

Section III
Notices of Changes, Corrections and
Withdrawals

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NO.: RULE TITLE:
59G-4.210 Optometric Services

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 32, No. 49, December 8, 2006 issue of the Florida Administrative Weekly.

These changes are in response to written comments received prior to the public hearing. The rule incorporates by reference Update January 2007 to the Florida Medicaid Optometric Services Coverage and Limitations Handbook. The following changes were made to the handbook update.

Page 2-4, Visual Examinations, Visual Exam in Conjunction With a Child Health Check-Up, first sentence, we added that Medicaid does not reimburse procedure code 92083 (threshold visual field) when it is performed in conjunction with or on the same date of service as any of the Child Health Check-Up procedure codes.

Page 2-5, Visual Examinations, Visual Exams Related to Providing Eyeglasses in a Nursing Facility, ICF/DD, Recipient's Home, or Custodial Care Facility, second bullet, we rewrote the instructions for verbal orders to bring them into compliance with Rule 59A-4.107, F.A.C. The revised bullet reads, "The medical need for the exception is ordered by the recipient's primary-care physician and is documented in the recipient's medical record at both the facility and the optometric provider's office. The physician's order is valid up to 90 days after the order is given. If additional care is needed by the provider, then another order must be written by the recipient's primary care physician. Pursuant to Rule 59A-4.107, F.A.C., the order may be given verbally by the licensed nurse or attending physician at the facility. The verbal order, including telephone orders, shall be immediately recorded, dated, and signed by the person receiving the order. All verbal treatment orders shall be countersigned by the primary care physician on the next visit to the facility and must be filed in the recipient's medical record at both the facility and the optometric provider's office."

Page 2-5, Visual Examinations, Visual Exams Related to Providing Eyeglasses in a Nursing Facility, ICF/DD, Recipient's Home, or Custodial Care Facility, last sentence, we deleted "includes refractions," because Medicaid will reimburse refractions performed in a facility or home setting. The sentence now reads, "General and special ophthalmological services procedure codes are not reimbursable when performed in a facility or home setting."

Page 2-6, Visual Examinations, Refractions, forth paragraph, we revised the sentence to read, "Medicaid reimburses refractions performed in a provider's office, an ICF/DD, a recipient's home, a nursing facility, and a custodial care facility."

Page 2-6, Visual Examinations, Computerized Corneal Topography, we added that Medicaid reimburses procedure code 92025.

Page 2-8, Evaluation and Management Services, Home Visits, forth paragraph, we added refractions. The sentence now reads, "Medicaid does not reimburse optometrists for other services provided in a recipient's home except for refractions and the home visit evaluation and management codes listed on the Optometric Services Fee Schedule."

We added page 2-11 to the handbook update. On page 2-11, Custodial Care Facility Services, Excluded Services, second paragraph, we added refractions. The sentence now reads, "Medicaid does not reimburse optometrists for services provided in a custodial care facility except for refractions and the evaluation and management services as outlined in the evaluation and management section of the CPT."

We added page 2-13 to the handbook update. On page 2-13, Nursing Facility and ICF/DD Services, Excluded Services, second paragraph, we added refractions. The sentence now reads, "Medicaid does not reimburse optometrists for additional services provided in a nursing care facility or ICF/DD except for refractions and the nursing facility evaluation and management procedures as outlined in the evaluation and management section of the CPT."

In addition to the above changes, we made the following technical changes. We added the title of the handbook to the header on the Chapter 2 pages and changed the footer date to January 2007 on pages 2-10, 2-11, and 2-13.

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NO.: RULE TITLE:
59G-4.340 Visual Services

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 32, No. 49, December 8, 2006 issue of the Florida Administrative Weekly.

These changes are in response to written comments received prior to the public hearing. The rule incorporates by reference Update January 2007 to the Florida Medicaid Visual Services Coverage and Limitations Handbook. The following changes were made to the handbook update.

Page 1-3, Provider Enrollment, General Enrollment Requirements, we added a sentence to clarify that physicians must be currently licensed as ophthalmologists in order to have Category of Service 62 (Visual Services) added to their provider files.

Page 2-4, Covered and Excluded Services, Excluded Services, we added glass lenses to the list of services that Medicaid does not reimburse.

Page 2-5, Covered and Excluded Services, Criteria For Providing Eyeglasses in a Nursing Facility, Custodial Care Facility, or Recipient’s Home, second bullet, we rewrote the instructions for verbal orders to bring them into compliance with Rule 59A-107, F.A.C. The revised bullet reads, “The medical need for the exception is ordered by the recipient’s primary-care physician and is documented in the recipient’s medical record in the provider’s office and at the facility. The physician’s order is valid up to 90 days after the order is given. If additional care is needed by the provider, then another order must be written by the recipient’s primary care physician. Pursuant to Rule 59A-4.107, F.A.C., the order may be given verbally by the licensed nurse or attending physician at the facility. The verbal order, including telephone orders, shall be immediately recorded, dated, and signed by the person receiving the order. All verbal treatment orders shall be countersigned by the primary care physician on the next visit to the facility and must be filed in the recipient’s medical record at both the facility and the visual services provider’s office.”

