

**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**

**Estate Recovery**

**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 (DSSM) regarding *Estate Recovery – Exempt Medicare Cost Sharing Benefits Paid*. 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 May 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 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 amends the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the *Prohibition of Estate Recovery of Medicare Cost Sharing* in compliance with Section 115 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA).

**Statutory Authority**

Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), P.L. 110-275

**Background**

Section 115 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) changed federal estate recovery provisions. Effective January 1, 2010, MIPPA requires States to exempt Medicare cost sharing benefits (Part A and Part B premiums, deductibles, coinsurance and copayments) paid under the Medicare Savings Programs (MSPs) from estate recovery under 1917(b)(1) of the Social Security Act

The intent of this provision is to encourage dual eligible beneficiaries to more fully utilize Medicare cost sharing benefits available through the MSPs and allay concerns that Medicaid estate recovery will, after their death, lay claim to recover the value of these cost sharing benefits from their estates.

The exemption applies to the following groups of dual eligibles: qualified Medicare beneficiaries (QMB), specified low-income Medicare beneficiaries (SLMB), qualified individuals (QI), and qualified disabled and working individuals (QDWI).

MIPPA does not exempt MSP-eligible individuals from all estate recovery. The service which is exempted from estate recovery is the MSP cost sharing benefit, as indicated above. Benefits not related to MSP cost sharing are still subject to estate recovery for MSP.

**Summary of Proposal**

Effective with dates of service on or after January 1, 2010, this plan amendment revises estate recovery for certain Medicare cost sharing expenses for duly eligible individuals who were over age 55 when the expense was incurred. To comply with section 115 of MIPPA, this state plan amendment provides that medical assistance for Medicare cost sharing is protected from estate recovery for the following categories of dual eligible individuals: QMB, SLMB, QI and QDWI. This protection extends to medical assistance for four Medicare cost sharing benefits including Part A and B premiums, deductibles, coinsurance and co-payments.

The provisions of this state plan amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

**Fiscal Impact Statement**

This plan amendment imposes 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.

Federal legislation (§115 of MIPPA) was enacted to exempt Medicare cost sharing benefits (paid with Medicaid funds) from estate recovery. This state plan amendment provides that medical assistance for Medicare cost sharing is protected from estate recovery for certain categories of dual eligible individuals. The rationale is as follows:

The intent of this provision is to encourage dual eligible beneficiaries to more fully utilize Medicare cost sharing benefits available through the MSPs and allay concerns that Medicaid estate recovery will, after their death, lay claim to recover the value of these cost sharing benefits from their estates.

The GACEC and the SCPD endorse the proposed regulation.

**Agency Response:** DMMA thanks the Councils for their endorsement.

#### **FINDINGS OF FACT:**

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding *Estate Recovery – Exempt Medicare Cost Sharing Benefits Paid* is adopted and shall be final effective July 10, 2011.

Rita M. Landgraf, Secretary, DHSS

#### **DMMA FINAL ORDER REGULATION #11-27a REVISION:**

53a-1

Revision: HCFA-PM-95-3 (MB)  
May 1995

#### **STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE/TERRITORY: DELAWARE**

4.17 (b) Adjustments or Recoveries

(3) (Continued)

Limitations on Estate Recovery – Medicare Cost Sharing

- (i) Medical assistance for Medicare cost sharing is protected from estate recovery for the following categories of dual eligibles: QMB, SLMB, QI, QDWI, QMB+, SLMB+. This protection extends to medical assistance for four Medicare cost sharing benefits: (Part A and B premiums, deductibles, coinsurance, co-payments) with dates of service on or after January 1, 2010. The date of service for deductibles, coinsurance, and co-payments is the date the request for payment is received by the State Medicaid Agency. The date of service for premiums is the date the State Medicaid Agency paid the premium.

- (ii) In addition to being a qualified dual eligible the individual must also be age 55 or over. The above protection from estate recovery for Medicare cost sharing benefits (premiums, deductibles, coinsurance, co-payments) applies to approved mandatory (i.e., nursing facility, home and community-based services, and related prescription drugs and hospital services) as well as optional Medicaid services identified in the State plan, which are applicable to the categories of duals referenced above.

**DMMA FINAL ORDER REGULATION #11-27b**  
**REVISION:**

**14540 Estate Recovery Protections**

Effective with dates of service on or after January 1, 2010, medical assistance for Medicare cost-sharing is protected from estate recovery for certain categories of individuals who, collectively, are known as dual eligibles.

The following categories of individuals are protected from estate recovery of Medicare cost-sharing:

- a) Qualified Medicare Beneficiaries
- b) Specified Low Income Medicare Beneficiaries
- c) Qualifying Individuals
- d) Qualified and Disabled Working Individuals
- e) Qualified Medicare Beneficiaries with full Medicaid
- f) Specified Low Income Medicare Beneficiaries with full Medicaid

Medicare cost-sharing includes payments of Part A and Part B premiums, deductibles, coinsurance, and copayments. The date of service for premiums is the date DMMA paid the premium. The date of service for deductibles, coinsurance, and copayments is the date the request for payment is received by DMMA. The protection from estate recovery for Medicare cost sharing applies to mandatory and optional services under the State plan including nursing facility, home and community-based services, and related prescription drugs and hospital services.

**15 DE Reg. 84 (07/01/11) (Final)**