STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA SOCIETY OF ANESTHESIOLOGISTS and ROBERT A. GUSKIEWICZ, M.D.,	)	
Petitioners,	)	
vs.	)	Case No. 97-0693RP
DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY, DIVISION OF WORKERS' COMPENSATION,	)	
Respondent,	)	
and	)	
INPHYNET MEDICAL MANAGEMENT, INC., FLORIDA PHYSICAL THERAPY ASSOCIATION, FLORIDA ASSOCIATION OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE; and FLORIDA SOCIETY OF PHYSICAL MEDICINE AND REHABILITATION,	)	
Intervenors.	)	

FINAL ORDER

This cause came on for consideration pursuant to the parties' stipulation as to standing and facts as more fully set forth in the Preliminary Statement.

APPEARANCES

For Petitioner, Florida Society of Anesthesiologists and Robert A. Guskiewicz, M.D.:

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William E. Williams, Esquire
Huey, Guilday and Tucker, P.A.

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For Intervenor, InPhynet Medical Management, Inc.:

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For Intervenor, Florida Physical Therapy Association:

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For Intervenor, Florida Association of Occupational and Environmental Medicine:

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For Intervenor, Florida Society of Physical Medicine and Rehabilitation:

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Gainesville, Florida 32605

STATEMENT OF THE ISSUE

Whether the Department's proposed amendment of Rule 38F-7.020, Florida Administrative Code, constitutes an invalid exercise of its delegated legislative authority under Section 120.52(8), Florida Statutes, [1996 Supp.], or whether the

authority specified in the proposed rule is sufficient for the Department to adopt the proposed rule?

PRELIMINARY STATEMENT

On January 3, 1997, the Department published in the Florida Administrative Weekly, Vol. 23, No. 1, notice of its intent to adopt proposed amendments to Rule 38F-7.020.

On February 10, 1997, Petitioners filed a Petition for Administrative Determination of Invalidity of a Proposed Rule.

The final hearing was initially set for March 10, 1997.

On February 17, 1997, Intervenor, InPhynet Medical Management, Inc., filed its Petition to Intervene. On February 20, 1997, the parties filed a Joint Motion for Continuance of Final Hearing. By Order Granting Intervention and Rescheduling Hearing, dated February 27, 1997, Administrative Law Judge William A. Buzzett granted InPhynet's Petition to Intervene, and the final hearing was rescheduled for March 31, 1997.

On March 4, 1997, the Florida Association of Occupational and Environmental Medicine and the Florida Society of Physical Medicine and Rehabilitation filed Petitions to Intervene. On March 13, 1997, the Florida Physical Therapy Association filed its Petition to Intervene. On March 21, 1997, Petitioners filed an unopposed Motion for Continuance of Final Hearing.

By Order of Continuance to Date Certain entered by the undersigned on March 25, 1997, the final hearing was rescheduled for April 30-May 1, 1997. By Order on Intervention, dated March 28, 1997, the pending Petitions to Intervene were granted.

On April 27, 1997, the parties filed a Joint Prehearing Stipulation agreeing to the standing of Petitioners and all Intervenors and to all of the facts necessary for a determination of this matter. The parties also stipulated that Petitioners have not waived any rights with regard to constitutional challenges to proposed Rule 38F-7.020.

During a hearing by telephonic conference call on April 29, 1997, the parties agreed to waive oral testimony, to rely upon the Joint Prehearing Stipulation, and to provide Proposed Final Orders containing legal argument in support of their respective positions on or before May 12, 1997. By Order dated May 5, 1997, the hearing scheduled for April 30-May 1, 1997, was

cancelled; the parties were given until May 12, 1997 to file proposed final orders; and an aspirational date for the entry of a Final Order was established as June 11, 1997.

