



Jeb Bush
Governor

Lucy D. Hadi
Secretary

MEMORANDUM

DATE: December 23, 2004 **TRANSMITTAL NO.:** P-04-12-0020

TO: District Economic Self-Sufficiency Services
Program Administrator (1-4, 7-15)
Suncoast Region Economic Self-Sufficiency Services
Program Administrator

FROM: Jennifer Lange, Chief, Program Policy (Signature on File)

SUBJECT: Suspension of P-04-10-0017 – Treatment of Promissory Notes,
Loans and Mortgages – Effective December 23, 2004

This memorandum instructs staff that the policies provided in transmittal No. P-04-10-0017 regarding promissory notes, loans and mortgages for SSI-Related Medicaid programs have been suspended through February 28, 2005.

Non-business promissory notes, loans and mortgages entered into on or after March 1, 2005 will no longer be considered under income producing property policy. They will be countable assets to the individual (lender) in the amount of their equity value. The liquidity of a promissory note, loan or mortgage will have no effect on the asset's countability.

Promissory notes, loans or mortgages entered into prior to March 1, 2005 must continue to be evaluated under income producing property policy.

Pending applications should be processed using the policies in effect prior to October 1, 2004.

Applications denied since October 1, 2004 due to the policies provided in P-04-10-0017 do not require a desk review. Applicants may submit a new application in which case their promissory notes, loans and mortgages will be evaluated based on the policies in effect prior to October 1, 2004, or request a fair hearing.

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**Suspension of P-04-10-0017 – Treatment of Promissory Notes, Loans and
Mortgages
Page Two**

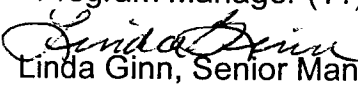
If district program office staff have questions related to this change, please
contact Virginia Hardcastle at (850) 921-6962 or SC 291-6962.

Copy: Program Policy (Lewis, Schilling, Grignon)
FLORIDA Operations (Poirier, France, Anderson, Love)
FLORIDA Helpdesk (Kenyon)
Program Integrity (Ransdell, Bowman)
Quality Control (Pearce)
Appeal Hearings (Pritchard)
Office of General Counsel (Minnis)
AHCA (McAuley)

MEMORANDUM

DATE: January 17, 2002 **TRANSMITTAL NO.:** P02-01-0002

TO: District Economic Self-Sufficiency Services
Program Administrators (1-4, 7-10, 12-15)
Suncoast Region Economic Self-Sufficiency Services
Program Administrator
District Economic Self-Sufficiency Services
Program Manager (11)

FROM: 
Linda Ginn, Senior Management Analyst Supervisor, Health Care Access

SUBJECT: Long-Term Care Insurance Payments

The purpose of this memorandum is to clarify policy regarding treatment of cash payments received from a long-term care insurance policy.

General: Cash received in conjunction with medical services may or may not be considered as income. Because there are so many different types of insurance available, it is important for staff to carefully review the terms of each policy to determine whether or not payments received should be included in the Medicaid eligibility and patient responsibility budgets. Policy regarding treatment of medical insurance payments may be found in HRSM 165-22, passages 1850.10.06 and 3220.05.15.

Reimbursements: Cash received to reimburse an individual for actual medical expenses incurred is not considered income, even if the individual chooses to receive the payment directly instead of assigning it to a provider. If the insurance policy pays an individual *up to a maximum* amount per day during a nursing home stay, it is *not* considered income as the payments are based on actual expenses incurred. A policy that pays actual expenses up to a certain maximum payment is not the same as a flat rate policy described in the following paragraph.

Flat Rate Payments: Cash from an insurance policy which pays a flat rate benefit to the client without any regard for actual per diem charges or expenses incurred is considered income. If the insurance policy pays an individual a fixed amount daily regardless of the actual daily facility charges, it is considered a flat rate payment and included as income. The payments from a flat rate policy are not restricted for payment of medical expenses as a set amount is paid even if it exceeds the actual charges.

Third Party Liability: It is very important that those policies identified as reimbursement policies be entered on the FLORIDA AFMD screen (AIMM for Medicare) as a third party liability (manual passage 3220.05.15). That entry forces the provider to bill the third party insurance carrier for reimbursement before Medicaid pays.

IMPORTANT: It is the public assistance specialist's responsibility to send a copy of the completed AFMD screen to the nursing home if institutional care coverage is involved. It is not necessary to provide a screen print to providers for any other type of third party coverage.

If you have any questions regarding this response, please call Christine Frier at SUNCOM 210-3477 or (850) 410-3477.

cc: Program Policy (Bailey, Knapp, Manke, Mitchell, Raichelson)
Technology and Systems (Brock)
Office of Appeal Hearings (Pritchard)
Office of the General Counsel (Minnis)
Florida Legal Services (Huddleston)
Quality Control (Pearce)
AHCA (Strowd)
Florida Bar Elder Law Section (Shalloway)

MEMORANDUM

DATE: December 17, 2001 **TRANSMITTAL NO:** P01-12-0149

TO: District Economic Self-Sufficiency Services
Program Administrators (1-4, 7-10, 12-15)
Suncoast Region Economic Self-Sufficiency Services
Program Administrator (23)
District Economic Self-Sufficiency Services Program Manager (11)

FROM: *Linda Ginn*
Linda Ginn, Senior Management Analyst Supervisor, Health Care Access

SUBJECT: New Assisted Living Waiver Initiative

EFFECTIVE: Upon Receipt

The purpose of this memo is to advise staff of a new initiative by the Department of Elder Affairs to move nursing home residents into the Assisted Living Waiver (ALW) program. Distribution of this memo was delayed pending resolution of other issues by DOEA and AHCA. An e-mail explaining the information in this memo was sent on September 20. Since the outstanding billing issues have not yet been resolved, we have decided to forward this memo and will advise of any further changes as they occur.

The Department of Elder Affairs (DOEA) received \$2.61 million additional funding for the Assisted Living Waiver to transition nursing home residents into assisted living waiver facilities in the community. Not only will this effort allow some individuals to live in a less restrictive, more home-like setting, but the initiative would potentially result in significant cost savings to the state.

Nursing homes throughout Florida provided CARES with a list of approximately 450 residents who meet the Intermediate II level of care criteria. CARES staff have reviewed the status of these individuals and are selecting appropriate candidates. Case managers will initiate the process by submitting a waiver packet to the DCF eligibility staff. The local Medicaid waiver specialists and the lead agency case managers will work with CARES and DCF to coordinate the placement for these individuals into the ALW.

Current manual material does not specifically address how to process ALW requests for individuals who are ICP recipients in a nursing home. The usual transition of an individual has been from their home to an assisted living facility (or relative's home) to a

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nursing home, when unable to live independently any longer. In this initiative the client will be moving from the nursing home to an assisted living facility.

To help expedite the transitioning of these cases to the waiver, we are clarifying existing policy to instruct staff to handle these cases under the ex parte process.

When an individual is already receiving Medicaid under the Institutional Care Program and elects to go into the Home and Community-Based Services waiver program, it is not necessary to request a new RFA to determine the client's eligibility. It is also not necessary to do another face to face interview with the client or the designated representative. Staff must handle these cases as an ex parte.

The same basic eligibility policies apply to both the institutional care program and HCBS programs. Therefore, an ICP recipient may qualify for waiver services as long as he/she meets the special waiver criteria. Staff must receive verification that the client meets the waiver level of care and obtain Form 2515 (Certification of Receipt of Home and Community Based Services) from the lead agency to confirm the client is in receipt of waiver services. The date when services begin, as indicated on Form 2515, is the month of approval for the Medicaid waiver program, if the client is determined eligible.

