

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 14300, 14360 and 18100

FINAL

ORDER

Citizenship and Alienage

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 *Citizenship and Alienage, specifically, State Funded Benefits*. 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 April 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 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 Division of Social Services Manual (DSSM) regarding *Citizenship and Alienage, specifically, State Funded Benefits*.

Statutory Authority

This regulatory action proposes changes to State funded benefits necessitated by State Fiscal Year 2012 Recommended Operating Budget and Capital Improvement Act.

Background

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to certain legally residing noncitizens who are ineligible for full Medicaid benefits because of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). This does not include long term care services. Coverage for these aliens is subject to the availability of state funding.

Summary of Proposal

The purpose of this rule change is to eliminate state funded full Medicaid benefits for certain legally residing noncitizens and to delete the reference to state funded benefits under the Delaware Healthy Children Program.

Due to budgetary constraints, continued funding for the program was not included in the State Fiscal Year (SFY) 2012 recommendations of the Health Fund Advisory Committee (HFAC). This recommendation is reflected in Volume II of the SFY 2012 Governor's Recommended Budget.

Legally residing noncitizens may be found eligible for coverage of emergency services and labor and delivery only.

The proposed changes are effective July 1, 2011 and affect the following policy sections:

DSSM 14300, *Citizenship and Alienage*

DSSM 14360, *State Funded Benefits*

DSSM 18100.1, *Alien Status*.

Fiscal Impact Statement

A savings of \$1,570,000 in tobacco funds is projected.

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.

As background, the Division notes that Delaware has historically provided State funding to provide Medicaid coverage

to some non-citizens. However, given competing priorities, the Delaware Health Fund Advisory Committee (HFAC) did not approve continued State funding in its FY 12 recommendations. The funding is also omitted from the Governor's proposed FY 12 budget.

Given the projected lack of State funding for coverage of non-citizens, the Division is modifying its regulations to limit Medicaid services eligibility of qualifying legally residing noncitizens to "emergency services and labor and delivery only". The Division is also adopting a minor amendment to its Delaware Healthy Children Program regulation. The DHCP regulation already excluded coverage of noncitizens.

There are obvious "pros and cons" to the initiative. On the one hand, it will eliminate access to a broad range of medical services, including prenatal care, to noncitizens. On the other hand, Delaware faces a budget deficit which is prompting consideration of curtailment of a number of safety-net programs, including General Assistance. Given the Councils strong interest in ensuring access to health care, we recommend that the Division conduct a careful fiscal analysis regarding the impact of the proposed regulation and consider whether prenatal care could be offered as a State-funded benefit.

Agency Response: There is no need for the Division to consider if prenatal care could be offered as a state funded benefit. Effective July 1, 2010, Delaware implemented the option allowed under Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), P. L. 111-3, to provide Medicaid coverage to pregnant women who are lawfully residing in the United States.

No change to the regulation was made as a result of this comment.

Additionally, DSSM 17902 was inadvertently omitted as deleted text in the proposed regulation. ~~[Bracketed Bold language]~~ indicates deleted text added at the time the final order is issued.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation regarding *Citizenship and Alienage, specifically, State Funded Benefits* is adopted and shall be final effective June 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATIONS #11-23

REVISIONS:

14300 Citizenship and Alienage

Medicaid must be provided to eligible citizens or nationals of the United States. An individual qualifies as a U.S. citizen if the person was born in the 50 states and District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, or Northern Mariana Islands. Nationals from American Samoa or Swain's Island are regarded as U.S. citizens for purposes of Medicaid eligibility. Children of a U.S. citizen who are born outside the U.S. may automatically be eligible for a Certificate of Citizenship.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the U. S. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. Medicaid eligibility for aliens is based on whether the alien is a qualified or nonqualified alien. The term nonqualified alien also includes illegal aliens.

~~In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. This coverage is described at Section 14360.~~

All applicants, whether citizens or aliens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid, ~~emergency services and labor and delivery only, or the state funded benefits~~ emergency services and labor and delivery only.

(Break in Continuity of Sections)

14360 State Funded Benefits

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to certain legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. This ~~does did~~ not include long term care services. Coverage for these aliens is was subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only. Effective July 1, 2011, state funded benefits are no longer available for these certain legally residing noncitizens. These aliens may be found eligible for emergency services and labor and delivery only.

~~The following groups of aliens may be found eligible for state funded benefits:~~

- ~~• Qualified aliens subject to the PRWORA five-year bar~~
- ~~• Legally residing nonqualified aliens~~

~~Ineligible and illegal aliens are not eligible for state funded benefits.~~

~~State funded benefits are not provided to the adult expansion population under the 1115 demonstration waiver.~~

(Break in Continuity of Sections)

~~[17902 Alien Status~~

~~MWD does not provide state funded benefits to qualified aliens subject to the 5-year bar under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) or to legally residing nonqualified aliens.]~~

(Break in Continuity of Sections)

18100.1 Alien Status

The DHCP does not provide ~~state funded benefits~~ or coverage of emergency services and labor and delivery only.

Receipt of DHCP benefits cannot be considered by the U.S. Citizenship and Immigration Services (USCIS) when making public charge determinations.

14 DE Reg. 1361 (06/01/11) (Final)