Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

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

Prescription Assistance

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 Delaware Social Services Manual (DSSM) regarding Prescription Assistance, specifically, *to restore the Delaware Prescription Drug Payment Assistance Program*.

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 December 3, 2018. Please identify in the subject line: Prescription Assistance.

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 Delaware Social Services Manual (DSSM) regarding Prescription Assistance, specifically, *to restore the Delaware Prescription Drug Payment Assistance Program*

Statutory Authority

29 **Del.C.** §6502 Annual estimates of expenditures

Background

The Delaware Prescription Assistance Program (DPAP) was established by the Delaware General Assembly on January 14, 2000, when Senate Bill 6 was passed during the 1999 Legislative Session. DPAP was funded by the Delaware Health Fund and provided prescription and over-the-counter drug coverage to qualified Delaware citizens. In 2007 the Bill was amended to allow the program to pay for the members' Medicare Part D premium. By paying for the premium, clients had access to all of the Medicare drug benefits.

The program was eliminated by the Fiscal Year 2018 Annual Appropriations Act and in July 2018, Senate Bill 228 restored the Delaware Prescription Drug Payment Assistance Program.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to restore the Delaware Prescription Drug Payment Assistance Program.

Summary of Proposed Changes

Effective for services provided on and after January 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 30000 of Delaware Social Services Manual (DSSM) regarding Prescription Assistance, specifically, to restore the Delaware Prescription Drug Payment Assistance Program.

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 December 3, 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

	State Fiscal Year 2019	State Fiscal Year 2020
General (State) funds	$2,000,000	$2,000,000
Federal funds	$-0-	$-0-

30000 Delaware Prescription Assistance Program

Revised July 2018

The 149th General Assembly amended Title 16, Delaware Code, by reinstating Chapter 30B to restore the Delaware Prescription Drug Payment Assistance Program. The purpose of this act is to provide payment assistance for prescription drugs and certain Medicare Part D costs to low-income seniors and individuals with disabilities who are ineligible for, or do not have, prescription drug benefits or coverage through federal, (excluding Medicare Part D coverage, state, or private sources.

The program is administered by the Fiscal Agent under contract with the Delaware Department of Health and Social Services.

The rules in this section set forth the eligibility requirements for coverage under the Delaware Prescription Assistance Program (DPAP). The DPAP is reinstated as of January 1, 2019, with benefits beginning January 14, 2019.

30100 Definitions

Revised July 2018

Contractor: The agent who is under contract with the State to administer the DPAP.

Department: The Department of Health and Social Services or DHSS

Division: The Division of Medicaid & Medical Assistance or DMMA

Low Income Subsidy (LIS): Assistance provided by the Centers for Medicare and Medicaid Services to pay Medicare Part D costs for individuals with limited income and resources. The LIS will provide payment assistance with the monthly premium, the yearly deductible, and the coverage gap. The LIS will also provide payment assistance for co-payments after an individual with income below 135% of the Federal Poverty Level reaches a total of $5100 in drug expenses.

Medicare Part D: The Medicare Prescription Drug Program established by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

Medicare Part D costs: Monthly premiums, yearly deductible, and drug costs that fall into the Part D coverage gap.

Prescription drugs: Drugs that are self-administered or administered by a lay person that have been approved as safe and effective by the Federal Food and Drug Administration or are otherwise legally marketed in the United States. Mediations administered only by a clinically trained person are not covered under this program.

30200 General Application Information

Revised July 2018

The application for DPAP must be made in writing on the prescribed form. This request for assistance can be made by the applicant, guardian, or other individual acting for the applicant with the applicant's knowledge and consent. The application filing date is the date the application is received in either the Contractor's office or a DHSS office.

DPAP will consider an application without regard to race, color, age, sex, sexual orientation, gender identity, disability, religion, national origin, limited English proficiency (LEP) or political belief as per Title VI of the Civil Rights Act of 1964.

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

30201 Disposition of Applications

Revised July 2018

The Contractor must include in each applicant's case record facts to support the Contractor's decision on his application. The Contractor must dispose of each application by a finding of eligibility or ineligibility, unless:

a. There is an entry in the case record that the applicant voluntarily withdrew the application, and that the Contractor sent a notice confirming the applicant's decision; or
b. There is a supporting entry in the case record that the applicant has died; or
c. There is a supporting entry in the case record that the applicant cannot be located; or
d. All verification requested is not received by the due date given to the applicant. If all verification requested is not received by the due date, an eligibility determination cannot be made. This will result in denial of the application. Verification that is received and/or provided may reveal a new eligibility issue not previously realized that requires additional verification. If the additional verification requested is not received by the due date given, this will result in denial of the application.

All applicants will receive a notice of acceptance or denial.

