



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: August 29, 2017

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

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 21 DE Reg. 156 [DMMA Notice: DSHP Amendments 8/1/17] – DDDS Lifespan Waiver Interaction with DSHP

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) first proposed amendment to allow non-residential enrollees in the DDDS Lifespan Waiver to obtain State Plan benefits through the DSHP MCO-based system. The proposed regulation was published as 21 DE Reg. 156 in the August 1, 2017 issue of the Register of Regulations.

The Division of Medicaid & Medical Assistance is soliciting comments on two (2) proposed amendments to the Diamond State Health Plan (DSHP) Waiver. The DSHP is the general Medicaid program initiated in 1996 which covers most of Delaware's Medicaid participants. It is implemented through managed care organizations (MCOs).

The SCPD has the following observations.

As background, the DDDS Waiver population has historically been "carved out" from the DSHP. DDDS Waiver enrollees were limited to those receiving Residential Habilitation. Effective July 1, 2017, the DDDS Waiver was rebranded the Lifespan Waiver and eligibility was expanded to include non-residential DDDS clients.

Under the DMMA proposal, the residential DDDS Waiver enrollees would continue to receive both Waiver and State Plan services through a "fee for service" model. Non-residential DDDS Waiver enrollees would receive Waiver services through a "fee for service" model but State Plan

services through the DSHP MCO system. The cited rationale for the divergent approaches is as follows: a) continuity of MCO-managed services; and b) transition to eventual conversion of all DDDS Waiver enrollees to the DSHP MCO system:

...Delaware seeks CMS approval to amend the current 1115 DSHP Waiver to enable the individuals that do not live in a provider-managed residential setting to remain enrolled in the DSHP Waiver to continue to receive their acute care benefits from their MCO. If Delaware does not make this amendment, the lives of these individuals will be needlessly disrupted.

DMMA Proposed Amendment, Section I.

If Delaware does not amend the 1115 waiver, new enrollees in the DDDS Lifespan 1915(c) waiver who have previously been enrolled in the 1115 waiver will be forced to disenroll from the Managed Care Organization. This amendment is needed to avoid unnecessarily disrupting the lives of prospective DDDS Lifespan waiver enrollees who live with their family. These individuals have established relationships with the Managed Care Organizations and their network of providers to whom they have become accustomed.

21 DE Reg. 156, 157 (8/1/17).

Individuals who are enrolled in the 1915(c) Lifespan Waiver and are receiving Residential Habilitation will continue to be carved out of the 1115 DSHP Waiver and will receive their acute care benefits via fee for service. It is our plan to eventually include this population among the individuals who receive their State Plan benefits from an MCO but we were not able to perform the necessary up front work to do this concurrent with the amendment to the DDDS Lifespan Waiver.

DMMA Proposed Amendment, Section II.

As a result, non-residential DDDS Waiver enrollees will receive all State Plan services through the DSHP MCOs while receiving the following medically necessary DDDS Waiver supports through the DDDS Waiver:

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

cc: Ms. Teresa Avery, Autism Delaware
Mr. Terry Olson, The Arc of Delaware
Mr. William McCool, UCP
Ms. Jody Hougentogler, BIADE
Ms. Jill Rogers, DDDS
Ms. Terri Hancharick, Advisory Council to DDDS
Mr. Steve Groff, DMMA
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

21reg156 dmma-DSHP amendments DDDS lifespan waiver 8-23-17



STATE OF DELAWARE

PUBLIC NOTICE AND NOTICE OF PUBLIC HEARINGS

DELAWARE HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

DELAWARE DIAMOND STATE HEALTH PLAN
1115 DEMONSTRATION WAIVER AMENDMENT

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit two requests to the Centers for Medicare and Medicaid Services (CMS) to amend Delaware's Section 1115 Diamond State Health Plan Demonstration Waiver.

Purpose

The purpose of this posting is to provide public notice and receive public input for consideration regarding Delaware's 1115 Diamond State Health Plan (DSHP) Waiver amendments. Delaware is proposing two amendments to the 1115 waiver that will be submitted to CMS at the same time. These amendments cover two separate populations. Amendment 1 addresses DDDS Lifespan Waiver enrollees in Managed Care. Amendment 2 addresses Out-of-State Former Foster Care Youth.

Background

Delaware's 1115 DSHP Waiver demonstration was initially approved in 1995, and implemented on January 1, 1996. The demonstration mandatorily enrolls eligible Medicaid recipients into managed care organizations (MCOs) to create efficiencies in the Medicaid program and enable the expansion of coverage to certain individuals who would otherwise not be eligible for Medicaid. Beginning January 1, 2014, DSHP expanded eligibility for individuals with incomes up to and including 133 percent of the Federal Poverty Level (FPL). The demonstration also provides long-term care services and support (LTSS) to eligible individuals through a mandated managed care delivery system, entitled DSHP-Plus. Beginning January 1, 2015, the state implemented Promoting Optimal Mental Health for Individuals through Supports and Empowerment (PROMISE), a voluntary program that provides enhanced behavioral health services and supports for targeted Medicaid beneficiaries.

