

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** 16000

PROPOSED

PUBLIC NOTICE

16000 Financial Methodologies - Application of Modified Adjusted Gross Income (MAGI) Methodology

Executive Order 36 Review and Reform of State Agency Regulations Part 1

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del. C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing a periodic review of Division of Social Services Manual (DSSM), specifically, regulations promulgated three years ago or more for possible modification or elimination.

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 by mail to Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906; by email to DHSS_DMMA_Publiccomment@Delaware.gov; or by fax to 302-255-4413 by 4:30 p.m. on July 1, 2025. Please identify in the subject line: Executive Order 36 Review and Reform of State Agency Regulations Part 1.

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 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 a periodic review of Division of Social Services Manual (DSSM), regarding Executive Order 36 Review and Reform of State Agency Regulations Part 1.

Statutory Authority

- State of Delaware Executive Order 36, Review and Reform of State Agency Regulations

Background

Delaware Health and Social Services (DHSS) is the principal state agency charged with providing health and other essential human services so its citizens can live healthier, more prosperous, and more productive lives.

On June 14, 2012, Governor Jack Markell signed Executive Order 36, which establishes a process for the review of certain regulations by state agencies. In Executive Order 36, "Review and Reform of State Agency Regulations", the Governor recognized the importance of a streamlined, effective, and efficient regulatory framework designed to promote economic growth and improve the efficiency of state government.

While regulations can establish clear and transparent frameworks for competition and economic activity, unnecessary and duplicative regulations can also damage market economy by imposing unnecessary costs on the private sector and citizens.

Executive Order 36 is the mechanism to achieve a more robust and effective regulatory framework. The Governor has directed the heads of all state departments and agencies to review existing significant regulations to identify those rules that can be eliminated as obsolete, unnecessary, burdensome, or counterproductive or that can be modified to be more effective, efficient, flexible, and streamlined.

While the systematic review of regulations will focus on the elimination of rules that are no longer justified or necessary, the review will also consider strengthening, complementing, or updating rules where necessary or appropriate—including, if relevant, undertaking new rulemaking.

DMMA is responsible for regulations, in whole or in part, that appear in the Delaware Administrative Code and are identified as Division of Social Services Manual (DSSM) Sections 16000, 30000, 50000, 70000, and 80000. These regulations may

be viewed online at: Delaware Social Services Manual

Summary of Proposal

Purpose

The purpose of this proposed regulation is to conduct a periodic review of Division of Social Services Manual (DSSM).

Summary of Proposed Changes

Effective August 11, 2025, the DHSS/DMMA proposes to amend DSSM promulgated three years ago or more for possible modification or elimination.

Public Notice

In accordance with the *federal* public notice requirements established in 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 gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 1, 2025.

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 provide 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

There is no fiscal impact.

16000 Financial Methodologies - Application of Modified Adjusted Gross Income (MAGI) Methodology

This section implements section 1902(e)(14) of the Social Security Act and describes the modified adjusted gross income (MAGI) methodology used to determine household composition and family size and how income is counted for the financial eligibility determination of modified adjusted gross income (MAGI)-related eligibility groups in accordance with the Affordable Care Act of 2010.

16100 Definitions

The following words and terms, when used in the context of these policies, will have the following meaning unless the context clearly indicates otherwise.

“Child” means a natural or biological, adopted, or step-child.

“Family size” means the number of persons counted as members of an individual's household. When determining the family size of a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver. When determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted as herself plus the number of children she is expected to deliver.

“Federal Poverty Level” means the Federal poverty level updated periodically in the Federal Register by the Secretary of the United States Department of Health and Human Services that is in effect for the budget period used to determine an individual's eligibility in accordance with this section.

“Household income” means the sum of the MAGI-based income of every individual included in the individual's household unless an exception applies.

Exceptions:

The MAGI-based income of an individual who is included in the household of his or her parent and who is not expected to be required to file a tax return for the taxable year in which eligibility is being determined, is not included in the household income whether or not the individual files a tax return.

The MAGI-based income of a tax dependent, claimed by someone other than a parent, who is not expected to be required to file a tax return for the taxable year in which eligibility is being determined, is not included in the household income of the taxpayer whether or not such tax dependent files a tax return.

