



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

John McNeal
SCPD Director

MEMORANDUM

DATE: January 31, 2018

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

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

RE: 21 DE Reg. 574 [DMMA Final Lifespan Waiver Regulation (1/31/18)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance (DMMA) final regulation to amend the Delaware Social Services Manual (DSSM) to clarify internal policy and procedures related to the DDDS Lifespan Waiver.

The SCPD submitted commentary on the proposed regulation as follows.

In general the current regulation is consistent with the amended waiver which is available at <http://dhss.delaware.gov/dhss/ddds/files/lifespanamendment052517.pdf>. However, we did identify a few provisions which may merit DMMA review.

First, §20720.1 describes financial deductions from countable income. Countable income cannot exceed 250% of the Federal Benefit Rate (FBR). See Waiver, pp. 8-9 and 47-48. Deductions for a “maintenance needs allowance” are different for residential versus non-residential DDDS Waiver participants. See Waiver, p. 49. The daily living needs deductions in the Waiver are generally reflected in the proposed revisions to §20720.1. However, the following sentence has been omitted: “All earned income in the form of wages shall be allowed to be protected.” See attached p. 49 from Waiver. DMMA may wish to include the sentence in §20720.1.

Second, §20720.1 authorizes the following deduction for residential Waiver participants:

Individuals receiving Medicaid under the Division of ~~Developmentally Disabled~~ Developmental Disabilities (DDDS) Lifespan Waiver who receive Residential Habilitation services are allowed a deduction equal to the current Adult Foster Care (AFC) rate. The AFC rate is based on the current

SSI income level plus \$140.00.

In contrast, the Waiver document refers to the “State Supplement amount” rather than “\$140.00”:

For those waiver participants that meet the criteria to receive residential habilitation services, the state will provide a maintenance needs allowance set at the Adult Foster Care Rate, which is the SSI standard plus the Optional State Supplement amount.

DMMA may wish to substitute “the Optional State Supplement amount” for “\$140.00”. Otherwise, if the State Supplement amount changes, the regulation would have to be immediately republished and corrected.

Third, §20720.1 describes the daily living needs deduction for non-residential participants as follows:

Individuals receiving Medicaid under the DDDS Lifespan Waiver who reside in the family home or in the Long Term Care Community Services (LTCCS) program are allowed an amount equal to their total income including income that is placed in a Miller Trust.

In contrast, the Waiver document describes the deduction as follows:

For waiver enrollees who do not receive a residential habilitation service, the state will provide a maintenance needs allowance that is equal to the individual’s total income as determined under the post eligibility process, which includes income that is placed in a Miller Trust.

The proposed revisions to §20720.1 are problematic since there may be Waiver participants living independently or in settings apart from “the family home or in the Long Term Care Community Services (LTCCS) program”. The language used in the Waiver document itself (“enrollees who do not receive a residential habilitation service”) is preferable since it is accurate and obviates the exclusion of participants who do not live in the undefined “family home” or the LTCCS program.

The SCPD certainly appreciates the Division’s consideration in adopting many of its recommendation.

cc: Mr. Steve Groff, DMMA
Mr. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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