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# **Report on Income Disregards for Persons with Intellectual and Developmental Disabilities**

**As Required By  
S.B. 7, 83rd Legislature, Regular Session, 2013**

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**Health and Human Services Commission  
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## **Executive Summary**

Pursuant to Senate Bill (S.B.) 7, 83<sup>rd</sup> Legislature, Regular Session, 2013, the Texas Health and Human Services Commission (HHSC) submits this report regarding income disregards. The bill directs HHSC to conduct a study to evaluate the need for applying income disregards to persons with intellectual and developmental disabilities receiving benefits in Medicaid, including through a Section 1915(c) waiver program.

An increase in income may disqualify individuals for Supplemental Security Income (SSI), and in turn disqualify individuals for Medicaid. Medicaid regulations require states to disregard some level of a person's assets, income, and work-related expenses based on SSI regulations so these individuals may remain eligible for Medicaid. HHSC follows the SSI regulations regarding allowable income exclusions when testing income eligibility.

The Texas Medicaid Buy-in (MBI) program offers low-cost Medicaid health care services to individuals who work. The MBI program allows adults with disabilities to earn more than would otherwise be possible and still retain Medicaid coverage. Participants "buy into" the Medicaid program, often by paying premiums based on their income.

Home and Community-Based Services (HCBS) 1915(c) waivers allow states to provide community-based services to individuals who meet eligibility criteria for care in an institution. States have the option of adding a 300 percent special income eligibility group to their 1915(c) waivers to expand income eligibility. States also have the option of adding the MBI program as an eligibility group served by their waiver. This allows working individuals with disabilities to make more money through employment while retaining their waiver status.

This report finds that Texas already applies all income exclusions allowed under federal regulations that enable individuals to receive Medicaid services that are paid for with federal matching funds. Individuals who work and have incomes in excess of the SSI eligibility level may still qualify to access services through one of the waivers allowing up to 300 percent SSI or through the MBI program.

## **Introduction**

Pursuant to S.B. 7, 83<sup>rd</sup> Legislature, Regular Session, 2013, HHSC submits this report regarding income disregards. The bill directs HHSC to conduct a study to evaluate the need for applying income disregards to persons with intellectual and developmental disabilities receiving benefits in Medicaid, including through a Section 1915(c) waiver program. This report examines federal income exclusions, financial eligibility methodologies, and programs that can be applied to persons with intellectual and developmental disabilities receiving Medicaid benefits.

## **Overview of Federal Programs and Income Disregards Policies**

SSI, governed by Title XVI of the Social Security Act, is a federal income supplement program administered by the Social Security Administration (SSA). SSI is designed to help individuals with low-income and few assets who may be aged, blind, or disabled by providing monthly cash assistance to meet basic needs for food, clothing, and shelter.<sup>1</sup> The SSI resource limit is \$2,000 for an individual and \$3,000 for a couple, minus standard exclusions. The monthly cash benefit amount for 2014 is up to \$721 per month for an individual and \$1,082 per month for a couple.<sup>2</sup> In Texas, anyone who receives SSI benefits is automatically eligible for Medicaid.

### **Supplemental Security Income (SSI) Program Rates and Limits 2014**

#### Monthly Federal Payment Standard

Individual	\$721
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Couple	\$1,082
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#### Resource Limit

Individual	\$2,000
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Couple	\$3,000
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#### Monthly Income Exclusions

Earned Income*	\$65
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Unearned Income	\$20
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Source: SSA, "OASDI and SSI Program Rates & Limits, 2014" Social Security Administration, October 2013, Accessed September 29, 2014.

[http://www.ssa.gov/policy/docs/quickfacts/prog\\_highlights/RatesLimits2014.html](http://www.ssa.gov/policy/docs/quickfacts/prog_highlights/RatesLimits2014.html).

\*Note: The earned income exclusion consists of the first \$65 of monthly earnings, plus one-half of remaining earnings.

HHSC follows SSI regulations regarding allowable income exclusions when testing income eligibility for Texas Medicaid.<sup>3</sup> SSI benefits are reduced when individuals have other countable income. The general income exclusion allows the SSA to exempt the first \$20 per month of unearned income, including Social Security benefits, pensions, interest income, or child support.<sup>4</sup> Each dollar of unearned income above this threshold reduces SSI benefits by a dollar. The

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<sup>1</sup> "Supplemental Security Income (SSI) Eligibility Requirements," accessed September 29, 2014, <http://www.ssa.gov/ssi/text-eligibility-ussi.htm>.

<sup>2</sup> "Social Security Fact Sheet: 2014 Social Security Changes," Social Security Administration, <http://www.ssa.gov/pressoffice/factsheets/colafacts2014.pdf>.

