

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 17000

FINAL

ORDER

Eligibility Determination

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Delaware Social Services Manual (DSSM) regarding Eligibility Determination, specifically, to align state and federal policy. 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 January 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2019 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 April 11, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 17160.1 of Delaware Social Services Manual (DSSM) regarding Eligibility Determination, specifically, *to align state and federal policy*.

Background

A review of DMMA policy identified the need for provisions of 16 Del. Admin. C. § 17160.1 to more closely track the federal language which is set forth more fully in the section directly preceding it in 16 Del. Admin. C. 17160. More specifically, the second eligibility criterion "have been receiving SSI prior to age 22 because of disability or blindness" sets forth a different parameter than what the federal statute contemplates. It is the disability or blindness itself which must have begun prior to reaching 22 years of age, rather than the receipt of SSI benefits prior to 22 years of age.

Statutory Authority

Section 1634(c) of the Social Security Act

Purpose

Purpose

The purpose of this proposed regulation is to align state and federal policy.

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 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (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 January 31, 2019.

Provider Manuals and Communications Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

No fiscal impact is projected as a result of this policy update.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: One commenter endorsed the proposed amendment as it clarifies that it is the disability or blindness which must have begun prior to reaching 22 years of age.

Agency Response: DMMA appreciates the endorsement.

Comment: One commenter suggested that the “proposed change removes the impermissible requirement that existed in the previous regulation, but is still not entirely correct. It reads: ‘have been receiving SSI because of disability or blindness, which began before he or she attained the age of 22.’

It is not a requirement of the federal statute that the SSI be received because of disability that began before age 22. The recommendation is to drop the words after “SSI” in the above sentence. The statute requires loss of SSI and current eligibility for Social Security benefits for a disability that began before age 22. There is no need to inquire regarding the basis for receipt of SSI. If a person is receiving Social Security Disability benefits on the account of a parent, by definition, that means that he or she has established to the satisfaction of the SSA that the disability began before age 22.”

Agency Response: DMMA agrees and has made the suggested change.

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

- State Council for Persons with Disabilities
- Governor's Advisory Council For Exceptional Citizens

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the January 2019 *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 the Delaware Social Services Manual (DSSM) regarding Eligibility Determination, specifically, to align state and federal policy is adopted and shall be final effective April 11, 2019.

3/14/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS,
Secretary, DHSS

17160.1 Eligibility Determination

To be eligible the individual must meet all the following criteria:

- be age 18 or older,
- have been receiving SSI[,] prior to age 22 ~~[because of disability or] blindness, [blindness which began before he or she attained the age of 22,]~~
- lost their SSI benefit because they started to receive Child's Insurance Benefits after 7/1/87 or
- received an increase in Child's Insurance Benefit after 7/1/87.

Child's Insurance Benefit is a type of Title II Social Security benefit as defined below:

A child is entitled to Child's Insurance Benefits on the Social Security record of a parent if:

1. an application for Child's Insurance Benefit is filed, and
2. the child is (or was) dependent upon the parent, and
3. the child is unmarried, and
4. the child is:
 - under age 18, or
 - under age 19 and a full-time elementary or secondary school student, or
 - age 18 or over and under a disability (which must have begun before age 22) and
5. the parent:
 - is entitled to disability insurance benefits, or
 - is entitled to retirement insurance benefits, or
 - died and was either fully or currently insured at the time of death.

Determine eligibility using SSI income and resource standards and methodologies. The Child's Insurance Benefit is excluded from income. Complete redeterminations annually.