Additionally, On May 25, 2017, CMS approved an amendment to Delaware's Home and Community-Based Services (HCBS) 1915(c) waiver that serves individuals with intellectual and developmental disabilities (IDD). The waiver was rebranded as the Divisions of Developmental Disability Services (DDDS) Lifespan Waiver and amended to allow Delaware to expand the waiver's target criteria to enroll

individuals who live with their family. The amendment also added HCB services designed to meet the needs of families who support a loved one with intellectual and developmental disabilities in the family home.

Overview and Summary of Proposed 1115 DSHP Waiver Amendments

Proposed Amendment 1: DDS Lifespan Waiver enrollees in Managed Care

Under the current design of the 1115 DSHP Waiver, individuals enrolled in the 1915(c) Lifespan Waiver are excluded from the 1115 waiver as a result of a state policy decision made at the time the 1115 waiver was implemented in 1996. All benefits for individuals enrolled in the 1915(c) Lifespan Waiver, both waiver and non-waiver, are paid as fee for service. When an individual enrolls in the 1915(c) Lifespan Waiver, they are dis-enrolled from the 1115 waiver and are, therefore, also dis-enrolled from their Managed Care Organization. Individuals who are not enrolled in the 1915(c) waiver but have a diagnosis of IDD and live in their homes or family home, are enrolled in the in the 1115 Waiver—Managed Care program. Under this amendment, Delaware desires to enable individuals to remain enrolled in the 1115 DSHP Waiver in order to receive their State Plan benefits from a managed care organization if they also choose to enroll in the DDS Lifespan waiver. If Delaware does not amend the 1115 waiver, new enrollees in the DDS Lifespan 1915(c) waiver who have previously been enrolled in the 1115 waiver will be forced to dis-enroll from the Managed Care Organization. This amendment is needed to avoid unnecessarily disrupting the lives of prospective DDS Lifespan waiver enrollees who live with their family. These individuals have established relationships with the Managed Care Organizations and their network of providers to whom they have become accustomed.

Proposed Amendment 2: Out-of-State Former Foster Care Youth

On November 21, 2016, CMS published the final rule clarifying that states can provide coverage to former foster care youth who were in Medicaid and foster care in a different state with income up to 133 percent of the federal poverty level (FPL) under the new adult group identified in the ACA. Additionally, states can use 1115 demonstration authority to provide coverage for former foster care youth who were in foster care under the responsibility of other states and have income higher than 133 percent of the FPL. States that provide coverage under the new adult group have the option of covering former foster care youth with MAGI-based income above 133 percent of the FPL, under the eligibility group described in section 1902(a)(10)(ii)(XX) of the Act and implementing regulations at 42 CFR 435.218.

Delaware currently provides coverage to former foster care youth under the age of 26, not otherwise mandatorily eligible, who were on Medicaid and in foster care in Delaware when they turned age 18 or “aged out” of foster care. Delaware also currently provides coverage to individuals with income up to 133 percent of FPL under the new adult group identified in the ACA. The purpose of this amendment is to provide coverage on a state-wide basis to former foster care youth who currently reside in Delaware and were in foster care and enrolled in Medicaid at age 18 or when they “aged out” of the system in a different state.

Public Comment Submission Process

As required by 42 CFR Part 441.304, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the waiver. Per Del. Code, Title 29, Ch. 101 §10118 (a), The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. The opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing when 1 or more public hearings are held on the proposal. The public is invited to review and comment on the proposed Lifespan Waiver Amendment. Comments must be received by 4:30 p.m. on September 11, 2017. Comments may be submitted in the following ways:

This public notice and the Amendment are posted DHSS/DMMA website at:
<http://dhss.delaware.gov/dhss/dmma/>

Comments and input may be submitted in the following ways:

By email: Nicole.M.Cunningham@state.de.us
By fax: 302-255-4413 to the attention of Nicole Cunningham
By mail: Nicole Cunningham
Division of Medicaid and Medical Assistance
Planning, Policy & Quality Unit
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720-0906

Public Hearings

Notice will be published regarding the amendments in the August 1, 2017 Delaware Register of Regulations. The comment period begins on August 1, 2017 and ends on September 11, 2017.

This timeframe allows an additional period of 15 days for the public to comment after the last public meeting. Following the comment period, the State reviews, considers, and responds to all comments received.

1. NEW CASTLE COUNTY

Date: August 25, 2017
TIME: 2:30 PM – 3:30 PM
LOCATION: DDDS Fox Run Center
2540 Wrangle Hill Road
Suite 200, Bear, DE 19701

2. KENT COUNTY

Date: August 22, 2017
TIME: 2:30 PM – 3:30 PM
LOCATION: Legislative Hall
411 Legislative Avenue
Dover, DE 19901

SUSSEX COUNTY

Date: August 22, 2017
TIME: 10:45 AM – 11:45 AM
LOCATION: Thurman Adams State Svc Center
546 S. Bedford St.
Georgetown, DE 19947

Any public feedback received will be summarized including any changes that will be made as a result of the public comment to the proposed 1115 DSHP Waiver Amendments that will be submitted to CMS.

If you require special assistance or auxiliary aids and/or services to participate in the public hearing (e.g., sign language or wheelchair accessibility), please call the following contact at least ten (10) days prior to the hearing for arrangements:

Lauren Gunton at (302) 255-9561

The prompt submission of requests helps to ensure the availability of qualified individuals and appropriate accommodations in advance.