“Modified adjusted gross income (MAGI)” means the adjusted gross income reported on the Internal Revenue Service (IRS) Form 1040 with the addition of:

- (1) Foreign earned income excluded from taxes
- (2) Tax-exempt interest

(3) Tax-exempt Social Security income

"MAGI-based income" means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Internal Revenue Service Code, with the following exceptions:

(1) An amount received as a lump sum is counted as income only in the month received.

(2) Gambling winnings less than \$80,000 are counted in the month received; Winnings of \$80,000 but less than \$90,000 are counted as income over two months, with an equal amount counted in each month. For every additional \$10,000 one month is added to the period over which total winnings are divided, in equal installments, and counted as income. The maximum period of time over which winning may be counted is 120 months.

Under section 53103(b)(2) of the BBA of 2018 the requirement to count qualified lottery and gambling winnings in household income over multiple months applies only to the individuals receiving the winnings. The determination of household income for other members of the individual's household are not affected.

For example: the total amount of qualified lottery or gambling winnings of a spouse or parent continues to count only in the month received in determining the eligibility of the other spouse and children.

(3) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.

(4) American Indian/Alaska Native income as defined in 42 CFR 435.603(e)(3) is excluded.

"Parent" means a natural or biological, adopted, or step-parent.

"Qualifying child" To be a dependent, a person must be either a qualifying child or a qualifying relative. Generally, a person is a qualifying child if that person:

- Is a child, stepchild, foster child, brother, sister, stepbrother, step-sister, or a descendant of any of them,
- Lived with claiming tax filer for more than half of the year,
- Didn't provide more than half of his or her own support for the year,
- Was under age 19 at the end of the year and younger than the claiming tax filer (or spouse if filing jointly), or was under age 24 at the end of the year, a student, and younger than the tax filer (or spouse if filing jointly), or was any age and permanently and totally disabled, and didn't file a joint return with his or her spouse.

For more information, see *Exemptions for Dependents* in IRS Pub 501.

"Qualifying relative" To be a dependent, a person must be either a qualifying child or a qualifying relative. Generally, a person is a qualifying relative if that person:

- Lives with or is related to the taxpayer claiming him or her,
- ~~Doesn't have \$4,050 or more of gross total income (based on 2017 IRS Pub 501 limit);~~ Has gross income at or below the Qualifying Relative income limit found in IRS Pub 501 (which may change annually).
- Is supported (generally more than 50%) by the taxpayer claiming him or her, and
- Is neither a qualifying child nor a qualifying child of anyone else

For more information, see *Exemptions for Dependents* in IRS Pub. 501

"Sibling" means a natural or biological, adopted, half, or step-sibling.

"Spouse" means a person who is legally married to another person regardless of their genders.

"Tax dependent" means a person, other than the tax filer or the tax filer's spouse, for whom an exemption can be claimed. To be a dependent, a person must be a qualifying child or qualifying relative of the tax filer. For more information, see *Exemptions for Dependents* in IRS Pub 501.

17 DE Reg. 731 (01/01/14)

22 DE Reg. 668 (02/01/19)

24 DE Reg. 1072 (06/01/21)

16200 Application of MAGI income and household size

Eligibility for an applicant shall be based on MAGI methodology effective January 1, 2014.

Ongoing eligibility for a beneficiary determined eligible for Medicaid coverage to begin on or before December 31, 2013, shall not have eligibility based on MAGI methodology until March 31, 2014, or at the next regularly scheduled renewal of eligibility, whichever is later.

If the household income of an individual determined in accordance with this section results in financial ineligibility for Medicaid and the household income of the individual determined in accordance with 26 CFR 1.36B-1(e) is below 100% of the Federal Poverty Level (FPL), Medicaid financial eligibility will be determined in accordance with 26 CFR 1.36B-1(e) as promulgated the IRS. This is the income-counting methodology used by the Federally Facilitated Marketplace (FFM) to determine eligibility for Advance Premium Tax Credits and Cost Sharing Reductions.

16300 MAGI-based Determination of Eligibility

Each applicant or beneficiary who meets the non-financial eligibility requirements will have a determination of eligibility based on MAGI methodology.

For an applicant or beneficiary found not eligible based on MAGI methodology and who has been identified on the application or renewal form as potentially eligible on a MAGI-excepted basis, an eligibility determination will be made on such basis.

