

# 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 for Workers with Disabilities

#### 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 and the Division of Social Services Manual (DSSM) related to the Medicaid for Workers with Disabilities Program. 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 April 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSED AMENDMENT

The proposed amends the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to implement a Medicaid Buy-In (MBI) program and to comply with federal law to ensure federal financial participation as it relates to the MBI Program for working individuals with disabilities. The Medicaid for Workers with Disabilities (MWD) Program is available to current and new Medicaid beneficiaries with disabilities who meet the MWD eligibility requirements.

#### Statutory Authority

- 1902(a)(10)(A)(ii)(XIII) of the Social Security Act, *Working disabled individuals who buy into Medicaid*;
- 1902(a)(10)(A)(ii)(XV) of the Social Security Act, *Working disabled individuals who buy into Medicaid under TWWIA (Ticket to Work and Work Incentives Improvement Act of 1999) Basic Coverage Group*;
- 1916(g) of the Social Security Act, *Premiums - Working Disabled Individuals*; and,
- Balanced Budget Act (BBA) of 1997, Section 4733, *State Option To Permit Workers With Disabilities To Buy Into Medicaid*.

#### Background

##### BBA Eligibility Group

Section 4733 of the Balanced Budget Act of 1997 (BBA) allows States to provide Medicaid coverage to working individuals with disabilities who, because of their earnings, cannot qualify for Medicaid under other Statutory provisions. Section 4733 allows States to provide Medicaid coverage to these individuals by creating a new optional categorically needy eligibility group.

#### Summary of Proposed Amendment

Congress enacted the Medicaid Buy-In option for states in the Balanced Budget Act of 1997 (§4733) and enhanced the option in the Ticket to Work and Work Incentive Improvement Act of 1999 (P.L. 106-170, 42 USC 1396 et seq.). The purpose of this amendment is to adopt rules for Delaware's MBI program, as in effect on June 1, 2008. The Division of Medicaid and Medical Assistance (DMMA) proposes to amend *Attachment 2.2-A, Page 23e and Attachment 2.6-A, Pages 12c through 12o* of the State Medicaid Plan; amend section DSSM 14900; and, propose new Section 17900 of the DSSM to add a new Medicaid categorically needy eligibility group: Medicaid

Buy-In Basic Coverage Group. All references in the rules to **Medicaid for Workers with Disabilities (MWD)** mean the Medicaid Buy-In Program.

### **Section-by-Section Summary:**

Section 17900 provides a general description of the Medicaid for Workers with Disabilities (MWD) program and the eligibility effective date. The requirements for applying and providing information are provided in §17901, *General Eligibility Requirements*. The eligibility requirement related to citizenship is contained in §17902, *Alien Status*. An individual must meet the age requirement under 17903, *Age Requirement*. The disability requirement for clients is described in §17904, *Disability Requirement* and the employment requirement the individual must meet is found in §17905, *Employment Requirement*. Sections 17905 through 17909, *Income*, explains what income is considered as well as what is excluded. The deeming policy for income is explained in §17910, *Deeming of Income*. §17911, *Financial Eligibility Determination*, describe the income tests used to determine financial eligibility. *Retroactive Eligibility* provisions are contained in Section 17912 and, finally, §17913 implements the monthly cost-sharing requirements for all months of eligibility.

The provisions of the proposed amendments to establish Medicaid for Workers with Disabilities (MWD) eligibility requirements, including the monthly cost-sharing requirements, are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES**

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

First, the "Summary of the Proposed Amendment" is somewhat underinclusive. It recites as follows: "This program will allow disabled individuals receiving Medicaid to return to the workplace without losing their Medicaid coverage, by paying a monthly premium, if applicable." This could be construed as a representation that the MBI is only available to current Medicaid beneficiaries who would lose eligibility based on returning to work. In fact, individuals who have never been on Medicaid can also qualify. See, e.g. the National Assistive Technology Advocacy Project Newsletter article at p. 365 and attached Delaware Medicaid Buy-in presentation materials from January 27, 2005 LIFE Conference identifying the following target groups:

- SSDI/Medicare beneficiaries who have to spend down to qualify for Medicaid
- SSDI beneficiaries who have to spend down to qualify for Medicaid
- SSI recipients with income at or above SSA limits
- SSI recipients with resources at or above the SSA limits
- Workers who are not receiving Medicaid or SSI/DI who meet the SSA disability definition in always except financial tests.