30202 Timely Determination of Eligibility
Revised July 2018

A time standard of 45 days will apply. This standard equals the period from the application filing date to the date that the notice of decision is mailed. The standard must be met except in unusual circumstances, such as:

- A decision cannot be made because the applicant or his representative delays or fails to take a required action.
- There is an administrative or other emergency beyond the Contractor's control.

30203 Reporting Changes in Circumstances
Revised July 2018

At time of application and redetermination, each individual must be informed that he is responsible for notifying the Contractor of all changes in the applicant's circumstances, which could potentially affect the applicant's eligibility for DPAP.

30300 Technical Eligibility
Revised July 2018

The following requirements are factors of eligibility specific to DPAP.

30301 Citizenship and Alienage
Revised July 2018

The individual must be a U.S. citizen or a lawfully admitted alien.

30302 State Residency
Revised July 2018

The individual must be living in the State of Delaware.

30303 Social Security Number
Revised July 2018

Each individual applying for DPAP must furnish his or her Social Security number.

30304 Aged or Disabled Requirement
Revised July 2018

The individual must meet one of the following requirements:

a. Be age 65 or over; or
b. Be an individual between the ages of 19 and 64 who is receiving disability benefits under Title II of the Social Security Act. An individual is considered to meet the "receiving disability benefits" requirement if the individual is a former recipient of either Social Security Disability Insurance benefits or Supplemental Security Income benefits and was required by the Social Security Administration to accept Social Security Survivors benefits.

30305 Requirement to Enroll in Medicare Part D
Revised July 2018

An individual who is entitled to receive Medicare benefits under Part A or Part B must enroll in Part D in order to be

eligible for DPAP. The individual must provide proof of Medicare Part D enrollment.

30306 Requirement to Apply for Low Income Subsidy (LIS)
Revised July 2018

An individual must apply for the LIS if potentially eligible. The individual must provide a copy of the LIS denial or approval notice.

30307 No Other Prescription Drug Coverage
Revised July 2018

The individual must not have or must be ineligible for, prescription drug benefits or coverage through federal (excluding Medicare Part D coverage), state, or private sources regardless of any annual limitations to the benefits.

The individual must not have or must be ineligible for:

a. Medicaid prescription benefits; and/or
b. Prescription drug benefits through a third party payer.

30307.1 Exceptions to No Other Prescription Drug Coverage
Revised July 2018

Individuals who are eligible for the following drug benefits will not be excluded from eligibility for DPAP:

a. Individuals covered under a specific disease state insurance program, for example a policy that pays only for cancer drugs
b. Individuals who are members of a discount drug program in which the policy does not actually pay for the drugs, for example American Association of Retired Persons (AARP)
c. Individuals eligible for drug coverage through the Division of Vocational Rehabilitation
d. Individuals eligible for drug coverage through the Division of Substance Abuse and Mental Health; and
e. Individuals covered under Medicare Part D.

30308 Inmate of a Public Institution
Revised July 2018

An individual who is an inmate of a public institution is not eligible for DPAP.

An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. An individual awaiting trial in a detention center is considered an inmate of a public institution.

30400 Financial Eligibility
Revised July 2018

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.

30401 Countable Income
Revised July 2018

Countable income includes but is not limited to:

1. Social Security benefits - as paid after deduction for Medicare premium;
2. Pension - as paid;
3. Veterans Administration Pension - as paid;
4. U.S. Railroad Retirement Benefits - as paid;
5. Wages - net amount after deductions for taxes and FICA;
6. Senior Community Service Employment - net amount after deductions for taxes and FICA;
7. Interest/Dividends - gross amount;
8. Capital Gains - gross amount from capital gains on stocks, mutual funds, bonds.;
9. Credit Life or Credit Disability Insurance Payments - as paid;
10. Alimony - as paid;
11. Rental Income from entire dwelling - gross rent paid minus standard deduction of 20% for expenses;

12. Roomer/Boarder Income - gross room/board paid minus standard deduction of 10% for expenses;
13. Self Employment - countable income as reported to Internal Revenue Service (IRS); and
14. Unemployment Compensation - as paid.

30402 Excluded Income
Revised July 2018

Excluded income includes but is not limited to:

1. Annuity payments;
2. Individual Retirement Account (IRA) distributions;
3. Payments from reverse mortgages;
4. Capital gains from the sale of principal place of residence;
5. Conversion or sale of a resource (i.e. cashing a certificate of deposit);
6. Income tax refunds;
7. Earned Income Tax Credit (EITC);
8. Vendor payments (bills paid directly to a third party on behalf of the individual);
9. Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance);
10. Loan payments received by individual;
11. Proceeds of a loan;
12. Foster care payments made on behalf of foster children living in the home;
13. Retired Senior Volunteer Program (RSVP);
14. Veterans Administration Aid and Attendance payments;
15. Victim Compensation payments;
16. German reparation payments;
17. Radiation Exposure Compensation Trust Fund payments;
18. Japanese-American, Japanese-Canadian, and Aleutian restitution payments; and/or
19. Payments from long term care insurance or for inpatient care paid directly to the individual.

