

February 24, 2017

Kimberly Xavier  
Planning, Policy & Quality Unit  
Division of Medicaid & Medical Assistance  
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P.O. Box 906  
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**RE: DMMA Proposed Elderly and Disabled Waiver Provider Policy Manual Regulation  
[20 DE Reg. 612 (February 1, 2017)]**

Dear Ms. Xavier:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Medicaid and Medicare Assistance (DMMA) proposal to do major revisions to its Elderly and Disabled Waiver Provider Manual. The primary impetus for the revisions is to promote conformity with the Centers for Medicare and Medicaid Services (CMS) Home and Community Based Services (HCBS) settings rule. Overall, the initiative mirrors CMS standards and provides helpful, affirmative guidance to Managed Care Organizations (MCOs) and providers. However, Council would like to share the following observations.

First, DMMA provided an early draft of the revised policy to the Disabilities Law Program (DLP) in December, 2015 which prompted the DLP to share three pages of recommendations in January, 2016. The current draft reflects approximately nine amendments based on those recommendations.

Second, the Elderly and Disabled Waiver no longer exists. It was merged into the Diamond State Health Plan Plus (DSHP+) program in 2012. See, e.g., excerpt from DMMA May 18, 2011 overview. See also §1.0, deleting reference to E&D waiver. The title to the Provider Manual should therefore be revised. Consistent with §1.0, the following title could be considered: "Long Term Care Community Services (LTCCS) Provider Policy Manual" or "Long Term Care Community Services/Diamond State Health Plan Plus Provider Policy Manual".

Third, §2.2.1 does not match the formatting in the balance of the section and is simply a non-directive statement. Consider the following substitute:

2.2.1. The LTCCS setting must be integrated and support full access of LTCCS recipients to the greater community, including:...

Fourth, §§2.2.6 and 2.2.7 recite that recipients “should” have the freedom and support to control their own schedules... and be able to have visitors of their choosing at any time. This is not coterminous with the federal regulation, 42 C.F.R. 441.530, which recites that states “must” make available a list of supports, including the following:

Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

Individuals are able to have visitors of their choosing at any time.

For consistency with §§2.2.2-2.2.5, DMMA may wish to use the term “must” rather than “should”, i.e., “individuals must have the freedom” and “individuals must be able to have visitors...”.

Fifth, §3.1.5 requires providers to provide DHSS with access to participant records. DMMA may wish to consider adding a provision addressing access by DHSS authorized representatives to provider-owned or leased settings (e.g. day habilitation; adult day services) in which covered services are provided. This is a DHSS statutory right for licensed residential LTC facilities. See Title 16 Del.C. §1105(a)(5), 1107 and 1134(d)(11). However, day programs are not covered by the residential LTC statutes so DHSS may wish to include the right in the policy manual.

Sixth, DMMA should correct the grammar in §3.3.2.6. The section recites that the person centered planning process is required to include nine listed features. All of the items in the list begin with a verb. Subsection 3.3.2.6 is inconsistent. See Delaware Legislative Drafting Manual, Rule 27, published at <http://legis.delaware.gov/docs/default-source/Publications/legislative-drafting-manual.pdf?sfvrsn=4>

Seventh, in §3.4.2., DMMA should consider replacing “authority” with “authorities” since there may be more than one entity to which critical incidents must be reported. For example, the DHSS PM 46 policy, §V.K.2 (Rev. 8/16) contemplates covered entities reporting to both the police and DHSS for conduct amounting to a crime. There is also overlapping jurisdiction between the Ombudsman (§3.4.2.2.2) and the Division of Long Term Care Residents Protection (DLTCRP) (§3.4.2.2.3).

Eighth, §§3.4.2.2.3 and 3.4.2.2.4 merit review. Council understands that licensing of acute and outpatient health care was switched when the Division of Public Health (DPH) Office of Health Facilities Licensing and Certification (OHFLC) was placed under the DLTCRP effective July 1, 2016. See <http://www.dhss.delaware.gov/dhss/dlcrp/>

Ninth, DMMA may wish to add a reference to the requirement of critical incident reporting concerning patients of psychiatric hospitals and residential centers to the Protection & Advocacy agency pursuant to 16 Del.C. §5162. See also DHSS PM 46 policy, §V.K.2 (Rev. 8/16).

Tenth, §6.2, entitled “Available Services”, omits some services included in the MCO contract, including minor home modifications, home-delivered meals, transition services and nutritional supplements. Each of these services enhance community-based living as much as the listed personal emergency response system. DMMA should consider adding the omitted services.

Eleventh, §6.2.1 and 6.2.2 contain specific references to additional services for individuals with brain injuries in the contexts of adult day services and attendant services:

Members with an acquired brain injury (ABI) or traumatic brain injury (TBI) will receive additional prompting and/or intervention as needed, and as indicated in the person-centered service plan.

This merits our endorsement.

Thank you for your consideration of our observations. Please contact me or Wendy Strauss at the GACEC office if you have any questions on our comments.

Sincerely,

Dafne A. Carnright  
Chairperson

DAC:kpc