DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02 (2012 Repl. & 2015 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.), hereby gives notice of the intent to amend Chapter 95 (Medicaid Eligibility) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

DHCF is the single state agency responsible for the administration of the State Medicaid program under Titles XIX and XXI of the Social Security Act in the District. This proposed rulemaking would amend Chapter 95 (Medicaid Eligibility) by adding a new Section 9511 (Supplemental Security Income-Based Methodology for Certain non-MAGI Eligibility Groups) that details Supplemental Security Income (SSI) based methodologies used to determine income for individuals whose eligibility is determined under certain non-modified adjusted gross income (non-MAGI) eligibility categories pursuant to 42 C.F.R. § 435.601. The non-MAGI eligibility categories whose income is determined using SSI-based income methodologies are individuals who are in the aged, or disabled (AD) program; individuals enrolled in the Qualified Medicare Beneficiary (QMB) program; individuals enrolled in the QMB Plus program; individuals with long term care medical needs; individuals receiving Medicaid through the Katie Beckett eligibility group; and medically needy individuals who are not subject to MAGI-based income methodology.

This proposed rulemaking would also amend Chapter 95 (Medicaid Eligibility) by: repealing the existing definitions section (Subsection 9500.99); creating a new definitions section (Section 9599); moving the definitions currently located in Subsection 9500.99 to the new Section 9599; and adding new definitions for the terms AmeriCorps/VISTA income, deduction, deemed income, earned income tax credit (EITC), exclusion, federal benefit rate, and TANF underpayments.

The Director gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 95, MEDICAID ELIGIBILITY, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

A new Section 9511 is added to read as follows:

9511 SUPPLEMENTAL SECURITY INCOME-BASED METHODOLOGY FOR CERTAIN NON-MAGI ELIGIBLITY GROUPS

9511.1 The Department shall determine financial eligibility for Medicaid using a Supplemental Security Income (SSI) based methodology pursuant to 42 C.F.R. Section 435.601 for the following non-modified adjusted gross income (non-MAGI) eligibility groups:

(a) Individuals who are aged sixty-five (65) years or older, or disabled (AD);

(b) Individuals enrolled in the Qualified Medicare Beneficiary (QMB) program;

(c) Individuals enrolled in the QMB Plus program;

(d) Individuals with long-term medical needs;

(e) Individuals receiving Medicaid through the Katie Beckett eligibility group; and

(f) Individuals, described in Subsection 9500.15, who are medically needy.

9511.2 The following income requirements shall apply to the non-MAGI eligibility groups set forth under Subsection 9511.1:

(a) AD - Applicants and beneficiaries shall have income at or below one hundred percent (100%) of the federal poverty level (FPL);

(b) QMB program - Applicants and beneficiaries shall have income at or below one hundred percent (100%) of the FPL. For applicants and beneficiaries that have income up to three hundred percent (300%) of the FPL, the Department shall disregard income in excess of one hundred percent (100%) of the FPL;

(c) QMB Plus program – Applicants and beneficiaries shall have income at or below one hundred percent (100%) of the FPL, and shall be entitled to full Medicaid coverage and benefits under the QMB program;

(d) Long-term care - Applicants and beneficiaries shall have income at or below three hundred percent (300%) of the SSI Federal Benefit Rate (FBR);

(e) Katie Beckett eligibility group - Applicants and beneficiaries shall have income at or below three hundred percent (300%) of the SSI FBR; and

(f) Medically Needy - Applicants and beneficiaries shall use a medically needy (MN) spend-down process, in which the Department shall deduct the amount of medical expenses incurred by the individual or family or

financially responsible relatives that are not subject to payment by a third party from countable income. The District shall disregard countable earned and unearned income in an amount equal to the difference between fifty percent (50%) of the FPL, and the District's medically needy income limit (MNIL) for a family of the same size, except the disregard for a family of one (1) will be equal to ninety-five percent (95%) of the disregard for a family of two (2).

