

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PROPOSED

PUBLIC NOTICE

DSSM 20910.1 Institutionalized Spouse

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend a rule in the Division of Social Services Manual (DSSM) used to determine financial eligibility for medical assistance.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by March 2, 2007.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSED CHANGE

Citation

States Medicaid Manual 3710, *Special Post-Eligibility Process for Institutionalized Persons with Community Spouses*

Summary of Proposed Change

DSSM 20910.1: The Centers for Medicare and Medicaid (CMS) pointed out an error in the Division of Social Services Manual (DSSM). The error would have disallowed a spousal calculation for a community spouse if they were receiving Medicaid through Home and Community based Services.

DMMA PROPOSED REGULATION #07-03

REVISION:

20910.1 Institutionalized Spouse

An individual who is in a medical institution or nursing facility and is married to a spouse who is not in a medical institution or nursing facility. ~~and who is not receiving HCBS.~~

20910.2 Community Spouse

An individual who is married to an institutionalized spouse and does not receive HCBS.

9 DE Reg. 1187 (2/1/06)

9 DE Reg. 1565 (4/1/06)

20910.3 Family Member

A minor or dependent child, dependent parent, or dependent sibling (including half-brothers and half-sisters) of either spouse and who is living with the community spouse. A dependent is a family member who may be claimed

as a dependent by either spouse for tax purposes under the Internal Revenue Code.

20910.4 Minimum Monthly Maintenance Needs Allowance

An allowance for the community spouse which, effective 7/1/92, equals 150% of Federal Poverty Level for two plus an excess shelter allowance. (Prior to 7/1/92 the allowance was 133% of the FPL for two plus excess shelter.) The minimum maintenance needs allowance will change annually (every July) based on the FPL and the cap on the maintenance allowance will change annually (every January) based on the consumer price index. See Allowances Chart.

20910.5 Excess Shelter Allowance

The amount by which the spouse's expenses for rent or mortgage payment, property taxes, and homeowner's insurance plus the Food Stamp standard utility allowance (SUA) exceeds 30% of the applicable percent of the FPL for two.

20910.6 Community Spouse Monthly Income Allowance

The amount of income needed to bring the monthly income of the community spouse up to the minimum maintenance needs allowance.

20910.7 Monthly Income of the Community Spouse

Income that is "otherwise available" to the community spouse. "Otherwise available income " includes income that would be used if eligibility was being determined for the community spouse, i.e. gross income.

Exception: Do not count as income to the community spouse the amount that the institutionalized spouse who is a veteran pays for the medical needs of the community spouse.

20910.8 Family Allowance

The amount of income needed to bring a family member's monthly income up to 1/3 of the applicable percent of the FPL for two. Each family member is entitled to a family allowance.

20910.9 State Spousal Share

The state spousal share is the minimum amount of the couples' combined countable resources necessary to maintain the community spouse.

20910.10 Community Spouse Resource Allowance

The community spouse resource allowance is the amount of resources equal to whichever is greater :

\$25,000.00 (current state spousal share)

OR

1/2 of the value of the couple's combined countable resources as of the beginning of the first continuous period of institutionalization on or after 9/30/89, but no more than current maximum resource allowance determined by Federal law.

The minimum and maximum resource allowances increase on January 1 of each year by Federal law. Delaware Senate Bill 99 increased the minimum resource allowance from \$14,148 to \$25,000 for applications filed on or after 10/1/93.

If the share belonging to the spouse in the community is less than \$25,000, the institutionalized spouse's resources are deemed available to the community spouse to bring the community spouse's resources up to \$25,000 for initial eligibility determinations. Any amount above the Maximum Resource Allowance determined by Federal law is considered available to the institutionalized spouse for the purpose of Medicaid eligibility determination.

10 DE Reg. 1220 (02/01/07) (Prop.)