

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 503(c) (31 **Del.C.** §503(c))
16 **DE Admin. Code** 20320

FINAL

ORDER

20320.7.E Substantial Home Equity Cap

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 *Home Equity Cap*. 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 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2012 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 Division of Medicaid and Medical Assistance proposes to amend the Division of Social Services Manual (DSSM) regarding eligibility for payment of Medicaid Long-Term Care (LTC) services, specifically, *Home Equity Cap*.

Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

Background

The Deficit Reduction Act (DRA) of 2005 was signed into law on February 8, 2006. The DRA made changes to certain Medicaid eligibility provisions in Section 1917(c)(1)(B)(i) of Social Security Act affecting Long Term Care services and supports.

Section 6014 of the DRA amends section 1917 of the Social Security Act (the Act) to provide that in determining the eligibility of an individual to receive medical assistance payment for nursing facility services or other long-term care services, States must deny payment if the individual's equity interest in his or her home exceeds \$500,000. States have the option to substitute an amount exceeding \$500,000, but not in excess of \$750,000.

Included in section 6014(f) of the DRA was the provision that the dollar amount of value of the home equity is to be increased beginning in 2011. The amount is to be increased from year to year based on the percentage increase in the Consumer Price Index (CPI), rounded to the nearest \$1,000.

Summary of Proposal

Under section 6014 of the Deficit Reduction Act of 2005 (DRA), Medicaid will not pay for long-term care services for individuals whose equity interested in their home exceeds a federally issued mandated home equity cap. As a State option, a higher limit may be set that does not exceed a maximum home equity cap. Delaware has elected to use the minimum cap.

Therefore, the corresponding sections of the Division of Social Services Manual, 20320.7.B and 20320.7.E, have been revised to reflect this provision and the Federal standard change of the excess home equity provisions based on the Consumer Price Index effective January 1, 2011 and effective January 1, 2012.

This statement of policy is retroactive to January 1, 2011.

Fiscal Impact Statement

These revisions impose 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.

Consistent with the "Summary of Proposal" section, federal law establishes a presumptive cap on Medicaid LTC eligibility of \$500,000 subject to annual increases based on the Consumer Price Index (CPI). DMMA is somewhat belatedly updating its standards to reflect the increases in the cap, i.e. to \$525,000 effective January 1, 2012.

The proposed regulation appears to be straightforward and we have only one (1) concern. The regulation recites as follows: "Equity value is determined by using the current market value of the home minus any mortgages or loans on the home." This is "underinclusive" and misleading. The attached CMS guidance recites as follows:

The equity value of a resource is the current market value minus any encumbrance on it. An encumbrance is a legally binding debt against the resource. This can be a mortgage, reverse mortgage, home equity loan, or other debt that is secured by the home.

Other states adopt the term "encumbrance" in their regulations. This would cover judgment liens, IRS liens, lis pendens claims, and other legally binding "encumbrances" on the home. The Councils recommend substitution of the following sentence: "Equity value is determined by using the current market value of the home minus any encumbrance (e.g. mortgage; loan; lien) on it." The APA allows such revision without pre-publication "to correct technical errors" or "to make (regulations) consistent with changes in basic law but which do not otherwise alter the substance of the regulations". Title 29 **Del.C.** §10112(b).

GACEC and SCPD endorse the proposed regulation subject to correction of the above underlined sentence which omits many forms of encumbrances which can reduce equity based on CMS guidance.

Agency Response: DMMA adopts the term "encumbrance" and revises the sentence accordingly. The agency thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to update the Division of Social Services Manual regarding eligibility for payment of Medicaid Long-Term Care (LTC) services, specifically, *Home Equity Cap*, is adopted and shall be final effective December 10, 2012.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #12-57 REVISIONS:

20320.7.B Receiving LTC On/After 01-01-2006

If a Medicaid recipient started receiving LTC Medicaid on or after January 1, 2006, evaluate home equity at the next redetermination.

Verification of the equity value of the home is required. Equity value is determined by using the current market value of the home minus any ~~mortgages or loans~~ **encumbrance (e.g. mortgage; loan; lien)** on the home.

Individuals with equity value in home property that exceeds ~~\$500,000~~ the home equity cap as set by federal regulations are NOT eligible for Medicaid payment of long-term care services unless the home is lawfully occupied by:

- a spouse,
- a dependent child under age 21 years, or
- a blind or disabled child of any age.

*Note: this This is not a change in the general rule that excludes a home of any value for purposes of determining eligibility for Medicaid. It applies only to medical assistance payment for nursing facility services, or other long-term care services referred to in 1917(c)(i)(C)(i).

Individuals with substantial home equity may be eligible for Medicaid payment of other covered services if they meet all the other Medicaid eligibility requirements.

See DSSM 20320.7.E for current home equity cap.

20320.7.E Substantial Home Equity Cap

Beginning in the year 2011, the limit on the substantial home equity will be increased yearly based on the Consumer Price Index (CPI).

16 DE Reg. 639 (12/01/12) (Final)

<u>Effective Date</u>	<u>Home Equity Cap</u>
<u>January 1, 2006</u>	<u>\$ 500,000</u>
<u>January 1, 2011</u>	<u>\$ 506,000</u>
<u>January 1, 2012</u>	<u>\$ 525,000</u>