

**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

Title XIX Medicaid State Plan Attachment 2.2, Page 18 Supplement 6 to Attachment 2.6-A and Division of Social Services Manual (DSSM) 17800 - 17805

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Medical Assistance during Transition to the Medicare Program. 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 September 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 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 PROPOSED AMENDMENT

The purpose of this proposal is to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) related to the Medical Assistance during Transition to the Medicare Program. The reason for this amendment is to add coverage for a new optional categorically needy Medicaid population group.

Statutory Authority

- 42 CFR §435.232, *Individuals Receiving Only Optional State Supplements*

Background

The SSI Medical Assistance Transition (MAT) Program was implemented on March 1, 2001. This program was specifically designed to provide Medicaid coverage to SSI beneficiaries who lost SSI benefits (and consequently Medicaid eligibility) due to the receipt of Social Security Disability Income (SSDI) benefits. This extension of Medicaid coverage was made possible by establishing an Optional State Supplement program, which satisfies federal requirements for Medicaid Federal Financial Participation (FFP). The Title XIX Medicaid State Plan defines this group as "*Individuals who lose SSI due to receipt of Social Security Disability Income and are not yet eligible for Medicare.*"

Summary of Proposed Amendment

The Medicaid State Plan and the Division of Social Services Manual (DSSM) will be amended to provide coverage to those individuals, not previously receiving SSI, who may be eligible for Medicaid based solely on income and who lose eligibility due to the receipt of Social Security Disability Income (SSDI), which exceed Medicaid eligibility guidelines. Effective September 1, 2008, eligibility would be for any individual who lost eligibility for Medicaid on or after January 1, 2008 due to the receipt of SSDI and does not have Medicare coverage.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

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:

First, the proposed amendments broaden eligibility for this program. Literally, it will be available to individuals who lose Medicaid eligibility due to receipt of SSDI even if the basis for Medicaid eligibility is not SSI. See Section 17801 and chart on top of p. 287. The Councils endorse this change.

Agency Response: Thank you for the endorsement.

Second, there is a "typo" at Par (9) on p. 286. The reference to "Medical" should be to "Medicare".

Agency Response: This was a publication error. The agency's original submission to the publisher shows "Medicare".

Third, the standards are inconsistent in one respect. The State Plan [Par (9) on p. 286 and chart at top of p. 287] extends eligibility only to persons "not yet eligible for Medicare". In contrast, Section 17801 extends eligibility to anyone who "does not have Medicare coverage". The latter standard is broader since SSDI beneficiaries can opt to not enroll in Medicare. The latter standard would allow an SSDI beneficiary eligible for Medicare to continue Medicaid eligibility indefinitely by not enrolling in Medicare. If the "Medicare coverage" standard is retained, DMMA may wish to clarify whether it refers to Medicare A, B or D. For example, if an SSDI beneficiary enrolls in Medicare A and B, but not D, does the beneficiary "have Medicare coverage" within the scope of Section 17801?

Agency Response: Section 17801 will be revised. Medicaid eligibility is extended to individuals who are not yet eligible for Medicare.

Fourth, there is some "tension" among Sections 17802, 17804, and 17805. While all income is excluded for eligibility purposes under Section 17802; Sections 17804 and 17805 contain income and countable income criteria. It appears inconsistent to make income immaterial under one section while establishing income standards under other standards. The \$5.00 referenced in Section 17804 is actually a payment to the beneficiary but could be interpreted as a countable income cap. These sections would benefit from revisions for clarity.

Agency Response: Sections 17802, 17804, and 17805 are in compliance with 42 CFR §435.234 and will not be revised.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Medical Assistance during Transition to the Medicare Program is adopted and shall be final effective December 10, 2008.