9511.3 The SSI-based income methodology shall use monthly gross countable income to determine financial eligibility for Medicaid, which shall be calculated in accordance with Subsection 9511.11. The methodology under Subsection 9511.11 shall incorporate the following:

(a) Countable earned income as set forth under Subsection 9511.4;

(b) Countable unearned income as set forth under Subsection 9511.5;

(c) Exclusions of gross countable income as set forth under Subsection 9511.6;

(d) Deeming of income calculations as set forth under Subsection 9511.7; and

(e) General income deductions and exclusions as set forth under Subsection 9511.10.

9511.4 An individual's countable earned income shall include:

(a) Wages, salaries, tips, overtime, and bonuses;

(b) Net income from a business or self-employment;

(c) Payments for services performed in a sheltered workshop or work activities center;

(d) Royalties earned by an individual in connection with any publication of his or her work and any honoraria received for services rendered; and

(e) Any other earnings from a job or work in which the individual receives payment.

9511.5 An individual's countable unearned income shall be defined as all other income which does not coincide with income delineated under Subsection 9511.4 and which is not excluded under 20 C.F.R. § 416.1124, and shall include but not be limited to:

(a) Social Security benefits;

(b) Interest, dividends, and other income from investments;

(d) Department of Veterans Affairs benefits;

(e) Railroad retirement and civil service retirement benefits;

(f) Annuities and pensions from government or private sources;

(g) Workers' compensation, unemployment insurance benefits, and black lung benefits;

(h) Prizes, settlements, and awards, including court-ordered awards;

(i) Proceeds of life insurance policies;

(j) Gifts and contributions;

(k) Child support and alimony payments;

(l) Inheritances in cash or property;

(m) Rental income; and

(n) Strike pay and other benefits from unions.

9511.6 An individual's gross countable income shall exclude the following income or payments:

(a) Children's earnings (earnings from an unmarried child who is living with a person who provides care or supervision, or earnings from a child who is a student in college or vocational training);

(b) Adoption subsidy;

(c) AmeriCorps/VISTA income received under the National and Community Service Trust Act of 1993, effective September 21, 1993 (107 Stat. 787; 12 U.S.C. §§ 12501 *et seq.*), as amended by the Serve America Act of 2009, effective April 21, 2009 (123 Stat. 1463; 42 U.S.C. §§ 12501 *et seq.*);

(d) Child nutrition payments;

(e) Payments received under the Domestic Volunteer Service Act of 1973, effective October 1, 1973 (87 Stat. 396; 42 U.S.C. §§ 4950 *et seq.*), as

amended by the Domestic Volunteer Service Act Amendments of 1984, effective May 21, 1984 (98 Stat. 189; 42 U.S.C. §§ 4951 *et seq.*), as amended by the National and Community Service Trust Act of 1993, effective September 21, 1993 (107 Stat. 899; 12 U.S.C. §§ 12501 *et seq.*), as amended by the Serve America Act of 2009, effective April 21, 2009 (123 Stat. 1581; 42 U.S.C. §§ 12501 *et seq.*);

(f) Earned income tax credits;

(g) Educational benefits (for example, Department of Education (DOE) Bureau of Indian Affairs Benefits, DOE Title IV Benefits, DOE Perkins Vocational and Applied Technology Education Act, DOE work study wages, and other any education benefits work study);

(h) Energy assistance payments;

(i) Foster care payments;

(j) Housing assistance provided by the federal or District of Columbia government or non-profit organizations;

(k) Incentive payments for prenatal and well-baby care, and from the work incentive programs for current or former recipients of Temporary Assistance for Needy Families (TANF) under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, effective August 22, 1996 (110 Stat. 2105; 42 U.S.C. §§ 1305 *et seq.*);

(l) Non-cash benefits in the form of a voucher, commodity, or service;

(m) Jury duty payments;

