

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** 20000

FINAL

ORDER

Personal Needs Allowance

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding Personal Needs Allowance, specifically, to modify the personal needs allowance amount for individuals residing in long term care facilities. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the November 2024 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 2, 2024, 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 Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding Personal Needs Allowance.

Background

State Plan provisions require the Delaware Medical Assistance Program (DMAP) to provide a personal needs allowance (PNA) to Medicaid recipients residing in long-term care facilities. This PNA is intended to provide for clothing and other personal needs. The current PNA is \$50/month for individuals and \$100/month for married couples and was set in 2016. Delaware Medicaid and Medical Assistance (DMMA) recognizes that the cost-of-living has increased since 2016 and proposes to increase the PNA to offset some of the increased costs of personal needs for recipients. The new PNA will be \$75/month for individuals and \$150/month for married couples.

Statutory Authority

- §1902(a)(50), (q) of the Social Security Act
- §1924(d)(1) of the Social Security Act
- 42 CFR §435.725
- 42 CFR §435.733
- 42 CFR §435.832

Purpose

The purpose of this regulation is to amend the current personal needs allowance.

Summary of Proposed Changes

Effective January 1, 2025, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan and the DSSM to modify the personal needs allowance amount for individuals residing in long term care facilities.

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 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 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 December 2, 2024.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public

comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statementt

	Federal Fiscal Year [2024 2025]	Federal Fiscal Year [2025 2026]
General (State) funds	\$278,116	\$285,600
Federal funds	\$419,793	\$425,556

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: There were comments regarding the Personal Needs amount being higher.

Agency response: DMMA thanks the Councils for their comments, however, no change will be made.

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

- State Council for Persons with Disabilities (SCPD)
- Governor's Advisory Council for Exceptional Citizens (GACEC)

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:

The DMMA Division Director has reviewed the proposed regulation as required by 29 Del. C. §10118(b)(3) and has determined that if promulgated, the regulation would have a de minimis impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November 2024 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan and Delaware Social Services Manual (DSSM) regarding Personal Needs Allowance, specifically, to modify the personal needs allowance amount for individuals residing in long term care facilities and shall be final effective January 11, 2025.

12/10/2024 | 8:26 PM EST

Date of Signature

Josette D. Manning Esq., Secretary, DHSS

Attachment 2.6-A
Page 4

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

ELIGIBILITY CONDITIONS AND REQUIREMENTS
42 CFR 435.725; 43 CFR 435.733; 42 CFR 435.832

B. Post-Eligibility Treatment of Institutionalized Individuals

The following amounts are deducted from the gross income when computing the application of an individual or couples' income to the cost of institutionalized care:

1. Personal Needs Allowance.

a. Aged, blind, disabled -

Individuals	\$50 <u>\$75</u>
Couples	\$100 <u>\$150</u>

For the following individuals with greater need

See Page 4 Addendum

b. AFDC related -

Children	\$50 <u>\$75</u>
Adults	\$50 <u>\$75</u>

c. Individuals under age 21 covered in this plan as specified in Item B.7 of ATTACHMENT 2.2-A Page 16. ~~\$50~~ \$75

TN No. SPA # ~~16-008~~ 24-0015

Approval Date ~~July 22, 2016~~

Supersedes

TN No.SP- ~~388~~ #16-008

Effective Date ~~July 1, 2016~~ January 1, 2025

Attachment 2.6-A
Page 4 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE
ELIGIBILITY CONDITIONS AND REQUIREMENTS
42 CFR 435.725; 43 CFR 435.733; 42 CFR 435.832

B. Post-Eligibility Treatment of Institutionalized Individuals (continued)

For the following individuals with a greater need (continued)

- d. ~~\$50/month~~ \$75/month for NF and ICF/IID residents engaging in frequent and regular rehabilitation out-of-facility activities.
- e. For nursing facility residents who are participating in gainful employment, the following amounts, not to exceed the adult foster care rate (551 benefit amount+ \$140), will be deducted from gross earned income:
 - i. Mandatory payroll deductions that are a condition of employment ~~including, but not limited to such as:~~
 - 1. Federal, State, and Local taxes
 - 2. FICA
 - 3. Union Dues
 - 4. Insurance Premiums
 - 5. Pension Contributions.
 - ii. Transportation costs as paid to and from employment.
 - iii. Clothing and personal needs allowance of \$75/month.
- f. For nursing facility residents requiring a court appointed guardian, the following amounts will be deducted from the gross income:
 - i. Monthly guardianship fees not to exceed \$100

- ii. Initial establishment of a guardianship (to include attorney's fees) not to exceed \$750

The maximum amount of income to be protected will not exceed the amount required to maintain an individual in adult foster/residential care. This amount is currently the SSI benefit plus \$140.

