

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

**PROPOSED**

**PUBLIC NOTICE**

**1915(c) Home and Community-Based Services Waiver**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) / Division of Developmental Disabilities Services (DDDS) gives notice to the public that a 1915(c) Home and Community-Based Services Waiver (HCBS) waiver amendment has been submitted to the Centers for Medicare and Medicaid Services (CMS) to add a new core service, *Group Supported Employment*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by August 31, 2013.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**SUMMARY OF PROPOSAL**

The proposed provides notice to the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Services (DMMA)/Division of Developmental Disabilities Services (DDDS) has submitted a 1915(c) Home and Community-Based Services (HCBS) Waiver amendment to the Centers for Medicare and Medicaid Services (CMS) to add a new core service, Group Supported Employment.

**Statutory Authority**

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*

**Background**

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The waiver to provide home and community-based services to developmentally disabled adults was developed by the Division of Developmental Disabilities Services (DDDS) and the Division of Social Services (DSS) in 1982, received approval from the Center for Medicare and Medicaid Services (CMS), and became effective on July 1, 1983. The waiver includes support services necessary to maintain individuals in the community as an alternative to institutionalization. The cost of the Home and Community-Based Services Waiver for the Developmentally Disabled (HCBS/DD) shall not exceed the cost of care of the Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

DDDS is the agency that has primary responsibility for administering the HCBS/DD waiver as well as providing, or contracting for the provision of, most of the services. Providers of Pre-Vocational Training, Supported Employment and Residential Habilitation services are certified by DDDS and contract directly with the Delaware Medical Assistance Program (DMAP).

**Summary of Proposal**

Currently, the Division of Developmental Disabilities Services (DDDS) 1915(c) Home and Community Based Services

(HCBS) Medicaid waiver allows consumers to receive Supported Employment with a one-to-one staffing ratio. Many states also allow Supported Employment to be provided in a group to individuals who work as a team, generally at a single worksite of a host community business or industry, with initial training, supervision, and ongoing support provided by on-site staff.

DDDS proposes to amend its 1915(c) HCBS waiver to offer consumers the opportunity to choose a group setting as opposed to receiving a one-on-one service. What was formerly called "Supported Employment" under the waiver will now be called "Individual Supported Employment" and the service definition will be amended so that the language is consistent with the new definition for Group Supported Employment. A new reimbursement methodology for Group Supported Employment is proposed herein for which public notice of the change must be made in accordance with 42 CFR 447.205.

Furthermore, DDDS proposes to change the unit of reimbursement for Day Habilitation, Pre-vocational Service and Supported Employment under the waiver from an hourly billable unit to a fifteen (15) minute billable unit. This change is necessary in order to align the billing units with the increments in which services are actually delivered.

Finally, DDDS proposes to change the frequency of the case manager contact schedule to review the plan of care with the consumer from a monthly face to face visit with the consumer and their family or guardian to review the plan to a monthly "paper" review of the plan by the case manager without the consumer and four face to face visits per year to review the plan with the consumer/family/guardian, of which two must be in the consumer's home.

Pursuant to the notice requirements of 42 CFR 447.205, Delaware Health and Social Services/Division of Medicaid and Medical Assistance/Division of Developmental Disabilities Services (DHSS/DMMA/DDDS), hereby affords the public notice of its intention to solicit public comment on the Department's intent to request a 1915(c) Home and Community-Based Services (HCBS) (HCBS) Waiver amendment to add a new core service, Group Supported Employment. If implemented as proposed, the waiver amendment will have the following effect on October 1, 2013:

- 1) Defining and adding "Group Supported Employment" as a waiver service in accordance with CMS Medicaid Waiver Technical Guide Version 3.5;
- 2) Adding reimbursement methodology for Group Supported Employment;
- 3) Adding provider qualifications for Group Supported Employment (the qualifications will be the same as for Individual Supported Employment);
- 4) Revising and renaming the service definition of "Supported Employment" to "Individual Supported Employment" in accordance with CMS Medicaid Waiver Technical Guide Version 3.5;
- 5) Clarifying that staff to consumer ratio must be one to one;
- 6) Changing the currently hourly billable unit for Day Habilitation, Supported Employment and Pre-vocational service to fifteen (15) minutes; and,
- 7) Revising the frequency of the case manager review of the plan of care from a monthly face-to-face visit with the consumer and their family or guardian to review the plan to a monthly "paper" review of the plan with documentation and four (4) face-to-face visits per year to review the plan with the consumer /family/guardian.

#### *Draft of Proposed Waiver Amendment Application*

A draft of Delaware's waiver amendment application is currently available for review on the Division of Developmental Disabilities Services website at <http://www.dhss.delaware.gov/ddds/>

The provisions of this waiver are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

#### **Fiscal Impact Statement**

There is no increase in cost on the General Fund. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver.

