DEPARTMENT OF SOCIAL SERVICES
DIVISION OF FINANCIAL SERVICES
MEMORANDUM

TO: Daniel T. Butler, Principal Attorney
Office of Legal Counsel, Regulations and Administrative Hearings

FROM: Michael Gilbert, Assistant Director DFS MJG

DATE: January 30, 2014

RE: Fiscal Note for proposed Reg. #~~13-05~~ 14-01 Medicaid Eligibility & The Deficit Reduction Act of 2006

Attached is the fiscal note to accompany the State Plan Amendment cited above when it is submitted to the Centers for Medicare & Medicaid Services for approval. You will find the dollar impact by federal fiscal year (FFY) in the Federal Impact section of the attached Fiscal Impact Statement. If you have any questions, please feel free to contact me at 424-5841.

Thank you.

Cc: Diane Benedetto
Kate McEvoy
Marc Shok
Mari Spallone
Nicholas Venditto
Nicholas Mazzatto

DSS ID # ~~13-05~~ 14-01

AGENCY FISCAL ESTIMATE OF PROPOSED REGULATIONS

AGENCY SUBMITTING REGULATION Department of Social Services DATE January 30, 2014

SUBJECT MATTER OF REGULATION Medicaid Eligibility & Deficit Reduction Act of 2006

REGULATION SECTION NO. UPM Sections STATUTORY AUTHORITY 17b-261

OTHER AGENCIES AFFECTED

EFFECTIVE DATE USED IN COST ESTIMATE October 1, 2012

ESTIMATE PREPARED BY Nick Mazzatto

QUESTIONS SHOULD BE ADDRESSED TO Michael Gilbert TELEPHONE 424- 5841

SUMMARY OF STATE COST AND REVENUE IMPACT OF PROPOSED REGULATION

Agency Department of Social Services Fund Affected General

	SFY 2014	SFY 2015
Number of Positions		
Personal Services		
Other Expenses		
Equipment		
Grants (Medicaid)		
Total Gross Costs (Savings)	$5,568,640	$5,568,640
Estimated Federal Share	$2,784,320	$2,784,320
Estimated State Share	$2,784,320	$2,784,320

STATE IMPACT OF REGULATION:

The Department originally proposed regulations in 2007 that implemented and gave effect to the DRA. The original regulation number 06-14 sought to amend the Uniform Policy Manual to incorporate changes, which will comply with, and give effect to the Deficit Reduction Act (Public Law 109-171). The fiscal note that accompanied that regulation described the expected savings resulting from the following changes:

The "look back" period during which asset transfers may affect eligibility for long-term care (LTC) benefits under the Medicaid program will be changing from 3 to 5 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 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 recipients of LTC Medicaid benefits, the penalty period begins as of the month of the transfer, as long as this is not part of any other period of ineligibility. This change is also effective for transfers made on or after February 8, 2006.

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 his or her equity in the 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.

The department has continuously operated under most of these regulations, despite the LRRC's rejection in 2009 and the corresponding savings have been incorporated into the Department's budget.

The current proposed regulation keeps most of the original DRA provisions intact, but provides updates resulting from subsequent legislation and court decisions. As a result of the Lopes v Starkowski decision, regulation number 13-05 is proposing to implement changes to the Medicaid Eligibility and The Deficit Reduction Act of 2006 which conform to our current regulations regarding how annuities are accounted for in terms of eligibility. These changes pertain to irrevocable, non-assignable annuities and prohibit the department from regarding the right to receive income as an available asset. The changes do not affect how the Department evaluates whether there has been an improper transfer of assets resulting in a penalty.

Effective immediately:

- The Department will continue to count deferred annuities (annuities where individuals have not elected to start to receive payments) as available assets.
- The Department will continue to evaluate annuities in payment status as available assets, unless their terms prohibit assignment.
- The Department will disregard the right to receive income from irrevocable, non-assignable annuities as available assets, and instead, count the payments as income.

The above changes apply to pending applications as well as those that have requested hearings due to denials on this basis.

FINANCIAL IMPACT:

The changes proposed in Regulation # 13-05, seek to implement changes to the treatment of annuities. As a result of the Lopes decision, effective in October 2012, the department has been tracking irrevocable, non-assignable annuities. Using this data from the annuities tracker database we are estimating that approximately 75 clients per month are now receiving Medicaid benefits approximately ten months earlier than they would have under the old regulations. These regulation changes are estimated to have an annualized gross financial impact of approximately $5.6 million.

EXPLANATION OF MUNICIPAL IMPACT OF REGULATION:

None.

SMALL BUSINESS IMPACT :

While the Department does not anticipate that the proposed regulations will have a significant impact on small businesses, small businesses will have the opportunity to bring any unanticipated concerns to the Department's attention through notice and public comment.