Staff cannot approve the ALW waiver benefits until the client is discharged from the nursing home and in receipt of the waiver services. This creates difficulties for DOEA with regard to waiver funding as well as placement because assisted living facilities are reluctant to accept new residents who have not been approved for waiver services prior to admission. Staff may diffuse this problem by issuing Form 2267, **Notice of Conditional Eligibility** (copy attached), to the waiver lead agency when the only pending issue is placement in the facility and the verification of waiver services. This form is available on Jet Forms.

Once the client has moved from the nursing home to the ALF, staff must send a notice of terminated benefits for ICP to the client (and provider) as well as a notice of approved benefits for the ALW to the client (and waiver case manager).

If an annual review is due on the case, staff must first ex parte the client into the waiver (if the client meets the waiver criteria) and then complete the review.

If you have questions regarding this memo, you may contact Debra Peterson at SUNCOM 291-6962 or by e-mail.

Attachment

cc: Program Policy (Knapp, Bailey, Manke, Mitchell, Raichelson)
Appeal HearingS (J. Pritchard)
Office of General Counsel (Chavers, Minnis)
Department of Elder Affairs (Fante, Corley)
Agency for Health Care Administration (Brantley, Kaempfer)
Florida Legal Services (Huddleston)
Florida Bar Elder Law Section (Colman)



NOTICE OF CONDITIONAL ELIGIBILITY

Date Mailed: _____

Name: _____

Address: _____

Fold Here for Window Envelope

Individual's Name: _____

Social Security Number: _____

Based on the information provided to date, **conditional** eligibility for

(Program Category)

has been determined for the above-named individual.

The pending application can be approved when the individual is enrolled. However, in the event that additional information is received which would alter the conditional eligibility determination, or should a change in the individual's situation occur that would adversely affect the eligibility decision, approval will not be made. **This conditional notice does not authorize payment.**

Should you have any questions or comments, please contact the person named below.

Public Assistance Specialist	Office Address and Telephone Number

Distribution of Copies:

Original Copy - To Client (or representative)

Copy - To Provider

Copy - To Case Record

LAW OFFICES

SOLKOFF & ZELLEN

A PROFESSIONAL ASSOCIATION

1901 South Congress Avenue • Suite 350 • Boynton Beach, Florida 33426
 Telephone (561) 733-4242 • Broward (954) 765-1035 • Fax (561) 733-4232

SCOTT M. SOLKOFF*
RODD R. ZELLEN*
DANIEL A. TERNER
NICHOLAS H. HAGOORT†
SUSAN G. HAINES*

December 4, 2001

SENT VIA FAX ONLY. TO: (850) 561-5825

Ms. Arlee Colman
 Florida Bar Elder Law Section
 650 Apalachee Parkway
 Tallahassee, FL 32399

Dear Ms. Colman:

Enclosed please find a letter that our office sent to the Florida Department of Insurance on October 30, 2001. In our letter, we sought to clarify the Florida Department of Insurance's position on the sale of Personal Service Contracts by Home Health Agencies, and whether such sales would be considered the sale of an insurance product and therefore subject to regulation.

Don Dillard, Senior Management Analyst II of the Department of Insurance, responded to our query on December 4, 2001. In his response, he stated that such sales should only be made by entities licensed by the Department to sell insurance, and that such contracts are required to be approved by the Department. His response letter is enclosed.

Scott Solkoff has requested that I provide you with copies of these letters, so that they may be included in the next mailing of Fair Hearing decisions.

If you have difficulty reading Mr. Dillard's response letter (it's a fax of a fax, with a small font size), please call me and I will mail a copy of the original letter to you when it is received by our office.

Thank you in advance for your time and attention to this matter.

Very truly yours,

SOLKOFF & ZELLEN, P.A.

Daniel A. Turner
for the firm
 Daniel A. Turner, Esq.

Encl.

SOLKOFF & ZELLEN, P.A.
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Preserving and enforcing
 end-of-life health decisions

General advice on aging issues

*Certified as a specialist in
 Elder Law by the Florida Bar



*Also Master of Public Health

†Also member New Jersey Bar

◆Member Colorado Bar only

■of Counsel

12/04/01 TUE 15:55 FAX 561 733-4232
SCOTT M. SOLKOFF*
JODD R. ZELLEN°

NICHOLAS H. HAGOORT†
SUSAN G. HAINES°

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Preserving and enforcing
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†Also member New Jersey Bar
°Member Colorado Bar only
* of Counsel

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1901 South Congress Avenue • Suite 350 • Boynton Beach, Florida 33426
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October 30, 2001

Florida Dept. of Insurance
State Capitol Plaza Level Eleven
Tallahassee, FL 32399-0300

To Whom it May Concern:

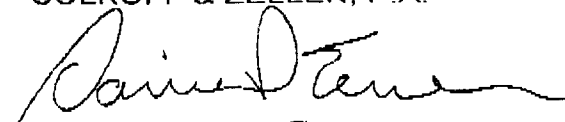
I am writing for clarification on the Florida Department of Insurance's position on sale of Personal Service Contracts by Home Health Agencies: would such a sale be considered the sale of an insurance product? If so, what regulatory and licensing requirements must the Home Health Agency meet before they may make such a sale?

By way of example: Consider a Home Health Agency in the business of providing home care medical assistance to ill individuals. May the Agency sell a Personal Service Contract to a healthy individual, such that the Agency bears the risk that in the future the person will become ill and require home health care in excess of the personal service contract premiums paid, while the individual bears the risk that they may never require services at all. Would such a sale be considered the sale of insurance? What if the person is already ill and in need of home health care: is it still the sale of insurance then?

Thank you in advance for your time and attention to this matter.

Very truly yours,

SOLKOFF & ZELLEN, P.A.


Daniel A. Turner, Esq.



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

Also Via Telecopier (561) 733-4232

December 4, 2001

Daniel A. Turner, Esq.
Solkoff & Zellen
1901 South Congress Avenue
Suite 350
Boynton Beach, Florida 33426

Dear Mr. Turner:

This regards your letter requesting the Florida Department of Insurance's position on the sale of Personal Service Contracts by Home Health Agencies. You have asked if the sale of these type contracts would be considered insurance and for applicable regulatory and licensing requirements.

Section 624.02, F.S., provides the definition of "insurance".

Part XVIII, of Chapter 627, in the Florida Insurance Code, titled "Long-Term Care Insurance Policies", requires that any limited benefit policy that limits coverage to one or more lower levels of care, required or authorized by Part XVIII, or by Department rule must meet all requirements of Part XVIII, except as so provided in certain sub-sections. Please see Section 627.9403, F.S., for reference to these requirements. Chapter 4-157, F.A.C., provides regulations for long term care insurance. Rule 4-157.009(4)(c), F.A.C., identifies a home health agency as a lower level of care.

Based on the information outlined in your letter it appears that the sale you described is one that should only be made through an entity licensed by this Department to sell insurance. Further, such contracts of insurance to provide home health care benefits, are required to be approved by this Department.

Mr. Turner, I have tried in the above comments to answer your questions. However, if you would like to discuss this with me further, please give me a call.

