

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

FINAL

ORDER

**Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments
Citizenship and Immigration Status**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Citizenship and Immigration Status*. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the October 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of the filing of federally required state plan amendments (SPA) to modify eligibility standards and processes to conform to the requirements under the Affordable Care Act, and to exercise available related state options. This SPA regulatory action deals with *Citizenship and Immigration Status*.

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*

Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children’s Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual’s current circumstances and needs.

State Plan Amendments

In preparation for implementation of the Medicaid and CHIP changes related to the Affordable Care Act, states will be submitting a number of State Plan Amendments (SPAs). In particular, SPAs are needed to implement the MAGI-based eligibility levels and income counting methodologies for Medicaid and CHIP, to elect a state’s single streamlined application format, and to indicate the design of their Medicaid alternative benefit plans (ABPs) for the new adult group in 2014. The vehicle for submitting these 2014-related SPAs are a set of “fillable” preprint documents. The Centers for Medicare and Medicaid Services (CMS) has asked states to submit these plan amendments together in order to provide a more comprehensive picture of the state’s proposed eligibility framework.

Please note that provisions and conditions that are required of all states are pre-checked and do not require any entry by the state. Also, by agreeing to any assurance the state is agreeing to comply with these requirements and conditions. The state provides this affirmative assurance by checking the box where indicated.

Description of State Plan Amendments and Effective Date

The MAGI and CHIP Eligibility and Benefit SPAs identify the groups that Delaware will cover in the Delaware Medicaid program. There are mandatory and optional coverage groups. These SPAs also identify the income limits for each group, if any, and criteria that the state has the option of selecting. The effective date of the following SPAs is [~~October 1, 2013~~ **January 1, 2014**].

Delaware Medicaid MAGI SPAs include:

1. MAGI-Based Eligibility Group
This SPA identifies the mandatory and optional coverage groups that Delaware will cover.
2. Eligibility Process
This SPA identifies the use of Delaware's single, streamlined application and the methods by which an application is accepted. It also includes renewal processing.
3. MAGI Income Methodology
This SPA identifies certain MAGI options Delaware has chosen.
4. Single State Agency
This SPA identifies Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) as the Medicaid agency.
5. Residency
This SPA identifies the state's residency requirements.
6. Citizenship and Immigration Status
This SPA identifies the immigrant statuses eligible for Medicaid services. It also provides for a 90 day reasonable opportunity period for individuals who declare they are citizens or qualified immigrants to provide documentation. During this reasonable opportunity period, Delaware Medicaid must approve benefits if otherwise eligible.

CHIP MAGI Eligibility SPAs include:

1. MAGI Eligibility & Methods
These SPAs identify the groups covered under Delaware's Title XXI CHIP program (Delaware Healthy Children Program).
2. Title XXI Medicaid Expansion
This SPA identifies ACA expansion coverage for children age 6-18 years with income between 100% FPL up to 133% FPL.
3. Eligibility Process
This SPA identifies the use of Delaware's single, streamlined application and the methods by which Delaware Medicaid can accept an application. It also includes renewal processing.
4. Non-Financial Eligibility
These SPAs identify the CHIP programs non-financial eligibility criteria such as state residency, citizenship and lawful presence, and verification/use of applicant social security number.

REMINDER: In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today:

- Aged, Blind or Disabled individuals;
- Foster Care children; and,
- SSI cash recipients.

Summary of Proposal

Note: The statute and regulation cited are the Social Security Act and the Code of Federal Regulations.

Citizenship and Immigration Status

1902(a)(46)(B); 1903(v)(2), (3) and (4)

Proposed 42 CFR 435.4; 435.406; 435.956,

78 FR 4594 (issued on January 22, 2013)

State plan page S89 describes the rules concerning Medicaid requirements related to U.S. citizenship and non-citizen eligibility.

Regulations at 42 CFR 435.406 require states to provide Medicaid to otherwise eligible individuals who are citizens or nationals of the United States, or qualified non-citizens as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (8 U.S.C. 1641) and whose eligibility is not prohibited during the five year waiting period, required at 8 U.S.C. 1613 for certain qualified non-citizens.

Section 1137(d)(4) of the Social Security Act requires states to provide Medicaid to individuals having satisfactory immigration status during a reasonable period of time (known as a reasonable opportunity period) while their immigration status is being verified, if they are otherwise eligible for Medicaid.

Section 211 of the Children's Health Insurance Program Reauthorization Act (CHIPRA) added the requirement to provide a reasonable opportunity period for an individual verifying their citizenship, if otherwise Medicaid eligible. Section 211 of CHIPRA amended section 1903(x) of the Act (requirement to provide documentary evidence of citizenship or nationality), and built upon existing regulation at §435.407(k) to require states to provide individuals who have declared themselves to be U. S. citizens, and who must have their citizenship or nationality status verified, the same reasonable opportunity to provide evidence of citizenship and to provide Medicaid coverage during this reasonable opportunity period, if the individual is otherwise Medicaid eligible, as is afforded to individuals who are verifying their immigration status.

The provisions of this state plan amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$ 124,986	\$ 254,855
ACA Expansion	\$ 11,924,412	\$ 26,689,670
Transitional	\$ 187,657	\$ 566,356
Former Foster Children	\$ -	\$ -
Total	\$ 12,237,055	\$ 27,510,882

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DMMA received no public comments regarding this state plan amendment.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan regarding *Citizenship and Immigration Status* is adopted and shall be final effective December 10, 2013.

