

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

Guardianship Fees - Post-Eligibility Protection of Income

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 Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the December 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2021 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after January 1, 2022, DHSS/DMMA proposes to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Post-Eligibility Treatment of Institutionalized Individuals, specifically, allows Medicaid recipients in medical institutions to retain more income to pay for guardianship costs.

Background

Medicaid recipients, institutionalized in long-term care facilities, are required to apply their income toward the cost of institutional care. The individual must contribute income to pay for institutional services, deducting only specific allowable amounts, such as a personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution.

Some institutionalized recipients may be appointed a guardian by the Court to make medical or financial decisions. There can be cost associated with services provided by the guardian. The services may include, but not be limited to, receiving and depositing income, paying bills, or maintaining accounts.

Statutory Authority

§1902(a)(50)(q) of the Social Security Act
§1902(a)(14)(l) of the Social Security Act

Purpose

The purpose of this proposed regulation is to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

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 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 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 December 31, 2021.

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 and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance

Portal 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 DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

Fiscal Impact

	Federal Fiscal Year 2022	Federal Fiscal Year 2023
Federal funds	\$0	\$273,600
General (State) funds	\$0	\$206,400

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs is adopted and shall be final effective March 11, 2022.

2/14/2022
Date of Signature

Molly K. Magarik, Secretary, DHSS

ATTACHMENT 2.6-A
Page 4 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY
ACT STATE: DELAWARE
ELIGIBILITY CONDITIONS AND REQUIREMENTS

42 CFR 435.725; 43 CFR 435.733; 42 CFR 435.832

B. Post-Eligibility Treatment of Institutionalized Individuals (continued)

For the following individuals with a greater need (continued)

- d. \$50/month for NF and ICF/IID residents engaging in frequent and regular rehabilitation out-of-facility activities.
- e. For nursing facility residents who are participating in gainful employment, the following amounts, not to exceed the adult foster care rate (SSI benefit amount + \$140), will be deducted from gross earned income:
 - i. Mandatory payroll deductions that are a condition of employment including, but not limited to:
 1. Federal, State, and Local taxes
 2. FICA
 3. Union Dues
 4. Insurance Premiums
 5. Pension Contributions.
 - ii. Transportation costs as paid to and from employment.
 - iii. Clothing and personal needs allowance of \$75/month.

f. For nursing facility residents requiring a court appointed guardian, the following amounts will be deducted from the gross earned income:

i. Monthly guardianship fees not to exceed \$100

The maximum amount of income to be protected will not exceed the amount required to maintain an individual in adult foster/residential care. This amount is currently the SSI benefit plus \$140.

TN No. SPA	Approval Date
Supersedes	
TN No. SPA <u>#16-008</u>	Effective Date

25 DE Reg. 866 (03/01/22) (Final)