

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** 14800

FINAL

ORDER

Reasonable Income Compatibility Threshold

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) 14800 regarding Reasonable Income Compatibility Threshold, specifically, to align the Verification Plan to change the Reasonable Compatibility for income from 10% to 25%. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the November *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 2022, 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 November 1, 2022, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) proposes to amend Delaware Social Services Manual (DSSM) section 14800 regarding Reasonable Income Compatibility Threshold.

Background

Affordable Care Act (ACA) regulations require that states compare electronic data sources to income information attested to by an applicant or beneficiary to determine whether the attestation and electronic data are "reasonably compatible." States do not have to obtain additional documents from applicants or beneficiaries to determine eligibility if their attestations are "reasonably compatible" with the electronic data. Under the regulations, Medicaid agencies must compare the applicant's or beneficiary's attestation to available electronic data sources and evaluate whether any difference affects eligibility. If both the attestation and the data source are at or below the eligibility threshold, the Medicaid agency finds the individual eligible. In these situations, the difference between the attestation and data source does not affect eligibility, because the individual would be eligible using either the electronic data or the attestation. With the approval of the Centers for Medicare & Medicaid Services (CMS), states can establish a reasonable compatibility standard, which applies when an attestation is at or below the eligibility threshold, but data sources show income above the threshold. States may set an acceptable level of variance - either a percentage of income or a specific dollar amount - when the difference between the attestation and data source does not have to be reconciled.

CMS issued the Medicaid and CHIP COVID-19 Health Emergency Eligibility and Enrollment Pending Actions Resolution Planning Tool to states in March 2022 to assist states in developing a comprehensive unwinding operational plan to restore routine operations in Medicaid and CHIP once the COVID-19 Public Health Emergency (PHE) ends. The plan should describe how the state will complete outstanding work, ensure continuity of coverage for eligible individuals, and facilitate seamless transitions for individuals who become eligible for other forms of coverage. This unwinding planning tool provides various risk mitigation strategies that states can implement to ensure there are no inappropriate coverage losses among eligible beneficiaries once the unwinding period begins. One of these options is to assess and adjust the current reasonable compatibility threshold for income.

As a result, DMMA is proposing to change the reasonable compatibility threshold for income from 10% to 25%. This change will aid in the passive renewal process of Medicaid members during the PHE and the unwinding period of the PHE. This will decrease the need for manual intervention, decrease the risk for inappropriate terminations, and allow staff the ability to focus on the large caseload of renewals that are unable to be passively renewed.

Statutory Authority

42 CFR 435.949

Purpose

The purpose of this proposed regulation is to align the Verification Plan to change the Reasonable Compatibility for income from 10% to 25%.

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 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 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, 2022.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) supports these regulations since it will assist individuals with the recertification process. It will also ease the administrative burden on DMMA as it processes all of the recertifications that must take place when the public health emergency (PHE) ends.

Agency Response: DMMA appreciates the support.

Comment: The State Council for Persons with Disabilities (SCPD) supports these regulations as it will assist individuals in recertification and also ease the administrative burden on DMMA as it processes all of the recertifications that must take place when the PHE "unwinds".

Agency Response: DMMA appreciates the support.

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 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Social Services Manual (DSSM) 14800 regarding Reasonable Income Compatibility Threshold, specifically, to align the Verification Plan to change the Reasonable Compatibility for income from 10% to 25%, is adopted and shall be final effective January 11, 2023.

12/14/2022

Date of Signature

Molly Magarik, Secretary, DHSS

14000 Medicaid General Eligibility Requirements

14800 Verifications of Factors of Eligibility

Regulatory Statute

42 CFR 435.948

42 CFR 435.949

42 CFR 435.952

42 CFR 435.956

Attestation will be accepted for most factors of eligibility at application, renewal, and for a change in circumstances. Attestation will be accepted by the individual; an adult who is in the applicant's household; an authorized representative; or if the individual is a minor or incapacitated someone acting responsibly for the individual. Certain factors of eligibility will be verified post-enrollment, post-renewal, and after a redetermination of eligibility due to a change in circumstances.

Verification will be obtained electronically using the Federal Data Services Hub (FDSH) and other electronic data sources. The FDSH is a service that enables access to multiple data bases via a single electronic transaction. Data will be available from the Social Security Administration (SSA), Department of Homeland Security (DHS), Internal Revenue Service (IRS), and Equifax Workforce Solutions (also known as TALX). TALX is a contracted service that verifies earned income as reported by employers. The agency will not be obtaining IRS data.

Other electronic data sources include the following:

- State Wage Information Collection Agency (SWICA)
- State Unemployment Compensation
- General Assistance Program
- Supplemental Nutrition Assistance Program (SNAP)
- Temporary Assistance for Needy Families (TANF)
- Child Care Subsidy Program
- Office of Vital Statistics
- Department of Motor Vehicles
- Office of Child Support Enforcement
- Public Assistance Reporting Information System (PARIS).

Attestation will be accepted without post-enrollment verification for the following factors of eligibility:

- residency
- date of birth
- household composition
- household relationships
- application for other benefits
- pregnancy – unless other available information, such as a medical claim, is not reasonably compatible with such attestation.

Attestation will be accepted with post-enrollment verification for the following factors of eligibility:

- income
- Medicare.

Attestation will not be accepted and must be verified via the FDSH for the following factors of eligibility:

- citizenship and identity
- immigration status
- Social Security number (SSN).

If citizenship and immigration status cannot be verified via the FDSH, the individual will be provided with a 90-day reasonable opportunity period to submit other documentation and may be found eligible during that time period. The reasonable opportunity period will be extended beyond 90 days if the individual is making a good faith effort to obtain the documentation.

Verification of SSN will be in accordance with Sections 14105-14105.1.

Individuals will not be required to provide additional information or documentation unless the information cannot be obtained electronically or is not reasonably compatible with the attested information.

Reasonably compatible means that the information provided by an electronic data source is generally consistent with the information reported by the applicant or beneficiary. Income verification obtained through an electronic data source shall be considered reasonably compatible when:

- attestation of income and the electronic verification are at or below the income standard;
- attestation of income and the electronic verification are above the income standard; and
- attestation of income is at or below the income standard and the electronic verification is above the income standard and the difference between the two is ~~40%~~ 25% or less.

When the difference between the attestation of income and the electronic verification is more than ~~40%~~ 25%, a reasonable explanation will be sought from the applicant or beneficiary. A reasonable explanation may include, but is not limited to, a loss of employment or reduced hours of employment. If both the reported income and the data source indicate that the income is below the applicable standard then no additional information is needed.

Post-enrollment verification will be completed in accordance with the agency's verification plan approved by the Centers for Medicare & Medicaid Services (CMS). Post-enrollment verification of income and Medicare will be completed within thirty (30) days of the date of enrollment. When additional information is needed to complete the eligibility determination, the agency will request such additional information from the individual. The individual will be provided thirty (30) days to respond to the request for additional information. If the additional information requested is not provided, eligibility will be terminated.

Exceptions to the verification requirements will be permitted on a case-by-case basis when documentation does not exist or is not reasonably available, such as for individuals who are homeless or have experienced domestic violence or a natural disaster. The exception does not apply to the verification requirements for citizenship and immigration status.

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

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

26 DE Reg. 590 (01/01/23) (Final)