

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

FINAL

ORDER

Daily Living Needs

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) 20720.1 regarding the Daily Living Needs Calculations, specifically, to clarify policy and procedures. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the March 2023 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2023, 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 Division of Social Services Manual (DSSM) 20720.1 regarding the Daily Living Needs Calculations, specifically, to clarify policy and procedures.

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.

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

Purpose

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

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) is to amend the Delaware Social Services Manual (DSSM) to clarify internal policy and procedures regarding the Daily Living Needs Calculations.

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 gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been 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 Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: The State Council for Persons with Disabilities (SCPD) endorses this amendment but asks that DMMA clean up the ambiguity created by the language regarding wages being totally protected.

Agency Response: DMMA appreciates the submission of comments regarding this regulation. DMMA has reviewed these comments and has determined that the proposed DMMA regulation, 26 DE Register of Regulation, 754 is not a change to the Daily Needs Allowance procedure, but rather a clarification of the existing policy.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- State Council for Persons with Disabilities (SCPD)

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2023 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware State Service Manual (DSSM) 20720.1 regarding Daily Living Needs Provisions is adopted, specifically, to clarify internal policy and procedures and shall be final effective May 11, 2023.

4/12/2023

Date of Signature

Molly Magarik, Secretary, DHSS

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. 957 (05/01/23) (Final)