

# 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

#### Long Term Care Resource Exclusions - Automobiles

##### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care Resource Exclusions - Automobiles. 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 March 2008 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2008 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 proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care Resource Exclusions - Automobiles.

##### Statutory Authority

- 42 CFR 416.1218, *Exclusion of the Automobile; and,*
- POMS Section SI 01130.200, *Automobiles and Other Vehicles Used for Transportation.*

##### Summary of Proposal

DSSM 20310.5 and 20330.1, *Automobiles*: One vehicle, regardless of the value, will be totally excluded if used for transportation of the eligible individual or a member of the eligible individual's household.

##### Summary of Comments Received with Agency Response and Explanation of Changes

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. DMMA has considered each comment and responds as follows.

In general, the amendments are consistent with the attached federal regulations, 20 C.F.R. §§416.1218 and 416.1201(c). However, we have three (3) recommendations to share with you.

First, the grammar in §20330.1 is problematic. Councils recommend the following substitute (with changes underlined):

If one vehicle can not be excluded under Section 20310.5, or there is more than one vehicle, the equity value is a resource if it:

- Is owned by an eligible individual/spouse; or

- Cannot be excluded under another provision (e.g. property essential to self support - DSSM 20320.5; co-owner refuses to sell) or conditional benefits do not apply (DSSM 20360).

**Agency Response:** DMMA agrees. Changes to the rule as proposed are indicated by **[bracketed bold type]**.

Second, the federal regulation [20 C.F.R. §416.1218(b)(2)] specifically recites that automobiles not excluded under 20 C.F.R. §416.1218(b)(1) are “non-liquid resources.” Although 16 **DE Admin Code** 20300.2 “captures” this concept, it would be preferable to clarify this status in the proposed §§20310.5 and 20330.1. This could be achieved by inserting “non-liquid” prior to “resource” in both sections.

**Agency Response:** DMMA agrees. The change to the rule as proposed is indicated by **[bracketed bold type]**.

Third, proposed §20330.1 contains the following benchmark for valuation of an auto’s equity value: “The equity value is the price it can reasonably sell for on the open market minus any encumbrances.” The federal standard is more restrictive by limiting equity value to “the price that an item can reasonably be expected to sell for on the open market in the particular geographical area involved; minus...(a)ny encumbrances. [emphasis supplied] See attached 20 C.F.R. 416.1201(c)(2). The federal regulation would not allow a valuation based on an eBay, national, or international internet sale. The DMMA regulation would allow valuation based on a non-Delaware market. At a minimum, we recommend the adoption of the following revised sentence: “The equity value is the price it can reasonably sell for on the open market in Delaware minus any encumbrances.”

**Agency Response:** DMMA agrees. The change to the rule as proposed is indicated by **[bracketed bold type]**.

#### **Findings of Fact:**

The Department finds that the proposed changes as set forth in the March 2008 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) related to Long Term Care Resources Exclusions – Automobiles is adopted and shall be final effective May 10, 2008.

Vincent P. Meconi, Secretary, DHSS, April 14, 2008

#### **DMMA FINAL REGULATION #08-14 REVISIONS:**

##### **20310.5 Automobiles**

~~One automobile, regardless of value, if, for the individual or a member of the individual's household (member of a household is one who receives food, clothing and shelter at the applicant's residence at time of institutionalization) if it fits the exclusions listed in Sections 20310.5.1 – 20310.5.4.~~

##### **20310.5.1 Employment**

~~The automobile is excluded if necessary for employment.~~

##### **20310.5.2 Medical Use**

~~If the automobile is necessary for the medical treatment of a specific or regular medical problem, it may be excluded.~~

##### **20310.5.3 Modifications**

~~An exclusion may be used if the vehicle is modified for operation by or transportation of a disabled person.~~

##### **20310.5.4 Essential Daily Activities**

~~The automobile may be excluded if it is necessary because of climate, terrain, distance, or similar factors to provide necessary transportation to perform essential daily activities.~~

#### **20310.6 Joint Ownership**

~~If the automobile is jointly owned and if a co-owner refuses to sell it may be excluded.~~

#### **20310.5 Automobiles**

20 CFR 416.1218

SI 01130.200

An automobile is any registered or non-registered vehicle that is used for transportation.

One automobile, per household, is excluded if:

- Used for transportation of the eligible individual or
- Used for transportation of a member of the eligible individual's household.

If there is more than one vehicle used for transportation, the automobile with the greatest equity value will be excluded.

The equity value of all additional automobiles will be evaluated as a [non-liquid] resource.

#### ***(Break In Continuity of Sections)***

#### **20330.1 Vehicles**

~~Vehicles are defined as automobiles, boats, travel trailers, motorcycles etc. The current market value of a vehicle is the average price that it will sell for (based on year, make, model and condition) on the open market in a certain geographic area. Current market value can be determined by using the NADA book (trade-in value) or a written appraisal from a disinterested, knowledgeable source. One vehicle may be excluded under Section 20310.5. Only one vehicle may be excluded for a married couple.~~

~~If NO vehicle is excluded per Section 20310.5, up to \$4650 of the CMV of ONE vehicle is excluded. If the CMV exceeds \$4650, the excess counts as a resource, unless the vehicle can be excluded under some other provision (i.e., co-owner refuses to sell). It is unlikely the \$4650 exclusion will be used. This is because most vehicles are used for either a medical problem or for essential daily activities and can be excluded per Section 20310.5.~~

~~Any vehicle an individual owns in addition to the vehicle that was totally or partly excluded (up to \$4650), is a resource in the amount of its equity value. The equity value is the CMV minus amount owed on the vehicle. The exclusion is applied in the manner most advantageous to the individual. If one of two vehicles can be excluded as necessary for medical treatment, the exclusion is applied to the vehicle with the greater equity value regardless of which vehicle is used to obtain medical treatment.~~

#### **20330.1 Automobiles**

For the purpose of Medicaid, automobile is defined as any registered or unregistered vehicle used for transportation.

One vehicle may be excluded under Section 20310.5.

Only one vehicle may be excluded per married couple/household.

If one vehicle can not be excluded under Section 20310.5, or there is more than one vehicle, the equity value is a

**[non-liquid]** resource if [it] :

- Is owned by an eligible individual/spouse [;or]
- Cannot be excluded under another provision (e.g. property essential to self support - DSSM 20320.5; co-owner refuses to sell) or conditional benefits do not apply (DSSM 20360).

The equity value is the price it can reasonably sell for on the open market [in Delaware] minus any encumbrances.

**11 DE Reg. 1479 (05/01/08) (Final)**