



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

John A. McNeal  
Director

**MEMORANDUM**

DATE: January 28, 2020

TO: Ms. Nicole Cunningham, DMMA  
Planning & Policy Development Unit  
*TW/arr*

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

RE: 23 DE Reg. 526 [DMMA Proposed Regulation Related to LTC  
Community Spouses (January 1, 2020)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Medicaid and Medical Assistance's (DMMA's) proposal to bring language into alignment with DMMA practices regarding application of spousal impoverishment provisions in the Medicaid long term care program. Spousal impoverishment provisions are meant to protect income and assets of the community-based spouse of an institutionalized person who is seeking or receiving LTC nursing home Medicaid. The proposed regulation was published as 23 DE Reg. 526 in the January 1, 2020 issue of the Register of Regulations. SCPD has the following observations.

Current language defines a community spouse in DSSM 20910.2 as the spouse of an institutionalized person ...." not receiving home and community-based services", excluding a spouse who does receive HCBS. The notice in the Register indicates that this language was not revised earlier in error. As a matter of practice, DMMA includes, as a community spouse, someone who is receiving HCBS. The proposed amendment corrects an earlier error in drafting of the spousal impoverishment provisions. SCPD endorses this proposed regulation.

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

cc: Mr. Stephen Groff  
Laura Waterland, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disability Council

23reg526- DMMA LTC community spouses 1-28-2020