Stephen M. Groff
Director
Division of Medicaid and Medical Assistance

July 10, 2017

Date



Delaware Health and Social Services

A Proposed Amendment to the Delaware
Section 1115 Demonstration Waiver

to

The Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services

State of Delaware

Stephen Groff, Director
Division of Medicaid & Medical Assistance (DMMA)

Section I – Program Description

On May 25, 2017, the State of Delaware received approval to amend its Division of Developmental Disability Services (DDDS) 1915(c) Home and Community-Based Services Waiver effective July 1, 2017. As part of the amendment process, Delaware renamed the 1915(c) DDDS Waiver to the 1915(c) DDDS Lifespan Waiver to reflect the continuum of waiver enrollment across the lifespan of the recipients.

The Division of Developmental Disabilities Services (DDDS) Home and Community Based Services Lifespan Waiver provides services and supports as an alternative to institutional placement for individuals with intellectual developmental disabilities (IDD) (including brain injury), autism spectrum disorder or Prader-Willi Syndrome.

The goal of these services is to support individuals to live healthy, independent and productive lives in the community. In addition, the amended waiver provides new flexible person-centered supports designed to assist the families to enable the waiver participant to remain in his/her family home for as long as possible. Services are intended to promote independence through strengthening the individual's capacity for self-care and self-sufficiency while respecting their needs and preferences. DDDS also offers the option for individuals to transition from ICF/IID institutions to the community using the waiver to provide residential and other supports.

The objectives of the DDDS Lifespan Waiver are to: Promote independence for individuals enrolled in the waiver and promote the engagement of family and other natural supports whenever possible; Offer an alternative to institutionalization through the provision of an array of services and supports that promote community integration and independence; Protect the health and safety of the participants receiving services under the waiver; and Ensure the highest standards of quality and best practices, through a network of qualified providers.

A summary of the services covered include:

- Day Habilitation
- Personal Care *
- Prevocational Services
- Respite *
- Supported Employment (Individual and Small Group)
- Assistive Technology for Individuals not otherwise covered by Medicaid *
- Clinical Consultation (Nursing and Behavioral)
- Community Transition *
- Home or Vehicle Accessibility Adaptations *
- Specialized Medical Equipment and Supplies not otherwise covered by Medicaid *
- Supported Living

* Added via May 25th amendment

The purpose of the 1915(c) DDS Lifespan Waiver amendment is to increase the waiver enrollment limits to include individuals with intellectual and developmental disabilities, autism, and/or Prader-Willi Syndrome who have left school but who do not require a residential support as of the time of enrollment. These individuals that are the target of the waiver expansion typically live in the family home and are currently enrolled in Delaware's 1115 Diamond State Health Plan (DSHP) Waiver to receive their regular Medicaid State Plan benefits via enrollment with a Managed Care Organization.

Since the inception of Delaware's 1115 waiver in 1994, individuals enrolled in the 1915(c) waiver have been carved out of the 1115 DSHP Waiver as a result of a state policy decision. If we do not amend the 1115 waiver, individuals living in the family home who wish to enroll in the DDS Lifespan Waiver, who have been receiving their State Plan benefits from a Managed Care Organization, would have one of two options:

- be dis-enrolled from managed care, or
- delay enrolling in the Lifespan Waiver

Delaware desires for these individuals to continue to receive their non-1915(c) waiver benefits from an MCO. To that end, Delaware seeks CMS approval to amend the current 1115 DSHP Waiver to enable the individuals that do not live in a provider-managed residential setting to remain enrolled in the DSHP 1115 Waiver in order to continue to receive their acute care benefits from their MCO. If Delaware does not make this amendment, the lives of these individuals will be needlessly disrupted.

Members that are receiving DSHP Plus LTSS under the 1115 Waiver will be unaffected by this change if they choose to remain enrolled in DSHP Plus. DSHP Plus LTSS members with intellectual and developmental disabilities cannot be concurrently enrolled in the 1115 waiver and the DDS Lifespan 1915(c) waiver. Individuals must choose the LTSS program that will best meet his or her needs. Individuals will be assisted to make that choice by the MCO case manager and a DDS Community Navigator.

Section II – Demonstration Eligibility

The population affected by this Demonstration is comprised of individuals who are enrolled in the 1115 DSHP Waiver that qualify to be enrolled in the 1915(c) DDS Lifespan Waiver on or after July 1, 2017 and are not receiving Residential Habilitation. This population will receive their regular Medicaid State Plan benefits via enrollment with a Managed Care Organization. Individuals who are enrolled in the 1915(c) DDS Lifespan Waiver and are receiving Residential Habilitation will continue to be carved out of the 1115 DSHP Waiver and will receive their acute care benefits via fee for service. It is our plan to eventually include this population among the individuals who receive their State Plan benefits from an MCO but we were not able to perform the necessary up front work to do this concurrent with the amendment to the DDS Lifespan Waiver.

Delaware has added 1122 unduplicated recipients to the DDDS waiver enrollment cap for WYE 4, the first year of the Lifespan amendment to allow enrollment of all individuals graduating from school that year and those who have already graduated and continue to living with their family. All of these newly enrolled individuals are currently enrolled in the 1115 DSHP Waiver.

The following optional eligibility group is being added to the 1115 DSHP Waiver to allow for this population to be enrolled in the 1915(c) DDDS Lifespan Waiver while receiving their regular Medicaid State Plan benefits via enrollment with a Managed Care Organization.

