DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §133 (16 **Del.C.** §133)
16 **DE Admin. Code** 4203

FINAL

ORDER

4203 Cancer Treatment Program

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulation Governing the Delaware Cancer Treatment Program. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Del.C.** §133.

On April 1, 2014 (Volume 17, Issue 10), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 30, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulation Governing the Delaware Cancer Treatment Program were published in the *Delaware State News*, the *News Journal* and the Delaware *Register of Regulations*.

Entities offering written comments include:

- State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson
- Governor's Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson

Public comments and the DHSS (Agency) responses are as follows:

State Council for Persons with Disabilities, Denise McMullin-Powell, Chairperson:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/ Division of Public Health's (DPH's) proposal to revise its technical, financial, and residency eligibility requirements for the Delaware Cancer Treatment program. The SCPD commented on prior versions of the regulations in May and December of 2004, and in September of 2007. The proposed regulation was published as 17 **DE Reg.** 955 in the April 1, 2014 issue of the *Register of Regulations*. SCPD has the following observations.

First, DPH adds a new definition of "uninsured" as follows:

1.2. Definition of "uninsured" for purposes of this regulation - a person who meets all technical, financial, and residency requirements of this regulation.

This definition is counterintuitive and makes no sense. Literally, someone who is insured but not a Delaware resident would be considered "uninsured". Similarly, someone who is insured but "overincome" would be considered "uninsured". If the Division wishes to retain the reference, consider substituting "a person who meets §§4.1.4 - 4.1.6 of this regulation".

DPH should consider creation of a "definitions" section rather than inserting a definition in the "purposes" section. See Delaware Administrative Code Style Manual, §3.1. Indeed, the Manual recites as follows: "Define a term only if it is important and it is used more than once in the regulation." The term "uninsured is only used once (§1.1) in the regulation so there is technically no need for a definition of "uninsured". The better approach would be to establish a "definitions" section, substitute "Be uninsured" for "Have no health insurance" in §4.1.4, and then include all definitions in the definitions section, including "uninsured" and "inmate" and "public institution" (currently defined in §4.3.1).

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has determined to leave the statement as is and due to the limited number of terms being defined, has determined not to include a definitions section. While the section appears to make no sense to the organization that submitted comments, the section does have meaning for the Agency and will be used to assist with determining eligibility for the program.

Second, the regulation limits authorization for treatment to a "physician". See §§4.1.1, 4.2.1, and 11.2. DPH may wish to consider adding references to "advanced practice nurse". See 24 **Del.C.** §1902(b)(1). Alternatively, DPH could adopt a generic term (e.g. "licensed health care professional" and add a definition of the term to cover physicians and advanced

practice nurses.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has determined to leave the term "physician".

Third, in §3.1, the Division may wish to consider deletion of the extraneous "acting" in the second sentence.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has added to the sentence "acting on behalf of the applicant" to address this comment.

Fourth, in §3.1, the third sentence lists protected classes. It omits some classes. See Title 6 **Del.C.** §§4501, 4502(14), and 4503.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has revised the sentence to include all of the following: race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, or national origin of such persons.

Fifth, in §4.1.5.1, DPH should consider correcting the grammar. There should be parallel form in lists. In this section, some items begin with nouns and some items begin with verbs. See Delaware Administrative Code Drafting & Style Manual, §6.2.3.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has revised the list to be of parallel form and all start with nouns.

Sixth, the regulation is inconsistent in the context of retroactivity. On the one hand, §4.2.4 authorizes 3 months of retroactive coverage for children with no analogous authorization for adults in §4.1. It's unclear why 3-months retroactive coverage would be authorized for children but not adults. Moreover, 12 month retroactivity for children and adults is authorized by §12.7. The Division may wish to clarify its intention and adopt a uniform standard.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has removed the additional unneeded language under §4.2.4 related to children as retroactivity for both adults and children as covered under §12.7.

Seventh, the references to "inmate of a public institution... as used in the Delaware Medicaid program" do not provide much guidance. It would be preferable to provide a citation to 16 **DE Admin Code** 14120 for clarity and ease of reference.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has revised the statement to refer to 16 **DE Admin Code** 14120.