<sup>3</sup> Per 1 Tex. Admin. Code §358.387, HHSC follows the SSI regulations at 20 Code of Federal Regulations (CFR) §416.1112 and §416.1124, regarding allowable income exclusions when testing income eligibility

<sup>4</sup> 20 CFR §416.1124.

earned income exclusion allows the SSA to exempt the first \$65 per month of earnings, plus one-half of remaining earnings. Each dollar of earned income reduces SSI benefits by 50 cents.<sup>5</sup> This exclusion is meant to encourage individuals to work without fear of losing their SSI benefits.

Certain exclusions, however, are not applied when testing income eligibility against a special income limit that states may use for institutional and 1915(c) home and community-based eligibility groups.<sup>6</sup> The special income limit for individuals is equal to or less than 300 percent of the individual SSI benefit rate. The special income limit for couples is twice the special income limit for an individual.<sup>7</sup> Most notably, the \$65 earned income in a month and one-half of remaining earned income in a month exclusions permitted for general SSI supplemental income benefits are not federally permitted when testing income eligibility under the special income limit.<sup>8</sup>

For individuals in institutions whose Medicaid eligibility is based on the special income standard (300 percent of the SSI limit), federal matching funds are available for services provided only to individuals whose gross income does not exceed 300 percent of the SSI benefit amount.<sup>9</sup> Therefore, Texas cannot apply income and resource disregards when determining eligibility under the special income standard without forfeiting federal matching funds for services provided to individuals who qualify under less restrictive methodologies.

### **Home and Community-Based Services (HCBS) 1915(c) Waivers for Individuals with Intellectual and Developmental Disabilities (IDD)**

HCBS 1915(c) waivers allow states to provide community-based services to people who meet eligibility criteria for care in an institution, including a nursing home, intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID), institution for mental disease (IMD), or hospital. States have the ability to set financial eligibility criteria for 1915(c) waivers up to 300 percent SSI by adding the optional 300 percent special income eligibility group to 1915(c) waivers.

The following 1915(c) waivers waive off institutions for individuals with an intellectual disability or related conditions and provide long term services and supports to individuals with intellectual and developmental disabilities:

1. Deaf-Blind with Multiple Disabilities (DBMD);
2. Community Living Assistance and Support Services (CLASS);

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<sup>5</sup> 20 CFR §416.1112.

<sup>6</sup> 20 CFR §416.1112(c): (4) Any portion of the \$20 monthly exclusion in §416.1124(c)(10) which has not been excluded from your unearned income in a month; (5) \$65 of earned income in a month; (7) One-half of remaining earned income in a month.

<sup>7</sup> HHSC, "Medicaid for the Elderly and People with Disabilities Handbook," Appendix XXXVI, Qualified Income Trusts (QITs) and MEPD Information, effective March 1, 2014, accessed September 29, 2014, <http://www.dads.state.tx.us/handbooks/mepd/appendix/xxxvi/index.htm>.

<sup>8</sup> 1 Tex. Admin. Code §358.387.

<sup>9</sup> 42 CFR §435.1005.

3. Home and Community-based Services (HCS); and
4. Texas Home Living (TxHmL).

All of these waivers include the 300 percent special income eligibility group, with the exception of TxHmL.

If a family makes too much money for a child to qualify for SSI, and therefore Medicaid, the child might qualify for all Medicaid services if the child is admitted into a 1915(c) waiver other than TxHmL and is eligible under the 300 percent special income level, regardless of parental income. Eligibility under the optional 300 percent special income limit group can be covered in 1915(c) waivers using the eligibility requirements for individuals in institutions.<sup>10</sup> The SSI financial methodologies do not count parental income and resources for children under 18 years old who are living in an institution. Therefore, parental income and resources do not count for a child under the age of 18 in a waiver when the 300 percent special income limit is used to test eligibility, even when living with the parents.

All 1915(c) waivers that serve individuals with intellectual and developmental disabilities, including TxHmL, have added the MBI as an eligibility group in the waiver.<sup>11</sup> This eligibility group is comprised of individuals participating in the Medicaid Buy-In (MBI) program. The MBI program is for working individuals with disabilities and allows individuals to make more money through employment while retaining their eligibility in a 1915(c) waiver.

Only an applicant's income and resources are considered when applying to participate in the MBI program. An individual's monthly earned income must be less than 250 percent of the federal poverty level, which is \$2,432 for an individual in 2014. Countable assets must be no more than \$2,000, which is the SSI resource limit for an individual to establish and maintain eligibility for MBI.<sup>12</sup> A \$3,000 resource disregard, Plan to Achieve Self-Support (PASS) funds, independence accounts, earned income tax credit, child tax credit payments, and disability-related work expenses are not counted. Premiums for the MBI program are based on earned and unearned income.<sup>13 14</sup> Enrollment in the MBI program allows individuals to earn more income while retaining 1915(c) waiver services.