Petitioners Florida Society of Anesthesiologists and Robert A. Guskiewicz, M.D.; Respondent Department of Labor and Employment Security; and Florida Physical Therapy Association timely filed proposed orders. InPhynet Medical Management, Inc. filed its proposed order on May 13, 1997. The remaining Intervenors have not filed any proposed orders. Pursuant to the parties' stipulation and the May 5, 1997 Order, the late-filed proposal has not been considered.

FINDINGS OF FACT

1. The Florida Society of Anesthesiologists is a voluntary, nonprofit association comprised of individual members, each of whom is licensed in the State of Florida to practice medicine.

2. Petitioner, Robert A. Guskiewicz, M.D., is a licensed medical doctor in the State of Florida specializing in anesthesia.

3. Pursuant to Section 440.13(12), Florida Statutes, a three-member panel is charged with the responsibility of determining the schedules of maximum reimbursement for physician treatment of workers' compensation patients.

4. In March 1996, the three-member panel convened and adopted a resource-based relative value scale ("RBRVS") reimbursement system, which, on or about January 3, 1997, the Department published notice of its intent to embody in proposed Rule 38F-7.020, in Vol. 23, No. 1 of the Florida Administrative Law Weekly. A copy is attached and incorporated herein by reference.

5. The proposed Rule lists Sections 440.13(7), 440.13(8), 440.13(11), 440.13(12), 440.13(13), 440.13(14), and 440.591, Florida Statutes, as specific authority.

6. The proposed Rule implements Sections 440.13(6), 440.13(7), 440.13(8), 440.13(11), 440.13(12), 440.13(13), and 440.13(14), Florida Statutes.

7. There are no other facts necessary for determination of the matter.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Section 120.56(2), Florida Statutes [Supp. 1996].

9. All Petitioners and Intervenors have standing herein.

10. Petitioners have not waived any rights with regard to any constitutional challenges to proposed Rule 38F-7.020.

11. Synopsized, the Petition herein alleged, in pertinent part: "Pursuant to Section 440.13(12), Florida Statutes, a threemember panel is charged with the responsibility of determining the schedules of maximum reimbursement for physician treatment of workers' compensation patients. The Department, by statute, is responsible for publishing the proposed changes to Rule 37F7.020. . . . Anesthesiologists are currently reimbursed under the provisions of the 1991 Florida Workers' Compensation Health Care Provider Reimbursement Manual (1991 Manual) adopted by reference in Rule 38F-7.020, Florida Administrative Code. . . . In March 1996, the three-member panel convened to adopt a new reimbursement schedule and adopted a Florida specific RBRVS system, with two conversion factors (surgical/nonsurgical) to be applied to medical procedures. The panel did not reclassify the anesthesiology codes from the present surgical designation contained in the Department's existing Rules. . . . The proposed Rule is intended to amend existing Rule 38F-7.020, Florida Administrative Code. The proposed Rule replaces the 1991 manual with the Florida Workers' Compensation Health Care Provider Fee For Service Reimbursement Manual ('1997 Manual')."

12. Subsequently, the clear terms of their stipulation, the parties limited the facts for consideration and Petitioners specifically waived any challenges pursuant to Sections 120.52(8)(a), (c), (d), (e), (f), and (g), Florida Statutes. Due to the parties' stipulation to limited facts and issues, it is not necessary to address all the original legal allegations of the Petition, including but not limited to the concept that the proposed rule in any way modifies or adds to the three-member panel's ultimate product. Therefore, the undersigned assumes, for purposes of this rule challenge, that the proposed rule does not alter the panel's final 1997 product.

13. Section 440.13(12), Florida Statutes [Supp. 1996], was formerly codified as Section 440.13(4)(a), Florida Statutes. Under the 1989 version of Section 440.13(4)(a), the Department of Labor and Employment Security was granted specific authority to adopt by rule the maximum reimbursement allowances as determined by the three-member panel.

