

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

Streamline Application

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES |
IN THE MATTER OF

REVISION OF THE REGULATION |
OF DELAWARE'S |
TITLE XIX MEDICAID STATE PLAN |
ATTACHMENT S94 |

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Delaware Title XIX Medicaid State Plan regarding the Streamline Application, specifically, to include questions for the justice involved population and retroactive eligibility. 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 March 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 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 October 11, 2021 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Delaware Title XIX Medicaid State Plan regarding the Streamline Application, specifically, to include questions for the justice involved population and retroactive eligibility.

Background

On December 4, 2018, Delaware Governor John Carney signed Executive Order 27. This executive order established The Delaware Correctional Reentry Commission (DCRC) with the objective of effectively coordinating services for the recently released, strengthening data sharing among state agencies, and improving the availability of programming prior to an inmates release in hopes of reducing recidivism.

In June 2018, DMMA, in collaboration with other state agencies, such as the Delaware Division of Mental Health and Substance Abuse, the Division of Social Services, and the Department of Corrections, held the first Justice Involved Individuals Steering Committee meeting, to develop a plan to facilitate access to covered Medicaid services for eligible individuals immediately upon release from a correctional institution.

On July 31, 2019, the Centers for Medicare & Medicaid Services (CMS) approved Delaware's request for extension and amendment of its Medicaid demonstration project entitled, "Diamond State Health Plan" beneficiaries beginning the month they submit an application, and to waive the three month retroactive eligibility period.

As a result of the approval of the Medicaid 1115 Waiver, retroactive coverage is potentially available (if general financial and technical eligibility requirements are met) to the following groups: Pregnant women (including during the 60-day postpartum period beginning on the last day of pregnancy; Infants under age 1; and Individuals under age 19 (listed separately from the group above due to the different income limits).

The changes to the streamline application are to reflect changes to include questions for the justice involved population and retroactive eligibility.

Statutory Authority

45 CFR § 155.405

Purpose

The purpose of this proposed regulation is to include questions for the justice involved population and retroactive

eligibility changes to the Medicaid Streamline Application.

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 gives public notice and provides 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 March 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

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: There were two endorsements of the regulation.

Agency Response: DMMA appreciates the support.

Comment: One commenter indicated that the "link" to Appendix B-2013 was broken.

Agency Response: The link does not work from the PDF document; however, it is working from the HTML version of the document. The URL information (in both the PDF and HTML) is correct and therefore can be cut and pasted into a browser to reach the document.

Comment: One commenter suggested that the term "Food Benefits" should also include the terms SNAP and Food Stamps so that applicants know that the Department means SNAP here. The term Food Benefits may not be known to applicants. The terms SNAP and Food Stamps are well known in the community.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter questioned who could utilize the Benefit Application Form 100 Justice Involved and Retro Changes. "In light of the recent changes made by the federal government regarding the "public charge" rule, the advice given about the effects of applying for benefits on immigration status needs to be updated. The consequences of the public charge rule are complicated and the explanation here is insufficient. This paragraph must be entirely rewritten. In its current form, it will confuse and mislead immigrant applicants and mixed status families."

Agency Response: DMMA removed the change and reverted to the previous language.

Comment: One commenter requested additional information be provided to explain emergency food benefits.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter requested DMMA reword *Complete this section for legal alien applicants only* to provide clarity.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter suggested rewriting the question *Do applicants have eligible immigration status?* The commenter suggested, "asking for the information in this manner will lead to confusion and inaccurate responses."

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter asked that the question about benefits from another state be narrowed.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter suggested removing the question, Drug felony after August 22, 1996 as Delaware does not have a felony drug ban.

Agency Response: This section has been removed from the applications.

Comment: One commenter requested additional context be added to the question about *Medical Bills within the last three months*.

Agency Response: DMMA updated the wording to clarify which months DMMA is requesting information.

Comment: The application fails to inform applicants who may have previously been eligible for Medicaid (but lost coverage and are reapplying) that they may also be eligible for three calendar months before the previous application.

Agency Response: The process is separate from the regular application process. Potentially impacted individuals received communication from the division informing them if they were approved for Medicaid, from August 1, 2019 - June 30, 2020, they may be able to get help with bills and were given instruction on how to contact the division.

Comment: The application provides no context for the question *Foster Care at age 18* and will confuse applicants regarding why this information is requested. The application needs to explain the purpose of requesting this information.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter suggested that section related to incarceration be clarified. The commenter noted, "the section could cause extreme confusion for families regarding who is included in the household for various benefits."

