



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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November 9, 2016

Stephen Groff, Director
Department of Health & Social Services
Division of Medicaid & Medical Assistance
Lewis Building – Herman Holloway Campus
1901 N. DuPont Highway, P.O. Box 906
New Castle, DE 19720

Dear Mr. Groff:

I write on half of the State Council for Persons with Disabilities (SCPD) regarding the Division of Medicaid & Medical Assistance's (DMMA's) plan regarding the Centers for Medicaid & Medicaid Services' (CMS) final rule related to Home and Community Based Services (HCBS) for Medicaid-funded long term services and supports provided in residential and non-residential home and community-based settings. Specifically, SCPD writes to comment on Amendment 1 dated September 15, 2016 in response to the CMS letter dated July 14, 2016.

SCPD endorses the attached letter from the Developmental Disabilities Council (DDC).

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our perspective on this most important issue.

Sincerely,

Jamie Wolfe

Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

cc: Lisa Zimmerman, DMMA
Jill Rogers, DDDS
Ann Phillips, SCPD Executive Committee
Brian Hartman, SCPD Executive Committee
Daniese McMullin-Powell, SCPD Executive Committee
Lloyd Schmitz, SCPD Executive Committee
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October 25, 2016

Stephen Groff, Director
Department of Health & Social Services
Division of Medicaid & Medical Assistance
Herman Holloway Campus
1901 North DuPont Highway, P.O. Box 906
New Castle, DE 19720

RE: Delaware Statewide Transition Plan, HCBS Setting Rule

Dear Mr. Groff,

Thank you for this opportunity to comment on the Amendment 1 dated September 15, 2016 in response to the CMS letter dated July 14, 2016.

It is a great step to receive an initial approval from CMS for the work that has been completed thus far on the Delaware Statewide Transition Plan (STP). A lot of work has been put into this STP and it will be an accomplishment when the full STP is finally approved.

Our primary concerns are listed below and we continue to offer our assistance towards the final product of this work.

- 1) We are concerned that the Participant Survey for those who reside in residential settings such as group homes and apartment settings are being completed late in this process and that they will not be able to be used for comparison to the provider self-assessment for another year. According to the Amendment, the Surveys for these Participants will be completed in the next year during their planned person-centered reviews in the presence of the Team. These Participants, it seems, will not be given the opportunity to complete this Survey in confidence or on their own. In addition, we are concerned that the Survey was sent previously to only Case Managers and guardians in advance, not to the Participants. Generally, these Participants should be given the same opportunities for preparation and confidentiality that the initial Participants received during their Survey completion.
- 2) In the CMS letter dated July 24, 2016, under Heightened Scrutiny pages 8-9, CMS questions the review of the residential school settings, Summit Academy and St. George Academy. It is unclear in the Amendment what review has been completed on these sites and whether or not the Participants in these sites have been or are being surveyed as are other Participants in the



Delaware programs. The Amendment, page 8, does talk about a setting, “the other because of the aversive practices used by the provider that they were not willing to stop using,” and that “both settings are in the process of being removed from the DDDS waiver program.” It is troubling that the state would leave Participants in a setting that would not pass Heightened Scrutiny with no effort to alleviate the use of aversives in that setting or relocate those Participants to settings that would meet the Settings Rule.

3) Beneficiary Relocation is now discussed in the Amendment more precisely when the setting does not meet the criteria for a HCBS setting. Previously, the STP discussed in detail the Corrective Action Plan (CAP) for MCO’s but little for those who lived in settings such as group homes and apartment settings. This is an improvement.

4) The CMS letter questions the process that the Advisory Council for DDDS will provide for the “look behind” review process. It is still unclear in the Amendment from the state what that process will entail, when it will be completed and how it will be reported out.

5) Finally, the STP does not address the concept of Reverse Integration should any new sites utilize that effort or if existing settings offer that as a means to meet the criteria of the Settings Rule. We hope that as this effort will not meet the criteria of the Rule and that the state would not accept this in a CAP for any provider or setting.

Thank you for taking our comments for the State Transition Plan and for your sincere consideration of our remarks.

Sincerely,

Patricia L. Maichle
Director Developmental Disabilities Council