipients potentially eligible for the Qualified Medicare Beneficiary program (QMB), and low income individuals in need of long-term care with incomes up to and including the Host state's Medicaid levels. Pregnant women from Alabama must have income below 133% of poverty to qualify for Medicaid, in accordance with the requirements of the Section 1115 waiver. Two months of post partum benefits will also be provided to women whose pregnancies end during the five month eligibility period, even if the two months extend Medicaid eligibility beyond the five month period. Presumptive eligibility for newborns, transitional and extended Medicaid and continuous eligibility policies do not apply to this emergency program. Ex parte reviews will not be conducted, in accordance with the authority granted by the Section 1115 waiver.

(g) Evacuees who meet the requirements of this section will receive benefits under these provisions and funding mechanisms. Eligible individuals who receive Medicaid under these provisions cannot receive regular Medicaid for the same time period. Eligible evacuee households that were approved

for food stamp or cash assistance benefits prior to implementation of this rule may request Medicaid benefits without a separate application.

(h) Fair hearings and/or appeals are not provided as part of this emergency Medicaid program.

Specific Authority 414.45 FS. Law Implemented 414.16 FS. History--New 10-8-97, Amended 4-22-98, 2-15-01, 9-24-01, 11-23-04, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Jennifer Lange

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kim Shaver

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 1, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 23, 2005

FISH AND WILDLIFE CONSERVATION COMMISSION

Manatees

RULE TITLE: RULE NO.:

Charlotte County (and Part of DeSoto County) Zones 68C-22.015

PURPOSE AND EFFECT: The purpose of the proposed rulemaking action is to amend the existing manatee protection zones in the Placida Harbor area of southern Lemon Bay to provide an additional 25 mph channel for access to southern Little Gasparilla Island. The effect of the action would be to allow speeds up to 25 mph (instead of Slow Speed as is currently required) in an additional navigation channel, if Charlotte County marks the channel in a manner approved by the Commission. This action is being proposed after considering recommendations and comments made by the Charlotte County Local Rule Review Committee that was formed by the County pursuant to Section 370.12(2)(f), F.S.

SUMMARY: A new 25 mph channel would be authorized in Placida Harbor to provide additional higher speed access to southern Little Gasparilla Island. The new channel would be a "south prong" off of the 25 mph channel that is already authorized by the existing rule. No changes would be made to any of the other existing zones in Charlotte County.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Costs (SERC) has been prepared.

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

SPECIFIC AUTHORITY: 370.12(2)(n) FS.

LAW IMPLEMENTED: 370.12(2)(d),(k),(n) FS.

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

TIME AND DATE: 6:00 p.m., Tuesday, March 7, 2006

PLACE: Tringali Park Community Center, 3460 North Access Road, Englewood, Florida

THE FINAL PUBLIC HEARING WILL BE HELD BY THE COMMISSION AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATES: To be announced, June 7-8, 2006

PLACE: West Palm Beach, Florida (Specific location to be determined)

Another notice will be published in the FAW to confirm the date of the final hearing and to provide the location information. The Commission's agenda for this meeting will indicate the specific day when this item is scheduled to be addressed.

If accommodation for a disability is needed to participate in any of the above hearings, please notify the contact person listed below at least five days before the hearing.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mr. Scott Calleson, Florida Fish and Wildlife Conservation Commission, Imperiled Species Management Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68C-22.015 Charlotte County (and Part of DeSoto County) Zones.

(1) The Commission hereby designates the waters within Charlotte County and DeSoto County, as described below, as areas where manatee sightings are frequent and where the best available information supports the conclusion ~~it can be assumed~~ that manatees inhabit these areas on a regular or periodic or continuous basis. ~~The Commission has further determined that a likelihood of threat to manatees exists in these waters as a result of manatees and motorboats using the same areas.~~ The primary purpose of this rule is to protect manatees from harmful collisions with motorboats and from harassment by regulating the speed and operation of motorboats within these designated areas. A secondary purpose is to protect manatee habitat. In consideration of balancing the rights of fishers, boaters, and water skiers to use the waters of the state these waterways for recreational and commercial purposes (as applicable under Section 370.12(2)(k), F.S.), with the need to provide manatee protection, the Commission has examined the need for limited lanes, corridors, or unregulated areas that allow higher speeds ~~unregulated areas or higher speed travel corridors~~ through or within regulated areas. Such lanes, corridors, or areas or corridors are provided in those locations where the Commission determined that they are

consistent with manatee protection needs, ~~on the basis of all available information, that (1) there is a need for the area or corridor and (2) the area or corridor will not result in serious threats to manatees or their habitat. Unregulated areas or higher speed corridors are not provided in locations where both of the above findings were not made.~~

(2) The following zones are established, which shall include all associated and navigable tributaries, lakes, creeks, coves, bends, backwaters, canals, and boat basins unless otherwise designated or excluded. As used in this rule, ICW means the Intracoastal Waterway.

