



State of Florida
Department of Children and Families

Charlie Crist
Governor

Robert A. Butterworth
Secretary

August 28, 2007

Jowanna N. Oates, Senior Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, Florida 32399-1300

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JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

RE: Department of Children & Families Rule 65A-1.712

Dear Ms. Oates:

Thank you for your June 14 letter to Pat Whitford of my staff. We reviewed your comments on our second Notice of Change for proposed rule 65A-1.712 and provide the following explanation.

You have questioned why the Notice of Change removed the language from subparagraph (3)(b)3 to require individual retirement accounts or annuities established by an employee or employer to name the state as primary beneficiary in order to qualify for Medicaid. The change was made because although the Centers for Medicare and Medicaid Services' (CMS) interpretation of the law supported this requirement, we could not find the legal basis for applying the requirement in the DRA law.

Section 1917(c) of the Social Security Act covers Medicaid transfer of assets (and income) provisions, including DRA provision (F), requiring individuals to name the state as beneficiary on annuities to avoid transfer penalty and DRA provision (G), which exempts certain annuities (IRAs and work-related annuities) from the transfer provision.

New DRA section 1917(e) requires disclosure of all annuities on the Medicaid application and the naming of the state as remainder beneficiary. Section (e)(1) states "Such application or recertification form shall include a statement that **under paragraph (2)** the State becomes a remainder beneficiary under such an annuity or similar financial instrument by virtue of provisions of such medical assistance." [Emphasis added to make the key connection here.] Paragraph (2) of section (e) goes on to say, "In the case of disclosure concerning an annuity under subsection (c) (1) (F), the State shall notify the issuer of the annuity of the right of the State under such subsection as a preferred remainder beneficiary in the annuity..."

Paragraph (c)(1)(F) mentioned in paragraph (e)(2) above refers to annuities that are subject to the transfer provision.

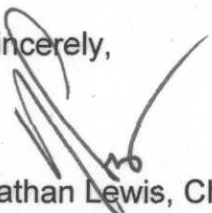
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There is no reference in paragraph (e)(2) (A) or (B) to annuities in paragraph (c)(1)(G), those annuities that are not subject to the transfer provision. Therefore we do not see the connection between the requirement to name the state as beneficiary in (e) to the annuities not subject to transfer in transfer subsection (c) (G).

Due to our questions on this policy, we requested further clarification from CMS but to date have not received a federal explanation on how the policies are connected in the DRA. Therefore, we decided to remove the requirement until we are able to obtain the legal basis of this provision. If you have further questions about this issue, please call Lynn Raichelson at 488-3274.

Sincerely,



Nathan Lewis, Chief
Medicaid Policy
ACCESS Program Office