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** 14000, 25000

PROPOSED

PUBLIC NOTICE

Continuous Coverage for Children Enrolled in Medicaid

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 14800, 14810, 14810.1, 14810.2, 14820, 14820.1, 25100.1, and Title XIX Medicaid State Plan Continuous Eligibility for Children Reviewable Unit, specifically, to provide continuous eligibility to children Enrolled in Medicaid for a full 12-month period regardless of changes in circumstances with limited exceptions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs, or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on January 31, 2024. Please identify in the subject line: Continuous Coverage for Children Enrolled in Medicaid

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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 Title XIX Medicaid State Plan and Division of Social Services Manual (DSSM) regarding Continuous Coverage for Children Enrolled in Medicaid.

Statutory Authority

- The Consolidated Appropriations Act of 2023 (CAA)
- 42 CFR 435.926
- 42 CFR 916(d)(1)(i)

Background

Section 5112 of the CAA amended titles XIX of the Social Security Act (SSA) to require that states provide 12 months of Continuous Eligibility (CE) for children under the age of 19 in Medicaid effective January 1, 2024. The Continuous Eligibility provides coverage to children regardless of changes in circumstances with certain exceptions. Extending this coverage will protect families from experiencing gaps in coverage that support better short-term and long-term health outcomes and promote health equity.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to provide continuous eligibility to children enrolled in Medicaid for a full 12-month period regardless of changes in circumstances with limited exceptions.

Summary of Proposed Changes

Effective January 1, 2024, the DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM) and Title XIX Medicaid State Plan regarding continuous eligibility for children enrolled in Medicaid, specifically, to provide 12 months of continuous eligibility for children under the age of 19 enrolled in Medicaid.

Public Notice

In accordance with the *federal* public notice requirements established in 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 gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 31, 2024.

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 provide 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

	Federal Fiscal Year 2024	Federal Fiscal Year 2025
General (State) funds	$4,469,369.70	$5,854,145.87
Federal funds	$6,623,630.30	$8,936,520.80

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 25% or less.

When the difference between the attestation of income and the electronic verification is more than 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 unless the child is in a continuous eligibility period. See Section 14810.2 Continuous Eligibility for Children in Medicaid.

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)

14810 ~~RESERVED~~ Continuous Eligibility

Continuous eligibility provides coverage for a predetermined period of time, regardless of changes in circumstances, with certain exceptions.

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

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

14810.1 Continuous Eligibility for Pregnant Women

42 CFR 435.116

42 CFR 435.170

Once a pregnant woman is determined eligible, she remains eligible throughout the pregnancy and the postpartum period regardless of changes in circumstances or eligibility category she is currently enrolled in. Refer to DSSM 15200 for full details around Continuous Eligibility for Pregnant Women.

14810.2 Continuous Eligibility for Children Enrolled in Medicaid

42 CFR 435.926

Effective January 1, 2024, all children under the age of 19 who are enrolled in Medicaid under any eligibility program shall have 12 months of continuous eligibility. The continuous eligibility period begins:

- For applicants on the date of the individual's eligibility.
- Following an annual renewal, on the effective date of the individual's renewal, which begins a new eligibility period.

A child's eligibility may not be terminated during a continuous eligibility period, regardless of any change in circumstances, unless:

(1) The child attains age 19, unless the child is in a 12-month postpartum period;

(2) The child or child's representative requests a voluntary termination of eligibility;

(3) The child ceases to be a resident of the State;

(4) The agency determines that eligibility was erroneously granted at the most recent determination, or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative; or

(5) The child dies.

Children who have been determined eligible based on self-attested information are entitled to the 12-month continuous eligibility period. Coverage may not be terminated for such children during a continuously eligible period if, in conducting post-enrollment verification, the state obtains information that indicates that the child does not meet all the eligibility requirements unless the information indicates that one of the limited exceptions to continuous eligibility above applies.

If the self-attested information indicates that the child is eligible, the state is not considered to have made an erroneous determination, even if there is an inconsistency between the attested information and information subsequently obtained from family or electronic data sources after enrollment. The receipt of information is considered a change in circumstance. See Section 14800 Verifications of Factors of Eligibility.

Children whose citizenship or satisfactory immigration status is not verified have not been determined eligible. Continuous Eligibility does not apply to children who are receiving benefits under a reasonable opportunity to provide (ROP) period if the child's status cannot be verified. See Section 14390.1 Reasonable Opportunity to Provide Documentation of Citizenship and Identity or Alien Status.

14820 Changes in Circumstances

At the time of application and renewal, individuals will be informed that they are responsible for notifying the agency about changes in circumstances that may affect eligibility. Changes may be reported via the ASSIST ~~self-service web site~~ Self Service website, by telephone, via mail, in person, and through other commonly available electronic means. Eligibility will be redetermined promptly between regularly scheduled renewals when information about a change in circumstance may affect eligibility unless the member is in a continuous eligibility period. See Section 14810.1 How Changes in Circumstances affect Continuous Eligibility.

If the agency has information about anticipated changes in a beneficiary's circumstances that may affect ~~his or her~~ their eligibility, the agency will redetermine eligibility at the appropriate time based on such changes.

Failure to report changes that may affect eligibility may result in an overpayment being filed or legal action taken to recover funds expended during periods of ineligibility.

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

14820.1 How Changes in Circumstances affect Continuous Eligibility

When a beneficiary is in a continuous eligibility period, coverage may not be terminated due to a change in circumstance, reported by the family or detected through a data match, prior to the regularly scheduled renewal, unless the change of circumstance is an allowable exception.

See Section 14810 Continuous Eligibility.

25000 Children's Community Alternative Disability Program (CCADP)

25100.1 Continuous Eligibility

(42 CFR 435.926)

Effective January 1, 2024, all children under the age of 19 who are enrolled in Medicaid under any eligibility program, including the Childrens Community Alternative Disability Program (CCADP) shall have 12 months of continuous eligibility, regardless of change in circumstances, with limited exceptions.

Refer to DSSM 14810 Continuous Eligibility for additional information.

27 DE Reg. 486 (01/01/24) (Prop.)