(a) No change.

(b) SLOW SPEED (All Year).

1. Lemon Bay Area: All waters of Lemon Bay south of the Sarasota/Charlotte County line, north of the Boca Grande Causeway, and west of State Road (SR) 775 (south of SR 776 on Gottfried Creek), excluding the ICW channel and the marked channel through Stump Pass as designated under subparagraph (2)(c)1. and the marked channels in Placida Harbor as designated under subparagraph (2)(c)2. Also excluded from this zone are the portion of the waterway known as "Ski Alley" south of a line bearing 258° from the northernmost point (approximate latitude 26°54'47.3" North, approximate longitude 82°21'03.7" West) of Peterson Island, and the areas described below:

a. through b. No change.

2. through 6. No change.

(c) 25 MPH (All Year).

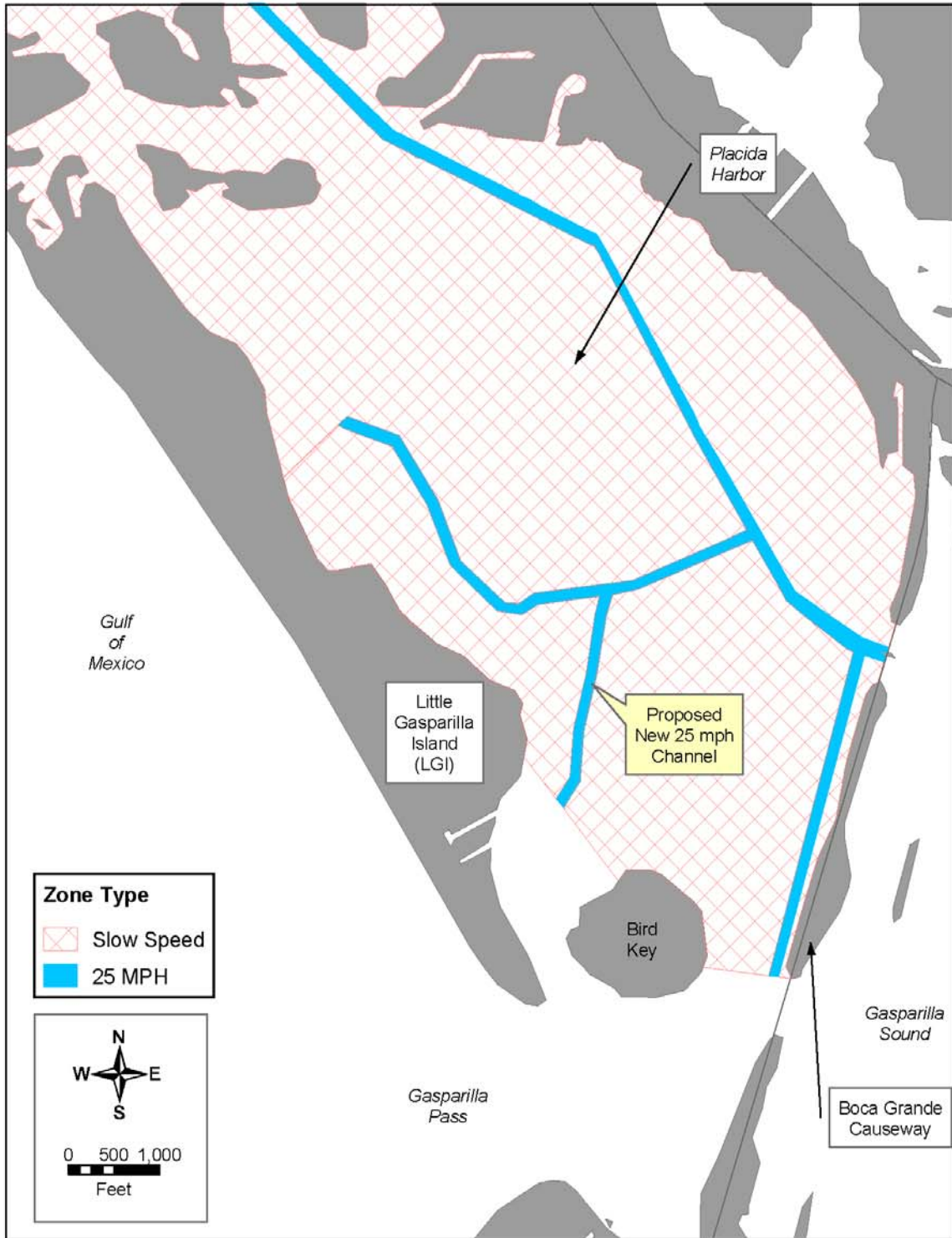
1. No change.

