

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 20310

PROPOSED

PUBLIC NOTICE

Long-Term Care Program

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 and Medical Assistance (DMMA) is amending the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, *Federal Tax Refunds or Advance Payments* provisions in compliance with Section 728 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, 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 April 30, 2011.

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 proposal amends the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, *Federal Tax Refunds or Advance Payments* provisions in compliance with Section 728 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010.

Statutory Authority

- Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312)
- Social Security Administration's Program Operations Manual System (POMS): SI 01130.600, Retroactive Supplemental Security Income (SSI) and Retirement, Survivors and Disability (RSDI) Payments

Background

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) was signed into law on December 17, 2010. Section 728 of this Act disregards federal tax refunds or advance payments with respect to a refundable tax credit, received after December 31, 2009, as income and as resources (for a period of 12 months after receipt) for purposes of determining eligibility for all federal or federally-assisted programs, including Medicaid and the Children's Health Insurance program (CHIP). Section 728 also provides that these tax refunds and advance payments are not to be taken into account in determining the amount or extent of benefits provided under any program subject to this provision, including Medicaid and CHIP. This provision became effective December 17, 2010, and applies to tax refunds or advance payments received after December 31, 2009, but before January 1, 2013.

Summary of Proposal

The purpose of the proposed change is to update the length of time certain resources are excluded. Lump sum retroactive Social Security Act (SSA) payments are now excluded for nine (9) calendar months following the month of receipt. Tax refunds and advance payments received after December 31, 2009 through December 31, 2012 are excluded for a period of twelve (12) calendar months following the month of receipt.

Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund.

DMMA PROPOSED REGULATION #11-15

REVISIONS:

20310.9 Retroactive Social Security Administration Lump Sum Payments

The unspent portion of retroactive SSI and Title II Retirement, Survivors, and Disability insurance (RSDI) benefits is excluded from resources for the ~~six~~ nine calendar months following the month of receipt. (See Social Security Administration's Program Operations Manual System (POMS) SI 01130.600 for exclusion of retroactive RSDI benefits.)

(Break in Continuity of Sections)

20310.18 Tax Refunds and Advance Payments

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P. L. 111-312), which was signed into law on December 17, 2010, includes a provision that requires all programs funded in whole or in part with Federal funds, to disregard Federal tax refunds for a period of twelve months from the month of receipt.

Tax refunds and advance payments with respect to a refundable tax credit received after December 31, 2009 through December 31, 2012 are excluded from resources for the twelve calendar months following the month of receipt.

Any portion of the refund or payment that is still retained after that twelve- month period will be a countable resource.

14 DE Reg. 1001 (04/01/11) (Prop.)