



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

John McNeal
SCPD Director

MEMORANDUM

DATE: April 5, 2021

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

FROM: Terri Hancharick – Chairperson *TH*
State Council for Persons with Disabilities

RE: 24 DE Reg. 848 [DMMA Proposed Regulation on Streamline
Medicaid Application (March 1, 2021)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Medicaid and Medical Assistance's (DMMA's) proposed regulation to amend Title XIX Medicaid State Plan regarding the Streamline Application. The changes include questions for the justice-involved population (incarcerated individuals) and retroactive eligibility, and would apply to services starting May 11, 2021. The proposed regulation was published as 24 DE Reg. 848 in the March 1, 2021 issue of the Register of Regulations. SCPD has the following observations.

This regulation had its genesis in Executive Order 27, signed by Governor Carney on December 4, 2018. The order recognized that "it is a paramount interest of the State for the benefit of all its citizens to: improve the

transition from correctional custody to release in the communities; increase public safety; reduce recidivism; make better use of resources in correctional facilities; and expand partnerships with communities, nonprofit services providers and reentry advocates, and statewide justice-oriented membership organizations.”

The order created the Delaware Correctional Reentry Commission (DCRC). Among the objectives of the Commission were to “[d]evelop policies with the DOC (Department of Corrections) and the Department of Health and Social Services (DHSS) that provide a continuum of care for reentry for those with mental illness and/or substance use disorders, including the appropriate extension of services after relapse.”

Contiguous with the creation of the DCRC, the State requested, and the Centers for Medicare & Medicaid Services (CMS), approved the extension and amendment to the Diamond State Health Plan on July 31, 2019. The changes included eligibility for individuals the month they submit an application and waiver of the three (3) month retroactive eligibility period.

To help implement these changes, the applications for services would include questions for incarcerated individuals, incarcerated dependents and retroactive eligibility. Several appendices and other documents are incorporated but not set forth in the proposed regulation because of their length. The forms were reviewed individually as in some the language has changed and in others, it has not. SCPD’s comments are as follows:

Appendix A is the Health Coverage from Jobs Form. It does not contain any changes.

Appendix B is the American Indian or Alaska Native Family Member Form. It also does not contain any changes.

Appendix C is the Assisting with Applications Form. This form does not contain any changes.

The Benefit Application Form 100 Justice Involved and Retro Changes Form contains the changes specified above. It is an application for food benefits, cash assistance, medical assistance, and child-care assistance. It addresses incarcerated individuals and incarcerated dependents and

specifically states that they can apply for benefits. It also asks questions about the populations that are still eligible for retroactive eligibility.

The Health Coverage—Family Justice Involved and Retro Form is an application specifically for medical assistance. It addresses incarcerated individuals and incarcerated dependents and specifically states that they can apply for benefits. It also asks questions about the populations that are still eligible for retroactive eligibility.

The Health Coverage—Short Form Justice Involved and Retro Form is an application for health coverage. It is shorter and easier to complete than the Health Coverage—Family Justice Involved and Retro Form. It contains the changes about incarcerated individuals. Single individuals who are incarcerated and do not have any dependents can use this form.

The last form is an application for Long Term Care Medicaid, LTC Application. It does not contain any changes.

The purpose of this regulation is to make it easier for incarcerated individuals to access benefits so that their reentry into society is easier and can help lower or prevent recidivism. To this extent, the changes in the forms are salutary.

Unfortunately, as a result of the Medicaid Section 1115 Waiver, the State is eliminating the three (3) month period of retroactive eligibility for Medicaid benefits except for certain populations. This could be problematic. The reason given for eliminating the retroactivity for most individuals is that it will allow the State to better control the Medicaid costs while providing “high quality health coverage.” Nevertheless, “if monitoring or evaluation data indicate that demonstration features are not likely to assist in promoting the objectives of Medicaid, CMS reserves the right to require the state to submit a corrective action plan to CMS for approval. Further, CMS reserves the right to withdraw waivers or expenditure authorities at any time it determines that continuing the waivers or expenditure authorities would no longer be in the public interest or promote the objectives of Medicaid.”

Although Medicaid retroactive benefits are being curtailed, there is a review mechanism that allows the CMS to require the State to correct or fix any problems that may result from the waiver or even to withdraw the waiver if it determines that the objectives of Medicaid are not promoted or that the

waiver is not in the public interest. Under the circumstances, SCPD endorses the proposed regulation but will monitor its implementation.

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

cc: Mr. Stephen Groff, DMMA
Ms. Lisa Zimmerman, DMMA
Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disability Council

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