

**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**

**Durable Medical Equipment (DME) Provider Specific Policy Manual**

**NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend the existing rules in the Delaware Medical Assistance Program (DMAP) Provider Manuals regarding *Durable Medical Equipment - Ownership of Equipment*. 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 October 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2010 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 purpose of this proposal is to amend the Delaware Medical Assistance Provider (DMAP) Manuals regarding the ownership of certain *Durable Medical Equipment (DME)*.

**Statutory Authority**

- 42 CFR §414.202, *Definitions (DME)*
- 42 CFR §440.70(b)(3), *Home Health services*
- 42 CFR §440.230, *Sufficiency of amount, duration, and scope*

**Background**

The Delaware Medical Assistance Program (DMAP) covers medically necessary durable medical supplies and equipment, under the Durable Medical Equipment (DME) program, which meet program guidelines when prescribed by a physician.

The Division of Medicaid and Medical Assistance (DMMA), in collaboration with the University of Delaware, Center for Disabilities Studies (CDS), is interested in developing a durable medical equipment retrieval program. Such a program would enable high-quality products such as wheelchairs, scooters, and communication devices to be refurbished and made available to a new customer when no longer needed by the original beneficiary. Similar programs have been implemented in other states, demonstrating both fiscal and environmental advantages.

Current DMMA policy assigns ownership of equipment purchased by DMMA to the client. The proposed revision would assign ownership of certain specified DME to DMMA. When the equipment is no longer needed, it will be recovered by CDS. CDS will assess and refurbish, if appropriate. A new customer service component will also be established to periodically evaluate the effectiveness of equipment in meeting the needs of the beneficiary. DMMA customers will also have the option of accepting refurbished equipment, when available, at a reduced cost to the state.

**Summary of Proposal**

The DME provider manual is revised to establish a policy of ownership for certain purchased durable medical equipment. This rule revision will allow certain durable medical equipment purchased by DMMA to remain the property of the DMMA to be used by for the benefit of the Medicaid recipient until it is no longer medically necessary. At such time as the item is no longer medically necessary, DMMA may retrieve the durable medical

equipment product if it is determined to be administratively and fiscally prudent.

This rule will allow DMMA to establish a durable medical equipment retrieval program and meet the needs of Delawareans who do not have access to durable medical equipment and ultimately reducing the amount of uncompensated care provided by DMAP healthcare providers. This rule promulgation is the first step in establishing procedures necessary to implement a durable medical equipment retrieval program.

### **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 considerations summarized below. DMMA has considered each comment and responds as follows.

As background, other states have implemented assistive technology/durable medical equipment "reuse" programs. Attached please find a PowerPoint outline describing the Kansas program. It notes that there is a high national rate of abandonment of AT/DME. In addition, legislators were concerned that Medicaid-purchased AT/DME was being sold at yard sales, and considerable cost savings resulted from adopting a system of recycling Medicaid-supplied AT/DME.

Delaware's Center for Disabilities Studies (CDS) and DMMA are now developing a similar system in Delaware. The regulation provides the following information:

Current DMMA policy assigns ownership of equipment purchased by DMMA to the client. The proposed revision would assign ownership of certain specified DME to DMMA. When the equipment is no longer needed, it will be recovered by CDS. CDS will assess and refurbish, if appropriate. A new customer service component will also be established to periodically evaluate the effectiveness of equipment in meeting the needs of the beneficiary. DMMA customers will also have the option of accepting refurbished equipment, when available, at a reduced cost to the state.

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CDS is soliciting providers to support this new initiative.

In response to my inquiry, CDS informally shared supplemental information on September 30. The following is a summary of the supplemental information:

A. The CDS/DMMA project is supported by an RSA model demonstration project grant. A stakeholder group comprised of state agencies, DME vendors, service providers and individuals with disabilities has been meeting for a few years to reach consensus on the model. The plan is to contract with one or more qualified vendors to conduct the reclamation, sanitization, refurbishment, and repair.

B. Health and safety is a key concern. Individuals could be hurt by "mismatched" DME or malfunctioning DME. Therefore, if a prescription is generally needed to obtain a particular piece of equipment, a prescription will be required to obtain equipment through this project to ensure the features match the individual's needs. Only lightly-used equipment will be processed and restored to "like-new" condition. Some types of equipment will not be processed due to hygiene issues.

C. DMMA is not restricting access to reclaimed equipment to Medicaid beneficiaries, but Medicaid will have the option of procuring equipment at costs far less than retail from the reuse inventory. CDS plans, under DMMA contract, to adopt a customer-service role in which Medicaid beneficiaries provided with DME will be contacted to assess whether the equipment is meeting their needs. If the equipment is no longer needed, or the beneficiary has passed away, the equipment will be retrieved and, if appropriate, refurbished for use by others.

