



September 21, 2023

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and enactment by the Council of the District of Columbia is the “DC Healthcare Alliance Financial Eligibility Rulemaking Emergency Approval Act of 2023”, along with an accompanying emergency declaration resolution.

The legislation will approve proposed final rules of the Department of Health Care Finance (“DHCF”) regarding the operation of the DC Healthcare Alliance program that will update the modified adjusted gross income financial methodology and increase the reasonable compatibility standard for verifying electronic data sources when an individual attests to their financial information. These changes will provide more room for errors that may be no fault of applicants or beneficiaries, and create a more streamlined and efficient automation of application and renewal processing that will reduce the risk of eligible Alliance beneficiaries losing health coverage.

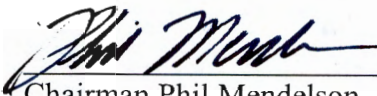
If you have any questions regarding the proposed legislation, please contact Acting Chief of Staff and Director of the Health Care Policy and Research Administration, DHCF, Eugene Simms, at (202) 427-1509.

I urge the Council to take prompt and favorable action on the legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser".

Muriel Bowser


Chairman Phil Mendelson
at the request of the Mayor

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve, on an emergency basis, rules governing the Health Care Safety Net Administration to provide for implementation of updated financial eligibility requirements and standards on eligibility determinations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the “DC Health Care Alliance Financial Eligibility Rulemaking Emergency Approval Act of 2023”.

Sec. 2. Pursuant to section 7a of the Health Care Privatization Amendment Act of 2001, effective March 30, 2004 (D.C. Law 15-109; D.C. Official Code § 7-1406), the Council approves the proposed final rules of the Department of Health Care Finance that were transmitted to the Council by the Mayor on [INSERT DATE] to amend Chapter 33 (Health Care Safety Net Administration) of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations, regarding the Health Care Safety Net Administration. A notice of proposed rulemaking was published in the *District of Columbia Register* on March 24, 2023, at 70 DCR 003582.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures

34 Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-
35 301.47a).

36 Sec. 4. Effective date.

37 This act shall take effect following approval by the Mayor (or in the event of veto
38 by the Mayor, action by the Council to override the veto), and shall remain in effect for
39 no longer than 90 days, as provided for emergency acts of the Council of the District of
40 Columbia in section 412(a) of the District of Columbia Home Rule Act, approved
41 December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

[as submitted to the Council of the District of Columbia for its approval pursuant to section 7a of the Health Care Privatization Amendment Act of 2001 (D.C. Official Code § 7-1406)]

The Director of the Department of Health Care Finance (“DHCF”), pursuant to the authority set forth in section 7a of the Health Care Privatization Amendment Act of 2001 (“Health Care Privatization Amendment Act”), effective July 12, 2001 (D.C. Law 14-18; D.C. Official Code § 7-1406), and section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6)), hereby gives notice of the adoption of amendments to Chapter 33 (Health Care Safety Net Administration) of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

Pursuant to sections 3 and 7 of the Health Care Privatization Amendment Act (D.C. Official Code §§ 7-1401 and 7-1405), DHCF finances and monitors the health care and medical services that are provided through contract to District residents enrolled in the District of Columbia Health Care Alliance program (“Alliance program”). The Alliance program provides comprehensive health care and medical services to District residents ages twenty-one (21) years and over, who have incomes at or below two hundred ten percent (210%) of the federal poverty level and are not otherwise eligible for or enrolled in Medicare, the Children’s Health Insurance Program, or federally-funded Medicaid benefits.

This rule further aligns with recent amendments to the Medicaid Modified Adjusted Gross Income (MAGI) financial eligibility requirements, which adopt federal legislative changes pursuant to the Tax Cuts and Jobs Act of 2017, approved on December 22, 2017 (Pub. L. No. 115-97, 131 Stat. 2054); the Bipartisan Budget Act of 2018, approved on February 9, 2018 (Pub. L. No. 115-123, 132 Stat. 64); the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act, approved on January 22, 2018 (Pub. L. No. 115-120, 132 Stat. 31); and the Patient Protection and Affordable Care Act of 2010, approved March 23, 2010 (Pub. L. No. 111-148, 124 Stat 119), as amended. These changes include: (1) qualified lottery winnings and qualified lump sum income (i.e., gambling) of eighty thousand dollars (\$80,000) or more, which are received in a single payout, shall be counted in the month received and over a period of up to one hundred twenty (120) months; (2) self-attestation will be accepted as a form of verification of qualified lottery winnings and qualified lump sum income, subject to post-eligibility verification using available electronic data sources; (3) an undue medical or financial hardship exemption is established for individuals impacted by the new treatment of qualified lottery and gambling winnings, subject to criteria as may be established by the Secretary of the U.S. Department of Health and Human Services; (4) compensation of a parent mentor, as defined under 42 U.S.C. § 1397mm(f)(5) (part of the Social Security Act) will be excluded from countable income; (5) the deduction for qualified moving expenses will no longer be counted as an exclusion from countable income, except for active members of the military; (6) alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are no longer deductible from income; (7) payment of tuition and fees for qualified education expenses for postsecondary education is no longer deductible from

income; and (8) household composition for married individuals living separately but filing joint tax returns includes the individual plus his or her spouse. The addition of these changes will create more parity with Medicaid and further streamline eligibility processes and avoid a bifurcated process when evaluating eligibility for the programs.

DHCF is also raising the reasonable compatibility standard to match financial information obtained from federal and state electronic data sources with self-attested application information to align with upcoming Medicaid policy changes. Consistent with the requirements set forth under 42 U.S.C. 1320b-7 (part of the Social Security Act) and 42 C.F.R. § 435.952, the District uses electronic data sources to verify Medicaid financial eligibility, and a reasonable compatibility standard to match financial information obtained from federal and state electronic data sources with attested application information. Under the District's reasonable compatibility standard, an applicant or beneficiary would not be required to provide additional documentation when self-attested income is below the applicable income threshold, the data source reports an income above the applicable income threshold, and the difference between them is less than ten percent (10%) of the amount given by the data sources. The District adopted the same reasonable compatibility standard for the Alliance program. However, ten percent (10%) is a low range for error, and electronic income data may not always be completely accurate or up to date with an applicant's or beneficiary's recent income changes. As part of the District's plan to unwind continuous Medicaid enrollment when the federal public health emergency ends, the District is raising the reasonable compatibility standard from ten percent (10%) to twenty percent (20%). This rulemaking aligns with this upcoming Medicaid policy change, which will provide more room for errors that may be no fault of the applicants or beneficiaries, and is consistent with guidance provided by the Centers for Medicare and Medicaid Services that states should raise their reasonable compatibility standards. This change will also create a more streamlined and efficient automation of application and renewal processing, minimize the need for paper-based manual work, and help reduce the risk of eligible Alliance beneficiaries losing health coverage. DHCF estimates that proposed changes in this rule will result in an increase of six hundred eighty thousand dollars (\$680,000) in total local expenditures in Fiscal Year 2023.

A Notice of Proposed Rulemaking was published in the *District of Columbia Register* on March 24, 2023, at 70 DCR 003582. No comments were received, and no changes have been made to the text of the rules as proposed.

The proposed final rules were submitted to the Council of the District of Columbia pursuant to section 7a of the Health Care Privatization Amendment Act of 2001, effective July 12, 2001 (D.C. Law 14-18; D.C. Official Code § 7-1406). The Council approved the rules through Resolution No. [INSERT NUMBER] on [INSERT DATE].

The Director of DHCF took final action to adopt this rulemaking on [INSERT DATE], and the rules shall become effective upon publication of this notice in the *District of Columbia Register*.

Chapter 33, HEALTH CARE SAFETY NET ADMINISTRATION, of Subtitle B, PUBLIC HEALTH AND MEDICINE, of Title 22, HEALTH, of the DCMR is amended as follows:

Section 3304 FINANCIAL ELIGIBILITY REQUIREMENTS, is amended as follows:

Subsection 3304.2 is amended to read as follows:

- 3304.2 For individuals who expect to file a federal income tax return or who expect to be claimed as a tax dependent by another tax filer for the taxable year in which an eligibility determination is made, household composition shall be determined as follows:
- (a) The household of an individual who expects to be a tax filer consists of the tax filer and all of the tax dependents the tax filer expects to claim;
 - (b) The household of a tax dependent, except individuals identified at § 3304.5, consists of the tax filer claiming the tax dependent and all other tax dependents expected to be claimed by that tax filer;
 - (c) The household of a married individual who lives with their spouse consists of both spouses regardless of whether they expect to file a joint federal tax return or whether one (1) or both spouses expect to be claimed as a tax dependent by another tax filer;
 - (d) The household of a married individual who does not live with their spouse but who files a joint federal tax return with their spouse includes both spouses;
 - (e) The household of a married individual who does not live with their spouse and who is filing a federal tax return separately from their spouse, does not include the spouse in the individual's household; and
 - (f) The household of a pregnant woman consists of the pregnant woman plus the number of children she is expected to deliver. In the case of determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted herself plus the number of children she is expected to deliver.

Subsection 3304.6 is amended to read as follows:

- 3304.6 MAGI-based income shall be determined using federal income tax rules for determining adjusted gross income except as otherwise provided in this Section. Countable income shall include the following:
- (a) Wages, salaries, tips, and other forms of earned income;
 - (b) Taxable and tax-exempt interest;
 - (c) Ordinary dividends;
 - (d) Qualified dividends;

- (e) Taxable refunds, credits, or offsets of state and local income taxes;
- (f) Alimony received;
- (g) Business income or losses;
- (h) Capital gains or losses;
- (i) Other taxable gains or losses;
- (j) Taxable Individual Retirement Account (IRA) distributions;
- (k) Taxable amounts of pensions and annuities;
- (l) Income from certain investments such as rental real estate, royalties, partnerships, S corporations, trusts;
- (m) Farm income or losses;
- (n) Unemployment compensation;
- (o) Taxable and tax-exempt Social Security benefits except as provided in Subsection 3304.6(q) below;
- (p) Lump sum payments, which shall be counted as follows:
 - (1) Qualified lottery winnings and qualified lump sum income shall be counted using the following formula (lottery winnings paid out in installments shall not be considered “qualified lottery winnings” and shall be considered unearned, recurring income that is counted in the month they are received):
 - (A) Single payment winnings less than eighty thousand dollars (\$80,000.00) shall be counted in the month received in their entirety, only for the individual who received the winnings;
 - (B) Single payment winnings of at least eighty thousand dollars (\$80,000.00) but less than ninety thousand dollars (\$90,000.00) shall be counted as income over two (2) months, with an equal amount counted in each month, only for the individual who received the winnings. For other household members, the winnings should be counted under § 3304.6(p)(2); and

- (C) For every additional ten thousand dollars (\$10,000.00) of single payment winnings, one (1) month is added to the period over which total winnings are divided, in equal installments, and counted as income up to a maximum of one hundred twenty (120) months only for the individual who received the winnings. This calculation shall be consistent with the table showing the amount of monthly income attributed to increasing amounts of winnings and the number of months over which the winnings are counted found in the Centers for Medicare and Medicaid Services (CMS) State Health Official Letter # 19-003, Attachment B, pages 12 – 13, at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho19003.pdf> (last visited on June 28, 2022). For other household members, the winnings shall be counted under § 3304.6(p)(2); and
- (2) Other lump sum payments that are not qualified lottery winnings or qualified lump sum income are counted in the month received; and
- (q) Any other income reported on the Internal Revenue Service Form 1040.

