

**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**

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

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) *to update the earned income disregard percentage used for the treatment of income for poverty level pregnant women and infants under age one (1)*. 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 December 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 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 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 Proposal**

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.

### **Fiscal Impact Statement**

The proposed regulation changes impose no increase in costs on the General Fund as the income conversion takes into account current disregards so the net effect is zero.

### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

As background, based on changes in federal law, DMMA was prompted to modify its calculation of the Medicaid countable income cap for pregnant women and infants under age 1. This resulted in an anomaly, i.e., pregnant women and infants under age 1 would be eligible with countable income up to 209% of the federal poverty level (FPL) but children between 1 and 18 would be eligible with countable income up to 212% of the FPL. DMMA would like to have the same standard so it is proposing to adopt the 212% FPL standard for both groups. CMS recommended that DMMA effect the revisions "immediately" (p. 598) so DMMA is issuing both an emergency and proposed regulation. DMMA indicates there is no negative financial impact on the State resulting from the proposed change. At p. 599.

Since the proposal would increase access to the Medicaid program with no negative financial impact, SCPD endorses the proposed regulation subject to consideration of a potential amendment. Both the emergency and proposed regulations recite that "Delaware will disregard an equal amount to the difference...". SCPD suspects that DMMA may have intended to recite that "Delaware will disregard an amount equal to the difference..."

**Agency Response:** Please be advised that the language used in the proposal reflects CMS guidance. DMMA thanks the Council for the endorsement. No change to the regulation was made as a result of this comment.

### **FINDINGS OF FACT:**

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) 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) is adopted and shall be final effective February 10, 2014.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #14-02a**

**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 FINAL ORDER REGULATION #14-02b**

**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. 845 (02/01/14) (Final)**