

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-Related General Assistance (GA) Program and Temporary Assistance for Needy Families (TANF)
Program Changes

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 regarding Medicaid-related General Assistance and TANF Changes. 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 November 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 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 proposal amends the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to comply with the Department's decision to eliminate the General Assistance (GA) payment for children living in the home of a non-relative adult and replace it with a payment under Temporary Assistance for Needy Families (TANF). This changes the category of Medicaid eligibility for these children.

Statutory Authority

- 1902(a)(10)(A)(ii) of the Social Security Act
- 1905(a)(i) of the Social Security Act
- Omnibus Budget Reconciliation Act 1990 (OBRA 90), Public Law 101-58
- 42 CFR §435.222, *Individuals under age 21 who meet the income and resource requirements*

Background

The American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5, provides eligible States with an increased Federal Medical Assistance Percentage (FMAP) through 12/31/2010. This increased FMAP was extended through 06/30/2011 under the Education, Jobs and Medical Assistance Act, Public Law 111-226.

To access the additional funds associated with the increased FMAP, each State must ensure that the eligibility standards, methodologies, or procedures under its Medicaid State Plan are not more restrictive during this period than those in effect on July 1, 2008. The Centers for Medicare and Medicaid Services (CMS) issued guidance about the maintenance of effort requirements in State Medicaid Director Letter (SMDL) #09-005. As noted in the guidance, "CMS would consider changes in State eligibility policies to be more restrictive if the changes result in determinations of ineligibility for individuals who would have been considered eligible as of July 1, 2008".

Although this proposed regulation and State Plan Amendment will eliminate the General Assistance unrelated child category ("reasonable classifications of children"), no child will lose Medicaid eligibility. The income limit under the poverty-level related group is much higher than the income limit under the General Assistance unrelated child category.

Summary of Proposal

Children under age 18 in the care of a non-relative adult will no longer receive a General Assistance cash benefit. The receipt of a General Assistance cash benefit provided Medicaid coverage under 42 CFR §435.222 which allows the State to cover reasonable classifications of certain children. This is described in the State Plan at Attachment 2.2 A, pages 12-13a, and Supplement 1 to Attachment 2.2-A.

These children will no longer receive Medicaid under this "reasonable classifications" group. Instead, these children will receive Medicaid under the poverty-level related groups as mandated by the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), Public Law 101-508, and described at DSSM 16000.

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.

In August, 2010, the Councils commented on a related proposed regulation switching eligible children from GA to TANF. We noted the generally positive aspects of the proposal (e.g. increased cash benefit) but also identified some concerns. The Division of Medicaid & Medical Assistance adopted a final regulation in October with some amendments prompted by our commentary. [14 DE Reg. 304 (October 1, 2010)]

The Division is now issuing a second proposed regulation which is essentially a "housekeeping" measure which amends the Medicaid State Plan to eliminate child eligibility under GA. Our only concern is that DMMA is repealing some regulations which apply to young adults, i.e., Section 15100, second sentence; Section 16120, third through fifth sentences. The TANF regulation treats individuals as adults upon turning 18. See §3027 at 14 DE Reg. 304, 312 (October 1, 2010). Hence, an 18-19 year old is not a "child" for purposes of qualifying for TANF. Therefore, it is counterintuitive to repeal GA standards which apply to 18-19 year olds since they may still qualify for GA.

Agency Response: Actually, the Division of Social Services adopted the regulation published as final in the October 1, 2010 issue of the Delaware Register. In response to the "counterintuitive" statement, DMMA is repealing the regulations at Section 15100, second sentence, and Section 16120, third through fifth sentences, because they are unnecessary. The Medicaid eligibility requirements for these young adults are at Section 16250. The General Assistance eligibility requirements for these young adults are at Section 3018.

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 November 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding Medicaid-related General Assistance and TANF Changes is adopted and shall be final effective January 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #10-56a

REVISION:

Revision: CMS
OMB No.

SUPPLEMENT 1 TO ATTACHMENT 2.2-A
Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT State/Territory DELAWARE

REASONABLE CLASSIFICATIONS OF INDIVIDUALS UNDER THE AGE OF 21, 20, 19, AND 18

~~1. Individuals under age 18 who meet the requirements of, and are in receipt of benefits from, the General Assistance Program and who also meet all the requirements of the AFDC (Title IV-A) program except that they do not qualify as dependent children.~~

2. 1. Children for whom the Department of Services for Children, Youth and their Families (DSCYF) has custody or consent to place and who:

- a. have been removed from their own home and are in a medical facility for temporary planning period prior to placement*, and
- b. meet the financial eligibility standards as established by the State Plan for Title IV-A.

*The plan of care must specify placement will be made in a home or facility that is approved by DSCYF for CHILD CARE (i.e., not medical or detention facilities), to which a public agency is making payments for the specified child's care. A home approved by DSCYF may be either with a relative or non-relative, as long as public funds are paying for the child's care.

3. 2. Children who, at the time of their birth, are placed in the care of private agencies for the purpose of adoption, to be covered from the date of their birth until their placement with the prospective adoptive parent(s). These children meet the financial eligibility standards as established by the State Plan for Title IV-A.

DMMA FINAL ORDER REGULATION #10-56b
REVISIONS:

13414 ~~General Assistance~~ RESERVED

~~Children under age 18 who receive General Assistance (GA) would be included in these optional groups.
14 DE Reg. 661 (01/01/11)~~

(Break In Continuity of Sections)

15100 ~~General Assistance~~ RESERVED

~~Any person aged 0 through 17 who is determined eligible for a General Assistance grant is also eligible for Medicaid coverage. Any individual under age 18 who is ineligible for a GA grant because of a budgeted need of \$.01 to \$9.99 is eligible for Medicaid.~~

~~GA recipients between age 18 and 19 can receive Federal Poverty Level related Medicaid. Uninsured GA recipients age 19 and over may be eligible as an adult in the expansion population under the *Diamond State Health Plan*. (See DSSM 16120)~~

(Break In Continuity of Sections)

16120 ~~General Assistance (GA) Recipients~~ RESERVED

~~General Assistance is a DSS cash assistance program available to families and unemployable individuals who meet certain financial and technical eligibility requirements.~~

~~An individual age 18 and under who receives GA is categorically eligible for Medicaid. An individual between age 18 and 19 who receives GA is categorically eligible under the poverty level related program for children. An individual age 19 or over who receives GA must be uninsured as defined in this section in order to be found eligible for Medicaid. Enrollment in a MCO is a technical eligibility requirement for individuals age 19 and over who receive GA. GA recipients who are age 19 or over will not receive Medicaid benefits until they are enrolled in a MCO.~~