TN No. SPA 22-0003 24-0015

Approval Date 09/22/2022

Supersedes

TN No. # 16-008 22-0003

Effective Date April 1, 2022 January 1, 2025

20000 Medicaid Long Term Care

20620.1 Personal Needs Allowance

Statutory Authority

42 CFR 435.725

42 CFR 435.733

42 CFR 435.832

20620.1.1 ~~\$50.00~~ \$75 per month of available income is to be protected for the Medicaid recipients recipient's direct personal needs; or

20620.1.2 If the recipient regularly attends a rehab/educational program off the grounds of his or her ~~the recipient's~~ long-term care facility, including employment for the purpose of rehabilitation in a sheltered workshop, ~~\$50.00~~ \$75 per month will be protected; or

20620.1.3 For long-term care facility residents who are participating in substantial gainful activity (SGA) (20 CFR 416.971), the following amounts, not to exceed the Adult Foster Care (AFC) rate will be deducted from gross earned income:

20620.1.3.1 Mandatory payroll deductions that are a condition of employment ~~including, but not limited to~~ such as:

- Federal, State and Local Taxes
- FICA
- Union Dues
- Insurance premiums
- Pension contributions
- Transportation costs as paid to & from work
- Clothing and personal needs allowance of \$75/month.

20620.1.3.2 If monthly earnings average more than the current SGA amount in a calendar year, this is considered SGA and the Division of Medical Assistance (DMMA) can allow a personal needs allowance of up to the AFC rate.

20620.1.3.3 If earnings average less than ~~\$300~~ \$400 a month in a calendar year, this is not ordinarily considered SGA and DMMA can allow the ~~\$50~~ \$75 personal needs allowance.

20620.1.3.4 If average earnings are between ~~\$300~~ \$400 and the current SGA amount, DMMA must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to persons without disabilities in the community performing similar jobs.

20620.1.4 For nursing facility residents requiring a court appointed guardian, the following amounts will be deducted from the gross income:

i. Monthly guardianship fees not to exceed ~~\$400~~ \$100;

ii. Initial establishment of a guardianship (to include attorney's fees) not to exceed ~~\$750~~ \$750.

19 DE Reg. 1095 (06/01/16)

26 DE Reg. 108 (08/01/22)

26 DE Reg. 694 (02/01/23)

20995.1 Post - Eligibility Deductions

42 CFR §435.725; 42 CFR §435.733; 42 CFR §435.832

Post-eligibility determination is revised to allow the following deductions from the income of the institutional spouse. The deductions must be taken in the following order:

20995.1.1 Personal Needs Allowance for the ~~institutional spouse~~ Institutional Spouse. The personal needs allowance amount is \$30 per month for SSI recipients, and ~~\$50~~ \$75 per month for all others. If the institutionalized spouse is employed, personal needs may range from ~~\$50~~ \$75 up to the Adult Foster Care rate per month.

20995.1.2 Community Spouse Income Allowance

20995.1.2.1 The community spouse monthly income allowance is the amount of income necessary to bring the spouse's monthly otherwise available income up to the applicable percent of the FPL for two, plus an additional amount for excess shelter.

20995.1.2.2 The total amount available to the community spouse may not exceed "Cap for Minimum Monthly Maintenance Standard. This standard usually changes each January based on the Consumer Price Index for Urban Consumers.

20995.1.3 Family Allowance

20995.1.4 Items for which protection of income has been approved by the Long-Term Care Operation's Administrator ~~and/or~~ or incurred medical expenses of the institutionalized spouse.

10 DE Reg. 703 (10/01/06)

19 DE Reg. 1095 (06/01/16)

28 DE Reg. 545 (01/01/25) (Final)