



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

John A. McNeal  
Director

**MEMORANDUM**

DATE: February 27, 2019

TO: Mr. Glyne Williams, Social Services Chief Administrator, DMMA  
Planning, Policy & Quality Unit

FROM: J. Todd Webb - Chairperson  
State Council for Persons with Disabilities

RE: 22 DE Reg. 697 [DHSS/DMMA Proposed Renewal of DDDS Lifespan Waiver  
(February 1, 2019)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposed renewal of the Division of Developmental Disabilities (DDDS) Lifespan Waiver. The general notice was published as 22 DE Reg. 697 in the February 1, 2019 issue of the Register of Regulations.

DMMA gave notice that it intends to file with CMS for a five-year renewal of the DDDS Lifespan Section 1915(c) home and community based services waiver.<sup>1</sup> The waiver was recently amended to include services for individuals living in family homes. The DDDS waiver historically only serviced individuals living in residential placements.

The most significant changes are as follows:

- The waiver adds a new service, which is Medical Residential Habilitation. DDDS is extending eligibility for residential habilitation to individuals who require medical supports.
- Language allowing individuals enrolled in the DDDS Lifespan to also enroll in Section 1115 DHSP Waiver "in order to receive their acute care benefits".
- New provider types have been added.
- Primary evaluation is restricted to Appendix C, which describes Participant Services.

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<sup>1</sup>This is a 300+ page document; and comments were geared to more significant changes. We didn't proofread thoroughly but notes that Inspector General is misspelled throughout and there is a misused apostrophe on page 173 (it's).

SCPD has the following observations and recommendations regarding the proposed additions.

**Residential Habilitation.** DDDS is adding a new category called Medical Residential Habilitation which is described as “include[ing] the provision of direct skilled nursing services and habilitative services and supports that enable a participant to acquire, retain or improve skills necessary to reside in a community-based setting.” These services can be provided in group homes, a supervised or staffed apartment or a shared living arrangement (SLA). Residents would be required to need medically necessary direct skilled nursing services that must be performed by an RN or LPN within scope of practice, ordered by a physician. These nursing services must be needed daily and not be amenable to pre-scheduled visits. Nursing services can be provided up to 24 hours a day if necessary; the waiver also says that providers can use one nurse to support more than one person if appropriate. Budgeting language in Appendix I-2 suggests that DDDS will allow staffing of one nurse for three residents in a neighborhood home, and one nurse for two residents in a community living arrangement (CLA) or SLA. The provider is required to oversee the health care needs of the participant.

SCPD following has concerns:

- Shared living arrangements and community living arrangements are not licensed by any health care organization. Neighborhood homes are licensed by DHCQ. SLAs are “credentialed” by DDDS but hands on, direct oversight is minimal. Is it safe to allow skilled nursing services to be provided in places that are not licensed or overseen by agencies with experience in the provision of health care services?
- A later section indicates that in SLAs which provide Medical Residential Habilitation, the provider must be a registered nurse or an advance practice registered nurse. The SCPD is questioning who is providing medical supervision to these nurses or to nurses in other settings. The language suggests that the providers are responsible for overseeing health care. Do the providers have medical directors or a doctor on staff who will provide supervision? If not, who is providing supervision to the medical aspects of care? In the CLA or SLA setting, who is supervising the medical aspects of care?
- The waiver language indicates that nurses providing services in Medical Residential Habilitation “demonstrate the ability to work with individuals with ID/DD with a wide range of intensity of support needs.” There is no discussion of who assesses for this degree of experience nor is there an indication that DDDS will develop specific credentials for these nurses.

Provision of this service will enable some individuals with intellectual disabilities to live in more integrated settings by providing skilled nurses in non-nursing home settings; however, it remains important for there to be sufficient oversight of the care that is provided in this setting, and the waiver document is very short on details on how this will be achieved. SLAs and CLAs should be a particular source of concern because they are not licensed by a health care agency. While there is some utility in getting out from under rigid health facility licensing requirements, it is equally important not to swing so far in the other direction that there is minimal oversight of

medical care.

Also related to Residential Habilitation, the waiver states that this service can be provided out of state. The language indicates that DDDS remains responsible for assuring the health and welfare of out of state placements even when onsite monitoring is being done by the local authority. The SCPD is suggesting that DDDS have an articulated robust policy regarding oversight of residents placed out of state. Such a policy is not evident in the waiver (although it may not be the place for it).

Finally, there is language that indicates that “individuals under 21 must access services through EPSDT before the waiver can be accessed.” EPSDT services do not always cover residential services, especially for those who do not carry a behavioral health diagnosis. How are children and youth under 21 to access this service through the Lifespan Waiver? DDDS must recognize that it has a role in providing services to individuals under 21 with ID/DD and that EPSDT services, which often lack care coordination, may not always be a source of comprehensive services for young people with ID/DD.

**Home Modifications.** Language has been added to allow payment for generators as a home modification under the waiver. Additional language clarifies that providers of this service need to be bonded, insured and have all necessary permits and licenses required by trade. They must also provide a one-year warranty for any work done. SCPD endorses these changes.

**Supported Living.** The waiver adds language requiring supported living providers to be qualified by DDDS and meet DDDS standards. They must also agree to comply with PM46 and other abuse and neglect processes. Direct care workers are required to be certified through completion of a training program as required by DDDS.

**Concurrent Participation.** Language was added to allow participation in multiple waiver programs. Lifespan Waiver participants will now be able to enroll in DSHP plus for “non-DDDS Lifespan Waiver acute care benefits.” This allows all participants to get non-DDDS services through Medicaid managed care. This appears to be beneficial and may enable participants to access a broader range of providers.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations or recommendations on the proposed renewal of the DDDS Lifespan Waiver.

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

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