

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

### PROPOSED

### PUBLIC NOTICE

#### Medicaid for Workers with Disabilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) related to the implementation of the Medicaid Buy-In program for the working disabled.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

#### 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. 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.

#### 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 TWWIIA (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 17908, *Income*, explains what income is considered as well as what is excluded. The deeming policy for income is explained in §17909, *Deeming of Income*. §17910, *Financial Eligibility Determination*, describe the income tests used to determine financial eligibility. *Retroactive Eligibility* provisions are contained in Section 17911 and, finally, §17912 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 & Medicaid Services (CMS).

**DMMA PROPOSED REGULATION #08-11  
REVISIONS:**

**Revision:**

**ATTACHMENT 2.2-A**

**PAGE 23d**

**OMB NO.:**

State/Territory:

Citation	Groups Covered		
B. <u>Optional Groups Other Than the Medically Needy</u> (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.

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OMB No.:

State/Territory:

Citation		Condition or Requirement
1902(a)(10)(A) (ii) (XIII) of the Act	(i)	<u>Working Individuals with Disabilities - BBA</u>  In determining countable income and resources for working individuals with disabilities under the BBA, the following methodologies are applied:  ____ The methodologies of the SSI program.  ____ 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.  ____ 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.

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ATTACHMENT 2.6-A

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OMB No.:

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Citation		Condition or Requirement
1902(a)(10)(A) (ii) (XV) of the Act	(ii)	<u>Working Individuals with Disabilities - Basic Coverage Group - TWWIIA</u>  In determining financial eligibility for working individuals with disabilities under this provision, the following standards and methodologies are applied:  ____ The agency does not apply any income or resource standard.

NOTE: If the above option is chosen, no further eligibility-related options should be elected.

☒ The agency applies the following income and/or resource standard(s):

1. **Income Standard:** 275% of 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  
Page 12e  
OMB No.:

State/Territory:

Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XV) of the Act (cont.)	<u>Income Methodologies</u>  In determining whether an individual meets the income standard described above, the agency uses the following methodologies.  <input checked="" type="checkbox"/> The income methodologies of the SSI program.  <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.  <input 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.

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Page 12f  
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State/Territory:

Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XV) of the Act (cont.)	<u>Resource Methodologies</u>

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 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.:**

State/Territory:	
Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XV) of the Act (cont.)	_____ The agency does not disregard funds in 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.

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

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**Page 12h**

**OMB No.:**

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

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**Page 12i**

**OMB No.:**

State/Territory:	
Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XVI) of the Act (cont.)	<u>Income Methodologies</u>  In determining whether an individual meets the income standard described above, the agency uses the following methodologies.  _____ The income methodologies of the SSI program.  _____ 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.

\_\_\_\_\_ The agency uses more liberal income methodologies than the SSI program. More liberal methodologies are described in Supplement 8a to Attachment 2.6-A.

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ATTACHMENT 2.6-A  
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OMB No.:

State/Territory:	
Citation	Condition or Requirement
1902(a)(10)(A) (ii) (XVI) 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 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.</p> <p>_____ The agency disregards funds held in employer-sponsored retirement plans, but not private retirement plans.</p> <p>_____ 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.</p>

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ATTACHMENT 2.6-A  
Page 12k  
OMB No.:

State/Territory:	
Citation	Condition or Requirement
1902(a)(10)(A)	<p>_____ The agency does not disregard funds in (ii)(XVI) of the Act (cont.) retirement accounts.</p> <p>_____ The agency uses resource methodologies in</p>

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 12l  
OMB No.:

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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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:



- ☒ 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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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</p>

described below.

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

#### **DMMA PROPOSED REGULATIONS #08-11b 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 date for MWD is June 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 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.

**17907 Unearned Income Exclusion**

Unearned income is excluded up to \$800.00 per month for the individual. There is no \$800.00 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.

**17908 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

### **17909 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.

### **17910 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, 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).

### **17911 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 1, 2008.

### **17912 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 20th 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.

**11 DE Reg. 1316 (04/01/08) (Prop.)**