Supported Employment in a group setting is being offered as an alternative for individuals who are most likely already receiving Supported Employment Services or Pre-Vocational Services, so there is no expected additional cost.

#### **DMMA PUBLIC NOTICE #13-24 ATTACHMENT**

DDDS Waiver Amendment  
Public Notice Attachment

#### Current Definition of Supported Employment

Supported employment services consists of intensive, ongoing supports that enable participants, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who, because of their disabilities, need supports, to perform in a regular work setting. Supported employment may include assisting the participant to locate a job or develop a job on behalf of the participant. Supported employment is conducted in a variety of settings, particularly work sites where persons without disabilities are employed. Supported employment includes activities needed to sustain paid work by participants, including supervision and training. When supported employment services are

provided at a work site where persons without disabilities are employed, payment is made only for the adaptations, supervision and training required by participants receiving waiver services as a result of their disabilities but does not include payment for the supervisory activities rendered as a normal part of the business setting.

Documentation is maintained in the file of each participant receiving this service that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.).

Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

1. Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;
2. Payments that are passed through to users of supported employment programs; or
3. Payments for training that is not directly related to an individual's supported employment program.

Transportation is not included in supported employment services.

#### Proposed Definition of Individual Supported Employment (new)

Individual Supported Employment Services are provided to participants, at a one to one staff to consumer ratio, who because of their disabilities, need ongoing support to obtain and maintain an individual job in competitive or customized employment, or self-employment position, in an integrated work setting in the general workforce for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. The outcome of this service is sustained paid employment at or above the minimum wage in an integrated setting in the general workforce, in a job that meets personal and career goals in order to promote community inclusion.

Supported individual employment may also include support to establish or maintain self-employment, including home-based self-employment. Supported employment services are individualized and may include any combination of the following services: vocational/job-related discovery or assessment, person-centered employment planning, job placement, job development negotiation with prospective employers, job analysis, job carving, training and systematic instruction, job coaching, on the job employment supports, social skills training, benefits support, training and planning, transportation, asset development and career advancement services, implementation of assistive technology, and other workforce support services including services not specifically related to job skill training that enable the waiver participant to be successful in integrating into the job setting.

#### Provider Qualifications Group Supported Employment

The Provider Qualifications for Group Supported Employment will be the same as are currently approved in the DDDS waiver for Supported Employment.

#### Proposed Definition of Group Supported Employment (new)

Supported Employment Small Group Employment Support are services and training activities provided in regular business, industry, and community settings for groups of two (2) to eight (8) workers with disabilities. Examples include mobile crews and other employment work groups. Small group employment support must be provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces. The outcome of this service is sustained paid employment and work experience leading to further career development and individual integrated community based employment for which an individual is compensated, at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Supported employment small group employment supports may be a combination of the following services: vocation/job related discovery or assessment, person center employment planning, job placement, job development, social skills training, negotiation with prospective employers, job analysis, training and systematic instruction, job coaching, benefits supports, training and planning, transportation and career advancements services.

Other workplace support services may include services not specifically related to job skill training that enable the waiver participant to be successful in integrating in to the job setting.

#### Proposed Reimbursement Methodology for Group Supported Employment (new)

The payment rate for Group Supported Employment will be based on the rate for Individual Supported Employment, which is a one-to-one staff-to-consumer ratio. The payment rate for the addition of each consumer in the group shall be computed by dividing the payment rate for Individual Supported Employment by the number of participants in the group (up to a maximum of 8) and applying a gross up factor to account for additional incremental costs related to the provision of group supported employment that would not have been captured in the base Individual Supported Employment rate. Group Supported Employment will be paid in 15 minute billable units.

## Case Manager Review of the Plan of Care - Appendix D: Participant-Centered Planning and Service Delivery, D-1: Service Plan Development

### Current Waiver Language

The DDDS State Case Manager monitors the contracted agency's implementation of the participant's plan of care (the ELP) on a monthly basis. This monitoring includes a direct interview with the participant to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her state priority outcomes. In effect, the participant has a known advocate with the state, which maintains contractual authority over the provider agency.

### Proposed Waiver Language

The DDDS State Case Manager monitors the contracted agency's implementation of the participant's plan of care (the ELP) on a monthly basis. In addition to the monthly paper monitoring, this includes a direct interview with the participant four times per year, two of which must be in the participant's home, to review the plan with the participant and his/her family or guardian to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her state priority outcomes. In effect, the participant has a known advocate with the state, which maintains contractual authority over the provider agency.

### Current Performance Measure D-d-2

The percentage of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care on at least a monthly basis. (The number of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care on at least a monthly basis/the number of participants whose services and supports were reviewed by OQM.)