Page 2-10, Eyeglasses and Lenses, Multifocal Lenses, first paragraph, last sentence, we revised the sentence to read, “Progressive addition lenses are not reimbursable.”

Page 2-11, Eyeglasses and Lenses, Polycarbonate Lenses, second bullet, we deleted, “the sight in the poorer eye being 20/50 or worse.” The revised bullet reads, “The recipient has significant amblyopia.”

Page 2-11, Eyeglasses and Lenses, Polycarbonate Lenses Reimbursement Information, second bullet, we added “single vision, bifocal or trifocal.” The revised bullet reads, “The appropriate procedure code for polycarbonate single vision, bifocal or trifocal lens fees.”

We added page 2-13 to the handbook update. On page 2-13, Eyeglasses and Lenses, Special Order Frame and Lenses, first sentence, we added that the medical reasons must be “stated and written.” We revised the second sentence to read, “The provider must submit sufficient information to cost the items with the prior authorization request, including the following: . . .”

We added page 2-14 to the handbook update. On page 2-14, Eyeglasses and Lenses, Lab Order Form, we added “prescriptive data” to the information that must be included on the lab order form.

On page 2-14, Contact Lenses, Description, we added a new sentence that reads, “It must be clearly stated and written on the prior authorization request form whether it is a new fitting or replacement lenses.

Page 2-14, Contact Lenses, Who May Receive Contact Lenses, we revised the first sentence to read, “Medicaid reimburses for contact lenses only for recipients who have the following conditions,” and deleted the second sentence. We added the following conditions as the first and second bullets, “unilateral aphakia or bilateral aphakia, but not pseudophakia,” and “keratoconus (conical cornea).”

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

RULE NO.: 61-5.007
 RULE TITLE: Administrative Penalty Guidelines for Unlicensed Activity

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 32, No. 47, November 22, 2006 issue of the Florida Administrative Weekly.

The changes are based upon comments received from the Joint Administrative Procedures Committee.

The changes to the proposed rule are identified in underline/strike format and are as follows:

61-5.007 Administrative Penalty Guidelines for Unlicensed Activity.

(1) through (3) No change.

~~(4) In imposing administrative penalties hereunder in cases in which a Notice to Cease and Desist or Order to Cease and Desist has been issued to the unlicensed person prior to the violation(s) currently being prosecuted, the Department shall impose its attorney fees and costs, including the costs of collection, pursuant to Subsection 455.228(1), Florida Statutes.~~

~~(4)(5)~~ For using a professional title or designation without holding the requisite license to do so, the following penalties shall apply:

- (a) First violation – \$2500 administrative fine; and
- (b) Second and subsequent violations – \$5000 administrative fine.

~~(5)(6)~~ For advertising or offering to practice a profession without holding the requisite license to do so, the following penalties shall apply:

- (a) First violation – \$3000 administrative fine; and
- (b) Second and subsequent violations – \$5000 administrative fine.

~~(6)~~(7) For practicing a profession without holding the requisite license to do so, the following penalties shall apply:

- (a) First violation – \$4000 administrative fine; and
- (b) Second and subsequent violations – \$5000 administrative fine.

~~(7)~~(8) Notwithstanding the foregoing, all second and subsequent violations of Section 489.13, Florida Statutes, shall result in the imposition of a \$10,000 administrative fine.

~~(8)~~(9) Circumstances which may be considered for the purposes of mitigation or aggravation of the foregoing penalties shall ~~include, but are not limited to,~~ consist of the following:

- (a) Monetary or other damage to the unlicensed person’s customer and/or other persons, in any way associated with the violation, which damage the unlicensed person has not relieved as of the time the penalty is to be assessed.
- (b) The severity of the offense.
- (c) The danger to the public.
- (d) The number of repetitions of offenses.
- (e) The number of complaints filed against the unlicensed person.
- (f) The length of time the unlicensed person has been engaging in unlicensed activity.
- (g) The actual damage, physical or otherwise, to the unlicensed person’s customer.
- (h) The deterrent effect of the penalty imposed.
- (i) The effect of the penalty upon the unlicensed person’s livelihood.
- (j) Any efforts at rehabilitation.
- (k) The unlicensed person’s use of an altered license or impersonation of a licensee.
- ~~(l) Any other mitigating or aggravating circumstances.~~
- ~~(9)~~(10) The administrative penalty guidelines established by this rule are only applicable to final orders issued by the Secretary of the Department or his/her appointed designee.