**Agency Response:** The "Summary of the Proposed Amendment" is revised to clarify that the Medicaid for Workers with Disabilities (MWD) Program is available to current and new Medicaid beneficiaries with disabilities who meet the MWD eligibility requirements.

Second, DMMA could have imposed a resource test. See pp. 1318-1320. The Councils endorse the absence of a resource cap.

**Agency Response:** Thank you for the endorsement.

Third, the Plan amendment on the bottom of p.1323, bottom of p.1324, and top of p.1325 contemplate that everyone pays a premium. However, §17912 clarifies that persons earning up to 100% FPL pay no premium. At a minimum, it would be preferable to amend the table on the top of p. 1325 to include an initial row for "0% - 100%" and "\$0" or "none" for amount of premium. The table in §17912 could include the same clarifying edits.

**Agency Response:** Section 17912 clearly indicates a premium is only required for an individual with countable income greater than 100% of the Federal Poverty Level. No change to the regulation will be made.

Fourth, it would be preferable to include a "Resource" section in the DSSM, perhaps as §17906 (renumbering other sections), which would recite, consistent with p. 1319, that there are no resource or asset

eligibility criteria for this program.

**Agency Response:** The regulation will be amended to recite that resources are not counted in the eligibility determination.

Fifth, in §17904, we recommend that DMMA add the following: "The Division may also accept pre-existing documentation (e.g. school district or DVR assessment) which confirms that the individual meets SSI disability standard (e.g. I.Q. of 59 or less)." Otherwise, the Division has no choice but to pay for an evaluation despite clear documentation that the person meets the SSI standards.

**Agency Response:** The regulation will be amended to allow greater flexibility in methods for performing disability determination.

Sixth, §17912 recites that an individual or couple whose AGI exceeds \$90,008 must pay the highest premium. In contrast, the CMS "note" on p. 1324 recites that "the agency MUST require that individuals whose annual adjusted gross income, as defined in IRS statute, exceeds \$75,000 pay 100% of premiums." The above AT article (p. 365) recites as follows: "States must require a 100 percent premium payment for individuals with adjusted gross incomes greater than \$75,000 unless states choose to subsidize the premium using their own funds." It is unclear if: 1) the CMS standard has been increased to \$90,008 in 2008; or 2) DMMA is subsidizing premiums for persons with AGI between \$75,001 and \$90,007. DMMA may wish to reassess the accuracy of the \$90,008 figure.

**Agency Response:** The Ticket to Work and Work Incentives Improvement Act of 1999 requires States to charge 100% of the premium for individuals whose adjusted gross annual income (as determined under the IRS statute) exceeds \$75,000. This amount increases each year by the percentage of the annual Social Security cost-of-living increase. The amount used for this standard in 2008 is \$90,008.

Seventh, §17909 contemplates application of standard SSI deeming rules. For 16 and 17 year old applicants, this would generally mean deeming of parental income. However, §17910.2 only refers to spousal deeming. DMMA may wish to consider incorporating a reference to parental deeming for 16-17 year old program participants.

**Agency Response:** As indicated in Section 17910, the deeming methodologies of the SSI program will be used and are incorporated by reference. Section 17911 describes the financial eligibility determination that is completed after the deeming provisions of the SSI program are applied.

Eighth, unearned income is excluded up to \$800/month/individual (Section 17907). This could exclude many individuals who could benefit from the MBI program that receive benefits from the Social Security Administration (e.g. SSDI). Indeed, this a target population specifically referenced by Medicaid at many of its presentations. See, for example, the attached MBI presentation from the January 27, 2005 LIFE Conference and the listed target groups. We recommend that income derived from the Social Security Administration (SSA) be disregarded. DMMA could still implement the unearned income exclusion up to \$800, but disregard any income from the SSA.

