

## DEPARTMENT OF SOCIAL SERVICES

### NOTICE REGARDING AMENDMENTS TO THE UNIFORM POLICY MANUAL CONCERNING THE DEFICIT REDUCTION ACT OF 2005

In accordance with the provisions of section 4-168 (a) of the Connecticut General Statutes, as amended, the Commissioner of Social Services previously gave notice, under section 17b-262 of the Connecticut General Statutes, of the intent to amend the Uniform Policy Manual (“UPM”) with respect to the eligibility requirements for individuals applying for or receiving long-term care benefits under the Medicaid program. The amendments were made to comply with, and give effect to, the Deficit Reduction Act of 2005 (Public Law 109-171) (“DRA”).

On June 9, 2009 the Legislative Regulations Review Committee (“LRRC”) rejected without prejudice the proposed regulation (LRRC Regulation Reference Number 2009-21). The Commissioner of Social Services hereby gives notice that he intends to resubmit the proposed regulation to the LRRC for final approval.

Unless prohibited by subsequent law or a court decision, the Department has continued to operate under most of the regulation as it was previously proposed, pursuant to section 17b-10 and section 17b-261a (e) of the Connecticut General Statutes. The current proposed regulation keeps most of the original provisions intact, incorporates numerous changes resulting from negotiations with members of the Elder Law Section of the Connecticut Bar Association and other advocacy groups, and updates the original submission due to subsequent state legislation and a court decision by the Court of Appeals for the Second Circuit (Lopes v. Starkowski), concerning the treatment of annuities under the DRA.

#### **Statement of Purpose:**

A) The problems, issues or circumstances that the regulation proposes to address: The proposed regulation amends the Uniform Policy Manual with respect to the eligibility requirements for individuals applying for or receiving long-term care benefits under the Medicaid program to comply with, and give effect to, the DRA.

(B) The regulation amends UPM sections 2540.60, 2540.64, 2540.88, 2540.92, 3028, 3028.03, 3028.05, 3028.15, 3828.25, 3028.35, 3029.13, 4000.01, 4030.20, 4030.40, 4030.50, 4030.65, 4030.80; adds UPM sections 3029, 3029.03, 3029.05, 3029.10, 3029.11, 3029.12, 3029.15, 3029.20, 3029.25, 3029.30, 3029.35, 4030.18; and repeals UPM sections 3099.25

(C) The legal effects of the regulation, including all the ways the regulation would change existing regulation or other laws: Among the major revisions are the following:

The “look-back” period during which asset transfers may affect eligibility for long-term care (“LTC”) benefits under the Medicaid program is changing from three years to five years for transfers made on or after February 8, 2006.

The “penalty period” during which Medicaid will not pay for LTC services will generally begin as of the date that the applicant is eligible for Medicaid and would otherwise be receiving payments for LTC services under the Medicaid program based on an approved application, and which does not occur during any other period of ineligibility. For a recipient of LTC Medicaid benefits, the penalty period begins as of the month of the transfer, as long as this month is not part of any other period of ineligibility. This change is also effective for transfers made on or after February 8, 2006. Previously, the penalty period generally began as of the month of the transfer for both applicants and recipients.

An individual with equity exceeding \$750,000 in his or her home property is ineligible for payment of LTC services under the Medicaid program. This change is effective for applications being made on or after January 1, 2006. The individual may reduce equity in his or her home by taking out a home equity loan or a reverse annuity mortgage. However, if he or she transfers the proceeds from the loan or mortgage, a transfer of asset penalty may be imposed.

If an individual purchases an annuity on or after February 8, 2006, he or she must make the state the remainder beneficiary, or the purchase will be considered a transfer of assets for less than fair market value.

There are other provisions, including provisions regarding undue hardship, the treatment of annuities, mortgage notes, life estates and continuing care retirement communities, that are either specifically required by, or necessary to give effect to, the DRA.

A copy of the complete text of the regulation is available at no cost upon request from the Department of Social Services, Office of Legal Counsel, Regulations and Administrative Hearings, 55 Farmington Avenue, Hartford, Connecticut, 06106.

All written comments, questions, and concerns regarding this regulation may be submitted within 30 days of the posting of this notice on the Secretary of the State’s website to the Department of Social Services, Office of Legal Counsel, Regulations & Administrative Hearings, 55 Farmington Avenue, Hartford, Connecticut, 06106. Attention: Brenda Parrella, Director. A hearing will be scheduled on the proposed regulation if requested by fifteen persons, by a governmental subdivision of an agency or by an association having not less than fifteen members, if notice of the request is received by the Department not later than fourteen days after the date of posting of the notice by the Secretary of the State.

When submitting correspondence, please refer to Regulation Control Number 14-01/DB.