Sincerely,

Don Dillard

TREASURER • INSURANCE COMMISSIONER • FIRE MARSHAL

DON DILLARD • SENIOR MANAGEMENT ANALYST II • BUREAU OF LIFE & HEALTH FORMS & RATES
200 EAST GAINES STREET • TALLAHASSEE, FLORIDA 32399-0328 • (850) 413-5154 • TELECOPIER (850) 922-3866

Affirmative Action / Equal Opportunity Employer

Dec 4 2001 14:40 P.02

Fax: 850-922-3866

F-0181/DOI

*sent to
Rebecca
11-28-01*

MEMORANDUM

DATE: November 7, 2001 Transmittal No: P01-11-0140

TO: District Economic Self Sufficiency Services
Program Administrators (1-4, 7-10, 12-15)
Suncoast Region Economic Self Sufficiency Services
Program Administrator
District Economic Self-Sufficiency Services
Program Manager (11)

FROM: *Kathy E. Meade-Hoeffer*
Kathy E. Meade-Hoeffer, Chief of Program Policy
Kim Brock
Kim Brock, Chief, Technologies and Systems Development

SUBJECT: Cost of Living Adjustment Increases and Other Changes
for SSI-Related Programs for January 2002

This memorandum is to inform staff of the January 2002 Cost of Living Adjustment (COLA) increases, other standard changes and the case actions required for SSI-related programs.

OVERVIEW

There will be a 2.6 percent increase in Title II (Social Security), Title XVI (Supplemental Security Income), Veterans Administration benefits, Civil Service Annuity benefits, and Railroad Retirement benefits. These increases will be reflected in January 2002 benefit checks. There will be changes in standards for Supplemental Security Income (SSI), Institutional Care Program (ICP), Optional State Supplementation (OSS), and interim changes for programs based on the Federal Poverty Level.

CHANGES EFFECTIVE JANUARY 1, 2002

1. **SSI Cash Assistance:** The new federal benefit rate is \$545 for an individual and \$817 for an eligible couple.

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2. Institutional Care Program, Home and Community-Based Services and Hospice:

- The new income standard is three times the SSI federal benefit rate or \$1,635 for an individual and \$3,270 for an eligible couple (when both spouses are requesting or receiving institutional Medicaid, HCBS or institutional Hospice).
- The new resource allocation for a community spouse is \$89,280.
- The community spouse maximum income allowance cap is \$2,232. The minimum monthly maintenance income allowance (MMMIA) plus excess shelter expenses cannot exceed this figure. This is the maximum diversion to a community spouse. If the community spouse's income exceeds this figure, no income can be diverted from the client to the community spouse.

3. **OSS:** Please see ATTACHMENT 7 for the 2002 COLA changes.

4. **Assisted Living Waiver:** The personal needs allowance for the Assisted Living Waiver will increase from \$609.40 to 623.40 (\$569.40 plus \$54).

5. **Protected Medicaid:** The conversion factor on FLORIDA, TSCA, will be updated for January 2002.

6. **Federal Poverty Level Interim Changes:** An interim increase of 2.6 percent is being applied to income standards based on the Federal Poverty Level. These interim standards will be used for applicants and recipients until the official figures are released in February-March 2002.

Programs affected by Federal Poverty Level changes: MEDS-AD, Qualified Medicare Beneficiaries (QMB), Special Low-income, Medicare Beneficiaries (SLMB), Working Disabled, QI-1, QI-2, and the personal needs allowance for community Hospice.

2002 Cost of Living Adjustment Increases

Page 3

The following interim standards have been calculated based on an anticipated 2.6 percent increase in the Federal Poverty Level:

Program	Individual	Couple
MEDS-AD:	662	894
Qualified Medicare Beneficiary	735	994
Special Low-Income Medicare Beneficiary	882	1192
QI-1	993	1341
QI-2	1286	1739
Working Disabled	1470	1986
Hospice Personal Needs Allowance (Community)	735	994

Staff must **NOT** terminate benefits for active cases that would be ineligible based on these interim standard increases. When actual FPL figures become available, FLORIDA will run a mass change to update all cases according to the actual FPL increases. An exception report will be generated and forwarded under a separate memo for any adversely affected cases.

NO CHANGES

1. There are no changes in the asset limits for the SSI cash assistance program or in the asset limits for SSI-related programs.
2. The Medically Needy Income limit has not changed.

OTHER CHANGES

The Medicare Part B premium will change from \$50 to \$54 in 2002.

ACTIONS REQUIRED

1. Use the new standards for eligibility benefits for January 2002 and ongoing for all applications currently pending on FLORIDA. The FLORIDA system tables TMEP (Eligibility Parameters) and the TSCA (COLA Conversion Factors for Protected Medicaid) have been changed to reflect the increases effective 01/01/2002.

For SLMB and QI-1 applications, use the new amounts from the table, approve on FLORIDA and submit input documents to ACS (formerly Consultec).

2. For Assisted Living Waivers, a desk review of affected cases will be necessary so the correct personal needs allowance and patient responsibility can be budgeted. A manual notice must be sent to advise clients and providers of the revised patient responsibility. Districts have been advised in the past to maintain their own tracking system for these cases. If necessary and requested, we will ask for an ad hoc report from the Department of Elder Affairs.
3. For OSS cases, no action is necessary for cases receiving SSI monthly income only. The new amount will be updated automatically on SPS. For cases without SSI, the SPS will automatically update the Social Security amounts and the provider rates on the system. A separate memo will be issued regarding instructions to implement OSS redesign for adult family care facilities.

Staff will have to complete a desk review when the OSS payment amount is reduced due to the Cost of Living Adjustment. An SPS exception report of cases requiring a desk review will be generated after the December payroll is run and forwarded to you under separate memo. The report will contain cases in which the OSS payment is reduced due to the COLA; OSS cases with veterans benefits, Civil Service Annuity, and/or Railroad Retirement income; and OSS cases which have only income other than Supplemental Security Income or Social Security.

2002 Cost of Living Adjustment Increases

Page 5

OTHER INFORMATION

1. Overpayment. If there is a discrepancy between the amount updated on FLORIDA and the verified amount of benefits, do not report this difference as overpayment
2. Verification. If the income amount is changed by automatic update, it is not necessary to re-verify. If the income has not been changed by automatic update, the actual amount of income must be verified and budgeted at the next complete re-determination, data exchange hit or re-enrollment, and the client must be provided a notice of adverse action if benefits decrease.
3. Ex-Parte. When the final Federal Poverty Level standards are released in March 2002, an ex-parte determination must be completed on all cases found ineligible due to income over the income standard for the current program.
4. Civil Service Annuity. COLA raises will vary depending on whether or not the client was on the retirement roles for full or part of the previous year. Clients who were retired for less than a year do not receive the full 2.6 percent COLA.
5. QI-2 Cases. No action is needed for the QI-2 cases. Central office will issue the one-time lump sum payment to the eligible Medically Needy individuals early next year.

AUTOMATIC UPDATE AND MASS CHANGE ON FLORIDA

An automatic update of Social Security and SSI benefits will be completed on FLORIDA. The update will affect **cases in open, enrolled, and pending status**. Cases that cannot be updated automatically will be updated by 2.6 percent through a FLORIDA mass change.

Cases that cannot be updated automatically or by the mass change will be printed to an exception report. There may be individuals on the exception report who have had their SSA updated, but due to other income or reasons, they appear on the exception report. The report will be mailed out as soon as possible following the update.

