

**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 20000

**PROPOSED**

**PUBLIC NOTICE**

**Personal Needs Allowance**

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 Title XIX Medicaid State Plan Attachment 2.6-A page 4 and Attachment 2.6-A page 4 Addendum and Delaware Social Services Manual (DSSM) 20620.1 and 20995.1.1, specifically, to modify the personal needs allowance amount for individuals residing in long term care facilities.

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](mailto:DHSS_DMMA_Publiccomment@Delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on December 2, 2024. Please identify in the subject line: Personal Needs Allowance

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 Title XIX Medicaid State Plan regarding Personal Needs Allowance.

**Statutory Authority**

- §1902(a)(50), (q) of the Social Security Act
- §1924(d)(1) of the Social Security Act
- 42 CFR §435.725
- 42 CFR §435.733
- 42 CFR §435.832

**Background**

State Plan provisions require the Delaware Medical Assistance Program (DMAP) to provide a personal needs allowance (PNA) to Medicaid recipients residing in long-term care facilities. This PNA is intended to provide for clothing and other personal needs. The current PNA is \$50/month for individuals and \$100/month for married couples and was set in 2016. Delaware Medicaid and Medical Assistance (DMMA) recognizes that the cost-of-living has increased since 2016 and proposes to increase the PNA to offset some of the increased costs of personal needs for recipients. The new PNA will be \$75/month for individuals and \$150/month for married couples.

**Summary of Proposal**

*Purpose*

The purpose of this proposed regulation is to amend the current personal needs allowance.

*Summary of Proposed Changes*

Effective January 1, 2025, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan and the DSSM to modify the personal needs allowance amount for individuals residing in long term care facilities.

*Public Notice*

In accordance with the *federal* public notice requirements established in 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 December 2, 2024.

*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 provide 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**

	Federal Fiscal Year 2024	Federal Fiscal Year 2025
General (State) funds	\$278,116	\$285,600
Federal funds	\$419,793	\$425,556

Attachment 2.6-A  
Page 4

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE

ELIGIBILITY CONDITIONS AND REQUIREMENTS  
42 CFR 435.725; 43 CFR 435.733; 42 CFR 435.832

B. Post-Eligibility Treatment of Institutionalized Individuals

The following amounts are deducted from the gross income when computing the application of an individual or couples' income to the cost of institutionalized care:

1. Personal Needs Allowance.

a. Aged, blind, disabled -

Individuals    \$50 \$75  
Couples        \$400 \$150

For the following individuals with greater need

**See Page 4 Addendum**

b. AFDC related -

Children    \$50 \$75  
Adults      \$50 \$75

c. Individuals under age 21 covered in this plan as specified in Item B.7 of ATTACHMENT 2.2-A Page 16.    \$50 \$75

TN No. SPA # 46-008 <u>24-0015</u>	Approval Date <u>July 22, 2016</u>
Supersedes	
TN No.SP- <del>388</del> <u>#16-008</u>	Effective Date <u>July 1, 2016</u> <u>January 1, 2025</u>

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE  
ELIGIBILITY CONDITIONS AND REQUIREMENTS  
42 CFR 435.725; 43 CFR 435.733; 42 CFR 435.832

B. Post-Eligibility Treatment of Institutionalized Individuals (continued)

For the following individuals with a greater need (continued)

- d. ~~\$\$0/month~~ \$75/month for NF and ICF/IID residents engaging in frequent and regular rehabilitation out-of-facility activities.
- e. For nursing facility residents who are participating in gainful employment, the following amounts, not to exceed the adult foster care rate (551 benefit amount+ \$140), will be deducted from gross earned income:
  - i. Mandatory payroll deductions that are a condition of employment ~~including, but not limited to such as:~~
    1. Federal, State, and Local taxes
    2. FICA
    3. Union Dues
    4. Insurance Premiums
    5. Pension Contributions.
  - ii. ~~ii.~~ iii. Transportation costs as paid to and from employment.
  - iii. ii. Clothing and personal needs allowance of \$75/month.
- f. For nursing facility residents requiring a court appointed guardian, the following amounts will be deducted from the gross income:
  - i. Monthly guardianship fees not to exceed \$100
  - ii. Initial establishment of a guardianship (~~to~~ include attorney's fees) not to exceed \$750

The maximum amount of income to be protected will not exceed the amount required to maintain an individual in adult foster/residential care. This amount is currently the SSI benefit plus \$140.

