



**STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES**

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The Honorable John Carney
Governor

John A. McNeal
Director

MEMORANDUM

DATE: November 30, 2018

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

FROM: Nick J. Fina, Ed.D - Chairperson *NJF/ARR*
State Council for Persons with Disabilities

RE: 22 DE Reg. 361 [DMMA Proposed Regulation DMMA Revisions to DSSM on
MAGI Methodology (11/1/18)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Medicaid and Medical Assistance's (DMMA) proposal to amend the Delaware Social Services Manual (DSSM) regarding Medicaid MAGI methodology in order to clarify policies on special income counting rules for children and tax dependents. These policies are meant to align with the federal Affordable Care Act regulations. This proposed regulation was published as 22 DE Reg. 361 in the November 1, 2018 issue of the Register of Regulations. The SCPD has the following observations.

The proposed changes largely do track the relevant federal regulations, but they also contain an error and could benefit from additional clarifying language.

The amended section on definitions (Section 16100) explains that a tax dependent must be an individual's qualifying child or qualifying relative, but it fails to define the terms "qualifying child" and "qualifying relative," which have very specific definitions under federal regulations. In order to be considered a qualifying child or a qualifying relative, an individual must satisfy various tests. For example, a "qualifying child" must meet certain relationship, residence, age, and support tests.¹

¹ 26 U.S.C. §§ 152(c)(1)(A)-(E); see also NHeLP's Advocates' Guide to MAGI at 44-46, available at: <https://healthlaw.org/resource/advocates-guide-to-magi-updated-guide-for-2018>.

The proposed regulations also include a new section on “special income counting rules for children or dependents claimed by someone other than a parent” (Section 16500.5). This section notes that a tax dependent’s income is excluded from total household income if the tax dependent’s income is below the tax filing threshold and the tax dependent is therefore not required to file a tax return for the current tax year. Under federal regulations, *this exclusion applies whether or not the tax dependent actually files a tax return*,² but this language is not included in the proposed language for the DSSM. CLASI recommends adding this clarification. A similar clarification is already included in the preceding section, Section 16500.4, concerning situations in which a child’s income is excluded from total household income. Including the additional language in Section 16500.5 would thus also improve consistency between these sections.

The last sentence in Section 16500.5 reads: “When determining the total household income of a child or dependent *who is not living with a parent*, the MAGI-based income is always counted in determining the child or dependent’s eligibility, even if the income is below the tax filing threshold” (emphasis added). This sentence misstates the rule it is trying to convey. For tax dependents, their MAGI-based income is always counted in determining their own eligibility when determining the total household income of a tax dependent *who is claimed by someone other than a parent*³ – not a tax dependent “who is not living with a parent.” The two situations are not equivalent. For example, a 21-year-old niece could be living with her unemployed mother, and they both could be claimed as tax dependents by an aunt.⁴ In this scenario, the tax dependent is living with a parent, but she is claimed as a dependent by someone other than a parent.

Finally, the above section fails to note that any exceptions exist to the general rule. The Centers for Medicare & Medicaid Services (CMS) highlights one such exception: “In the event that such a tax dependent’s household (established using the non-filer rules described at 435.603(f)(3)) includes the tax dependent’s parent, the tax dependent’s income would be excluded from his own household income.”⁵ The DSSM should explain this exception and any others that may apply.

In conclusion, the SCPD is asking DMMA to further revise proposed sections 16100 and 16500.5 regarding MAGI methodology. DMMA should define the terms “qualifying child” and “qualifying relative.” Additionally, Section 16500.5 should include language clarifying that the exclusion at issue applies whether or not the tax dependent actually files a tax return. This

² 42 C.F.R. § 435.603(d)(2)(ii).

³ Centers for Medicare & Medicaid Services, MAGI 2.0 Building MAGI Knowledge, Part 2: Income Counting at 11; available at: <https://www.medicaid.gov/state-resource-center/mac-learning-collaboratives/downloads/part-2-income.pdf>.

⁴ See generally the Internal Revenue Service Tax Tutorial on Dependents, available at https://apps.irs.gov/app/understandingTaxes/how/tax_tutorials/mod04/tt_mod04_01.jsp.

⁵ Centers for Medicare & Medicaid Services, MAGI 2.0 Building MAGI Knowledge, Part 2: Income Counting at 11; available at: <https://www.medicaid.gov/state-resource-center/mac-learning-collaboratives/downloads/part-2-income.pdf>.

section should also explain that when determining the total household income of a tax dependent who is claimed by someone other than a parent (not “who is not living with a parent”), the tax dependent’s MAGI-based income is always counted in determining his/her own eligibility. Lastly, the section should note any exceptions to the general rules.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations and recommendations.

cc: Mr. Steve Groff, DMMA
Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disability Council

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