



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

John McNeal  
SCPD Director

MEMORANDUM

DATE: September 28, 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. 185 [DMMA Proposed Care Expense Deduction (9/1/17)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance (DMMA) proposes to amend the Medicaid State Plan to revise a countable income deduction. The proposed regulation was published as 20 DE Reg. 185 in the September 1, 2017 issue of the Register of Regulations.

As background, DMMA notes that the attached federal law [42 USC §1396(r)(1)(A)] authorizes states to deduct from countable income unreimbursed medical and remedial care expenses of a beneficiary receiving HCBS or institutional care. At 185. The Division is expanding the scope of the deduction from costs incurred within 30 days of the beginning date of Medicaid eligibility to 3 months of that date. At 187.

The projected fiscal impact is very modest, i.e., \$5,725 and 22,900 in State funds for FY17 and FY18 respectively. At 186.

The SCPD is endorsing the proposed regulation since the proposal benefits Medicaid enrollees receiving HCBS or institutional services with little fiscal impact.

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

cc: Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

21reg185 dmma care expense deduction 9-27-17

(r) DISREGARDING PAYMENTS FOR CERTAIN MEDICAL EXPENSES BY INSTITUTIONALIZED INDIVIDUALS

(1)

(A) For purposes of sections 1396a(a)(17) and 1396r-5(d)(1)(D) of this title and for purposes of a waiver under section 1396n of this title, with respect to the post-eligibility treatment of income of individuals who are institutionalized or receiving home or community-based services under such a waiver, the treatment described in subparagraph (B) shall apply, there shall be disregarded reparation payments made by the Federal Republic of Germany, and there shall be taken into account amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) medicare and other health insurance premiums, deductibles, or coinsurance, and

(ii) necessary medical or remedial care recognized under State law but not covered under the State plan under this subchapter, subject to reasonable limits the State may establish on the amount of these expenses.

(B)

(i) In the case of a veteran who does not have a spouse or a child, if the veteran—

(I) receives, after the veteran has been determined to be eligible for medical assistance under the State plan under this subchapter, a veteran's pension in excess of \$90 per month, and

(II) resides in a State veterans home with respect to which the Secretary of Veterans Affairs makes per diem payments for nursing home care pursuant to section 1741(a) of title 38,

any such pension payment, including any payment made due to the need for aid and attendance, or for unreimbursed medical expenses, that is in excess of \$90 per month shall be counted as income only for the purpose of applying such excess payment to the State veterans home's cost of providing nursing home care to the veteran.

(ii) The provisions of clause (i) shall apply with respect to a surviving spouse of a veteran who does not have a child in the same manner as they apply to a veteran described in such clause.

(2)

(A) The methodology to be employed in determining income and resource eligibility for individuals under subsection (a)(10)(A)(i)(III), (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), (a)(10)(A)(ii), (a)(10)(C)(i)(III), or (f) or under section 1396d(p) of this title may be less restrictive, and shall be no more restrictive, than the methodology—

(i) in the case of groups consisting of aged, blind, or disabled individuals, under the supplemental security income program under subchapter XVI, or

(ii) in the case of other groups, under the State plan most closely categorically related.

(B) For purposes of this subsection and subsection (a)(10), methodology is considered to be “no more restrictive” if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.