

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

Excluded Income

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Delaware Social Services Manual (DSSM) regarding the application of Modified Adjusted Gross Income (MAGI) methodology, specifically, to clarify excluded income. 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 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 2017 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 purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding the application of Modified Adjusted Gross Income (MAGI) methodology, specifically, to clarify excluded income.

Statutory Authority

- 42 CFR 435.603(e)
- 26 U.S.C. 36B(d)(2)(B)

Background

The Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended) created Section 36(B) of the Internal Revenue Code (IRC) to define household income, based on modified adjusted gross income (MAGI). MAGI is used to determine (1) penalty amounts owed if a person does not comply with the individual mandate or whether an individual is exempt from the individual mandate; (2) eligibility for and the amount of a premium credit to purchase coverage through a health insurance exchange; and (3) Medicaid income eligibility for certain populations.

Under the ACA, states were required to transition to a new income-counting rule based on MAGI to establish uniform standards for what income to include or disregard in determining Medicaid eligibility for most nonelderly and nondisabled individuals, children under the age of 18, and adults and pregnant women under the age of 65.

In 2013, the Centers for Medicare and Medicaid Services (CMS) developed a training manual to help states and eligibility workers understand and apply MAGI-based rules for Medicaid and CHIP. At that time Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) made modifications to the eligibility system, as well as eligibility policy, to meet those requirements. In September of 2016, CMS shared a companion to the 2013 training manual, providing specific language that can be used to make the income counting rules more clear for eligibility workers.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to amend the Delaware Social Services Manual to reflect current policy and provide more clarity to eligibility workers regarding excluded income.

Summary of Proposed Changes

Effective for services provided on and after October 11, 2017, the Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend 16500.2 of the Delaware Social Services Manual (DSSM) to clarify excluded income.

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 1, 2017.

Provider Manuals Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>.

Fiscal Impact Statement

The proposed regulation imposes no increase in costs on the General Fund.

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

The regulation appears to be relatively straightforward and includes SSI, child support, Worker's Compensation, and TANF in the list of excluded income. There is no State fiscal impact as a result of adoption of the regulation.

The SCPD endorses the proposed regulation.

Agency Response: endorses the proposed regulation.

DMMA is appreciative of the comments from the State Council for Persons with Disabilities. 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 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Social Services Manual (DSSM) regarding the application of Modified Adjusted Gross Income (MAGI) methodology, specifically, to clarify excluded income, is adopted and shall be final effective January 11, 2018.

12/20/17

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

FINAL

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.

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