(n) Money received by a third party for an applicant, beneficiary, or community spouse, unless an applicant, beneficiary, or community spouse has or will have access to the funds;;

(o) Money received by an applicant, beneficiary, or community spouse, on behalf of any third party;

(p) Nutrition payments;

(q) Rehabilitation Service Administration (RSA) payments received under the Rehabilitation Act of 1973, effective September 26, 1973 (87 Stat. 355; 29 U.S.C. §§ 701 *et seq.*);

(r) Reimbursements received from an individual or organization to cover past, current, or future expenses, if all the following conditions are met:

(1) The reimbursement is for actual expenses;

(2) The reimbursement is earmarked to cover those expenses; and

(3) The reimbursement is paid or documented separately from any other payment such as wages;

(s) Payments received from roommates to cover their share of household expenses such as rent and utilities and which are paid by the applicant or beneficiary to the landlord or utility company;

(t) Senior Community Service Employment Program (SCSEP) income received under the Older Americans Act of 1965, approved July 14, 1965 (79 Stat. 218; 42 U.S.C. §§ 3001 *et seq.*), as amended by the Older Americans Act Amendments of 2000, approved November 13, 2000 (114 Stat. 2226; 42 U.S.C. §§ 3001 *et seq.*), as amended by the Older Americans Act Amendments of 2006, approved October 17, 2006 (120 Stat. 2522; 42 U.S.C. §§ 3001 *et seq.*);

(u) TANF underpayments received;

(v) Training income, such as training expense allowances and stipends;

(w) Utility allowances received through a federal or District government housing assistance program; and

(x) Other uncommon unearned income exclusions required under federal statute.

9511.7 With the exception of individuals with long-term medical needs and Katie Beckett eligibility group applicants and beneficiaries, the following deeming of countable earned and unearned income shall apply to the individual pursuant to Section 1614(f) of the Social Security Act (42 U.S.C. § 1382c(f)):

(a) For an individual with a spouse who is ineligible for SSI benefits and is living with the individual, the income of an ineligible spouse shall be deemed to the individual and counted towards the individual's gross countable income;

(b) For a child under the age of eighteen (18) that lives with a parent(s), the income of the parent(s) is deemed to the child and counted towards the child's gross countable income, unless deeming is determined to be inequitable pursuant to the circumstances described in Section 1614(f)(2)(B) of the Social Security Act (42 U.S.C. § 1382c(f)(2)(B)); and

(c) For an individual who is an alien that meets citizenship requirements described under Subsection 9503.2, the individual's income and resources shall be deemed to include the income and resources of the individual's sponsor and the sponsor's spouse.

9511.8 The Department shall only consider the income and assets of the child applying for or currently receiving Medicaid through the Katie Beckett eligibility group in calculating income under Subsection 9511.3. The parents' income and resources shall not be deemed to be income and assets of the Katie Beckett eligibility group applicant or beneficiary.

9511.9 The Department shall determine the income and resources of individuals with long-term medical needs applying for or currently receiving Medicaid pursuant to Chapter 98 of Title 29 DCMR.

9511.10 General income deductions and exclusions may apply as follows:

(a) Individuals with unearned income may deduct up to twenty dollars ($20) as an unearned income deduction from their gross countable unearned income. If an individual has less than twenty dollars ($20) of unearned income in a month and also has earned income in that month, the remainder of the twenty dollar ($20) exclusion shall reduce the amount of the earned income;

(b) An individual with earned income may deduct up to sixty-five dollars ($65) as an earned income deduction from their gross countable earned income;

(c) One half of the remaining earned income in a month may be deducted; and

(d) Exclusions from general earned income may include:

(1) Earned income tax credit payments (effective January 1, 1991) and child tax credit payments;

(2) Up to thirty dollars ($30) of earned income or sixty dollars ($60) of unearned income in a calendar quarter if it is infrequent or irregular;

(3) Earned income of blind or disabled student children up to the student earned income exclusion (SEIE) monthly limit, but not more than the SEIE yearly limit as determined by the U.S. Social Security Administration;

(4) Earned income of disabled individuals used to pay impairment-related work expenses;

(5) Earned income of blind individuals used to meet work expenses; and

(6) Any earned income used to fulfill an approved plan to achieve self-support (PASS).