An individual may request a determination of eligibility on a basis other than MAGI.

16400 Household Composition

Household composition is based on tax households, with certain exceptions.

16400.1 Basic rule for taxpayer not claimed as a tax dependent

For an individual who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another taxpayer, the household consists of:

- the taxpayer;
- a spouse living with the taxpayer; and
- all persons whom the taxpayer expects to claim as a tax dependent.

If a taxpayer cannot reasonably establish that another individual is a tax dependent for the tax year in which Medicaid is sought, the inclusion of the dependent in the taxpayer's household shall be determined according to the rules described at Section 16400.3, Rule for individuals who neither file a tax return nor are claimed as a tax dependent.

16400.2 Basic rule for tax dependents

For an individual who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made, the household is the same as the taxpayer's household unless the individual meets any of the following exceptions:

- the individual expects to be claimed as a tax dependent of someone other than a spouse or parent;
- the individual is a child under age 19 living with both parents, but the parents do not expect to file a joint tax return;

or

the individual is a child under age 19 who expects to be claimed by a non-custodial parent. A non-custodial parent is based on a court order or binding separation, divorce, or custody agreement. If there is no such order or agreement or if there is a shared custody agreement, the custodial parent is the parent with whom the child spends most nights.

If the individual meets any of the exceptions, the household shall be determined according to the rules described at Section 16400.3, Rule for individuals who neither file a tax return nor are claimed as a tax dependent.

16400.3 Rule for individuals who neither file a tax return nor are claimed as a tax dependent

For an individual who does not expect to file a tax return and does not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, the household consists of the individual, and if living with the individual:

- the individual's spouse;
- the individual's children under age 19; and
- for individuals under age 19, the individual's parents and any siblings who are also under age 19.

16400.4 Rule for married couples

For married couples, each spouse will be included in the household of the other spouse if they are living together or if they expect to file a joint tax return.

17 DE Reg. 731 (01/01/14)

16500 MAGI-based Income

MAGI-based income is based on federal tax rules for determining adjusted gross income with some modifications.

16500.1 Counted Income - Below are the common but not exclusive list of included income items per the Internal Revenue Service (IRS) for calculating MAGI. Please visit <https://www.irs.gov/publications/p525> to find the entire list of items on the list.

- Wages, salaries, tips, etc.
- Interest – both taxable and tax-exempt amounts.
- Ordinary dividends.
- Qualified dividends.
- Taxable refunds, credits, or offsets of state and local income taxes.
- Alimony - for individuals with alimony agreements finalized on or before December 31, 2018, alimony continues to be included in the income of the recipient for the duration of the agreement unless or until the agreement is modified. Ali-

mony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not included in the income of the recipient.

- Self-Employment (Business income or ~~(loss)~~ loss).
- Capital gain or (loss).
- Other gains or (losses).
- IRA distributions – taxable amount.
- Pensions and annuities – taxable amount.
- Rental real estate, royalties, partnerships, S corporations, trusts, etc.
- Farm income or (loss).
- Unemployment compensation.
- Social Security benefits – both taxable and tax-exempt amounts.
- Lump sum payment - a non-recurring lump sum payment (such as back pay, a retroactive benefit payment, State tax refund, or an insurance settlement) is counted as taxable income only in the month received.
- Gambling winnings less than \$80,000 are counted in the month received; Winnings of \$80,000 but less than \$90,000 are counted as income over two months, with an equal amount counted in each month. For every additional \$10,000 one month is added to the period over which total winnings are divided, in equal installments, and counted as income. The maximum period of time over which winning may be counted is 120 months.
 1. Under section 53103(b)(2) of the BBA of 2018 the requirement to count qualified lottery and gambling winnings in household income over multiple months applies only to the individuals receiving the winnings. The determination of household income for other members of the individual's household are not affected.
For example: the total amount of qualified lottery or gambling winnings of a spouse or parent continues to count only in the month received in determining the eligibility of the other spouse and children.
 2. Affected individuals are notified of the date on which the lottery or gambling winnings no longer will be counted for the purpose of Medicaid or CHIP eligibility. DMMA will also notify affected individuals of the hardship exemption.
- Other taxable income.

