



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: August 29, 2017

TO: Ms. Nicole Cunningham, DMMA
Planning & Policy Development Unit

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 21 DE Reg. 156 [DMMA Notice: DSHP Amendments (8/1/17)] – Medicaid Coverage of Former Out-of-State Foster Care Youth

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) notice to authorize Medicaid coverage until age 26 of former foster care youth from other states. The proposed regulation was published as 21 DE Reg. 156 in the August 1, 2017 issue of the Register of Regulations.

As background, the SCPD endorsed a DMMA proposed regulation in March, 2017 extending Medicaid coverage to 18-26 year olds who aged out of the foster care system in another state. The current proposed DMMA State Plan amendment simply implements the final regulation approved in May. See 20 DE Reg. 908 (May, 2017).

The description of the State Plan amendment is as follows:

Delaware currently provides coverage to former foster care youth under the age of 26, not otherwise mandatorily eligible, who were on Medicaid and in foster care in Delaware when they turned 18 or "aged out" of foster care. Delaware also currently provides coverage to individuals with income up to 133 percent of FPL under the new adult group identified in the ACA. The purpose of this amendment is to provide coverage on a state-wide basis to former foster care youth who currently reside in Delaware and were in foster care and enrolled in Medicaid at age 18 or when they "aged out" of the system in a different state.

21 DE Reg. 156, 157 (8/1/17)

Consistent with the attached summary of the proposed State Plan amendment, Delaware Medicaid currently covers approximately 150 former foster care youth who “aged out” of the Delaware foster care system. DMMA anticipates that the coverage for former foster care youth from out-of-state will “likely result in very few new clients, and therefore won’t have a significant fiscal impact.” See 20 DE Reg. at 696 (May 1, 2017).

The SCPD is endorsing the proposed amendment.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position on the proposed regulation.

cc: Mr. Steve Groff, DMMA
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

21reg156 dmma-notice DSHP amendments Medicaid coverage former out of state foster care youth 8-23-17



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MEMORANDUM

DATE: March 20, 2017

TO: Ms. Kimberly Xavier, DMMA
Planning & Policy Development Unit

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 20 DE Reg. 694 [DMMA Proposed Medicaid Eligibility of Former Foster Youth Regulation (3/1/17)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposed regulation to expand the eligible population to young adults who aged out of the foster care system of another state. The proposed regulation was published as 20 DE Reg. 694 in the March 1, 2017 issue of the Register of Regulations.

Consistent with federal law, DMMA currently provides Medicaid coverage to former foster care youth who have aged out of Delaware's foster care system until age 26. The financial impact of this initiative would be modest:

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.

At 696.

There would be no income or resource cap for this population. Id.

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 analogous to the option of youth who remain on their parent's private health insurance through age 26.

The SCPD is endorsing the proposed regulation. may wish to consider endorsement with a courtesy copy to the Office of the Child Advocate and Steve Yeatman at DSCY&F.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed regulation.

cc: Mr. Stephen Groff
Ms. Tania M. Culley, Esq.
Mr. Steve Yeatman, DSCYF
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

20reg694dmms-medicaid eligibility former foster youth 3-20-17

Section I – Program Description

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.

Delaware currently, and will continue to, provides coverage to former foster care youth under the age of 26, not otherwise mandatorily eligible, who were on Medicaid and in foster care in Delaware when they turned age 18 or "aged out" of foster care. Delaware also currently provides coverage to individuals with income up to 133 percent of the federal poverty level (FPL) under the new adult group identified in the ACA.

The purpose of this Demonstration is to provide coverage on a state-wide basis to former foster care youth who currently reside in Delaware and were in foster care and enrolled in Medicaid at age 18 or when they "aged out" of the system in a different state. As such, Delaware will cover former foster care youth from a different state who have income at or below 133 percent Federal Poverty Level (FPL) under a mandatory coverage group or under the new adult group identified in the ACA. Additionally, on May 26, 2017, Delaware submitted an eligibility State Plan Amendment (SPA) electing to provide coverage to the optional eligibility group described under 1902(a)(10)(A)(ii)(XX) of the state plan. Delaware is also seeking an amendment and requests waivers of sections 1902(a)(8) and 1902(a)(10), to its current 1115 Demonstration Waiver, to the extent necessary, to permit the state to limit the provision of medical assistance (and treatment as eligible) for individuals described in the eligibility group under 1902(a)(10)(A)(ii)(XX) of the state plan, to former foster care youth who currently reside in Delaware, are under 26 years of age, were in foster care under the responsibility of another state, and were enrolled in Medicaid at age 18 or when they "aged out" of foster care.

Delaware proposes to test and evaluate how including former foster care youth who "aged out" of foster care in a different state increases and strengthens overall coverage for former foster care youth and improves health outcomes for these youth. Delaware expects that this hypothesis will be proven correct.

Section II – Demonstration Eligibility

The population affected by this Demonstration is former foster care youth who were in foster care under the responsibility of another state and enrolled in Medicaid at age 18 or when they "aged out" of foster care. Individuals who meet these criteria and have income at or below 133 percent FPL will be covered under a mandatory coverage group or under the new adult group. Individuals with income above 133 percent FPL require Section 1115 Demonstration authority. Delaware currently serves approximately 150 former foster care youth that "aged out" of foster care in Delaware. Therefore, Delaware does not anticipate a large number of individuals who "aged out" of foster care in a different state to seek Medicaid coverage in Delaware. Additionally, Delaware estimates that a large percentage of those individuals will fall under a different mandatory coverage or new adult group.

