

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

**PUBLIC NOTICE**

**Long Term Care Program**

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 Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal gives direction on counting annuities for the eligibility process.

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 & Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2005.

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 The Proposed Change**

**Citation**

20 CFR §416.1201(a) - Resources

Adds a new rule at DSSM 20330.4.1 that addresses annuities and how they count towards the eligibility process.

**DSS PROPOSED REGULATION #05-07**

**NEW:**

**20330.4.1 Annuities**

An annuity is a financial device that conveys a right to receive periodic payments for life or a fixed number of months or years. While the annuity itself may or may not be an available resource, the stream of income generated by the annuity is a countable asset. If there is a market to purchase the annuity stream of income it is considered to be available for the applicant's or spouse's support and maintenance. See 20 CFR 416.1201 (a).

To calculate the value of the annuity's stream of income use the amount at which the annuity was originally purchased and subtract all payments received to date. The remainder is the value of the annuity's income stream. The annuity income stream must be sold at Fair Market Value. See DSSM 20350.1.7.

An annuity purchased by a third party, e.g., the applicant's employer, as a retirement benefit to the applicant is not counted as an available resource. However, the income generated from a third party annuity is counted as income.

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. 1262 (3/1/05)**