Eighth, the Division is switching from a net income to a gross income standard for most forms of earned income. <u>See</u> §§5.3.5 and 5.3.6. This creates an anomaly since rental income (§5.3.11 and 5.3.12) is reduced by expenses to amount to net income. Obviously, it would be more consumer-oriented to continue to count net earned income.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has determined to maintain the language as originally proposed. The allowance for expenses related to rental income and Roomer/Boarder income are directly related to operating expenses for such incomes. The same is allowed under §5.3.13 Self-Employment, whereby operating expenses are accounted for prior to a person submitting countable income to the IRS.

Ninth, the Division proposes to change the residency standard as follows:

> 6.1. A Delaware resident is an individual who lives in Delaware with the intention to remain permanently ~~or for an indefinite period~~ or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

The deletion of "or for an indefinite period" is highly objectionable. Residency does not require an intention to remain in the State permanently. See 16 **DE Admin Code** 14110.5 -14110.8. See also 17 **DE Reg.** 386 (10/1/13). The term "or for an indefinite period" should be retained. DPH may wish to consult its assigned Attorney General for guidance.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has determined that the removal of the language follows the intent of the program as well as 16 **DE Admin Code** 14110.5 - 14110.8. 16 **DE Admin Code** 14110.5 -14110.8 states "intends to reside including without a fixed address", this expressed intent is the same for the purposes of this program.

Tenth, the Division proposes the following deletion:

Eligibility: ...

> ~~6.3.2. Will not be denied because of a durational residence requirement~~.

The implication of the change is to reinforce the proposed requirement in §6.1 that residency must be "permanent" to be eligible for the program. This is objectionable. Residency can be established without meeting a "permanency" standard. Section 6.3.2 should be retained.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has removed the word "permanently" from 6.1

Eleventh, the Division proposes the following revision:

> 7.4 Failure to provide requested documentation ~~may~~ <u>will</u> result in denial or termination of eligibility.

It would be preferable for the Division to retain discretion in how it addresses lack of documentation rather than adopting a "brittle" standard. For example, an individual may lack competency or attempt unsuccessfully to obtain documentation from other sources.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency maintains that failure

to provide requested documentation will result in denial or termination of eligibility. The Division partners with hospitals and cancer programs statewide to offer assistance to individuals who need assistance obtaining the required documentation.

Twelfth, the grammar in §9.3 could be improved. The reference to "regardless as to if the individual" is somewhat awkward. Consider substituting "regardless of whether the individual".

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has made the suggested revision.

Thirteenth, §11.2 recites as follows:

> 11.2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer.

Literally, if someone became ineligible for one month due to excess earnings, or if someone's eligibility were terminated due to lack of documentation which is then located, this section would categorically preclude reinstatement or continued therapy in following months. This would be a harsh result. The section should be reconsidered. For example, for someone with variable income, could benefits be subject to "suspension" in a high-income month rather than outright termination of eligibility. Alternatively, if someone's eligibility is terminated (per §7.4) for lack of documentation, and the requested documentation is then acquired and submitted, reconsideration of eligibility should be allowed.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §10.2 and thus addresses that section. The Agency maintains that if eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer. The intent of this is further explained in §10.2, whereby it states that a person cannot receive program services for a recurrence of the same cancer.

Fourteenth, the Division could consider deletion of §112.8 since no one would ostensibly be affected by this section in 2014 or later.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §11.2 and thus addresses that section. The Agency has determined that §11.2 will remain in the regulation.

Fifteenth, in §10.1, the Division is modifying a reference to read "his/her". The Delaware Administrative Code Drafting & Style Manual (§3.3.2.1) discourages use of "him/her" and similar references. It would also be preferable to revise the multiple references to "his/her" in §5.6.2 and the reference to "his or her" in §3.2.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §9.1, §5.6.2 and §3.2 and thus will address those sections. The Agency has replaced "his/her" and "him/her" with "his or her.

