

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** 20101, 20103, and 14100

PROPOSED

PUBLIC NOTICE

Long Term Care Medicaid

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 Long Term Care Medicaid, specifically, *to add additional application methods*.

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, or by fax to 302-255-4413 by 4:30 p.m. on May 31, 2018. Please identify in the subject line: Long Term Care Medicaid.

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 Long Term Care Medicaid, specifically, to add additional application methods.

Statutory Authority

- 42 CFR 435.906
- 42 CFR 435.908
- 42 CFR 435.907(a)
- 42 CFR 435.930(a)
- 1902(a)(8)&(19) Social Security Act

Background

Current policy and practice requires a face to face interview when an individual applies for Long Term Care Medicaid. Additionally, current practice requires the application process to be completed by the applicant, their family member or their legal representative. The proposed policy change removes this restriction and allows the applicant the choice of who can apply for Long Term Care Medicaid on their behalf and removes the face-to-face interview requirement for applying for Long Term Care Medicaid. The proposed application process leaves the choice of the type of application method to the individual applying e.g. electronic, face-to-face interview, mail, fax, telephone.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to add additional application methods for Long Term Medicaid.

Summary of Proposed Changes

Effective for services provided on and after July 12, 2018, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend sections 20101, 20103, and 20103.1.2 of the Delaware Social Services Manual (DSSM) regarding Long Term Care Medicaid, specifically, to add additional application methods.

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 May 31, 2018.

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

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

AMENDED

20101 Application Process - Long Term Care Services

The application process is twofold. Applicants for Medicaid must be medically and financially eligible to receive coverage. Referrals for Medicaid may come from many sources: the applicant, the family of the applicant, persons in the community, hospital social workers, etc. The potential nursing facility or Home and Community Based Waiver patient may be in an adult foster care home, in his own home, in the hospital or in a nursing facility as a private pay patient.

Rarely does the applicant himself initiate the referral. This means it is extremely important in the case of the mentally competent patient that the DSS nurse determine initially if the patient is aware that a referral for nursing facility admission or Home and Community Based Waiver has been made. The person must be willing to enter a nursing facility or accept Waiver services, otherwise placement or referral cannot be made. The DSS nurse and social worker may assist the family or others in helping the patient to accept the need for nursing facility or Waiver care, but the main responsibility belongs to the family or persons acting as family.

If the patient is not competent, the family or ~~legal representative~~ someone acting responsibly will act on behalf of the patient.

It is not the responsibility of DSS to find a nursing facility placement for a patient although they may give assistance when they have knowledge of available, Medicaid certified beds.

20103 Financial Eligibility Determination

This is the second step in the application process. A referral is passed to the LTC financial eligibility unit within two days of being referred to the Medicaid PAS unit.

~~An application for Medicaid is made only when an interview is held with the applicant or his family member who is applying on the applicant's behalf. Should anyone hold Power of Attorney or Guardianship over the applicant, he also must attend the interview along with the applicant/family member, unless his attendance is waived by the supervisor. In addition, the application form must be signed listing those individuals for whom Medicaid coverage is being sought. The applicant or his representative must sign the Application, Affidavit of Citizenship, and Responsibility Statement. The application date is considered to be the date of the interview unless the interview requirement is waived. The interview can only be waived if the applicant is medically unable to come in for the interview and there is no family member, POA agent or Guardian medically able to come in for the interview or other good cause exists. The unit Supervisor must approve the waiving of the interview requirement.~~

~~For cases in which the interview is waived, the application must be date stamped when it is received in the Division of Medicaid and Medical Assistance office. The stamped date sets the base for the timeliness of determination.~~

In accordance with section 1413(b)(1)(A) of the Affordable Care Act, the agency must accept an application from the applicant, an adult who is in the applicant's household, as defined in § 435.603(f), or family, as defined in section 36B(d)(1) of the Code, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant, and any documentation required to establish eligibility -

- (1) Through commonly available electronic means;
- (2) By telephone;
- (3) Via mail;
- (4) In person

The Application, Affidavit of Citizenship and Responsibility Statement must be signed by the individual or a representative of their choice. For individuals who are minors or incapacitated a signature is required by someone acting responsibly on the applicant's behalf. The date of application is the date the application is received by LTC Medicaid Office.

20103.1.2 Timely Documentation

The DMMA Medicaid worker must explain this 90-day time standard to the applicant or representative. ~~during the initial interview.~~ It must be emphasized ~~during the interview to the applicant or their representative,~~ that all documentation needed for the worker to determine Medicaid eligibility must be received by the date indicated on the "Request for Verification" letter (Form 415) or the application will be denied. In cases where verification is incomplete, the worker will give the applicant 15 days to return the information on the initial "Request for Verification" letter (Form 415). The date by which all documentation must be received must be clearly noted on this form.

14100.3 Interview Requirement for Some Eligibility Groups

An in-person interview is not required for any eligibility group subject to the modified adjusted gross income (MAGI)-based methodologies described in Section 16000.

An in-person interview is not required for ~~some~~ Long Term Care eligibility determinations. SEE SECTION 20101 - Application Process - Long-Term Care Services.

17 DE Reg. 503 (11/01/13)

21 DE Reg. 860 (05/01/18) (Prop.)