

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

Statutory Authority: 31 Delaware Code, Chapter 5, Section 512  
(16 Del.C., Ch. 5, §512)

**PROPOSED**

**Combining §1915(c) Home and Community-Based Services Waivers**

**PUBLIC NOTICE**

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, and, in compliance with State Notice procedures as set forth in the Federal Register, September 27, 1994, the Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit an amendment to the Elderly and Disabled Waiver that combines three existing §1915(c) Home and Community-Based Services (HCBS) waivers into one HCBS waiver.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this waiver must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by August 31, 2010. A copy of the waiver amendment is available upon request by contacting Lisa Bond, Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) at (302) 255-9358.

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 PROPOSAL**

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Elderly and Disabled (E & D) §1915(c) Home and Community-Based Services (HCBS) Waiver that combines three existing HCBS waivers into one waiver.

**Statutory Authority**

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §435.217, *Individuals receiving home and community-based services*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*

**Background**

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in accordance with §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

**Summary of Proposal**

The State of Delaware is requesting approval for an amendment to the Elderly and Disabled (E & D) Medicaid Waiver under authority of §1915(c) of the Social Security Act. The purpose of this amendment is to: 1) Consolidate

three existing home and community-based waivers into one waiver; 2) Add participant direction opportunities to the E & D Waiver; 3) Make changes to personal care and respite service definitions and planned service units; 4) Make changes in the budget to reflect the waiver consolidation and service adjustments; 5) Update data sources used as part of the Quality Improvement Strategy; 6) Make miscellaneous adjustments to the narrative.

Specifically, the provisions of the proposed amendment:

**1) Consolidate three existing home and community-based waivers into one waiver.**

Currently, the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) administers and operates three waiver programs: the Elderly & Disabled (E & D) Waiver, the Assisted Living (AL) Waiver, and the Acquired Brain Injury (ABI) Waiver. Because many current services and service providers are shared across waivers, the consolidation of the three waiver programs into a single waiver will result in numerous efficiencies. The administration and operation of a single waiver, for example, will cut down on redundant administrative activities related to provider enrollment and monitoring, records management, reporting, financial tracking, and other functions. In addition, the streamlining will simplify choices for participants, and will allow for easier access to waiver services. Services currently provided as part of the AL and ABI waiver will be incorporated into the E & D waiver as part of this amendment. The AL and ABI Waiver will be discontinued, but this change will not result in the loss of service to persons currently receiving services under the AL or ABI Waiver, nor will it result in a loss of service to participants in the E & D Waiver. In recognition of the inclusion of participants currently served under the ABI waiver, the amendment specifies persons with acquired brain injury as part of the service population for the E & D waiver.

**2. Add participant direction opportunities to the E & D Waiver.**

This amendment includes the option for individuals who receive personal care services to choose between service delivery methods. Specifically, individuals can choose: a) participant-directed personal care services; b) agency-managed personal care services; or c) both participant-directed and agency-managed personal care services. Individuals who chose to direct their personal care services will have the full range of employer authority for personal care. As common-law employers, they will be able to hire, fire, train, schedule and direct the work of their personal care attendants. Participants will have the option of hiring relatives to serve as their personal care attendants, including, with certain safeguards in place, legally-responsible relatives. The state will contract with one or more vendors to provide Support for Participant Direction as an administrative function to assist participants in managing their responsibilities as employers. Support for Participant Direction vendor(s) will provide financial management services and information and assistance in support of participant direction (support brokerage).

**3. Make changes to personal care and respite service definitions and planned service units.**

Currently, except for a small number of respite care hours delivered in long-term care facilities, respite and personal care services under the E & D Waiver are virtually identical. Personal care and respite care (except, as noted above, respite care in long-term care facilities) are supportive services provided in the home of waiver participants. All providers of home-based respite care also provide personal care under the E & D Waiver. With this amendment, personal care and respite services will continue to be available, but with certain changes. First, respite services will be available only in long-term care facilities (assisted living facilities and nursing homes) to provide temporary and short-term relief for caregivers. The financial resources that are currently used to provide in-home respite hours will be used instead to expand the availability of personal care hours. It is expected that this change will be virtually seamless for participants, since the current respite service providers also provide personal care services. It is expected that this consolidation of in-home care service hours will be simpler for participants to understand, and more efficient for agency staff to manage. Second, the waiver amendment will increase the number and type of entities that can provide personal care services. Personal care will be available as a participant-directed service provided by individual personal care attendants, as described above, or as a provider-managed service. Currently, only home health agencies can provide personal care services under the E & D Waiver. The amendment will allow Personal Assistance Services Agencies (PASA), licensed by the State of Delaware, in addition to home health agencies, to deliver provider-managed personal care under the waiver. It is expected that the addition of personal care attendants and licensed PASA agencies as waiver providers will afford participants more choice in providers for personal care services.

**4. Make changes in the budget to reflect the waiver consolidation and service adjustments.**

Factor D: Cost estimates for Year 1 are adjusted to reflect the most recent claims data for the E & D Waiver. Changes in Years 2-5 are made to account for the addition of services and participants from the ABI and AL Waivers (cognitive services, day habilitation, and assisted living). In addition, service amounts for respite services are reduced and those for personal care are increased as a result of service definition changes, as described above. Service unit costs for personal care services are adjusted to account for the inclusion of personal care attendants and PASA agencies as service providers. (Unit costs for personal care attendants and PASA agencies are projected to be lower than costs for home health agencies, currently the sole provider type for personal care services.) Year 2 costs are calculated to account for the fact that new services and participants will be introduced five months into the year. (Year 2 of the renewal period begins on 7/1/10 and the amendment will take effect on 12/1/10.) Service costs are calculated at the full annual amount beginning in Year 3. Factors D', G, and G': Adjustments to Factors D', G, and G' estimates are made based on utilization data for the combined waiver populations (E & D, AL, and ABI Waiver participants). Average length of stay: Adjustments are made to the average length of stay for each of the waiver years. The new figures are derived by weighting average utilization data from the three Waiver populations (E & D, AL, and ABI) and accounting for the partial-year enrollment of AL and ABI Waiver participants during Year 2.

**5. Update data sources used as part of the Quality Improvement Strategy.**

DSAAPD, in coordination with the Division of Medicaid and Medical Assistance (DMMA), has had the opportunity to refine its quality improvement strategy for the E & D Waiver, and in the process has developed new data collection and remediation tools, including the Initial Level of Care Review Tool, the Critical Event or Incident Report, and the Provider and Payment Oversight Report. In some cases, these new tools replace less effective data collection and reporting methods. For some performance measures, the collection and/or aggregation and analysis of data is changed from monthly to quarterly to reflect adjustments to the quality improvement strategy. These updates are included in the quality improvement sections of the affected appendices.

**6. Make miscellaneous adjustments to the narrative.**

A change was made to clarify language and create consistency within the document related to the number and type of participant contacts made by DSAAPD staff each year. Throughout the narrative, reference is made to the provider relations agent. Recently, the provider relations agent for Delaware underwent a corporate name change and is now known as HP Enterprise Services. This change was made throughout the document.

The waiver will be administered by the Division of Medicaid and Medical Assistance (DMMA), the State Medicaid agency, and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The proposed waiver period is July 1, 2009 through June 30, 2014.

The provisions of this waiver are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

**Fiscal Impact Statement**

There is no increase in cost on the General Fund. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver.

**\* Please Note: The application is available in PDF format at the following link: [1915\(c\).pdf](#)**

**14 DE Reg. 88 (08/01/10) (Prop.)**