

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

FINAL

ORDER

Nondiscrimination

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding nondiscrimination, specifically, *to modify language to be more inclusive and to ensure compliance with Federal Regulation*. 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 January 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 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 the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding nondiscrimination, specifically, *to modify language to be more inclusive and to ensure compliance with Federal Regulation*.

Background

The Department of Health and Social Services (DHSS) is the agency designated by the State as responsible for Delaware's public assistance programs. Within the Department, the Division of Social Services (DSS) is responsible for administering the following programs in an accurate and timely fashion while treating clients with respect and dignity: Temporary Assistance for Needy Families (TANF), General Assistance Program, Food Supplement Program, Refugee Resettlement Program, Child Care Subsidy Program, and Employment and Training Services. Additionally, the Division of Medicaid and Medical Assistance (DMMA) is responsible for furnishing medical assistance to eligible low-income families and to eligible aged, blind and/or disabled people whose income is insufficient to meet the cost of necessary medical services.

DHSS, and its divisions, are required to provide these services in accordance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 7 CFR §272.6(a), 42 CFR §440.262; and 45 CFR Parts 80, and 84, 90, and 92, such that no individual shall be subject to discrimination under this plan on the grounds of race, color, national origin, age, disability, sex, sexual orientation, gender identity, religious creed, political beliefs, limited English proficiency (LEP) and/or retaliation.

Summary of Proposal

The purpose of the proposed rule is to expand existing nondiscrimination protections to be more inclusive and to ensure compliance with Federal Regulation.

Summary of Proposed Changes

If implemented as proposed, the state plan amendment will accomplish the following, effective January 1, 2017:

Modify language on page 87, in Section 7 - General Provisions, to include discrimination based on sex, sexual orientation, gender identity, and limited English proficiency (LEP).

If implemented as proposed, the Delaware Social Services Manual (DSSM) amendment will accomplish the following, effective March 11, 2017:

Modify language in the following sections, to include discrimination based on sex, sexual orientation, gender identity, and limited English proficiency (LEP).

DSSM 1000 Definitions

DSSM 1006 Guaranteeing Civil Rights and Non-Discrimination

- DSSM 1006.1 Ensuring Non-discrimination in the Provision of Services
- DSSM 1006.4 Assuring Compliance in Area Operations
- DSSM 1006.6 Publicizing the Civil Rights Program
- DSSM 1007 Making Civil Rights Complaints
- DSSM 1007.3 Routing Civil Rights Complaints
- DSSM 1007.4 Keeping Track of Civil Rights Complaints

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 expansion of existing nondiscrimination protections to be more inclusive and to ensure compliance with Federal Regulation. Comments were to be received by 4:30 p.m. on January 31, 2017.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) relating to coverage and payment methodology for services 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, upon CMS approval, 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 DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact

The proposed regulation clarifies practice and procedures currently used by the Division of Medicaid and Medical Assistance and Division of Social Services and therefore will result in no fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

No public comments were received for this regulation.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding nondiscrimination, specifically, *to modify language to be more inclusive and to ensure compliance with Federal Regulation*, is adopted and shall be final effective March 11, 2017.

Date of Signature: 2/20/17

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

DMMA FINAL REGULATION #17-011a REVISED

1000 DEFINITIONS

The following words and terms, when used in this regulation, will have the following meaning unless the context clearly indicates otherwise.

Civil rights

A civil right is an enforceable right or privilege, which if interfered with by another gives rise to an action for injury. Examples of civil rights are freedom of speech, press, assembly, the right to vote, freedom from involuntary servitude, and the right to equality in public places.