State Plan Medicaid Group	Optional Eligibility	Description/ Social Security Act and CFR Citations	Income Level/FPL	Resource Standard	Benefit Package
Individuals with IDD, autism, and/or Prader-Willi Syndrome enrolled in the 1915(c) DDDS Lifespan Waiver who are not receiving Residential Habilitation		§§1902(a)(10)(A)(ii)(VI)	250% of SSI Standard	\$2,000 individual \$3,000 couple	Diamond State Health Plan (DSHP)

Additionally, the excluded eligibility group, *Community-based individuals who meet the ICF/MR level of care (DDDS/MR 1915(c) Waiver)*, which is currently excluded under the 1115 DSHP Waiver is being modified to included only those individuals in the 1915(c) Lifespan Waiver that are receiving Residential Habilitation who meet ICF/IID level of care.

Exclusions from the DSHP and DSHP-Plus	Description/ Social Security Act and CFR Citations	Income Level/FPL	Resource Standard	Benefit Package
Community-based individuals living in a provider-managed residential setting to receive Residential Habilitation who meet ICF/IID level of care (DDDS Lifespan 1915(c) Waiver)	§1902(a)(10)(A)(ii)(VI)	250% of SSI Standard	\$2,000 individual \$3,000 couple	N/A

Section III – Demonstration Benefits and Cost-Sharing Requirements

Benefits provided to the population included in this application will be the same benefits that are provided for the current Medicaid population under Delaware's Medicaid State plan.

1. Indicate whether the benefits provided under the Demonstration differ from those provided under the Medicaid and/or CHIP State plan:

Yes No

2. Indicate whether the cost sharing requirements under the Demonstration differ from those provided under the Medicaid and/or CHIP State plan:

Yes No

Section IV – Delivery System and Payment Rates for Services

The health care delivery system for Demonstration participants will be no different than the healthcare delivery system that is in place today for Delaware's Medicaid population.

1. Indicate whether the delivery system used to provide benefits to Demonstration participants will differ from the Medicaid and/or CHIP State plan:

Yes No

If this amendment is approved, individuals who will be newly enrolled in the DDDS Lifespan 1915(c) waiver will continue to receive their State Plan benefits from a Managed Care Organization. Lifespan waiver benefits will continue to be carved out of the 1115 demonstration. This is to ensure that their lives are not needlessly interrupted.

If CMS approves this change to the 1115 waiver, Delaware will revise the language in the 1915(c) DDDS Lifespan waiver to indicate that that waiver is operated concurrent with the 1115 waiver authority.

Section V – Implementation of Demonstration

Delaware is requesting approval, under Section 1115 Demonstration authority, to continue to provide coverage to individuals who are enrolled in the 1115 DSHP Waiver that are newly enrolled in the 1915(c) DDDS Lifespan Waiver and are not receiving Residential Habilitation in a provider-managed setting.

This amendment is needed to ensure that these individuals can continue to receive the Medicaid State Plan benefits they are eligible for via enrollment with a Managed Care Organization, concurrent with receipt of services and supports from the 1915(c) DDDS Lifespan Waiver in lieu of institutionalization to enable them to remain living with their family.

Section VI – Demonstration Financing and Budget Neutrality

Delaware is requesting to continue the Section 1115 expenditure authority for State Plan benefits received by individuals who will be newly enrolled in the 1915(c) DDDS Lifespan waiver. This

population is comprised of a Medicaid State Plan eligibility group described in §1902(a)(10)(A)(ii)(VI) of the Social Security Act. This group is already receiving Medicaid State Plan benefits via enrollment with a Managed Care Organization.

Section VII – List of Proposed Waivers and Expenditure Authorities

Expenditure Authorities:

Delaware is requesting to continue the Section 1115 expenditure authority for State Plan benefits received by individuals who will be newly enrolled in the 1915(c) DDDS Lifespan waiver. The 1915(c) waiver services received by individuals enrolled in that waiver will be delivered under the authority of the 1915(c) waiver.

Waiver Authorities:

Delaware is requesting approval, under Section 1115 Demonstration authority, to continue to provide coverage to individuals who are enrolled in the 1115 DSHP Waiver that are newly eligible for the 1915(c) DDDS Lifespan Waiver and are not receiving Residential Habilitation.

Section VII – Public Notice

1. Delaware provided an open comment period from November 1, 2016 to December 19, 2016 for the amendment to the DDDS HCBS 1915(c) waiver at which this proposed change to the 1115 waiver was presented.
2. Delaware published a Notice of Public Comment and Hearing in the Delaware Register of Regulations, the Delaware News Journal, and the Delaware State News on November 1, 2016 for the proposed amendment to the DDDS HCBS 1915(c) waiver. The publication in the Delaware Register can be found at: <http://regulations.delaware.gov/default.shtml>
3. A draft of the DDDS HCBS 1915(c) waiver amendment application was posted on the Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) and Division of Developmental Disabilities (DDDS) websites on November 1, 2016 as well.
4. Delaware conducted three public hearings on the amendment to the DDDS HCBS 1915(c) waiver at which this proposed change to the Section 1115 demonstration waiver was presented. The information for these hearings is as follows:
 - a. NEW CASTLE COUNTY
Monday, November 28, 2016, 6-7PM
Fox Run Large Training Conference Room 2nd floor
2540 Wrangle Hill Rd. Suite 200 Bear, DE 19701

b. SUSSEX COUNTY

Tuesday November 29, 2016, 1-2 pm
Thurman Adams State Service Center Conference Room 100
544 South Bedford Street Georgetown, DE 19947

c. KENT COUNTY

Wednesday, November 30, 2016, 3-4 pm
Dover Public Library Multi-Purpose Room A
15 Lookerman Plaza Dover, DE 19901