> A three-member panel is created, consisting of the Insurance Commissioner and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of previous vocation, employment, or affiliation, shall be

> classified as a representative of employers, the other members who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel, after reviewing recommendations from the advisory committee, shall annually determine schedules of maximum reimbursement allowances for such medically necessary remedial treatment, care, and attendance. Reimbursement for all fees and other charges for such treatment, care, any attendance, including treatment, care, and attendance provided by any hospital or other health care provider, shall not exceed the amounts provided by the schedules of maximum reimbursement allowances as determined by the panel and adopted by rule by the department. (Emphasis Supplied)

14. In 1990, the Legislature repealed the specific agency rulemaking authority previously granted under this subsection by deleting the words "and adopted by rule by the department." See Chapter 90.201, Section 18, at 930, Laws of Florida.

15. Also in 1990, the Legislature enacted Section 440.591, Florida Statutes, which granted the agency the "authority to adopt rules to govern the performance of any programs, duties, or responsibilities with which it is charged under this chapter." See, Chapter 90-201, Section 46, at 992, Laws of Florida.

16. Read in sari materia, the simultaneous 1990 amendments would seem to cancel out each other and manifest the Legislature's intent that the agency should continue to provide by rule for administering the panel-determined maximum medical allowances (a/k/a "fee schedules"), including publishing the fee schedule in manual form.

17. Moreover, Section 440.591, Florida Statutes, relied upon by the promulgating agency for the proposed rule here challenged, has not been amended since 1990 and is very broad. In its expanse, Section 440.591 Florida Statutes, is like many of the grants of statutory authority which were widely upheld prior to the October 1, 1996, statutory amendments to Section 120.52, Florida Statutes, [Supp. 1996], which statutes permitted agencies to promulgate almost any rule reasonably related to the

agency's statutory authority to monitor or to act. See, Charity v. Florida State University, 680 So. 2d 463 (Flat 1st DCA 1996), Cortes v. State Board of Regents, 655 So. 2d 132 (Flat 1st DCA 1995), Department of Labor and Employment Security. Div. of Workers' Compensation v. Bradley, 636 So. 2d 802 (Flat 1st DCA 1994)

18. Indeed, Chapter 440, Florida Statutes, has been amended in many other ways in 1991, 1992, 1993, and 1996, but until the massive 1996 amendments to Chapter 120, Section 440.591 would have been sufficient to allow the agency to promulgate its proposed rule.

19. The 1996 legislative overhaul of Chapter 120 was preceded by gubernatorial mandates to agencies to reduce their rules by fifty per cent. See, Fla. Exec. Ord. 95-74 (February 27, 1995); Fla. Exec. Ord. 95-256, Section 7 (July 12, 1995). The 1996 Florida Legislature responded with the same goal. See, Sections 120.54(1)(f) ("An agency may adopt rules authorized by law and necessary to the proper implementation of a statute . . . "); 120.56(2) (petitions challenging a proposed rule must state the reason the proposed rule "is an invalid exercise of delegated authority"); 120.52(8) (definition of "invalid exercise of delegated authority" means action that exceeds "the powers, functions, and duties delegated by the Legislature."); and 120.536(2)and (3) (how agencies shall account to the Legislature for unauthorized rules).

20. Particularly, in 1996, the presumption and burden of proof as to the validity of proposed rules was shifted by legislative amendment. Section 120.56(2) provides, in pertinent part

> (2)(a) CHALLENGING PROPOSED RULE, SPECIAL PROVISIONS . . . The petition shall state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The agency then has the burden to prove that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised.

* * *

> (c) When any substantially affected person seeks determination of the invalidity of a proposed rule pursuant to this section, the proposed rule is not presumed to be valid or invalid.

21. Also, today, Section 120.52, Florida Statutes, [Supp. 1996], provides:

> (8) "Invalid exercise of delegated legislative authority" means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislature authority if any one of the following applies:
>
> * * *
>
> (b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.
>
> * * *
>
> A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.

22. Clearly, the Legislature has amended Section 120.52(8) Florida Statutes, effective October 1, 1996, to require more

than Section 440.581's general grant of rulemaking authority and a rule reasonably related to the enabling legislation.