Sixteenth, appeal rights under §16.0 are meager and do not include even rudimentary due process. Compare Goss v. Lopez, 397 U.S. 254 (1970). Cf. Title 29 **Del.C.** §10121-10129. DHSS could consider applying 16 **DE Admin Code** 5000 to the program.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §15.0 and thus addresses that section. The Agency has determined that as the regulations for the program are clear and that the appeal process has worked for many years, no changes will be made to §15.0 at this time.

Governor's Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Public Health (DPH) proposal to revise its "technical, financial, and residency eligibility requirements for the Delaware Cancer Treatment program." At 955. Council would like to share the following observations.

First, DPH adds a new definition of "uninsured" as follows:

> 1.2. Definition of "uninsured" for purposes of this regulation - a person who meets all technical, financial, and residency requirements of this regulation.

This definition is counterintuitive and makes no sense. Literally, someone who is insured but not a Delaware resident would be considered "uninsured". Likewise, someone who is insured but "over income" would be considered "uninsured". If the Division wishes to retain the reference, consider substituting "a person who meets §§4.1.4 - 4.1.6 of this regulation".

DPH should consider creation of a "definitions" section rather than inserting a definition in the "purposes" section. See Delaware Administrative Code Style Manual, §3.1. Indeed, the Manual recites as follows: "Define a term only if it is important and it is used more than once in the regulation." The term "uninsured is only used once (§1.1) in the regulation so there is technically no need for a definition of "uninsured". The better approach would be to establish a "definitions" section, substitute "Be uninsured" for "Have no health insurance" in §4.1.4, and then include all definitions in the definitions section, including "uninsured" and "inmate" and "public institution" (currently defined in §4.3.1).

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has determined to leave the statement as is and due to the limited number of terms being defined, has determined not to include a definitions section. While the section appears to make no sense to the organization that submitted comments, the section does have meaning for the Agency and will be used to assist with determining eligibility for the program.

Second, the regulation limits authorization for treatment to a "physician". See §§4.1.1, 4.2.1, and 11.2. DPH may wish

to consider adding references to “advanced practice nurse”. See 24 **Del.C.** §1902(b)(1). Alternatively, DPH could adopt a generic term (e.g. “licensed health care professional” and add a definition of the term to cover physicians and advanced practice nurses.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has determined to leave the term “physician”.

Third, in §3.1, the Division may wish to consider deletion of the unnecessary “acting” in the second sentence.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has added to the sentence “acting on behalf of the applicant” to address this comment.

Fourth, in §3.1, the third sentence lists protected classes. Some classes have been omitted. See Title 6 **Del.C.** §§4501, 4502(14), and 4503.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has revised the sentence to include all of the following: race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, or national origin of such persons.

Fifth, in §4.1.5.1, DPH should consider correcting the grammar. There should be parallel form in lists. In this section, some items begin with nouns and some items begin with verbs. See Delaware Administrative Code Drafting & Style Manual, §6.2.3.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has revised the list to be of parallel form and all start with nouns.

Sixth, the regulation is inconsistent in the context of retroactivity. On the one hand, §4.2.4 authorizes three months of retroactive coverage for children with no corresponding authorization for adults in §4.1. It’s unclear why three-months retroactive coverage would be authorized for children but not adults. Moreover, 12 month retroactivity for children and adults is authorized by §12.7. The Division may wish to clarify its intention and adopt a uniform standard.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has removed the additional unneeded language under §4.2.4 related to children as retroactivity for both adults and children as covered under §12.7.

Seventh, the references to “inmate of a public institution ... as used in the Delaware Medicaid program” do not provide much guidance. It would be preferable to provide a citation to 16 **DE Admin Code** 14120 for clarity and ease of reference.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has revised the statement to refer to 16 **DE Admin Code** 14120.

Eighth, the Division is switching from a net income to a gross income standard for most forms of earned income. See §§5.3.5 and 5.3.6. This creates an abnormality since rental income (§5.3.11 and 5.3.12) is reduced by expenses to amount to net income. Obviously, it would be more consumer-oriented to continue to count net earned income.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has determined to maintain the language as originally proposed. The allowance for expenses related to rental income and Roomer/Boarder income are directly related to operating expenses for such incomes. The same is allowed under §5.3.13 Self-Employment, whereby operating expenses are accounted for prior to a person submitting countable income to the IRS.