Agency Response: DMMA will take that into consideration in discussions with CMS.

Comment: One commenter asked DMMA to clarify the question, *Does anyone in your household have any vehicles (don't include your car)?*

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter requested the Medical Expenses section, "be clarified to explain that it calls for ONGOING medical expenses rather than previous bills."

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter requested the term "non-lawful aliens," be changed within the Penalties section.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter requested removing the section providing for a lifetime ban from cash if "Any member of your household is convicted of a felony for having, using, or selling controlled substances."

Agency Response: This section has been removed from the applications.

Comment: One commenter requested replacing the term Food Supplement Program with Food Benefits (SNAP/Food Stamps).

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter suggested that in the section *Certifications and Signatures*, the certification regarding alien status is inaccurate and will lead to confusion.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commuter requested changes to the section *For Person Who Cannot Speak English*. "It fails to set out the Department's legal obligation to provide translation or interpretation. It improperly implies that the applicant must use a family member or other person to translate the application. It fails to inform LEP applicants that they are entitled to such services from the Department and how to access them."

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter suggested revision and clarification of the "Public Charge" statement.

Agency Response: DMMA reverted to the previous language.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Community Legal Aid Society, Inc.
- Governor's Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the March 2021 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 *Del.C.* §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding the Streamline Application, specifically, to include questions for the justice involved population and retroactive eligibility, is adopted and shall be final effective October 11, 2021.

9/14/2021

Date of Signature

Molly K. Magarik, MS
Cabinet Secretary, DHSS

Appendix A 08-2013 Health Coverage from Jobs

***Please Note: Due to the size and format of the form, it is not being published here. A copy of the form is available at:**

<http://regulations.delaware.gov/register/october2021/final/Appendix A 08-2013 Health Coverage from Jobs.pdf>

Appendix B 08-2013 American Indian or Alaska Native Family Member AIAN

***Please Note: Due to the size and format of the form, it is not being published here. A copy of the form is available at:**

<http://regulations.delaware.gov/register/october2021/final/Appendix B 08-2013 American Indian or Alaska Native Family Member AIAN.pdf>

Appendix C 01-2014 Assisting With Applications

***Please Note: Due to the size and format of the form, it is not being published here. A copy of the form is available at:**

<http://regulations.delaware.gov/register/october2021/final/Appendix C 01-2014 Assisting With Applications.pdf>

Benefit Application Form 100 Justice Involved and Retro Changes

***Please Note: Due to the size and format of the form, it is not being published here. A copy of the form is available at:**

<http://regulations.delaware.gov/register/october2021/final/Benefit Application Form 100 Justice Involved and Retro Changes.pdf>

CCADP 1

***Please Note: Due to the size and format of the form, it is not being published here. A copy of the form is available at:**

<http://regulations.delaware.gov/register/october2021/final/CCADP 1.pdf>

CCADP 2

***Please Note: Due to the size and format of the form, it is not being published here. A copy of the form is available at:**

<http://regulations.delaware.gov/register/october2021/final/CCADP 2.pdf>

Draft CMS Submission

***Please Note: Due to the size and format of the form, it is not being published here. A copy of the form is available at:**

<http://regulations.delaware.gov/register/october2021/final/Draft CMS Submission.pdf>

Health Coverage - Family Justice Involved and Retro

***Please Note: Due to the size and format of the form, it is not being published here. A copy of the form is available at:**

[http://regulations.delaware.gov/register/october2021/final/Health Coverage - Family Justice Involved and Retro.pdf](http://regulations.delaware.gov/register/october2021/final/Health%20Coverage%20-%20Family%20Justice%20Involved%20and%20Retro.pdf)

Health Coverage - Short Form Justice Involved and Retro

***Please Note: Due to the size and format of the form, it is not being published here. A copy of the form is available at:**

[http://regulations.delaware.gov/register/october2021/final/Health Coverage - Short Form Justice Involved and Retro.pdf](http://regulations.delaware.gov/register/october2021/final/Health%20Coverage%20-%20Short%20Form%20Justice%20Involved%20and%20Retro.pdf)

LTC Application 03-2020 Revised

***Please Note: Due to the size and format of the form, it is not being published here. A copy of the form is available at:**

[http://regulations.delaware.gov/register/october2021/final/LTC Application 03-2020 Revised.pdf](http://regulations.delaware.gov/register/october2021/final/LTC%20Application%2003-2020%20Revised.pdf)

24 DE Reg. 848 (03/01/21) (Prop.)

25 DE Reg. 414 (10/01/21) (Final)