

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** 14120 and 60000

FINAL

ORDER

Incarcerated Individuals Medicaid Program

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Division of Social Services Manual (DSSM) regarding the Incarcerated Individuals Medicaid Program. 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 June 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 1, 2022 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 November 11, 2022 DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM) regarding the Incarcerated Individuals Medicaid Program.

Background

Centers for Medicare & Medicaid Services (CMS) issued guidance to states on Medicaid eligibility for incarcerated individuals and those being released back into the community. Facilitating enrollment in Medicaid, and supporting access to services following incarceration, has the potential to make a significant difference in the health of this population and the eligible individuals' ability to obtain health services that can promote their wellbeing.

Statutory Authority

Patient Protection and Affordable Care Act (ACA, P.L.111-148, as amended)

Purpose

The purpose of this proposed regulation is to define the Incarcerated Individuals Medicaid Program.

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 July 1, 2022.

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

DMMA received the following comments:

Comment: The SCPD Council strongly supports these regulations as they promote health and well-being and support a successful transition to post-incarceration life.

Response: DMMA appreciates the support.

Comment: Council supports these regulations as they promote health and well-being and assist with a successful transition to post-incarceration life. Permitting Medicaid enrollment while the individual is incarcerated which would take effect after he or she is released, would remove one barrier an inmate would face when released and enable the person to obtain health services more easily."

Response: DMMA appreciates the support.

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

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the June 2022 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding the Incarcerated Individuals Medicaid Program, is adopted and shall be final effective October 11, 2022.

8/12/2022

Date of Signature

Molly K. Magarik, Secretary, DHSS

14000 Medicaid General Eligibility Requirements

14120 Inmate of a Public Institution

Statutory Authority

Patient Protection and Affordable Care Act (ACA, P.L.111-148, as amended)

~~An individual who is an inmate of a public institution is not eligible.~~

Inmates of a public institution who are held involuntarily may be enrolled in Medicaid if otherwise eligible, but Medicaid may not provide coverage for most services while the individual is detained. The inmate may be eligible for Medicaid coverage of services as an inpatient in a medical institution if admitted to the medical institution for more than 24 hours.

An inmate of a public institution is a person who is living in a public institution. A public institution is a facility that is under the responsibility of a governmental unit or over which a governmental unit exercises administrative control. This control can exist when a facility is actually an organizational part of a governmental unit or when a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates. Administrative control can also exist when a governmental unit is responsible for the ongoing daily activities of a facility; for example, when facility staff members are government employees or when a government unit, board, or officer has final authority to hire and fire employees. Privately supported institutions that are not under the control of a governmental unit do not meet the definition of a public institution.

An individual is an inmate and is not eligible when he or she is serving time for a criminal offense or is confined involuntarily awaiting trial, criminal proceedings, penal dispositions, or other involuntary detention determinations and is living in:

- a. State or Federal prison
- b. jail
- c. a detention facility
- d. a wilderness camp under government control
- e. a halfway house under government control

- f. any penal facility

The following individuals are not inmates of a public institution and may be eligible:

1. An individual who is voluntarily living in a public institution after his or her case has been adjudicated and other living arrangements are being made (such as transfer to a community residence).
2. An individual who is sent to a privately supported institution as an alternative to a detention or prison sentence.
3. Infants living with the inmate in the public institution.
4. Parolees.
5. Probationers.
6. Individuals living in a halfway house that is not under governmental control.

6000 Incarcerated Individuals Medicaid Program

Statutory Authority

Patient Protection and Affordable Care Act (ACA, P.L.111-148, as amended)

Inmates of a public institution who are held involuntarily may be enrolled in Medicaid, but Medicaid may not provide coverage for most services while the individual is detained. The inmate coverage exclusion applies to all Medicaid services provided to inmates, EXCEPT inpatient services provided in a medical institution.

Medicaid regulations, 42 CFR 435.1009, limit payment for services for individuals residing in correctional institutions. Medicaid statute requires coverage of inpatient services for the incarcerated individual if he/she is admitted to a medical institution for 24 hours or more, per 42 USC § 1396d(a)(31)(A).

Incarcerated individuals who apply for Medicaid may be required to enroll with a Managed Care Organization (MCO). Enrollment with an MCO while incarcerated allows for a smooth transition to full Medicaid benefits when the inmate is released from jail or prison if the inmate remains eligible for Medicaid after released.

60100 Incarcerated Individuals Definitions

Inmate - an individual of any age who is in custody and held involuntarily in a public institution under the operation of law enforcement authorities. Regardless of the label attached to any particular custody status, an important consideration of whether an individual is an "inmate" is the individual's legal ability to exercise personal freedom.

Inmate of a Public Institution- Federal law defines an inmate of a public institution as "a person living in a public institution."

Public Institution - Federal Law defines a public institution as "an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. A public institution includes a correctional institution."

(See DSSM section 14120 for additional institution definitions)

60200 Inmate residence

An inmate is considered a resident of the state in which the crime was committed. This information will be obtained from the Medicaid application.

For an inmate incarcerated by their home state but sent to an out of state public institution for any reason, including the home state not having capacity to house the individual, the home state remains the state of residence.

Individuals who have committed a crime outside of their home state and are placed in a correctional institution in and by the state in which the crime was committed are considered be residents of that state while incarcerated.

60300 Financial Eligibility and Household Composition

Financial Eligibility is determined based on modified adjusted gross income (MAGI) eligibility rules, or non-MAGI eligibility rules, depending on the individual's circumstances.

There are no special rules or exceptions for incarcerated individuals. Follow income eligibility rules and household

composition under section 16000 of the DSSM.

Exception: Incarcerated individuals are not considered parents/caretaker relatives for Medicaid purposes. However, an incarcerated individual can still file taxes and claim dependents which would be counted in the incarcerated individual's household size for Medicaid purposes.

60400 Application and Redetermination

Regulations under DSSM Sections 14000 apply to incarcerated individuals applying for Medicaid. With the following exceptions:

1. Incarcerated Medicaid eligibility is effective the first day of the month if the individual was eligible at any time during that month provided the individual was an Incarcerated Delaware resident on the first of the month. If not a Delaware resident on the first of the month, Medicaid will be effective the date the individual became an Incarcerated Delaware resident.

2. An inmate may designate an individual as an authorized representative (see DSSM section 14100.1) to act on his or her behalf in matters related to eligibility and enrollment. An authorized representative may NOT enroll an inmate in Medicaid without his or her consent.

An annual renewal of eligibility is required for incarcerated individuals, there are no special rules or exclusions. See DSSM Section 14100.6

26 DE Reg. 212 (09/01/22) (Final)