

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

FINAL

Title XIX Medicaid State Plan, Attachment 2.6-A, Supplement 8A, Page 2

Title XXI, Attachment 2.6-A, Supplement 12, Page 2a

Delaware Healthy Children Program State Plan

and, the Division of Social Services Manual (DSSM) Regarding Income Disregards and the Decennial Census

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan, the Delaware Healthy Children Program State Plan and, the Division of Social Services Manual (DSSM) related to the Decennial Census. 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 March 2009 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Amendments

The proposal amends the Title XIX Medicaid State Plan, the Title XXI Delaware Healthy Children Program State Plan and, the Division of Social Services Manual (DSSM) regarding the income disregards utilized in the Medicaid income eligibility determination process. Currently, individuals eligible for coverage under the Medicaid program are allowed disregards for certain types of income in the determination of their eligibility. The proposed change will add a disregard for income earned from temporary employment with the United States Census Bureau in completing a Decennial Census. In the past, the Census Bureau has successfully recruited program participants to help fill these vacancies, and wishes to do the same for the upcoming 2010 Census.

Statutory Authority

- Section 1902(r)(2) of the Social Security Act, *The methodology to be employed in determining income and resource eligibility...*;
- Section 1931 of the Social Security Act, *Assuring coverage for certain low-income families*;
- CMS, State Health Officials Letter dated February 18, 2000, *Eligibility for Those Individuals and Families Who Were Temporarily Hired for the 2000 Census Bureau*

Background

Delaware received a request from the United States Census Bureau asking that income from temporary census employment be excluded. The Centers for Medicare and Medicaid Services (CMS) is encouraging states to exclude the earned income of temporary census workers for purposes of eligibility. Doing so would mean that temporary income from census employment would not result in recipients losing access to medical assistance. The exclusion of this income will allow the Census Bureau to hire people to work in the neighborhoods in which they live to ensure the workforce reflects the diversity of the United States population.

Over the course of the 2010 Census, the Census Bureau currently expect to recruit more than 3 million applicants and hire more than 900,000 employees nationwide. Although Local Census Offices will require some

staff from the fall of 2008 through the end of 2010, most positions are part of either the Address Canvassing or Nonresponse Follow-up operations occurring in 2009 and 2010, respectively. In 2009, over 100,000 people will be employed as part of the decennial census. Almost 600,000 people will be employed solely for the Nonresponse Follow-up operation in 2010.

Census work provides valuable job skills that could lead to permanent employment elsewhere (enumerators complete four to five days of paid training). Some of the skills involved in Census work include:

- Using handheld computers,
- Following detailed instructions,
- Completing paperwork,
- Working independently,
- Public contact skills, and
- Work during nights, weekends, and/or normal business hours depending on the operation.

Preliminary activities related to the 2010 Census have already begun in some states.

Summary of Proposal

The proposed rule allows the Division of Medicaid and Medicaid Assistance (DMMA) to exercise the federal option, in years in which there is a federal census, to exclude earned income paid by the Census Bureau to temporary census workers from the determination of the individual's eligibility for the following programs:

- Delaware Medical Assistance Program (DMAP);
- Delaware Healthy Children Program (DHCP).

Previous policy/state plan language specifically excluded wages from temporary employment related to Census 2000 activities. This exclusion was applied to the last federal census, but the reference was time-limited. These amendments will make the exclusion permanent.

Please note that this exclusion applies to temporary census workers only; income received by permanent census workers will be treated as countable income in the above programs.

Food and Nutrition Service (FNS) will **not** allow states to exclude income received by temporary census workers in determining eligibility and benefits for the Food Supplement Program. Delaware's Temporary Assistance for Needy Families (Delaware TANF) Program has also opted not to provide this exclusion.

The Child Care Subsidy Program has had this wage exclusion for temporary Census activities at *DSSM 11003.9.1* since October 2005 and will remain in place.

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

Summary of Comments Received With Agency Response

The State Council for Persons with Disabilities (SCPD) offered the following observation. DMMA has considered the comment and responds as follows.

As background, DMMA notes that income from temporary census workers is currently disregarded for purposes of the Food Supplement, TANF, and Child Subsidy programs. CMS is encouraging states to adopt a disregard for the Medicaid and CHIP programs. DMMA is honoring the CMS solicitation by explicitly adopting regulations making income received by temporary census workers "non-countable".

SCPD endorses the proposed regulations since they promote employment, facilitate development of job skills, and favor Medicaid and CHIP eligibility.

Agency Response: DMMA thanks the Council for their endorsement.

Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2009 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan, the Delaware Healthy Children Program State Plan and, the Division of Social Services Manual (DSSM) regarding the exclusion of temporary decennial census income is adopted and shall be final effective May 10, 2009.

Date of Signature

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #09-19a
REVISION:

Revision: HCFA-PM-00-1
February 2000

Supplement 8A to Attachment 2.6-A
Page 2

State Plan Under Title XIX of the Social Security Act

State: DELAWARE

LESS RESTRICTIVE METHODS OF TREATING INCOME
UNDER SECTION UNDER SECTION 1902(r)(2) OF THE ACT

- X All wages paid by the U.S. Census Bureau for temporary employment related to Decennial Census activities are excluded for the eligibility groups listed below:

For 1902(r)(2) mandatory eligibility groups:

Poverty level pregnant women and infants (133% - 200% FPL) under (a)(10)(A)(i)(IV):

Poverty level children under age 6 (133% FPL) under (a) (10)(A)(i)(VI):

Poverty level children under age 19 (100% FPL) under (a)(10)(A)(i)(VII), and:

For optional categorically needy groups under 1902(a)(10)(A)(ii) as listed below:

NOTE: The Special Income Level Group under 1902(a)(10)(A)(ii)(V), the Individuals Who Would be Eligible if In an Institution Group under 1902(a)(10)(A)(ii)(VI) and the Hospice Group under

1902(a)(10)(A)(ii)(Vii) cannot be included in this disregard.

1. Individuals who would be eligible for cash assistance (AFDC or SSI) if they were not in a medical institution under 1902(a)(10)(A)(ii)(IV).
2. Individuals who are under State adoption agreements under 1902(a)(10)(A)(ii)(VIII).
3. Working disabled individuals who buy into Medicaid under TWWIIA Basic Coverage Group under 1902(a)(10)(A)(ii)(XV).
4. Children under age 21 who were in foster care on their 18th birthday, under 1902(a)(10)(A)(ii)(XVII).

For 1905(p) eligibility groups:

Qualified Medicare Beneficiaries (QMBs) under 1902(a)(10)(E)(i);

Specified-Low Income Medicare Beneficiaries (SLMBs) under 1902(a)(10)(E)(iii); and,

Qualifying Individuals (QIs) under 1902(a)(10)(E)(iv)(I).

*Less restrictive methods may not result in exceeding gross income limitations under section 1903(f).

DMMA FINAL ORDER REGULATION #09-19b

REVISION:

Supplement 12 to ATTACHMENT 2.6-A
Page 2a

Less Restrictive income and/or resource methodologies than those in effect as of July 16, 1996 - continued

4. *For both applicant and recipient families, all interest and dividend income is excluded.*

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

Prior to 10/1/99, interest and dividend income is counted for both applicant and recipient families.

5. Disregard all earned income for recipients for 12 months after employment causes ineligibility.

6. 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.

7. Exclude all wages paid by the U. S. Census Bureau for temporary employment related to Census activities in years in which there is a federal census.

_____ The agency terminates medical assistance (except for certain pregnant women and children) for individuals who fail to meet TANF work requirements.

X The agency continues to apply the following waivers of provisions of Part A of Title IV in effect as of July 16, 1996, or submitted prior to August 22, 1996 and approved by the Secretary on or before July 1, 1997.

Delaware's 1115 Demonstration Waiver for Welfare Reform, Delaware's Temporary Assistance for Needy Families (TANF) Program, was approved on May 8, 1995 and serves as the State's TANF Plan effective 3/10/97.

**DMMA FINAL ORDER REGULATION #09-19c
REVISION:**

Section 4

DELAWARE HEALTHY CHILDREN PROGRAM

Section 4. Eligibility Standards and Methodology (section 2102(b))

4.1.3 X Income: All wages paid by the U. S. Census Bureau for temporary employment related to Decennial Census activities are excluded in years in which there is a federal census.

DMMA FINAL ORDER REGULATION #09-19d
REVISION:

14710 Income

Income is any payment from any source whether in money, goods or services; whether recurring or on a one-time basis. Gross income, net income, disregarded income, excluded income, earned and unearned income are defined in the policy of each specific program.

Income eligibility limits vary from program to program.

For each Medicaid eligibility group and for the Delaware Healthy Children Program, all wages paid by the U.S. Census Bureau for temporary employment related to Decennial Census 2000 activities are excluded ~~from April 1, 2000 through December 31, 2000~~ in years in which there is a federal census.

12 DE Reg. 1416 (05/01/09) (Final)