Subsection 3304.7 is amended to read as follows:

3304.7 Countable income shall exclude the following:

- (a) Income scholarships, awards, or fellowship grants used for education purposes and not for living expenses;
- (b) American Indian/Alaska Native income as defined in 42 C.F.R. § 435.603(e);
- (c) Educator expenses;
- (d) Certain business expenses of reservists, performing artists, and fee-based government officials;
- (e) Health savings account deductions;
- (f) Moving expenses for active duty members of the military who are ordered to move or change duty stations. For individuals that are not active duty members of the military, moving expenses shall not be excluded from income through tax year 2025;
- (g) Deductible parts of self-employment taxes;
- (h) Self-employed Simplified Employee Pension (SEP), Savings Incentive Match Plan for Employees (SIMPLE), and qualified plans;

- (i) Self-employed health insurance deductions;
- (j) Penalties on early withdrawal of savings;
- (k) Alimony paid pursuant to a separation or divorce agreement finalized on or before December 31, 2018 that has not been modified after December 31, 2018;
- (l) Alimony received pursuant to a separation or divorce agreement finalized on or after January 1, 2019, or pursuant to a pre-existing agreement modified on or after January 1, 2019;
- (m) Individual Retirement Arrangements (IRA) deductions;
- (n) Student loan interest deductions;
- (o) Discharged student loan debt of a borrower if the debt is discharged due to the death or permanent and total disability of the student, as described under Section 11031 of the Tax Cuts and Jobs Act of 2017, approved on December 22, 2017 (Pub. L. No. 115-97, 131 Stat. 2054);
- (p) Public assistance benefits;
- (q) Domestic production activities deductions;
- (r) Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act; and
- (s) Compensation of a parent mentor, as defined under 42 U.S.C. § 1397mm (f)(5) of the Social Security Act, that assists families with children that are eligible, but not enrolled, in Medicaid, in accordance with Section 3004 of the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act of 2017, approved on January 22, 2018 (Pub. L. No. 115-120, 132 Stat. 28) (HEALTHY KIDS Act).

Subsection 3304.13 is amended to read as follows:

3304.13 The Department shall verify financial eligibility through one (1) or more federal and state electronic data sources, except for qualified lottery winnings and qualified lump sum payments, for which the Department shall accept self-attestation, subject to post-eligibility verification using available electronic data sources.

Subsection 3304.15 is amended to read as follows:

3304.15 The reasonable compatibility standard for financial information shall be met when:

- (a) The attestation and data sources are both above the District Alliance program’s applicable income standard;
- (b) The attestation and data sources are both below the District Alliance program’s applicable income standard;
- (c) The attestation is below the District Alliance program’s applicable income standard and the data sources are above the applicable income standard, when the difference between them is less than twenty percent (20%) of the amount given by data sources; or
- (d) The attestation is zero (0) income and no income data is available from electronic data sources.

A new subsection 3304.21 is added to read as follows:

3304.21 An individual whose income exceeds the applicable Medicaid Modified Adjusted Gross Income (MAGI) income limit due to the application of the formula for qualified lottery winnings and qualified lump sum income, as described in § 3304.6(p)(1), may continue to be eligible to the extent the Department determines that the denial of eligibility of the individual would cause an undue medical or financial hardship as determined on the basis of criteria as may be established by the Secretary of the U.S. Department of Health and Human Services.

Section 3399, DEFINITIONS, is amended as follows:

The following new definition, of “Certification period”, is added after the existing definition of “Bilateral contract modification”:

Certification period – Alliance program eligibility is determined for a twelve (12) month period. This period is called a certification period.

The following new definitions, of “Other lump sum payments” and “Parent mentor”, are added after the existing definition of “Option”, to read as follows:

Other lump sum payments – non-recurring payments that are not qualified lottery winnings or gambling winnings, and may include but not be limited to backpay, a retroactive benefit payment, state tax refund, or an insurance settlement.

Parent Mentor - as defined under 42 U.S.C. § 1397mm (f)(5).

The following new definitions, of “Qualified lottery winnings” and “Qualified lump sum income”, are added after the existing definition of “Purchase order”, to read as follows:

Qualified lottery winnings – as defined under 42 U.S.C. § 1396a(e)(14)(K)(v).

