




STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: May 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. 860 [(DMMA Long Term Care Medicaid Application Methods (May 1, 2018))]

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) proposed regulation to bring Section 20103 of the Del. Admin. Code into compliance with the Affordable Care Act. The proposed rule allows "someone acting responsibly" to apply for long term care Medicaid on behalf of an applicant who is either a minor or incapacitated. Applications can also be filed by the applicant, or by someone in the applicant's household or family, as defined by code. Additionally, the proposed regulation eliminates the requirement for an in person interview, and consistent with the Affordable Care Act, requires the acceptance of applications by electronic means, telephone, the mail or in person. The proposed regulation was published as 21 DE Reg. 860 in the May 1, 2018 issue of the Register of Regulations.

The SCPD has the following observations.

DMMA is obligated to amend current regulations to reflect the simplification of the application process mandated by the ACA. The requirement of an in-person interview, in particular, was unduly burdensome. Frequently, due to circumstances, applicants need other people to file applications for them. The new regulation reflects this reality. The only potential concern is the

term “someone acting responsibly.” This term is not defined in the Delaware regulations¹ though it appears other places in the federal regulations. It may make sense to link the term to the surrogacy statute or to otherwise limit it. Otherwise, nursing homes and other facilities that have a conflict of interest with the applicant may feel empowered to file applications on behalf of residents or patients in circumstances where it might be against earlier expressed wishes or their best interest. Occasionally, people opt not to apply for LTC Medicaid because of the estate recovery provisions or for other reasons.

The SCPD is endorsing the regulation with the recommendation that the term “someone acting responsibly” be defined to exclude individuals or entities who have a conflict of interest or at least require that any entity or individual acting as “someone acting responsibly” has an obligation to act in the best interest of the applicant. The text of the regulation also needs to be corrected to add a correct citation for the definition of family. The SCPD also suggests adding the full CFR citation for the definition of household.

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

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

21reg860 dmma-ltc Medicaid application methods 5-31-18

¹ Missouri defines someone acting responsibly as “[someone] age 18 or older and with the capacity to enter into a contract and who: 1. Is related to the applicant by blood, marriage, or adoption; OR 2. Is a person who the division reasonably determines has sufficient knowledge of the applicant’s circumstances to accurately complete the application, and has an obligation to act in the best interests of the applicant.”