Ninth, the Division proposes to change the residency standard as follows:

> 6.1. A Delaware resident is an individual who lives in Delaware with the intention to remain permanently ~~or for an indefinite period~~ or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

The deletion of “or for an indefinite period” is highly objectionable. Residency does not require an intention to remain in the State permanently. See 16 **DE Admin Code** 14110.5 -14110.8. See also 17 **DE Reg.** 386 (10/1/13). The term “or for an indefinite period” should be retained. DPH may wish to consult its assigned Attorney General for guidance.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has determined that the removal of the language follows the intent of the program as well as 16 **DE Admin Code** 14110.5 - 14110.8. 16 **DE Admin Code** 14110.5 -14110.8 states “intends to reside including without a fixed address”, this expressed intent is the same for the purposes of this program.

Tenth, the Division proposes the following deletion:

Eligibility: ...

> ~~6.3.2. Will not be denied because of a durational residence requirement~~.

The implication of the change is to reinforce the proposed requirement in §6.1 that residency must be “permanent” to be eligible for the program. This is objectionable. Residency can be established without meeting a “permanency” standard. Section 6.3.2 should be retained.

Agency Response: T*he Agency appreciates and acknowledges these comments. The Agency has removed the word “permanently” from 6.1

Eleventh, the Division proposes the following revision:

> 7.4 Failure to provide requested documentation ~~may~~ <u>will</u> result in denial or termination of eligibility.

It would be preferable for the Division to retain discretion in how it addresses lack of documentation rather than adopting an inflexible standard. For example, an individual may lack competency or attempt unsuccessfully to obtain

documentation from other sources.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency maintains that failure to provide requested documentation will result in denial or termination of eligibility. The Division partners with hospitals and cancer programs statewide to offer assistance to individuals who need assistance obtaining the required documentation.

Twelfth, Council would like to point out that although sections 9 through 15 have been re-numbered, the section headers have not been renumbered leading to "910.0 Changes In Circumstances And Personal Information", "1011.0 Termination Of Eligibility" and continuing.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has moved the original section 9.0 to section 13.0 and renumbered the headers following this change. The Agency would like to thank the commenter for pointing out this error.

Thirteenth, the grammar in §9.3 could be improved. The reference to "regardless as to if the individual" is somewhat awkward. Consider substituting "regardless of whether the individual".

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has made the suggested revision.

Fourteenth, in §10.1, the Division is modifying a reference to read "his/her". The Delaware Administrative Code Drafting & Style Manual (§3.3.2.1) discourages use of "him/her" and similar references. It would also be preferable to revise the multiple references to "his/her" in §5.6.2 and the reference to "his or her" in §3.2.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §9.1, §5.6.2 and §3.2 and thus will address those sections. The Agency has replaced "his/her" and "him/her" with "his or her.

Fifteenth, §11.2 recites as follows:

> 11.2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer.

Literally, if someone became ineligible for one month due to excess earnings, or if eligibility of the individual was terminated due to lack of documentation which is then located, this section would categorically prevent reinstatement or continued therapy in following months. This would be a severe result. The section should be reconsidered. For example, for someone with variable income, could benefits be subject to "suspension" in a high-income month rather than outright termination of eligibility. Alternatively, if the eligibility is terminated (per §7.4) for lack of documentation and the requested documentation is then acquired and submitted, reconsideration of eligibility should be allowed.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §10.2 and thus addresses that section. The Agency maintains that if eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer. The intent of this is further explained in §10.2, whereby it states that a person cannot receive program services for a recurrence of the same cancer.

Sixteenth, the Division could consider deletion of §12.8 since no one would ostensibly be affected by this section in 2014 or later.

Agency Response: The Agency appreciates and acknowledges these comments. There is not a section §12.8. The Agency believes the commenter was referring to §11.2 and thus addresses that section. The Agency has determined that §11.2 will remain in the regulation.

Seventeenth, appeal rights under §16.0 are limited and do not include even basic due process. Compare Goss v. Lopez, 397 U.S. 254 (1970). Cf. Title 29 **Del.C.** §10121-10129. DHSS could consider applying 16 **DE Admin Code** 5000 to the program.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency believes the commenter was referring to §15.0 and thus addresses that section. The Agency has determined that as the regulations for the program are clear and that the appeal process has worked for many years, no changes will be made to §15.0 at this time.