23. Commentators have uniformly noted that the Legislature, through the foregoing new language, has expressed its intent to radically restrict the authority of agencies to adopt rules without specific and detailed legislative authority. See, e.q., F. Scott Boyd, Legislative Checks on Rulemakina Under Florida's New APA, 24 Fla. St. U.L. Rev. 309, 341 (1997) (these four sentences "are potentially the most far-reaching of any in the 1996 amendments"); Jim Rossi, The 1996 Revised Florida Administrative Procedure Act: A Survey of Major Provisions Affecting Florida Agencies, 24 Fla. St. U.L. Rev. 283, 296 (1997) (revisions to the APA seriously limit agency rulemaking authority through this "remarkable" language that is designed to radically curtail agency rulemaking authority); DOAH Administrative Law Judge Linda M. Rigot and Ralph A. DeMeo, "Florida's 1995 Administrative Procedure Act," 71 Fla. B.J. 12, 14 (March) 1997 (the kinds of rule agencies are permitted to promulgate are more limited); Wade L. Hopping, Lawrence E. Sellers, and Kent Wetherell, "Rulemaking Reforms and Nonrule Policies: A (Catch-22) for State Agencies?," 71 Fla. B.J. 20, 26 (March 1997) ("reforms are intended to ensure that agency policy choices, whether in rules or no rules policies, are specifically authorized by the enabling legislation.") (emphasis in the original); Patrick L. "Booter" Imhof and James Parker Rhea, "Legislature Oversight", 71 Fla. B.J. 28, 30 (March 1997) ("The legislature also attempted to improve legislative oversight by enacting statutory restrictions on agency rulemaking.")

24. Therefore, this instant determination of the validity, vel non, of proposed Rule 38F-7.020, Florida Administrative Code, must turn upon the statutory provisions other than Section 440.591 which were listed by the promulgating agency. These are Sections 440.13(7), (8), (11), (12), (13), and (14).

25. The current Section 440.13(12)(a) [Supp. 1996] provides, in pertinent part, as follows:

> A three-member panel is created, . . . The panel shall determine statewide schedules of maximum reimbursement allowance for medically necessary treatment, care, and attendance provided by physicians, . . . Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians. . . . An individual physician, . . . shall be reimbursed either the usual and customary charge for treatment, care, and attendance, the agreed-upon contact price, or the maximum reimbursement allowance in the appropriate schedule, whichever is less. (Emphasis supplied)

26. Petitioners correctly observe that neither in 1996 nor 1997 has Chapter 440 specifically used language which permits the agency to unilaterally promulgate a schedule of maximum reimbursement allowances of its own or which permits the agency to otherwise modify the panel-adopted schedule of maximum reimbursement allowances via the agency rule adoption process established in Chapter 120, Florida Statutes.[1] Instead, current sub-section 440.13(12)(a), clearly reserves to the three member panel the exclusive authority to "adopt" (in this statutory context meaning to: convene, investigate, deliberate over, determine, and create) the substantive content of schedules of maximum reimbursement allowances, and provides that until the panel annually adopts new schedules, specific old schedules shall apply.

27. However, the undersigned does not perceive that the "legislative authority" which may not be exceeded pursuant to Section 120.52(8)(b) [Supp. 1996] and which must be specifically pointed out by the agency pursuant to Section 120.54(3)(a)1., [Supp. 1996] is somehow restricted to a single statutory sub-section or paragraph, namely sub-section 440.13(12)(a). Likewise, although varied arguments by several parties have been based upon time-honored administrative practice definitions of the terms "publish", "adopt", "application", and "interpretation", none of those arguments is persuasive in light of the hybrid nature of Section 440.13 which authorizes the three-member panel to adopt (i.e., convene, investigate, deliberate over, determine, and create) the substantive content

of a fee schedule, but, since the panel is not an agency, further authorizes the agency to refer to, rely upon, and apply, on a case-by-case basis, the substantive content developed by the panel.

