



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: October 31, 2012

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit

FROM: Mr. Don Moore, ^{DM/KIT} Vice Chairperson
State Council for Persons with Disabilities

RE: 16 DE Reg. 377 [DMMA Proposed Medicaid LTC Home Equity Cap Reg.]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to amend its financial eligibility standards for qualification for long-term care Medicaid. The proposed regulation was published as 16 DE Reg. 377 in the October 1, 2012 issue of the Register of Regulations. Consistent with the "Summary of Proposal" section, federal law establishes a presumptive cap on Medicaid LTC eligibility of \$500,000 subject to annual increases based on the Consumer Price Index (CPI). DMMA is somewhat belatedly updating its standards to reflect the increases in the cap, i.e. to \$525,000 effective January 1, 2012.

The proposed regulation appears to be straightforward and SCPD has only one (1) concern. The regulation recites as follows: "Equity value is determined by using the current market value of the home minus any mortgages or loans on the home." This is "underinclusive" and misleading. The attached CMS guidance recites as follows:

The equity value of a resource is the current market value minus any encumbrance on it. ...An encumbrance is a legally binding debt against the resource. This can be a mortgage, reverse mortgage, home equity loan, or other debt that is secured by the home.

Other states adopt the term "encumbrance" in their regulations. This would cover judgment liens, IRS liens, lis pendens claims, and other legally binding "encumbrances" on the home. SCPD recommends substitution of the following sentence: "Equity value is determined by using the current market value of the home minus any encumbrance (e.g. mortgage; loan; lien) on it." The APA allows such revision without pre-publication "to correct technical errors" or "to make (regulations) consistent with changes in basic law but which do not otherwise alter the substance

of the regulations”. Title 29 Del.C. §10112(b).

SCPD endorses the proposed regulation subject to correction of the above underlined sentence which omits many forms of encumbrances which can reduce equity based on CMS guidance.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed regulation.

cc: Ms. Rosanne Mahaney
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

16reg377 dmma-ltc Medicaid 10-31-12

Enclosure

Section 6014

Disqualification for Long-Term Care Coverage for
Individuals with Substantial Home Equity Under the
Deficit Reduction Act of 2005

Centers for Medicare & Medicaid Services
Center for Medicaid and State Operations

July 27, 2006

Enclosure Highlights—Section 6014

I. New Provision

II. Methodology

III. Limitations

IV. Increases in Limits

V. Undue Hardship

VI. Effective Date

I. New Provision

Section 6014 of the DRA amends section 1917 of the Social Security Act (the Act) to provide that in determining the eligibility of an individual to receive medical assistance payment for nursing facility services or other long-term care services, States must deny payment if the individual's equity interest in his or her home exceeds \$500,000. States have the option to substitute an amount exceeding \$500,000, but not in excess of \$750,000. States that choose to use a higher amount than the \$500,000 need not use the higher amount on a statewide basis. Also, States need not apply their higher amount to all eligibility groups.

For purposes of this provision, "other long-term care services" include:

- A level of care in any institution equivalent to nursing facility services;
- Home or community-based services furnished under a waiver under sections 1915(c) or (d) of the Act; and
- Services provided to a noninstitutionalized individual that are described in paragraph (7), (22), or (24) of section 1905(a) of the Act, and, if a State has elected to apply section 1917(c) to other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care, those services.

NOTE: This is not a change in the general rule that excludes a home of any value for purposes of determining eligibility for Medicaid. It applies only to medical assistance payment for nursing facility services, or other long-term care services as defined above.

II. Methodology

* In determining the value of home equity, States should follow the basic policies of the Supplemental Security Income (SSI) program. The equity value of a resource is the current market value minus any encumbrance on it. Current market value is the going price of the home, or the amount for which it can reasonably be expected to sell on the open market in the particular geographic area involved. An encumbrance is a legally binding debt against the resource. This can be a mortgage, reverse mortgage, home equity loan, or other debt that is secured by the home. States should follow their existing policies to determine current market value. States should also apply their usual verification procedures if an encumbrance is alleged.

If the home is held in any form of shared ownership, e.g., joint tenancy, tenancy in common, or other arrangement, only the fractional interest of the applicant for medical assistance for nursing facility or other long-term care services should be considered. For example, if the home is owned in joint tenancy by an applicant and a sibling, one-half of the home's current market value should be used in calculating the equity value of the individual, unless the individual can rebut the presumption that he or she has equal ownership interest in the property.

III. Limitations

The limitations on home equity do not apply if the spouse of the individual, the individual's child under 21, or the individual's blind or disabled child is residing in the home. A child is considered disabled if he or she meets the definition of disability in section 1614(a)(3) of the Act. In Guam, Puerto Rico, and the Virgin Islands, instead of using the section 1614(a)(3) definition of disability, the child must be permanently and totally disabled (as defined for purposes of the State plan

program under title XVI of the Social Security Act) for the exemption to apply.

IV. Increases in Limits

Beginning in the year 2011, the \$500,000 and \$750,000 limits on home equity will increase each year. The increase will be based on the percentage increase in the consumer price index for all urban consumers, rounded to the nearest \$1,000. However, States will continue to have the option under the State plan to elect a home equity limit that is greater than \$500,000 as adjusted by inflation, but that does not exceed \$750,000, as adjusted by inflation.

V. Undue Hardship

In addition, the Secretary of Health and Human Services is directed to establish a process to waive the application of the home equity limit in the case of a demonstrated hardship. Pending publication of a process specific to the home equity limit, States may use their existing procedures for determining the existence of undue hardship as currently required under section 1917(c)(2)(D) (transfers of assets for less than fair market value), or newer procedures developed for transfer of assets undue hardship waivers under section 6011 of the DRA.

Effective Date

The changes made by this section apply to individuals who are determined eligible for medical assistance with respect to nursing facility services or other long-term care services based on applications filed on or after January 1, 2006.