9511.11 When applying SSI-based methodology to determine financial eligibility for Medicaid, an individual's countable income shall be calculated as follows:

(a) All countable unearned income sources, as determined under Subsection 9511.5, shall be added to deemed income, if any, as determined under Subsection 9511.7;

(b) If the individual has up to twenty dollars ($20) of an unearned income deduction as determined under Subsection 9511.10(a), the amount of unearned income (up to twenty dollars ($20)) shall be deducted from the amount derived under paragraph (a) of this subsection. This derived amount shall be the net unearned income;

(c) The individual's countable gross earned income, as determined under Subsection 9511.4, shall be added to deemed income, if applicable, as determined under Subsection 9511.7;

(d) If the household has earned income, the earned income deduction, if applicable as determined under Subsection 9511.10(b), shall be deducted from the amount calculated in paragraph (c) of this subsection. If a portion of the unearned income deduction was unused because the unearned income was less than twenty dollars ($20), as determined under Subsection 9511.10(a), the remaining amount shall be subtracted from paragraph (c) of this subsection;

(e) Sixty-five dollars ($65) shall be deducted from the amount derived from paragraph (d) of this subsection. If paragraph (d) of this subsection is not applicable as determined under Subsection 9511.10(b), then sixty-five dollars ($65) shall be deducted from the amount derived in paragraph (c) of this subsection;

(f) One half of the remaining earned income, as described under Subsection 9511.10(c), shall be deducted from the amount determined under paragraph (e) of this subsection. The exclusions to general earned income, delineated under Subsection 9511.10(d), shall then be applied. This amount shall be the net earned income; and

(g) The household's total net unearned income derived in paragraph (b) of this Subsection shall be added to the total net earned income derived under paragraph (f) to determine the household's total gross income. This amount shall be the non-MAGI countable income.

9511.12 Each applicant described under Subsection 9511.1 shall report at the time of application all earned and unearned income, as described in this section, to the Department, including any income that the applicant receives periodically (less frequently than once a month) or anticipates receiving prior to the time of renewal. Each current Medicaid beneficiary described under Subsection 9511.1 shall continually report any new or significant changes of earned or unearned income to the Department.

9511.13 Recipients of SSI and state supplemental payments (SSP) are categorically eligible for Medicaid. The income of recipients of SSI and state supplemental payments (SSP) shall be determined pursuant to 20 C.F.R. Part 416 and in accordance with the District's Section 1634 of the Social Security Act Agreement with the federal Social Security Administration (SSA). The methodology set forth in this section shall not be applied when determining income of recipients of SSI and SSP.

Section 9500, GENERAL PROVISIONS, is amended by repealing Subsection 9500.99.

A new Section 9599, DEFINITIONS, is added to read as follows:

9599 DEFINITIONS

For the purposes of this chapter, the following terms shall have the meanings ascribed:

Alien - An individual who is not a Citizen or National of the United States pursuant to 8 U.S.C.A. § 1641 and § 101(a) of the Immigration and Nationality Act, 8 U.S.C.A. § 1101(a).

AmeriCorps/VISTA income - income given to volunteers in the Volunteers in Service to America (VISTA) program.

Applicant - An individual who is seeking an eligibility determination for Medicaid through an application submission or a transfer from another insurance affordability program.

Application - The single streamlined form that is used by the District of Columbia in accordance with 42 C.F.R. § 435.907(b) or an application described in § 435.907(c)(2) of this chapter submitted on behalf of an individual.

Authorized Representative - Legally authorized individual or entity able to consent on behalf of a prospective applicant.

