

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES**

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

ORDER

20700.6 Attendant Services Waiver Program (ASWP)

Nature of the Proceedings:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Attendant Services Waiver Program (ASWP). 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 March 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Change

The Attendant Services Waiver Program (ASWP) 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).

The proposed set forth the rules and regulations governing the administration of the ASWP, 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 ASWP is December 1, 2004.

**Summary of Comments Received with Agency Response
and Explanation of Changes**

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

First, the menu of covered services appears to have many of the same services as the elderly and disabled (E & D) waiver while adding attendant services and supports brokerage. However, the menu of services does not include “personal care” which was included in the E & D waiver and “fiscal agent” services which was to be included in the Attendant Services waiver. SCPD respectfully requests clarification on this issue.

Agency Response: The menu of services in the final regulation shows the following inadvertently omitted services: personal care, fiscal agent and case management.

Second, Section 20700.6.1 requires a waiver candidate to meet “nursing facility admission standards”. This is essentially the same standard applicable to the E & D waiver. SCPD recommends inclusion of assisted living facility level of care as well.

Agency Response: The waiver request submitted and approved by CMS included this standard, as written. There is no change.

Third, in the same Section 20700.6.1, SCPD recommends to at least amend the reference to read “nursing facility (including skilled and intermediate care) admission standards. A nursing facility includes an intermediate care facility.

Agency Response: DSS accepts the requested change. The final order regulation shows the amended reference.

Fourth, Sections 20700.6.4 and 20700.6.5 refer to “patient pay amount”. Unless required by the waiver, it would be preferable to refer to “participant pay amount” since this program is not based on a medical model.

Agency Response: “Patient pay amount” is the terminology used by staff. There is no change.

Fifth, the reference to meeting the “financial...and medical criteria for DSS Long Term Care Medicaid Program” in Section 20700.6.1 generally equates to countable income of 250% of the SSI standard and countable resources up to \$2,000. SCPD respectfully requests that DSS clarify the circumstances under which a participant would ever have to contribute a “patient pay amount” and how it would be calculated.

Agency Response: The final order regulation shows that the following sentence is added to Section 20700.6.4: “Only individuals with a Miller Trust may be subject to a patient pay. See Section 20720.”

Additional comments were received from Roger Waters, DSS Hearing Officer. His suggested changes are intended to make the language of the rules simpler and easier to understand. As a result of the suggestions, DSS made non-substantive grammatical and clarifying language changes throughout the regulation indicated by [bracketed bold type].

Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2005 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding the Attendant Services Waiver Program (ASWP) is adopted and shall be final effective May 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 4/15/05

DSS FINAL ORDER #05-22

NEW:

20700.6 Attendant Services Waiver

The Attendant Services Waiver (ASW) is a home and community based services program [that will be] managed by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The purpose of the [Wavier 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 [will] have [the an] opportunity to hire and train their own attendants and serve as the employer of record for these attendants. DSAAPD staff [will] provide[s] initial intake, assessment, service authorization, and [a] wavier service plan. The Division of Social Services (DSS) [will be is] responsible for determining financial eligibility for the [Wavier waiver. The effective date is October 1, 2004.]

20700.6.1 Eligibility Criteria

To be eligible for this program, [an] individual[s] must:

- Be a resident of the [state State] of Delaware
- Be 18 years of age or older
- Meet the financial and medical criteria for [the] DSS Long Term Care Medicaid Program
- [Medical criteria must meet 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 [will be is given to] applicants who are:

- persons who with an attendant can complete an education[al 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 ~~[who live but could be living]~~ independently and more cost effectively if they had attendants.

20700.6.2 Number of Recipients

There ~~[are 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 ~~[will is] not ~~[be]~~ exceeded.~~

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.

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.]**

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.

20700.6.7 ASW Services

The Attendant Services Waiver ~~[will]~~ 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 (5/1/05)**