24 DE Reg. 1072 (06/01/21)

16500.1.1 Lottery and Gambling Winnings

Months over which Income is counted by Income Increment

From \$	Up To \$	# Months Counted for Medicaid
1	79,999	1
80,000	89,999	2
90,000	99,999	3
100,000	109,999	4
110,000	119,999	5
120,000	129,999	6
130,000	139,999	7
140,000	149,999	8
150,000	159,999	9
160,000	169,999	10
170,000	179,999	11
180,000	189,999	12
190,000	199,999	13
200,000	209,999	14
210,000	219,999	15
220,000	229,999	16
230,000	239,999	17
240,000	249,999	18
250,000	259,999	19
260,000	269,999	20
270,000	279,999	21
280,000	289,999	22

From \$	Up To \$	# Months Counted for Medicaid
670,000	679,999	61
680,000	689,999	62
690,000	699,999	63
700,000	709,999	64
710,000	719,999	65
720,000	729,999	66
730,000	739,999	67
740,000	749,999	68
750,000	759,999	69
760,000	769,999	70
770,000	779,999	71
780,000	789,999	72
790,000	799,999	73
800,000	809,999	74
810,000	819,999	75
820,000	829,999	76
830,000	839,999	77
840,000	849,999	78
850,000	859,999	79
860,000	869,999	80
870,000	879,999	81
880,000	889,999	82

From \$	Up To \$	# Months Counted for Medicaid
290,000	299,999	23
300,000	309,999	24
310,000	319,999	25
320,000	329,999	26
330,000	339,999	27
340,000	349,999	28
350,000	359,999	29
360,000	369,999	30
370,000	379,999	31
380,000	389,999	32
390,000	399,999	33
400,000	409,999	34
410,000	419,999	35
420,000	429,999	36
430,000	439,999	37
440,000	449,999	38
450,000	459,999	39
460,000	469,999	40
470,000	479,999	41
480,000	489,999	42
490,000	499,999	43
500,000	509,999	44
510,000	519,999	45
520,000	529,999	46
530,000	539,999	47
540,000	549,999	48
550,000	559,999	49
560,000	569,999	50
570,000	579,999	51
580,000	589,999	52
590,000	599,999	53
600,000	609,999	54
610,000	619,999	55
620,000	629,999	56
630,000	639,999	57
640,000	649,999	58
650,000	659,999	59
660,000	669,999	60

From \$	Up To \$	# Months Counted for Medicaid
890,000	899,999	83
900,000	909,999	84
910,000	919,999	85
920,000	929,999	86
930,000	939,999	87
940,000	949,999	88
950,000	959,999	89
960,000	969,999	90
970,000	979,999	91
980,000	989,999	92
990,000	999,999	93
1,000,000	1,009,999	94
1,010,000	1,019,999	95
1,020,000	1,029,999	96
1,030,000	1,039,999	97
1,040,000	1,049,999	98
1,050,000	1,059,999	99
1,060,000	1,069,999	100
1,070,000	1,079,999	101
1,080,000	1,089,999	102
1,090,000	1,099,999	103
1,100,000	1,109,999	104
1,110,000	1,119,999	105
1,120,000	1,129,999	106
1,130,000	1,139,999	107
1,140,000	1,149,999	108
1,150,000	1,159,999	109
1,160,000	1,169,999	110
1,170,000	1,179,999	111
1,180,000	1,189,999	112
1,190,000	1,199,999	113
1,200,000	1,209,999	114
1,210,000	1,219,999	115
1,220,000	1,229,999	116
1,230,000	1,239,999	117
1,240,000	1,249,999	118
1,250,000	1,259,999	119
1,260,000	or higher	120

24 DE Reg. 1072 (06/01/21)

16500.2 Excluded Income - Below are the common but not exclusive list of excluded income items per the Internal Revenue Service (IRS) for calculating MAGI. Please visit <https://www.irs.gov/publications/p525> to find the entire list of items on the list.

- Scholarships, awards, or fellowship grants used for education purposes and not for living expenses;
- American Indian/Alaska Native income as defined in 42 CFR 435.603(e);
- Child Support Received;
- Gifts and loans;
- Inheritance;
- Supplemental Security Income (SSI);

- Temporary Assistance to Needy Families (TANF) and other government cash assistance;
- Veteran's benefits;
- Worker's Compensation payments;
- Alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not included in the income of the recipient. For individuals with alimony agreements finalized on or before December 31, 2018, alimony continues to be included in the income of the recipient for the duration of the agreement unless or until the agreement is modified.
- Other Non-Taxable Income.