The public comment period was open from April 1, 2014 through April 30, 2014. Based on comments received during the public comment period, only non-substantive changes have been made to the proposed regulations. The regulations have been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Based on public comments received, non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulation Governing the Delaware Cancer Treatment Program are adopted and shall become effective July 1, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

4203 Cancer Treatment Program

1.0 Purpose

1.1 The Cancer Treatment Program (CTP) is a program of Delaware Health and Social Services (DHSS), Division of Public Health (DPH) intended to provide medical insurance coverage to uninsured Delawareans for the treatment of cancer.

1.2 Definition of "uninsured" for purposes of this regulation - a person who meets all technical, financial, and residency requirements of this regulation.

8 DE Reg 1144 (2/1/05)

2.0 Availability Of Funds

2.1 Benefits will be available to enrollees provided that funds for this program are made available to DHSS.

2.2 In the event that funds are not available, DHSS will notify enrollees and providers.

3.0 General Application Information

3.1 The application must be made in writing on the prescribed CTP form. An individual, agency, institution, guardian or other individual acting **[on behalf of the applicant]** can make this request for assistance for the applicant with his knowledge and consent. The CTP will consider an application without regard to race, color, age, sex, **[marital status, creed, sexual orientation, gender identity,]** disability, religion, national origin or political belief as per State and Federal law.

3.2 Each individual applying for the CTP is ~~requested, but not~~ required~~,~~ to furnish his or her Social Security Number, if the individual has a Social Security Number.

3.3 Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

4.0 Technical Eligibility

4.1 The following for an adult applicant are required to receive benefits under this program. The adult applicant must:

4.1.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.

4.1.2 Be a Delaware resident.

4.1.3 Have been a Delaware resident at the time cancer was diagnosed.

4.1.4 Have no health insurance.

4.1.4.1 Examples of health insurance include comprehensive, major medical and catastrophic plans, Veterans Affairs Medical Services, Correctional Healthcare Services, Medicare, and Medicaid.

4.1.4.2 Excepted are the following types of insurance plans, which do not exclude eligibility for the CTP: dental, vision, dismemberment, drug, mental health, nursing home, blood bank, workman's compensation, accident, family planning, the Delaware Prescription Assistance Program, the Delaware Chronic Renal Disease program, and non-citizen medical coverage.

4.1.4.3 The CTP is the payer of last resort and will only provide benefits to the extent that they are not covered by the plans listed in 4.1.4.2.

4.1.5 Meet one of the exemptions listed in the Patient Protection and Affordable Care Act's (PPACA) requirements to buy coverage.

4.1.5.1 Exemptions listed in the PPACA include: **[applicant is]** part of a religion opposed to acceptance of benefits from a health insurance policy; **[~~are~~ applicant is]** an undocumented immigrant; **[~~are~~ applicant is]** incarcerated; **[applicant is]** a member of an Indian tribe; **[applicant's]** family income is below the threshold for filing a tax return; **[~~have~~ applicant is required]** to pay more than 8% of household income for health insurance, after taking into account any employer contributions or tax credits.

4.1.5.2 Applicants will need to show proof of exemption from the PPACA.

4.1.6 Be ineligible for Medicaid.

4.1.~~5~~7 Be over the age of 18 years.

4.1.~~6~~8 Be diagnosed with any cancer on or after July 1, 2004, or be receiving benefits for the ~~treatment~~ diagnosis of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004.

4.2 The following are required for a minor (child under 18 years of age) to receive benefits under this program. The minor applicant must:

4.2.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.

4.2.2 Be a Delaware resident

4.2.3 Have been a Delaware resident at the time cancer was diagnosed.

4.2.4 Be diagnosed with any cancer on or after July 1, 2004. **[~~Coverage shall be retroactive up to 3 months prior to date of application, provided applicant meets medical requirements and applicant's parent(s) or legal guardian(s) meet financial eligibility requirements under 5.1. In no case will the minor applicant be eligible for benefits under this program before July 1, 2004.~~]**

4.2.5 The CTP is payer of last resort and will only provide benefits to the extent that they are not covered by other plans.