D. The program is viewed as a means of leveraging resources. The CDS is aware of Medicaid beneficiaries or their families selling DMMA-purchased DME on Craig's List or DATI's AT Exchange soon after delivery. This project should reduce the incidence of such sales and facilitate access to DME by uninsured and underinsured persons.

E. As part of the project, Paul Solano, a University of Delaware economist, will conduct a cost/benefit analysis to provide comprehensive data about the return on the reuse investment. This analysis would be of use both locally

and nationally.

The proposed regulation represents a “first step” towards DMMA implementation of the reuse program. The current regulation grants ownership of DME purchased through Medicaid to the beneficiary. The new regulation “carves out” certain forms of Medicaid-purchased DME which will be “owned” by DMMA. It would then be subject to retrieval and recycling when the beneficiary no longer needs the device.

From a consumer perspective, there are pros and cons to the initiative.

On the negative side, query whether beneficiaries will be subject to State claims if State-owned equipment is lost or damaged, even through no fault of the beneficiary. Some of the listed DME is also so inexpensive and/or subject to wear and tear (e.g. car seats) that sanitizing and refurbishing may be of questionable cost effectiveness.

On the positive side, the reuse program should ultimately save DHSS money, promote recycling, and facilitate access to equipment. The Kansas model included receiving donations of equipment from the public with positive results.

Balancing the competing interests, the Councils endorse the proposed regulation subject to DMMA considering the following.

First, since Medicaid is the payor of last resort, the Councils assume there are situations in which a third party (e.g. insurer) has partially paid (e.g. 80%) for equipment and DMMA has paid a remaining balance (e.g. 20%). Under those circumstances, we query whether it is equitable for DMMA to assume full ownership of the equipment.

**Agency Response:** DMMA’s intent is to only recover certain pieces of equipment no longer needed by Medicaid clients. Doing so will potentially enable other Medicaid clients or the general public to benefit since the recovered items will become part of the recycling effort’s larger inventory of equipment. Since the program is designed to acquire used equipment from the general public in addition to Medicaid, we believe equity will be achieved through the recycling of equipment for everyone, including non-Medicaid individuals with third party coverage who may benefit from the acquisition of a refurbished piece of equipment that may have originally been paid in full by Medicaid.

No change to the regulation was made as a result of this comment.

Second, DMMA should consider the extent of the beneficiary’s liability for lost or damaged equipment owned by the State. If the beneficiary exercises reasonable care, it would be inappropriate to penalize the beneficiary for loss or damage. The beneficiary should not be treated as an “insurer” of the equipment.

**Agency Response:** Damage or loss of equipment can happen under current policy where a client retains ownership. In those instances, DMMA does not penalize clients when a replacement is needed. Under the proposed ownership change, DMMA would impose no new policy penalizing a client for damage or loss which occurred through no fault of the client. Retention of ownership by the State is solely for the purpose of assuring that equipment may be reused as part of the recycling program. We intend no new level of liability on the part of the client.

No change to the regulation was made as a result of this comment.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the October 2010 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the existing rules in the Delaware Medical Assistance Program (DMAP) Provider Manuals regarding *Durable Medical Equipment – Ownership of Equipment* is adopted and shall be final effective December 10, 2010.

Rita M. Landgraf, Secretary, DHSS

#### **DMMA FINAL ORDER REGULATION #10-50**

#### **REVISION:**

#### **DELAWARE MEDICAL ASSISTANCE PROGRAM**

#### **Durable Medical Equipment (DME) Provider Specific Policy Manual**

### 3.5 Purchase Versus Rental

3.5.4 ~~If purchase is the only option (such as for a custom-made wheelchair), or is determined to be the most cost-effective method of providing the equipment, the equipment will become the property of the client after the DMAP reimbursement is made.~~ Items specified below, purchased by DMMA shall be the property of DMMA. Other equipment purchased by DMMA will become the property of the client after the DMAP reimbursement is made.

- Augmentative Communication Devices
- Bath Benches
- Bi-Paps
- C-Paps
- Car Seats
- Commodes
- Feeder Seats
- Feeding Pumps
- Gait Trainers
- Hospital Beds and Hospital Bed Accessories
- Nebulizers
- Oxygen Concentrators
- Patient Lifts
- Quad Canes
- Scooters
- Shower Chairs
- Stenders
- Strollers
- Walkers
- Wheelchairs and Wheelchair Accessories