



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904
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Nicole M. Cunningham
Planning, Policy & Quality Unit
Division of Medicaid & Medical Assistance
1901 N. DuPont Hwy.
P.O. Box 906
New Castle, DE 19720-0906

**RE: DHSS/DMMA Proposed MAGI Methodology Revisions Regulation [22 DE Reg. 361
(November 1, 2018)]**

Dear Ms. Cunningham:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHHS)/Division of Medicaid and Medicare Assistance (DMMA) proposal to amend the Delaware Social Services Manual (DSSM) regarding Medicaid MAGI methodology. This revision is being made 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. Council would like to share the following observations on the proposed amendments.

First, 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.

Second, the proposed regulations 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, but this language is not included in the proposed language for the DSSM. 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* – 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. In this scenario, the tax dependent is living with a parent, but she is claimed as a dependent by someone other than a parent. Language should be included to clarify that the exclusion applies whether or not the tax dependent actually files a tax return. It 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 referenced above 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." The DSSM should explain this exception and any others that may apply.

Thank you for your consideration of our observations. Please contact me or Wendy Strauss at the GACEC office if you have any questions.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc