

What we know:

- Overview of what happened with Manual change and immediate application of new policy. Monday we noticed in quarterly updates to Program Policy Manual.
 - Colleagues are getting denials when using a pooled trust for a person over age 64, even for cases pending for months prior
- We have some emails within DCF that refers to a “Circumstances required the initial change...” Directing to follow “transfer of asset procedures” in these matters now.

In March 2020 the FAC was changed and 65A-1.702 which is the section that mentions SNT’s. Wasn’t really a substantive change but basically still says Florida follows the federal law regarding SNT’s

- Last Friday the ELS and AFELA jointly, Filed a notice with DCF general counsel saying we believe this is an unadopted rule and giving 30 days to withdraw or fix the issue or potential attorney fees.
- Also late last week Twyla Sketchley Filed a FOIA request asking for: the Transmittals, all internal communications, amendments to FAC and drafts of any proposed changes regarding the pooled trust issue, and possible changes to spousal refusal and PSCs.
- On Monday The Task Force engaged and retained Geoffrey Smith to advise on administrative law issues and I spoke with him Tuesday morning – Gave him big picture of what Pooled Trusts are and our issues. He is preparing a legal challenge that the change is an unadopted rule under 120.52 and 120.54
- Discussion with DCF Chief of Staff (Molly McKinstry) report Monday after hours –Also – Head of Program Policy – Patti Grogan and several attorneys from General Counsel’s office. Not much came out of that meeting but they were surprised that we told them we have individuals who have received denials based upon this policy and asked for specifics.

We are in discussions with our National Policy people at NAELA and formulating a plan on a national level. Other states have dealt with this and are dealing with this issue.

What we Think:

- DCF was genuinely surprised when we said we are hearing of denials. They did not expect to hear that.
- We expect to receive a formal response from them this morning (was expecting it yesterday).
- We expect there will be a formal transmittal setting out the new policy with an effective date, possibly in the future.

What do I think:

- DCF will proceed with this change and eventually adopt the change properly and with proper notice. That will take some time.
- We will then be arguing that the “transfer” is a fully compensated transfer. There is a Minnesota Supreme Court case from last year: Pfoer v Harpstead. Will need to argue that what the person receives back for the contribution to the Pooled Trust is roughly equal to the contribution. For most this will not be an issue. Almost certainly over income only cases should be fine and having a plan to exhaust the funds within the actuarial life expectancy of the beneficiary should be answer.

What we are doing at GT.

- Continuing to accept new cases for those over age 64.
- We are unable to substantiate any denials being issued based upon this change.
- Agreeing to unwind any applications where you receive a denial due to the Pooled trust.
- Report for each attorney of current clients in our trust with balances.