



May 27, 2021

Department of Children and Families
2415 N. Monroe St., Ste. 400
Tallahassee, FL 32303-4190
(850) 487-1111 (telephone)
(850) 922-2993 (facsimile)

Submitted via email to Jodi.Abramowitz@myflfamilies.com

Re: Proposed Changes to Fla. Admin. Code R. 65A-1.712

Dear Ms. Abramowitz:

The Florida Health Justice Project is a civil legal aid organization that recognizes that access to quality and affordable healthcare is a human right. We engage in comprehensive advocacy to expand healthcare access and promote health equity for vulnerable Floridians.

We write to provide comment regarding the proposed changes to Fla. Admin. Code R. 65A-1.712 proposed by the Department of Children and Families (“DCF”). We have several concerns about the draft rule.

- Under the proposed language of the rule, subpart (3)(a) requires that “the form CF-ES 2613 must be signed by the individual, their spouse, parent, power of attorney or legal guardian, and a copy of the legal document giving such authority must be provided in accordance with 20 C.F.R. §416.320.”

Importantly, 20 C.F.R. §416.320 governs authority to sign applications for Supplemental Security Income (“SSI”); it does not govern Medicaid applications. Instead, 42 C.F.R. §435.923 describes the requirements for who may act as an authorized representative in a Medicaid application.

This Medicaid regulation requires that the agency accept designations of authorized representatives through multiple modalities including, telephonically recorded, signatures transmitted electronically, and signatures provided through the mail.

Additionally, 42 C.F.R. §435.923 requires that “authority for an individual or entity to act on behalf of an applicant or beneficiary accorded under state law, *including but not limited to*, a court order establishing legal guardianship or power of attorney, must be treated as a written designation by the applicant or beneficiary of authorized representation. (emphasis added).



Under Florida state law certain individuals are statutorily recognized as “healthcare proxies” who can act on behalf of individuals who have a developmental disability or are incapacitated. Fla. Stat. §765.401. Healthcare proxies are granted specific healthcare decision-making authority including the authority to apply “for private, public, government, or veterans’ benefits to defray the cost of healthcare.” Fla. Stat. §765.101. This law does not require an express written designation of healthcare decision-making authority but, instead, the proxy is automatically authorized to make healthcare decisions on behalf of the developmentally disabled or incapacitated person. *Id.* Under 42 C.F.R. §435.923, this authority accorded under state law must be treated as a designation of an authorized representative.

Unlike 20 C.F.R. §416.320, there is no requirement in 42 C.F.R. §435.923 that an authorized representative provide evidence of their authority via court appointment or by submitting a statement describing the relationship and the extent to which the person is responsible for the care of the claimant.

Since 42 C.F.R. §435.923 more broadly defines who can act as an authorized representative and specifically applies to Medicaid applications (unlike 20 C.F.R. §416.320 which applies to SSI applications), DCF should reference 42 C.F.R. §435.923 in subpart (3)(a) of the rule rather than the regulation that concerns applications for SSI. This, in turn, will incorporate the decision-making authority granted “healthcare proxies” under Fla. Stat. §765.401.

- Under the proposed language for Fla. Admin. Code R. 65A-1.712(3) (governing Asset Verification), it is unclear from the draft rule and from the responses to our questions by DCF during its May 20th rule hearing, how DCF intends to use the Asset Verification System (AVS). Here are the questions that we asked during the hearing that DCF stated they would take under advisement but otherwise did not respond to substantively:
 - 1) It appears that the authorization for DCF to access financial records through the AVS data exchange will be incorporated into the web-based ACCESS application -- is this correct? Has it already been incorporated?
 - 2) Will the electronic authorization for DCF to access financial records also be incorporated into applications for recertification or is that unnecessary because the authorization will have been given at the initial application?
 - 3) Does DCF have any intention to mail out form CF-ES 2613 to existing Medicaid recipients or new applicants where the applicant or recertificant has applied/recertified online for Medicaid?



- 4) Describe the process of sending a Financial Information Release form CF-ES 2613 to an applicant? Will the paper form CF-ES 2613 be sent during the ex parte review process for those who lose SSI benefits? Please describe that process.

- 5) Medicaid regulations, and specifically 42 CFR §§ 435.948 & .949 require that, where DCF chooses to verify financial information for Medicaid applications electronically, DCF cannot also make a Medicaid application approval contingent on the applicant providing the same information via paper documentation. How will DCF ensure that applicants whose assets are verified electronically will also not be asked by the regional offices to verify via paper documentation? Will you be providing training to caseworkers that they cannot deny Medicaid applications where assets are verified electronically even when applicants do not provide that information in response to an Information Letter or Notice of Case Action?

Thank you for considering these comments. We would greatly appreciate the opportunity to discuss these concerns so that we can better understand how the rules will be implemented and whether additional language should be included in rule to prevent misapplication or misunderstanding leading to denials of Medicaid eligibility. In the meantime, if you have further questions about the points we discuss in this letter or the questions we raised during the rule hearing, please do not hesitate to contact us. I can be reached by email at: debriere@floridahealthjustice.org or by phone at: 904-356-8371, x. 333.

With Sincere Appreciation,

/s/Katy DeBriere

Katy DeBriere
Legal Director
Florida Health Justice Project, Inc.