Vincent P. Meconi, Secretary, DHSS, November 17, 2008

DMMA FINAL ORDER REGULATION #08-46a

REVISIONS:

State: DELAWARE

Agency*	Citation(s)	Groups Covered
	C. Optional Groups Other Than the Medically Needy (Continued)	
	_____(4)	Aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.
	_____(5)	Blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.
	_____(6)	Disabled individuals in domiciliary facilities or other group living arrangements as defined under SSI.
	_____(7)	Individuals receiving federally administered optional State supplement that meets the conditions specified in 42 CFR 435.230.
	_____(8)	Individuals receiving a State administered optional State supplement that meets the conditions specified in 42 CFR 435.230.
	<u> X </u> (9)	Individuals in additional classifications approved by the Secretary as follows: Individual who lose SSI due to receipt of Social Security Disability and are not yet eligible for Medicare. <u>Individuals who lose eligibility for Medicaid due to the receipt of Social Security Disability Insurance and are not yet eligible for Medicare.</u>

(Break In Continuity of Sections)

Revision:

HCFA-AT-85-3
FEBRUARY 1985

SUPPLEMENT 6 TO
ATTACHMENT 2.6-A

State: DELAWARE

Standards for Optional State Supplementary Payments

PAYMENT CATEGORY (REASONABLE CLASSIFICATION)	FEDERAL	STATE	INCOME		LEVELS		INCOME DISREGARDS EMPLOYED
			GROSS 1 Person	Couple	NET 1 Person	Couple	
(1) Individuals Residing in Adult Foster Care Homes	(2) X		(3) SSI + \$140 + \$20		(4) SSI + \$140		(5) Disregards According to the SSI Program
Individuals Who Lose <u>SSI Eligibility for Medicaid</u> Due to Receipt of Social Security Disability <u>Insurance</u> and Are Not Yet Eligible for Medicare		X	\$5.00		\$5.00		All Income is Excluded

DMMA FINAL ORDER REGULATION #08-46b

REVISIONS:

17800 Medical Assistance During Transition to Medicare

Under 42 CFR 435.232 Medicaid may be provided to individuals who receive only an optional State supplement and who would be eligible for SSI except for the level of their income.

The rules in this section set forth the eligibility requirements for coverage under this state-administered Optional State Supplementation group - Medical Assistance during Transition to Medicare (MAT). The MAT group is implemented with the earliest effective date of February 1, 2001 ~~March 1, 2001~~. Eligibility under this group is not retroactive.

17801 Status Eligibility

In addition to the general Medicaid eligibility requirements listed in DSSM 14000 - 44950.7 14960, the individual ~~meets all the conditions listed below~~ must meet the following conditions:

- a) received SSI, and
- b) ~~lost eligibility for SSI because of Social Security Disability, and~~ lost eligibility for SSI due to the receipt of Social Security Disability Insurance, and
- c) **~~[does not have Medicare coverage, and is not yet eligible for Medicare.]~~**
- d) ~~is not an inmate in a public institution. An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. An individual awaiting trial in a detention center is considered an inmate of a public institution~~
- e) ~~an annual redetermination is completed. A redetermination is a re-evaluation of a recipient's continued eligibility for medical assistance. In a redetermination, all eligibility factors are re-examined to ensure that the recipient continues to meet categorical eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached.~~

Effective September 1, 2008, coverage under the MAT group is extended to an individual who:

- a) lost eligibility for Medicaid on or after January 1, 2008, due to the receipt of Social Security Disability Insurance, and
- b) **~~[does not have Medicare coverage is not yet eligible for Medicare.]~~**

17802 Financial Eligibility

All income and resources are excluded.

17803 Eligibility Determination

~~DSS will receive the names of individuals who lose SSI via the monthly State Data Exchange (SDX). When an individual loses Medicaid eligibility because of the loss of SSI, Federal regulations require a redetermination of Medicaid eligibility based upon information obtained through the SDX file. A new application is not required. The SSI Unit will use the information obtained from the SDX to redetermine Medicaid eligibility.~~

When an individual loses Medicaid eligibility, a redetermination will be completed to the extent possible based on information contained in the individual's file. An application form may be required if additional or updated information is needed for the redetermination.

17804 Income Standard

The income standard is \$5.00.

17805 Payment Level

Countable income is deducted from the income standard.

12 DE Reg. 788 (12/01/08) (Final)