4.3 An inmate of a public institution shall be ineligible for the CTP~~, provided that the benefits of the CTP are not otherwise provided in full or in part~~.

4.3.1 For the purposes of the CTP, the definitions of public institution and inmate shall be the same as used by the Delaware Medicaid program **[16 DE Admin. Code 14120]**.

4.4 The Medical Assistance Card is the instrument used to verify an individual's eligibility for benefits. Prior to rendering services, medical providers are required to verify client eligibility using the client's identification number by accessing one of the Electronic Verification Systems (EVS) options. Instructions for accessing EVS are described in the EVS section of the billing manual.

8 DE Reg 1144 (2/1/05)

5.0 Financial Eligibility

5.1 To be eligible for the CTP the applicant must have countable household income that is less than 650% of the Federal Poverty Level (FPL).

5.2 Income is any type of money payment that is of gain or benefit to an individual. Income is either counted or excluded for the eligibility determination.

5.3 Countable income includes but is not limited to:

5.3.1 Social Security benefits – as paid after deduction for Medicare premium

5.3.2 Pension – as paid

5.3.3 Veterans Administration Pension – as paid

5.3.4 U.S. Railroad Retirement Benefits – as paid

5.3.5 Wages – ~~net~~ gross amount ~~after~~ before deductions for taxes and FICA

5.3.6 Senior Community Service Employment – ~~net~~ gross amount ~~after~~ before deductions for taxes and FICA

5.3.~~6~~7 Interest/Dividends – gross amount

5.3.~~7~~8 Capital Gains – gross amount from capital gains on stocks, mutual funds, bonds.

5.3.~~8~~9 Credit Life or Credit Disability Insurance Payments – as paid

5.3.~~9~~10 Alimony – as paid

5.3.~~10~~11Rental Income from entire dwelling – gross rent paid minus standard deduction of 20% for expenses

5.3.~~11~~12Roomer/Boarder Income – gross room/board paid minus standard deduction of 10% for expenses

5.3.~~12~~13Self Employment – countable income as reported to Internal Revenue Service (IRS)

5.3.~~13~~14Unemployment Compensation - ~~as paid~~ gross amount before deductions for taxes and FICA

5.4 Excluded income includes but is not limited to:

5.4.1 Annuity payments

5.4.2 Individual Retirement Account (IRA) distributions

5.4.3 Payments from reverse mortgages

5.4.4 Capital gains from the sale of principal place of residence

5.4.5 Conversion or sale of a resource (i.e. cashing a certificate of deposit)

5.4.6 Income tax refunds

5.4.7 Earned Income Tax Credit (EITC)

5.4.8 Vendor payments (bills paid directly to a third party on behalf of the individual)
5.4.9 Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)
5.4.10 Loan payments received by individual
5.4.11 Proceeds of a loan
5.4.12 Foster care payments made on behalf of foster children living in the home
5.4.13 Retired Senior Volunteer Program (RSVP)
5.4.14 Veterans Administration Aid and Attendance payments
5.4.15 Victim Compensation payments
5.4.16 German reparation payments
5.4.17 Agent Orange settlement payments
5.4.18 Radiation Exposure Compensation Trust Fund payments
5.4.19 Japanese-American, Japanese-Canadian, and Aleutian restitution payments
5.4.20 Payments from long term care insurance or for inpatient care paid directly to the individual

5.5 Determination of the household income will be based on the family budget group, which is the total number of persons whose income is budgeted together. This will always include the following:
5.5.1 Married couples if they live together; and,
5.5.2 Unmarried couples who live together as ~~husband and wife~~ a married couple.
5.5.3 Couples will be considered as living together as ~~husband and wife~~ a married couple if:
5.5.3.1 They say they are married, even if the marriage cannot be verified; or,
5.5.3.2 They are recognized as ~~husband and wife~~ a married couple in the community; or,
5.5.3.3 One partner uses the other's last name; or,
5.5.3.4 They state they intend to marry.

