

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 20620

FINAL

ORDER

Reasonable Limits on Care Expenses

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan and the Delaware Social Services Manual (DSSM) regarding Reasonable Limits on Care Expenses, specifically, *to clarify remedial care deductions for pre-incurred Medical expenses*. 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 September 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 2, 2017 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 purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and the Delaware Social Services Manual (DSSM) regarding Reasonable Limits on Care Expenses, specifically, *to clarify remedial care deductions for pre-incurred Medical expenses*.

Statutory Authority

- 42 CFR 435.725(b)

Background

Section 1902(r)(1)(A) of the Social Security Act requires States to take into account, under the post-eligibility process, amounts for incurred medical and remedial care expenses that are not subject to payment by a third party. Section 1902(r)(1)(A)(ii) permits States to place "reasonable" limits on the amounts of necessary medical and remedial care expenses recognized under State law but not covered under the State plan. However, those reasonable limits must ensure that nursing home residents are able to use their funds to purchase necessary medical or remedial care not paid for by the State Medicaid program or another third party.

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) will be submitting a state plan amendment to recognize incurred medical or remedial care expenses as those that are incurred during the three months preceding the month of application.

Summary of Proposal

The purpose of this proposed regulation is to *clarify remedial care deductions for pre-incurred Medical expenses*.

Summary of Proposed Changes

Effective for services provided on and after July 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) *to clarify remedial care deductions for pre-incurred Medical expenses*.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 2, 2017.

Centers for Medicare and Medicaid Services Review and Approval

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

Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals Update

Also, there may be additional provider manuals that will require small updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

The following fiscal impact is projected:

	Federal Fiscal Year 2017	Federal Fiscal Year 2018
General (State) funds	\$ 5,725	\$ 22,900
Federal funds	\$ 6,775	\$ 27,100

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) offered the following summarized observations:

The SCPD and GACEC are endorsing the proposed regulation since the proposal benefits Medicaid enrollees receiving HCBS or institutional services with little fiscal impact.

Agency Response: DMMA appreciates both councils endorsement.

DMMA is appreciative of the comments from State Council for Persons with Disabilities and the Governor's Advisory Council For Exceptional Citizens. DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan and the Delaware Social Services Manual (DSSM) regarding Reasonable Limits on Care Expenses, specifically, to clarify remedial care deductions for pre-incurred Medical expenses is adopted and shall be final effective November 11, 2017.

Kara Odom Walker, MD, MPH, MSHS
Secretary, DHSS

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Supplement 3 to
Attachment 2.6-A
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: **DELAWARE**

REASONABLE LIMITS IN AMOUNTS FOR NECESSARY MEDICAL OR
REMEDIAL CARE NOT COVERED UNDER MEDICAID

Reasonable and necessary medical expense not covered by Medicaid, incurred in the three (3) months period prior to the month of application are allowable deductions. Expenses incurred prior to this three month period are not allowable deductions.

The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty period is limited to zero.

TN No. SPA #07-023

Approval Date _____

Supersedes

TN No. SPA 06-003

Effective Date July 1, 2017

FINAL

20620.2.3 Prior Medical Costs

Medical costs incurred in a prior period of ineligibility (if approved by Medicaid) may be protected from his/her income. Costs incurred in a period of ineligibility must be approved by the Medicaid State Office prior to being protected and will only be considered if incurred within ~~30 days~~ three (3) months of the beginning date of Medicaid eligibility.

The recipient's reimbursement level and patient pay amount must be identified. Medicaid will protect at the Medicaid reimbursement rate, not the private pay rate.

The period of ineligibility may be caused by excess resources or excess income.

Protections for which the individual is seeking coverage will not be granted if the ineligible period occurred during a transfer of assets penalty phase.

10 DE Reg. 703 (10/01/06)

21 DE Reg. 435 (11/01/17) (Final)