In addition to the public hearings and notice in the Delaware Register of Regulations, information about the proposed Lifespan Amendment to the DDDS HCBS 1915(c) waiver was also shared at the following public meetings:

- 4/17/16 and 10/26/16 Medical Care Advisory Committee (MCAC) quarterly meetings
- 9/21/16 DDDS Quarterly Provider Meeting
- 10/6/16 and 12/1/16 DDDS Day Service Provider meeting
- 11/15/16 DMMA's Bi-monthly joint MCO meeting
- 11/16/16 Governor's Council for Exceptional Citizens
- 11/17/16 Governor's Advisory Committee to DDDS, monthly meeting
- 11/18/16 Governor's Commission on Community Based Alternatives, quarterly meeting
- 11/21/16 State Council for Persons with Disabilities, monthly meeting

A number of changes were made to the amendment as a result of feedback received from the public during the comment period.

- The attached power point presentation about the proposed changes was used at the public hearings and the other public meetings outlined above. Slide 15 of the power point presentation indicated that, *For individuals living with their family: They will continue to be enrolled with an MCO who will cover their regular (i.e. non-waiver) healthcare needs.*

5. Delaware certifies that it used an electronic mailing list to notify the public.

6. A list of comments received and associated responses that pertain to this amendment is attached as Appendix A. This document was posted on the DDDS and DMMA websites along with the revised amendment that was submitted to CMS. Most of the public comment/questions requested clarification regarding elements of the waiver.

Section IX – Demonstration Administration

Name and Title: Glyne Williams, Social Services Chief Administrator,
Policy Planning, and Quality Unit, DMMA
Telephone Number: 302-255-9628
Email Address: Glyne.Williams@state.de.us

- I. **Habilitation Services.** The State assures that prevocational, educational, or supported employment services, or a combination of these services, if provided as habilitation services under the waiver are: (1) not otherwise available to the individual through a local educational agency under the Individuals with Disabilities Education Act (IDEA) or the Rehabilitation Act of 1973; and, (2) furnished as part of expanded habilitation services.
- J. **Services for Individuals with Chronic Mental Illness.** The State assures that federal financial participation (FFP) will not be claimed in expenditures for waiver services including, but not limited to, day treatment or partial hospitalization, psychosocial rehabilitation services, and clinic services provided as home and community-based services to individuals with chronic mental illnesses if these individuals, in the absence of a waiver, would be placed in an IMD and are: (1) age 22 to 64; (2) age 65 and older and the State has not included the optional Medicaid benefit cited in 42 CFR §440.140; or (3) age 21 and under and the State has not included the optional Medicaid benefit cited in 42 CFR § 440.160.

6. Additional Requirements

Note: Item 6-I must be completed.

- * A. **Service Plan.** In accordance with 42 CFR §441.301(b)(1)(i), a participant-centered service plan (of care) is developed for each participant employing the procedures specified in Appendix D. All waiver services are furnished pursuant to the service plan. The service plan describes: (a) the waiver services that are furnished to the participant, their projected frequency and the type of provider that furnishes each service and (b) the other services (regardless of funding source, including State plan services) and informal supports that complement waiver services in meeting the needs of the participant. The service plan is subject to the approval of the Medicaid agency. Federal financial participation (FFP) is not claimed for waiver services furnished prior to the development of the service plan or for services that are not included in the service plan.
- B. **Inpatients.** In accordance with 42 CFR §441.301(b)(1)(ii), waiver services are not furnished to individuals who are inpatients of a hospital, nursing facility or ICF/IID.
- C. **Room and Board.** In accordance with 42 CFR §441.310(a)(2), FFP is not claimed for the cost of room and board except when: (a) provided as part of respite services in a facility approved by the State that is not a private residence or (b) claimed as a portion of the rent and food that may be reasonably attributed to an unrelated caregiver who resides in the same household as the participant, as provided in Appendix I.
- D. **Access to Services.** The State does not limit or restrict participant access to waiver services except as provided in Appendix C.
- E. **Free Choice of Provider.** In accordance with 42 CFR §431.151, a participant may select any willing and qualified provider to furnish waiver services included in the service plan unless the State has received approval to limit the number of providers under the provisions of §1915(b) or another provision of the Act.
- F. **FFP Limitation.** In accordance with 42 CFR §433 Subpart D, FFP is not claimed for services when another third-party (e.g., another third party health insurer or other federal or state program) is legally liable and responsible for the provision and payment of the service. FFP also may not be claimed for services that are available without charge, or as free care to the community. Services will not be considered to be without charge, or free care, when (1) the provider establishes a fee schedule for each service available and (2) collects insurance information from all those served (Medicaid, and non-Medicaid), and bills other legally liable third party insurers. Alternatively, if a provider certifies that a particular legally liable third party insurer does not pay for the service(s), the provider may not generate further bills for that insurer for that annual period.
- G. **Fair Hearing:** The State provides the opportunity to request a Fair Hearing under 42 CFR §431 Subpart E, to individuals: (a) who are not given the choice of home and community-based waiver services as an alternative to institutional level of care specified for this waiver; (b) who are denied the service(s) of their choice or the provider(s) of their choice; or (c) whose services are denied, suspended, reduced or terminated. Appendix F specifies the State's procedures to provide individuals the opportunity to request a Fair Hearing, including providing notice of action as required in 42 CFR §431.210.
- H. **Quality Improvement.** The State operates a formal, comprehensive system to ensure that the waiver meets the assurances and other requirements contained in this application. Through an ongoing process of discovery, remediation and improvement, the State assures the health and welfare of participants by monitoring: (a) level of care determinations; (b) individual plans and services delivery; (c) provider qualifications; (d) participant health and welfare; (e) financial oversight and (f) administrative oversight of the waiver. The State further assures that all problems identified through its discovery processes are addressed in an appropriate and timely manner, consistent with the severity and nature of the

