

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 16 Delaware Code, Section 512 (16 **Del.C.** §512)

FINAL

REGULATORY IMPLEMENTING ORDER

Asset Verification System

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 regarding the *Asset Verification System*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del.C.** §10115 in the October 2011 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2011 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 serves as notice of intent of the Division of Medicaid and Medical Assistance (DMMA) to submit a State Plan Amendment (SPA) to implement section 1940 of the Social Security Act that requires all States to implement *Asset Verification System*, a system for verifying the assets of aged, blind or disabled applicants for and recipients of Medicaid.

Statutory Authority

- Supplemental Appropriations Act of 2008, Public Law 111-148, Title VII, Section 7001(d)
- Social Security Act §1940, *Asset Verification through Access to Information Held By Financial Institutions*

Background

Title VII, section 7001(d) of P.L. 110-252 (Supplemental Appropriations Act of 2008) added a new section 1940 to the Social Security Act. Section 1940 of the SSA requires all States to add "asset verification programs" to their Medicaid State plans.

Individuals whose eligibility is being determined or redetermined (and others whose finances are relevant to eligibility) must authorize the State agency to obtain records from any financial institution in connection with the eligibility determination in order to verify the individual's assets. The verification program is to be "consistent with the approach of the Commissioner of Social Security" under Section 1631 of the SSA, i.e., an electronic verification system. Individuals who refuse or revoke their authorization may be determined ineligible for medical assistance.

States are required to submit a state plan amendment which describes how they will implement an asset verification system. Plan amendments will have to be submitted at least six months before the implementation deadline applicable to each State. Delaware has been scheduled by CMS to implement an electronic asset verification system in year 2013. (Public Law 110-252)

If a State fails to implement an asset verification system as required by section 1940, Federal Financial Participation (FFP) for services provided to aged, blind or disabled individuals for whom assets should have been verified will be withheld.

Summary of Proposal

The Division of Medicaid and Medical Assistance (DMMA) will be implementing the Asset Verification System to comply with Section 1940 of the Social Security Act (SSA) and with the Centers for Medicare and Medicaid Services (CMS) directives.

The provisions of this State plan amendment are subject to approval by the CMS.

Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

The costs for system changes are already budgeted in the General Fund.

Savings/Cost Avoidance may be achieved to the extent that the asset verification data increases the accuracy of eligibility determinations.

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 proposed amendment suggests that DMMA plans to use a contractor to operate the asset verification system which includes interaction with local banks. However, DMMA indicates that "(t)he contractor is not known at this time." See amendment, Par. 3. In Section 2, it appears that DMMA should be checking off Par. "B" since it is adopting a contractor-based approach as juxtaposed to the other available options. However, Par. B contains no "check-off". DMMA should consider whether this is an oversight.

Agency Response: The check-off was inadvertently omitted during publication. The final order regulation shows paragraph "B" in section 2 appropriately checked.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to regarding the *Asset Verification System* is adopted and shall be final effective December 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #11-54 REVISION:

Revision:

SUPPLEMENT 16 TO ATTACHMENT 2.6-A
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT State/Territory **DELAWARE**

Asset Verification System

1940(a)

1. The Agency will provide for the verification of assets for purposes of determining or redetermining Medicaid eligibility for aged, blind and disabled Medicaid applicants and recipients using an Asset Verification System (AVS) that meets the following minimum requirements.
 - A. The request and response system must be electronic:
 - (1) Verification inquiries must be sent electronically via the internet or similar means from the Agency to the financial institution (FI).
 - (2) The system cannot be based on mailing paper-based requests.
 - (3) The system must have the capability to accept responses electronically.
 - B. The system must be secure, based on a recognized industry standard of security (e.g., as defined by the U.S. Commerce Department's National Institute of Standards and Technology, or NIST).
 - C. The system must establish and maintain a database of FIs that participate in the Agency's AVS.
 - D. Verification requests also must be sent to FIs other than those identified by applicants and recipients, based on some logic such as geographic proximity to the applicant's home address, or other reasonable factors whenever the Agency determines that such requests are needed to determine or redetermine the individual's eligibility.
 - E. The verification requests must include a request for information on both open and closed accounts, going back up to 5 years.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory **DELAWARE**

ASSET VERIFICATION SYSTEM

2. System Development

- A. ___ The Agency itself will build and maintain an AVS.
In 3 below, describe how the system will meet the requirements in Section 1.
- B. ___ The Agency will hire the following contractor to build and maintain an AVS.
In 3 below, identify the contractor, if known, and describe how the system will meet the requirements in Section 1.
- C. ___ The Agency will be joining a consortium to develop an AVS.
In 3 below, identify the States participating in the consortium. Also identify the contractor, if known, who will build and maintain the consortium's AVS, and how the system will meet the requirements in Section 1.
- D. ___ The Agency already has a system in place that meets the requirements for an acceptable AVS:
In 3 below, describe how the system meets the requirements in Section 1.
- E. ___ Other alternative not included in A. - D. above.
In 3 below, describe this alternative approach how it will meet the requirements in Section 1.

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ASSET VERIFICATION SYSTEM

3. Provide the AVS implementation description and other information requested for the implementation approach checked in Section 2.
The contractor is not known at this time.
The Agency will select a contractor through the Request for Proposal (RFP) process.
The system and entity chosen will be able to comply with the following requirements of Supplement 16 to Attachment 2.6-A, Page 1:
- A. An electronic request and response process for asset verification;
- B. A database of financial institutions (FIs) that provide data to the entity meeting the geographic requirements of the entity;
- C. A 5-year look-back of the assets on individual applicants, recipients, spouses and partners;
- D. A secure system based on a recognized industry standard as defined by the United States Commerce Department's National Institute of Standards and Technology, or NIST;
- E. Verification request will include both open and closed asset account information as determined by the State;
- F. The acceptable asset verification entity will provide adequate data for the generation of all required reports expected to meet federal reporting requirements such as the number of requests, number of responses and amounts of undisclosed assets found.