

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

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** § 512)

FINAL

ORDER

DSSM 20700.6 - 20700.6.7- Delaware's Attendant Services Waiver Program

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Attendant Services Waiver Program. 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 December 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2008 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 proposed amends the Division of Social Services Manual (DSSM) to repeal rules related to the Attendant Services Waiver Program, which was not implemented.

Statutory Authority

31 **Del.C.** §107, Rules and Regulations

Background

On October 31, 2006, the Division of Medicaid & Medical Services (DMMA) submitted a §1915(c) waiver application to the Centers for Medicaid & Medicaid Services (CMS) for approval. The DMMA announced a thirty-day comment period for this Waiver application in the December 1, 2006 issue.

DMMA withdrew its proposed regulation published on December 1, 2006 at **10 DE Reg. 954** as of February 1, 2007. Please note that eligible clients continue to be placed in the State's Attendant Services Program. This option offers more services to the client population than would be available under the Waiver.

Summary of Proposal

DSSM 20700.6 - DSSM 20700.6.7: This repeal is being undertaken to remove the eligibility regulations for the Attendant Services Waiver (ASW) Program from the Division of Social Services Manual (DSSM). Since the ASW Program was not implemented, the rules at DSSM 20700.6 through DSSM 20700.6.7 are unnecessary. Therefore, to be consistent with the agency's withdrawal of the above-referenced Attendant Services Waiver application sections 20700.6 through 20700.6.7 are being repealed.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following observation. DMMA has considered each comment and responds as follows.

As background, the Division published proposed standards in the Fall of 2006 to implement a proposed attendant services waiver. Unfortunately, DMMA identified some "downsides" to the waiver. After a meeting with representatives of the SCPD and Developmental Disabilities Council (DDC), it was decided to abandon the waiver in favor of eliminating the waiting list with an infusion of "Tobacco" funds. This was accomplished in July 2007. Although a new waiting list now exists, SCPD endorses the proposed regulation which is essentially a "housekeeping" measure to conform to the waiver withdrawal effected in February 2007.

Agency Response: DMMA thanks the Council for their endorsement.

Findings of Fact:

The Department finds that the proposed changes as set forth in the December 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the repeal of sections DSSM 20700.6 through 20700.6.7 of the Division of Social Services Manual (DSSM) regarding the Attendant Services Waiver Program is adopted and shall be final effective February 10, 2009.

Vincent P. Meconi, Secretary, DHSS

DMMA FINAL ORDER REGULATION #09-05

REPEAL:

20700.6 ATTENDANT SERVICES WAIVER

~~The Attendant Services Waiver (ASW) is a home and community based services program managed by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The purpose of the waiver is to minimize the likelihood of institutionalization and maximize the potential for independent living for adults with physical disabilities. This program is a consumer directed support program. Participants have an opportunity to hire and train their own attendants and serve as the employer of record for these attendants. DSAAPD staff provides initial intake, assessment, service authorization, and a wavier service plan. The Division of Social Services (DSS) is responsible for determining financial eligibility for the waiver.~~

~~**8 DE Reg. 1625 (05/01/05)**~~

20700.6.1 ELIGIBILITY CRITERIA

~~To be eligible for this program, an individual must:~~

~~"Be a resident of the State of Delaware~~

~~"Be 18 years of age or older~~

~~"Meet the financial and medical criteria for the DSS Long Term Care Medicaid Program~~

~~"Have a medical condition that meets nursing facility (including skilled and intermediate care) admission standards~~

~~"Meet the ASW criteria as determined by DSAAPD~~

- ~~▪ Financial eligibility is determined by DSS~~
- ~~▪ Medical eligibility is determined by the Pre-Admission Screening Unit of DSAAPD~~
- ~~▪ Program eligibility is determined by DSAAPD.~~

~~An individual must meet ALL of the following criteria:~~

~~"have an anatomical/physical deficit anticipated to last 12 months or more~~

~~"be medically stable~~

~~"have ability to self-direct or have a surrogate who can support the client in making decisions~~

~~Priority is given to applicants who are:~~

~~"persons who with an attendant can complete an educational plan, or can attain or retain gainful employment;~~

~~"persons with greater environmental, social supportive and financial capacity constraints, especially those with constraints in all three areas;~~

~~"persons who are living in costly, congregate living facilities but could be living independently and more cost-effectively if they had attendants.~~

~~8-DE-Reg-1625 (05/01/05)~~

20700.6.2 NUMBER OF RECIPIENTS

~~There is a maximum number of recipients who may be served under the ASW 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 ASW so the maximum number is not exceeded.~~

~~8-DE-Reg-1625 (05/01/05)~~

20700.6.3 COST-EFFECTIVE REQUIREMENT

~~In order for an applicant to be eligible for the ASW, the applicant's cost of care cannot exceed the cost if the same applicant were institutionalized. This determination is made on an aggregate basis which considers all ASW recipients. A DSAAPD worker determines cost effectiveness.~~

~~8-DE-Reg-1625 (05/01/05)~~

20700.6.4 APPROVAL

~~Upon approval, DSS will send a notice of approval to the applicant or his representative. The notice will include the effective date of coverage and the patient pay amount if any. The client's eligibility start date is determined by DSAAPD staff. Only individuals with a Miller Trust may be subject to a patient pay amount. See Section 20720.~~

~~8-DE-Reg-1625 (05/01/05)~~

20700.6.5 POST-ELIGIBILITY BUDGETING

~~For recipients in the ASW 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 administering the most costly service.~~

20700.6.6 HOSPITALIZATION OR ILLNESS

~~Waiver services will terminate upon the 31st consecutive day of hospitalization. There are no Medicaid bed hold days for hospitalization. DSS will periodically redetermine eligibility for continued Medicaid coverage. Waiver services may restart after hospital discharge as determined by DSAAPD staff.~~

~~8-DE-Reg-1625 (05/01/05)~~

20700.6.7 ASW-SERVICES

~~The Attendant Services Waiver include (s) the following:~~

~~"Attendant Services~~

~~"Adult Day Health~~

~~"Respite~~

~~"Equipment/Supplies~~

~~"Emergency Response Systems~~

"Supports Brokerage

"Personal Care

"Fiscal Agent

"Case Management

~~8 DE Reg. 1624 (5/01/05)~~

12 DE Reg. 1088 (02/01/09) (Final)