

MEMORANDUM

To: Office of Management and Budget

From: Elizabeth G. Booth, Esq. on behalf of the following organizations:
State Council for Persons with Disabilities
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

Date: November 15, 2016

Re: Division of Developmental Disabilities Services ("DDDS") FY 2018 Budget

Please consider this memorandum a memorialization of the oral testimony presented by Elizabeth G. Booth, Esq. on behalf of the State Council for Persons with Disabilities ("SCPD"), the Developmental Disabilities Council ("DDC"), and the Governor's Advisory Council for Exceptional Citizens ("GACEC"). Today we wish to focus our comments on the proposed Lifespan waiver program.

Lifespan Waiver Program

Previous fiscal years' budgets have directed the Division to develop a family support waiver to supplement existing waiver programs. The Division has developed a plan to amend its current waiver to add family support services for individuals served by DDDS who are living in family homes.¹ The Delaware Division of Medicaid and Medical Assistance ("DMMA") plans to submit this waiver amendment application to the federal Center for Medicare & Medicaid Services ("CMS") in January 2017, for an effective date of July 1, 2017.

While the Lifespan waiver amendment is not anticipated to increase costs for the Division, it will utilize the current level of funding to leverage additional Medicaid funds to cover expanded family support services. As according to census data provided by the Division in December 2015, more than 70% of DDDS's 4314 clients were living with family,² which demonstrates the need for additional, sustainably-funded family-based supports.

In addition to existing waiver program clients, the Lifespan amendment is expected to add approximately 1,100 clients who include individuals age 12 and over who participate in DDDS day services, or individuals who have exited school and still live at home with family.³ New clients who demonstrate a need for residential services may also be added to the program.⁴

¹ See Public Hearing Presentation on DDDS Lifespan Waiver Amendment, available at ddds.dhss.gov/dhss/ddds/files/dddslifespanwaiverpublichearing.pptx

² See DDDS census report from December 2015, included as Attachment A.

³ See Public Hearing Presentation on DDDS Lifespan Waiver Amendment.

⁴ *Id.*

The amendment will add a variety of services specifically for individuals who are living at home with family members. These include but are not limited to community living supports such as personal care and respite, assistive technology, home and vehicle modifications, and specialized medical equipment not covered by the State Plan.⁵ These services will offer needed support to family caregivers while allowing more DDDS clients to remain at home with their families while receiving appropriate services. The services will be offered through a person-centered planning process based on individual and family needs, and will add a self-direction option for participants receiving community living support services, which will enable greater autonomy and independence for program participants.⁶

While the proposed waiver amendment plan remains open for public comment, the Councils strongly support development and implementation of an amendment of the current waiver program, which is approved through 2019 to include family supports. Amending an easier waiver is an easier option than the alternative of applying for a brand new waiver, particularly with changes potentially on the horizon at the federal level. Sustained funding to the Division from the State to ensure smooth implementation this waiver program is essential.

Thank you for your consideration.

⁵ Summary of DDDS Lifespan Amendment, included as Attachment B, at p. 3.

⁶ *Id.* at 4.

Division of Developmental Services
MONTHLY CENSUS

Source: Division of Developmental Disabilities Services Client Registry System

December 2015



Number as of the
last day of the month

A. INSTITUTIONAL PLACEMENTS	NEW CASTLE	KENT	SUSSEX	OUT OF STATE
MARY ANN COVERDALE CENTER	0	0	52	0
102 WARREN WAY (GOTTAGE)-closed 4/7/15	0	0	0	0
PSYCHIATRIC PLACEMENTS	2	0	0	0
NURSING HOMES	48	7	9	1

A.

B. COMMUNITY SERVICES/ RESIDENTIAL PLACEMENTS	NEW CASTLE	KENT	SUSSEX
NEIGHBORHOOD (GROUP) HOMES/CLAs	575	150	175
SHARED LIVING	44	34	43
SUPPORTED LIVING	20	7	13
OUT OF STATE	13	0	1
ETLA (Emergency Temporary Living Arrangement)	5	3	2

B.

* C. FAMILY SUPPORT	NEW CASTLE	KENT	SUSSEX
	1703	685	722

*

TOTAL CENSUS (A to C)

4314

Attachment
A

**Summary of the DDDS Lifespan Amendment
Proposed Effective Date July 1, 2017**

Appendix A: Waiver Administration and Oversight:

This section describes how the waiver is operated and administered and how oversight by the Medicaid Agency is conducted. The section continues to indicate that DDDS operates the waiver under the oversight of DMMA under a Memorandum of Understanding. No significant changes were made to this section.

