

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

Medicaid Eligibility- Out-of-State Former Foster Youth

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM), specifically, to extend Medicaid Coverage for Out-of-State Former Foster Youth. 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 1, 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 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 Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM), specifically, *to extend Medicaid Coverage for Out-of-State Former Foster Youth*.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*
- §1902(a)(10)(ii)(XX) of the Social Security Act; *Optional eligibility group*
- §42 CFR 435.218; *Individuals with MAGI-based income above 133 percent FPL*
- §1115 of the Social Security Act; *Demonstration Projects*

Background

Title IV-E foster care youth have been a mandatory Medicaid eligibility category since the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272). On March 23, 2010, the Affordable Care Act (ACA) was signed into law, making a number of changes to Medicaid eligibility effective, January 1, 2014. The ACA includes many provisions designed to expand and streamline Medicaid eligibility, such as the option to extend coverage to a new adult group of non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL). Additionally, to further the overall goal of the ACA to expand health coverage, it included a new provision to allow youth to maintain coverage under their parents’ or guardians’ health insurance plan until age 26 (to the extent that such plan extends coverage to dependents). Section 2004 of the ACA added a new mandatory Medicaid eligibility group at section 1902(a)(10)(A)(i)(IX) of the Act to provide a parallel opportunity for former foster care youth to obtain Medicaid coverage until age 26 from the state responsible for the individual’s foster care.

On January 22, 2013, the Center for Medicaid Services (CMS) issued a notice of proposed rulemaking that proposed to implement the former foster care eligibility group in regulations at 42 CFR 435.150. As part of that provision, CMS proposed to provide states the option to cover youth who were in foster care under the responsibility of another state, and enrolled in Medicaid, upon turning 18 or “aging out” of foster care in the other state. On November 21, 2016, CMS published the final rule clarifying that the Department of Health and Human Services (HHS) had determined that the state option to cover youth who were in foster care under the responsibility of another state was not available under section 1902(a)(10)(A)(i)(IX) of the Act. That section provides that, to be eligible under this group, an individual must have been “in foster care under the responsibility of the state” and to have been “enrolled in the state plan under this title or under a waiver of the plan while in such foster care [.]” Because the provision requires coverage specifically for youth in foster care under the responsibility of “the state”—not “a” or “any” state—CMS does not believe the provision provides states with the option to cover youth who were not under the responsibility of the state while in foster care under the former foster care eligibility group.

However, states can provide coverage to former foster care youth who were in Medicaid and foster care in a different

state with income up to 133 percent of the federal poverty level (FPL) under the new adult group identified in the ACA. Additionally, states can use 1115 demonstration authority to provide coverage for former foster care youth who were in foster care under the responsibility of other states and have income higher than 133 percent of the FPL. States that provide coverage under the new adult group have the option of covering former foster care youth with MAGI-based income above 133 percent of the FPL, under the eligibility group described in section 1902(a)(10)(ii)(XX) of the Act and implementing regulations at 42 CFR 435.218 (the "XX" group). States would receive their standard Federal Medical Assistance Percentage (FMAP) for coverage of the "XX" group.

Summary of Proposal

Delaware currently provides coverage to former foster youth that have aged out of Delaware's foster care system. This proposed regulation will allow DMMA to extend coverage to former foster care children who had been enrolled in Medicaid and in foster care under the responsibility of another state at the time they "aged out" of the foster care system.

Purpose

If implemented as proposed, this regulation will accomplish the following, effective May 21, 2017:

- Make changes to the Medicaid State Plan, Modified Adjusted Gross Income (MAGI)-Based Eligibility Groups, form S33 and S50, to include individuals who were in foster care and enrolled in Medicaid in any state at the time they turned 18 or aged out of the foster care system.
- Add a provision to DSSM 15550 – Former Foster Children Group to include individuals who were in foster care and enrolled in Medicaid in any state at the time they turned 18 or aged out of the foster care system.

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 March 31, 2017.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) relating to coverage and payment methodology for services 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 Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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 manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact Statement

In state fiscal year 2016 there were approximately 150 former foster youth that aged out of Delaware's foster care system that were eligible for Medicaid under the ACA. Extending this rule to former foster youth from other states would most likely result in very few new clients and therefore won't have a significant fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) and Governor's Advisory Council for Exceptional Citizens (GACEC) offered the following summarized observations:

A disproportionate number of foster care youth have disabilities and transition to adulthood is often difficult. The availability of Medicaid to this constituency would be a significant support and is similar to the option of youth who remain on their parent's private health insurance through age 26.

The SCPD and the GACEC endorse the regulation.

Agency Response: DMMA appreciates the endorsement.

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 March 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM), specifically, to extend Medicaid Coverage for Out-of-State Former Foster Youth, is adopted and shall be final effective May 21, 2017.

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

**DMMA FINAL ORDER #17-017a
REVISION**

Eligibility Groups- Mandatory Coverage: Former Foster Care Children

**DMMA FINAL ORDER #17-017b
REVISION**

Eligibility Groups- Options for Coverage: Individuals above 133% FPL

**DMMA FINAL ORDER #17-017c
REVISION**

15550 Former Foster Children Group

This section describes the eligibility requirements for the Former Foster Children Group. This group is established through the enactment of the Affordable Care Act of 2010. Coverage under this group is effective January 1, 2014.

15550.1 Former Foster Children Group General Eligibility Requirements

An individual must meet the general eligibility requirements in Section 14000.

15550.2 Technical Eligibility

An individual must:

- a) 15550.2.1 be age 18 or older and under age 26; and
- b) 15550.2.2 have been in foster care under the responsibility of the Delaware Department of Services for Children, Youth, and Their Families (DSCYF) and enrolled in Delaware Medicaid upon attaining age 18 or older (up to age 21); or
- 15550.2.3 Have been in foster care and on Medicaid in any state at the time they turned 18 or aged out of the foster care system; and
- e) 15550.2.4 not be eligible under the following mandatory groups – Parent/Caretaker Relative, Transitional, Prospective, Pregnant Women, Children, and Supplemental Security Income (SSI).

15550.3 Financial Eligibility

There is no income or resource test for this group.

20 DE Reg. 908 (05/01/17) (Final)