28. In sub-section 440.13(12), and throughout Section 440.13 Florida Statutes, the Legislature has specifically provided that reimbursement of health care providers under Chapter 440 shall be, and is limited to, either the usual and customary charge for treatment, care, and attendance, the agreedupon contract price, or the maximum reimbursement allowance in the appropriate schedule, whichever is less. Provision is made in some statutory sub-sections for limiting reimbursement to just the maximum reimbursement allowances determined by the threemember panel. To that end, the Legislature has created a statutory scheme of considerable detail which sets up a methodology or procedure whereby the agency and all persons operating pursuant to Chapter 440 are required to refer to, and rely upon, the substantive content of the panel's fee schedules.

29. Sub-sections 440.13(7), (8), (11), (12), (13), and (14), cited by the agency as authority for the proposed rule challenged herein, impose requirements on fee-paying employer/insurance carriers and fee-receiving health care providers, related to billing for health care services for workers' compensation patients. These sub-sections further require the agency to monitor billing activities and enforce the fee schedules so as to curb unnecessary medical procedures and expenses. Also, the agency is charged with determining the reasonableness of fees charged by applying the substantive content of the panel's fee schedules. The agency also is authorized to resolve disputes between employer/insurance carriers and health care providers concerning fees charged and paid, which dispute resolution process of necessity requires reliance upon the substantive content of the panel's fee schedules. To resolve such disputes, the agency is called upon by specific statutory language to interpret and apply the substantive content of the panel-adopted maximum medical allowances and to establish procedural rules for such dispute resolution.

30. Clearly, the agency has been empowered and authorized by the statutory scheme to apply the substantive content of the panel's annual fee schedules to individual situations.

31. Additionally, many of these sub-sections include specific statutory language authorizing the agency to adopt rules of a procedural nature for applying, on a case-by-case basis, the substantive content of the panel's fee schedule. Section 440.13(7) provides for utilization and reimbursement disputes and contains a provision charging the Division of Workers' Compensation with authority to "adopt rules to carry out this subsection. . . . includ[ing] provisions for consolidating petitions filed by a petitioner and expanding the timetable for rendering a determination upon a consolidated petition." Section 440.13(8), applies to the pattern or practice of overutilization and empowers the Division to impose certain delineated penalties for "overutilization or a violation of this chapter or rules adopted by the division[.]" Section 440.13(11) (a) and (c), empower the Division to investigate health care providers to ensure compliance with Chapter 440 and with Division rules, and empowers the Division to monitor and audit carriers to ensure compliance with the section and with Division rules. Section 440.13(13), authorizes the Division to remove from the list of authorized physicians or facilities any physician or facility found to have engaged in certain enumerated conduct, including overutilization or violating Chapter 440 or a Division rule. Section 440.13(14) addresses the payment of medical fees and prohibits fees charged in excess of the applicable panel-adopted maximum reimbursement allowances.

32. Indeed, assuming arquendo, but not ruling, that sub-section 440.13(12) is insufficient by itself to authorize the agency to interpret and apply the panel's schedules, then sub-section 440.13(7) clearly provides that the Division must be guided by the standards and policies set forth in Chapter 440, including all applicable reimbursement schedules, in rendering its determination of the respective rights of physicians, employers, and insurance carriers. Sub-paragraph 440.13(7)(a) provides for the agency to resolve issues between employer/insurance carriers and physicians for payment of charges on behalf of injured employees. Sub-paragraph (c) requires that the "division must be guided by standards and policies set forth in this chapter, including all applicable reimbursement schedules, in rendering its determination." Sub-paragraph (e) provides that the agency "shall adopt rules to carry out this subsection."

33. The Legislature has, throughout Section 440.13, authorized the three-member panel to "adopt" the substantive content of a fee schedule and has authorized the agency to refer to and rely upon that panel-adopted fee schedule's substantive

content in fulfilling the other duties devolved upon the agency by statute.

