

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 – Treatment of Income and Resources of Couples

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care, specifically, applying couple computation rules. 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 June 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2008 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 proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care, specifically, applying couple computation rules.

Statutory Authority

- Social Security Act 1611(e)(3);
- 42 CFR §435.602(a)(4); *Financial Responsibility of Relatives and Other Individuals*; and,
- State Medicaid Manual, *Treatment of Couples in Medical Institutions*.

Summary of Proposal

DSSM 20810, ~~*Treatment of Couples in Medical Institutions*~~ *Treatment of Income and Resources of Couples*: First, the rule title has been renamed to reflect the revised content of the rule. Second, the language has been clarified to better describe how income and resources are counted when determining and redetermining long-term care Medicaid eligibility for legally married couples. The changes clarify how the couple income and resource standards should be applied. Current policy does not address how to treat the income and resources of the couple for the first six (6) months of institutionalization.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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. DMMA has considered each comment and responds as follows.

As background, the current regulation allows couples cohabiting in a long-term care facility for at least six months to be budgeted as either a couple or two individuals, whichever is more beneficial to the spouses. The proposed regulation makes a few changes. The standards are not intuitive and are difficult to follow.

First, the Summary of Proposal section indicates that the new regulation addresses "how to treat the income and resources of the couple for the first six (6) months of institutionalization." However, the actual standards are not

very clear in this context. Council infers that if both are institutionalized OR if one is institutionalized and the second has applied for admission to the same institution, the "couples" income and resource standards apply for six months. For example, if both had vehicles, 16 DE Admin. Code 20330.1 would exempt only one vehicle from the resources limit since the standard allows couples to exempt one vehicle. After six months, both could claim the exemption for separate vehicles since they could be budgeted as separate individuals.

Agency Response: One vehicle is excluded per household. Even after 6 months of institutionalization in the same facility a couple is still considered a household of one. They may be budgeted as an individual however; only one vehicle will be excluded.

Second, the "couples" standards are extended to couples receiving or applying for Home and Community Based Services (HCBS). However, the favorable option of being treated as a couple or separate individuals after six months do not apply. That option literally applies only to persons in "the same nursing facility".

Agency Response: Correct. A couple receiving HCBS does not have the option of being budgeted as an individual after 6 months.

Our recommendations are as follows:

First, the regulation literally states that if one spouse is in a nursing home and the other spouse applies for residency at the nursing home, the income and resource standards for couples must apply. This means that the spousal impoverishment protections would not apply to the spouse living at home who has applied for nursing home care. This would ostensibly violate the spousal impoverishment regulations. The spouse in the home is a "community spouse" under 16 DE Admin. Code 20910.2 entitled to favorable financial allowances.

Agency Response: The community spouse will receive spousal impoverishment protections until they are admitted to a nursing facility. However, during the application process the couple standards will be applied in order to determine Medicaid eligibility. If the community spouse is not eligible for Long Term Care Medicaid, the spousal impoverishment allowances would continue.

Second, the "6-month" standard does not appear in the applicable federal regulation [42 C.F.R. 435.604] and DMMA could consider simply deleting the six-month standard for ease of administration. If adopted, spouses would have the option of being budgeted as a couple or individuals and the spousal impoverishment issue would not be presented.

Agency Response: The "6-month" standard does appear in section 1611 of the Social Security Act and in Section 3597 of the State Medicaid Manual. DMMA will retain this standard.

Third, the reference to "the same nursing facility" may be "under inclusive". In other sections, the reference is to "an institution" or "a medical institution or nursing facility". The superseded regulation applied to hospitals as well as nursing homes.

Agency Response: For the sake of clarity and consistency, the reference to the "same nursing facility" will be amended to read "same facility".

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the June 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) related to Long Term Care, specifically, treatment of income and resources of couples, is adopted and shall be final effective August 10, 2008.

Karryl McManus for
Vincent P. Meconi, Secretary, DHSS, July 2, 2008

**DMMA FINAL REGULATION #08-33
REVISION:**

20810 Treatment of Couples in Medical Institutions

~~A legally married husband and wife who have continuously shared a room in a hospital, nursing home, skilled nursing facility or intermediate care facility for a period of at least 6 months, may be considered a Couples Case and the Couples Case income and resource limits would apply to them. Should a married couple be determined a Couples Case, then spousal rules will not apply. The decision to treat a married couple as a Couples Case or as 2 individuals should be based on the couple's best interests in regard to the income and resource limits. See DSSM 20100.2.2 and 20300.~~

20810 Treatment of Income and Resources of Couples

This policy applies to all legally married couples when determining and redetermining Long Term Care Medicaid eligibility for both husband and wife.

Treatment of Home and Community Based Services (HCBS) Couples

The income and resource standards for a HCBS couple will be applicable if:

- Both are requesting HCBS AND reside at the same address; OR
- One is currently receiving HCBS and the spouse is requesting HCBS AND they reside at the same address.

Treatment of Couples Residing in an Institution

The income and resource standards for couples residing in an institution will be applicable if:

- Both are requesting institutional services AND they will be residing in the same facility;
OR
- One is currently receiving institutional services and the spouse is requesting institutional services at the same facility.

After a husband and wife have resided in the same ~~nursing~~ facility for 6 months they have the option of being budgeted as a couple or as two individuals. This decision should be based on the couple's best interests in regard to the income and resource limits.

See DSSM 20100.2.2 (income standards) and 20300 (resource standards).