

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 16000

**FINAL**

**ORDER**

**MAGI Methodology**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend the Delaware Social Services Manual (DSSM) regarding MAGI Methodology, specifically, to clarify policy related to special income counting rules for children and dependents. 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 November 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 3, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after February 11, 2018 Delaware Health and Social Services/ Division of Medicaid and Medical Assistance proposes to amend Delaware Social Services Manual (DSSM) Section 16000 regarding MAGI Methodology.

**Background**

On September 1, 2016, the Centers for Medicare and Medicaid Services (CMS) provided clarification of the modified adjusted gross income (MAGI) methodologies rules. MAGI Methodology includes special income counting rules for children and dependents. The Delaware Division of Medicaid and Medical Assistance (DMMA) is adding further policy clarification to ensure the correct application of MAGI rules to MAGI Medicaid and Delaware Healthy Children's Program (DHCP) cases.

**Statutory Authority**

- 42 CFR 435.603 Application of Modified Adjusted Gross Income

**Purpose**

*Purpose*

The purpose of this proposed regulation is to clarify policy related to special income counting rules for children and dependents.

*Summary of Proposed Changes*

Effective for services provided on and after February 11, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Section 16000 of the Delaware Social Services Manual (DSSM) regarding MAGI Methodology.

*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 3, 2018.

*Provider Manuals and Communications Update*

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://>

## Fiscal Impact Statement

No fiscal impact is projected as a result of this policy clarification.

## Summary of Comments Received with Agency Response and Explanation of Changes

Two commenters offered the following summarized observations:

**Comment:** Both commenters noted that the terms “qualifying child” and “qualifying relative,” have very specific definitions under federal regulations and should be defined.

**Agency Response:** DMMA added definitions for “qualifying child” and “qualifying relative” utilizing IRS Pub 501 definitions for reference. As a result of adding these two definitions, DMMA also made some changes to the language used in the definition for “tax dependent” to be consistent with the additional definitions.

**Comment:** Both commenters indicated that language should be included to clarify when dependent’s income is excluded and specify when MAGI-based income is counted. In addition, each stated that Section 16500.5 fails to note that any exceptions exist to the general rule.

**Agency Response:** DMMA has included language to note exceptions to the rules of MAGI methodology.

**Comment:** Both commenters noted that Section 16500.5 should include language clarifying that the exclusion applies whether or not the tax dependent actually files a tax return.

**Agency Response:** DMMA added language clarifying Section 16500.5 with regard to filing tax returns.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding MAGI Methodology, specifically, to clarify policy related to special income counting rules for children and dependents is adopted and shall be final effective February 11, 2019.

1/8/2019

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary  
DHSS

## 16000 Financial Methodologies - Application of Modified Adjusted Gross Income (MAGI) Methodology

This section implements section 1902(e)(14) of the Social Security Act and describes the modified adjusted gross income (MAGI) methodology used to determine household composition and family size and how income is counted for the financial eligibility determination of modified adjusted gross income (MAGI)-related eligibility groups in accordance with the Affordable Care Act of 2010.

### 16100 Definitions

The following words and terms, when used in the context of these policies, will have the following meaning unless the context clearly indicates otherwise.

“**Child**” means a natural or biological, adopted, or step-child.

“**Family size**” means the number of persons counted as members of an individual’s household. When determining the family size of a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver. When determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted as herself plus the number of children she is expected to deliver.

“**Federal Poverty Level**” means the Federal poverty level updated periodically in the Federal Register by the Secretary of the United States Department of Health and Human Services that is in effect for the budget period used to determine an individual’s eligibility in accordance with this section.

“**Household income**” means the sum of the MAGI-based income of every individual included in the individual’s household unless an exception applies.

Exceptions:

The MAGI-based income of an individual who is included in the household of his or her parent and who is not expected to be required to file a tax return for the taxable year in which eligibility is being determined, is not included in the household income whether or not the individual files a tax return.

The MAGI-based income of a tax dependent, ~~other than a spouse or biological, adopted, or step child claimed by someone other than a parent~~, who is not expected to be required to file a tax return for the taxable year in which eligibility is being determined, is not included in the household income of the taxpayer whether or not such tax dependent files a tax return.

**"Modified adjusted gross income (MAGI)"** means the adjusted gross income reported on the Internal Revenue Service (IRS) Form 1040 with the addition of:

- (1) Foreign earned income excluded from taxes
- (2) Tax-exempt interest
- (3) Tax-exempt Social Security income

**"MAGI-based income"** means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Internal Revenue Service Code, with the following exceptions:

- (1) An amount received as a lump sum is counted as income only in the month received.
- (2) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.
- (3) American Indian/Alaska Native income as defined in 42 CFR 435.603(e)(3) is excluded.

