

# **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

## **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. §512)

### **PUBLIC NOTICE**

#### **Long Term Care Program**

**Title XIX Medicaid State Plan: Attachment 2.6-A, Page 26a (New Page) and Supplement 13 to Attachment 2.6A;**

**DSSM 20910.10, Community Spouse Resource Allowance,  
20950 Initial Eligibility Determinations**

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 Social Services is proposing to amend the Title XIX Medicaid State Plan and the rules in the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal reduces the minimum community spouse resource allowance to the federal standard.

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 & Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by July 31, 2005.

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 THE PROPOSED CHANGE**

#### **Citations**

- 1924 (c)(3)(c) of the Social Security Act
- 1924(f)(2)(A) of the Social Security Act
- 42 USC 1396r-5
- State Medicaid Manual Sections 3260.1 and 3262

#### **Amending the Following Sections**

- Title XIX Medicaid State Plan: Attachment 2.6-A, Page 26a (New Page) and Supplement 13 to Attachment 2.6-A
- Division of Social Services Manual (DSSM): 20910.10 and 20950

#### **Background**

In 1988, Congress enacted provisions to prevent what has come to be called "spousal impoverishment", which can leave the spouse who is still living at home in the community with little or no income or resources. Within certain limitations, these provisions help ensure that this situation will not occur and that community spouses are able to live out their lives with independence and dignity.

The spousal impoverishment provisions apply when one member of a couple enters a nursing facility or other medical institution and is expected to remain there for at least 30 days.

States decide on a minimum amount of couples' combined countable resources necessary for community spouses to maintain themselves in the community. The minimum and maximum amounts are increased each calendar year after 1989 by the same percentage as the percentage increase in the Consumer Price Index between September 1988 and the September before the calendar year involved.

Effective January 1, 2005, the Medicaid spousal impoverishment standards for 2005 are as follows:

- Minimum Community Spouse Resource Standard - \$19,020.00;
- Maximum Community Spouse Resource Standard - \$95,100.00;
- Maximum Monthly Maintenance Standard - \$2,377.50; and,
- The minimum monthly maintenance standard remains \$1,561.25 until July 1, 2005.

### Summary of Proposed Change

Reduce the State minimum spousal resource allowance from \$25,000.00 to the federal standard (\$19,020.00 for the current fiscal year). The calculation of spousal resources will now be divided when the total countable resources exceeds \$19,020.00. Previously, resources were not divided unless the total exceeded \$25,000.00.

#### DSS PROPOSED REGULATION #05-34a

Revision: HCFA-PM- (MB) Attachment 2.6-A

Page 26a (NEW PAGE)

Citation	Condition or Requirement
<u>1924 of the Act</u>	<p>15. <u>The agency complies with the provisions of §1924 with respect to income and resource eligibility and post eligibility determinations for individuals who are expected to be institutionalized for at least 30 consecutive days and who have a spouse living in the community. When applying the formula used to determine the amount of resources in initial eligibility determinations, the State standard for community spouse is:</u></p> <p><u>the maximum standard permitted by law;</u></p> <p><u>X the minimum standard permitted by law.</u></p>

Revision: HCFA-PM- Supplement 13 to Attachment 2.6-A

#### Section 1924 Provisions

- a. Income and resource eligibility policies used to determine eligibility for institutional spouses who have a community spouse living in the community are consistent with Section 1924 of the Act.
- b. In determination of resource eligibility the state minimum resource standard is ~~\$25,000 in accordance with State Senate Bill 99, effective 10/1/93~~ the minimum standard allowed by Federal law.
- c. The acknowledgement of undue hardship follows:

An institutionalized spouse who (or whose Spouse) has excess resources shall not be find ineligible under Title XIX of the Social Security Act, per section 1924(c)(3)(C), where the State determines that denial of eligibility on the basis of having excess resources would work an undue hardship.

#### DSS PROPOSED REGULATION #05-34b

## REVISIONS:

### 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)~~ the minimum resource allowance

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. Effective 7/1/05, Delaware will use the minimum standard allowed by Federal Law.

If the share belonging to the spouse in the community is less than ~~\$25,000~~ the minimum spousal resource allowance, the institutionalized spouse's resources are deemed available to the community spouse to bring the community spouse's resources up to ~~\$25,000~~ the minimum spousal resource allowance 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.

(Break In Continuity of Sections)

### 20950 Initial Eligibility Determinations

Determine couples' combined countable resources for the month of application. Deduct from the couples' countable resources owned at the time of application a protected amount which is the greater of the following amounts:

the community spouse resource allowance (provided it does not exceed the maximum)

OR

the ~~current State spousal share (\$25,000)~~ minimum spousal resource allowance

Compare the remaining resources to the Medicaid resource limit of \$2,000. If the remaining resources are over \$2,000, the institutionalized spouse is ineligible until the combined countable resources are reduced to the greater of the following:

the community spouse resource allowance plus \$2000

OR

the ~~current State spousal share (\$25,000)~~ minimum spousal resource allowance plus \$2,000

See PROCEDURES FOR IMPLEMENTATION OF ELIGIBILITY RULES - 20950 Spousal Impoverishment Examples

An institutionalized spouse who (or whose spouse) has excess resources shall not be found ineligible per Section 1924 (c)(3)(C) of the Social Security Act where the state determines that denial of eligibility on the basis of having excess resources would work an undue hardship. Resources may be depleted in whatever manner the client/spouse wishes as long as there is no transfer for less than fair market value. See Section 20350.6 Transfer of Assets.

Once eligibility has been established, resources not used to determine eligibility for institutionalized spouses (i.e., the amount of spousal resource allowances) may be transferred to community spouses to assist such spouses in meeting their needs in the community. Thus, resources are not merely deemed available (or attributed) to community spouses in initial eligibility periods, but are actively made available to meet their needs in the community. Spouses who intend to transfer resources for this purpose are encouraged to do so as soon as is practicable before the first regularly scheduled redetermination of eligibility.

See PROCEDURES FOR IMPLEMENTATION OF ELIGIBILITY RULES 20950 #2 Community Spousal Resource Allowance

Resources transferred to community spouses as well as other specified parties, without receiving fair market value for the property transferred, do not adversely affect continuing eligibility of institutionalized spouses. See Section 20350.6 Transfer of Assets

**NOTE:** Although the revised transfer of assets provisions allow the institutionalized spouse to transfer all of his or her resources to the community spouse without regard to the resource allowance, the initial eligibility determination will still attribute resources in excess of the community spouse allowance to the institutionalized spouse.

After eligibility has been determined the eligibility worker must provide a written notice to both spouses including the following information as appropriate:

the amount of combined countable resources at the beginning of the first continuous period of institutionalization;

- the method used to compute the community spouse resource allowance, and
- institutionalized spouses' right to rebut through a fair hearing ownership or availability of income and resources.

**9 DE Reg. 70 (7/1/05) (Prop.)**