Beneficiary - An individual who has been determined eligible and is currently receiving Medicaid.

Budget Period - The monthly or annual period in which financial eligibility for Medicaid is determined.

Certification Period - Medicaid eligibility is determined for a twelve-month period. This period is called a certification period.

Cost Sharing - When patients pay out-of-pocket for a portion of health care costs not covered by health insurance, including but are not limited to, copays, deductibles, and coinsurance.

Custodial Parent - A court order or binding separation, divorce, or custody agreement establishing physical custody controls; or if there is no such order or agreement or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights pursuant to 42 C.F.R § 435.603 (iii)(A)-(B).

Deduction - income that is subtracted from countable earned and unearned income.

Deemed income - the amount of another person's income that is considered to belong to the applicant/recipient.

Deemed Newborn - A child under the age of one (1) who is automatically eligible for Medicaid pursuant to 42 C.F.R. § 435.117.

Deferred Action for Childhood Arrivals (DACA) - Certain individuals who were brought to the U.S. as children are as described pursuant to the Memorandum from Janet Napolitano, Secretary of Homeland Security, to David V. Aguliar, Acting Commissioner, U.S. Customs and Border Protection; Alejandro Mayorkas, Director, U.S., Citizenship and Immigration Services; John Mortan, Director, U.S. Immigration and Customs Enforcement (June 15, 2012) (on file with the U.S. Department of Homeland Security.

Department - For the purposes of this chapter, the term "the Department" shall refer to the Department of Health Care Finance (DHCF) or its designee.

Dependent Child - A natural or biological, adopted or step-child who is under the age of eighteen (18), or is age eighteen (18) and a full-time student in secondary school (or equivalent vocational or technical training).

Earned Income Tax Credit (EITC) - a federal tax credit for working individuals who have low to moderate income.

Eligibility determination - An approval or denial of eligibility in accordance with 42 C.F.R. § 435.911 as well as a renewal or termination of eligibility in accordance with 42 C.F.R. § 435.916.

Emergency medical condition - A medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity including severe pain so that the absence of immediate medical attention could reasonably be expected to result in one of the following: (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions, (3) serious dysfunction of a bodily organ or part.

Exclusion - income that is not counted when determining gross countable income.

Fair Hearings - an administrative procedure that gives applicants and beneficiaries the opportunity to contest adverse decisions regarding eligibility and benefit determinations.

Family - The individuals for whom a tax filer claims a deduction for a personal exemption under § 151 of the Code for the taxable year, which may include the tax filer, the tax filer's spouse, and dependents. 26 U.S.C. § 36B(d)(1)(2012).

Family size - The number of persons counted as members of an individual's household for purposes of MAGI Medicaid eligibility. When counting a household that includes a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver.

Federal benefit rate - the monthly payment rate that the SSA determines for an eligible individual to receive a Federal SSI benefit.

Federal Poverty Level (FPL) - A measure of income levels updated periodically in the Federal Register by the Secretary of Health and Human Services under the authority of 42 U.S.C. Section 9902(2), as in effect for the applicable budget period used to determine an individual's eligibility in accordance with 42 C.F.R. § 435.603(h).

Household Composition - Determined by individuals living together and their relationships to one another. The composition of the household determines an individual's family size.

Household Income - The MAGI-based income of every individual included in an applicant or beneficiary's household.

Indian - Means any individual who is a member of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. §§ 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Institution - Means Institution and Medical institution, as defined in 42 C.F.R. § 435.1010.

Lawfully Present - Aliens described at 42 C.F.R. Section 152.2 (1),(3)-(7); aliens in a valid nonimmigrant status, as defined in 8 U.S.C. § 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. § 1101(a)(17)); aliens granted an administrative stay of removal under 8 C.F.R. Section 241; aliens lawfully present in American Samoa under the immigration laws of American Samoa; and aliens who are victims of severe trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, approved October 28, 2000 (Pub. L. 106-386, as amended; 22 U.S.C. § 7105(b)).