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|-----------------------------------|--|
| Civil Rights Coordinator | A Division of Social Services staff person who ensures that employees of the Division, who have direct contact with applicants and recipients, carry out the requirements of the Civil Rights Program. The Coordinator also maintains complete records of all complaints that are made and/or appeals and fair hearings that are requested on the grounds of discrimination. |
| Discrimination | The unlawful and intentional act of unfair treatment of a person based on race, <u>color</u> , ethnicity, sex (gender), <u>sexual orientation</u> , <u>gender identity</u> , <u>religion</u> , <u>religious creed</u> , national origin, physical or mental disability, <u>political beliefs</u> , <u>retaliation</u> , <u>limited English proficiency (LEP)</u> , and/or age. |
| Guardian ad litem | An individual appointed by the courts to represent the best interests of a minor child. |
| Law enforcement officer | Any official who has the authority to arrest individuals. Officials with arrest powers include police officers, constables, and in Delaware, parole and probation officers. |
| Limited English proficient | Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English may be limited English proficient. |
| Means tested programs | Programs that provide cash, benefits or services to people who meet a test of need based on income and assets |

12 DE Reg. 453 (10/01/08)
16 DE Reg. 1191 (05/01/13)

**DMMA FINAL REGULATION #17-011b
REVISED**

1006 GUARANTEEING CIVIL RIGHTS AND NON-DISCRIMINATION

Title VI of the Civil Rights Acts of 1964, §504 of the Rehabilitation Act of 1973, 45 CFR Part 80, 84, 90, and 92; 7 CFR 272.6(a), 42 CFR §440.262

This policy applies to any person who inquires about, applies for or receives **any** services from Division of Social Services (DSS) or Division of Medicaid and Medical Assistance (DMMA). It includes the use of all DSS or DMMA physical facilities. For this policy, the terms DSS or DMMA include all other persons or organizations that perform services for either Division.

1. Division Director Ensures Rights are Upheld

The DSS or DMMA Director, acting through administrative staff, coordinates the Division's Civil Rights Program. The Director ensures all staff comply with the requirements of the program.

The Director ensures that all aspects of the program are understood and implemented by staff members.

The Director ensures that all individuals asking about, applying for or receiving DSS or DMMA services are freely informed of their rights of protection against discrimination and their right to complain in any case of discrimination.

2. Staff Development and Training Unit Emphasizes Civil Rights

The Staff Development and Training Unit emphasizes the role of the Civil Rights Program in all services provided to individuals, especially as it relates to the rights and privileges of each individual.

The Staff Development and Training Program emphasizes that all applicants and recipients, and all persons receiving any care or services from or through the Division, will not be subject to discrimination of any kind on the grounds of race, color, national origin, sex, sexual orientation, gender identity, religious creed, age, disability, political beliefs, limited English proficiency (LEP), and/or retaliation.

3. Staff Protect Civil Rights

DSS and DMMA staff protect the civil rights of persons asking about, applying for or receiving any Division service.

4. Staff Do Not Discriminate

Staff do not discriminate against any person on the grounds of race, color, national origin, age, sex, sexual orientation, gender identity, disability, political beliefs, religion, religious creed, retaliation, or any other form of discrimination.

DSS and DMMA do not directly or indirectly (through contracts or other arrangements) on the grounds of race, color, national origin, age, sex, sexual orientation, gender identity, disability, political beliefs or religion, religious creed, and/or retaliation:

- A. Deny any person a DSS or DMMA service.
- B. Subject any person to segregation or separate treatment in any matter related to his or her receipt of services.
- C. Restrict any person's use of privileges enjoyed by others receiving Division services.
- D. Treat any person differently from others in determining if that person satisfies any condition of eligibility that all persons must meet in order to qualify for services.

16 DE Reg. 1191 (05/01/13)

DMMA FINAL REGULATION #17-011c REVISED

1006.1 ENSURING NON-DISCRIMINATION IN THE PROVISION OF SERVICES

Title VI of the Civil Rights Acts of 1964, §504 of the Rehabilitation Act of 1973, 45 CFR Part 80, 84, 90, and 92; 7 CFR 272.6(a); 42 CFR §440.262

This policy applies when any person inquires about, applies for, or receives services from the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA) or a person or organization under contract with DSS or DMMA.