**"Parent"** means a natural or biological, adopted, or step-parent.

**["Qualifying child" To be a dependent, a person must be either a qualifying child or a qualifying relative.**

**Generally, a person is a qualifying child if that person:**

- **Is a child, stepchild, foster child, brother, sister, stepbrother, step-sister, or a descendant of any of them,**
- **Lived with claiming tax filer for more than half of the year,**
- **Didn't provide more than half of his or her own support for the year,**
- **Was under age 19 at the end of the year and younger than the claiming tax filer (or spouse if filing jointly), or was under age 24 at the end of the year, a student, and younger than the tax filer (or spouse if filing jointly), or was any age and permanently and totally disabled, and didn't file a joint return with his or her spouse.**

**For more information, see *Exemptions for Dependents* in IRS Pub 501.**

**"Qualifying relative" To be a dependent, a person must be either a qualifying child or a qualifying relative.**

**Generally, a person is a qualifying relative if that person:**

- **Lives with or is related to the taxpayer claiming him or her,**
- **Doesn't have \$4,050 or more of gross total income (based on 2017 IRS Pub 501 limit),**
- **Is supported (generally more than 50%) by the taxpayer claiming him or her, and**
- **Is neither a qualifying child nor a qualifying child of anyone else**

**For more information, see *Exemptions for Dependents* in IRS Pub. 501]**

**"Sibling"** means a natural or biological, adopted, half, or step-sibling.

**"Spouse"** means a person who is legally married to another person regardless of their genders.

**"Tax dependent"** means ~~an individual for whom another individual claims a deduction for a personal exemption under section 151 of the Internal Revenue Service Code for a taxable year. a person, other than the [taxpayer tax filer] or the [taxpayer's tax filer's] spouse, for whom an exemption can be claimed. To be [your a] dependent, a person must be [your a] qualifying child or qualifying relative [of the tax filer]. [For more information, see Exemptions for Dependents in IRS Pub 501.]~~

**17 DE Reg. 731 (01/01/14)**

## **16200 Application of MAGI income and household size**

Eligibility for an applicant shall be based on MAGI methodology effective January 1, 2014.

Ongoing eligibility for a beneficiary determined eligible for Medicaid coverage to begin on or before December 31, 2013, shall not have eligibility based on MAGI methodology until March 31, 2014, or at the next regularly scheduled renewal of eligibility, whichever is later.

If the household income of an individual determined in accordance with this section results in financial ineligibility for Medicaid and the household income of the individual determined in accordance with 26 CFR 1.36B-1(e) is below 100% of the Federal Poverty Level (FPL), Medicaid financial eligibility will be determined in accordance with 26 CFR 1.36B-1(e) as promulgated the IRS. This is the income-counting methodology used by the Federally Facilitated Marketplace (FFM) to determine eligibility for Advance Premium Tax Credits and Cost Sharing Reductions.

## **16300 MAGI-based Determination of Eligibility**

Each applicant or beneficiary who meets the non-financial eligibility requirements will have a determination of eligibility based on MAGI methodology.

For an applicant or beneficiary found not eligible based on MAGI methodology and who has been identified on the

application or renewal form as potentially eligible on a MAGI-excepted basis, an eligibility determination will be made on such basis.

An individual may request a determination of eligibility on a basis other than MAGI.

## **16400 Household Composition**

Household composition is based on tax households, with certain exceptions.

### **16400.1 Basic rule for taxpayer not claimed as a tax dependent**

For an individual who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another taxpayer, the household consists of:

- the taxpayer;
- a spouse living with the taxpayer; and
- all persons whom the taxpayer expects to claim as a tax dependent.

If a taxpayer cannot reasonably establish that another individual is a tax dependent for the tax year in which Medicaid is sought, the inclusion of the dependent in the taxpayer's household shall be determined according to the rules described at Section 16400.3, Rule for individuals who neither file a tax return nor are claimed as a tax dependent.

### **16400.2 Basic rule for tax dependents**

For an individual who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made, the household is the same as the taxpayer's household unless the individual meets any of the following exceptions:

- the individual expects to be claimed as a tax dependent of someone other than a spouse or parent;
- the individual is a child under age 19 living with both parents, but the parents do not expect to file a joint tax return;

or

the individual is a child under age 19 who expects to be claimed by a non-custodial parent. A non-custodial parent is based on a court order or binding separation, divorce, or custody agreement. If there is no such order or agreement or if there is a shared custody agreement, the custodial parent is the parent with whom the child spends most nights.

If the individual meets any of the exceptions, the household shall be determined according to the rules described at Section 16400.3, Rule for individuals who neither file a tax return nor are claimed as a tax dependent.

### **16400.3 Rule for individuals who neither file a tax return nor are claimed as a tax dependent**

For an individual who does not expect to file a tax return and does not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, the household consists of the individual, and if living with the individual:

- the individual's spouse;
- the individual's children under age 19; and
- for individuals under age 19, the individual's parents and any siblings who are also under age 19.

### **16400.4 Rule for married couples**

For married couples, each spouse will be included in the household of the other spouse if they are living together or if they expect to file a joint tax return.

**17 DE Reg. 731 (01/01/14)**

## **16500 MAGI-based Income**

MAGI-based income is based on federal tax rules for determining adjusted gross income with some modifications.

