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THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

September 25, 2007

Nathan Lewis  
Chief, Medicaid Policy  
Department of Children and Family Services  
1317 Winewood Boulevard  
Tallahassee, Florida 32399

**RE: Department of Children & Family Services Rule 65A-1.712**

Dear Mr. Lewis

Thank you for your recent letter in which you explained the Department's reasoning for removing from rule 65A-1.712(3)(b)3. the requirement that individual retirement accounts or annuities established by an employee or employer name the State as a remainder beneficiary.

Section 42 USC §1396p(c)(1)G. excludes from the definition of assets certain annuities purchased by or on behalf of an applicant for long-term care. According to the Department, because there is no reference in 42 USC §1396p(e)(2) to annuities listed in 42 USC §1396p(c)(1)G., applicants purchasing those annuities are not required to name the State as a remainder beneficiary. This interpretation would appear to conflict with the plain language of the statute. While there is no specific reference to annuities listed in 42 USC §1396p(c)(1)G. in paragraph (e)(2), the statute states that applicants must name the State as a remainder beneficiary "regardless of whether the annuity is irrevocable or is treated as an asset." See 42 USC §1396p(e)(1). It would appear that this language would include annuities listed in 42 USC §1396p(c)(1)G. since those annuities are either irrevocable or not treated as assets. Further, the Department's interpretation appears to conflict with the Centers for Medicare and Medicaid Services' (CMS) July 27, 2006, guidance letter which states that requirements of 42 USC §1396p(c)(1)G. are "in addition to those specified in 1917(c)(1)F. pertaining to the State's position as a remainder beneficiary." Since your letter indicates that the Department is seeking further clarification regarding this issue, please let me know when you receive additional information from CMS.

I have also reviewed your September 13, 2007, letter which clarifies the basis for the third Notice of Change. It is unclear as to whether the notice of change was filed in response to an issue raised after the July 2, 2007, hearing or an issue raised by the AARP at the March 20, 2007, hearing. If the change was made as a result of an issue raised at the March hearing, please provide me with a copy of the summary from that hearing. Additionally, please provide the

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specific statutory authority which permits the Department to not impose a penalty period where an individual's total countable resources (including the transferred resources) are below program limits.

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your written response.

Sincerely,



Jowanna N. Oates  
Senior Attorney

CC: Pat Whitford, Public Assistance Policy  
Department of Children and Family Services

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