### **Texas Home Living (TxHmL) Waiver and Income Eligibility**

The TxHmL Program provides essential services and supports for people with intellectual disabilities as an alternative to living in an ICF/IID. At the end of fiscal year 2015, there were 8,738 slots allocated to the TxHmL waiver. As of October 2014, 5,590 individuals were enrolled in TxHmL. Individuals receiving services through TxHmL may be of any age and must meet the following eligibility requirements:<sup>15</sup>

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<sup>10</sup> 42 CFR §435.217.

<sup>11</sup> BBA working disabled group as provided in 1902(a)(10)(A)(ii)(XIII) of the Social Security Act.

<sup>12</sup> 1 Tex. Admin. Code §360.113.

<sup>13</sup> HHSC "Medicaid Buy-In," accessed on September 29, 2014. <https://www.hhsc.state.tx.us/MBI.shtml>.

<sup>14</sup> 20 CFR §416.1205.

<sup>15</sup> "Texas Department of Aging and Disability Services (DADS) 2014 Reference Guide," DADS Media Services, April 2014, Publication 287.

- Have a determination of an intellectual disability made in accordance with state law or have physician's diagnosis as having a related condition.
- Live in their own or their family's home.
- Meet the requirements for ICF/IID Level of Care I.
- Have an Individual Service Plan (ISP) not exceeding \$17,000.
- Not be assigned to a Pervasive Plus Level of Need (LON) 9.
- Not be enrolled in another 1915(c) waiver program.
- Be eligible for Medicaid or would be found eligible for Medicaid under the different Medicaid Eligible (ME) groups.<sup>16</sup>

As previously noted, unlike other 1915(c) waiver programs' financial eligibility requirement of having a monthly income within 300 percent of the SSI monthly income limit (\$2,130 per month for an individual in 2014), TxHmL has a financial eligibility requirement of 100 percent of the SSI monthly income limit. When TxHmL was first implemented in 2004, the intent was to serve only people who would have Medicaid eligibility whether or not the waiver existed. Therefore, unlike other 1915(c) waivers, no one accessing TxHmL would become Medicaid eligible because of waiver enrollment.

Texas can add the 300 percent optional special income limit group to TxHmL by requesting CMS approval of an amendment to the TxHmL waiver. Raising the eligibility for TxHmL from 100 percent of SSI to 300 percent of SSI would allow individuals to earn more income while continuing to receive their waiver services. Parental income and resources would be disregarded for minors.

Adding the optional 300 percent income eligibility group to TxHmL would require legislative direction because there likely would be a fiscal impact to state government as a result of this amendment. Under such an income standard, the remaining 3,148 TxHmL waiver slots likely would be filled. Adding this optional special income limit group to TxHmL would increase Medicaid spending on state plan services for individuals between 100 and 300 percent SSI who become eligible for Medicaid through this waiver.

S.B. 7 also directs HHSC to determine whether to transition the provision of Medicaid program benefits for individuals with intellectual and developmental disabilities who are receiving long-term services and supports under TxHmL waiver program to the STAR+PLUS Medicaid managed care delivery model, or the most appropriate integrated capitated managed care program delivery model, by September 1, 2017. Texas could wait to make significant changes to eligibility for TxHmL until this determination is made.

## **Conclusion**

HHSC and the Department of Aging and Disability Services (DADS) are committed to supporting individuals with intellectual and developmental disabilities seeking, obtaining, and retaining employment. Although less restrictive financial eligibility methodologies than those

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<sup>16</sup> Medicaid Eligible (ME) Groups include: ME-SSI, ME-Pickle, ME-Disabled Widower, ME-Early Aged Widower, ME-Disabled Adult Child. Persons cannot be determined eligible for TxHmL under the special income limit program.

used under SSI are available, states do not receive federal matching funds for individuals who qualify on the basis of less restrictive methodologies. For individuals in institutions whose Medicaid eligibility is based on a special income standard, 300 percent SSI, federal matching funds are available for services provided to those individuals only if their income before deductions, as determined by SSI budget methodology, does not exceed 300 percent of SSI. Texas is therefore unable to use less restrictive methodologies than those under cash assistance programs (e.g., SSI) and receive federal matching funds for those made eligible by these less restrictive methodologies.

The MBI program allows individuals or families whose adjusted gross income is up to 250 percent of the federal poverty level (FPL) to pay premiums to access Medicaid. This option is included in all 1915(c) waivers serving individuals with intellectual and developmental disabilities, including TxHmL, allowing them to earn more income while retaining eligibility for their waiver program.