**Agency Response:** MWD is an employment initiative that provides comprehensive health insurance coverage to encourage people with disabilities to work or increase their level of work, increase their disposable income, and reduce or eliminate dependency on cash assistance programs. The appropriation approved by the General Assembly assumed the imposition of an unearned income limit. Income derived from the Social Security Administration is treated as unearned income for the eligibility determination. DMMA is unable to disregard all income derived from the Social Security Administration; however, we have applied an inflationary factor recognizing that the unearned income limit was originally set several years ago. This will increase the monthly unearned income exclusion from \$800.00 to \$904.00. This monthly unearned income exclusion will increase each year by the Cost of Living Adjustment (COLA) announced by the Social Security Administration.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the April 2008 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) as it relates to the Medicaid for Workers with Disabilities Program is adopted and shall be final effective October 10, 2008.

Vincent P. Meconi, Secretary, DHSS, 9/11/2008

**DMMA FINAL REGULATION #08-43a  
REVISIONS:**

**Revision:**

**ATTACHMENT 2.2-A  
PAGE 23d  
OMB NO.:**

State/Territory:

Citation	Groups Covered
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B. Optional Groups Other Than the Medically Needy  
(Continued)

1902(a)(10)(A) (ii) (XIII) of the Act	[ ]	23.	BBA Work Incentives Eligibility Group Individuals with a disability whose net family income is below 250 percent of the Federal poverty level for a family of the size involved and who, except for earned income, meet all criteria for receiving benefits under the SSI program. See page 12c of Attachment 2.6-A.
1902(a)(10)(A) (ii) (XV) of the Act	[ X ]	24.	TWWIIA Basic Coverage Group - Individuals with a disability at least 16 but less than 65 years of age whose income and resources do not exceed a standard established by the State. See page 12d of Attachment 2.6-A
1902(a)(10)(A) (ii) (XVI) of the Act	[ ]	25.	TWWIIA Medical Improvement Group Employed individuals at least 16 but less than 65 years of age with a medically improved disability whose income and resources do not exceed a standard established by the State. See page 12h of Attachment 2.6-A.

NOTE: If the State elects to cover this group, it MUST also cover the Basic Coverage Group described in no. 24 above.

***(Break In Continuity of Sections)***

**Revision:**

**ATTACHMENT 2.6-A  
Page 12c  
OMB No.:**

State/Territory:

Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XIII) of the Act	<p data-bbox="618 310 646 338">(i)</p> <p data-bbox="810 310 1312 338"><u>Working Individuals with Disabilities - BBA</u></p> <p data-bbox="810 375 1446 468">In determining countable income and resources for working individuals with disabilities under the BBA, the following methodologies are applied:</p> <ul style="list-style-type: none"> <li data-bbox="810 501 1369 529">___ The methodologies of the SSI program.</li> <li data-bbox="810 567 1479 751">___ The agency uses methodologies for treatment of income and resources more restrictive than the SSI program. These more restrictive methodologies are described in Supplement 4 (income) and/or Supplement 5 (resources) to Attachment 2.6-A.</li> <li data-bbox="810 789 1466 978">___ The agency uses more liberal income and/or resource methodologies than the SSI program. More liberal methodologies are described in Supplement 8a to Attachment 2.6-A. More liberal resource methodologies are described in Supplement 8b to Attachment 2.6-A.</li> </ul>

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**ATTACHMENT 2.6-A**  
**Page 12d**  
**OMB No.:**

State/Territory:	
Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XV) of the Act	<p data-bbox="618 1360 646 1388">(ii)</p> <p data-bbox="810 1360 1325 1423"><u>Working Individuals with Disabilities - Basic Coverage Group - TWWIIA</u></p> <p data-bbox="810 1461 1463 1554">In determining financial eligibility for working individuals with disabilities under this provision, the following standards and methodologies are applied:</p> <ul style="list-style-type: none"> <li data-bbox="810 1587 1401 1650">___ The agency does not apply any income or resource standard.</li> <li data-bbox="906 1682 1463 1745">NOTE: If the above option is chosen, no further eligibility-related options should be elected.</li> <li data-bbox="810 1776 1466 1839"><b>X</b> The agency applies the following income and/or resource standard(s): <ul style="list-style-type: none"> <li data-bbox="906 1871 1333 1898">1. <b><u>Income Standard:</u></b> 275% of</li> </ul> </li> </ul>

the federal poverty level (FPL).

