

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

FINAL

Notice of Withdrawal of Proposed Regulation Long Term Care Medicaid

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, notice is hereby given that the proposed regulation published in Volume 9, Issue 6, Number 859 of the December 1, 2005 issue of the *Delaware Register of Regulations* is withdrawn.

Summary of Withdrawal

On December 1, 2005, the Division of Medicaid and Medical Assistance (DMMA) published for public comment a proposal to amend the rules in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance. DMMA proposed to expand the terms at DSSM 20910.1 and DSSM 20910.2 to clearly define who is an institutionalized spouse and who is a community spouse to include persons receiving (20910.1) and not receiving (20910.2) Medicaid under any of the Medicaid Long Term Care Programs. The clarifications will assist staff in determining if a spousal calculation needs to be completed. These changes will enable the Social Worker to process the case in a more accurate and timely manner.

In response to the public notice, the Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations summarized below.

First, both proposed Sections 20910.1 and 20910.2 "carve out" "Assisted Living Waiver" as a distinct program from "Home and Community Based Services". This is inconsistent with attached Section 20100, which includes "Assisted Living Waiver" as a form of HCBS. This creates an unnecessary inconsistency in the regulatory scheme.

Second, the attached Section 3710 of the CMS State Medicaid Manual allows application of the long-term care and spousal impoverishment standards to §1915(c) HCBS waiver participants. Delaware accepted this option in 1993. See attached Section 20900. By analogy, it may be inappropriate to define community spouse as someone participating in HCBS programs apart from §1915(c) waivers. Specifically, the reference to "any of the Long Term Care Medicaid programs such as..." may be overbroad since it encompasses more than §1915(c) waivers. The CMS definition of "community spouse" in attached Section 3710 is simply a spouse "not living in a medical institution or nursing facility." There is no authorization to limit "community spouse" to someone receiving any form of Medicaid LTC assistance.

DMMA withdraws its proposed regulation published on December 1, 2005 at 9 DE Reg. 859 as of February 1, 2006.

Long Term Care Medicaid

DMMA NOTICE OF WITHDRAWAL #06-01

REVISIONS:

20910.1 Institutionalized Spouse

An individual who is in a medical institution or nursing facility and is married to a spouse who is not in a medical institution or nursing facility and who is not receiving HCBS. Medicaid under any of the Long Term Care Medicaid programs such as Home and Community Based Services, Nursing Home Medicaid or Assisted Living Waiver.

20910.2 Community Spouse

~~An individual who is married to an institutionalized spouse and who does not receive HCBS~~ An individual who is not receiving Medicaid under any of the Long Term Care Medicaid programs such as Home and Community Based Services, Nursing Home Medicaid or Assisted Living Waiver and is married to an institutionalized spouse.

9 DE Reg. 1187 (02/01/06) (Final)