Target Group	Included	Target SubGroup	Minimum Age	Maximum Age	
				Maximum Age Limit	No Maximum Age Limit
<input type="checkbox"/> Aged or Disabled, or Both - General					
	<input type="checkbox"/>	Aged			<input type="checkbox"/>
	<input type="checkbox"/>	Disabled (Physical)			
	<input type="checkbox"/>	Disabled (Other)			
<input type="checkbox"/> Aged or Disabled, or Both - Specific Recognized Subgroups					
	<input type="checkbox"/>	Brain Injury			<input type="checkbox"/>
	<input type="checkbox"/>	HIV/AIDS			<input type="checkbox"/>
	<input type="checkbox"/>	Medically Fragile			<input type="checkbox"/>
	<input type="checkbox"/>	Technology Dependent			<input type="checkbox"/>
<input checked="" type="checkbox"/> Intellectual Disability or Developmental Disability, or Both					
	<input checked="" type="checkbox"/>	Autism	14		<input checked="" type="checkbox"/>
	<input type="checkbox"/>	Developmental Disability			<input type="checkbox"/>
	<input checked="" type="checkbox"/>	Intellectual Disability	14		<input checked="" type="checkbox"/>
<input type="checkbox"/> Mental Illness					
	<input type="checkbox"/>	Mental Illness			
	<input type="checkbox"/>	Serious Emotional Disturbance			

b. **Additional Criteria.** The State further specifies its target group(s) as follows:

In order to be enrolled in the Lifespan waiver, individuals must have been determined to meet the following criteria:

1) Must be determined eligible for DDDS services per the criteria delineated in Title 16, Section 2100 of the Delaware Administrative Code. This eligibility criteria requires a diagnosis of an intellectual developmental disability (including brain injury), autism spectrum disorder or Prader Willi Syndrome assigned in the developmental period and also documented functional limitations.

2) Must meet established priority criteria for selection of entrance into the waiver or meet the criteria for one of the groups for which capacity has been reserved

3) Must meet level of care and financial eligibility for ICF/IID Services (as described in Appendix B-4)

c. **Transition of Individuals Affected by Maximum Age Limitation.** When there is a maximum age limit that applies to individuals who may be served in the waiver, describe the transition planning procedures that are undertaken on behalf of participants affected by the age limit (*select one*):

- Not applicable. There is no maximum age limit
- The following transition planning procedures are employed for participants who will reach the waiver's maximum age limit.

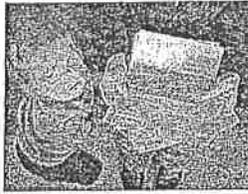
Specify:

Appendix B: Participant Access and Eligibility

B-2: Individual Cost Limit (1 of 2)

Nemours-UnitedHealthcare feud leaves families stuck

The News Journal Published 10:47 p.m. ET March 6, 2014 | Updated 11:52 p.m. ET March 6, 2014



(Photo: JENNIFER CORBETT/THE NEWS JOURNAL)

The letters – all 21 of them – arrived in the mailbox of Kyer and Ashley Sabo on the same day, Feb. 10.

All were from UnitedHealthcare, and all carried the same disturbing message: They would need to find new doctors, specialists and other medical professionals to care for their little girls – Anna, 4, and Lucy, 1 – by April 1, the day United's contract with Alfred I. duPont Hospital for Children/Nemours expires.

It was their first clue that such a breakup was under consideration, let alone likely and imminent. Each letter named a specific professional Anna and Lucy had seen at some point who no longer would be in United's network – cardiologists, surgeons, anesthesiologists, hearing specialists, orthopedic specialists, gastro-intestinal specialists, to name a few. The hospital and its satellite facilities – no longer in the insurer's network.

"It was sickening," Ashley Sabo said. "It was like a sucker punch to the stomach. These are the doctors, in our case at least, who have provided life-saving surgery. Now we're told arbitrarily that we can't go there."

Anna, especially, has needed the expertise found at the hospital, which has a reputation for pediatric excellence. She already has had two open-heart surgeries there in her young life.

