



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: December 3, 2010

TO: Ms. Sharon Summers, DMMA
Planning & Policy Development Unit

FROM: Daniese McMullin-Powell, *DMP/KK* Chairperson
State Council for Persons with Disabilities

RE: 14 DE Reg. 461 [DMMA Final Consolidation of E&D, ABI & AL Waivers]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMAs) final regulation regarding an amendment to the Elderly and Disabled (E&D) Waiver that combines three existing §1915(c) Home and Community-Based Services (HCBS) waivers [E&D, Acquired Brain Injury (ABI) and Assisted Living (AL)] into one HCBS waiver. As background, SCPD submitted comments on the May 19, 2010 pre-publication draft of the Department's consolidated waiver application. DHSS responded with an itemized July 29 response. DHSS then published its waiver application as a proposed regulation in August [14 DE Reg. 88 (August 1, 2010)]. The SCPD submitted a 10-page memo which reiterated its original comments on the May 19 draft followed by DSAAPD's response. A final regulation has been issued, which includes the original SCPD commentary, July DHSS response, August 16 SCPD supplemental commentary, and DHSS response to the supplemental commentary. Listed below are the supplemental commentary and responses. Please note Council's request in number 9.

3. Comment: The Council expressed concern that DSAAPD case managers may lack specific training and expertise to address needs of individuals with ABI. The Council also recommended consumer education on availability of in-home respite as a personal care service.

Response: DHSS has identified 4 case managers and a planner to be formally trained as Certified Brain Injury Specialists. DHSS will be proactive in informing beneficiaries about respite and personal care.

4. Comment: The Council recommended consideration of use of the client satisfaction surveys used by JEVS and Easter Seal for PAS participants.

Response: DHSS has questionnaires designed to address federal HCBS waiver quality indicators.

5. Comment: SCPD questioned lack of check-off for “brain injury” subgroup.

Response: DHSS reiterated that, while not intuitive, lack of check-off is per CMS guidance.

9. Comment: The Council questioned the validity and reliability of use of standard “long term care assessment tool” to assess level of care for persons with ABI.

Response: Same tool is currently used for ABI waiver and is broad-based.

SCPD respectfully requests a copy of the long term care assessment tool.

10. Comment: SCPD encourages inclusion of provision for supported and competitive employment or TBI Clubhouse as alternative to day-care type programs.

Response: DHSS is “open” to exploring options subject to funding availability.

11. Comment: The Council recommends adoption of reimbursement rates for adult habilitation sufficient to attract quality providers.

Response: Efforts are made to establish rates which are fair and appropriate.

16. Comment: The Council recommends inclusion of “advanced practice nurse” and “licensed professional counselors of mental health” in the current version of the waiver.

Response: Even such ostensibly minor amendments would involve making changes to budgets, provider enrollment materials, quality review strategies, and claims payment systems. DHSS is predisposed to address in future amendment.

18. Comment: The SCPD recommends incorporation of a requirement to maintain service plans beyond 3 years.

Response: The 3-year period is part of the CMS template.

19. Comment: The Council promoted adoption of a standard requiring more frequent agency-beneficiary contact.

Response: DHSS will research best practices in this context.

22. Comment: The Council recommends consideration of inclusion of CLASI in section on grievances, official events, and quality assurance.

Response: DHSS will assess ways that CLASI could be resource in identified contexts.

23. Comment: The Council recommends inclusion of additional references to Ombudsman in abuse/neglect context.

Response: DHSS will research as part of future amendment.

24. Comment: The Council questioned accuracy of statement that “the State does not permit or prohibits the use of restraints or seclusion.

Response: DHSS will research as part of future amendment.

25. Comment: The SCPD notes that “medication administration” section is underinclusive.

Response: DHSS notes that, although the provision is not literally limited to assisted living facilities, it would only apply to such facilities as practical matter.

27. Comment: The SCPD expressed interest in having input on personal care services authorization guidelines.

Response: DHSS will be in contact with the SCPD.

28. Comment: The Council recommends more frequent assessment of waiver implementation and disaggregation of data since subsets of beneficiaries (e.g. TBI survivors) could be dissatisfied with services while larger E&D participant group is satisfied.

Response: DHSS shares the SCPD’s interest in ensuring that the needs of persons with ABI are not overshadowed by aggregate data collection.

SCPD certainly appreciates the Department’s consideration of our comments. Please contact SCPD if you have any questions or comments regarding our observations on the final regulation.

cc: Ms. Rosanne Mahaney
Mr. William Love
Ms. Lisa Bond
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

14reg461 waiver amend 12-3-10