

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
Statutory Authority: 31 **Delaware Code**, Section 512 (31 **Del.C.** §512)

**PROPOSED**

**PUBLIC NOTICE**

**Long Term Care Medicaid - Annuities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) regarding the treatment of annuities provisions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by June 30, 2007.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**SUMMARY OF PROPOSAL**

**Statutory Authority**

- Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

**Background**

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in Section 1917(c)(1)(B)(i) of Social Security Act affecting Long Term Care services and supports.

**Summary of Proposal**

DSSM 20330.4.1.A, *Treatment of Annuities Purchased Prior to February 8, 2006*: The Division of Medicaid and Medical Assistance (DMMA) recently made changes to the annuity policy provisions based on the mandates of the DRA (see 10 **DE Reg.** 1601). This regulatory action incorporates additional guidance received from the Centers for Medicare and Medicaid Services (CMS) regarding the DRA as it applies to the treatment of annuities.

**DMMA PROPOSED REGULATION #07-28**

**REVISIONS:**

**20330.4.1 Annuities**

An annuity is a financial device between an individual and a commercial company that conveys a right to receive periodic payments for life or a fixed number of months or years.

**20330.4.1.A**

- A. Treatment of annuities purchased prior to February 8, 2006:

While the annuity itself may or may not be an available resource, the stream of income generated by the annuity is a countable income. The applicant must demonstrate to DMMA that a market to purchase the annuity stream of income does not exist. If a market exists, DMMA will consider the annuity to be an available resource. See 20 CFR 416.1201 (a).

DMMA will require that the fair market value of the annuity income stream be sold at Fair Market Value counted as a resource. See DSSM 20350.1.7 Fair Market Value (FMV).

DMMA will not count the value of an annuity purchased by a third party, e.g., the applicant's employer, as a retirement benefit to the applicant. However, DMMA will count the value of the income generated from a third party annuity.

An annuity that is revocable is always a countable resource. Revocable annuities are able to be converted to cash.

Spouses that claim the income allowance is inadequate to meet the needs of the Community Spouse may request additional resources be set aside to bring their income up to the minimum maintenance needs allowance. These requests MUST go through the fair hearing process in order to retain excess resources for their protected income share. See DSSM 20970 and 42 USC 1396r-5(e). In these cases, at the death of the annuity's owner, the beneficiary of the annuity must be the estate of the Medicaid recipient.

**8 DE Reg. 1617 (05/01/05)**

**10 DE Reg. 1601 (04/01/07)**

**10 DE Reg. 1781 (06/01/07) (Prop.)**