33,000 children

The contract impasse was made public last month, when state officials announced they had a plan for the 33,000 children whose Medicaid coverage was provided by United. Because state Medicaid officials considered it a major change, arrangements were made to ensure those children could switch to the state's other Medicaid provider – Aetna-owned Delaware Physicians Care – if their caregivers wanted them to remain with Nemours physicians.

Through February, about 10 percent of those kids – 3,511 of them – had moved to the Aetna network, according to figures supplied Thursday night by Lt. Gov. Matt Denn.

Denn also issued a list of things parents should do if their children are caught in this snag, including a review of their legal rights under the plan that covers their children. If answers are not available from United or the answers are not satisfactory, Denn urged families to contact the state Insurance Commissioner's office.

Almost 6,000 children covered by a United policy have been seen or treated at DuPont in the past couple of years, hospital officials say. It is unclear how many children United covers statewide – children who might want the hospital's services in the future but have not been there recently. But United spokeswoman Mary McElrath-Jones said the insurer covers more than 130,000 people in Delaware.

The contract change was not seen as major to those in the Insurance Commissioner's office, though.

"A change in the provider network is not a major life change," said Linda Nemes, assistant director of market regulation.



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Those covered under an individual policy – not through their employer – could cancel those policies and buy a plan in the state's insurance marketplace (at choosehealthde.com (<http://choosehealthde.com/>)), which has open enrollment through March 31, Nemes said.

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in its letter to policyholders, United noted four other facilities where care could be offered, including Christiana Hospital, St. Francis Hospital, Wilmington Hospital and Children's Hospital of Philadelphia (CHOP).

Most of those places send children straight to A.I. duPont, Ashley Sabo said. And CHOP – in center city Philadelphia – is a long ride from their home near Prices Corner. It takes about nine minutes to get to DuPont Hospital, Kyer Sabo said. It took him 90 minutes to get to south Philadelphia last week, he said.

"It's disruptive for the whole family," he said, "financially, emotionally, everything."

Why should families be forced to drive an extra hour to reach a Philadelphia facility when a superb pediatric hospital is minutes away, asked Linnea Messina of Hockessin, whose two children – Lachlan, 5, and Hadley, 18 months – have been treated for hearing conditions at DuPont.

"It's certainly not a lunch-hour appointment," she said.

Denn said he remains hopeful that an agreement will be reached, but wanted families to know it may not be resolved.

"The reason I still have hope is that it makes a great deal of sense for both Nemours and United to resolve this, from a purely business perspective," Denn said. "And it's clearly the best thing for the children who need medical care."

Not a done deal

Chris Manning, spokesman for Nemours, said hospital officials do not consider the matter closed.

"However, our most recent conversations with United have been focused on issues relating to transitions of care for our patients and families in anticipation of the April 1 termination date," he said.

McElrath-Jones said United has many providers in its network.

"We are fully committed to arranging for necessary pediatric care and will work with providers both within the Delaware provider community as well as outside the state to ensure timely access to medical services," she said.

Kyer Sabo said he asked hospital officials if this was a game of "brinkmanship." Their answer to him, he said, was to urge him to get the ball rolling with CHOP.

"That was very telling to me," he said. "It doesn't sound like someone who is bluffing or withholding information."

If this situation is being used as leverage, Messina said, it's heartless.

"You can mess with me – and that's one thing," she said. "But use these kids as leverage?"

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What to do

If your family is caught in the Nemours-United contract snag, Lt. Gov. Matt Denn on Thursday issued these recommendations:

- **Children receiving Medicaid or CHIP benefits administered by UnitedHealthcare:** Parents can ensure their children continue to have access to Nemours and A.I. duPont Hospital by calling the Delaware Medicaid Health Benefit Manager at (800) 996-9969 and asking to switch their Managed Care Organization to DPCI. The deadline for transfers is March 15. Parents who wish to remain with United Healthcare must select a new provider.
- **Children whose parents get self-insured benefits from UnitedHealthcare through a private employer:** Delawareans who work for companies that are self-insured may offer benefits through other insurance carriers. Ask your employer if you can switch to a carrier that has Nemours in its network. If your company does not use more than one carrier, you should talk to your employer about any medical conditions your child has that make it important that he or she be seen at A.I. duPont, so your employer can make an informed decision about how to address the situation with UnitedHealthcare.
- **Children whose parents are insured by UnitedHealthcare through employer group health insurance or individually purchased health insurance:** You have legal rights that include a minimal level of medical care that your child is entitled to receive. Find out what UnitedHealthcare's plan is for your child's future medical care. If you do not receive a prompt response or are unsatisfied with the response, contact the Delaware Insurance Department at (800) 282-8611 or (302) 674-7310.

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Nemours Foundation sues United Healthcare of Delaware

April 20, 2015

DOVER, Del. (AP) — The foundation that owns the Alfred I. du Pont Hospital for Children in Wilmington filed a federal lawsuit against United Healthcare of Delaware on Monday over pediatric care provided to children covered by Medicaid and another state-subsidized health care program.

In its lawsuit, the Nemours Foundation is seeking more than \$15 million in damages from United Healthcare for breach of contract and unjust enrichment.

The lawsuit stems from United Healthcare's termination last year of an agreement with Nemours under which UHC members received in-network coverage at the du Pont Hospital and other Nemours pediatric facilities.

