DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 15000, 18000

FINAL

ORDER

Continuous Eligibility and Removal of Premiums for CHIP

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) 15300.4, 18300, 18600, 18700, 18800.1, 18800.2, and Title XXI CHIP State Plan Sections 1, 4, 8 and 9, specifically, to provide 12 months of continuous eligibility for children under age 19 in CHIP (with limited exceptions) and to remove the premium requirement for the CHIP program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the May 2024 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2024, 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 Title XXI CHIP State Plan and Division of Social Services Manual (DSSM) regarding Continuous Eligibility and Removal of Premiums for CHIP.

Background

Prior to the CAA 2023, states had the option to provide continuous eligibility (CE) for children in Medicaid and/or CHIP. Under section 5112 of the Consolidated Appropriations Act of 2023 (CAA), all states are required to provide 12 months of continuous coverage for children under 19 in Medicaid and Children's Health Insurance Program (CHIP) with limited exceptions. The provisions are effective January 1, 2024.

The 12-month CE period for begins on the effective date of the child's last eligibility determination at application or renewal.

Sections 1902(e)(12) and 2107(e)(1)(K) of the Social Security Act (the Act), as modified by Section 5112 of the Consolidated Appropriations Act, 2023 (CAA, 2023), provide for limited exceptions to the requirement that all states provide 12 months of continuous eligibility for children regardless of any changes in circumstances that otherwise would result in loss of coverage.

On October 27, 2023, CMS issued guidance that the existing regulatory option at 42 CFR § 457.342(b) for states operating a separate CHIP to consider non-payment of premiums as an exception to CE would end on December 31, 2023, and states are no longer permitted to terminate the Medicaid or CHIP eligibility of a child under age 19 during a CE period for non-payment of premiums. As such, DMMA is proposing to remove the premium requirement for the CHIP program.

Statutory Authority

- The Consolidated Appropriations Act of 2023 (CAA)
- 42 CFR 457.342

Purpose

The purpose of this proposed regulation is to provide 12 months of continuous eligibility for children under age 19 in CHIP (with limited exceptions) and to remove the premium requirement for the CHIP program.

Summary of Proposed Changes

Effective January 1, 2024, the DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM) and Title XXI CHIP State Plan regarding continuous eligibility for children enrolled in CHIP, specifically, to provide 12 months of

continuous eligibility for children enrolled in CHIP and remove the premium requirement.

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 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/ DMMA gave public notice and provided an open comment period for 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 May 31, 2024.

Centers for Medicare and Medicaid Services Review and Approval
The provisions of this state plan amendment (SPA) 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 and Communications Update
Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal 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 DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: https://medicaid.dhss.delaware.gov/provider

Fiscal Impact Statement

	Federal Fiscal Year 2024	Federal Fiscal Year 2025
General (State) funds	$1,783,562.45	$2,850,476.78
Federal funds	$4,541,127.09	$7,434,226.06

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: There were comments supporting the proposed changes.

Agency response: DMMA appreciates the support.

Comment: Council supports the proposed amendment as it will promote family financial stability. Additionally, Council would encourage DMMA to insert a comma following "eligibility" in exception 4 to continuous eligibility in subsection 18800.1.

Agency Response: DMMA appreciates the support and agrees with interpretation requiring the insertion of the comma.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:
- Governor's Advisory Council for Exceptional Citizens (GACEC)
- League of Women Voters of Delaware

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:

The DMMA Division Director has reviewed the proposed regulation as required by 29 Del. C. §10118(b)(3) and has determined that if promulgated, the regulation would have a de minimis impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May 2024 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 Del.C. §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) and Title XXI CHIP State Plan regarding Continuous Eligibility and Removal of Premiums for CHIP, specifically, to provide 12 months of continuous eligibility for children enrolled in CHIP and remove the premium requirement and shall be final

effective July 11, 2024.

6/12/2024 | 3:38 PM EDT
Date of Signature

Josette D. Manning Esq.
Cabinet Secretary, DHSS

15000 Family and Community Medicaid Eligibility Groups

15300.4 Mandatory Continuation of ~~Eligibility~~ Coverage for Children Receiving Inpatient Services

A child receiving inpatient services in a hospital or long-term care facility at the end of the month in which the child turns age 19 remains eligible until the end of the inpatient stay. The child must continue to meet the general and financial eligibility requirements described in Section 15300.1 and Section 15300.3.

