

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Ch. 5, §512 (31 **Del.C.**, Ch. 5, §512)

FINAL

ORDER

Assisted Living Medicaid 1915(c) Waiver

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to submit an application to the Centers for Medicare and Medicaid Services (CMS) for renewal of its Home and Community-Based Services waiver entitled, Assisted Living Medicaid Waiver Program (ALMWP), for an additional five years. 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 July 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Statutory Authority

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*

Background

The Assisted Living Medicaid Waiver Program (ALMWP) provides community based residential services. The Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) administers the ALMWP and is funded by Delaware Medicaid and State general funds. The ALMWP is targeted to older persons and adults with physical disabilities who need assistance with the activities of daily living (ADLs) and meet Medicaid nursing facility admission criteria. The goal of the waiver is to provide services in a manner which responds to each consumer's abilities, assessed needs, and preferences, and which ensures maximum consumer self-sufficiency, independent functioning and safety in a homelike residential setting.

The current demonstration project #0332.91 expires on September 30, 2006. To assure the continuation of the waiver, the Division of Medicaid and Medical Assistance will submit a five-year extension request for the ALMWP to the CMS for the period October 1, 2006 through September 30, 2011.

The provisions of this waiver are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Summary of Proposal

DMMA is announcing a thirty-day comment period on the Waiver Extension request submitted to CMS.

The State of Delaware is in the process of renewing its home and community-based waiver for assisted living. The State intends no changes in benefits or the population served during the renewal period. If during the renewal application process and during our discussions with CMS a need for any changes is identified, those changes would be published at the earliest possible time for public review and comment.

Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC) and the State Council for Persons with Disabilities (SCPD) offered the following condensed observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

Consistent with the June 23, 2006 DSAAPD letter, the Division promises to provide enhanced benefits for the ABI population through its Assisted Living (AL) Medicaid Waiver. In pertinent part, the letter recites as follows:

Those within the Assisted Living (AL) Medicaid waiver population diagnosed with an Acquired Brain Injury will have enhanced benefits offered to them through the existing AL Waiver program. This may include such benefits as Adult Day Care and Cognitive Behavioral Health. The Division of Medicaid and Medical Assistance (DMMA) and the Division of Aging and Adults with Physical Disabilities (DSAAPD) will develop and submit a waiver amendment request to CMS.

Subsequent discussion with DSAAPD at the SCPD Brain Injury Committee clarified that the Division will be submitting an amendment to the AL waiver to secure enhanced services for people with ABI after the renewal application is approved by CMS. The Division indicated that it was on a strict timeline to submit the renewal application and that CMS has already informally approved the aforementioned approach.

In contrast, DMMA published information on its renewal application for the same waiver on July 1, 2006. See DMMA Public Notice, 10 DE Reg. 56 (July 1, 2006). DMMA confirms its present intention to adopt no changes in benefits or the population served by the waiver during the 5 year renewal period (October 1, 2006 – September 30, 2011):

The State of Delaware is in the process of renewing its home and community-based waiver for assisted living. The State intends no changes in benefits or the population served during the renewal period.

This “disconnect” between the DSAAPD letter and the DMMA public notice is of great concern to us. It appears the DMMA comment is not accurate. We, therefore, are recommending that the Waiver Application include changes that will benefit the ABI population in Delaware and incorporate the enhancements that are noted in the DSAAPD letter to the State Council.

We recommend that the Division include language in the Registry of Regulations consistent with the DSAAPD approach (i.e., once the renewal application is approved by CMS, DMMA will affirmatively contemplate amendments to enhance benefits for the ABI population).

Agency Response: The Department fully understands your concern about the appearance of a “disconnect” between the application and the June 23, 2006 Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) letter to Daniese McMullin-Powell, State Council for Persons with Disabilities (SCPD) Brain Injury Committee. We would like to clear up any confusion that may have been created in this regard.

In the letter to Ms. Mc Mullin Powell, DSAAPD stated that: “Those within the Assisted Living (AL) Medicaid Waiver population diagnosed with an Acquired Brain Injury (ABI) will have enhanced benefits offered to them through the existing AL Waiver program. This may include such benefits as Adult Day Care and Cognitive Behavioral Health. The Division of Medicaid and Medical Assistance (DMMA) and the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) will develop and submit a waiver amendment request to CMS.”

We believe that the confusion was generated around the fact that the process will include two steps: first, the *renewal* and then the *amendment* to the Waiver. The *renewal* application does not include the introduction of Acquired Brain Injury services because it was our plan to first complete this application with existing services and then *amend* the waiver to include ABI services.

On July 12, 2006, DSAAPD attended a meeting of the SCPD Brain Injury Committee to respond to the same concern expressed by its membership. During the meeting, we apologized for the misunderstanding, but assured everyone that the Division was and is currently moving forward with plans to amend the Assisted Living Waiver, as well as the Elderly and Disabled Waiver, to include ABI services.

We assure you that DSAAPD continues to move forward with its plans to amend both waivers and has made a great deal of progress to date. The Division has made every effort to keep advocates and constituents

alike updated and involved in the process. As a matter of fact, DSAAPD staff and consultant provided a brief presentation at the Annual Brain Injury Association of Delaware Conference in Dover on Wednesday, October 25, 2006.

As you know, DSAAPD has established an ABI Steering Team composed of representatives from the Division of Medicaid and Medical Assistance, the Division of Developmental Disabilities and the Division of Services for Aging and Adults with Physical Disabilities. This team is charged with the responsibility of developing and supporting the implementation of the Waiver amendments indicated above.

Finally, DSAAPD staff along with our consultant is more than willing to meet with you and others to provide you with updates on the progress of this initiative.

Thank you again for taking the time to share your thoughts and concerns with us on this very important matter.

Findings of Fact

The Department finds that the proposed changes as set forth in the July 2006 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding the five-year extension of the Assisted Living Medicaid 1915(c) Waiver is adopted and shall be final effective December 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 11/14/06

10 DE Reg. 1001 (12/01/06) (Final)