Eligibility Group	Description/ Social Security Act and CER Citations	Income Level/FPL	Resource Standard	Benefit Package
Former foster care youth who were in foster care under the responsibility of another state and enrolled in Medicaid at age 18 or when they "aged out" of foster care.	§1115 of the Social Security Act; Demonstration Authority	>133%	N/A	Diamond State Health Plan (DSHP)

Section III – Demonstration Benefits and Cost-Sharing Requirements

Benefits provided to the population included in this application will be the same benefits that are provided for the current Medicaid population under Delaware's Medicaid State plan.

1. Indicate whether the benefits provided under the Demonstration differ from those provided under the Medicaid and/or CHIP State plan:
 Yes No
2. Indicate whether the cost sharing requirements under the Demonstration differ from those provided under the Medicaid and/or CHIP State plan:
 Yes No

Section IV – Delivery System and Payment Rates for Services

The health care delivery system for Demonstration participants will be no different than the healthcare delivery system that is in place today for Delaware's Medicaid population.

1. Indicate whether the delivery system used to provide benefits to Demonstration participants will differ from the Medicaid and/or CHIP State plan:
 Yes No

Currently, there are approximately 150 former foster care youth who were in foster care under the responsibility of Delaware and enrolled in Medicaid at age 18 or when they "aged out" of foster care. Delaware does not anticipate that there is a large number of former foster care youth who currently reside in Delaware, are under 26 years of age, were in foster care under the responsibility of another state, and were enrolled in Medicaid at age 18 or when they "aged

out” of foster care, and that are not covered under another type of State Plan covered group. However, all former foster youth who were in foster care under the responsibility of a different state, and enrolled in Medicaid while in foster care, will receive benefits through the same managed care delivery system described in the state’s approved Section 1115 Demonstration.

Section V – Implementation of Demonstration

Delaware is requesting approval, under Section 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. Delaware does not currently provide Medicaid coverage to this population, but is prepared to begin upon approval of the 1115 Demonstration.

On May 26, 2017, Delaware submitted a State Plan Amendment to CMS to elect the option to provide coverage to individuals with income above 133% of FPL and requests waivers of sections 1902(a)(8) and 1902(a)(10) to limit this state plan group coverage to former foster care youth who were in Medicaid and foster care in a different state. Additionally, Delaware published a final order on May 1, 2017 to amend eligibility requirements for the Former Foster Children Group effective May 21, 2017.

Section VI – Demonstration Financing and Budget Neutrality

Delaware is not requesting Section 1115 expenditure authority as the affected population is comprised of a Medicaid State Plan eligibility group described in section 1902(a)(10)(ii)(XX) of the Social Security Act (new adult group); therefore, no budget neutrality agreement is needed in conjunction with this Demonstration since expenditures will be reported under its State Plan.

Section VII – List of Proposed Waivers and Expenditure Authorities

Expenditure Authorities:

Delaware does not need expenditure authority for former foster care youth who are at least 21 years old through age 26, were in foster care under the responsibility of another state, and were enrolled in Medicaid at age 18 or when they “aged out” of the system, and have income above 133% of FPL as this population is covered under the eligibility group described in section 1902(a)(10)(ii)(XX) of the Social Security Act (new adult group), and is served under the State Plan.

Waiver Authorities:

Delaware submitted a State Plan Amendment to CMS on May 26, 2017 to elect the option to provide coverage to individuals with income above 133% of FPL and requests waivers of sections 1902(a)(8) and 1902(a)(10) to limit this state plan group coverage to former foster care youth who were in Medicaid and foster care in a different state.

Section VII – Public Notice

1. Delaware provided an open comment period from August 1, 2017 to September 5, 2017.
2. Delaware published a Notice of Public Comment and Hearing in the Delaware Register of Regulations, the Delaware News Journal, and the Delaware State News on August 1, 2017. The publication in the Delaware Register can be found at:
<http://regulations.delaware.gov/default.shtml>
3. A draft of this Section 1115 Demonstration Waiver application was posted on the Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) website on August 1, 2017 as well.
4. Delaware conducted three public hearings on this Section 1115 Demonstration Waiver. The information for these hearings is as follows:
 - a. NEW CASTLE COUNTY
Date: August 25, 2017
Time: 2:30 PM – 3:30 PM
Location: DDDS Fox Run Center
2540 Wrangle Hill Road
Suite 200, Bear, DE 19701
 - b. KENT COUNTY
Date: August 22, 2017
Time: 2:30 PM – 3:30 PM
Location: Legislative Hall
411 Legislative Avenue
Dover, DE 19901
 - c. SUSSEX COUNTY
Date: August 22, 2017
Time: 10:45 AM – 11:45 AM
Location: Thurman Adams State Svc Center
546 S. Bedford St.
Georgetown, DE 19947
5. Delaware certifies that it used an electronic mailing list to notify the public.
6. The following is a list of comments received and associated responses that pertain to the 1115 Demonstration submission:

TBD after hearing

Section IX – Demonstration Administration