Appendix B: Participant Access and Eligibility

- The description of the waiver target group was changed to allow for inclusion of individuals with IDD that are not in immediate need of a waiver residential setting. This will allow individuals living in the family home who are receiving DDDS day services to be enrolled in the waiver
- The maximum number of waiver participants was increased for SFYs 18 and 19, the last two years of the current five year renewal period, by 1122 and 1206, respectively. The increase in the enrollment cap is an unduplicated count of individuals and must allow for attrition that occurs during the demonstration year (the state fiscal year). Waiver "slots" cannot be reused within a demonstration year. Should it be necessary to increase the waiver cap within available budgeted resources, requesting CMS approval for increasing this cap during the year is a relatively easy process. DDDS will closely monitor enrollment against the cap during the year and will request an increase in the enrollment cap if necessary to ensure that all new Medicaid eligible graduates can be covered.
- Reserved capacity within the overall waiver enrollment cap was created for the following groups to help manage waiver enrollment. Individuals who:
 - require out of home placement due to the lack or incapacity of a caregiver (60 slots)
 - are aging out of the Pathways to Employment Medicaid State Plan program (25 slots in FY18 and 55 slots in FY19)
 - are graduating from K-12 school (1122 slots initially and then 84 additional slots each year thereafter)
 - are transitioning to the community from an institution (5 slots)
- Priority for entry into the waiver was revised to reference the priority groups for which capacity has been reserved. The entire cadre of individuals receiving DDDS day services as of the effective date of the amendment will be given priority entry. This will result in over 900 individuals being initially enrolled. Enrollment thereafter will be managed throughout the year.
- AFTER it is determined that an individual is eligible for the waiver, a separate computation is performed to determine if the individual will have a "patient liability amount". This process is called the "post eligibility treatment of income". The waiver language was changed to enable individuals living in the family home to protect all family income for the purpose determining whether a patient liability amount will be assessed and applied toward their cost of care. This means that individuals living in a residential setting will continue to be assessed a patient liability amount for income above 250% of the monthly Federal Benefit Rate (\$1,832.50/mo until 12/31/16). For individuals living in the family home, however, the maintenance allowance will be their total income.

Appendix C: Participant Services

- The following new waiver services were added to meet the unique needs of individuals living in the family home:
 - Community Living Support – this service includes both respite and personal care. A self-directed option is available that will allow individuals and families to choose their own caregiver. A broker under contract to DDDS using the Agency with Choice model of self-direction will be a co-employer and will assist families with recruiting, hiring and paying these workers. Payments will comply with FLSA rules regarding payment of minimum wage, overtime and travel time, when applicable.
 - Community Participation – this service is a subset of Day Habilitation and is designed for maximum community participation. This service can only be provided in a 1:1 of 1:2 staff to participant ratio. DDDS conducted a pilot over a year ago to help develop the specifications for this service.
 - Assistive Technology – this service covers assistive technology equipment that is used to improve functional capabilities, the assessment necessary to select the proper equipment and tailor it to the needs of the individual and any required training in how to use the equipment. The cost of the equipment is limited to \$500, including maintenance, with exceptions considered for cases of exceptional need.
 - Home or Vehicle Modifications – this service can pay for modifications to the home or a vehicle to enable the individual to function with greater independence in the home or community. Modifications are limited to \$6,000 per member every 5 years.
 - Specialized Medical Equipment not covered under the State Plan – this service includes devices that enable individuals to increase their ability to perform activities of daily living, control their environment and to address functional limitations that prevent an individual from fully participating in their community
- Behavioral and Nurse Consultation: once enrolled in the waiver, individuals with IDD living in the family home will also be able to access Behavioral and Nurse Consultation if they meet the medical necessity criteria.
- Residential Habilitation:
 - medical necessity criteria was added for this service consistent with the criteria previously used to prioritize entry into the waiver, now that individuals living in the family home can enroll in the waiver.
 - Language was added to the provider qualifications for Residential Habilitation Agency indicating that Delaware accepts facility licensure/certification from other states for out of state facilities as meeting the requirement for facility licensure if they are comparable to the Delaware standards. This has been a long-standing DDDS practice but has not previously been expressed in the application.
 - New: Expenses for Community Transition were added as a component part of Residential Habilitation
- Performance Measures C-a-2 and C-c-1 related to provider compliance with DDDS standards were revised to include the word “substantial” as it relates to the level of compliance. Without this clarification, the measure seemed to indicate that a provider must be in 100% compliance with all waiver standards at all times in order to be counted as “compliant”. This will allow for providers making progress under a corrective action plan to be considered “in compliance”.

