



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: April 25, 2016

TO: Ms. Kimberly Xavier, DMMA
Planning, Policy and Quality Unit
DM-P/ARR

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 19 DE Reg. 893 [DMMA Proposed LTC Facility Personal Needs Allowance
Regulation (4/1/16)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to raise the personal needs allowance for Medicaid-funded individuals residing in long-term care facilities. The proposed regulation was published as 19 DE Reg. 893 in the April 1, 2016 issue of the Register of Regulations.

Under CMS regulations, Medicaid-funded individuals residing in long-term care facilities are generally required to contribute to costs of institutional services after deducting certain allowable amounts. At 894, quoting 42 CFR §435.725. One deduction is a "personal needs allowance (PNA)" which, for "aged, blind, or disabled" persons must be at least \$30/month for individuals and \$60/month for couples. The purpose of the PNA is to provide an "allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution".

The current PNA established by DMMA is \$44/month for individuals and \$88/month for couples. These amounts have not changed in 14 years, i.e., since 2002. The Division proposes to increase the PNA from \$44/month to \$50/month for individuals and from \$88/month to \$100/month for couples. The change would be effective July 1, 2016. The change is "subsidized" by federal funds. For example, in FFY17, the projected fiscal impact of the change is \$71,596 in federal funds and \$60,500 in State funds.

SCPD has the following observations.

First, DMMA could consider a larger increase in the PNA. Consistent with the attachment, \$44 in 2002 equates to \$57.99 in 2016 based on inflation. Adopting a \$50 rate reflects an increase of less than half the inflation rate. Moreover, since the State infrequently changes the rate, adopting an overly restrained benchmark in 2016 which will remain in effect for many years will accentuate the disparity. DMMA could consider adopting a \$58 rate for individuals and a \$116 rate for couples which would fully account for the inflation rate. This would ostensibly raise the State fiscal impact from \$60,500 to \$141,167 while increasing the federal contribution from \$71,596 to \$167,057.

Second, on p. 896, DMMA may wish to consider substituting “ICF/IID” for ICF/MR. See CMS attachment, Title 29 Del.C. §608, and DMMA references to ICF/IID at 19 DE Reg. 888, 889 and 892.

Third, on p. 897, the following reference should be reconsidered in consultation with DDDS:

If the recipient regularly attends a rehab/educational program off the grounds of his ~~nursing~~ or her long-term care facility, including employment for the purpose of rehabilitation in a sheltered workshop ~~off the grounds of the facility~~, \$50.00 per month (~~rather than \$44~~)-will be protected; ...

The reference is somewhat archaic given Title 19 Del.C. §§740-747 (Employment First Act) and could be interpreted as excluding PNA eligibility to participants in supported employment as well as day habilitation programs. It may violate public policy to limit PNA to participants (including group home and foster home residents) in sheltered workshops to the exclusion of participants in supported employment.

Fourth, on p. 897, there are two references to an SGA limit of \$700. That was the SGA limit in 1999-2000. See attachment. There is also an incorrect reference to “Department of Social Services (DSS)” rather than Department of Health & Social Services and references to “DSS” that ostensibly should be “DMMA”.

Fifth, on p. 897, the reference to “unimpaired people” should be reconsidered. See Title 29 Del.C. §608.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: The Honorable Melanie Smith
The Honorable Harris McDowell
Mr. Stephen Groff, DMMA
Ms. Jill Rogers, DDDS
Mr. Dan Madrid, Employment First Oversight Commission
Ms. Sheila Grant, AARP
Mr. Brian Hartman, Esq.

Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

19reg893 dmma-ltc facility personal needs allowance 4-19-16

(<http://www.usinflationcalculator.com/>)

The US Inflation Calculator measures the buying power of the dollar over time. Just enter any two dates between 1913 and 2016, an amount, and click 'Calculate'.

Inflation Calculator

If in (enter year)

I purchased an item for \$

then in (enter year)

that same item would cost: **\$57.99**

Cumulative rate of inflation: **31.8%**

*Learn how this calculator works (<http://www.usinflationcalculator.com/frequently-asked-questions-faqs/#HowInflationCalculatorWorks>). This US Inflation Calculator uses the latest US government CPI data (<http://www.usinflationcalculator.com/inflation-calculator-information/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>) published on March 16, 2016 to adjust for inflation and calculate the cumulative inflation rate through February 2016. The Consumer Price Index (CPI) and Inflation for March 2016 is scheduled for release by the United States government on April 14, 2016. (See a chart of recent inflation rates (<http://www.usinflationcalculator.com/inflation/current-inflation-rates/>)).

