

Delaware Developmental Disabilities Council

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July 15, 2011

Sharon L. Summers
Planning & Policy Development Unit
Division of Medicaid and Medical Assistance
1901 North DuPont Hwy.
P.O. Box 906
New Castle, DE 19720-0906

RE: DMMA Prop. State Residency Regulation [15 DE Reg. 46 (July 1, 2011)]

Dear Ms. Summers,

The Developmental Disabilities Council understands that the Division of Medicaid and Medical Assistance proposes to amend its residency standards in three contexts.

First, in the general residency section, DMMA proposes to consider a person institutionalized in Delaware a non-resident under the following circumstances:

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.

There are multiple problems with this approach.

A. If the institutionalized individual has a guardian or has an I.Q. of 49 or less, federal regulations render the individual's "intent" immaterial. See 42 C.F.R. §435.403(c).

B. Likewise, the "next of kin" arguably determines place of abode/residency for individuals residing in licensed long-term care facilities who are determined incompetent by the attending physician. See Title 16 Del.C. §§1121(34) and 1122.

C. If the individual intends to return to a former residence on a temporary basis, Delaware residency should be unaffected. See 42 C.F.R. §435.403(j)(3) which recites as follows:

(3) The agency may not deny or terminate a resident's Medicaid eligibility because of that person's temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.

For example, if an individual's elderly parent developed a terminal illness and the individual returns to the out-of-state family home to provide temporary care, the proposed DMMA standard would compel a finding of non-Delaware residency contrary to federal law.

Second, in the context of long-term care, DMMA is narrowing the resource exclusion for a principal place of residence if the individual intends to return home. See proposed §§20310.1.1 and 20320.4.1. The current regulations would exclude the residence even if out-of-state. The proposed regulations would only permit a resource exclusion if the residence is in Delaware. I could not locate any federal law or regulation which requires Delaware to only exclude a Delaware principal place of residence. The analogous SSI resource regulation [20 C.F.R. §416.1212] excludes the value of the principal place of residence regardless of location. Moreover, it is anomalous to exclude an out-of-state principal residence if used by a spouse or dependent relative. See §20310.1.2. Finally, the following illustration would appear to undermine the validity of the proposed regulation:



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A 20 year old with a principal place of residence in Elkton, Maryland suffers a traumatic brain injury in a motorcycle accident. He undergoes rehabilitation in Delaware with expectation of recovery and returning home in 1 year and is appointed a Delaware guardian prior to placement in an institution. The 20 year-old's state of residence is that of the guardian by operation of law pursuant to 42 C.F.R. §435.403(h)(4)(I). The 20 year old is a Delaware resident for Medicaid purposes but his Maryland principal place of residence should be an exempt resource.

The Developmental Disabilities Council thanks you in advance for your consideration of our comments. Should you have any questions regarding these please contact our office at 739-3333.

Sincerely,

Harline J. Dennison

Harline Dennison
Chair

cc. GACEC
SCPD