18000 Delaware Healthy Children Program

18300 Technical Eligibility

Age: The child must be under age 19.

Uninsured: The child must be uninsured. Children cannot be found eligible for DHCP if they:

- are eligible for Medicaid;
- are eligible for Medicare;
- ~~have insurance coverage, in the month of application, that meets the definition of comprehensive health insurance;~~
- ~~have Military Health Insurance for Active Duty, Retired Military, and their dependents; or~~
- have the following types of insurance coverage at the initial determination of eligibility or at the annual redetermination of eligibility.
  - Insurance coverage that meets the requirements of comprehensive health insurance, or
  - Military Health Insurance for Active Duty, Retired Military, and their dependents.
- are eligible for or ~~who~~ have access to coverage under a state health benefits plan ~~on the basis~~ of a family member's employment with a public agency in the state.

A child who has a family member who works for a public agency within Delaware and is eligible to participate in the State health benefits plan with an employer premium subsidy is not eligible for DHCP. Family member is defined as the parent of the child or the individual who has legal custody of the child. The State health benefits plan is the plan that is offered or organized by the State of Delaware on behalf of State employees or other public agency employees within the state. The State health benefits plan does not include separately run county plans, city plans, or other municipal plans.

Residents of Institutions: A child who is a patient in an institution for mental disease (IMD) or who is an inmate of a public institution is not eligible. Exception: If a child enrolled in DHCP subsequently requires inpatient services in an IMD, the receipt of inpatient services will not make the child ineligible during a period of continuous eligibility.

18600 Managed Care Enrollment Requirements

Children who are found eligible must enroll with a managed care organization ~~and pay a monthly premium~~ to receive coverage of medical services. The Health Benefits Manager (enrollment broker) will be responsible for the enrollment process ~~including premium payment requirements~~.

18700 Premium Requirements

~~Statutory Authority~~
~~42 C.F.R. 435.926~~

~~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 age, household size and family income as follows:~~

~~Age~~	~~Percent Federal Poverty Level based on Household size~~	~~Monthly Premium~~
~~1 through 5~~	~~143% through 159% FPL~~	~~$10.00~~
~~6 through 18~~	~~134% through 159% FPL~~	~~$10.00~~
~~1 through 18~~	~~160% through 176% FPL~~	~~$15.00~~

1 through 18	177% through 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.

Postpartum 12 Month Continuous Eligibility Exception

Coverage for any child that is pregnant, or within the 12-month postpartum period, may not be terminated for nonpayment.

See 18700 Premium Requirements - History

Effective January 1, 2024, premiums are no longer required.

18 DE Reg. 375 (11/01/14)
20 DE Reg. 639 (02/01/17)
22 DE Reg. 299 (10/01/18)
26 DE Reg. 323 (10/01/22)

18800.1 Continuous Eligibility for Target Low-Income Children

Continuous eligibility means continued eligibility under DHCP during the 12-month period of time between the first month of eligibility and the next scheduled renewal.

The initial month of the continuous period of eligibility is the first month of eligibility. A new period of continuous eligibility will be established beginning with the month following the last month of the previous period of continuous eligibility, when a scheduled renewal is completed and the child is determined to be eligible. A new 12-month period of continuous eligibility will also begin after any break in DHCP eligibility.

There is no interruption of the continuous eligibility period because of an increase in household income. This includes an increase in income because of a change in family size. If there is a decrease in household income or an increase in family size, eligibility will be redetermined. A decrease in income could result in the family becoming eligible for Medicaid or the child remaining eligible for DHCP with a lower premium. If the decrease in income results in a lower premium for the family, the child will receive a new 12-month period of continuous eligibility.

A child who is determined eligible for DHCP remains eligible for a 12-month period of continuous eligibility. A child's eligibility may not be terminated during a continuous eligibility period, regardless of any changes in circumstances, unless:

- The child turns 19 years old;
- The child or child's representative requests a voluntary termination of eligibility;
- The child ceases to be a resident of the State;
- The agency determines that eligibility was erroneously granted at the most recent determination, redetermination or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative;
- The child dies;
- The child becomes eligible for Medicaid; or

There is a failure to pay required premiums or enrollment fees on behalf of a child, as provided for in the DHCP State

~~Plan.~~

Continuous eligibility for targeted low-income children provides coverage to children in DHCP for a full 12-month period regardless of changes in circumstance, with certain exceptions. Continuous eligibility is based on the effective date of the child's last eligibility determination at application or renewal.