1. The following case situations will not be automatically updated by FLORIDA or by mass change. These cases will be listed on the mass change exception reports, and the specialist must take action through a desk review. The ad hoc reports must be completed by January 31, 2002. Cases on the exception report will consist of the following:
 - Cases with a question mark in the income verification fields.
 - Cases with Supplemental Security Income and any other income (other than Social Security). Eligibility specialists must rerun EDBC(AABC) as appropriate.
 - Fail Reason Code: If, during the mass change, an assistance group comes up with a "fail" condition, run EDBC and authorize as appropriate.
 - System Determined Closure: This situation will occur when EDBC has been previously run, the system determined the assistance group should be closed, but the worker did not close the assistance group on AWAA
 - FIAT: The system cannot run mass change on any assistance group created by FIAT.
 - Maintenance Need Allowance (MNA) Recalculation Required: When there is a community spouse allocation, the Social Security amount will be automatically updated; however, specialists must re-run EDBC. If there are two separate cases (one for the Institutional Care Program individual and one for the community spouse), re-run EDBC and reauthorize the nursing home case first.
 - Time-limited Assistance Groups: These cases will have the Cost of Living Adjustment applied but will not be updated, generate an alert, or appear on an exception report. This includes Medically Needy assistance groups where the enrollment period will end by 12/31/01.

2002 Cost of Living Adjustment Increases

Page 7

2. All FLORIDA cases with Social Security and/or Supplemental Security Income will have the amounts updated but not all cases will have the budgets recalculated. Some cases will require a manual desk review as follows:

IF CASE HAS...	THEN...	AND A <u>DESK REVIEW</u> IS...
SSI only	FLORIDA calculates	not required
SSI /Social Security only	FLORIDA calculates	not required
SSI and other income	appears on exception report	REQUIRED
SSI/Social Security/ and other income	appears on exception report	REQUIRED
Social Security and other income	FLORIDA calculates	not required

3. Veterans benefits, Railroad Retirement and Civil Service Annuity benefits are not automatically updated. Refer to Attachment 3 for instructions for these cases. Ad hoc reports are attached.

Attachments

Attachments 1, 2, and 3: Refer to attachments for detailed instructions on working FLORIDA and non-FLORIDA cases.

Attachment 4: Cost of Living Adjustment Chart for Social Security and SSI income. This chart contains the 2001 income amounts with the corresponding new benefit amount for 2002. Use this chart to determine the client's January 2002 income, when needed for manual budgeting for desk reviews.

Attachment 5: Updated conversion chart on FLORIDA, TSCA, for Protected Medicaid cases.

Attachment 6: Eligibility chart containing the new income levels for each program.

Attachment 7 Eligibility chart containing new income standards for the OSS program.

We will send an electronic copy of the ad hoc reports for cases with Veterans Administration benefits, Civil Service Annuity,

2002 Cost of Living Adjustment Increases

Page 8

We will send an electronic copy of the **ad hoc reports** for cases with Veterans Administration benefits, Civil Service Annuity, and/or Railroad Retirement income. If you are unable to access the report, please contact us. Manual revisions to reflect these changes will be completed as soon as possible.

If there are any questions about these instructions, please have district program office staff contact Debra Peterson at SUNCOM 291-6962 or Victoria Ellis at SUNCOM 291-2275.

Attachments

Copy to: Agency for Health Care Administration (Strowd)
Department of Elder Affairs (Engle)
Appeals (Pritchard)
Quality Control (Pearce)
Technology (Brock, Poirier, Donovan, Fraser, Hudgens
Brennan, McGregor, Ransdell)
Program Policy (Ginn, Knapp, Manke, Mitchell,
Raichelson)
OSET (Swindell)
Office of General Counsel (Minnis, Chavers)
Florida Legal Services (Huddleston)
Elder Law Section (Colman)

2002 Cost of Living Adjustment Increases

Attachment 1

FLORIDA Cases with Social Security Income

Programs	Action
MEDS-AD Qualified Medicare Beneficiaries WORKING DISABLED Hospice HOME AND COMMUNITY BASED SERVICES Protected Medicaid Medically Needy (enrolled and eligible) Institutional Care Program-- individuals	<p>A desk review is <u>not</u> necessary.</p> <p><u>For Authorized cases:</u> FLORIDA will recalculate the Social Security benefit amounts and rerun EDBC.</p> <ul style="list-style-type: none"> • If client remains eligible: FLORIDA sends notices • If client is ineligible, FLORIDA takes no action and lists case on exception report with message "Fail Reason Code". The specialist must rerun EDBC (AABC) and take appropriate action. <p>(Exception: Staff must not take action to close an "ineligible" case based on interim Federal Poverty Level figures until the official 2002 Federal Poverty Level figures are released in the Spring 2002.)</p> <p><u>For Unauthorized cases:</u> FLORIDA will update the Social Security benefit amounts. The specialist must rerun EDBC (AABC) and authorize as appropriate.</p>
Institutional Care Program - with a Community Spouse	<p><u>A desk review is necessary.</u></p> <p>FLORIDA will update the Social Security benefit amounts. You will receive an exception report message "MNA Re-Calc Required". The specialist must rerun EDBC (AABC) and reauthorize.</p> <p>FLORIDA will notify the client, if applicable. If two separate cases, the institutional case must be handled first.*</p> <p>For institutional care cases with \$90 Veterans Administration payment, no action is necessary.</p>

*These cases will appear on separate reports depending on caseload assignment.

2002 Cost of Living Adjustment Increases

Attachment 2

FLORIDA Cases with Veterans Administration, Civil Service Annuity, and/or Railroad Retirement Income

Program	Action
ALL	<p><u>A desk review is necessary.</u> A list of all cases with Veterans Administration, Railroad Retirement, and/or Civil Service Annuity income is attached (including authorized and pending cases).</p> <p>Verify the new benefit amount with Veterans Administration, Railroad Retirement Board, and/or Office of Personnel Management and take the following action:</p> <p><u>For both active and pending cases:</u> Enter an END MM/CCYY date for the old amount (for most COLA cases this date will be 12/2001). Put "N" in INC TERM field. Press enter. The screen will come up with your new entries. Put AFMI in TRAN field and press ENTER. The screen comes up again. Enter the new begin MM/CCYY for the new income amount (usually 01/2002 for the new COLA). Delete the END MM/CCYY and the "N" under INC TERM. Enter the new income and hit ENTER. Run EDBC (AABC TRAN). This is the correct way to layer income on AFMI.</p> <p><u>For Unauthorized cases:</u> Enter an end date for the old amount. Rerun EDBC (AABC) and authorize with the old amount. Suppress the notice. Enter the new amount (with the appropriate begin date), rerun EDBC (AABC) and authorize, as appropriate. FLORIDA will notify the client, if applicable.</p>

2002 Cost of Living Adjustment Increases

Attachment 3

NON-FLORIDA Cases

(HCDA, Special Low-Income Medicare Beneficiaries and QI-1 Beneficiaries) With Social Security, Supplemental Security Income, Veterans Administration, Civil Service Annuity and/or Railroad Retirement Income

Program	Action
Home Care for the Disabled	A desk review is <u>not</u> necessary. At the next re-determination, verify the increase and notify the Adult Services counselor of the amount.
OSS	<p>A desk review is <u>necessary for all non-SSI direct assistance OSS cases in which the OSS payment is reduced due to the Cost of Living Adjustment.</u> You must complete a desk review by March 2002.</p> <p>Take the following action:</p> <ul style="list-style-type: none">• Use the new OSS cost of care for all budgets effective January 2002.• Complete the budget and appropriate SPS change for the January 2002 change.• Send a notice of adverse case action to the client (10 day adverse action notice) to advise him that his supplement is being reduced. <p>IF the client's income is over the income limit, cancel the case, and provide adverse action notices giving appropriate notice.</p> <p>A warrant message regarding the change in the cost to care will be sent to all OSS recipients with their December and January warrants.</p>

2002 Cost of Living Adjustment Increases

Attachment 3 continued.

SLMB/QI-1	<p>A desk review is <u>not necessary</u>. Take no action on active SLMB AND QI-1 cases until it is known what effect the actual federal poverty level figures will have on the cases. Further instruction will be provided at a later date for these cases.</p>
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**SSI AND SSA BENEFIT ADJUSTMENT CHART
EFFECTIVE JANUARY 2002**

SSI	Jan-00	Jan-01	Jan-02
Individual	512	531	545
Couple	769	796	817

Current SSA Amount	With 2.6% Increase	Current SSA Amount	With 2.6% Increase	Current SSA Amount	With 2.6% Increase	Current SSA Amount	With 2.6% Increase
350	359	400	410	450	462	500	513
351	360	401	411	451	463	501	514
352	361	402	412	452	464	502	515
353	362	403	413	453	465	503	516
354	363	404	415	454	466	504	517
355	364	405	416	455	467	505	518
356	365	406	417	456	468	506	519
357	366	407	418	457	469	507	520
358	367	408	419	458	470	508	521
359	368	409	420	459	471	509	522
360	369	410	421	460	472	510	523
361	370	411	422	461	473	511	524
362	371	412	423	462	474	512	525
363	372	413	424	463	475	513	526
364	373	414	425	464	476	514	527
365	374	415	426	465	477	515	528
366	376	416	427	466	478	516	529
367	377	417	428	467	479	517	530
368	378	418	429	468	480	518	531
369	379	419	430	469	481	519	532
370	380	420	431	470	482	520	534
371	381	421	432	471	483	521	535
372	382	422	433	472	484	522	536
373	383	423	434	473	485	523	537
374	384	424	435	474	486	524	538
375	385	425	436	475	487	525	539
376	386	426	437	476	488	526	540
377	387	427	438	477	489	527	541
378	388	428	439	478	490	528	542
379	389	429	440	479	491	529	543
380	390	430	441	480	492	530	544
381	391	431	442	481	494	531	545
382	392	432	443	482	495	532	546
383	393	433	444	483	496	533	547
384	394	434	445	484	497	534	548
385	395	435	446	485	498	535	549
386	396	436	447	486	499	536	550
387	397	437	448	487	500	537	551
388	398	438	449	488	501	538	552
389	399	439	450	489	502	539	553
390	400	440	451	490	503	540	554
391	401	441	452	491	504	541	555
392	402	442	453	492	505	542	556
393	403	443	455	493	506	543	557
394	404	444	456	494	507	544	558
395	405	445	457	495	508	545	559
396	406	446	458	496	509	546	560
397	407	447	459	497	510	547	561
398	408	448	460	498	511	548	562
399	409	449	461	499	512	549	563

**SSI AND SSA BENEFIT ADJUSTMENT CHART
EFFECTIVE JANUARY 2002**

SSI	Jan-00	Jan-01	Jan-02
Individual	512	531	545
Couple	769	796	817

Current SSA Amount	With 2.6% Increase	Current SSA Amount	With 2.6% Increase	Current SSA Amount	With 2.6% Increase	Current SSA Amount	With 2.6% Increase
550	564	600	616	650	667	700	718
551	565	601	617	651	668	701	719
552	566	602	618	652	669	702	720
553	567	603	619	653	670	703	721
554	568	604	620	654	671	704	722
555	569	605	621	655	672	705	723
556	570	606	622	656	673	706	724
557	571	607	623	657	674	707	725
558	573	608	624	658	675	708	726
559	574	609	625	659	676	709	727
560	575	610	626	660	677	710	728
561	576	611	627	661	678	711	729
562	577	612	628	662	679	712	731
563	578	613	629	663	680	713	732
564	579	614	630	664	681	714	733
565	580	615	631	665	682	715	734
566	581	616	632	666	683	716	735
567	582	617	633	667	684	717	736
568	583	618	634	668	685	718	737
569	584	619	635	669	686	719	738
570	585	620	636	670	687	720	739
571	586	621	637	671	688	721	740
572	587	622	638	672	689	722	741
573	588	623	639	673	690	723	742
574	589	624	640	674	692	724	743
575	590	625	641	675	693	725	744
576	591	626	642	676	694	726	745
577	592	627	643	677	695	727	746
578	593	628	644	678	696	728	747
579	594	629	645	679	697	729	748
580	595	630	646	680	698	730	749
581	596	631	647	681	699	731	750
582	597	632	648	682	700	732	751
583	598	633	649	683	701	733	752
584	599	634	650	684	702	734	753
585	600	635	652	685	703	735	754
586	601	636	653	686	704	736	755
587	602	637	654	687	705	737	756
588	603	638	655	688	706	738	757
589	604	639	656	689	707	739	758
590	605	640	657	690	708	740	759
591	606	641	658	691	709	741	760
592	607	642	659	692	710	742	761
593	608	643	660	693	711	743	762
594	609	644	661	694	712	744	763
595	610	645	662	695	713	745	764
596	611	646	663	696	714	746	765
597	613	647	664	697	715	747	766
598	614	648	665	698	716	748	767
599	615	649	666	699	717	749	768

**SSI AND SSA BENEFIT ADJUSTMENT CHART
EFFECTIVE JANUARY 2002**

SSI	Jan-00	Jan-01	Jan-02
Individual	512	531	545
Couple	769	796	817

Current SSA Amount	With 2.6% Increase	Current SSA Amount	With 2.6% Increase	Current SSA Amount	With 2.6% Increase	Current SSA Amount	With 2.6% Increase
750	770	800	821	850	872	900	923
751	771	801	822	851	873	901	924
752	772	802	823	852	874	902	925
753	773	803	824	853	875	903	926
754	774	804	825	854	876	904	928
755	775	805	826	855	877	905	929
756	776	806	827	856	878	906	930
757	777	807	828	857	879	907	931
758	778	808	829	858	880	908	932
759	779	809	830	859	881	909	933
760	780	810	831	860	882	910	934
761	781	811	832	861	883	911	935
762	782	812	833	862	884	912	936
763	783	813	834	863	885	913	937
764	784	814	835	864	886	914	938
765	785	815	836	865	887	915	939
766	786	816	837	866	889	916	940
767	787	817	838	867	890	917	941
768	788	818	839	868	891	918	942
769	789	819	840	869	892	919	943
770	790	820	841	870	893	920	944
771	791	821	842	871	894	921	945
772	792	822	843	872	895	922	946
773	793	823	844	873	896	923	947
774	794	824	845	874	897	924	948
775	795	825	846	875	898	925	949
776	796	826	847	876	899	926	950
777	797	827	849	877	900	927	951
778	798	828	850	878	901	928	952
779	799	829	851	879	902	929	953
780	800	830	852	880	903	930	954
781	801	831	853	881	904	931	955
782	802	832	854	882	905	932	956
783	803	833	855	883	906	933	957
784	804	834	856	884	907	934	958
785	805	835	857	885	908	935	959
786	806	836	858	886	909	936	960
787	807	837	859	887	910	937	961
788	808	838	860	888	911	938	962
789	810	839	861	889	912	939	963
790	811	840	862	890	913	940	964
791	812	841	863	891	914	941	965
792	813	842	864	892	915	942	966
793	814	843	865	893	916	943	968
794	815	844	866	894	917	944	969
795	816	845	867	895	918	945	970
796	817	846	868	896	919	946	971
797	818	847	869	897	920	947	972
798	819	848	870	898	921	948	973
799	820	849	871	899	922	949	974

