

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

FINAL

ORDER

Inpatient Hospital Services
Freestanding Inpatient Rehabilitation Hospital Services

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding Inpatient Hospital Services, specifically, *Freestanding Inpatient Rehabilitation Hospital Services*. 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 January 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2015 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan regarding Inpatient Hospital Services, specifically, *Freestanding Inpatient Rehabilitation Hospital Services*.

Statutory Authority

- Section 1886(j) of the Social Security Act, *Prospective Payment for Inpatient Rehabilitation Services*
- 42 CFR §412.604, *Conditions for payment under the prospective payment system for inpatient rehabilitation facilities*
- 42 CFR §440.10, *Inpatient hospital services, other than services in an institution for mental diseases*
- 42 CFR §447, Subpart C - *Payment for Inpatient Hospital and Long-Term Care Facility Services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

Background

Delaware Medicaid reimburses enrolled providers for services provided to Medical Assistance recipients, including hospitals, under the authority of Title XIX of the Social Security Act. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services.

Inpatient hospital services means services that are ordinarily furnished in a hospital for the care and treatment of inpatients; are furnished under the direction of a physician or dentist; and, are furnished in an institution that (i) is maintained primarily for the care and treatment of patients with disorders other than mental diseases; (ii) is licensed or formally approved as a hospital by an officially designated authority for State standard-setting; (iii) meets the requirements for participation in Medicare as a hospital; and (iv) has in effect a utilization review plan, applicable to all Medicaid patients, that meets the requirements of 42 CFR §482.30, unless a waiver has been granted by the Secretary. Inpatient hospital services do not include skilled nursing facility (SNF) and intermediate care facility (ICF) services furnished by a hospital with a swing-bed approval.

Inpatient hospital services are paid for Medicaid recipients by means of rates determined in accordance with the following principles, methods and standards which comply with Federal regulations at 42 CFR §447.250 through 42 CFR §447.299 and 1902(a)(13)(A), 1902(a)(30), and 1923 of the Social Security Act.

Inpatient Rehabilitation Hospital Services

In accordance with 42 CFR §485.58, an inpatient rehabilitation hospital must provide a coordinated rehabilitation program that includes, at a minimum, physicians' services, physical therapy services, and social or psychological services. These services must be consistent with the plan of treatment and the results of comprehensive patient assessments.

Summary of Proposal

Purpose

To establish payment methodology for freestanding inpatient rehabilitation hospital services reimbursement in the Delaware Medicaid State Plan.

Payment Methodology for Freestanding Rehabilitation Hospital Services

For claims with dates of discharge on or after December 1, 2014, the Delaware Medical Assistance Program (DMAP) shall reimburse freestanding inpatient rehabilitation hospital services using the Medicare Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS).

The Medicare IRF PPS is based on a Patient Assessment Instrument (PAI). The PAI contains patient clinical and demographic information. The PAI classifies the patient into distinct groups based on their clinical characteristics and what the patient's expected resource needs will be. Separate payment rates are then calculated for each group.

Medicare rates are updated annually to reflect changes in local wages using the hospital wage index. Delaware Medicaid will follow Medicare policy on local wage rate increases.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) published notice of proposed amendment to the methods and standards governing reimbursement methodology for freestanding inpatient rehabilitation hospitals participating in the Delaware Medical Assistance Program (DMAP) before the proposed effective date of December 1, 2014 on November 15, 2014 in *The News Journal* and on November 17, 2014 in the *Delaware State News*.

To satisfy *state* public notice requirements established at Title 29, Chapter 101 of the Delaware Code, notice appeared in the January 1, 2015 issue of the Delaware *Register of Regulations*.

Upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

Fiscal Impact Statement

The Title XIX Medicaid State Plan will be amended to add information about the payment methodology for freestanding inpatient rehabilitation hospital services to clarify that the Delaware Medical Assistance Program (DMAP) uses the Medicare Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS) methodology.

DMAP's proposal involves no change in the definition of those eligible to receive the inpatient rehabilitation hospital services benefit under Medicaid, and the inpatient rehabilitation hospital services benefit to eligible recipients remains the same. There is no estimated fiscal impact.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following comments summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

GACEC and SCPD

GACEC and SCPD have reviewed DMMA's proposal to amend the Medicaid State Plan in the context of Freestanding Inpatient Hospital Services. The proposed standards would apply to patients discharged on or after December 1, 2014. DMMA is adopting the Medicare payment standards and rates. The Medicare system classifies patients into distinct groups based on their clinical characteristics and what each patient's expected resource needs will be. At p. 512, the Division notes that "Medicare rates are updated annually to reflect changes in local wages using the hospital wage index." At pp. 511 and 512.

The Councils **endorse** the proposed standards. We would like to note however that covered facilities may benefit from using a similar reimbursement system for both Medicaid and Medicare patients.

Agency Response: DMMA thanks both councils for the endorsement. Regarding a similar reimbursement system for both Medicaid and Medicare patients, DMMA will take this recommendation into consideration once we have had some experience with this facility.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the January 2015 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding Inpatient Hospital Services, specifically, *Freestanding Inpatient Rehabilitation Hospital Services*, is adopted and shall be final effective April 10, 2015.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ODER REGULATION #15-07

REVISION:

ATTACHMENT 4.19-A.2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES FOR INPATIENT HOSPITAL SERVICES
CONTINUED

Freestanding Inpatient Rehabilitation Hospital Services

For claims with dates of discharge on or after December 1, 2014, the Delaware Medical Assistance Program (DMAP) shall reimburse freestanding inpatient rehabilitation hospital services using the Medicare Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS).

The Medicare IRF PPS is based on a Patient Assessment Instrument (PAI). The PAI contains patient clinical and demographic information. The PAI classifies the patient into distinct groups based on their clinical characteristics and what the patient's expected resource needs will be. Separate payment rates are then calculated for each group.

Medicare rates are updated annually to reflect changes in local wages using the hospital wage index. Delaware Medicaid will follow Medicare policy on local wage rate increases.

The fee schedule and any annual/periodic adjustments to the fee schedule and effective dates are available on the Delaware Medical Assistance Program (DMAP) website at: <http://www.dmap.state.de.us/downloads/feeschedules.html>

Except as otherwise noted in the plan, payment for these services is based on State-developed fee schedule rates, which are the same for both governmental and private providers of freestanding inpatient rehabilitation hospital services.

18 DE Reg. 784 (04/01/15) (Final)