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June 16, 2016

Senator Clark J. Chapin, Co-Chair
Representative Brian Becker, Co-Chair
Regulation Review Committee
Room 011, Capitol Building
Hartford, CT 06106

RE: Eligibility Requirements for Individuals Applying for or Receiving Long-Term Care Benefits under the Medicaid Program

Dear Senator Chapin and Representative Becker:

Pursuant to subsection (e) of section 4-170 of the Connecticut General Statutes, I am resubmitting for your approval a proposed regulation that implements provisions of the Deficit Reduction Act of 2005 (Public Law 109-171) ("DRA") concerning the eligibility of 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 DRA.

Among the major revisions to the Uniform Policy Manual (UPM) 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 cannot overlap with any other period of ineligibility. For an active 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 active 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.

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- 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.

The Department of Social Services (the "Department") submitted the proposed regulation to the Legislative Regulations Review Committee ("LRRC") in 2009, and on June 9, 2009, the LRRC rejected the proposed regulation without prejudice.

In response to advice from the LRRC, the Department met with members of the elder bar in an attempt to resolve areas of disagreement. The Department and elder bar were able to resolve most, but not all, areas of disagreement. The areas where the Department and elder bar could not agree are: (1) the start date of the penalty for cases involving home and community-based services; (2) what should happen when there is a partial return of a transferred asset – the elder bar believed that a partial return should change the end date of the penalty and not the beginning date of the penalty; (3) whether there should be a distinction between a post-eligibility transfer of the home and home equity transfers as opposed to selling the home and giving that money away; and (4) whether home equity should be counted if a sibling lives in the home.

Thereafter, notice of the Department's intent to adopt the proposed regulation was posted on the Secretary of the State's website on October 10, 2014. A public hearing regarding the proposed regulation was held on November 12, 2014, and written comments were also received. A summary of all comments received and the Department's response is attached to this letter. Notice of the Department's decision to take action on the proposed regulations was posted on the Secretary of the State's website on January 11, 2016. On May 18, 2016, the Office of the Attorney General approved the proposed regulations as legally sufficient. Copies of the proposed regulation and all supporting documents have been submitted to the Office of Fiscal Analysis and the Human Services Committee, which has cognizance over the subject matter of the proposed regulation.

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If you or your staff require additional information concerning this proposed regulation, please contact Principal Attorney Daniel T. Butler at (860) 424-5488.

Sincerely,


Roderick L. Bremby
Commissioner

Enclosures

cc: Brenda Parrella
Marc Shok
Jessica Carroll
Laura Catarino
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