

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** 17000

FINAL

ORDER

Medicaid Workers with Disabilities (MWD) Premiums

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Division of Social Services Manual (DSSM) and Title XIX Medicaid State Plan regarding Medicaid Workers with Disabilities (MWD) Premiums, specifically, to remove the requirement of premiums for participation in the MWD Program and to provide clarity to other sections of the MWD regulations. 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 XIX Medicaid State Plan and Division of Social Services Manual (DSSM) regarding Medicaid Workers with Disabilities Premiums.

Background

The Consolidated Appropriations Act (CAA) of 2023 requires states to provide 12-months continuous eligibility to children under the age of 19 in Medicaid and Childrens Healthy Insurance Program (CHIP). This requirement is regardless of the Medicaid program the child is enrolled in. Medicaid for Workers with Disabilities (MWD) may include eligible individuals within the ages 16-65. Under Delaware's current MWD program, individuals are required to pay a monthly premium, depending on their income.

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 explaining that states will no longer be permitted to terminate the Medicaid or CHIP eligibility of a child under age 19 during a CE period for non-payment of premiums.

Statutory Authority

- 42 CFR 435.926 (d)
- The Consolidated Appropriations Act (CAA) 2023

Purpose

The purpose of this proposed regulation is to remove the requirement of premiums for participation in the MWD Program, and to provide clarity to other sections of the MWD regulations.

Summary of Proposed Changes

Effective July 1, 2024, the DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM) and Title XIX Medicaid State Plan to remove the requirement of premiums for participation in the MWD Program, and to provide clarity to other sections of the MWD regulations.

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	\$237	\$952
Federal funds	\$353	\$1411

Summary of Comments Received with Agency Response and Explanation of Changes

The following comments were received:

Comment: Comments were received encouraging DMMA to make information regarding the MWD program more accessible to potential MWD eligible individuals.

Agency Response: DMMA is working to update information available regarding the MWD program.

Comment: There were comments supporting the proposed changes to the Regulations and State Medicaid Plan for the elimination of premiums for Medicaid for Workers with Disabilities (MWD).

Agency Response: DMMA appreciates the support.

Comment: Comments were received that a spouse's unearned income is not factored in for the unearned income step of a MWD applicant's eligibility, but rather only in the total countable income.

Agency Response: We agree with the commenters. However, the regulation is not substantively changing with the revision, but seeks to provide clarity by removing reference to a set dollar figure for the unearned income exclusion.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- State Council for Persons with Disabilities (SCPD)
- The Arc of Delaware
- Governor's Advisory Council for Exceptional Citizens (GACEC)

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.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) and Title XIX Medicaid State Plan regarding Medicaid Workers with Disabilities Premiums, specifically, to remove the requirement of premiums for participation in the MWD Program and to provide clarity to other sections of the MWD regulations and shall be final effective July 11, 2024.

6/14/2024 | 12:45 PM EDT

Date of Signature

Josette D. Manning Esq.
Cabinet Secretary, DHSS

Attachment 2.6 A
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: DELAWARE

Citation(s)	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 the 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>XThe agency 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>

TN No. SPA # <u>09-005 24-0007</u>	Approval Date <u>January 26, 2010</u>
Supersedes	
TN No. SPA <u>N/A 09-005</u>	Effective Date <u>October 1, 2009 July 1, 2024</u>

Attachment 2.6 A
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: DELAWARE

Citation(s)	Condition or Requirement
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1902(a)(10)(A)(ii) Premiums and Other Cost-Sharing Charges
 (XV), (XVI), and 1916(g)
 of the Act (cont.)

For the Basic Coverage Group, the agency's premium or other cost-sharing charges and how they are applied, are described below.

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

~~Individuals eligible for Medicaid under this section must pay a monthly premium subject to the following premium structure:~~

Cost-Sharing Schedule	
Percentage of FPL	Monthly Premium Amount
100% - 125%	\$25
125% - 150%	\$35
150% - 175%	\$45
175% - 200%	\$60
200% - 225%	\$75
225% - 250%	\$90
250% - 275%	\$105

TN No. SPA # <u>09-005 24-0007</u>	Approval Date <u>January 26, 2010</u>
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17000 SSI Related Programs

17800 Medical Assistance during Transition to Medicare

42 CFR 435.232

~~Under 42 CFR 435.232~~ Medicaid may be provided to individuals who receive only an optional State supplement and who would be eligible for SSI except for the level of their income.

The rules in this section set forth the eligibility requirements for coverage under this state-administered Optional State Supplementation group - Medical Assistance during Transition to Medicare (MAT). The MAT group is implemented March 1, 2001. ~~Eligibility under this group is not retroactive.~~ Effective January 1, 2025, this group is eligible for retroactive eligibility.

12 DE Reg. 788 (12/01/08)

17908 Unearned Income Exclusion

Unearned income is excluded up to ~~\$956.00 per month for the individual. There is no \$956.00 per month unearned income exclusion for a spouse who is not applying for MWD.~~ This the standard established by Delaware Medicaid and Medical Assistance (DMMA). The unearned income exclusion determined in 2009 was \$956.00 per month. The unearned income exclusion ~~will be~~ is increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register. There is no unearned income exclusion for a spouse who is not applying for MWD.

13 DE Reg. 654 (11/01/09)

17911 Financial Eligibility Determination

There are two income tests used to determine financial eligibility:

1. If the monthly unearned income of the individual exceeds ~~\$956.00~~ the standard established by Delaware Medicaid and Medical Assistance (DMMA), the individual is ineligible. The unearned income limit was determined to be \$956.00 per month in 2009. This unearned income limit ~~will be~~ is 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).

13 DE Reg. 654 (11/01/09)

17912 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 October 1, 2009.

13 DE Reg. 652 (11/01/09)

17913 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:~~

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

~~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 15th of the month for the next month's coverage.~~

~~Coverage will be cancelled when the individual 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.~~

~~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.~~

~~Effective July 1, 2024, premiums are no longer required.~~

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

15 DE Reg. 1716 (06/01/12)

***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 Attachment 2.6-A Supplement 8A page 1.pdf>

28 DE Reg. 48 (07/01/24) (Final)

