

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PROPOSED

PUBLIC NOTICE

State Residency

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), with 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 amending the Division of Social Services Manual regarding State Residency.

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) 255-4454 by July 31, 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 purpose and effect of this proposal is to amend the Division of Social Services Manual (DSSM) regarding State Residency.

Statutory Authority

- 42 CFR §435.403, State residence;
- State Medicaid Manual, Eligibility Requirements, Section 33230, State Residence

Background

Federal regulation at 42 CFR §435.403 says that a State agency must provide Medicaid services to eligible residence of that State. Specifically, a resident is someone who lives in Delaware with the intention to remain permanently or for an indefinite period of time, or someone living in Delaware, having entered with a job commitment or for the purpose of seeking employment, whether or not the individual is currently employed. The individual must live in Delaware and meet all other eligibility requirements in order to receive Medicaid benefits.

Summary of Proposal

Each State Medicaid agency has specific guidelines for determining whether an individual satisfies the Federal criteria defining eligibility and State residency.

As such, the Division of Medicaid and Medical Assistance (DMMA) is revising the appropriate sections of the Division of Social Services Manual (DSSM) to clarify that an individual must be a Delaware resident in order to receive Delaware Medicaid. A primary residence may be excluded from eligibility if the individual intends to return to the primary residence. An individual will not be considered a Delaware resident if they intend to return to a primary residence located in another state.

The proposed changes affect the following policy sections:

DSSM 14110.8.2, Exceptions

DSSM 20310.1, Intent to Return; and,

DSSM 20320.4.1, Intent to Return.

Fiscal Impact Statement

The proposed revisions impose no increase in cost on the General Fund.

DMMA PROPOSED REGULATION #11-25

REVISIONS:

14110.8.2 Exceptions

When one of the following exists, it supersedes the general residency policy.

a. Exception for individuals receiving a State Supplementary Payment, the State of residence is the State making the payment.

b. Exception for individuals of any age who are receiving Federal payments for foster care under title IV-E of the Social Security Act, and individuals for whom there is an adoption assistance agreement in effect under title IV-E, the State of residence is the State where the individual is living.

c. Exception where a State or agency of the State, including an entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.

d. Exception when residency is disputed - When two or more States cannot resolve which State is the State of residence, the State in which the individual is physically located is the State of residence.

e. Exception when an institutionalized individual intends to return home to their principal place of residence located in another state, the individual will not be considered a Delaware resident since their intent is not to remain in Delaware.

(Break in Continuity of Sections)

20310.1.1 Intent to Return

The principal place of residence, if located in Delaware, may be excluded if the individual intends to return home after any length of time.

Temporary Institutionalization - If the attending physician has certified that a recipient is likely to return to his own home within a definite period (not to exceed 2 months) up to \$75.00 per month may be protected for maintenance of the home.

(Break in Continuity of Sections)

20320.4.1 Intent to Return

~~The individual intends to return home.~~ The applicant must be able to express the desire to return home to their principal place of residence located in Delaware. The record must include a written statement of intent to return to the home. ~~If applicant gives intent verbally to DSS social worker this should be noted as part of the case record. The case record must indicate if the applicant gives intent verbally to DMMA social worker.~~

~~If the statement is written by someone other than applicant~~ writes the statement, there must be an indication that this is in fact the intent of the applicant (i.e. signature or mark of applicant). If an institutionalized applicant/recipient is mentally capable of indicating that he intends to return to his principal place of residence in Delaware (even if medical evidence indicates that he will never recover sufficiently to return home), then the home may be excluded as a resource. In no case can the family **declare** this **intent** for the applicant/recipient.

15 DE Reg. 46 (07/01/11) (Prop.)