21 DE Reg. 572 (01/01/18)

24 DE Reg. 1072 (06/01/21)

16500.3 Deductions

- Educator expenses;
- Certain business expenses of reservists, performing artists, and fee-basis government officials;
- Health savings account deduction;
- Deductible part of self-employment tax;
- Self-employed SEP, SIMPLE, and qualified plans;
- Self-employed health insurance deduction;
- Penalty on early withdrawal of savings;
- Alimony paid;
- IRA deduction;
- Student loan interest deduction;
- Domestic production activities deduction.

24 DE Reg. 1072 (06/01/21)

16500.4 Special income counting rules for children claimed by a parent

A child's MAGI based income is excluded from total household income if:

- The child is either under age 19 or is an adult child claimed by a parent as a tax dependent; and
- The child and parent are both included in the MAGI-based household; and
- The child's income is below the tax filing threshold (i.e., the child is not expected to be required to file a tax return for the current tax year).

This rule applies to a child or children living with a parent whether household composition is based on the rules for tax filers or the non-filer rules.

It does not matter whether the child actually files a tax return.

22 DE Reg. 668 (02/01/19)

16500.5 Special income counting rules for children or dependents claimed by someone other than a parent

The special income counting rule for tax dependents applies in the case of tax dependents who are claimed by someone other than a parent.

When a dependent is claimed by someone other than a parent, the tax dependent's income is excluded from total household income if:

- The tax dependent and the tax filer who expects to claim the individual are both included in the household; and
- The tax dependent's income is below the tax filing threshold (i.e., the tax dependent is not expected to be required to file a tax return for the current tax year); it does not matter whether the dependent actually files a tax return.

When determining the total household income of a dependent who is claimed by someone other than 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.

Such a tax dependent's household would not include the claiming tax filer due to the exception at 42 CFR 435.603(f)(2)(i). This means that the tax dependent's MAGI based income would not be excluded from his or her own household income.

Exception:

If a tax dependent's household is established using the non-filer rules described at 435.603(f)(3) and includes the tax dependent's parent, the tax dependent's income should be excluded from his or her own household income.

22 DE Reg. 668 (02/01/19)

16500.6 Applying the tax filing threshold for tax dependents

Whether a dependent has to file a return generally depends on the amount of the dependent's earned or unearned income.

Single dependents (under age 65) are required to file a tax return if the dependent has earned or unearned income that is more than the limits, or tax thresholds, announced by the IRS annually. IRS Publication 929 Tax Rules for Children and Dependents describes how to determine if a dependent is required to file a return and the applicable tax thresholds.

To determine the tax thresholds that apply, we use all of the dependent's MAGI based counted income with the exception of the dependent's Social Security Benefits (SSB).

Only the taxable portion of the dependent's SSB may be applied toward the tax filing threshold. If no portion of the SSB is taxable, none of those benefits will be applied toward the tax filing threshold.

Except in rare cases, such as receipt of a lump sum payment, a child or tax dependent's SSB will not be taxable unless the tax dependent has other income which itself exceeds the tax filing threshold.

If a child or tax dependent's MAGI based income counts toward the total household income, then all of the dependent's SSB counts.

22 DE Reg. 668 (02/01/19)

16600 Income Disregard

An amount equivalent to 5% of the Federal Poverty Level (FPL) for the applicable family size is deducted from household income. The income disregard only applies when determining eligibility for an individual under the MAGI-based group with the highest income standard available for the individual.

16700 Budget Period

The budget period for applicants and beneficiaries is based on current monthly household income and family size.

16800 Eligibility Determination

Household income must not exceed the income standard for the eligibility group applicable to the individual.

9 DE Reg. 564 (10/01/05)

9 DE Reg. 774 (11/01/05)

10 DE Reg. 143 (07/01/06)

12 DE Reg. 1320 (04/01/09)

13 DE Reg. 1540 (06/01/10)

15 DE Reg. 202 (08/01/11)

17 DE Reg. 503 (11/01/13)

28 DE Reg. 839 (06/01/25) (Prop.)