Rita M. Landgraf, Secretary, DHSS



Medicaid Eligibility

OMB Control Number 0938-1148

OMB Expiration date: 10/31/2014

Non-Financial Eligibility	S89
Citizenship and Non-Citizen Eligibility	

1902(a)(46)(B)
8 U.S.C. 1611, 1612, 1613, and 1641
1903(v)(2),(3) and (4)
42 CFR 435.4
42 CFR 435.406
42 CFR 435.956

Citizenship and Non-Citizen Eligibility

The state provides Medicaid to citizens and nationals of the United States and certain non-citizens consistent with requirements of 42

- CFR 435.406, including during a reasonable opportunity period pending verification of their citizenship, national status or satisfactory immigration status.

- The state provides Medicaid eligibility to otherwise eligible individuals:

- Who are citizens or nationals of the United States; and

Who are qualified non-citizens as defined in section 431 of the Personal Responsibility and Work Opportunity

- Reconciliation Act (PRWORA) (8 U.S.C. §1641), or whose eligibility is required by section 402(b) of PRWORA (8 U.S.C. §1612(b)) and is not prohibited by section 403 of PRWORA (8 U.S.C. §1613); and

Who have declared themselves to be citizens or nationals of the United States, or an individual having satisfactory

- immigration status, during a reasonable opportunity period pending verification of their citizenship, nationality or satisfactory immigration status consistent with requirements of 1903(x), 1137(d), 1902(ee) of the SSA and 42 CFR 435.406, and 956.

The reasonable opportunity period begins on and extends 90 days from the date the notice of reasonable opportunity is received by the individual.

The agency provides for an extension of the reasonable opportunity period if the individual is making a good faith effort to resolve any inconsistencies or obtain any necessary documentation, or the agency needs more time to complete the verification process.

- Yes No

The agency begins to furnish benefits to otherwise eligible individuals during the reasonable opportunity period on a date earlier than the date the notice is received by the individual.

- Yes No

The date benefits are furnished is:

- The date of application containing the declaration of citizenship or immigration status.
 The date the reasonable opportunity notice is sent.
 Other date, as described:



Medicaid Eligibility

The state provides Medicaid coverage to all Qualified Non-Citizens whose eligibility is not prohibited by section 403 of PRWORA (8 U.S.C. §1613).

Yes No

The state elects the option to provide Medicaid coverage to otherwise eligible individuals under 21 and pregnant women, lawfully residing in the United States, as provided in section 1903(v)(4) of the Act.

Yes No

Pregnant women

Individuals under age 21:

Individuals under age 21

Individuals under age 20

Individuals under age 19

An individual is considered to be lawfully residing in the United States if he or she is lawfully present and otherwise meets the eligibility requirements in the state plan.

An individual is considered to be lawfully present in the United States if he or she:

1. Is a qualified non-citizen as defined in 8 U.S.C. 1641(b) and (c);
2. Is a non-citizen in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. 1101(a)(17));
3. Is a non-citizen who has been paroled into the United States in accordance with 8 U.S.C. 1182(d)(5) for less than 1 year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings;
4. Is a non-citizen who belongs to one of the following classes:
 - Granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a, respectively;
 - Granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. §1254a, and individuals with pending applications for TPS who have been granted employment authorization;
 - Granted employment authorization under 8 CFR 274a.12(c);
 - Family Unity beneficiaries in accordance with section 301 of Pub. L. 101-649, as amended;
 - Under Deferred Enforced Departure (DED) in accordance with a decision made by the President;
 - Granted Deferred Action status;
 - Granted an administrative stay of removal under 8 CFR 241;
 - Beneficiary of approved visa petition who has a pending application for adjustment of status;
5. Is an individual with a pending application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C.1231, or under the Convention Against Torture who -
 - Has been granted employment authorization; or
 - Is under the age of 14 and has had an application pending for at least 180 days;



Medicaid Eligibility

- 6. Has been granted withholding of removal under the Convention Against Torture;
- 7. Is a child who has a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. 1101(a)(27)(J);
- 8. Is lawfully present in American Samoa under the immigration laws of American Samoa; or
- 9. Is a victim of severe trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, as amended (22 U.S.C. 7105(b));
- 10. Exception: An individual with deferred action under the Department of Homeland Security's deferred action for the childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, shall not be considered to be lawfully present with respect to any of the above categories in paragraphs (1) through (9) of this definition.

Other

The state assures that it provides limited Medicaid services for treatment of an emergency medical condition, not related to an organ transplant procedure, as defined in 1903(v)(3) of the SSA and implemented at 42 CFR 440.255, to the following individuals who meet all Medicaid eligibility requirements, except documentation of citizenship or satisfactory immigration status and/or present an SSN:



Qualified non-citizens subject to the 5 year waiting period described in 8 U.S.C. 1613;

Non-qualified non-citizens, unless covered as a lawfully residing child or pregnant woman by the state under the option in accordance with 1903(v)(4) and implemented at 435.406(b).

PRA Disclosure Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1148. The time required to complete this information collection is estimated to average 40 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.