TN No. SPA <del>22-0003</del> <u>24-0015</u>	Approval Date <u>09/22/2022</u>
Supersedes	
TN No. # <del>16-008</del> <u>22-0003</u>	Effective Date <del>April 1, 2022</del> <u>January 1, 2025</u>

**20000 Medicaid Long Term Care**

**20620.1 Personal Needs Allowance**

Statutory Authority  
42 CFR 435.725  
42 CFR 435.733  
42 CFR 435.832

- 20620.1.1 ~~\$50.00~~ \$75 per month of available income is to be protected for the Medicaid recipients recipient's direct personal needs; or
- 20620.1.2 If the recipient regularly attends a rehab/educational program off the grounds of ~~his or her~~ the recipient's long-term care facility, including employment for the purpose of rehabilitation in a sheltered workshop, ~~\$50.00~~ \$75 per month will be protected; or

20620.1.3 For long-term care facility residents who are participating in substantial gainful activity (SGA) (20 CFR 416.971), the following amounts, not to exceed the Adult Foster Care (AFC) rate will be deducted from gross earned income:

20620.1.3.1 Mandatory payroll deductions that are a condition of employment ~~including, but not limited to~~ such as:

- Federal, State and Local Taxes
- FICA
- Union Dues
- Insurance premiums
- Pension contributions
- Transportation costs as paid to & from work
- Clothing and personal needs allowance of \$75/month.

20620.1.3.2 If monthly earnings average more than the current SGA amount in a calendar year, this is considered SGA and the Division of Medical Assistance (DMMA) can allow a personal needs allowance of up to the AFC rate.

20620.1.3.3 If earnings average less than ~~\$300~~ \$400 a month in a calendar year, this is not ordinarily considered SGA and DMMA can allow the ~~\$50~~ \$75 personal needs allowance.

20620.1.3.4 If average earnings are between ~~\$300~~ \$400 and the current SGA amount, DMMA must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to persons without disabilities in the community performing similar jobs.

20620.1.4 For nursing facility residents requiring a court appointed guardian, the following amounts will be deducted from the gross income:

- i. Monthly guardianship fees not to exceed ~~\$400~~ \$100;
- ii. Initial establishment of a guardianship (to include attorney's fees) not to exceed ~~\$750~~ \$750.

**19 DE Reg. 1095 (06/01/16)**

**26 DE Reg. 108 (08/01/22)**

**26 DE Reg. 694 (02/01/23)**

## **20995.1 Post - Eligibility Deductions**

42 CFR §435.725; 42 CFR §435.733; 42 CFR §435.832

Post-eligibility determination is revised to allow the following deductions from the income of the institutional spouse. The deductions must be taken in the following order:

20995.1.1 Personal Needs Allowance for the ~~institutional spouse~~ Institutional Spouse. The personal needs allowance amount is \$30 per month for SSI recipients, and ~~\$50~~ \$75 per month for all others. If the institutionalized spouse is employed, personal needs may range from ~~\$50~~ \$75 up to the Adult Foster Care rate per month.

20995.1.2 Community Spouse Income Allowance

20995.1.2.1 The community spouse monthly income allowance is the amount of income necessary to bring the spouse's monthly otherwise available income up to the applicable percent of the FPL for two, plus an additional amount for excess shelter.

20995.1.2.2 The total amount available to the community spouse may not exceed "Cap for Minimum Monthly Maintenance Standard. This standard usually changes each January based on the Consumer Price Index for Urban Consumers.

20995.1.3 Family Allowance

20995.1.4 Items for which protection of income has been approved by the Long-Term Care Operation's Administrator ~~and/or~~ or incurred medical expenses of the institutionalized spouse.

**10 DE Reg. 703 (10/01/06)**

**19 DE Reg. 1095 (06/01/16)**

**28 DE Reg. 364 (11/01/24) (Prop.)**