

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

DSSM: Long Term Care Medicaid

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 proposing to amend existing rules in the Division of Social Services Manual (DSSM) to comply with the transfer of assets provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171).

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, Policy and Program 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 (new fax number) by January 31, 2007.

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 PROPOSED AMENDMENT

Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

Background

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in Section 1917(c)(1)(B)(i) of Social Security Act affecting Long Term Care services and supports.

Summary of Proposals

The DRA contains a number of provisions necessitating changes to Delaware rules. This regulatory action incorporates the mandatory provisions as it relates to: 1) *Requirement to Impose Partial Months of Ineligibility*; and 2) *Authority for States to Accumulate Multiple Transfers into One Penalty Period*.

Revised and clarified policy changes are summarized as follows:

1) *Requirement to Impose Partial Months of Ineligibility*

Prior to enactment of the DRA, States had the option to impose penalty periods for transfers in a month that were less than the State's average monthly cost to a private patient of nursing facility services in the State, or to impose no penalty period for such "partial month" transfers. Additionally, some States elected not to impose a penalty for transfers made within a month that were under a certain threshold e.g., \$500. In States that elected to impose no penalty period for such partial month transfers, individuals were able to transfer amounts less than the average monthly cost of nursing facility services in successive months, but never incur a penalty.

To address this, section 6016(a) of the DRA amended section 1917(c)(1)(E) of the Act, to add a new subsection (iv) that prohibits a State from rounding down or otherwise disregarding any fractional period of ineligibility. The result is that States are now required to impose penalty periods even in the case of smaller asset transfers, where the period of ineligibility would be less than a full month. In imposing penalties on such transfers, if the calculation of the penalty period produces a fractional amount, the penalty must include a partial month disqualification based upon the relationship between that fractional amount and the monthly nursing home rate used to calculate the penalty period.

2) *Authority for States to Accumulate Multiple Transfers into One Penalty Period*

While the DRA prohibits States from rounding down or disregarding fractional periods of ineligibility, it does give States the option to combine multiple transfers for less than fair market value in more than one month and impose a single period of ineligibility, rather than applying multiple penalty periods. This flexibility is the result of a new subsection (H), added to section 1917(c)(1) of the Act by section 6016(b) of the DRA. Under subsection (H), States may treat the total, cumulative value of all uncompensated transfers made within the look-back period as a single transfer and calculate a single period of ineligibility, which would begin on the earliest date applicable under section 1917(c)(1)(D).

States must include information about whether they elect to combine multiple fractional transfers into a single transfer in their State Medicaid Plans.

The provisions of these amendments are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

DMMA PROPOSED REGULATION #06-55

REVISIONS:

20350.4 Multiple Transfers

OBRA 93 provides that the penalty period will be based on the total, cumulative uncompensated value of the assets transferred. When a single asset is transferred, or a number of assets are transferred ~~during the same month~~, the penalty period is calculated using the total value of the asset(s). When assets are transferred at different times, use the following methods for calculating the penalty periods. This policy applies to assets that were transferred on or after 2/8/06 and applications that were filed on or after 4/1/06.

20350.4.1 Transfers Made So That Penalty Periods Overlap

When assets have been transferred in amounts and/or frequency that would make the calculated penalty periods overlap, add together the value of all assets transferred to calculate a single penalty period. ~~The single penalty period will begin on the first day of the month in which the first transfer was made.~~ Fractional periods of ineligibility shall not be rounded down or otherwise disregarded when determining the penalty for a transfer of assets.

20350.4.2 ~~Transfers Made So That Penalty Periods Would Not Overlap~~

~~When multiple transfers are made in such a way that the penalty periods for each would not overlap, treat each transfer as a separate event, with its own penalty period.~~

10 DE Reg. 1117 (01/01/07)