

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

EMERGENCY

PUBLIC NOTICE

Pregnant Women and Infants Under Age 1 – 212% of the Federal Poverty Level

NATURE OF THE PROCEEDINGS:

This emergency regulation is being promulgated to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) in preparation for healthcare reform in the State of Delaware. This includes aligning Medicaid and Children's Health Insurance Program (CHIP) eligibility determination rules with the Medicaid eligibility provisions of the Affordable Care Act (ACA), particularly the switch to Modified Adjusted Gross Income (MAGI) methodologies. This emergency regulation adoption is necessary while the proposed rulemaking process is being completed to implement the required provisions of the ACA. Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) finds that federal law for receipt of federal funds requires immediate adoption of these rule revisions to provide Delawareans with the opportunity to apply for and enroll in Delaware's public health benefits programs. The Department has determined that a threat to the public welfare exists if it is not implemented without prior notice or hearing.

NATURE OF PROPOSED AMENDMENT:

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to increase the Federal Poverty Level (FPL) for pregnant women and infants under age one (1) in Medicaid to 212% of the FPL.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act
- Section 1902(r)(2) of the Social Security Act, *More Liberal Methods of Treating Income*

Background

In determining eligibility for Medicaid, the Agency's rules and regulations are governed by the Social Security Act, applicable sections of the Code of Federal Regulations and, the Title XIX Medicaid State Plan.

Section 1902(r)(2) of the Social Security Act permits states to have more liberal policies than those of the old AFDC program for resources and income allowances. Under the more liberal policies permitted by section 1902(r)(2), states may modify their Medicaid eligibility process to make more liberal the review of certain resource and income elements in determining financial eligibility.

Modified Adjusted Gross Income (MAGI) Conversion Plan

Under the Affordable Care Act, to complete the transition to the MAGI-based methodology, states developed MAGI-based income eligibility standards for the applicable eligibility groups that "are not less than the effective income levels" that were used to determine Medicaid and CHIP income eligibility as of the enactment of the Affordable Care Act. The conversion of current income eligibility standards to equivalent MAGI-based income eligibility standards account for any income disregards now used. Finally, under section 1902(e)(14)(E) of the Act, each state must submit to the Secretary for approval its proposed MAGI-equivalent income eligibility standards and the methodologies and procedures that support those proposed standards, for each applicable eligibility group. This submission is referred to as the state's "MAGI Conversion Plan". Delaware's conversion plan was approved on September 17, 2013.

SUMMARY OF THE PROPOSED AMENDMENT:

The Division of Medicaid and Medical Assistance (DMMA) intends to submit a Medicaid state plan amendment to the Centers for Medicare and Medicaid Services (CMS) to change the percentage of earned income disregard applied to poverty level pregnant women and infants under age one (1).

Currently, in Delaware, pregnant women and infants under age one (1) under Medicaid and children ages 1 through 18 under CHIP are both covered at 200% of the Federal Poverty Level (FPL). However, the conversion of net income standards to Modified Adjusted Gross Income (MAGI) equivalent income standards resulted in 209% FPL for the Medicaid pregnant women and infants under age one (1) but 212% FPL for CHIP children ages 1 through 18. Delaware wants to cover both Medicaid and CHIP at the same income standard in 2014.

To align both Medicaid and CHIP, CMS recently advised Delaware that it needs to amend the Medicaid state plan and

its eligibility rules immediately in order to bring the Medicaid pregnant women and infants under age one (1) up to the CHIP converted limit of 212% FPL for children aged 1 through 18. DMMA would use the authority under section 1902(r)(2) of the Social Security Act to disregard a block of income between the current net income standard of 200% FPL and a gross income standard of 212% FPL for Medicaid pregnant women and infants under age one (1) under section 1902(a)(10)(A)(ii)(IX) of the Act. Then, that gross income standard in effect on December 31, 2013 under the Medicaid state plan, would be the state's maximum income limit for that group which the state may continue to use in 2014.

Effective December 31, 2013, the levels for determining income eligibility for optional groups of pregnant women and infants under age one (1) under the provisions of sections of 1902(a)(10)(A)(ii)(IX) and 1902(r)(2) of the Social Security Act are as follows on state plan page Supplement 8c to Attachment 2-6-A:

"For pregnant women and infants under age one (1) in the optional poverty-level related eligibility group under section 1902(a)(10)(A)(ii)(IX) of the Act, the State of Delaware will disregard an equal amount to the difference between a net income standard of 200% and a gross income standard of 212% of the Federal Poverty Level for the same family size as updated annually in the Federal Register."

DSSM Sections 15200.4 and 15300.3 of the Division of Social Services Manual (DSSM) will also be amended to reflect the above-referenced change.

The provisions of this state plan amendment are subject to approval by CMS.

Please note that this proposed regulation is also published concurrently herein under "Emergency Regulations" to allow for a thirty-day public comment period.

FINDINGS OF FACT:

The Department finds that a compelling public interest exists which necessitates promulgation of an emergency regulation and requests emergency approval of these rule amendments to change the percentage of earned income disregard applied to poverty level pregnant women and infants under age one (1). The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, to assure compliance with relevant Federal Medicaid rules, that the proposed revisions to the Title XIX Medicaid State Plan regarding Medicaid Eligibility Conditions and Requirements, specifically, *to update the earned income disregard percentage used for the treatment of income for poverty level pregnant women and infants under age one (1) to 212% of the Federal Poverty Level (FPL)*, be adopted on an emergency basis without prior notice or hearing.

Rita M. Landgraf, Secretary, DHSS

DMMA EMERGENCY REGULATION #13-53a REVISION:

Supplement 8c to ATTACHMENT 2.6-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: DELAWARE

MORE LIBERAL METHODS OF TREATING INCOME FOR PREGNANT WOMEN AND INFANTS UNDER AGE 1 UNDER SECTION 1902 (r) (2) OF THE ACT

~~For Pregnant Women and Infants Under Age 1, the State of Delaware will disregard an equal amount to the difference between 185% and 200% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.~~

For pregnant women and infants under age one (1) in the optional poverty-level related eligibility group under section 1902(a)(10)(A)(ii)(IX) of the Act, the State of Delaware will disregard an equal amount to the difference between a net income standard of 200% and a gross income standard of 212% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.

DMMA EMERGENCY REGULATION #13-53b REVISION:

15200.4 Financial Eligibility

Financial eligibility is determined using the modified adjusted gross income (MAGI) methodologies described in Section 16000. The pregnant woman counts as at least two family members for the financial eligibility determination. If a pregnant woman is diagnosed with a multiple pregnancy, the unborn fetus count is increased accordingly.

Household income must not exceed ~~209%~~ 212% of the Federal Poverty Level (FPL).

15300.3 Financial Eligibility

Financial eligibility is determined using the modified adjusted gross income (MAGI) methodologies described in Section 16000.

Household income for children under age 1 must not exceed ~~209%~~ 212% of the Federal Poverty Level (FPL).

Household income for children age 1 through age 5 must not exceed 142% of the Federal Poverty Level (FPL).

Household income for children age 6 through age 18 must not exceed 133% of the Federal Poverty Level (FPL).

17 DE Reg. 584 (12/01/13) (Emer.)