34. Therefore, although the parties herein have made contrary arguments based upon time-honored Chapter 120 and administrative practice concepts of the terms, "publish" and "adopt", Chapter 440's hybrid scheme does not lend itself to any of them in this instance, and they are discounted. As President Dwight David Eisenhower stated in a campaign speech for his second term in office, "No platform justifies an abrogation of common sense." The legislative language is clear that the threemember panel is authorized to "adopt" the substantive measurement (the fee schedules), and the agency is authorized to procedurally apply that panel's substantive measurement.

35. Since the parties have limited the facts and Petitioners have specifically waived their challenge under Section 120.52(8)(c), based on the proposed rule's allegedly enlarging, modifying, or contravening specific provisions of the law implemented, there remains no dispute over what ultimate product the 1997 three member panel has adopted. Therefore, it naturally follows that the agency's proposed rule correctly refers to the discreet and intact fee schedules adopted by the 1997 panel as authorized by law, and the proposed rule then does no more than give notice to the public that 1997 annual maximum reimbursement allowances have been adopted by the three-member panel, which the statute authorizes the panel to do; that the agency has printed the same panel-adopted 1997 annual maximum reimbursement allowances in a manual entitled, "Florida Workers' Compensation Health Care Provider Fee For Service Reimbursement Manual"; and that, having been adopted by the panel and printed by the agency, the substantive content of the panel-adopted maximum reimbursement allowances will henceforth be referred to, relied upon, and applied by the agency on a case-by-case basis, as the agency is charged to do by statute.

36. Proposed Rule 38F-7.020, implementing sub-sections 440.13(6), (7), (8), (11), (12), (13) and (14), Florida Statutes, is authorized by sub-sections 440.13(8), (9), (11), (12), (13), and (14), and constitutes a valid exercise of the agency's delegated legislative authority.

ORDER

Upon the foregoing findings of fact and conclusions of law, it is hereby ORDERED:

Proposed Rule 38F-7.020, Florida Administrative Code, as published, is valid.

DONE AND ORDERED this 24th day of June, 1997, at Tallahassee, Leon County, Florida

ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(904) 488-9675 SUNCOM 278-9675
Fax Filing (904) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of June, 1997.

ENDNOTE

1/ This final order assumes, on the basis of the parties' stipulation (see Finding of Fact 7 and Conclusions of Law 12 and 35) that, notwithstanding the several titles of documents and words of art contained in the proposed rule, there is no longer any issue about whether the agency has enlarged or modified the panel-determined maximum medical allowances ("RBRVS").

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NOTICE OF RIGHT TO APPEAL

A party who is adversely affected by this final order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of the notice of appeal with the Agency Clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

EXHIBIT A

Florida Administrative Weekly
Volume 23, Number 1, January 3, 1997

SPECIFIC AUTHORITY: 440.13(7), 440.13(8), 440.13(11) 440.1 3(1 2), 440.1 3(1 3), 440.1 3(1 4), 440.591 FS.
LAW IMPLEMENTED: 440.13(6), 440.13(7), 440.13(8), 440.13(11),440.13(12),440.13(13),440.13(14)FS.
IF REQUESTED WITHIN 21 DAYS OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:
TIME AND DATE: 2:00 p.m. to 4:00 p.m., Thursday, January 30, 1997

PLACE: Room 302, Hartman Building, 2012 Capital Circle, S.E., Tallahassee, Florida
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS Donna Reynolds, Registered Nurse Consultant, Division of Workers' Compensation. Rehabilitation and Medical Services Unit, 2728 Centerview Drive, Suite 331, Forrest Building. Tallahassee, FL 32399, telephone number (904)488-3431, ext. 180

THE FULL TEXT OF THE PROPOSED RULE IS:
38F-7.020 Florida Workers' Compensation Health Care Provider Reimbursement Manual.

