

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

Patient Pay Calculation for Division of Developmental Disabilities Services (DDDS) Waiver Recipients

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 Patient Pay Calculations, specifically, to change the entity responsible for the collection of the patient pay amount for Division of Developmental Disabilities Services (DDDS) waiver recipients. 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 November 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 2016 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 Patient Pay Calculations, specifically, *to change the entity responsible for the collection of the patient pay amount for Division of Developmental Disabilities Services (DDDS) waiver recipients.*

Statutory Authority

- Social Security Act §1915(c), *Home and community-based services*
- 42 CFR §435.217, *Individuals receiving home and community-based services*
- 42 CFR §435.726(a) and (b), *Post-eligibility treatment of income of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.*

Background

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in 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.

The Centers for Medicare & Medicaid Services (CMS) recognizes that the design and operational features of a waiver program will vary depending on the specific needs of the target population, the resources available to the State, service delivery system structure, State goals and objectives, and other factors. A State has the latitude to design a waiver program that is cost-effective and employs a variety of service delivery approaches, including participant direction of services.

The Delaware Division of Medicaid and Medical Assistance (DMMA), in partnership with the Division of Developmental Disabilities Services (DDDS) has operated the DDDS waiver since 1987. This waiver is targeted to individuals with intellectual disabilities (including brain injury) and autism spectrum disorder who can no longer live independently or with their family. The waiver includes an array of services and supports designed to enable the individual to live safely in the community and to respect and support their desire to work or engage in other productive activities.

Summary of Proposal

Purpose

The purpose of this policy amendment is to change the entity responsible for the collection of the patient pay amount for Division of Developmental Disabilities Services (DDDS) waiver recipients so as to be compliant with federal regulation.

Summary of Proposed Changes

If implemented as proposed, this regulation will accomplish the following, effective January 11, 2017:

Change Delaware Social Services Manual, 20720, to list the entity responsible for the collection of the patient pay

amount for Division of Developmental Disabilities Services (DDDS) waiver recipients from DDDS to the provider of Residential Habilitation.

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 Patient Pay Calculation proposed regulation. Comments were to have been received by 4:30 p.m. on December 1, 2016.

Provider Manuals Update

Applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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 manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact Statement

The proposed regulation is clarifying rules of practice and procedure by the agency and has no fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

First, many DDDS waiver participants have one provider for residential habilitation and a different provider for day programming. Under the proposal, the residential provider would be paid 100% of the patient pay amount. The attached CMS regulation (42 C.F.R. §435.726) does not literally apportion the patient pay contribution exclusively to the residential habilitation provider. It only generally refers to "home and community-based services". DMMA may wish to assess whether 100% of the patient pay contribution is required to be paid exclusively to the residential provider. If not, the proposed approach may be inequitable for day program providers.

Agency Response: While the patient pay amount is not required to be paid to any particular provider type, the payments to the waiver residential providers tend to be the largest payments and are, therefore, the logical service to which to apply the patient payment. Splitting the patient payment across multiple providers would add administrative burden for both the state and for the providers. As long as the monthly payment to the residential provider is sufficiently large to accommodate the entire patient pay amount, it will be deducted from the payment to the residential provider.

Second, SCPD assumes part of the rationale for the proposal is reduction of the administrative burden of DDDS accounting/allocating the patient pay funds. However, DDDS is the representative payee for the SSI/SSDI monthly benefits for several hundred DDDS clients. Therefore, reciting that "(i) individuals receiving Residential Habilitation...will submit their patient pay amount directly to the provider" will ostensibly still result in DDDS (as representative payee) allocating patient pay funds to providers. Moreover, if an individual defaults in payment to the provider, SCPD assumes this should affect waiver eligibility which is within the province of DDDS, not the provider. Therefore, if this change in approach is not required by federal regulation, DMMA may wish to consider retention of the current approach.

Agency Response: The Council is correct in pointing out that DDDS is the representative payee for many waiver recipients. For those individuals, DDDS will distribute the patient payment to the provider acting on behalf of the waiver member. The change in the regulation clarifies that it is the provider's responsibility to ensure that the patient pay is collected for each individual. The regulation does not prohibit DDDS from acting on behalf of the individual in its capacity as representative payee. For those individuals for whom DDDS is not the representative payee, the provider will work directly with the individual or his or her guardian or non-DDDS representative payee to ensure that they receive the patient payment amount.

No changes were made to the regulation as a result of these comments

DMMA is appreciative of these comments from the SCPD. 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 November 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding Patient Pay Calculations, specifically, to change the entity responsible for the collection of the patient pay amount

for Division of Developmental Disabilities Services (DDDS) waiver recipients, is adopted and shall be final effective January 11, 2017.

Rita M. Landgraf, Secretary, DHSS
12-16-2016

**DMMA FINAL REGULATION APA 17-003
REVISION:**

20720 Patient Pay Calculation

This policy applies to all individuals receiving Medicaid through the Division of Developmental Disabilities Services (DDDS) Waiver and the Long Term Care Community Services 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:
 - ~~For DDDS Waiver recipients, the patient pay amount is paid to the Division of Developmental Disabilities.~~ 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)