

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 XXI Delaware Healthy Children Program State Plan - Cost Sharing and Payment

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*. 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 September 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2014 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/Division of Medicaid and Medical Assistance is proposing to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*.

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
- Title XXI of the Social Security Act, *State Children’s Health Insurance Program*
- 42 CFR Part 457, *State Children’s Health Insurance Programs (SCHIPs)*
- 16 Delaware Code, Section 9909

Background

The Balanced Budget Act of 1997, enacted on August 5, 1997, established the “State Children’s Health Insurance Program (SCHIP)” by adding Title XXI to the Social Security Act. The purpose of this program is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Delaware’s SCHIP program called the Delaware Healthy Children Program (DHCP) is authorized under Title 19, Chapter 99, and Section 9905 of the **Delaware Code**.

Modified Adjusted Gross Income (MAGI) Conversion Plan

Under the Affordable Care Act, to complete the transition to the MAGI-based methodology, states developed MAGI-based income eligibility standards for the applicable eligibility groups that “are not less than the effective income levels” that were used to determine Medicaid and CHIP income eligibility as of the enactment of the Affordable Care Act. The conversion of current income eligibility standards to equivalent MAGI-based income eligibility standards account for any income disregards now used. Finally, under section 1902(e)(14)(E) of the Act, each state must submit to the Secretary for approval its proposed MAGI-equivalent income eligibility standards and the methodologies and procedures that support those proposed standards, for each applicable eligibility group. This submission is referred to as the state’s “MAGI Conversion Plan”. Delaware’s conversion plan was approved on September 17, 2013.

The conversion to MAGI-based income eligibility standards impacts the percentages of the Federal Poverty Level (FPL) used to set the premium levels under CHIP.

Summary of Proposal

The Centers for Medicare and Medicaid Services (CMS) recently advised Delaware that the State needs to amend the Delaware Healthy Children Program (DHCP) state plan to update the premium levels to account for the MAGI-based conversion standards.

Therefore, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) will be submitting a state plan amendment to change the percentages of the Federal Poverty Level (FPL) applied to the premium levels and to describe the incentives for pre-payment of premiums, as follows:

1. Effective January 1, 2014, the ten dollar (\$10.00) per family per month premium for families with incomes between 101% and 133% of the Federal Poverty Level (FPL) is obsolete. Children in these families transitioned to Medicaid effective January 1, 2014.
2. Effective January 1, 2014, the conversion to MAGI-based standards results in a premium of fifteen dollars (\$15.00) per family per month for families with incomes between 134% and 166% of the FPL and a premium of twenty-five dollars (\$25.00) per family per month for families with incomes between 167% and 212% of the FPL. These revised premium levels have been in practice since January 1, 2014, but had not been set forth in the CHIP state plan.

Section 8 of the DHCP State Plan and Section 18700 of the Division of Social Services Manual (DSSM) will be amended to reflect the above-referenced change to the premium levels.

In addition, based on agency review, DHSS/DMMA intends to amend the DHCP state plan at section 8.2.1 to update the language regarding incentives for pre-payment of premiums. The updated language reflects incentives for pre-payment of premiums that have been in practice since the inception of Delaware's CHIP program. These incentives are described at Section 18700 of the Division of Social Services Manual (DSSM).

Fiscal Impact Statement

The proposed regulation changes impose no increase in costs on the General Fund as the income conversion takes into account current disregards so the net effect is zero.

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.

GACEC

The GACEC has reviewed the Division of Medicaid and Medical Assistance (DMMA) proposal to modify its schedule of Delaware Healthy Children Program premiums to align with Centers for Medicare and Medicaid Services (CMS) guidance based on the Affordable Care Act. The Delaware Healthy Children Program is the Delaware version of the federal State Children's Health Insurance Program (SCHIP) and is designed to provide health insurance to uninsured, low income children not eligible for Medicaid. Historically, Delaware has charged a monthly premium as a condition of eligibility. Since the proposed changes are being prompted by CMS guidance and benefit low-income families with children, we endorse the proposed changes. Thank you for your time and consideration of our observations.

Agency Response: DMMA appreciates and thanks the GACEC for its endorsement.

No change was requested or made in the final regulation in response to these comments.

SCPD

Historically, Delaware has charged a monthly premium as a condition of eligibility. CMS guidance based on the Affordable Care Act has prompted the Division of Medicaid & Medical Insurance to modify its schedule of premiums effective January 1, 2014 as follows:

- A. family income between 101%- 133% of the Federal Poverty Level - children transitioned to Medicaid with no premium;
- B. family income between 134% - 166% of Federal Poverty Level - \$15/month per family; and
- C. family income between 167%-212% of Federal Poverty Level - \$25/month per family.

