

March 27, 2014

Sharon L. Summers  
Planning & Policy Development Unit  
Division of Medicaid and Medical Assistance  
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**RE: DMMA Proposed Pathways to Employment Medicaid Plan Amendment Regulation [17 DE Reg. 930 (March 1, 2014)]**

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) commented earlier on this initiative which was originally published in the January 2014 Register of Regulations as 17 DE Reg. 688. A copy of our January 30, 2014 letter is attached for your convenience. Council would like to share the following observations and recommendations in addition to the earlier observations since we were unable to fully analyze the amendment in January.

p. 1: Council questions why individuals with visual impairments are eligible for only five services while individuals with all other qualifying impairments are eligible for nine services. Individuals with visual impairments would be categorically barred from receiving the following Pathways services available to individuals with other qualifying impairments: 1) career exploration and assessment; 2) small group supported employment; 3) individual supported employment; and 4) personal care. Council recommends more uniformity in the services menu.

p. 4: The Division envisions the establishment of "a consumer council within the organization to monitor issues of choice". The GACEC did not identify any other references to the consumer council. It may be useful to include the council in the quality improvement section (pp. 40 et seq) and otherwise clarify the structure and role of the council.

p. 4: On p. 4, Par. 7, as well as on p. 8, DMMA represents that the program will not cover services otherwise available to an individual under the Individuals with Disabilities Education Act (IDEA). There is some conflict between such an approach and federal law which generally bars Medicaid programs from refusing to cover services available to a student under the IDEA. The National Health Law Program (NHLP) memo (pp. 2-3) offers the following guidance:

Some related services can be paid for by Medicaid. In fact, the Medicaid statute specifically forbids the

federal government from refusing to pay for Medicaid services that are provided to a child with a disability as part of the child's IEP. 42 U.S.C. §1396b(c). In addition, 34 C.F.R. §300.601 provides that "Part B of the [IDEA] may not be construed to permit a State to reduce medical or other assistance available to children with disabilities, or to alter the eligibility of a child with a disability, under title V (Maternal and Child Health) or title XIX (Medicaid) of the Social Security Act, to receive services that are also part of FAPE."

For example, if a student could receive habilitation services through the special education system, DMMA could not deny Medicaid-funded habilitation simply because it is available through the special education program of the student. Between Medicaid and the IDEA, Medicaid is generally the payer of first resort.

p. 5: DMMA identifies an income cap but does not address whether any resource cap applies. Consistent with the GACEC January 30 commentary, "First" paragraph, it would be preferable to clarify that there is no resource cap.

p. 7: The standard defining the credentials of persons conducting re-evaluations is rather insubstantial:  
For all target groups, re-evaluations are conducted by individuals holding an associate's degree or higher in a behavioral, social sciences, or a related field or experience in health or human services support which includes interviewing individuals and assessing personal, health, employment, social or financial needs in accordance with program requirements.

This standard is reiterated at pp. 11-12 and 15. An Employment Navigator preparing a plan of care does not even need a high school diploma. A telephone receptionist for a non-profit or public agency will generally meet the standard of "experience in health or human services support which includes interviewing individuals and assessing ...needs in accordance with program requirements." Moreover, an individual with only geriatric experience would qualify under this standard despite no familiarity with services for teens and young adults. This represents a major weakness in the proposal, especially for low-incidence populations (e.g. Traumatic Brain Injury) who have very specialized needs.

p. 7: There are no time lines for screening and processing of applications. Time lines would be useful.

p. 10: The table on p. 10 does not match DDDS eligibility standards. Under DDDS standards, some conditions require low I.Q. scores while others (e.g. autism) do not. The table would literally permit Pathways eligibility of individuals with brain injury without low I.Q. scores. The Council would strongly favor this approach. However, as the GACEC stressed in its January 30 letter in par. eight, the absence of an explicit reference to brain injury under the "physical disabilities" heading is problematic. This concern could be addressed by amending the reference to Group B on p. 10 as follows: "Individuals age 14 to 25 with a physical disability (including brain injury); whose physical condition is anticipated to last 12 months or more."

p. 19: For individuals receiving individual supported employment services, job placement support appears to be capped at six months in a benefit year. The same cap is applied to persons receiving group supported employment services (p. 22). No rationale is provided. DMMA may wish to reconsider the merits of such a cap.

p. 21: Individuals receiving group supported employment are subject to a presumptive (but not absolute) cap of 12 continuous months. There is no comparable cap for individual supported employment (p. 19). This may be a deterrent to successful outcomes for persons with the most severe disabilities who may need more time to prove successful.

p. 26: The standards for financial coaches appear to be very generic, i.e., persons with some financial planning experience may serve as financial coaches despite little experience with disability-based planning. Council suspects that very few financial planners are familiar with Miller Trusts, the Delaware CarePlan Trust, the Social Security PASS program, housing assistance programs and the Social Security Administration Ticket to

Work Program. Council queries whether this level of sophistication with disability-related financial planning may be achieved through the training identified on p. 27. If that training does not address programs such as the Delaware CarePlan Trust, PASS program and Ticket to Work, this section should be revised to require background at least equivalent to benefits planners with the Division of Vocational Rehabilitation (DVR).

p. 29: DMMA recites that the non-medical transportation service “does not provide for mileage reimbursement for a person to drive himself to work”. This is objectionable and unrealistic. The transportation broker should be allowed to pay the participant to drive himself/herself to an employment or training site. This is the approach adopted by DVR. See Delaware DVR Casework Manual, §9.3. As a practical matter, if someone lives in Sussex County, use of a personal vehicle may be the only realistic and affordable option. There is limited taxi service and no accessible taxi service. Paratransit is also limited and often results in lengthy delays in reaching destinations. Finally, it is possible that the assistive technology benefit could be used to retrofit a vehicle (e.g. with hand controls). It makes little sense to facilitate the driving capacity of a participant and then categorically exclude mileage reimbursement as an option.

p. 34: There are several references to the “Department of Vocational Rehabilitation” rather than the “Division of Vocational Rehabilitation”.

p. 35: Council considers it to be unusual that spouses (among all relatives) are the only ones authorized to provide personal care services. Many individuals between the ages of 14-25 will not be married. It would be preferable to authorize siblings and other relatives to provide personal care services.

p. 40 et seq: The number and disposition of fair hearing requests could be incorporated into the quality improvement standards. The emphasis on “safety”, “abuse/neglect”, and “incidents of emergency restrictive behavior intervention strategies” (pp. 46-48) are not intuitively core benchmarks of successful employment outcomes and should be reconsidered.

Thank you for your time and consideration in reviewing our observations. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,

Terri A. Hancharick

TAH:kpc

CC: Mr. Stephen Groff, DMMA  
Mr. Bill Love, DSAAPD  
Ms. Jane Gallivan, DDDS  
Ms. Andrea Guest, DVR  
Mr. Dan Madrid, DVI  
Mr. George Meldrum, Nemours  
Ms. Deborah Gottschalk, DHSS  
Mr. Lloyd Schmitz, Employment First Oversight Commission

Attachment