Despite termination of the in-network agreement, Nemours says it has an obligation and responsibility under the agreement, as well as state law, to continue to treat United's members under certain conditions and for certain periods of time.

But Nemours claims that the Medicaid rate it has been receiving from United for those services is not adequate, and that it has not been paid in full for providing medically necessary services, including emergency care, to United members, including those on Medicaid and Delaware Healthy Children Program.

"Instead, United has wrongly taken advantage of its position as a provider of health insurance for Delaware's underprivileged children to enrich itself at the expense of Nemours, a longstanding provider of and advocate for medical services for all of Delaware's children," the lawsuit claims.

In a statement, United suggested that Nemours resorted to litigation after making a failed money grab.

"Nemours has repeatedly asked to be paid up to 50 percent more than other comparable children's hospitals in the region for providing the same inpatient services, which would significantly raise costs for the Delaware Medicaid program and the taxpayers who help fund Medicaid," United Healthcare spokeswoman Alice Ferreira said in the statement. "Nemours is now using litigation to respond to our refusal of their excessively high rates, but our focus remains on ensuring the Medicaid members we serve have continued access to the specialized care they need through the many other care providers who have committed to improving patient quality and outcomes."

But Nemours claims that United has failed to maintain a complete network of pediatric primary care physicians and pediatric specialists who are available to its Medicaid and DHCP members within 60 miles of their homes, as required by United's contract with the state Department of Health and Social Services.

Nemours also claims that United has been slow to identify in-network physicians to which Nemours should refer United members.

DHSS spokeswoman Jill Fredel said agency officials had not seen the lawsuit and would need time to review it before commenting.

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Nemours, UnitedHealthcare reach agreement

Jen Rini, The News Journal 9:25 p.m. EDT September 19, 2016



(Photo: SAQUAN STIMPSON/SPECIAL TO THE NEWS JOURNAL)

After a two-year feud, Nemours Children's Health System and UnitedHealthcare have negotiated a contract so thousands of Delawareans with UnitedHealthcare insurance now will be able to see Nemours doctors.

The contract applies only to private or employee-sponsored commercial plans run by UnitedHealthcare. Delawareans who are enrolled in UnitedHealthcare's Medicaid plan will ultimately still need to find new doctors, but could use the hospital's emergency room as well as certain doctors if services were previously approved.

According to the new agreement, health care services and procedures rendered by Nemours-affiliated doctors in Delaware, New Jersey, Pennsylvania and Maryland will be covered at an in-network rate for those with a commercial plan beginning Oct. 1, hospital officials said late Monday. Services that are classified in an insurance plan as "in-network" are typically less expensive than if patients are forced to go out-of-network or

pay out of pocket.

Chris Manning, Nemours' senior manager of public and media relations, said there will be "extensive outreach" to interested patients and families. He said the health system doesn't anticipate that there will be any issues with families receiving care.

About 240,000 residents in Delaware and Southeastern Pennsylvania have commercial plans through UnitedHealthcare, said Mary McElrath-Jones, UnitedHealthcare's director of public relations. A specific breakout of the number of Delaware plans was not immediately available late Monday.

New contract aside, Nemours is still going forward with a lawsuit filed against UnitedHealthcare in 2015 seeking \$15 million in damages for providing unpaid health care to Delaware's Medicaid recipients. Manning said in a statement that the lawsuit is still progressing according to the schedule established by the court. A teleconference is scheduled for Sept. 26.

STORY: Nemours-UnitedHealthcare feud leaves families stuck (/story/news/local/2014/03/06/nemours-united-healthcare-feud-leaves-families-stuck/6148771/)

STORY: UnitedHealthcare-Nemours feud lingers (/story/news/local/2015/03/25/united-nemours-feud-lingers/70458540/)

Nemours has maintained that UnitedHealthcare's Medicaid contract with the state is not adequate and has forced thousands of families to travel out-of-state without access to Delaware's only children's hospital. UnitedHealthcare said previously that Nemours has repeatedly asked to be paid up to 50 percent more than other comparable children's hospitals in the region for providing the same inpatient services and has used litigation to respond to the insurer's refusal of "excessively high rates."

Nemours won settlements with UnitedHealthcare of Pennsylvania, UnitedHealthcare of the Mid-Atlantic and UnitedHealthcare Community Plan of New Jersey on similar issues.

The two had not been able to negotiate a contract since 2014. The contract impasse forced Delawareans who have a UnitedHealthcare commercial or Medicaid plan and want access to Nemours primary doctors, specialists and their emergency care to either switch their children's plan or pay the difference.

When issues began two years ago, the Sabo family of Wilmington received over 20 letters saying the Nemours-affiliated doctors and specialists their young daughters had been seeing would no longer be in UnitedHealthcare's network.

Anna, now 6, needed the care since she had two open-heart surgeries at the children's hospital by age 4. Her mother, Ashley, said that they needed to drop UnitedHealthcare and switch their private insurance so the girls could still see Nemours doctors, but is thrilled with the resolution Monday.

"It just goes to show that even though it's two years later, it's still worth continuing the fight for what your kids need," she said.

Though they go to Nemours less frequently, Ashley said, "it's just important that it came to this conclusion."

Editor's note: An earlier version of this story incorrectly stated how much Delawareans with UnitedHealthcare's Medicaid plan would need to pay to see Nemours physicians.

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