### **16500.1 Counted Income**

- Wages, salaries, tips, etc.;
- Interest – both taxable and tax-exempt amounts;
- Ordinary dividends;
- Qualified dividends;
- Taxable refunds, credits, or offsets of state and local income taxes;
- Alimony received;
- Business income or (loss);
- Capital gain or (loss);
- Other gains or (losses);
- IRA distributions – taxable amount;
- Pensions and annuities – taxable amount;

Rental real estate, royalties, partnerships, S corporations, trusts, etc.;  
Farm income or (loss);  
Unemployment compensation;  
Social Security benefits – both taxable and tax-exempt amounts;  
Lump sum payment - a non-recurring lump sum payment (such as back pay, a retroactive benefit payment, State tax refund, or an insurance settlement) is counted as taxable income only in the month received;  
Other taxable income.

#### **16500.2 Excluded Income**

Scholarships, awards, or fellowship grants used for education purposes and not for living expenses;  
American Indian/Alaska Native income as defined in 42 CFR 435.603(e);  
Child Support Received;  
Gifts and loans;  
Inheritance;  
Supplemental Security Income (SSI);  
Temporary Assistance to Needy Families (TANF) and other government cash assistance;  
Veteran's benefits;  
Worker's Compensation payments;  
Other Non-Taxable Income.

**21 DE Reg. 572 (01/01/18)**

#### **16500.3 Deductions**

Educator expenses;  
Certain business expenses of reservists, performing artists, and fee-basis government officials;  
Health savings account deduction;  
Moving expenses;  
Deductible part of self-employment tax;  
Self-employed SEP, SIMPLE, and qualified plans;  
Self-employed health insurance deduction;  
Penalty on early withdrawal of savings;  
Alimony paid;  
IRA deduction;  
Student loan interest deduction;  
Tuition and fees;  
Domestic production activities deduction.

#### **16500.4 Special income counting rules for children claimed by a parent**

A child's MAGI based income is excluded from total household income if:

- The child is either under age 19 or is an adult child claimed by a parent as a tax dependent; and
- The child and parent are both included in the MAGI-based household; and
- The child's income is below the tax filing threshold (i.e., the child is not expected to be required to file a tax return for the current tax year).

This rule applies to a child or children living with a parent whether household composition is based on the rules for tax filers or the non-filer rules.

It does not matter whether the child actually files a tax return.

#### **16500.5 Special income counting rules for children or dependents claimed by someone other than a parent**

The special income counting rule for tax dependents applies in the case of tax dependents who are claimed by someone other than a parent.

[A When a dependent is claimed by someone other than a parent, the] tax dependent's income is excluded from total household income if:

- The tax dependent and the tax filer who expects to claim the individual are both included in the household; and
- The tax dependent's income is below the tax filing threshold (i.e., the tax dependent is not expected to be required to file a tax return for the current tax year); it does not matter whether the dependent actually files a tax return.]

When determining the total household income of a [child or] dependent who is [not living with claimed by someone other than] a parent, the MAGI-based income is always counted in determining the child or dependent's eligibility, even if the income is below the tax filing threshold.

**[Such a tax dependent's household would not include the claiming tax filer due to the exception at 42 CFR**

435.603(f)(2)(i). This means that the tax dependent's MAGI based income would not be excluded from his or her own household income.

**Exception:**

If a tax dependent's household is established using the non-filer rules described at 435.603(f)(3) and includes the tax dependent's parent, the tax dependent's income should be excluded from his or her own household income.]

**16500.6 Applying the tax filing threshold for tax dependents**

Whether a dependent has to file a return generally depends on the amount of the dependent's earned or unearned income.

Single dependents (under age 65) are required to file a tax return if the dependent has earned or unearned income that is more than the limits, or tax thresholds, announced by the IRS annually. IRS Publication 929 Tax Rules for Children and Dependents describes how to determine if a dependent is required to file a return and the applicable tax thresholds.

To determine the tax thresholds that apply, we use all of the dependent's MAGI based counted income with the exception of the dependent's Social Security Benefits (SSB).

Only the taxable portion of the dependent's SSB may be applied toward the tax filing threshold. If no portion of the SSB is taxable, none of those benefits will be applied toward the tax filing threshold.

Except in rare cases, such as receipt of a lump sum payment, a child or tax dependent's SSB will not be taxable unless the tax dependent has other income which itself exceeds the tax filing threshold.

If a child or tax dependent's MAGI based income counts toward the total household income, then all of the dependent's SSB counts.

**16600 Income Disregard**

An amount equivalent to 5% of the Federal Poverty Level (FPL) for the applicable family size is deducted from household income. The income disregard only applies when determining eligibility for an individual under the MAGI-based group with the highest income standard available for the individual.

**16700 Budget Period**

The budget period for applicants and beneficiaries is based on current monthly household income and family size.

**16800 Eligibility Determination**

Household income must not exceed the income standard for the eligibility group applicable to the individual.

**9 DE Reg. 564 (10/01/05)**

**9 DE Reg. 774 (11/01/05)**

**10 DE Reg. 143 (07/01/06)**

**12 DE Reg. 1320 (04/01/09)**

**13 DE Reg. 1540 (06/01/10)**

**15 DE Reg. 202 (08/01/11)**

**17 DE Reg. 503 (11/01/13)**

**22 DE Reg. 668 (02/01/19) (Final)**