5.6 In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's income and those of **[~~his/her~~ his or her]** children are always budgeted together. The income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:
5.6.1 CTP benefits would be denied to any of the recipients by maintaining separate budget groups.
5.6.2 The caretaker chooses to have **[~~his/her~~ his or her]** income and those of **[~~his/her~~ his or her]** children considered with the income of any other people in the home.

6.0 Residency

6.1 A Delaware resident is an individual who lives in Delaware with the intention to remain **[~~permanently~~]** ~~or for an indefinite period,~~ or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

6.2 Factors that may be taken into account when determining residency are variables such as the applicant's age, location of dwellings and addresses, location of work, institutional status, and ability to express intent.

6.3 Eligibility:
6.3.1 Will not be denied to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.
~~6.3.2 Will not be denied because of a durational residence requirement.~~
6.3.~~3~~2 Will not be denied to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.
6.3.~~4~~3 Will not be terminated due to temporary absence from the State, if the person intends to return when the purpose of the absence has been accomplished.

6.4 When 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.

7.0 Verification Of Eligibility Information

7.1 The CTP ~~may~~ will verify information related to eligibility. Verification may be verbal or written and may be obtained from an independent or collateral source.

7.2 Documentation shall be date stamped and become part of the CTP case record.

7.3 Verifications received and/or provided may reveal a new eligibility issue not previously realized. Additional verifications may be required.

7.4 Failure to provide requested documentation ~~may~~ will result in denial or termination of eligibility.

8.0 Disposition Of Applications

8.1 The CTP will dispose of each application by a finding of full eligibility, temporary eligibility or ineligibility, unless:

8.1.1 There is an entry in the case record that the applicant voluntarily withdrew the application, and that the CTP sent a notice confirming the applicant's decision;

8.1.2 There is a supporting entry in the case record that the applicant is deceased; or

8.1.3 There is a supporting entry in the case record that the applicant cannot be located.

8.2 Disposition definitions:

8.2.1 Full eligibility - applicants provided full eligibility in the CTP meet all technical, income and residency eligibility requirements

8.2.2 Temporary eligibility - applicants provided temporary eligibility meet all technical, income and residency eligibility requirements except 4.1.5

8.2.3 Ineligibility - applicants do not meet one or more of the technical, income and/or residency eligibility requirements

9.0 Temporary Eligibility

9.1 Applicants provided temporary eligibility in the CTP are not exempt from the requirements to buy health insurance coverage per the PPACA.

9.2 Applicants provided temporary eligibility in the CTP are only afforded coverage under the CTP until such time as they can obtain health insurance coverage either through an employer or through the individual health insurance marketplace.

9.2.1 CTP applicants can obtain individual health insurance coverage during the annual health insurance coverage open enrollment period on the individual health insurance marketplace.

9.3 After such time as the applicant can obtain health insurance coverage through means listed in 9.2, the CTP enrollee will be terminated from the CTP, regardless **[~~as to if~~ of whether]** the individual has followed through with obtaining health insurance coverage.

[~~9~~10.0 ~~Changes In Circumstances And Personal Information~~

~~9~~10.1 ~~Enrollees are responsible for notifying the CTP of all changes in his/her circumstances that could potentially affect eligibility for the CTP. Failure to do so may result in overpayments being processed and legal action taken to recover funds expended on his/her behalf during periods of ineligibility.~~

~~9~~10.2 ~~Enrollees are responsible for notifying the CTP of changes in the enrollee's name, address and telephone number.~~]

~~10~~[~~11~~10].0 Termination Of Eligibility

[~~10~~11~~10~~].1 Eligibility terminates:

[~~10~~11~~10~~].1.1 When the enrollee attains other medical insurance~~, including Medicare, Medicaid, and the Medicaid Breast and Cervical Cancer treatment program~~ as listed in 4.1.4.

[~~10~~11~~10~~].1.2 When the enrollee is no longer receiving treatment for cancer as defined in 4.1.1.

[~~10~~11~~10~~].1.3 When the enrollee no longer meets the technical or financial eligibility requirements.

[~~10~~11~~10~~].1.4 When applicants provided temporary eligibility status fail to obtain health insurance coverage or satisfy the requirements to transition to full eligibility status.

