



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John A. McNeal
Director

MEMORANDUM

DATE: January 28, 2020

TO: Ms. Nicole Cunningham, DMMA
Planning & Policy Development Unit

FROM: J. Todd Webb – Chairperson
State Council for Persons with Disabilities

RE: 23 DE Reg. 528 [DMMA Proposed Regulation on Delaware Healthy Children's Program State Plan (January 1, 2020)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Medicaid and Medical Assistance's (DMMAs) proposal to amend Section 2.2 of Title XXI Delaware Healthy Children's Program State Plan regarding Health Services Initiatives, which govern governmental initiatives aimed at improving the health of Delawarean children. The regulation is being amended to revise the definition of "low-income" to align with the Delaware Department of Education's (DDOE) definition of low-income in its Vision Services – School Based Initiative, and to revise the data collection process in an effort to aid in the identification of uninsured children. The proposed regulation was published as 23 DE Reg. 528 in the January 1, 2020 issue of the Register of Regulations. SCPD opposes the proposed regulation as currently written and has the following observations and recommendations.

The biggest change is with the change to the definition of "low-income" to align with DDOE's definition, which has been in use since the 2013-14 school year. Currently, low-income is defined as a Title I school where at least 51% of the student body receives free or reduced-price meals. DMMA proposes to change the definition to include only those schools that qualify as a Community Eligibility (CEP) School. Schools are considered eligible for CEP if at least 40% of its students are "directly certified" through the Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) and the school provides meals to its students. This definition is in line

with DDOE's definition and guidance provided by the U.S. Department of Education. U.S. Department of Education, Office of Elementary and Secondary Education, *Guidance The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended* (January 2014).

In the 2019-20 school year, there are 116 total Delaware schools that qualify for CEP status. Delaware Community Eligibility Provision Schools, School Year 2019-2020 ([DDOE Link](#)). These CEP schools educate nearly 62,000 students, which is approximately 44% of the total student enrollment for Delaware. Id. This is less than the total number of Title I schools as recent as the 2018-2019 school year, which totaled 155. 2018-2019 Title I Schools by LEA ([DDOE Link](#)). This definitional change may reduce the number of students who qualify for vision screening services which is a concern of SCPD.

In addition to the above concern, the United States Department of Agriculture (USDA) proposed to change the categorical eligibility in SNAP, by eliminating the broad-based categorical eligibility, which gives states the flexibility to waive specific asset and income limits for households receiving both SNAP and other benefits. In its analysis, USDA estimated that this change would result in approximately 1 million students automatically losing access to free school meals. Revision of Categorical Eligibility in SNAP, ([USDA Link](#)). USDA's proposed regulation received tens of thousands of comments and resulted in petitions against the change and protests. Maria Godoy, Activists Protest USDA Changes That Threaten Free School Lunch, (Nov. 2019, <https://www.npr.org/sections/thesalt/2019/11/14/779491101/activists-stage-protest-against-usda-changes-that-threaten-free-school-lunch>).

SCPD opposes these definitional changes especially because this change may result in fewer children receiving school-based vision services outlined under this plan. In addition, the threat of USDA's proposal could mean that even more Delawarean students would become ineligible.

The second major change involves the process by which eligible students are identified and screened. Presently, once a student fails the school-supplied vision screening, a qualified provider would send home, with the student, a parental consent form. Only if a parent consented to the provider's services would a student then be screened and provided with corrective lenses and frames in the on-site mobile eye clinic.

DMMA proposes to remove the need for parental consent before the provision of provider services. Instead of obtaining consent prior to service, the qualified provider would only be required to send home, with the student, a notice that the student would be receiving a vision screening, eye exam, and corrective lenses and frames if necessary. If a guardian does not want these services, they must return the form/notice to the school indicating their refusal. It is unclear from the proposal whether the form would need to be sent back to the school consenting to services before they are performed; however, the removal of the words "For children whose return with parental consent..." would lend itself to the belief that the proposal is removing the need for parental consent.

Under Delaware law, parental¹ consent is required for the provision of medical treatment to a minor. 13 Del C. § 707 (b). Medical treatment is defined as “developmental screening, mental health screening and treatment, and ordinary and necessary medical and dental examination and treatment.” 13 Del. C. § 707 (a)(2). Eye screenings and exams would arguably be included under this definition of medical treatment, which requires parental consent. SCPD recommends that DMMA not remove the requirement for parental consent, as required by state law.

DMMA also proposes to change the timeline for providing corrective lenses and frames to those students identified as having a need for these. Instead of being provided with corrective eyewear in the mobile eye clinic, the student will be given a notice to be sent home, explaining the student’s need for corrective eyewear and requesting insurance information. There is no mention in the proposed changes of when the students would then be provided with the corrective eyewear. SCPD recommends that DMMA include a timeline of when students can expect to receive corrective eyewear once insurance information is provided.

In an effort to streamline the process, SCPD recommends that, in addition to not removing the requirement for parental consent for the provision of the eye screening and examination, DMMA also include the request for insurance information in the initial consent form. This would eliminate the need for providers to send a second notice/form home with students. The initial parental consent form would then include whether the parent consented to the eye screening and examination and, if the parent consents to the services, the student’s insurance information.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations, recommendations or position on the proposed regulation.

cc: Mr. Stephen Groff
Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disability Council

23reg528- DMMA Delaware healthy children program state plan 1-28-2020

¹ Parental consent includes those individuals capable of furnishing consent for a minor as outlined in 13 Del. C. § 707 (b). The word parent, as used in this document, includes those individuals outlined.