The continuous eligibility period begins:

- For applicants on the date of the individual's eligibility.
- Following an annual renewal, on the effective date of the individual's renewal, which begins a new eligibility period.

A child's eligibility may not be terminated during a period of continuous eligibility for changes in circumstance, unless one of the following allowable exceptions applies. These exceptions have been revised effective January 1, 2024.
(1) The child attains age 19, unless the child is in a 12-month postpartum period;
(2) The child or child's representative requests a voluntary termination of eligibility;
(3) The child ceases to be a resident of the State;
(4) The agency determines that eligibility was erroneously granted at the most recent determination, or renewal of eligibility**[,]** because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative;
(5) The child dies; or
(6) The child becomes eligible for Medicaid.

Children who have been determined eligible based on self-attested information are entitled to the 12-month continuous eligibility period. Coverage may not be terminated for such children during a continuously eligible period if, in conducting post-enrollment verification, the state obtains information that indicates that the child does not meet all the eligibility requirements unless the information indicates that one of the limited exceptions to continuous eligibility above applies.

If the self-attested information indicates that the child is eligible, the state is not considered to have made an erroneous determination, even if there is an inconsistency between the attested information and information subsequently obtained from family or electronic data sources after enrollment. The receipt of information is considered a change in circumstance. See Section 14800 Verifications of Factors of Eligibility.

Children whose citizenship or satisfactory immigration status is not verified have not been determined eligible. Continuous Eligibility does not apply to children who are receiving benefits under a reasonable opportunity to provide (ROP) period if the child's status cannot be verified. See Section 14390.1 Reasonable Opportunity to Provide Documentation of Citizenship and Identity or Alien Status.

18800.2 12-month Postpartum Continuous Eligibility

~~Continuous eligibility is provided to targeted low-income children who, while pregnant, were eligible and received services under DHCP throughout the duration of the pregnancy (including any period of retroactive eligibility) and the 12-month postpartum period. Coverage begins on the day the pregnancy ends and continues through the last day of the month in which the 12-months ends.~~

~~For individuals first enrolled at the end of their pregnancy, the regularly-scheduled renewal date may coincide with the end of the extended 12-month postpartum period. For most, however, the 12-month postpartum period will end after their regularly-scheduled renewal date. Therefore, the renewal must be conducted at the end of the individual's extended 12-month postpartum period and not at the regularly-scheduled renewal date.~~

~~A child may not be terminated during a period of 12-month postpartum continuous eligibility, regardless of change in circumstances, unless:~~

- ~~The child or child's representative requests a voluntary termination of eligibility;~~
- ~~The child ceases to be a resident of the State;~~
- ~~The agency determines that eligibility was erroneously granted at the most recent determination, redetermination or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative; or~~
- ~~The child dies.~~

~~Unlike continuous eligibility for children, 12-month postpartum continuous eligibility may not be terminated due to:~~

- ~~Non-payment of premiums,~~
- ~~A child turning 19 years old, or~~
- ~~A child becoming eligible for Medicaid.~~

The 12-month postpartum period is a mandatory extension of coverage for DCHP members who were determined eligible in the month the pregnancy ends or in a month prior to the month the pregnancy ends (while still pregnant). A targeted low-

income child cannot apply and be found eligible for the postpartum period alone.

The 12-month postpartum period begins on the date a pregnancy ends, extends 12 months, and ends on the last day of the month in which the 12-month period ends.

Once it has been determined that a DHCP member is eligible for the 12-month postpartum continuous eligibility, they will transfer to the Pregnant Woman Medicaid group and remain continuously eligible throughout the 12-month postpartum period, regardless of changes in income.

13 DE Reg. 1540 (06/01/10)
14 DE Reg. 1361 (06/01/11)
17 DE Reg. 503 (11/01/13)
26 DE Reg. 323 (10/01/22)

***Please Note: Due to formatting of certain amendments to the regulation, they are not being published here. Copies of the documents are available at:**

https://regulations.delaware.gov/register/july2024/final/Amended CHIP CS27 Continuous Eligibility.pdf

28 DE Reg. 45 (07/01/24) (Final)