



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

John McNeal  
SCPD Director

**MEMORANDUM**

DATE: March 23, 2023

TO: Melissa Dohring, DHSS-DMMA  
Planning and Policy Unit

FROM: Benjamin Shrader – Chairperson   
State Council for Persons with Disabilities (SCPD)

RE: Proposed DMMA Regulation [20000 Medicaid Long Term Care 20720.1  
Daily Needs Allowance, 26 Delaware Reg. of Regulations 754 (March 1,  
2023)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance's (DHSS/DMMA) proposal to amend this regulation to clarify internal policies and procedures for calculating the Daily Needs Allowance for individuals participating in the Long Term Care Community Services Program. The proposed regulation was published as 26 DE Reg. 754 in the March 1, 2023, Register of Regulations issue.

SCPD has the following observations:

The Patient Pay Calculation is a post-eligibility determination<sup>1</sup> of how much a recipient must pay while receiving either Lifespan or LTCCS and is dependent on setting. A Daily

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<sup>1</sup> It is important to distinguish this from how resources and income are counted for eligibility purposes- the rules are very different.

Needs Allowance is calculated, and the amount deducted from income to establish the Patient Pay Amount.

Currently, the regulation provides as follows:

- Individuals on the DDDS Lifespan Waiver who are receiving residential habilitation services are entitled to a deduction from income equal to the Adult Foster Care rate<sup>2</sup>. The balance is the Patient Pay Amount, and it is paid directly to the provider.
- Individuals who are receiving LTCCS and in assisted living, get a deduction from income equal to the ADC rate and a deduction for room and board. The balance is the Patient Pay Amount and is paid directly to the facility (room and board is paid separately).
- Individuals on the DDDS Lifespan Waiver who are not in residential habilitation get a deduction equal total income, including income that has passed through a Miller Trust. The regulation states that, “All earned income in the form of wages shall be allowed to be protected,” which is confusing as these individuals do not have a patient pay amount.

**The State Council for Persons with Disabilities (SCPD) endorses this amendment, but asks that DMMA clean up the ambiguity created by the language regarding wages being totally protected.**

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

cc: The Honorable Molly Magarik, Secretary, DHSS  
Director Theodore Mermigos, DMMA  
Ms. Laura Waterland, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

26 reg 754 DMMA Medicaid LTC Daily Needs 03-23-23

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<sup>2</sup> [https://dhss.delaware.gov/dmma/files/an\\_202208.pdf](https://dhss.delaware.gov/dmma/files/an_202208.pdf);