[~~10~~11~~10~~].1.45 Twenty-four months after the date that cancer treatment is initiated for each primary cancer diagnosis.

[~~10~~11~~10~~].2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer. An individual who has a recurrence of cancer for which coverage has been previously provided is not eligible for additional coverage. The determination of a new primary cancer or recurring cancer is made by the treating physician.

[~~10~~11~~10~~].3 When temporary eligibility is terminated or a disposition of ineligibility is received, applicants may request a financial hardship waiver and submit to DHSS for review to determine if a significant financial hardship exists for the applicant.

11 DE Reg 680 (11/01/07)

[~~11~~12~~11~~11].0 Coverage And Benefits

[~~11~~12~~11~~11].1 Coverage is limited to the treatment of cancer as defined by DHSS.

[~~11~~12~~11~~11].2 There is no managed care enrollment.

[~~11~~12~~11~~11].3 Benefits will be paid at rates equivalent to Medicaid under a fee for service basis. If a Medicaid rate does not exist for the service provided, the CTP will determine a fair rate.

[~~11~~12~~11~~11].4 Benefits will only be paid when the provider of the cancer treatment services is a Delaware Medicaid Assistance Provider.

[~~11~~12~~11~~11].5 Benefits for patients enrolled prior to September 1, 2004 (or whatever date is established by DHSS as having an operational benefits management information system), may not be paid until after that date.

[~~11~~12~~11~~11].6 The CTP is the payer of last resort and will only provide benefits to the extent that they are not otherwise covered by another insurance plan.

[~~11~~12~~11~~11].7 Eligibility may be retroactive to the day that cancer treatment was initiated provided that the application is filed within one year of that day. In such circumstances, covered services will only be provided for the time period that the applicant is determined to have been eligible for the CTP.

[~~11~~12~~11~~11].8 In no case will eligibility be retroactive to a time period prior to July 1, 2004, except if the enrollee was receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004. If this exception occurs, eligibility will be retroactive only to the date the enrollee was receiving benefits for colorectal cancer treatment through the Screening for Life program.

~~11.9 Enrollees receiving treatment for cancer through the CTP as of July 1, 2007 are able to extend their initial 12 month coverage to a maximum of 24 months after the date cancer treatment is initiated for each primary cancer diagnosis, provided that the enrollee continues to meet the technical and financial eligibility requirements.~~

11 DE Reg 680 (11/01/07)

[~~12~~13~~12~~12].0 Cancer Treatment Services Which Are Not Covered

[~~12~~13~~12~~12].1 The cost of nursing home or long-term care institutionalization is not covered. (The cost of cancer treatment services within a nursing home or long term care institution is a covered benefit.)

[~~12~~13~~12~~12].2 Services not related to the treatment of cancer as determined by DHSS are not covered.

[~~12~~13~~12~~12].3 Cancer treatment services for which the enrollee is eligible to receive by other health plans as listed in 4.1.4.2 are not covered.

[13.0 Changes In Circumstances And Personal Information

13.1 Enrollees are responsible for notifying the CTP of all changes in his or her circumstances that could potentially affect eligibility for the CTP. Failure to do so may result in overpayments being processed and legal action taken to recover funds expended on his or her behalf during periods of ineligibility.

13.2 Enrollees are responsible for notifying the CTP of changes in the enrollee's name, address and telephone number.]

~~13~~14.0 Changes In Program Services

~~13~~14.1 When changes in program services require adjustments of CTP benefits, the CTP will notify enrollees who have provided an accurate and current name, and address or telephone number.

~~14~~15.0 Confidentiality

~~14~~15.1 The CTP will maintain the confidentiality of application, claim, and related records as required by law.

~~15~~16.0 Review Of CTP Decisions

~~15~~16.1 Any individual who is dissatisfied with a CTP decision may request a review of that decision.

~~15~~16.2 Such request must be received by the CTP in writing within 30 days of the date of the decision in question.

~~15~~16.3 The CTP will issue the results of its review in writing. The review will be final and not subject to further appeal.

8 DE Reg. 107 (7/1/04)

18 DE Reg. 67 (07/01/14) (Final)