Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

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

Long Term Care Medicaid, DSSM 20320.7 Substantial Home Equity

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 existing rules in the Division of Social Services Manual (DSSM) to comply with the substantial home equity provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171). 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 March 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 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 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 Proposal

The DRA contains a number of provisions necessitating changes to Delaware rules. This regulatory action incorporates the mandatory provisions as it relates to: *Disqualification for Long-Term Care Assistance for Individuals with Substantial Home Equity.*

The provisions of this policy apply to nursing facility and HCBS recipients who are receiving Long-Term Care Medicaid on or after January 1, 2006, as follows:

- Section 6014 of the DRA amends section 1917 of the Social Security Act (the Act) to provide that in determining the eligibility of an individual to receive medical assistance payment for nursing facility services or other long-term care services, States must deny payment if the individual's equity interest in his or her home exceeds $500,000. States have the option to substitute an amount exceeding $500,000, but not in excess of $750,000. These dollar amounts are increased, beginning in 2011, from year based on the Consumer Price Index (CPI) for all consumers, rounded to the nearest $1,000.

- The limitations on home equity do not apply if the spouse of the individual, the individual's child under 21, or the individual's blind or disabled child is lawfully residing in the home.

- This provision would not prevent an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.

- Applicants and nursing facilities will be notified that the State has a process under which this limitation will be waived in cases of undue hardship.

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

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. DMMA has considered each comment and responds as follows:

Councils would like to recommend that Delaware follow the lead of New York and Maine in adopting the higher cap of $750,000. Political compromises on the federal budget are commonplace and it is possible that states adopting a higher cap could have limits "grandfathered". While the $500,000 cap may appear reasonable to some policymakers today, $500,000 in home equity (even considering incremental increases based on the CPA) may not amount to much in the future (e.g. 10 years from now). Adopting a higher cap now may protect Delaware's prospective flexibility and discretion.

Agency Response: Long-term care Medicaid is a program for *low-income* individuals. The department does not consider applicants with home equity in excess of $500,000 as low-income. The intent of this requirement is to ensure that individual's with substantial home equity resources are not able to receive Medicaid payment for long term care services when they have assets of their own to pay for their care. This regulation, as proposed, is consistent with the provisions and intent of the DRA. Also, the DRA already provides States with the flexibility and discretion (e.g. the option under the State plan) to elect a higher amount up to $750,000, as adjusted by inflation. No change will be made to the regulations as a result of this comment.

Findings of Fact:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual regarding the substantial home equity provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) is adopted and shall be final effective May 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 4/16/07

DMMA FINAL ORDER REGULATION #07- 21a
NEW:

SUPPLEMENT 17 TO ATTACHMENT 2.6-A
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

DISQUALIFICATION FOR LONG-TERM CARE ASSISTANCE FOR INDIVIDUALS WITH SUBSTANTIAL HOME EQUITY

1917(f) The State agency denies reimbursement for nursing facility services and other long-term care services covered under the State plan for an individual who does not have a spouse, child under 21 or adult disabled child residing in the individual's home, when the individual's equity interest in the home exceeds the following amount:

X ___ $500,000 (increased by the annual percentage increase in the urban component of the consumer price index beginning with 2011, rounded to the nearest $1,000).

_____ An amount that exceeds $500,000 but does not exceed $750,000 (increased by the annual percentage increase in the urban component of the consumer price index beginning with 2011, rounded to the nearest $1,000).

The amount chosen by the State is _________________.

_____ This higher standard applies statewide.

_____ This higher standard does not apply statewide. It only applies in the following areas of the State:

_____ This higher standard applies to all eligibility groups.

_____ This higher standard only applies to the following eligibility groups:

The State has a process under which this limitation will be waived in cases of undue hardship.

DMMA FINAL ORDER REGULATION #07- 21b
NEW:

20320.7 Substantial Home Equity

The policy in this section applies to nursing facility and HCBS recipients who are receiving Long-Term Care (LTC) Medicaid on or after January 1, 2006. It does **not apply** to recipients who were receiving LTC Medicaid prior to January 1, 2006, and who maintain continuous Medicaid eligibility as per the Deficit Reduction Act section 6014.

20320.7.A Receiving LTC Before 01-01-2006

If a Medicaid recipient started receiving LTC Medicaid **before** January 1, 2006, do not evaluate home equity at the next redetermination. As long as he remains continuously eligible for Medicaid, do not evaluate home equity. If the recipient is found ineligible for Medicaid, and he subsequently re-applies for LTC Medicaid, home equity must be evaluated when he reapplies.

20320.7.B Receiving LTC On/After 01-01-2006

If a Medicaid recipient started receiving LTC Medicaid on or after January 1, 2006, evaluate home equity at the next redetermination.

Verification of the equity value of the home is required. Equity value is determined by using the current market value of the home minus any mortgages or loans on the home.

Individuals with equity value in home property that exceeds $500,000 are NOT eligible for Medicaid payment of long-term care services unless the home is lawfully occupied by

- a spouse,
- a dependent child under age 21 years, or

- a blind or disabled child of any age.

*Note: this is not a change in the general rule that excludes a home of any value for purposes of determining eligibility for Medicaid. It applies only to medical assistance payment for nursing facility services, or other long-term care services referred to in 1917(c)(i)(C)(i).

Individuals with substantial home equity may be eligible for Medicaid payment of other covered services if they meet all the other Medicaid eligibility requirements.

20320.7.B.1 Reverse Mortgages

Reverse mortgages do not reduce equity value until payments are being received from the reverse mortgage.

20320.7.B.2 Home Equity Credit Lines/Loans

A home equity line of credit or home equity loan does not reduce the equity value until credit line or loan has been used or payments from the credit line or loan have been received. DMMA shall verify that the home equity credit line or loan was not transferred for less than Fair Market Value.

20320.7.C Co Owners

When there are co owners to the property, divide the total equity interest by the number of shared owners proportional to their interest in the property. Husband and wife are considered as one owner.

20320.7.D Definition of Home

The home is defined as any residential property in which the applicant and/or spouse possess an ownership interest that also serves as the principal place of residence of the applicant and /or, spouse, or dependent child. An applicant and spouse may have an ownership interest in several residential properties, but only one shall be considered a home for the purposes of this section. See DSSM 20320.3.

20320.7.E Home Equity Cap

Beginning in year 2011, the limit on home equity will be increased yearly based on the Consumer Price Index (CPI).

20320.7.F Hardship

Applicants/recipients may request a hardship waiver. See DSSM 20400.12.1 for definition of hardship.

10 DE Reg. 1700 (05/01/07) (Final)