

# 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** 20310

### FINAL

### ORDER

#### Long-Term Care Program

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Long-Term Care program, specifically, *Federal Tax Refunds or Advance Payments* provisions in compliance with Section 728 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010. 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 April 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2011 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 proposal amends the Division of Social Services Manual (DSSM) regarding the Long-Term Care program, specifically, *Federal Tax Refunds or Advance Payments* provisions in compliance with Section 728 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010.

#### Statutory Authority

- Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312)
- Social Security Administration's Program Operations Manual System (POMS): SI 01130.600, Retroactive Supplemental Security Income (SSI) and Retirement, Survivors and Disability (RSDI) Payments

#### Background

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) was signed into law on December 17, 2010. Section 728 of this Act disregards federal tax refunds or advance payments with respect to a refundable tax credit, received after December 31, 2009, as income and as resources (for a period of 12 months after receipt) for purposes of determining eligibility for all federal or federally-assisted programs, including Medicaid and the Children's Health Insurance program (CHIP). Section 728 also provides that these tax refunds and advance payments are not to be taken into account in determining the amount or extent of benefits provided under any program subject to this provision, including Medicaid and CHIP. This provision became effective December 17, 2010, and applies to tax refunds or advance payments received after December 31, 2009, but before January 1, 2013.

#### Summary of Proposal

The purpose of the proposed change is to update the length of time certain resources are excluded. Lump sum retroactive Social Security Act (SSA) payments are now excluded for nine (9) months. Tax refunds and advance payments received on or after January 1, 2010 are excluded for a period of twelve (12) months.

#### Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

There are two (2) changes.

First, the unspent portion of a retroactive SSI, SSDI, or Social Security retirement benefit is currently disregarded for

six (6) months following the month of receipt. The proposed amendment would extend that time period to nine (9) months following the month of receipt.

Second, federal income tax refunds received between January 1, 2010 and December 31, 2012 will be excluded from countable resources for a period of twelve (12) months following the month of receipt.

GACEC and SCPD endorse the proposed regulation since both changes would benefit Medicaid beneficiaries.

**Agency Response:** DMMA thanks the Councils for their endorsement.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the April 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding *Federal Tax Refunds or Advance Payments* is adopted and shall be final effective June 10, 2011.

Rita M. Landgraf, Secretary, DHSS

#### **DMMA FINAL ORDER REGULATION #11-22**

##### **REVISIONS:**

##### **20310.9 Retroactive Social Security Administration Lump Sum Payments**

The unspent portion of retroactive SSI and Title II Retirement, Survivors, and Disability insurance (RSDI) benefits is excluded from resources for the ~~six~~ nine calendar months following the month of receipt. (See Social Security Administration's Program Operations Manual System (POMS) SI 01130.600 for exclusion of retroactive RSDI benefits.)

*(Break in Continuity of Sections)*

##### **20310.18 Tax Refunds and Advance Payments**

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P. L. 111-312), which was signed into law on December 17, 2010, includes a provision that requires all programs funded in whole or in part with Federal funds, to disregard Federal tax refunds for a period of twelve months from the month of receipt.

Tax refunds and advance payments with respect to a refundable tax credit received after December 31, 2009 through December 31, 2012 are excluded from resources for the twelve calendar months following the month of receipt.

Any portion of the refund or payment that is still retained after that twelve- month period will be a countable resource.

**14 DE Reg. 1364 (06/01/11) (Final)**