TITLE II COST OF LIVING INCREASES

UNDER PUBLIC LAW 94-566

(Protected Medicaid Conversion Factors)

Month of Cola	Amount of Cola	Conversion Factor
Jan-02	2.6%	0.975
Jan-01	3.5%	0.942
Jan-00	2.5%	0.919
Jan-99	1.3%	0.907
Jan-98	2.1%	0.888
Jan-97	2.9%	0.863
Jan-96	2.6%	0.841
Jan-95	2.8%	0.818
Jan-94	2.6%	0.798
Jan-93	3.0%	0.774
Jan-92	3.7%	0.747
Jan-91	5.4%	0.709
Jan-90	4.7%	0.677
Jan-89	4.0%	0.651
Jan-88	4.2%	0.625
Jan-87	1.3%	0.617
Jan-86	3.1%	0.598
Jan-85	3.5%	0.578
Jan-84	3.5%	0.558
Jul-82	7.4%	0.520
Jul-81	11.2%	0.467
Jul-80	14.3%	0.409
Jul-79	9.9%	0.372
Jul-78	6.5%	0.349
Jul-77	5.9%	0.330

ELIGIBILITY STANDARDS FOR SSI RELATED PROGRAMS

January 2002

COVERAGE GROUP	INCOME LIMIT	ASSET LIMIT
ICP/HCBS/HOSPICE Individual (3 X FBR)	\$ 1,635	\$ 2,000
ICP/HCBS/HOSPICE Couple	\$ 3,270	\$ 3,000
MEDS-AD/ICP-MEDS/Individual (90% FPL)	\$ 662	\$ 5,000
MEDS-AD/ICP-MEDS/Couple	\$ 894	\$ 6,000
QMB Individual (100% FPL)	\$ 735	\$ 5,000
QMB Couple	\$ 994	\$ 6,000
SLMB Individual (120% FPL)	\$ 882	\$ 5,000
SLMB Couple	\$ 1,192	\$ 6,000
QI1 Individual (120-135% FPL) *	\$ 993	\$ 5,000
QI1 Couple	\$ 1,341	\$ 6,000
QI2 Individual (135-175% FPL) *	\$ 1,286	\$ 5,000
QI2 Couple	\$ 1,739	\$ 6,000
Working Disabled Individual (2 X FPL)	\$ 1,470	\$ 5,000
Working Disabled Couple	\$ 1,986	\$ 6,000
Protected Medicaid	See A-11 and policy in Chapter 2000	

<u>Personal Needs Allowance</u>	
ICP/ICP-MEDS/HOSPICE (Institution)	\$ 35
HOSPICE (Community) 100% FPL	\$ 735
<u>Spousal Impoverishment</u>	
Minimum Monthly Maintenance Income Allowance (MMMIA)**	\$ 1,452
Excess Shelter Standard**	\$ 436
Maximum Community Spouse Income Allowance (MMMIA plus excess shelter allowance cannot exceed this figure)	\$ 2,232
Community Spouse Asset Allocation Standard	\$ 89,280

FBR = Supplemental Security Income Federal Benefit Rate

FPL = Federal Poverty Level

* This is not an open, entitlement program

** These standards change effective July 1 of each year in accordance with federal law found in Section 1924(d) of the Social Security Act.

2002 Cost of Living Adjustment Increases

Attachment 7

The following new OSS standards effective January 1, 2002 have been calculated based on the new SSI federal benefit rate:

OSS REDESIGN	OLD STANDARD	NEW STANDARD
Income Standard	\$609.40	\$623.40
Provider Rate	\$555.40	\$569.40
PNA	\$54	\$54
Max Payment	\$78.40	\$78.40
TRADITIONAL OSS	OLD STANDARD	NEW STANDARD
Income Standard	\$716	\$730
Provider Rate	\$716	\$730
PNA	\$54	\$54
Max Payment	\$239	\$239

OSS REDESIGN STANDARDS APPLY TO THE FOLLOWING RESIDENTS:

ALFs (code "A") effective 9/01/01
RTFs (code "U") as enrolled as ACS providers
AFCH (code "F") effective 1/01/02

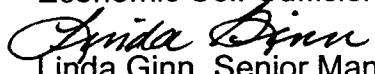
TRADITIONAL OSS STANDARDS APPLY TO THE FOLLOWING RESIDENTS:

GAP (code "G")
RTFS (code "M")
OLD AABD PRE 1974 ("H")

MEMORANDUM

DATE: September 28, 2001

TO: Gladys Smith, SHSPS, District 9
Economic Self-Sufficiency Services

FROM: 
Linda Ginn, Senior Management Analyst Supervisor, Health Care Access

SUBJECT: Policy Clarification, Income Trust Disbursements

This memorandum is in response to the request for policy clarification sent by e:mail on 7/12/01. Your information and questions are stated below.

Background: This is a general question asked as many of the recipients of the Long-term Care Community Diversion Pilot Program have qualified income trusts. The individuals at home have a personal needs allowance of \$1590 that will increase to \$1593 on August 1. The countable incomes for many recipients are several hundred dollars above the HCBS income standard and are deposited into the income trust. Passage 1805.15.20 clearly states when payments are made from the trust for medical costs for the individual at fair market value, the individual is considered to have received fair compensation. It is my understanding when payments are paid directly from the trust to the third parties, the disbursement is excluded as income to the individual.

Statement of the Question: Are disbursements from the qualified income trust that exceed the personal needs allowance, patient responsibility and community spouse diversion limited to medical care, including health insurance only? If no, what other types of expenses are allowable?

Central Office Response: In accordance with policy set forth in the HCFA State Medicaid Manual, part 3, section 3259.7 C, the state does not require that payments be made for any specific purpose other than for the benefit of the individual or the individual's spouse.

Each deposit into an income trust is a potential transfer of income. Income not used for the benefit of the client or their spouse in the month it is deposited is considered a transfer of income without fair compensation; however, for a penalty to apply, the total uncompensated value must be at least \$3300 in any month. Payment of the patient responsibility, health insurance premiums, and spouse's shelter expenses are just some examples of fair compensation because they are for the benefit of the client or their spouse.

Income Trust Disbursements

Page 2

Payments made from the trust to a third party do not count as income to the client. However, all payments made from the trust to the individual or their legal representative count as income in the month paid. Furthermore, if payment of the personal needs allowance is directed from the trust it is counted as income to the client. Such disbursements to the individual require the worker to adjust the FLORIDA QTIT entry.

If you have any questions regarding this response, please call Christine Frier at SUNCOM 210-3477 or (850) 410-3477.

cc: Program Policy (Knapp, Bailey, Manke, Mitchell, Raichelson)
Quality Assurance (Myers)
Technology and Systems (Brock)
Appeal Hearings (Pritchard)
Florida Elder Law Section (Arlee Colman)

**LAW OFFICE OF
STEPHANIE L. SCHNEIDER, P.A.
1860 N. PINE ISLAND ROAD, SUITE 111
PLANTATION, FLORIDA 33322
CERTIFIED ELDER LAW ATTORNEY
The Florida Bar Elder Law Section**

TELEPHONE (954) 382-1997

FACSIMILE (954) 382-9997

MEMORANDUM

TO: Arlee Coleman, Esq.
Fax No.: 850-561-5825
DATE: September 26, 2001
RE: LONG TERM CARE INSURANCE

Attached is recent response from Acting Bureau Chief of the Department of Children and Families to my inquiry concerning treatment of medical insurance payments, including long term care insurance payments.