- Case management:
 - Language was added to sections C-1-b & c to indicate that case management will be furnished under a Targeted Case Management (TCM) State Plan Option for two specified target groups:
 - individuals living in a waiver residential setting
 - individuals living in the family home
 - DDDS state employee case managers will continue to provide case management under the TCM framework for individuals living in a waiver residential setting.
 - The “Family Support Specialists” with which DDDS has been contracting will be replaced by Targeted Case Management provided by a private vendor.
 - DDDS will issue an RFP for a private vendor to deliver TCM for individuals living in the family home. The vendor will provide a uniform, comprehensive case management approach and will oversee all of the employees who work for them to deliver case management. The vendor will provide TCM to individuals living at home who are:
 - enrolled in the Lifespan waiver
 - eligible for Medicaid, but not enrolled in the waiver
 - not eligible for Medicaid (DDDS will use state funds to pay for TCM for these individuals)

Appendix D: Participant Centered Planning and Service Delivery

- In general, the phrase “Plan of Care” has been replaced with “Person Centered Plan” throughout the document.
- The sections on how person centered planning is carried out were rewritten to indicate that DDDS has adopted two new planning frameworks. For individuals living in a waiver residential setting, DDDS has adopted the Lifespan Plan and for individuals living in the family home, DDDS has adopted the Support Plan for Individuals and Families. Additional assessment tools used to inform the planning process are also listed in this section.
- In this section, DDDS has also described differences between the way the person centered planning process is delivered and the way monitoring is conducted for waiver members who live in a waiver residential setting as opposed to those that live in the family home.
- The Quality Improvement section of Appendix D was revised to provide a better description of DDDS’s processes for discovery and remediation regarding waiver services.

Appendix E: Participant Direction of Services:

Delaware has added a self-direction option for the new waiver service known as Community Living Support. Participant direction opportunities are limited to participants who live in their own private residence or the home of a family member. Key features of self-direction include:

- Agency With Choice model of self-direction
- DDDS will issue an RFP for this function
- Waiver members will have Employer Authority but not Budget Authority
- Agency With Choice broker will be paid as a Medicaid administrative cost. The broker will invoice DDDS at a flat rate per participant that covers the Financial Management Services (FMS) and other services the broker will provide in support of waiver members who elect to self-direct.

Appendix F: Participant Rights:

This section outlines the process by which waiver members may request a Medicaid Fair Hearing, whether DDDS offers an alternative dispute resolution process in addition to the Medicaid Fair Hearing and whether the state operates a grievance/complaint system. No substantive changes were made to this section.

Appendix G: Participant Safeguards

- Appendix G was revised to reflect changes to the DHSS policy on reporting of abuse and neglect and the DDDS policy on reportable incidents.
- New language was added as a result of a new CMS requirement for states to document who is responsible for monitoring the unauthorized use of seclusion, how this oversight is conducted and the frequency.
- The section on Medication Administration was revised based on changes to the Delaware curriculum regarding assistance with administration of medication and clarifying differences in training requirements and monitoring of Shared Living providers from Residential Habilitation agency providers. This section now references LLAM as opposed AWSAM as the curriculum approved by the Delaware Board of Nursing.
- Performance Measure G-a-1 regarding reports of incidents of abuse and neglect was changed from counting the number of *members* who have reportable incidents to counting the number of *incidents*. We believe that this will result in a more reliable measure of participant health and safety trends over time.

Appendix H: Quality Improvement

This section was generally revised to highlight the role of the DDDS Performance Analysis Committee and the new reporting tool called “DivStat” that is used to monitor waiver performance measures.

Appendix I: Rate Determination Methods

- Rate methodologies have been added for each of the new waiver services added in Appendix C
 - Community Living Support – the Agency with Choice broker will determine an appropriate wage for individuals who choose the self-directed option. The Medicaid State Plan methodology and rate for Home Health Aide has been adopted as the rate for Community Living Support provided by a licensed Home Health Agency. Community Living Support provided by a Personal Attendant Services Agency (PASA) will be paid at 75% of the rate for a Home Health Aide.
 - Community Participation – the Direct Support Professional methodology from the 2014 DSP rebasing report was used. The data inputs for Day Habilitation were modified to account for the differences for this service. A rate is computed for both the ratio of 1:1 of 1:2 staff to participants using the same methodology used to apply staffing ratios for Supported Employment.
 - Assistive Technology – the methodology and fee schedule developed for the Pathways to Employment program for the assessment and training part of this service was adopted. For Assistive Technology equipment, DDDS will obtain bids or estimates of cost from at least two vendors. The lowest and best price will be authorized up to the maximum allowed amount.

- Home or Vehicle Modifications – DDDS will obtain bids or estimates of cost from at least two vendors. The lowest and best price will be authorized up to the maximum allowed amount.
 - Specialized Medical Equipment not covered under the State Plan – DDDS will obtain bids or estimates of cost from at least two vendors. The lowest and best price will be authorized up to the maximum allowed amount.
- Additional detail regarding billing validation methods was provided and the Agency With Choice broker is referenced.

Appendix J: Budget Neutrality

- Unduplicated count of members per year, average length of stay and estimated unit cost payments were updated to incorporate assumptions related to the new waiver members to enable an estimate to be computed for a cost per waive member for waiver and State Plan costs.
- Estimated utilization and rate data for the new members and services was added to enable the Budget Neutrality computation to be performed.