

# 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** 14300, 14360 and 18100

### PROPOSED

### PUBLIC NOTICE

#### Citizenship and Alienage

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Division of Social Services Manual (DSSM) regarding *Citizenship and Alienage, specifically, State Funded Benefits*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2011.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

#### SUMMARY OF PROPOSAL

The proposal amends the Division of Social Services Manual (DSSM) regarding *Citizenship and Alienage, specifically, State Funded Benefits*.

#### Statutory Authority

This regulatory action proposes changes to State funded benefits necessitated by State Fiscal Year 2012 Recommended Operating Budget and Capital Improvement Act.

#### Background

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to certain legally residing noncitizens who are ineligible for full Medicaid benefits because of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). This does not include long term care services. Coverage for these aliens is subject to the availability of state funding.

#### Summary of Proposal

The purpose of this rule change is to eliminate state funded full Medicaid benefits for certain legally residing noncitizens and to delete the reference to state funded benefits under the Delaware Healthy Children Program.

Due to budgetary constraints, continued funding for the program was not included in the State Fiscal Year (SFY) 2012 recommendations of the Health Fund Advisory Committee (HFAC). This recommendation is reflected in Volume II of the SFY 2012 Governor's Recommended Budget.

Legally residing noncitizens may be found eligible for coverage of emergency services and labor and delivery only.

The proposed changes are effective July 1, 2011 and affect the following policy sections:

DSSM 14300, *Citizenship and Alienage*

DSSM 14360, *State Funded Benefits*

DSSM 18100.1, *Alien Status*.

#### Fiscal Impact Statement

A savings of \$1,570,000 in tobacco funds is projected.

#### DMMA PROPOSED REGULATIONS #11-14

#### REVISIONS:

## 14300 Citizenship and Alienage

Medicaid must be provided to eligible citizens or nationals of the United States. An individual qualifies as a U.S. citizen if the person was born in the 50 states and District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, or Northern Mariana Islands. Nationals from American Samoa or Swain's Island are regarded as U.S. citizens for purposes of Medicaid eligibility. Children of a U.S. citizen who are born outside the U.S. may automatically be eligible for a Certificate of Citizenship.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the U. S. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. Medicaid eligibility for aliens is based on whether the alien is a qualified or nonqualified alien. The term nonqualified alien also includes illegal aliens.

~~In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. This coverage is described at Section 14360.~~

All applicants, whether citizens or aliens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid, ~~emergency services and labor and delivery only, or the state funded benefits or emergency services and labor and delivery only.~~

### *(Break in Continuity of Sections)*

## 14360 State Funded Benefits

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to certain legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. This ~~does did~~ not include long term care services. Coverage for these aliens ~~is was~~ subject to the availability of state funding. ~~In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only. Effective July 1, 2011, state funded benefits are no longer available for these certain legally residing noncitizens. These aliens may be found eligible for emergency services and labor and delivery only.~~

~~The following groups of aliens may be found eligible for state funded benefits:~~

- ~~▪ Qualified aliens subject to the PRWORA five-year bar~~
- ~~▪ Legally residing nonqualified aliens~~

~~Ineligible and illegal aliens are not eligible for state-funded benefits.~~

~~State-funded benefits are not provided to the adult expansion population under the 1115 demonstration waiver.~~

### *(Break in Continuity of Sections)*

## 18100.1 Alien Status

The DHCP does not provide ~~state-funded benefits or~~ coverage of emergency services and labor and delivery only.

Receipt of DHCP benefits cannot be considered by the U.S. Citizenship and Immigration Services (USCIS) when making public charge determinations.

**14 DE Reg. 998 (04/01/11) (Prop.)**