Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 20700 & 20720

FINAL

ORDER

Division of Developmental Disabilities Services (DDDS) Lifespan Waiver

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Delaware Social Services Manual (DSSM) regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver, specifically, to clarify internal policy and procedures. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver, specifically, to clarify internal policy and procedures.

Statutory Authority

- Social Security Act §1915(c), Home and community-based services
- 42 CFR 440.167, Personal care services.

Background

On May 22, 2017 the Centers for Medicare & Medicaid Services (CMS) approved Delaware's request to amend the DDDS Lifespan Home and Community-Based Services (HCBS) Waiver effective July 1, 2017. The Waiver provides services and supports as an alternative to institutional placement for individuals with intellectual developmental disabilities (IDD) (including brain injury), autism spectrum disorder or Prader-Willi Syndrome. The description of the waivers target group allows for inclusion of individuals with IDD that are not in immediate need of a waiver residential setting. This allows individuals living in the family home who are receiving DDDS day services to be enrolled in the waiver.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to clarify internal policy and procedures regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver.

Summary of Proposed Changes

Effective for services provided on and after July 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Delaware Social Services Manual (DSSM) to clarify internal policy and procedures regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 31, 2017.

Provider Manuals Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the Delaware Medical

Assistance Provider Portal website: https://medicaid.dhss.delaware.gov/provider.

Fiscal Impact Statement

The proposed regulation clarifies practice and procedures currently used by the Division of Medicaid and Medical Assistance and Division of Social Services and therefore will result in no fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council For Exceptional Citizens offered the following summarized observations:

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.

Agency Response: DMMA agrees with the suggestions provided and has revised the proposed language in §20720.1.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Social Services Manual (DSSM) regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver, specifically, to clarify internal policy and procedures, is adopted and shall be final effective January 11, 2018.

12/20/17
Kara Odom Walker, MD, MPH, MSHS
Cabinet Secretary, DHSS

Division of Developmental Disabilities Services (DDDS) Lifespan Waiver

FINAL

20700.1 Division of Developmental Disabilities Services <u>Lifespan</u> Waiver

1. Only clients of the Division of Developmental Disabilities Services (DDDS) are eligible for ~~this~~ <u>the Lifespan</u> Waiver.
2. Individuals must be medically eligible.

   Initial <u>and ongoing</u> medical eligibility is determined by DDDS staff. ~~The DDDS Intake Coordinator makes a preliminary determination for each applicant for initial eligibility. Once an individual accepts a residential setting, the DDDS Social Service Benefits Administrator sends all waiver requests to the Division of Medicaid & Medical Assistance Medical Review Team (MRT) for review. Based on the information provided on the comprehensive Medical Report (MAP-25), Social Evaluation Form, Cost Projection Data Sheet and the Level of Care (LOC) form, the MRT will either concur with the initial decision to approve or deny the applicant for an ICF/MR level of care.~~

~~The MRT signs off on all forms sent by the DDDS Social Service Benefits Administrator.~~

3. Individuals must be financially and technically eligible.

   If the client is not already Medicaid eligible as an SSI recipient, DDDS submits an application (individuals in residential placements) or referral packet (individuals residing in the family home) to the appropriate ~~Long Term Care~~ DMMA Operations Unit for the financial and technical eligibility determination. The financial and technical ~~E~~eligibility determination is made by using ~~financial~~ criteria applied to those institutionalized and receiving Long Term Care (LTC) Medicaid.

15 DE Reg. 1718 (06/01/12)

FINAL

20720 Patient Pay Calculation

This policy applies to all individuals receiving Medicaid through the Division of Developmental Disabilities Services (DDDS) Lifespan Waiver and the Long Term Care Community Services (LTCCS) Program.

1. The Medicaid recipient's total income will be used in the post eligibility treatment of income. This includes income that is counted for eligibility and income that is excluded for eligibility.
2. Allowable deductions are given based on an individual's circumstances. Not all deductions will apply to all individuals.
3. Any amount of income remaining after allowable deductions is the patient pay amount. This amount must be paid on a monthly basis as indicated below:
   - Individuals receiving Residential Habilitation funded by the DDDS waiver will submit their patient pay amount directly to the provider of Residential Habilitation.
   - Individuals residing in an Assisted Living Facility will submit their patient pay amount directly to the Assisted Living Facility.

The following deductions from the Medicaid recipient's total gross income should be taken in the following order:

15 DE Reg. 1718 (06/01/12)
20 DE Reg. 552 (01/01/17)

FINAL

20720.1 Daily Living Needs

Individuals receiving Medicaid under the Division of ~~Developmentally Disabled~~ Developmental Disabilities Services (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~~ the Optional State Supplement amount]**.

Individuals receiving Medicaid under the Long Term Care Community Services program and are residing in an Assisted Living Facility are given a deduction based on the Adult Foster Care rate less an amount payable for room and board.

Individuals receiving Medicaid under the DDDS Lifespan Waiver who **[~~reside in the family home or in the Long Term Care Community Services (LTCCS) program~~ do not receive a residential habilitation service]** are allowed an amount equal to their total income including income that is placed in a Miller Trust. **[All earned income in the form of wages shall be allowed to be protected.]**

15 DE Reg. 1718 (06/01/12)
21 DE Reg. 574 (01/01/18) (Final)