

**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 20620

**PROPOSED**

**PUBLIC NOTICE**

**20620.2.3.1 Limitation on the Submission of Requests for Protection of Prior Medical Costs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, 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 proposing to amend the Delaware Social Services Manual (DSSM) regarding Prior Medical Costs, specifically, *to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs.*

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on January 2, 2018. Please identify in the subject line: Prior Medical Costs Submission Limitation.

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 purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding Prior Medical Costs, specifically, *to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs.*

**Statutory Authority**

- 42 CFR §435.725 - Post-eligibility treatment of income of institutionalized individuals in SSI States: Application of patient income to the cost of care
- Social Security Act §1902(r)(1)(A)(ii)

**Background**

Federal regulations permit States to establish and apply reasonable limits to the post-eligibility treatment of the income of individuals who are institutionalized. Delaware currently allows for the protection of medical costs incurred in the three (3) months immediately preceding the beginning date of Medicaid eligibility for institutionalized individuals. There are no current regulations addressing reasonable limits on the timely submission of requests for the protection of prior medical costs.

**Summary of Proposal**

The purpose of this proposed regulation is to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs.

**Summary of Proposed Changes**

Effective for services provided on and after February 11, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Delaware Social Services Manual (DSSM) section 20620.2.3.1 to add a reasonable limit on the timeframe for the submission of requests for the protection of prior medical costs.

**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 must be received by 4:30 p.m. on January 2, 2018.

#### *Provider Manuals Update*

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

#### **Fiscal Impact**

There is no anticipated fiscal impact to the agency as a result of this proposed clarification of program eligibility policy.

#### **20620.2.3 Prior Medical Costs**

Medical costs incurred in a prior period of ineligibility (if approved by Medicaid) may be protected from his/her income. Costs incurred in a period of ineligibility must be approved by the Medicaid State Office prior to being protected and will only be considered if incurred within three (3) months of the beginning date of Medicaid eligibility.

The recipient's reimbursement level and patient pay amount must be identified. Medicaid will protect at the Medicaid reimbursement rate, not the private pay rate.

The period of ineligibility may be caused by excess resources or excess income.

Protections for which the individual is seeking coverage will not be granted if the ineligible period occurred during a transfer of assets penalty phase.

#### **20620.2.3.1 Limitation on the Submission of Requests for Protection of Prior Medical Costs**

Requests for income protections to cover medical costs incurred in a prior period of ineligibility must be submitted to DMMA within one (1) year of the date(s) of coverage. DMMA will deny income protection requests received more than one (1) year after the period of coverage being requested.

**10 DE Reg. 703 (10/01/06)**

**21 DE Reg. 435 (11/01/17)**

**21 DE Reg. 475 (12/01/17) (Prop.)**