Specific Authority 455.228 FS. Law Implemented 455.228 FS. History–New_____.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jennifer A. Tschetter, Assistant General Counsel, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399, (850)488-0062

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Alcoholic Beverages and Tobacco

RULE NO.: RULE TITLE:
61A-4.030 Deliveries to Vendors

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 31, No. 21, May 27, 2005 issue of the Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Pari-Mutuel Wagering

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| RULE NOS.: | RULE TITLES: |
| 61D-8.002 | Financial Reporting Requirements |
| 61D-8.005 | Purses and Florida Owners’ Awards, Horse Racing |

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the Notice of Change published in Vol. 32, No. 52, December 29, 2006, issue of the Florida Administrative Weekly, in accordance with subparagraph 120.54(3)(d)1., Florida Statutes. The changes are in response to written comments received from the Joint Administrative Procedures Committee.

- 61D-8.002 Financial Reporting Requirements.
- (1) through (9) No change.

Specific Authority 550.0251(3), (7), (9), 550.125(2)(b), 550.155(1), 550.3551(10), 550.6305(5) FS. Law Implemented 550.0251, 550.0951(5), 550.125, 550.155, 550.3551, 550.615, 550.6305, 550.6335 FS. History–New 10-20-96, Amended 12-15-97, 9-19-04, _____.

- 61D-8.005 Purses and Florida Owners’ Awards, Horse Racing.
- (1) through (12)(d) No change.

(13) For conducting purse audits, the division shall require accounting records that are used to verify purse payouts, for example, contributions to the purse pool derived from live handle, intertrack wagering, and simulcast wagering; amounts distributed from the purse pool; and transfers to any breeders’ or owners’ awards program. The division shall require specific records as necessary for conducting purse audits.

- (a) through (19) No change.

Specific Authority 550.2614(1), (2), (3), (4), 550.2625(2)(d) FS. Law Implemented 550.2614, 550.2625(2), 550.625, 550.655 FS. History–New 10-20-96, Amended 12-15-97, _____.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Building Code Administrators and Inspectors Board

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| RULE NO.: | RULE TITLE: |
| 61G19-5.007 | Notice of Noncompliance |

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 32, No. 41, October 13, 2006 issue of the Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Building Code Administrators and Inspectors Board

RULE NO.: 61G19-10.003
RULE TITLE: Reinstatement Fee of a Null and Void License

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 32, No. 41, October 13, 2006 issue of the Florida Administrative Weekly.

Rule 61G19-10.003 shall read:
Reinstatement of a null and void license must be accompanied by payment of a fee of \$125.00.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-26.2032
RULE TITLE: Licensure by Examination; Internship Requirements

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 30, No. 52, December 23, 2004 issue of the Florida Administrative Weekly.

The change is in response to written comments submitted by the staff of the Joint Administrative Procedures Committee. The rule shall now read as follows:

64B16-26.2032 Licensure by Examination; Internship Requirements.

(1) through (2) No change.

~~(3) A program approved by the Florida Board of Pharmacy shall not be less than 1500 hours and all other programs shall be not less than 2080 hours.~~

(4) through (6) renumbered (3) through (5) No change.

~~(6)(7)~~ Proof of completion of an internship program shall consist of a certification that the applicant has completed the program. If additional hours are required to total 2080 hours, pursuant to subsection (3) of this rule, satisfactory proof of the additional hours shall be constituted by the program's certification of completion of the additional hours.

(8) through (12) renumbered (7) through (11) No change.

Specific Authority 465.005 FS. Law Implemented 465.003(12), 465.007, 465.0075 FS. History--New _____.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

**Section IV
Emergency Rules**

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: 69OER07-1
RULE TITLE: Residential Property Insurance Rate Filings

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Financial Services Commission and the Office of Insurance Regulation ("Office") hereby state that the following circumstances constitute an immediate danger to the public health, safety, or welfare:

The residential property insurance market in Florida is in crisis. Property insurance rates are at the highest levels in Florida history. The multiple hurricanes and tropical storms of the past several years (which resulted collectively in more than an estimated \$36 billion in insured losses) coupled with the actions and reactions of certain private insurers have created and fueled this crisis. Additionally, many insurers have in the recent past engaged in a widespread pattern of policy cancellations and non-renewals. These factors have limited significantly the availability and affordability of residential property insurance and have dramatically increased the cost of such insurance.

The turmoil in the residential property insurance market has affected not only homeowners, but also the real estate and construction market. Homeowners in Florida, especially those located in the proximity of the coast, are finding it extremely difficult to find an adequate level of residential property insurance coverage at affordable rates. Thousands of Florida citizens voiced to the Governor, members of the Cabinet, and the Legislature the hardships faced as a result of the current