Qualified lump sum income – as defined under § 1396a(e)(14)(K)(vi) (i.e., gambling winnings).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
BRIAN L. SCHWALB

Legal Counsel Division

MEMORANDUM

TO: Beverly Perry
Senior Advisor
Office of Policy and Legislative Affairs

FROM: Megan D. Browder
Deputy Attorney General
Legal Counsel Division

DATE: January 4, 2023

SUBJECT: Legal Sufficiency Review of the “Alliance Enrollment and Financial Eligibility Amendment Rulemaking Approval Resolution of 2022” (AD-22-744B)

This is to Certify that this Office has reviewed the above-referenced resolution and that we have found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

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Megan D. Browder

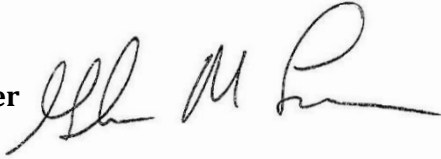
Government of the District of Columbia
Office of the Chief Financial Officer



Glen Lee
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Glen Lee
Chief Financial Officer 

DATE: January 18, 2023

SUBJECT: Fiscal Impact Statement – Alliance Enrollment and Financial Eligibility
Amendment Rulemaking Approval Resolution of 2023

REFERENCE: Draft Introduction as provided to the Office of Revenue Analysis on
January 13, 2023

Conclusion

Funds are sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the proposed rules.

Background

The bill approves two proposed rulemakings by the Department of Health Care Finance (DHCF) that make changes to rules for the District of Columbia Healthcare Alliance (Alliance) program.

The first rulemaking increases the Alliance eligibility period from six months of eligibility to twelve months of eligibility. This increase will align the rules with eligibility period changes that were included in the fiscal year 2023 budget.¹

The second rulemaking updates the Modified Adjusted Gross Income (MAGI) financial eligibility requirements calculation methodology. With this change, the Alliance MAGI methodology will align with Medicaid MAGI methodology .

The second rulemaking also aligns the Alliance program with upcoming Medicaid policy changes to increase the reasonable compatibility standard for verifying electronic data sources when an

¹ Fiscal Year 2023 Budget Support Act of 2022 , Subtitle V(C), Alliance Enrollment Amendment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; 69 DCR 11937).

The Honorable Phil Mendelson

FIS: "Alliance Enrollment and Financial Eligibility Amendment Rulemaking Approval Resolution of 2023,"
Introduction as provided to the Office of Revenue Analysis on January 13, 2023

individual attests to their financial information. The District uses electronic data sources to verify Medicaid and Alliance financial eligibility, and a reasonable compatibility standard to match financial information obtained from federal and state electronic data sources with attested application information. If an applicant's self-attested income is within the reasonable compatibility standard, the applicant is not required to submit more documentation to be eligible to enroll in Alliance. The proposed rule will increase the reasonable compatibility standard from ten percent to twenty percent to be consistent with federal guidance on Medicaid.

Financial Plan Impact

Funds are sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the proposed rules.

Approving rules that extend the Alliance enrollment period from six months to twelve months does not have an additional cost. The fiscal year 2023 budget and financial plan includes funding to implement the enrollment extension. Updating the MAGI financial eligibility requirements calculation methodology does not have a cost to the District. Approving rules that increase the reasonable compatibility standard from ten percent to twenty percent will slightly increase the number of Alliance beneficiaries enrolled in the program. The estimated cost of the additional enrollees is \$680,000 in fiscal year 2023 and \$2.8 million over the financial plan. DHCF can absorb these costs using savings realized from the extension of public health emergency enhanced Federal Medical Assistance Percentage through the end of the calendar year and through growth included in the financial plan. The agency also anticipates efficiencies from having the same reasonable compatibility standard in place for Medicaid and Alliance enrollment, since the application and renewal process will be more streamlined, although efficiency savings have not been quantified.

Alliance Enrollment and Financial Eligibility Amendment Rulemaking Approval Resolution of 2023					
Total Cost					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
Reasonable Compatibility ^(a)	\$680,000	\$691,000	\$704,000	\$716,000	\$2,791,000

Table Notes:

(a) Assumes 1.75 percent cost growth.