2. **Resource Standard:** No resource or other asset eligibility criteria for Basic Coverage Group – TWWIIA.

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ATTACHMENT 2.6-A  
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State/Territory:	
Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XV) of the Act (cont.)	<p><u>Income Methodologies</u></p> <p>In determining whether an individual meets the income standard described above, the agency uses the following methodologies.</p> <p><input checked="" type="checkbox"/> The income methodologies of the SSI program.</p> <p><input type="checkbox"/> The agency uses methodologies for treatment of income that are more restrictive than the SSI program. These more restrictive methodologies are described in Supplement 4 to Attachment 2.6-A.</p> <p><input checked="" type="checkbox"/> The agency uses more liberal income methodologies than the SSI program. More liberal income methodologies are described in Supplement 8a to Attachment 2.6-A.</p>

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State/Territory:	
Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XV) of the Act (cont.)	<p><u>Resource Methodologies</u></p> <p>In determining whether the individual meets the resource standard described above, the agency uses the following methodologies.</p> <p>Unless one of the following items is checked the agency, under the authority of section 1902(r)(2) of the Act, disregards all funds held in retirement funds and accounts, including private retirement accounts such as</p>

IRAs and other individual accounts, and employer-sponsored retirement plans such as 401(k) plans, Keogh plans, and employer pension plans. Any disregard involving retirement accounts is separately described in Supplement 8b to Attachment 2.6-A.

\_\_\_ The agency disregards funds held in employer-sponsored retirement plans, but not private retirement plans.

\_\_\_ The agency disregards funds in retirement accounts in a manner other than those described above. The agency's disregards are specified in Supplement 8b to Attachment 2.6-A.

**There will be no resource or other asset eligibility criteria for the Basic Coverage Group – TWWIIA.**

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ATTACHMENT 2.6-A  
Page 12g  
OMB No.:

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State/Territory:

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Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XV) of the Act (cont.)	<p>___ The agency does not disregard funds in retirement accounts.</p> <p>___ The agency uses resource methodologies in addition to any indicated above that are more liberal than those used by the SSI program. More liberal resource methodologies are described in Supplement 8b to Attachment 2.6-A.</p> <p>___ The agency uses the resource methodologies of the SSI program.</p> <p>___ The agency uses methodologies for treatment of resources that are more restrictive than the SSI program. These more restrictive methodologies are described in Supplement 5 to Attachment 2.6-A.</p> <p><b>There will be no resource or other asset eligibility criteria for the Basic Coverage Group – TWWIIA.</b></p>

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ATTACHMENT 2.6-A

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State/Territory:

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Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XVI) of the Act	<p>(iii) <u>Working Individuals with Disabilities Employed Medically Improved Individuals -TWWIIA</u></p> <p>In determining financial eligibility for employed medically improved individuals under this provision, the following standards and methodologies are applied:</p> <p>_____ The agency does not apply any income or resource standard.</p> <p>NOTE: If the above option is chosen, no further eligibility-related options should be elected.</p> <p>_____ The agency applies the following income and/or resource standard(s):</p> <p>_____ % FPL – Income Standard</p>

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Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XVI) of the Act (cont.)	<p><u>Income Methodologies</u></p> <p>In determining whether an individual meets the income standard described above, the agency uses the following methodologies.</p> <p>_____ The income methodologies of the SSI program.</p> <p>_____ The agency uses methodologies for treatment of income that are more restrictive than the SSI program. These more restrictive methodologies are described in Supplement 4 to Attachment 2.6-A.</p> <p>_____ The agency uses more liberal income methodologies than the SSI program. More liberal methodologies are described in Supplement 8a to Attachment 2.6-A.</p>

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State/Territory:

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Citation

Condition or Requirement

1902(a)(10)(A)  
(ii) (XVI) of the Act (cont.)

Resource Methodologies

In determining whether the individual meets the resource standard described above, the agency uses the following methodologies.

Unless one of the following items is checked the agency, under the authority of section 1902(r)(2) of the Act, disregards all funds held in retirement funds and accounts, including private retirement accounts such as IRAs and other individual accounts, and employer-sponsored retirement plans such as 401(k) plans, Keogh plans, and employer pension plans. Any disregard involving retirement accounts is separately described in Supplement 8b to Attachment 2.6-A.

\_\_\_\_\_ The agency disregards funds held in employer-sponsored retirement plans, but not private retirement plans.

\_\_\_\_\_ The agency disregards funds in retirement accounts in a manner other than those listed above. The agency's disregards are specified in Supplement 8b to Attachment 2.6-A.

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State/Territory:

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Citation

Condition or Requirement

1902(a)(10)(A)

\_\_\_\_\_ The agency does not disregard funds in (ii)(XVI) of the Act (cont.) retirement accounts.

\_\_\_\_\_ The agency uses resource methodologies in addition to any indicated above that are more liberal than those used by the SSI program. More liberal resource methodologies are described in Supplement 8b to Attachment 2.6-A.

\_\_\_\_\_ The agency uses the resource

methodologies of the SSI program.

\_\_\_\_\_ The agency uses methodologies for treatment of resources that are more restrictive than the SSI program. These more restrictive methodologies are described in Supplement 5 to Attachment 2.6-A.

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**ATTACHMENT 2.6-A**  
**Page 12I**  
**OMB No.:**

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State/Territory:	
Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XVI) and 1905(v)(2) of the Act	<u>Definition of Employed - Employed Medically Improved Individuals – TWWIIA</u>  _____ The agency uses the statutory definition of “employed”, i.e., earning at least the minimum wage, and working at least 40 hours per month.  _____ The agency uses an alternative definition of “employed” that provides for substantial and reasonable threshold criteria for hours of work, wages, or other measures. The agency’s threshold criteria are described below:

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**ATTACHMENT 2.6-A**  
**Page 12m**  
**OMB No.:**

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State/Territory:	
Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XIII), (XV), (XVI), and 1916(g) of the Act	<u>Payment of Premiums or Other Cost Sharing Charges</u>  For individuals eligible under the BBA eligibility group described in No. 23 on page 23d of Attachment 2.2-A:  <b>X</b> The agency requires payment of premiums or other cost-sharing charges on a sliding scale based on income. The premiums or other cost-sharing charges, and how they are applied, are described below:

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ATTACHMENT 2.6-A  
Page 12n  
OMB No.:

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State/Territory:	
Citation	Condition or Requirement
1902(a)(10) (A) (ii) (XIII), (XV), (XVI), and 1916(g) of the Act (cont.)	<p>For individuals eligible under the Basic Coverage Group described in No. 24 on page 23d of Attachment 2.2-A, and the Medical Improvement Group described in No. 25 on page 23d of Attachment 2.2-A:</p> <p>NOTE: Regardless of the option selected below, the agency MUST require that individuals whose annual adjusted gross income, as defined under IRS statute, exceeds \$75,000 pay 100 percent of premiums.</p> <p><input checked="" type="checkbox"/> The agency requires individuals to pay premiums or other cost-sharing charges on a sliding scale based on income. For individuals with net annual income below 450 percent of the Federal poverty level for a family of the size involved, the amount of premiums cannot exceed 7.5 percent of the individual's income.</p> <p>The premiums or other cost-sharing charges, and how they are applied, are described on page 12o.</p>

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State/Territory:	
Citation	Condition or Requirement
Sections 1902(a) (10) (A) (ii) (XV), (XVI), and 1916(g) of the Act (cont.)	<p><u>Premiums and Other Cost-Sharing Charges</u></p> <p>For the Basic Coverage Group and the Medical Improvement Group, the agency's premium or other cost-sharing charges, and how they are applied, are described below.</p> <p><b>Individuals eligible for Medicaid under this section must pay a monthly premium subject to the following premium structure:</b></p>

Cost Sharing Schedule	
Percentage of FPL	Monthly Premium Amount
101% - 125%	\$25
126% - 150%	\$35
151% - 175%	\$45
176% - 200%	\$60
201% - 225%	\$75
226% - 250%	\$90
251% - 275%	\$105

*(Break In Continuity of Sections)*

[Revision: HCFA-PM-91-4  
AUGUST 1991

(BPD)

Supplement 8a to ATTACHMENT 2.6-A  
Page 1  
OMB No.: 0938-

**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 \$904.00 per month for the individual. There is no \$904.00 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 SSA in the Federal Register.