1. **All Classes of People May Participate in any DSS or DMMA Program**
2. **DSS and DMMA Do Not Discriminate**

Neither the Division nor its contractors will discriminate against any person because of race, color, national origin, sex, sexual orientation, gender identity, religious creed, age, disability, or political beliefs, limited English proficiency (LEP), and/or retaliation.

DSS and DMMA will not discriminate:

- A. In the type of services provided.
- B. Against any class of people.
- C. Regardless of the class of people to which services will be provided.
- D. Regardless of the situation in which services will be provided.

16 DE Reg. 1191 (05/01/13)

DMMA FINAL REGULATION #17-011d REVISED

1006.4 ASSURING COMPLIANCE IN AREA OPERATIONS

Title VI of the Civil Rights Acts of 1964, §504 of the Rehabilitation Act of 1973, 45 CFR Part 80, 84, 90, and 92; 7 CFR 272.6(a); 42 CFR §440.262

This policy applies to all Division of Social Services (DSS) or Division of Medicaid and Medical Assistance (DMMA) staff and vendors/contractors any time a service is provided to an applicant or recipient.

1. **Management Assures Compliance by Staff and Vendor/Contractors**

Staff are instructed by Management, during training and the normal course of work activity, to be alert to instances of discrimination.

Vendors and contractors are notified in their contract that all services provided on behalf of DSS must be provided without discrimination on account of race, color, national origin, sex, sexual orientation, gender identity, religious creed, age, disability, or political beliefs, limited English proficiency (LEP), and/or retaliation. They are also notified that payment will not be made unless such services are provided without discrimination.

2. **Staff Report Discrimination**

If staff notice any instances of discrimination, staff will make a full written report to the Director via his or her Supervisor and the Civil Rights Coordinator.

3. **Civil Rights Coordinator Maintains Records of Complaints**

The Civil Rights Coordinator maintains complete records of all complaints that are made on the grounds of discrimination. He also maintains complete records of all appeals and fair hearings that are requested on the grounds of discrimination.

16 DE Reg. 1191 (05/01/13)

**DMMA FINAL REGULATION #17-011e
REVISED**

1006.6 PUBLICIZING THE CIVIL RIGHTS PROGRAM

Title VI of the Civil Rights Acts of 1964, §504 of the Rehabilitation Act of 1973, 45 CFR Part 80, 84, 90, and 92; 7 CFR 272.6(a); 42 CFR §440.262

This policy applies when publicizing information about the Division of Social Services' (DSS) Civil Rights Program.

DSS Informs the Public of the Civil Rights Program

The DSS Civil Rights policy is available on the State website at www.dhss.delaware.gov/dss. The agency also displays posters in all its offices notifying all persons that assistance and services are provided to all eligible persons without regard to race, color, national origin, sex, sexual orientation, gender identity, age, religious creed, disability, political beliefs, limited English proficiency (LEP), and/or retaliation.

The Director will provide speakers from the administrative staff of the Department to any organization interested in learning more about the Civil Rights Program.

16 DE Reg. 1191 (05/01/13)

**DMMA FINAL REGULATION #17-011f
REVISED**

1007 MAKING CIVIL RIGHTS COMPLAINTS

45 CFR 80.7, 7 CFR 272.6

Title VI of the Civil Rights Acts of 1964, §504 of the Rehabilitation Act of 1973, 45 CFR Part 80, 84, 90, and 92; 7 CFR 272.6(a); 42 CFR §440.262

This policy applies to any person, group or agency inquiring about, applying for or receiving any Division of Social Services (DSS) or Division of Medicaid and Medical Assistance (DMMA) provided service who believes he or she has been the victim of discrimination based on of race, color, national origin, sex, sexual orientation, gender identity, religious creed, age, disability, political beliefs, limited English proficiency (LEP), and/or retaliation.

