

Implementation of the Deficit Reduction Act in Florida

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By now we are all familiar with the Deficit Reduction Act (DRA). More than likely you are familiar with Vice President Cheney's Senate tie breaking flight back from the Middle East; the narrow three vote victory in the House; and President Bush signing the DRA into law on February 8, 2006. You have studied the DRA and the changes to Medicaid including changes to the look back period, penalty start date, annuities, and homestead exemption.

The Department of Children and Families is currently in the process of drafting administrative rules that will make implementation of the DRA in Florida a reality. Some portions of the DRA have already been implemented such as the citizenship requirement; however, the more controversial issues have not. This article does not purport to answer questions regarding when the remainder of the DRA will be implemented. In fact, it could be in effect at the time this article goes to print. Rather, this article is intended to increase your understanding of the rulemaking process in Florida by providing a brief overview of the guidelines for developing administrative rules.

Chapter 120, Florida Statutes, sets forth the Administrative Procedure Act and the guidelines for developing administrative rules for the Department of Children and Families (DCF) and all agencies in the State of Florida. Keep in mind the DRA is a law enacted by the federal government and enforced by state governments. States have some discretion regarding implementation as long as they are consistent with the federal act. This creates a number of grey areas as the DRA must go through Florida's rulemaking process.

An agency must provide notice by publication in the Florida Administrative Weekly of the development of proposed rules as long as the rule is not a repeal.¹ Public workshops for the purpose of developing rules may be held by agencies.² If an interested person requests a workshop in writing it must be held unless the agency can show, in writing, that it is unnecessary.³ An agency may also use negotiated rulemaking when strong opposition is expected or complex rules are being drafted by using a committee of interested persons to negotiate drafting a mutually acceptable proposed rule.⁴

DCF is in the preliminary stages of implementing the administrative rules for the DRA and has already applied some of these techniques in drafting the proposed administrative rules. Notice of intent to enter into the rule making process has been published. Workshops have been held to allow public input before drafting the administrative rules. One such workshop was on the citizenship issue. Additional workshops may be necessary in the future.

In addition, DCF is using the negotiated rulemaking strategy to receive input from different individuals and groups. One such group is the Joint Public Policy Task Force. I recently had the opportunity to speak with John Gilroy, an administrative law attorney working with the Task Force regarding the rulemaking process. According to Gilroy, "The Task Force is working in contact with [DCF] to provide information to help the agency develop fair and consistent rules."⁵

Once the proposed administrative rules have been drafted the agency must publish notice of its intended action in the Florida Administrative Weekly no less than 28 days from the intended action.⁶ The notice should include among other things an explanation of the action and a complete text of the proposed administrative rule.⁷ The agency must then file with the Administrative Procedures Committee a copy of the proposed administrative rule for adoption as well as statements related to the following: estimated regulatory costs, the extent to which the rule relates to federal rules on the same subject, and satisfaction of the notice requirement 21 days prior to the adoption date.⁸

The agency may hold public hearings on the proposed administrative rules. A hearing may also be requested by affected persons under narrow circumstances.⁹ After the public hearing or if time for requesting the public hearing has expired and there have been no changes or only technical changes to the proposed administrative rule, the agency must file a notice with the Administrative Procedures Committee to that effect at least seven days prior to filing the rule for adoption.¹⁰ If changes not deemed technical are made then a notice of change must be filed with the Administrative Procedures Committee and published in the Florida Administrative Weekly at least 21 days prior to adoption.¹¹

The time frame for filing the rule for adoption can vary from 14 to up to 90 days depending upon a number of factors such as whether a public hearing or a notice of change was required.¹² To finalize adoption, the agency must file the proposed rules with either the Department of State or the agency head depending upon whether or not the agency's rules are filed in the Florida Administrative Code.¹³ Once filed the rule becomes effective 20 days after being filed or on the date required by the rule or statute.¹⁴

With all of these hoops to jump through and time frames, it is not surprising that full implementation of the DRA has not taken affect in Florida. According to Victoria Heuler, co-chair, the Task Force has been closely monitoring each step in the process on our behalf and will continue to do so until Florida has successfully implemented each part of this important act.

¹Fla. Stat. § 120.54(2)(a) (2007).

²Fla. Stat. § 120.54(2)(c) (2007).

³Fla. Stat. § 120.54(2)(c) (2007).

⁴Fla. Stat. § 120.54(2)(d)(1) (2007).

⁵For more information on the Joint Public Policy Task Force visit www.afela.org or www.elderlawsection.org

⁶Fla. Stat. § 120.54(3)(a)(1-2) (2007).

⁷Fla. Stat. § 120.54(3)(a)(1) (2007).

⁸Fla. Stat. § 120.54(3)(a)(4) (2007).

⁹Fla. Stat. 120.54(3)(c) (2007).

¹⁰Fla. Stat. § 120.54(3)(d)(1) (2007).

¹¹Fla. Stat. § 120.54(3)(d)(1) (2007).

¹²Fla. Stat. § 120.54(3)(3)(2) (2007).

¹³Fla. Stat. § 120.54(3)(e)(1) (2007).

¹⁴Fla. Stat. § 120.54(3)(e)(6) (2007).