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

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**DMMA PROPOSED REGULATIONS #08-43b  
REVISIONS:**

**14900 Enrollment In Managed Care**

On May 17, 1995, Delaware received approval from the Health Care Financing Administration (HCFA) (~~in 2000 on June 14, 2001, HCFA was~~ renamed Centers for Medicare and Medicaid Services [CMS]) for a Section 1115 Demonstration Waiver that is known as the *Diamond State Health Plan*. The basic idea behind this initiative is to use managed care principles and a strong quality assurance program to revamp the way health care is delivered to Delaware's most vulnerable populations. The *Diamond State Health Plan* is designed to provide a basic set of health care benefits to current Medicaid beneficiaries as well as uninsured individuals in Delaware who have income at or below 100% of the Federal Poverty Level (FPL). The demonstration waiver will mainstream certain Medicaid recipients into managed care to increase and improve access to medical service while improving cost effectiveness and slowing the rate of growth in health care costs.

Effective July 1, 2002, a Medicaid only managed care organization, *Diamond State Partners*, is implemented. Individuals may enroll in either the *Diamond State Health Plan* or *Diamond State Partners*

The majority of the Medicaid population receiving non institutional services will be enrolled into the *Diamond State Health Plan* or *Diamond State Partners*. Recipients in the cash assistance programs (TANF/AFDC, SSI, and GA) as well as the TANF/AFDC-related groups, SSI-related groups, and poverty level groups will be included in the managed care program. The following individuals cannot enroll in *Diamond State Health Plan* or *Diamond State Partners*:

- a. Individuals entitled to or eligible to enroll in Medicare
- b. Individuals residing in a nursing facility or intermediate care facility for the mentally retarded (ICF/MR)
- c. individuals covered under the home and community based waivers
- d. non lawful and non qualified non citizens (aliens)
- ~~d.~~ e. individuals who have Military Health Insurance For Active Duty, Retired Military, and their dependents
- e. f. individuals eligible under the Breast and Cervical Cancer Group.
- f. g. presumptively eligible pregnant women
- h. individuals eligible under Medicaid for Workers with Disabilities

**(Break in Continuity of Sections)**

**17900 Medicaid for Workers with Disabilities**

The Ticket to Work and Work Incentives Improvement Act of 1999 established an optional categorically needy eligibility group under Section 1902(a)(10)(A)(ii)(XV) of the Social Security Act. This eligibility group provides Medicaid coverage to certain employed individuals with disabilities. The rules in this section set forth the eligibility requirements under this group entitled Medicaid for Workers with Disabilities (MWD). The [implementation effective] date for MWD is **June October** 1, 2008.

### **17901 General Eligibility Requirements**

The Medicaid rules at Section 14000 of the Division of Social Services Manual (DSSM) also apply to MWD except as provided in this section.

### **17902 Alien Status**

MWD does not provide state-funded benefits to qualified aliens subject to the 5-year bar under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) or to legally residing nonqualified aliens.

### **17903 Age Requirement**

The individual must be at least 16 but less than 65 years old.

### **17904 Disability Requirement**

The individual must be disabled as defined under the Supplemental Security Income (SSI) program except that being engaged in substantial gainful activity will not preclude a determination of disability. ~~[The disability requirement is met if there is currently in effect a decision by the Social Security Administration (SSA) that the individual is disabled. If there is no SSA decision currently in effect, a contractor who is competent to perform a disability determination will be used.]~~

### **17905 Employment Requirement**

The individual must be engaged in paid employment and document Federal Insurance Contributions Act (FICA) withholding from income.

### **[17906 Resources**

**All resources are excluded.]**

### **[179067] Income**

The definition of income is the same definition used by the SSI program. Refer to DSSM 20200-20200.9 and 20210-20210.15 for a detailed description of income.