1. Complaints Must be Written

Persons must submit the complaint in writing within 180 days of the alleged discriminatory act. They may also file an appeal and ask for a fair hearing if not satisfied with a decision of the Division. See DSSM 5000.

2. Complaints Contain Specific Information

Exception: Complaints involving the Food Supplement Program are also accepted verbally. However, the complaint must be reduced to writing for record keeping purposes.

A. Cash, Medical, and Child Care Assistance Complaints must describe:

Complaints must describe:

1. The kind of discrimination alleged (e.g., race, color, etc.)
2. When and where the discrimination took place
3. Any important facts and circumstances connected with the alleged discrimination

The complaint must be signed by the person making the complaint.

B. Food Benefit Assistance Complaints

Complaints must contain:

1. The name, address, and telephone number of the person alleging discrimination.
2. The name and location of the office or organization accused of the discriminatory practice.
3. The nature of the incident or acts which resulted in the allegation.
4. The date(s) of the incident.
5. The names of persons who have knowledge of the alleged discriminatory acts.
6. The type of alleged discrimination (e.g., race, color, etc.).

16 DE Reg. 1191 (05/01/13)

DMMA FINAL REGULATION #17-011g

REVISED

1007.3 ROUTING CIVIL RIGHTS COMPLAINTS

Title VI of the Civil Rights Acts of 1964, §504 of the Rehabilitation Act of 1973, 45 CFR Part 80, 84, 90, and 92; 7 CFR 272.6(a); 42 CFR §440.262

This policy applies any time a complaint is filed against the Division of Social Services (DSS) and/or Division of Medicaid and Medical Assistance (DMMA) alleging discrimination on account of race, color, national origin, sex, sexual orientation, gender identity, religious creed, age, disability, ~~or~~ political beliefs, limited English proficiency (LEP), and/or retaliation.

1. Civil Rights Coordinator Routes Complaints

The Civil Rights Coordinator will study and evaluate all complaints alleging discrimination and route them to the appropriate official.

When a complaint is received the Coordinator will forward:

- A. Food Supplement complaints to the Regional Office of the United States Department of Agriculture.
- B. Medicaid complaints to the Secretary of the Department of Health and Human Services (DHSS).
- C. All other DSS complaints to the Division Director.
- D. All other DMMA complaints to the Division Director.

16 DE Reg. 1191 (05/01/13)

DMMA FINAL REGULATION #17-011h

REVISED

1007.4 KEEPING RECORDS OF CIVIL RIGHTS COMPLAINTS

Title VI of the Civil Rights Acts of 1964, §504 of the Rehabilitation Act of 1973, 45 CFR Part 80, 84, 90, and 92; 7 CFR 272.6(a); 42 CFR §440.262

This policy applies to all complaints of discrimination based on race, color, national origin, sex, sexual orientation, gender identity, religious creed, age, disability, ~~or~~ political beliefs, limited English proficiency (LEP), and/or retaliation.

The Civil Rights Coordinator keeps records of all civil rights complaints received by the Division of Social Services (DSS). Records of civil rights complaints will show:

- A. Action(s) taken on the complaint.
- B. Any investigation conducted.
- C. Findings.
- D. Any subsequent action.

16 DE Reg. 1191 (05/01/13)

DMMA FINAL REGULATION #17-011i

REVISION

7.2 Non-Discrimination

In accordance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 7 CFR §272.6(a), 42 CFR §440.262; and 45 CFR Parts 80, ~~and~~ 84, 90, and 92, the Medicaid agency assures that no individual shall be subject to discrimination under this plan on the grounds of race, color, national origin, age, disability, sex, sexual orientation, gender identity, religious creed, political beliefs, limited English proficiency (LEP) and/or retaliation, ~~or handicap~~.

The Medicaid agency has methods of administration to assure that each program or activity for which it receives Federal financial assistance will be operated in accordance with title VI regulations. These methods for title VI are described in ATTACHMENT 7.2-A of the State Plan.

20 DE Reg. 726 (03/01/17) (Final)