

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF SOCIAL SERVICES**  
**Statutory Authority: 31 Delaware Code,**  
**Section 512 (31 Del.C. §512)**

**PUBLIC NOTICE**

**Acquired Brain Injury Waiver Program**

**PROPOSED**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Division of Social Services Manual (DSSM) regarding the Acquired Brain Injury Waiver Program (ABIWP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware by August 31, 2004.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**Summary Of Proposed Changes**

The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.

The proposed set forth the rules and regulations governing the administration of the ABIWP, and describe the types of services available under the program. The regulations being proposed would also define the eligibility criteria that must be met by applicants for the services and the scope of services available to eligible applicants.

The earliest effective date for the ABIMWP is October 10, 2004.

**DSS PROPOSED REGULATION #04-18**

**20700.5 Acquired Brain Injury Medicaid Waiver Program**

The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a home and community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.

The earliest effective date for the ABIMWP is October 10, 2004.

**20700.5.1 Eligibility Criteria**

To be eligible for the ABIMWP, an individual must:

1. be a Delaware resident
  2. be between 18 and 64 years of age (persons who enter the waiver before age 65 may remain in the waiver after age 65)
  3. meet the financial and medical criteria for the DSS Long Term Care Medicaid Program and meet nursing facility admission criteria.
- Medical eligibility is determined by the Pre-Admission Screening Unit of DSAAPD.  
Financial eligibility is determined by DSS.  
Program eligibility is determined by DSAAPD. An individual must meet all of the following criteria:

- a have an injury to the brain which is not hereditary or congenital (Acquired Brain Injury)
- b have a need of one waiver service, in addition to case management, on a monthly basis
- c have a physical, cognitive and/or behavioral symptom of an acquired brain injury and currently reside in a nursing facility or is at risk for placement in a nursing facility

d have completed or would no longer benefit from intensive, inpatient, post-trauma or rehabilitation programs

e accept and maintain case management services

20700.5.2 Number of Recipients

There is a maximum number of recipients who may be served under the ABIMWP each fiscal year. The total unduplicated number of recipients served under the program cannot exceed the maximum number approved by the Centers for Medicare and Medicaid Services (CMS). DSAAPD will monitor the number of individuals receiving ABIMWP services so the maximum number will not be exceeded.

20700.5.3 Cost Effective Requirement

In order for an applicant to be eligible for the ABIMWP, the applicant's cost of care cannot exceed the cost of their care if the same applicant was institutionalized. An average monthly cost for institutionalized individuals is used to determine the amount that may be spent on ABIMWP recipients. A DSAAPD worker determines cost effectiveness.

20700.5.4 Approval

Upon approval, DSS will send a notice of approval to the applicant or the applicant's representative and the ABIMWP provider. The notice to the provider will include the effective date of Medicaid coverage, the patient pay amount, and the Medicaid identification number.

20700.5.5 Post Eligibility Budgeting

See DSSM 20720 and 20995.1 for patient pay calculation.

For recipients residing in Assisted Living facilities, the personal needs allowance is equal to the current Adult Foster Care rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the assisted living provider.

For recipients residing in community-based settings, the personal needs allowance is equal to 250% of the Federal SSI Benefit Rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the provider who is providing the most costly service.

20700.5.6 Days Appropriate for Billing

The waiver provider may not bill for any day that the recipient is absent from the program or facility for the entire day. The waiver provider may bill for services for any day that the recipient is present in the facility or program for any part of the day.

If the recipient resides in an assisted living facility, the waiver provider may not bill Medicaid for room and board.

20700.5.7 Hospitalization or Illness

Waiver services will terminate upon hospitalization. There are no Medicaid bed hold days for hospitalization. DSS will redetermine eligibility for continued Medicaid coverage. Waiver services may restart after hospital discharge as determined by DSAAPD staff.

If the recipient is a resident of an assisted living facility, the waiver provider shall not provide services to a recipient that has been bedridden for seven (7) consecutive days unless a physician certifies that the individual's needs may be safely met by the service agreement. If a physician certification is not obtained, waiver services will terminate and DSS will redetermine eligibility for continued Medicaid coverage.

20700.5.8 ABIMWP Services

Acquired brain injury waiver services will include the following:

Case Management

Personal Care

Respite Care

Adult Day Expanded Services

Specialized Medical Equipment and Supplies

Personal Emergency Response Systems (PERS)

Assisted Living Program

Behavioral and/or Cognitive Services