

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

FINAL

ORDER

Long-Term Care Program DSSM 20310.18 Tax Refunds and Advance Payments

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Long-Term Care program, specifically, *Tax Refunds or Advance Payments*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the February 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 4, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The proposal amends the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, *Tax Refunds or Advance Payments*.

Statutory Authority

Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312)

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

DSSM 20310.18, *Tax Refunds and Advance Payments*: The purpose of the proposed change is to clarify that the 12 month disregard of tax refunds and advance payments only applies to the funds that are received through December 31, 2012. Any refunds/advance payments received on or after January 1, 2013 will be considered a resource if retained the month following receipt.

Fiscal Impact Statement

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) have reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to amend its Long-Term Care (LTC) Medicaid resource regulation and would like to affirm that we did not identify any technical concerns. The proposed regulation was published as 16 DE Reg. 825 in the February 1, 2012 issue of the *Register of Regulations*.

DMMA notes that federal legislation enacted in 2010 created a twelve month "disregard" for federal income tax refunds

received between December 31, 2009 and December 31, 2012. That “disregard” has expired and the Division is now adding the following conforming sentence: “Any retained portion of a tax refund and/or advance payment that was received on or after January 1, 2013 will be a countable resource the month following receipt.”

Agency Response: DMMA thanks you for the affirmation.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the February 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding Long Term Care Medicaid, specifically, *Tax Refunds or Advance Payments* is adopted and shall be final effective April 10, 2013.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #13-12
REVISION**

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.

Any retained portion of a tax refund and/or advance payment that was received on or after January 1, 2013 will be a countable resource the month following receipt.

14 DE Reg. 1364 (06/01/11)

16 DE Reg. 1077 (04/01/13) (Final)