

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** 20700

PROPOSED

PUBLIC NOTICE

Daily Living Needs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 20720.1 regarding the Daily Living Needs Calculations, specifically, to clarify policy and procedures.

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, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on March 31, 2023. Please identify in the subject line: Daily Living Needs.

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 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 Division of Social Services Manual (DSSM) 20720.1 regarding the Daily Living Needs Calculations, specifically, to clarify policy and procedures.

Statutory Authority

- Social Security Act §1915(c), Home and community-based services
- Social Security Act §1115, Demonstration projects
- 42 CFR §435.217, Individuals receiving home and community-based services

Background

The Division of Medicaid and Medical Assistance (DMMA) must reduce its payment for home and community-based services (HCBS) provided to an individual by the amount that remains after the application of certain deductions from the individual's income. The daily living needs deduction is applicable to individuals receiving HCBS through either the Long-Term Care Community Services (LTCCCS) Program or the Division of Developmental Disabilities Services (DDDS) Lifespan Waiver. The amount of the daily living needs deduction varies by program and setting. DMMA wishes to revise existing language regarding the application of the daily living needs deduction for clarity and consistency.

Summary of Proposal

Purpose

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Summary of Proposed Changes

Effective for services provided on and after July 1, 2017, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Delaware Social Services Manual (DSSM) to clarify internal policy and procedures regarding the Daily Living Needs Calculations, specifically, to clarify internal policy and procedures.

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 gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on March 31, 2023.

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

There is no anticipated fiscal impact.

20000 Medicaid Long Term Care

20700 Home and Community Based Services

20720.1 Daily Living Needs

Individuals receiving Medicaid under the Division of Developmental Disabilities Services (DDDS) Lifespan Waiver who receive Residential Habilitation services are allowed a deduction equal to the current Adult Foster Care (AFC) rate. The AFC rate is based on the current SSI income level plus the Optional State Supplement amount.

Individuals receiving Medicaid under the ~~Long-Term~~ Long-Term Care Community Services (LTCCS) program and ~~are~~ residing in an Assisted Living Facility are given a deduction based on the Adult Foster Care rate less an amount payable for room and board.

Individuals receiving Medicaid under the DDDS Lifespan Waiver who do not receive a residential habilitation service and individuals receiving Medicaid under the LTCCS program (excluding those residing in an Assisted Living Facility) are allowed ~~an amount~~ a deduction equal to their total income including income that is placed in a Miller Trust. All earned income in the form of wages shall be allowed to be protected.

15 DE Reg. 1718 (06/01/12)

21 DE Reg. 574 (01/01/18)

26 DE Reg. 754 (03/01/23) (Prop.)