Jeb Bush
Governor

Kathleen A. Kearney
Secretary

September 20, 2001

Stephanie L. Schneider, P.A.
1860 N. Pine Island Road, Suite 111
Plantation, FL 33322

RECEIVED
SEP 24 2001

Dear Ms. Schneider:

John Slye forwarded a copy of your letter dated August 13 to the Policy Bureau in Economic Self-Sufficiency Services to address your questions about treatment of certain types of medical insurance payments.

The first scenario you described involves an indemnity policy that pays a set amount to the individual per day regardless of the nursing home charges. You asked if this type payment is considered income. You also asked when the resulting patient responsibility exceeds the Medicaid reimbursement rate, if the individual would still need an income trust or would the applicant simply be denied Institutional Care Program (ICP) benefits.

Medicaid policy considers this type of payment as income to the recipient unless it is specifically restricted to payment of the nursing home bill. Cash from any insurance policy which pays a flat rate benefit to the recipient without regard to the actual charges or expenses incurred is income.

Patient responsibility is not a factor of eligibility. It is computed only after the individual is determined eligible for the Institutional Care Program. In order to be eligible under the income factor, when gross countable income exceeds the limit, an income trust must be established and adequately funded. The patient responsibility is essentially the maximum monthly amount the individual is expected to pay for the cost of care in a nursing home. The facility may not charge the patient any amount over and above the per diem Medicaid reimbursement rate for the cost of care even if the patient responsibility is higher.

The second scenario you described involves long-term care insurance that covers actual expenses incurred. You wanted to know if the policy benefits were treated as a health benefit as opposed to a source of income. Medical payments restricted to payment of actual medical expenses are not counted as income. Any cash provided by

1317 Winewood Boulevard • Tallahassee, Florida 32399-0700

*The Department of Children and Families is committed to working in partnership
with local communities to ensure safety, well-being and self-sufficiency for the people we serve.*

Treatment of Medical Insurance Payments**Page 2**

a nongovernmental organization (including medical liability insurers) for medical or social services already received by the individual is not considered as income.

However, if the payment is in excess of the charges, we do count the excess as income. Payments restricted to future purchases of medical and or social services are also excluded as income.

Specific eligibility policy may be found in our integrated policy manual, HRSM 165-22, passages 1850.10.06, *Medical Insurance Payments*, and 2605.35.05, *Patient Responsibility Computation*. Please refer to 42 CFR 435.622 for a reference to disregarding income in the Medicaid eligibility process that would be disregarded in determining eligibility for Supplemental Security Income (SSI), 20 CFR 416.1103 for what is not considered income in the SSI program, and 42 CFR 435.725 for post eligibility treatment of income for an institutionalized individual.

If you have any questions regarding this response, please call Christine Frier of my staff at (850) 410-3477.

Sincerely,



Fred Knapp
Acting Bureau Chief
Public Assistance Policy

cc: Office of General Counsel (Herschel Minnis)



Jeb Bush
Governor

Kathleen A. Kearney
Secretary

May 3, 2001

Stephanie L. Schneider, P.A.
1860 N. Pine Island Road, Suite 111
Plantation, Florida
33322

RE: Qualified Income Trusts

Dear Ms. Schneider:

I received your letter of April 24, 2001, and have reviewed its contents. I agree with the contents of the second paragraph of your letter.

I trust this is responsive to your request.

Sincerely,

John S. Slye
Deputy General Counsel

Cc: Lynn Raichelson, Access to Health Care Unit, Economic
Self Sufficiency

RECEIVED
MAY 09 2001

1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

The Department of Children and Families is committed to working in partnership with local communities to ensure safety, well-being and self-sufficiency for the people we serve.

**LAW OFFICE OF
STEPHANIE L. SCHNEIDER, P.A.
1860 N. PINE ISLAND ROAD, SUITE 111
PLANTATION, FLORIDA 33322**

CERTIFIED ELDER LAW ATTORNEY
The Florida Bar Elder Law Section

TELEPHONE (954) 382-1997

FACSIMILE (954) 382-9997

April 24, 2001

VIA U.S. MAIL AND FAXED TRANSMISSION 1-850-922-3947

John S. Slye, Esq., Deputy General Counsel
Department of Children and Families
1317 Winewood Blvd.
Tallahassee, FL 32399

Re: Qualified Income Trusts

Dear Mr. Slye:

It was a pleasure speaking with you today. Thank you for providing me with copies of Ms. Langford's letter of January 21, 1997 and Mr. Crayton's letter of April 10, 1996 concerning Medicaid income trusts.

After reviewing the letters as well as Florida Statute Section 709.08(7)(b)5, it appears that a Durable Power of Attorney executed prior to October 1, 1995 is not required to contain either general language regarding the execution of a trust nor, specific language regarding the execution of a Qualified Income Trust.

I would appreciate you advising me in writing whether you agree with my interpretation as I wish to have legal support upon which to rely for clients whose Durable Powers of Attorney pre-

John S. Slye, Esq.
April 24, 2001
Page 2

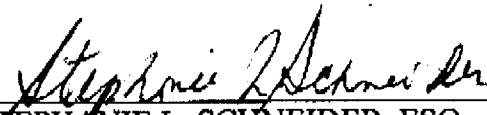
date October 1, 1995 and do not contain general language to create a trust. In particular, I have a client who needs to establish an income trust in the month of May, 2001, and to that end, we would be most appreciative of receiving an expedited response from you (initially by fax).

Thank you for your courtesies and assistance herein.

Yours very truly,

STEPHANIE L. SCHNEIDER, P.A.

kr


STEPHANIE L. SCHNEIDER, ESQ.

F:\CLIENTS\Kathy\LeToDLC 042401.wpd

APR-23-2001 10:51

DEP CHILDREN AND FAMILIES

850 921 1809 P.03



DEPARTMENT OF HEALTH & HUMAN SERVICES

Region IV
Health Care Financing
Administration

Re: Mr. FL Minutepolicy

101 Marietta Street
Suite 601
Atlanta, Georgia 30333-2711

January 21, 1997

Mr. Gary Crayton
Director of Medicaid
State of Florida
Agency For Health Care Administration
Medicaid Administration
P.O. Box 13000
Tallahassee, Florida 32317-3000

Form 7871	Date 1/21/97
From Linda R. Kuchler	To Gary Crayton
Phone 404-331-0064	Fax 404-331-7064
404-921-1809	

Dear Mr. Crayton:

This is in response to your letter requesting our advice concerning your interpretation of newly enacted State legislation. You questioned if the legislation changing durable power of attorney requirements for trusts is consistent with Federal law concerning Medicaid Income (also known as Miller) trusts. I referred your questions to our Central Office and below is our response to your request.

We see no inconsistency with Federal statute concerning Medicaid Income trusts in the State's interpretation of the statutory provisions described in your letter. As we have noted from time to time to fall under the OBRA 93 trust provisions a trust must be a valid trust under State law. The Statutory provisions you are interpreting deal with treatment of trusts under State law, and in no way impact on the Medicaid aspects of treatment of such trusts. As such, interpretation of the effect of the new statutory provisions on the validity under State law of trusts which happen to meet the requirements of Medicaid income trusts is strictly within the purview of the State.

