STATE OF FU

THE FLORIDA LEGISLATURE JOINT ADMINISTRATIVE PROCEDURES COMMITTEE



Senator Ellyn Setnor Bogdanoff, Chair Representative Lake Ray, Vice Chair Senator Mike Fasano Senator Rene Garcia Senator Alan Hays Senator Bill Montford Senator Christopher L. "Chris" Smith Representative Frank Artiles Representative Matt Gaetz Representative Tom Goodson Representative Hazelle P. "Hazel" Rogers Representative Barbara Watson KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
joint.admin.procedures@leg.state.fl.us

February 3, 2012

Mr. Jonathan Grabb Senior Attorney Agency for Persons with Disabilities 4030 Esplanade Way, Suite 380 Tallahassee, FL 32399-0950

RE: Agency for Persons with Disabilities Rule 65G-2.016

Dear Mr. Grabb:

I have reviewed the above-referenced rule and offer the following comments for your consideration and response:

The notice of proposed rulemaking, which was published on January 13, 2012, states that a hearing will be held on February 3, 2012. Section 120.54(3)(c)1., Florida Statutes, requires an agency "on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action,[to] give affected persons an opportunity to present evidence and argument on all issues under consideration." Since the hearing is being held on the 21st day, the Agency will have to schedule a hearing if requested on February 3, 2012.

Effective June 24, 2011, Chapter 2011-225, Laws of Florida, amended subparagraph 120.54(3)(a)1., Florida Statutes, to require a notice of proposed rule to include:

a statement as to whether, based on the statement of the estimated regulatory costs or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3).

Since a SERC was not prepared for this rule, please publish a notice of correction describing the information expressly relied upon by the Agency in determining whether the rule is expected to require legislative ratification.

Mr. Jonathan Grabb February 3, 2012 Page 2

65G-2.016	Please explain why section 393.501, Florida Statutes, is cited as rulemaking authority; the rule does not cite any provision in Chapter 393, Florida Statutes, as law implemented.
65G-2.016(2)	The phrase "operating procedure" should be changed to "rule."
65G-2.016(2)(a)	Please explain why this paragraph is necessary; it reiterates section 393.063(1), Florida Statutes. <u>See</u> §120.545(1)(c), Fla. Stat. (2011).
65G-2.016(2)(b)	Please explain why this paragraph is necessary; it reiterates section 393.063(5), Florida Statutes. See §120.545(1)(c), Fla. Stat. (2011). Additionally, section 402.33, Florida Statutes, which is cited as both rulemaking authority and law implemented, defines the term "client."
65G-2.016(2)(e)	Please explain why this paragraph is necessary; it reiterates section 402.33(1)(h), Florida Statutes. <u>See</u> §120.545(1)(c), Fla. Stat. (2011).
65G-2.016(4)(a)	The rule references "federal exceptions"; this requirement is vague. The rule should identify the applicable federal exceptions.
65G-2.016(5)(b)	Should the paragraph also reference state holidays?
65G-2.016(5)(c)	The rule references "federally approved exemptions or deductions"; this requirement is vague. The rule should identify the applicable federal exemptions and deductions.
65G-2.016(6)(c)	Should the paragraph also reference state holidays?

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,

Jowanna N. Oates Senior Attorney