30403 Eligibility Determination
Revised July 2018

To be eligible for DPAP:

a. The individual must have countable income that is less than 200% of the Federal Poverty Level (FPL); or
b. The individual has countable income that is equal to or greater than 200% of the FPL and the individual has prescription drug expenses that exceed 40% of the individual's countable income.

The Federal Poverty Level (FPL) is published annually. The income eligibility standard based on the FPL will be issued within 10 business days after the FPL is published. The revised income eligibility standard will be used to determine eligibility for the month following the month in which the standard is issued.

30404 Effective Date of Coverage
Revised July 2018

Coverage begins on the first day of the month following the month that eligibility is determined. There is no retroactive coverage. Eligible individuals will receive an identification card for DPAP.

30405 Annual Renewal of Eligibility
Revised July 2018

The eligibility of DPAP beneficiaries must be renewed once every twelve (12) months. The contractor will redetermine eligibility for DPAP without requiring information from the recipient. The Contractor will notify DPAP recipients of the following:

a. The eligibility determination; and
b. The recipient's responsibility to inform the Contractor of any changes in circumstances which could potentially affect the recipient's eligibility for DPAP.

DPAP coverage will be terminated when the Contractor or DSS DHSS is notified by the recipient that he or she no longer wants coverage.

30500 Benefits
Revised July 2018

Prescription drugs covered under DPAP are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. Policy and guidelines will follow the existing Delaware Medical Assistance Program limitations. Services covered include generic and brand name prescription drugs that have been approved as safe and effective by the Federal Food and Drug Administration as well as cost effective over-the-counter drugs prescribed by a practitioner. Necessary diabetic supplies not covered by Medicare will also be covered. Medications that are covered by Medicare are not covered under DPAP.

30500.1 Benefits for Individuals with Medicare Part D Coverage
Revised July 2018

DPAP will provide payment assistance for Medicare Part D monthly premiums, yearly deductible, those drug costs that fall into the Part D coverage gap, and drugs that are excluded from Medicare Part D.

Medicare Part D coverage will be primary to payment assistance under DPAP.

30501 Limitations on Benefits
Revised July 2018

Payment assistance to each eligible individual shall not exceed $3,000.00 per benefit year. Individuals will receive a notice when 75% of the $3,000.00 cap has been expended.

30502 Co-payment Requirement
Revised July 2018

There is a co-payment of $5.00 or 25% of the cost of the prescription (whichever is greater) during the Part D deductible and coverage gap and for drugs that are excluded from Part D. DPAP will not provide payment assistance for Medicare Part D co-payments. When the individual receives a prescription drug that is covered under Medicare Part D, the individual is responsible for the Medicare Part D co-payment.

30600 Confidentiality
Revised July 2018

DPAP will provide safeguards that restrict the use or disclosure of information about applicants and recipients to purposes directly connected with the administration of the DPAP.

Purposes directly related to administration of the DPAP include establishing eligibility, providing services for recipients, determining the amount of medical assistance, and conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the program.

At a minimum, the types of information about applicants and recipients that must be safeguarded and not released without consent include:

1. Names and addresses;
2. Medical services provided;
3. Social and economic conditions or circumstances;
4. Contractor evaluation of personal information;
5. Medical data, including diagnosis and past history of disease or disability;
6. Information received for verifying income eligibility and amount of medical assistance payments; and
7. Information about third party liability.

30601 Release of Information to DPAP Providers
Revised July 2018

DPAP providers have a contractual obligation to safeguard information about recipients. Providers may have access to certain eligibility information if they can provide:

a. A DPAP identification number; or
b. Two of the following identifying factors: individual's full name, date of birth, Social Security number; AND the date of service.

Providers who supply the above identifying factors may be given the following information:

a. Correct spelling of the recipient's name;
b. DPAP number;
c. Date of birth;

d. An indication whether the individual is eligible for the date of service given or for a range of dates given. Providers may not be given all periods of eligibility.

30602 Release of Information to Others
Revised July 2018

At the time of application, individuals are informed that all eligibility information is confidential and disclosure without written permission of the individual is limited. DPAP has the authority to responsibly share information concerning applicants and recipients with:

a. DHSS employees;
b. Federal or federally assisted programs that provide assistance to individuals on the basis of need (SSI, HUD); and/or
c. Contracted service providers.

Information may also be released to comply with a subpoena or other valid court order.

DPAP must obtain specific written permission from the individual before releasing information to any other persons or sources.

30700 Fair Hearings
Revised July 2018

A fair hearing is an administrative hearing held in accordance with the principles of due process. An opportunity for a fair hearing will be provided, subject to the provisions in policy at DSSM 5000 - 5607.