These premium levels had already been implemented effective January 1, 2014. See Summary of Proposal at p. 184 and attached DMMA Administrative Notice 01-2014, last page. However, the Delaware Healthy Children State Plan had not been amended to conform to practice. The proposed regulation amends the Delaware Healthy Children Program plan to reflect the current premium structure.

DMMA is also amending the plan to incorporate a pre-payment premium discount which has been implemented since the inception of the Program but not specifically included in the plan. The discount is described as follows:

Pay three (3) months get one (1) premium free month; pay six (6) months get two (2) premium free months; pay nine (9) months get three (3) premium free months.

SCPD endorses the proposed changes since they are being prompted by CMS guidance and the changes benefit low-income families with children.

Agency Response: DMMA appreciates and thanks the SCPD for its endorsement.

No change was requested or made in the final regulation in response to these comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XXI Delaware Healthy Children Program State Plan regarding Cost Sharing and Payment, specifically, *Premium Requirements*, is adopted and shall be final effective November 11, 2014.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #14-42a
REVISION:**

**MODEL APPLICATION TEMPLATE FOR
STATE CHILD HEALTH PLAN UNDER TITLE XXI OF THE SOCIAL SECURITY ACT
STATE CHILDREN’S HEALTH INSURANCE PROGRAM

DELAWARE HEALTHY CHILDREN PROGRAM**

Section 8. Cost Sharing and Payment (Section 2103(e))

Check here if the state elects to use funds provided under Title XXI only to provide expanded eligibility under the state’s Medicaid plan, and continue on to Section 9.

8.1. Is cost-sharing imposed on any of the children covered under the plan? (42 CFR 457.505)

8.1.1. YES

8.1.2. NO, skip to question 8.8.

Describe the amount of cost-sharing and any sliding scale based on income, the group or groups of enrollees that may be subject to the charge and the service for which the charge is imposed or time period for the charge, as appropriate. (Section 2103(e)(1)(A)) (42CFR 457.505(a), 457.510(b) & (c), 457.515(a)&(c))

8.2.1. ~~Premiums: \$10 per family per month (PFPM) for families with incomes between 101% and 133% of the FPL, \$15 PFPM for families with incomes between 134% and 166% of the FPL, and \$25 PFPM for families with incomes between 167% and 200% of the FPL (see Section 4.3 for information on effect of non-payment of premiums). Incentives for pre-payment of premiums will be considered. Fifteen dollars (\$15.00) per family per month for families with incomes between 134% and 166% of the Federal Poverty Level (FPL) and twenty-five dollars (\$25.00) per family per month for families with incomes between 167% and 212% of the FPL. (See Section 4.3 and CHIP MAGI State Plan Page CS21 for information on the effect of non-payment of premiums).~~

Incentives for pre-payment of premiums include the following: Pay three (3) months get one (1) premium free month; pay six (6) months get two (2) premium free months; pay nine (9) months get three (3) premium free months.

**DMMA FINAL ORDER REGULATION #14-42b
REVISION:**

18700 Premium Requirements

Families with eligible children are required to pay a premium in order to receive coverage. The premium is per family per month regardless of the number of eligible children in the family. The monthly premium will vary according to family income as follows:

<u>Family Income</u>	<u>Premium</u>
>142% FPL < or = 176% FPL 134% FPL = 176% FPL	\$15.00
177% FPL < or = 212% FPL 177% FPL = 212% FPL	\$25.00

Payments that are less than one (1) month’s premium will not be accepted.

Coverage begins the first of the month following payment of the initial premium. Payments for the initial premium will be accepted through a monthly cut-off date known as the authorization date. The authorization date is set by the automated eligibility system. If payment of the initial premium is received by the authorization date, coverage under DHCP will be effective the following month. Premium payments for ongoing coverage will be accepted through the last day of the month.

Families will be able to pay in advance and purchase up to one year's coverage. The following incentive is offered for advance payments:

Pay three (3) months – get one (1) premium free month

Pay six (6) months – get two (2) premium free months

Pay nine (9) months – get three (3) premium free months.

The advance premium payments for coverage may extend beyond the scheduled eligibility renewal. If the child is determined to be ineligible, the advance premium payments will be refunded to the family.

Coverage will be cancelled when the family is in arrears for two premium payments. The coverage will end the last day of the month when the second payment is due. If one premium payment is received by the last day of the cancellation month, coverage will be reinstated.

Families who lose coverage for nonpayment of premiums will have received two unpaid months of coverage. Families who are cancelled for nonpayment of premiums may reenroll at any time without penalty. Reenrollment will begin with the first month for which the premium paid.

Good cause for nonpayment of premiums will be determined on a case-by-case basis.

18 DE Reg. 375 (11/01/14) (Final)