2. Placida Harbor Area: All waters in the marked channel that runs from the ICW to Gasparilla Pass on the northwest side of the Boca Grande Causeway, and; all waters in the marked channel that runs in a general east-west direction from the marina and boat ramp basin on the northwest side of Boca Grande Causeway, across the ICW, to Little Gasparilla Island, including a "south prong" channel that runs from said east-west channel to the zone boundary between Little Gasparilla Island and Bird Key. This designation only applies if the channels are marked in accordance with permits issued by all applicable state and federal authorities and if the channel locations and marking schemes are approved in advance by the Commission. In the absence of properly permitted and approved channels, these areas are as designated under subparagraph (2)(b)1.

3. through 7. No change.

(3) No change.

(4) The amendments to Rule 68C-22.015, F.A.C., as approved by the Commission on [insert approval date] September 12, 2002, shall take effect as soon as the regulatory markers are posted.



**Proposed Amendments to Charlotte County Manatee Protection Zones
Placida Harbor Area - February 2006**

For information please call or write to:
Florida Fish & Wildlife Conservation Commission
Division of Habitat and Species Conservation
Habitat Species Management Section
625 South Meridian Street, 3rd Floor
Tallahassee, FL 32304-1800
Tel: 904-221-4330 Fax: 904-221-4209

Specific Authority 370.12(2)(n) FS. Law Implemented 370.12(2)(d),(k),(n) FS.
History—New 12-12-02, Amended _____

NAME OF PERSON ORIGINATING PROPOSED RULE:
Mr. Tim Breault, Director of the Division of Habitat and
Species Conservation

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

DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: November 30, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: November 18, 2005

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF EDUCATION

Commission for Independent Education

RULE NO.:	RULE TITLE:
6E-2.0061	Actions Against a Licensee: Penalties

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 31, No. 18, on May 6, 2005, Florida Administrative Weekly has been withdrawn.

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

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

DEPARTMENT OF CORRECTIONS

RULE NO.:	RULE TITLE:
33-501.301	Law Libraries

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing on the above referenced proposed rule, as noticed in the Florida Administrative Weekly, Vol. 31, No. 52, December 30, 2005, will be held as follows:

TIME AND DATE: 10:00 a.m., Tuesday, March 7, 2006

PLACE: Department of Corrections Central Office, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

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 Chiropractic Medicine

RULE NO.:	RULE TITLE:
64B2-12.020	Retired Status Fee

NOTICE OF CORRECTION

The above-referenced rule was published in Vol. 31, No. 50, of the December 16, 2005, issue of the Florida Administrative Weekly. The rule was inadvertently published with the wrong number and the number is being changed to Rule 64B2-12.021, F.A.C. The above correction does not have any effect on the substance of the rule.

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

DEPARTMENT OF HEALTH

Division of Health Access and Tobacco

RULE NOS.:	RULE TITLES:
64F-11.002	Client Eligibility
64F-11.003	Patient Selection and Referral
64F-11.005	Contract Requirements

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to proposed rules in accordance with subparagraph 120.54(3)(d)1., F.S., published in the Florida Administrative Weekly, Vol. 31, No. 18 on May 6, 2005 and Vol. 31, No. 47 on November 23, 2005. The changes reflect comments received from the Joint Administrative Procedures Committee and additional changes to Section 766.1115, Florida Statutes, Chapter 2005-118, section 1. The changes are as follows:

1. Subsection (4) of proposed 64F-11.002, F.A.C., shall read as follows:

(4) "The governmental contractor is responsible for determining if applicants meet the eligibility criteria as established in the Department of Health Client Eligibility and Referral Process Training Guide, DH 1032G, (02/06), as incorporated herein by reference, for participation in the Volunteer Health Care Provider Program. A copy of the Client Eligibility and Referral Process Training Guide can be obtained through the department's Volunteer Health Services Program."