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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

October 18, 2007

Herschel Minnis
Department of Children and Family Services
1317 Winewood Boulevard
Tallahassee, Florida 32399

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

Dear Mr. Minnis:

This letter is to memorialize our recent telephone conversation regarding the above-referenced rule. It is my understanding that the Department is seeking clarification from the Centers for Medicaid and Medicare Services (CMS) in order to determine whether the purchase of an Individual Retirement Account (IRA) by or on behalf of an applicant constitutes a disposal of an asset for less than fair market value unless the State is named as a remainder beneficiary. Please let me know when you receive a response from CMS, as such guidance has been found to be persuasive in interpreting the application of federal statutes. See, e.g. Slekis v. Thomas, 525 U.S. 1098 (1999)(remanding case to lower court for "further consideration in light of the interpretive guidance issued by the Health Care Financing Administration); Lankford v. Sherman 451 F.3d 496, 506 (8th Cir. 2006)(citing several decisions where courts have given deference to CMS' interpretation of a statute).

As an additional matter, in reviewing the most recent hearing summary, I noticed that several questions were asked regarding the "A" versions of Forms 2354 and 2264 that were incorporated by reference in the proposed rule. In response to an issue raised in my initial letter regarding the proposed rules, the Department indicated that the forms were not going to be used. As such, the Department removed references to forms 2354A and 2264A from the rule. However, at the hearing the Department stated "the forms are part of the application process used by eligibility workers to facilitate discussion with client." Additionally, the Department's comments at the hearing indicate that it is in the process of developing various training materials related to the rule. A rule is defined as an "agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by a statute or by an existing rule." §120.52(15), Fla. Stat. (2007). Any form which meets the definition of "rule" provided in section 120.52(15) must be incorporated by reference

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in the rule. Please let me know whether or not the Department will be using forms 2354A and 2264A. If so, please provide me a copy of the finalized forms. Also, please provide me with a copy of the aforementioned training materials.

Although the rule has been filed for adoption, please be advised that I intend to keep my file open for further review and that additional concerns may be raised in the future. Should you have any questions, please feel free to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Senior Attorney

CC: Pat Whitford
Public Assistance Policy

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