

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

Title XIX Medicaid State Plan, Medicaid Eligibility Conditions and Requirements

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 to align Medicaid eligibility conditions and requirements with current practice. 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 May 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2012 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 to align Medicaid eligibility conditions and requirements with current practice.

Statutory Authority

- Social Security Act §1115, *Demonstration Projects*
- Social Security Act §1931, *Assuring Coverage for Certain Low-Income Families*
- 42 CFR §435.222, *Individuals under age 21 who meet the income and resource requirements of AFDC*

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.

Summary of Proposal

The Centers for Medicare and Medicaid Services (CMS) reviewed the recently approved waiver amendment request submitted under the authority of Section 1115 of the Social Security Act to include additional populations in a mandatory managed care program. During the waiver review process, CMS noted that certain pages in the Title XIX Medicaid State Plan required updates.

The proposed modifications are intended to update the income standard used in eligibility determinations for low income families with children under Section 1931 of the Social Security Act, and for children under age 21 under 42 CFR §435.222 for whom public agencies are assuming full or partial financial responsibility (e.g. foster children). The income standard used in the eligibility determination is 75% of the Federal poverty level (FPL).

The rule has long been in practice but has not heretofore been expressly set forth in the Medicaid State plan in *Supplement 8a to Attachment 2.6-A, Page 1* and *Supplement 12 to Attachment 2.6-A, Page 2*. This amendment clarifies requirements already in effect operationally.

No one will lose eligibility as a result of this amendment. There is no change to the eligibility determination process for these populations. Individuals who were qualifying for Medicaid before this amendment takes effect will continue to qualify for Medicaid after this amendment takes effect.

The provisions of this state plan amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

Other than conforming state plan to current practice, this plan amendment imposes no increase in cost on the General

Fund.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

The Summary of Proposal recites that the changes are being prompted by the Centers for Medicare and Medicaid Services (CMS) commentary noting that the existing sections contain outdated standards. DMMA emphasizes that "(n)o one will lose eligibility as a result of this amendment." At 1549. The GACEC and the SCPD **endorses** the proposed changes since they are prompted by CMS and will revise outdated standards.

Agency Response: DMMA thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan to align the Plan with current practice regarding *Medicaid Eligibility Conditions and Requirements – 75% FPL* is adopted and shall be final effective July 10, 2012.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #12-31

REVISION:

Revision:	HCFA-PM-91-4 AUGUST 1991	(BPD)	Supplement 8a to ATTACHMENT 2.6-A Page 1 OMB No.:0938-
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STATE PLAN UNDER TITLE OF THE SOCIAL SECURITY ACT

State: DELAWARE

MORE LIBERAL METHODS OF TREATING INCOME

UNDER SECTION 1902 (r) (2) OF THE ACT

/ / Section 1902(f) State

/X/ Non-Section 1902 (f) State

For children covered under Section 1902 (a) (10) (A) (I) (III) and 1905 (n) of the Social Security Act, the State of Delaware will disregard an equal amount to the difference between 100% of the AFDC payment standard for the same family size and 100% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.

Interest and dividend income are excluded for QMB, SLMB, QDWI and QI-1 cases.

A standard deduction will be applied to the gross income from self employment for poverty level pregnant women, infants and children; QMB, SLMB, and QI-1 cases. The standard deduction for self employment income is considered the cost to produce income. The standard deduction for self employment is a percentage determined annually and announced each October.

When the application of the standard deduction results in a finding of ineligibility, the applicant will be given an opportunity to show that actual self employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self employment.

For the TWWIIA Basic Coverage Group, unearned income is excluded up to \$956.00 per month for the individual. There is no \$956.00 per month unearned income exclusion for a spouse who is not applying for the TWWIIA Basic Coverage Group Medicaid. This unearned income exclusion will be increased annually by the Cost of Living Adjustment (COLA) announced by the Social Security Administration (SSA) in the Federal Register.

For individuals whose eligibility is determined under 42 CFR 435.222, income is disregarded in an amount equal to the difference between the State's AFDC payment standard (see Supplement 1 to Attachment 2.6-A Page 1) and 75% of the Federal Poverty Level updated annually in the Federal Register for the same family size.

*More liberal methods may not result in exceeding gross income limitations under Section 1903(f)

(Break in Continuity of Sections)

STATE PLAN UNDER TITLE OF THE SOCIAL SECURITY ACT
State: DELAWARE
ELIGIBILITY CONDITIONS AND REQUIREMENTS
ELIGIBILITY UNDER SECTION 1931 OF THE ACT (Cont.)

— The agency applies higher resource standards than those in effect as of July 16, 1996, increased by no more than the percentage increases in the CPI-U since July 16, 1996, as follows:

X The agency uses less restrictive income and/or resource methodologies than those in effect as of July 16, 1996, as follows:

1. The 30 and 1/3 disregard will be applied without regard to prior receipt of Medicaid, if otherwise applicable.

The income and/or resource methodologies that the less restrictive methodologies replace are as follows:

Prior to 10/1/99, the net income test does not include the 30 and 1/3 disregard for applicant families.

2. ~~For applicant families, income will be disregarded in an amount equal to the difference between 100% of the AFDC/TANF payment standard for the same family size and 100% of the AFDC/TANF standard of need for the same family size.~~

For both applicant and recipient families, income is disregarded in an amount equal to the difference between the State's AFDC payment standard (see Supplement 1 to Attachment 2.6-A Page 1) and 75% of the Federal Poverty Level updated annually in the Federal Register for the same family size.

All earned income will be disregarded for the second and third months of eligibility.

The income and/or resources methodologies that the less restrictive methodologies replace are as follows:

Prior to 10/1/99, the net income test for applicant and recipient families includes all countable earned and unearned income.

3. For both applicant and recipient families, all resources are excluded.

The income and/or resource methodologies that the less restrictive methodologies replace are as follows:

Prior to 10/1/99, available resources cannot exceed \$1,000 for both applicant and recipient families.