(1) The 1997 Florida Workers' Compensation Health Care Provider Fee For Service Reimbursement Manual for ~~physician and non-physician services, with replacement pages 237, 238 through 240b(dated 12-6-95), and 258.1 through 258.3 (1995~~), is adopted by reference as part of this rule. The manual contains reimbursement policies and maximum reimbursement for physician services, non-physician services, pharmaceutical and medical supplies. The manual contains basic instructions and information for all providers and insurance carriers in the preparation and reimbursement of claims for medical services. The manual is distributed by the Rehabilitation and Medical Services Unit of the Division of Workers' Compensation.

(2) The 1996 Phvsicians' Current Procedural Temminologv (CPT-4). 4th Edition. copyright 1995. ~~Division has incorporated procedure codes consistent with the American Medical Association's Current Procedural Terminology (1990 and 1992 CPT), the 1990 Reimbursement Guide for Physicians published by Bluc Cross and Bluc Shield Florida, Incorporated~~, and the 1995 Current Dental Terminologv (CDT-2). 2nd Edition. copyright 1994. American Dental Association's ~~Current Dental Terminology (1990 CDT 1)~~ and the Health Care Financing Administration's Common Procedural Coding Svstem (HCPCS), Level 11, 1995 Edition. ~~These publications~~ are adopted by reference as part of this rule. When a procedure is performed, which is not listed in the 1997 Florida Workers' Compensation Health care Provider Fee for Service Reimbursement Mmanual, the provider must use a ~~the appropriate~~ code and descriptor contained in either the CPT-4. CDT-2 or HCPCS ~~most current copy of the appropriate aforementioned publication (CPTs, 1990 Reimbursement Guide for Physicians, or CDT). In such instances, insurance carriers must rely on their on data to determine the appropriate reimbursement~~.

~~(3) All medical services provided must be "medically necessary" as that term is defined in Section 440.13, Florida Statutes. Medical services which are of an experimental, investigative or research nature must be approved by the Division of Workers' Compensation prior to authorization by the carrier.~~

Specific Authority 440.13 (7)~~(4)(b)~~, 440.13(8), 440.13(11), 440.13(12), 440.13(13), 440.13(14), 440.591 FS. Law Implemented 440.13(6), 440.13(7), 440.13(8), 440.13(11) 440.13 (12), 440.13(13), 440.13(14) FS. History-New 10-1-82, Amended 3-16-83, 11-6-83, 5-21-85, Formerly 38F-7.20, Amended 4-1-88, 7-20-88, 6-1-91, 4-29-92, 2-18-96.

NAME OF PERSON ORIGINATING PROPOSED RULE: Linda Knopf, Unit Coordinator, Rehabilitation and Medical Services Unit.
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jimmy R. Glisson, Director, Division of Workers' Compensation
DATE PROPOSED RULE APPROVED: December 6, 1997
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN F.A.: December 27, 1996.

DEPARTMENT OF ELDER AFFAIRS
Facilities and Federal Programs for the Aging

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Hospice	58A-2
RULE TITLES	RULE NOS.:
Purpose	58A-2.001
Definitions	58A-2.002
License Required	58A-2.003
Licensure Procedure	58A-2.004
Administration of the Hospice	58A-2.005
Administrative Officer	58A-2.006
Administrative Policies and Practices	58A-2.007
Coordinated Care Program	58A-2.009
Quality Assurance/Utilization Review (QA/UR) Committee and Plan	58A-2.010
Program Reporting	58A-2.012
Ratio of Inpatient to Home-Care Services	58A-2.013
Medical Direction	58A-2.014
Nursing Services	58A-2.0141
Pastoral/Spiritual Counseling	

Services	58A-2.015
Counseling and Social Services	58A-2.016
Volunteer Services	58A-2.017
Bereavement Services	58A-2.018
Nutritional Services	58A-2.019
Advance Directives	58A-2.0232
Residential Units	58A-2.0236
Physical Plant Requirements (Inpatient Unit)	58A-2.024

PURPOSE AND EFFECT: Hospice Chapter 58A-2 is being revised in order to: 1) clarify requirements regarding hospice licensure, administration, staffing, reporting and provision of