Limited or no-English proficiency - As defined by D.C. Official Code § 2-193 (2012 Repl.) as the inability to adequately understand or to express oneself in the spoken or written English language.

Long-term services and supports - Nursing facility services, a level of care in any institution equivalent to nursing facility services; home and community-based services furnished under a waiver or State plan under Sections 1915 or 1115 of the Act; home health services as described in § 1905(a)(7) of the Act and personal care services described in § 1905(a)(24) of the Act.

Lawful Permanent Resident (LPR) - One who was lawfully admitted for permanent residence in accordance with the immigration laws of the United States, such status not having changed since admission. A legalized alien under IRCA whose status has been adjusted from LTR to LPR by INS.

Medicaid - Means the program established under Title XIX and Title XXI of the Social Security Act, 42 U.S.C. §§ 1396 *et seq.* and Title 29 DCMR, Chapter 9.

Medically Needy - Individuals, as described in 42 U.S.C. § 1396a(a)(10)(A)(ii), who meet non-financial eligibility determination factors but who have incomes over the Medicaid threshold.

Modified adjusted gross income (MAGI) - Income calculated using the financial methodologies used to determine modified adjusted gross income as defined in 26 U.S.C. § 36B(d)(2)(B) and 42 C.F.R. § 435.603.

U.S. National - A person who is a citizen of the U.S. or a person who, though not a citizen of the U.S., owes permanent allegiance to the U.S.

Non-MAGI - Eligibility Groups described at 42 C.F.R. § 435.603 for which MAGI–based methods do not apply.

Parent - A person who has a natural or biological, adopted, or step-child.

Pregnant woman - A female during pregnancy and the post-partum period, which begins on the date the pregnancy ends, extends sixty (60) calendar days, and then ends on the last day of the month in which the 60-day period ends.

Qualified Alien - An alien described in Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1641, as amended (PRWORA), and non-citizens required to be eligible by § 402(b) of the PRWORA, as amended, and non-citizens not prohibited by § 403 of PRWORA, as amended including qualified non-citizens subject to the five (5) year bar identified in 8 U.S.C. § 1613.

Qualified Plan - Profit-sharing, money purchase, defined benefit plans, 401K, and other retirement plans that allow a tax-favored way to save for retirement. Employers may deduct contributions made to the plan on behalf of their employees. Earnings on these contributions are generally tax free until distributed at retirement.

Renewal - Annual review to evaluate continued eligibility for Medicaid.

Satisfactory Immigration Status - An immigration status which does not make the alien ineligible for benefits under the applicable program (See § 121(d)(1)(B)(i)(III)) of IRCA, 42 U.S.C.A. § 1320b-7, note).

Self-employed Simplified Employee Pension (SEP) - A written plan that allows individuals to make contributions toward their own retirement and their employees' retirement without getting involved in a more complex qualified plan.

Sibling - Each of two or more children or offspring having one or both natural, biological, adopted, or step-parents in common.

SIMPLE - An employer sponsored retirement plan offered for small businesses that have one hundred (100) employees or less.

State - Includes any of the fifty (50) constituent political entities of the United States and the District of Columbia.

TANF underpayments - TANF payments to a recipient that are lower than the TANF payments the recipient is eligible to receive.

Tax dependent - Tax dependent has the same meaning as the term "dependent" under Section 152 of the Internal Revenue Code, as an individual for whom another individual claims a deduction for a personal exemption under § 151 of the Internal Revenue Code for a taxable year.

Verification plan - the plan describing the verification policies and procedures adopted by the Department in accordance with 42 C.F.R. §§ 435.940-435.965, and § 457.380.

Well-established religious objections - The applicant is a member of a recognized religious sect or division of the sect and adheres to the tenets or teachings of the sect or division and for that reason is conscientiously opposed to applying for or using a national identification number.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.