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

15120.2 Financial Eligibility

Self-Employment Income

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 & Medical Assistance is proposing to amend policies in the Division of Social Services Manual (DSSM) to comply with the CMS-approved Medicaid state plan amendment regarding the use of a self-employment standard deduction to determine eligibility.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulations must submit same to Sharon L. Summers, Policy, Planning & Policy 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 by March 4, 2009.

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

The proposed changes described below amends policies in the Division of Social Services Manual (DSSM) to comply with the CMS-approved Medicaid state plan amendment regarding the use of a self-employment standard deduction to determine eligibility.

Statutory Authority

Section 1902(r)(2) of the Social Security Act, More Liberal Methods of Treating Income

Summary of Proposal

Title XIX Medicaid State Plan, SPA #411, regarding self-employment income, was approved on March 9, 2006 and effective October 1, 2005. Policy addressing actual self-employment expenses was inadvertently omitted in the final regulation as published in the Delaware Register at **9 DE Reg. 567** (October 1, 2005 issue). The Centers for Medicare & Medicaid Services (CMS) approved SPA #411 provided agency policy indicates that actual expenses are used if the application of the standard deduction results in a finding of ineligibility.

DSSM 15120.2, Financial Eligibility; DSSM 16230.1.2, Self-Employment Income: The proposed rule will amend existing rules to reflect the policy of the state plan to allow actual self-employment expenses to be used when the application of the self-employment standard deduction results in a finding of ineligibility.

There will be no change in practice or procedure as staff has been applying this policy about actual self-employment expenses.

15120.2 Financial Eligibility

TANF rules on income standards and methodologies (disregards, exclusions, allocations) apply to Section 1931 Medicaid except as provided in this section.

For Section 1931 Medicaid, there are two income tests to determine financial eligibility. The first test is a gross income test and the second is a net income test. For the gross income test, compare the family's gross income to 185% of the applicable standard of need. For the net income test, compare the family's net income to the applicable standard of need.

Financial eligibility for both applicant and recipient families will be calculated using the 30 and 1/3 disregard if applicable. This disregard allows the deduction of $30 plus 1/3 of the remaining earned income after the standard allowance for work connected expenses is subtracted.

The $30 plus 1/3 disregard is applied to earned income for four (4) consecutive months. If Medicaid under Section 1931 or employment ends before the fourth month, the earner is eligible for the disregard for four (4) additional months upon reapplication or re-employment.

When an earner's wages are so low ($90 or less in the month) that the income is zero before any part of the $30 plus 1/3 disregard can be applied, that month does not count as one of the four (4) consecutive months and the earner is eligible for the disregard for four (4) additional months.

After the $30 plus 1/3 disregard has been applied for four (4) consecutive months, the 1/3 disregard is removed from the budget. The $30 disregard continues to be deducted from earned income for eight (8) consecutive months. The $30 disregard is not repeated if an individual stops working or 1931 Medicaid ends before the completion of the eight (8) consecutive months. If 1931 Medicaid ends and the family reapplies, the $30 disregard from earned income is continued until the end of the original eight (8) consecutive months.

Unlike the $30 plus 1/3 disregard which is dependent upon the family having sufficient earned income and being 1931 Medicaid recipients, the $30 disregard is for a specific time period. This time period begins when the $30 plus 1/3 disregard ends and is not dependent upon the family having earned income or 1931 Medicaid.

When an earner has received the $30 and 1/3 disregard in four (4) consecutive months and the $30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received Medicaid under Section 1931 for twelve (12) consecutive months.

All earned income is disregarded for the second and third months of eligibility.

All earned income is disregarded for 12 months after employment causes ineligibility.

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self- employment standard deduction. The result is the amount included in the gross income test (185% of the applicable standard of need). Standard earned income deductions are then applied to the self-employment income for the net income test (the applicable standard of need).

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

When the application of the standard deduction results in a finding of ineligibility, the applicant or recipient will be given an opportunity to show that actual self-employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self-employment.

<u>Actual self-employment expenses must be directly related to producing the goods or services. Actual self-employment expenses for the eligibility determination do not include all expenses that are allowed by the Internal Revenue Service. Actual self-employment expenses that are not allowed for the eligibility determination include depreciation, personal and entertainment expenses, personal transportation, purchase of capital equipment, payments on the principal of loans for capital assets or durable goods, and rent or mortgage payments when the business is in the home.</u>

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section 1931.

9 DE Reg. 564 (10/01/05)
10 DE Reg. 143 (07/01/06)

(Break in Continuity of Sections)

16230.1.2 Self-Employment Income

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self- employment standard deduction. The result is the amount included in the individual's gross income. Standard earned income deductions are then applied to the individual's gross income.

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

When the application of the standard deduction results in a finding of ineligibility, the applicant or recipient will be given an opportunity to show that actual self-employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self-employment.

Actual self-employment expenses must be directly related to producing the goods or services. Actual self-employment expenses for the eligibility determination do not include all expenses that are allowed by the Internal Revenue Service. Actual self-employment expenses that are not allowed for the eligibility determination include depreciation, personal and entertainment expenses, personal transportation, purchase of capital equipment, payments on the principal of loans for capital assets or durable goods, and rent or mortgage payments when the business is in the home.

9 DE Reg. 564 (10/01/05)

10 DE Reg. 143 (07/01/06)

12 DE Reg. 1044 (02/01/09) (Prop.)