INFLATION ([HTTP://WWW.USINFLATIONCALCULATOR.COM/CATEGORY/INFLATION/](http://www.usinflationcalculator.com/category/inflation/))

US Inflation Falls in February, Annual Inflation Rate Eases

(<http://www.usinflationcalculator.com/inflation/us-inflation-falls-in-february-annual-inflation-rate-eases/10001949/>)

MARCH 16, 2016 ([HTTP://WWW.USINFLATIONCALCULATOR.COM/INFLATION/US-INFLATION-FALLS-IN-FEBRUARY-ANNUAL-INFLATION-RATE-EASES/10001949/](http://www.usinflationcalculator.com/inflation/us-inflation-falls-in-february-annual-inflation-rate-eases/10001949/)) | LEAVE A COMMENT ([HTTP://WWW.USINFLATIONCALCULATOR.COM/INFLATION/US-INFLATION-FALLS-IN-FEBRUARY-ANNUAL-INFLATION-RATE-EASES/10001949/#RESPOND](http://www.usinflationcalculator.com/inflation/us-inflation-falls-in-february-annual-inflation-rate-eases/10001949/#RESPOND))

US consumer prices declined in February alongside plunging gasoline but underlying inflation advanced more than expected, a government report released on Wednesday, March 16, shows. Costs climbed for a broad section of goods and services to include big ticket items like shelter and medical care.

Overall in the past 12 months, inflation eased compared to the annual rate of a month earlier yet the pace clocked higher than any other since late 2014.



Centers for Medicare & Medicaid Services

Home > Regulations and Guidance > Conditions for Coverage (CfCs) & Conditions of Participations (CoPs) > Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

Publication date:

1988

Effective date:

1988

CFR section numbers:

483.400 – 483.480

CFR section descriptions:

Based on changes made in Rosa's Law in 2010, Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) will now reflect nationwide changes and be referred to as Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID).

Sections 483.400 – 483.480 are located in Part 483 of the Code of Federal Regulations, Subpart I- Conditions of Participation for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID). These CoPs establish the health and safety requirements that ICF/IID providers must meet in order to participate in the Medicare and Medicaid programs. The health and safety requirements address topics such as the provider's governing body, client protections, facility staffing, facility environment, and services provided.

Brief description of document(s):

The links below provide more detailed information about the CoPs for ICF/IID providers, surveyor guidelines, payment policy information, and the statutory authority governing ICF/IID providers.

| Downloads |
|--|
| Surveyor Guidelines [PDF, 714KB] |
| ICF/IID Background [PDF, 31KB] |

| Related Links |
|--|
| CONDITIONS OF PARTICIPATION: ICF/IID (483.400-480) |
| Payment Information |
| Social Security Act Section 1902(a) |
| Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) |

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A federal government website managed by the Centers for Medicare & Medicaid Services
7500 Security Boulevard, Baltimore, MD 21244



Social Security

Official Social Security Website

Substantial Gainful Activity

Automatic Determinations:
Determinations:
 SGA for blind
 SGA for non-blind disabled
Wage-indexed amounts

To be eligible for disability benefits, a person must be unable to engage in substantial gainful activity (SGA). A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability. The Social Security Act specifies a higher SGA amount for statutorily blind individuals; Federal regulations specify a lower SGA amount for non-blind individuals. Both SGA amounts generally change with changes in the national average wage index.

Amounts for 2016

The monthly SGA amount for statutorily blind individuals for 2016 is \$1820. For non-blind individuals, the monthly SGA amount for 2016 is \$1130. SGA for the blind does *not* apply to Supplemental Security Income (SSI) benefits, while SGA for the non-blind disabled applies to Social Security and SSI benefits. See historical series of SGA amounts below.

Trial work period

After a person becomes eligible for disability benefits, the person may attempt to return to the work force. As an incentive, we provide a *trial work period* in which a beneficiary may have earnings and still collect benefits.

Monthly substantial gainful activity amounts by disability type

| Year | Blind | Non-blind | Year | Blind | Non-blind | Year | Blind | Non-blind |
|------|-------|-----------|------|-------|-----------|------|---------|-----------|
| 1975 | \$200 | \$200 | 1990 | \$780 | \$500 | 2005 | \$1,380 | \$830 |
| 1976 | 230 | 230 | 1991 | 810 | 500 | 2006 | 1,450 | 860 |
| 1977 | 240 | 240 | 1992 | 850 | 500 | 2007 | 1,500 | 900 |
| 1978 | 334 | 260 | 1993 | 880 | 500 | 2008 | 1,570 | 940 |

| | | | | | | | | |
|------|-----|-----|------|-------|------|------|-------|-------|
| 1979 | 375 | 280 | 1994 | 930 | 500 | 2009 | 1,640 | 980 |
| 1980 | 417 | 300 | 1995 | 940 | 500 | 2010 | 1,640 | 1,000 |
| 1981 | 459 | 300 | 1996 | 960 | 500 | 2011 | 1,640 | 1,000 |
| 1982 | 500 | 300 | 1997 | 1,000 | 500 | 2012 | 1,690 | 1,010 |
| 1983 | 550 | 300 | 1998 | 1,050 | 500 | 2013 | 1,740 | 1,040 |
| 1984 | 580 | 300 | 1999 | 1,110 | 700* | 2014 | 1,800 | 1,070 |
| 1985 | 610 | 300 | 2000 | 1,170 | 700 | 2015 | 1,820 | 1,090 |
| 1986 | 650 | 300 | 2001 | 1,240 | 740 | 2016 | 1,820 | 1,130 |
| 1987 | 680 | 300 | 2002 | 1,300 | 780 | | | |
| 1988 | 700 | 300 | 2003 | 1,330 | 800 | | | |
| 1989 | 740 | 300 | 2004 | 1,350 | 810 | | | |

* \$500 amount applied in the first half of 1999.