

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PROPOSED

PUBLIC NOTICE

Estate Recovery

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 Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding *Estate Recovery*.

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, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2011.

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 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.

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 PROPOSED REGULATION #11-17b

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.

14 DE Reg. 1193 (05/01/11)