### **[179078] Unearned Income Exclusion**

Unearned income is excluded up to ~~[\$800.00 \$904.00]~~ per month for the individual. There is no ~~[\$800.00 \$904.00]~~ per month unearned income exclusion for a spouse who is not applying for MWD. This unearned income exclusion will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

### **[179089] Earned Income Exclusions**

Monthly earned income exclusions are applied in the following order:

1. Earned income of disabled student children (under age 18) up to the student earned income exclusion monthly limit, but not more than the student earned income exclusion yearly limit. These limits are updated annually by the Social Security Administration.
2. \$20.00 general income exclusion
3. \$65.00 of earned income
4. Earned income of disabled individuals used to pay impairment-related work expenses. Expenses must be directly related to the individual's impairment. These are the costs paid by the individual for certain items and services that he or she needs in order to work even though such items and services are also needed for

normal daily activities. Examples include but are not limited to the cost of certain attendant care services, dog guide, modified audio/visual equipment, specialized keyboards, and vehicle modification. The expense cannot be one that a similar worker without a disability would have, such as uniforms. The expenses are subject to reasonable limits. The amount paid will be considered reasonable if it does not exceed the standard or normal cost for the same item or service in the individual's community.

5. One-half of remaining earned income

### **[1790910] Deeming of Income**

The term deeming identifies the process of considering another person's income for the eligibility determination. Deeming provisions recognize some measure of family responsibility as they apply from spouse-to-spouse or parent-to-child. The deeming provisions of the SSI program at 20 CFR Part 416, Subpart K, Deeming of Income, are used for the eligibility determination. The Federal Benefit Rate is used in the SSI program for the deeming calculation. The income standard of 275% of the Federal Poverty Level (FPL) will be substituted for the Federal Benefit Rate in the MWD deeming calculation.

### **[1790411] Financial Eligibility Determination**

There are two income tests used to determine financial eligibility:

1. If the monthly unearned income of the individual exceeds ~~[\$800.00]~~ **\$904.00**, the individual is ineligible. This unearned income limit will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

2. Countable income must be at or below 275% of the Federal Poverty Level for the appropriate family size (individual or couple).

### **[1790412] Retroactive Eligibility**

The individual may be found eligible for up to three months prior to the month of application as described at DSSM 14920-14920.6 provided the premium requirements under MWD are met. Eligibility cannot be retroactive prior to ~~June~~ **October** 1, 2008.

### **[1790413] Premium Requirements**

Individuals with countable income over 100% FPL are required to pay a monthly premium to receive coverage. Countable income is the same amount that is used to determine eligibility. When a husband and wife are both MWD eligible, a monthly premium is assessed on each spouse.

The monthly premium will be based on a sliding scale as follows:

<u>Percentage of FPL</u>	<u>Monthly Premium</u>
<u>101-125%</u>	<u>\$25</u>
<u>126-150%</u>	<u>\$35</u>
<u>151-175%</u>	<u>\$45</u>
<u>176-200%</u>	<u>\$60</u>
<u>201-225%</u>	<u>\$75</u>
<u>226-250%</u>	<u>\$90</u>
<u>251-275%</u>	<u>\$105</u>

Exception to sliding scale: An individual or couple whose adjusted gross annual income (as determined under the IRS statute) exceeds \$90,008 must pay the highest premium amount listed on the sliding scale. This adjusted gross annual income amount will increase each year by the COLA.

A premium is assessed the month an individual is added for coverage including any months of retroactive eligibility. Eligibility for a month is contingent upon the payment of the premium. Payments that are less than one month's premium will not be accepted.

A monthly premium notice for ongoing coverage will be sent to the individual. The premium is due by the **[20 15]**th of the month for the next month's coverage. When the premium is not received by the date due, action will be taken to terminate eligibility under MWD. If the premium is received by the last day of the month, eligibility under MWD will be reinstated.

Coverage continues pending a fair hearing decision if the fair hearing request is filed within the timely notice period, even if the individual is not paying premiums that are due.

**12 DE Reg. 446 (10/01/08) (Final)**