I hope this information will be of assistance you. If you require further assistance, please contact me at 404-331-0064.

Sincerely,

Carol P. Langford
Health Insurance Specialist
Division of Medicaid

APR-23-2001 10:51

DEP. CHILDREN AND FAMILIES

850 921 1809

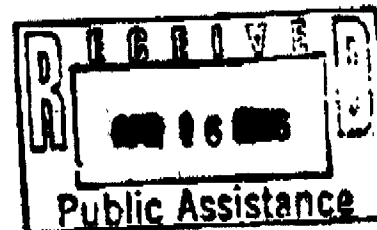
P.04



STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

April 10, 1996

Mr. Eugene Grasser, Associate Regional Administrator
Health Care Financing Administration
Division of Medicaid
101 Marietta Tower, Suite 702
Atlanta, Georgia 30323



Re: Effect of Changes to Florida Statutes on
Requirements for Execution of Medicaid Income Trusts

Dear Mr. Grasser:

The 1995 Florida Legislature added a new Section 737.111 to Chapter 737, Florida Statutes (Trusts), and significantly changed Section 709.08, F.S. (Durable Power of Attorney). Both changes may affect Medicaid income trusts executed in Florida after October 1, 1995.

Newly created §737.111 (copy enclosed), provides that "testamentary aspects" (defined as provisions of a trust that dispose of the trust property upon the death of the settlor to a party other than the settlor's estate) of a trust (defined in §731.201(33)) are invalid unless the trust is executed with the formalities of a will. However, "trusts for the primary purpose of paying debts" are excluded from the definition of trusts in §731.201(33).

If Medicaid income trusts are classified as "trusts for the primary purpose of paying debts" they are excluded from the provisions of §737.111 requiring the execution of trusts with the formalities of a will. Since the purpose of a Medicaid income trust is to enable its settlor to qualify for Medicaid benefits and to repay the State with any funds remaining upon the death of the settlor, it is reasonable to classify them as "trusts for the primary purpose of paying debts."

The change to §709.08(7)(B)(5), F.S. (copy enclosed) prohibits creation or modification of any document effective at the principal's death unless expressly authorized to do so in the power of attorney. This should apply to Medicaid income trusts because they contain provisions which are "effective at the principal's death." Subsection (12) provides that the changes only affect powers of attorney executed after October 1, 1995.

MEDICAID ADMINISTRATION
P.O. BOX 13000 • TALLAHASSEE, FLORIDA 32317-3000

LANTON OGLE, DIRECTOR

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DEP CHILDREN AND FAMILIES

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Mr. Eugene Grasser
Page Two

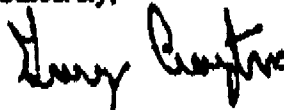
The Agency for Health Care Administration and the Department of Health and Rehabilitative Services take the following positions regarding the effect of the above described statutory changes on the execution of Medicaid income trusts:

1. Because they are "trusts for the primary purpose of paying debts", Medicaid income trusts are excluded from the definition of trusts which must be executed with the formalities of a will.
2. Because Medicaid income trusts contain provisions "effective at the principal's death", if an attorney-in-fact executes the trust using a power of attorney dated after 10/1/95, the power of attorney must include the specific authority required by §709.08(7)(b)(5). If the power of attorney was executed prior to 10/1/95, then it need not include that specific authority.

We believe that the above interpretations are consistent with federal law regarding these matters and will recommend that review of Medicaid income trusts in Florida be based upon same unless you notify me within thirty (30) days that you find the above to be contrary to federal law or rules.


Thank you for your assistance in this matter.

Sincerely,



Gary Crayton
Director of Medicaid

GC:bh
Enclosure

cc:  Martha Crabb, HRS Economic Services
Emily Moore, DOEA General Counsel
John Sly, HRS General Counsel
Roger Maas, AHCA General Counsel

TOTAL P.05



Jeb Bush
Governor

Kathleen A. Kearney
Secretary

April 17, 2001

Law Office of Stephanie L. Schneider, P.A.
1860 N. Pine Island Road, Suite 111
Plantation, Florida
33322

RE: Your letter of April 12 - Qualified Income Trusts

Dear Ms. Schneider:

I received your letter of April 12, 2001, asking that we respond to your question of whether a power of attorney must contain specific authority for the person receiving the power to execute a Qualified Income Trust for an individual.

Subsequent to the issuance of the March 20, 1996, memo referred to in your letter, a decision was made not to require the power of attorney to specify that the individual receiving the power of attorney had the authority to specifically execute an income trust in order for such execution to be valid. I understand we are in the process of changing our manual Appendix to reflect this change.

I hope this information is of assistance to you.

Sincerely,

John S. Slye
Deputy General Counsel

Cc: Lynn Raichelson - Ass't Director
Developmental Services

1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

The Department of Children and Families is committed to working in partnership with local communities to ensure safety, well-being and self-sufficiency for the people we serve.

**LAW OFFICE OF
STEPHANIE L. SCHNEIDER, P.A.
1860 N. PINE ISLAND ROAD, SUITE 111
PLANTATION, FLORIDA 33322**

CERTIFIED ELDER LAW ATTORNEY
The Florida Bar Elder Law Section

TELEPHONE (954) 382-1997

FACSIMILE (954) 382-9997

April 12, 2001

VIA U.S. MAIL AND FAXED TRANSMISSION

1-850-922-3947

John S. Slye, Esq.

Deputy General Counsel

Department of Children and Families

1317 Winewood Blvd.

Tallahassee, FL 32399

Re: Qualified Income Trusts

Dear Mr. Slye:

I am writing to you in an effort to clarify a question regarding the execution of a Qualified Income Trust by an attorney in fact. Pursuant to Department of Children and Families memo of March 20, 1996 states that in order for a person with a power of attorney executed on or after October 1, 1995 to execute a Qualified Income Trust for an individual, the power of attorney must provide the specific authority to do so, pursuant to Florida Statute Section 709.08.

The memo goes on to state that this provision will be applied to trusts currently under review (October, 1995) and that no action is needed on trusts which have already been approved.

We are representing an Attorney In Fact who holds a Durable Power of Attorney executed prior to October 1, 1995 that does not have general language regarding the execution of a trust and does not have specific language regarding the execution of a Qualified Income Trust.

Will the Department of Children and Families approve a Qualified Income Trust executed under this Durable Power of Attorney? Have any memos been generated to that effect? If so, we would appreciate a copy so we may reference it in our trust document. Our client is endeavoring to qualify the nursing home resident for ICP benefits by April 30, 2001. To that end, we would be most appreciative of receive an expedited response from you.

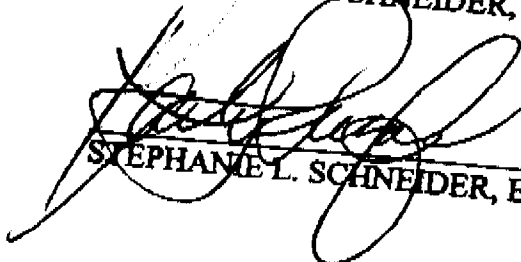
*4/16 - Ltr to Carlyn, per - He is asking if it will be sent
Shelly - 4/20 - Ltr sent to us as well.*

John S. Slye, Esq.
April 12, 2001
Page 2

Thank you for your courtesies and assistance herein.

Yours very truly,

STEPHANIE L. SCHNEIDER, P.A.



STEPHANIE L. SCHNEIDER, ESQ.

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