

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

FINAL

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for the Medicaid Long Term Care Program. 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 February 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

Citation

States Medicaid Manual §3710, *Special Post-Eligibility Process for Institutionalized Persons with Community Spouses*

Summary of Proposed Change

DSSM 20910.1: The Centers for Medicare & Medicaid (CMS) pointed out an error in the Division of Social Services Manual (DSSM). The error would have disallowed a spousal calculation for a community spouse if they were receiving Medicaid through Home and Community Based Services.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following comment summarized below.

In April 2006, DMMA adopted regulations adding illustrations to institutionalized spouse standards. Although comments were not solicited, the SCPD objected to characterizing any spouse receiving HCBS as an “institutionalized spouse” which would remove spousal impoverishment protections. CMS then influenced DMMA to agree to delete the illustrations. DMMA then issued new regulations omitting the illustrations. However, the text still eliminated spousal impoverishment protections if a community spouse were receiving HCBS. CMS then confirmed that it had advised DMMA of its concurrence with the Council’s interpretation. DMMA has now published a conforming proposed regulation.

SCPD endorses the final regulation since it now allows non-institutionalized spouse participation in an HCBS waiver to benefit from spousal impoverishment protections.

Agency Response: DMMA thanks the Council for endorsing this proposed regulation.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the February 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual related to the institutionalized spouse is adopted and shall be final effective April 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 3/15/07

DMMA FINAL ORDER REGULATION #07-17

REVISION:

20910.1 Institutionalized Spouse

An individual who is in a medical institution or nursing facility and is married to a spouse who is not in a medical institution or nursing facility. ~~and who is not receiving HCBS.~~

20910.2 Community Spouse

An individual who is married to an institutionalized spouse and does not receive HCBS.

9 DE Reg. 1187 (2/1/06)

9 DE Reg. 1565 (04/01/06)

20910.3 Family Member

A minor or dependent child, dependent parent, or dependent sibling (including half-brothers and half-sisters) of either spouse and who is living with the community spouse. A dependent is a family member who may be claimed as a dependent by either spouse for tax purposes under the Internal Revenue Code.

20910.4 Minimum Monthly Maintenance Needs Allowance

An allowance for the community spouse which, effective 7/1/92, equals 150% of Federal Poverty Level for two plus an excess shelter allowance. (Prior to 7/1/92 the allowance was 133% of the FPL for two plus excess shelter.)

The minimum maintenance needs allowance will change annually (every July) based on the FPL and the cap on the maintenance allowance will change annually (every January) based on the consumer price index. See Allowances Chart.

20910.5 Excess Shelter Allowance

The amount by which the spouse's expenses for rent or mortgage payment, property taxes, and homeowner's insurance plus the Food Stamp standard utility allowance (SUA) exceeds 30% of the applicable percent of the FPL for two.

20910.6 Community Spouse Monthly Income Allowance

The amount of income needed to bring the monthly income of the community spouse up to the minimum maintenance needs allowance.

20910.7 Monthly Income of the Community Spouse

Income that is "otherwise available" to the community spouse. "Otherwise available income" includes income that would be used if eligibility was being determined for the community spouse, i.e. gross income.

Exception: Do not count as income to the community spouse the amount that the institutionalized spouse who is a veteran pays for the medical needs of the community spouse.

20910.8 Family Allowance

The amount of income needed to bring a family member's monthly income up to 1/3 of the applicable percent of the FPL for two. Each family member is entitled to a family allowance.

20910.9 State Spousal Share

The state spousal share is the minimum amount of the couples' combined countable resources necessary to maintain the community spouse.

20910.10 Community Spouse Resource Allowance

The community spouse resource allowance is the amount of resources equal to whichever is greater:

\$25,000.00 (current state spousal share)

OR

1/2 of the value of the couple's combined countable resources as of the beginning of the first continuous period of institutionalization on or after 9/30/89, but no more than current maximum resource allowance determined by Federal law.

The minimum and maximum resource allowances increase on January 1 of each year by Federal law. Delaware Senate Bill 99 increased the minimum resource allowance from \$14,148 to \$25,000 for applications filed on or after 10/1/93.

If the share belonging to the spouse in the community is less than \$25,000, the institutionalized spouse's resources are deemed available to the community spouse to bring the community spouse's resources up to \$25,000 for initial eligibility determinations. Any amount above the Maximum Resource Allowance determined by Federal law is considered available to the institutionalized spouse for the purpose of Medicaid eligibility determination.

10 DE Reg. 1619 (04/01/07) (Final)