### Proposed Performance Measure D-d-2

The percentage of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care at least four times per year, of which two visits must be in the participant's home. (The number of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care at least every four months (two of which must be in the home)/the number of participants whose services and supports were reviewed by OQM.)

## **DMMA PUBLIC NOTICE #13-24**

In accordance with the public notice requirements of 42 CFR 447.205, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA), Division of Developmental Disabilities Services (DDDS) gives notice that it has submitted a waiver application to the Centers for Medicare and Medicaid Services (CMS) to request an amendment to add a new core service, Group Supported Employment.

Currently, the Division of Developmental Disabilities Services (DDDS) 1915(c) Home and Community Based Services (HCBS) Medicaid waiver allows consumers to receive Supported Employment with a one-to-one staffing ratio. Many states also allow Supported Employment to be provided in a group to individuals who work as a team, generally at a single worksite of a host community business or industry, with initial training, supervision, and ongoing support provided by on-site staff.

DDDS proposes to amend its 1915(c) HCBS waiver to offer consumers the opportunity to choose a group setting as opposed to receiving a one-on-one service. What was formerly called "Supported Employment" under the waiver will now be called "Individual Supported Employment" and the service definition will be amended so that the language is consistent with the new definition for Group Supported Employment. A new reimbursement methodology for Group Supported Employment is proposed herein for which public notice of the change must be made in accordance with 42 CFR 447.205.

Furthermore, DDDS proposes to change the unit of reimbursement for Day Habilitation, Pre-vocational Service and Supported Employment under the waiver from an hourly billable unit to a fifteen (15) minute billable unit. This change is necessary in order to align the billing units with the increments in which services are actually delivered.

Finally, DDDS proposes to change the frequency of the case manager contact schedule to review the plan of care with the consumer from a monthly face to face visit with the consumer and their family or guardian to review the plan to a monthly "paper" review of the plan by the case manager without the consumer and four face to face visits per year to review the plan with the consumer/family/guardian, of which two must be in the consumer's home.

Pursuant to the notice requirements of 42 CFR 447.205, Delaware Health and Social Services/Division of Medicaid and Medical Assistance/Division of Developmental Disabilities Services (DHSS/DMMA/DDDS), hereby affords the public notice of its intention to solicit public comment on the Department's intent to request a 1915(c) Home and Community-Based Services (HCBS) (HCBS) Waiver amendment to add a new core service, Group Supported Employment. If implemented as proposed, the waiver amendment will have the following effect on October 1, 2013:

- 1) Defining and adding "Group Supported Employment" as a waiver service in accordance with CMS Medicaid Waiver Technical Guide Version 3.5;

- 2) Adding reimbursement methodology for Group Supported Employment;
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- 4) Revising and renaming the service definition of “Supported Employment” to “Individual Supported Employment” in accordance with CMS Medicaid Waiver Technical Guide Version 3.5;
- 5) Clarifying that staff to consumer ratio must be one to one;
- 6) Changing the currently hourly billable unit for Day Habilitation, Supported Employment and Pre-vocational service to fifteen (15) minutes; and,
- 7) Revising the frequency of the case manager review of the plan of care from a monthly face-to-face visit with the consumer and their family or guardian to review the plan to a monthly “paper” review of the plan with documentation and four (4) face-to-face visits per year to review the plan with the consumer /family/guardian.

See attached “DDDS Waiver Amendment Public Notice Attachment” for proposed definition of “individual supported employment”; proposed definition of “group supported employment”; proposed reimbursement methodology for group supported employment; revised waiver language for case manager review of the plan of care; and, proposed performance measures.

#### **Draft of Proposed Waiver Amendment Application**

A draft of Delaware’s waiver amendment application is currently available for review on the Division of Developmental Disabilities Services web address:

<http://www.dhss.delaware.gov/ddds/medicaidwaiver.html>

Hard copies are available for review at the following three (3) locations from 8:00 a.m. – 4:30 p.m.:

- 1) Division of Developmental Disabilities Services  
Fox Run Office  
2540 Wrangle Hill Road  
2<sup>nd</sup> Floor  
Bear, Delaware 19701  
(Visitor parking is designated by signs and is close to the entrance of the building)
- 2) Division of Developmental Disabilities Services  
Woodbrook Professional Center,  
1056 South Governor’s Avenue  
Suite 101  
Dover, Delaware 19904  
(Visitor parking is designated by signs and is close to the entrance of the building)
- 3) Division of Developmental Disabilities Services  
Community Services Administrative Office - Stockley Center  
101 Boyd Boulevard  
26351 Patriots Way  
Georgetown, Delaware 19947  
(Visitor parking is designated by signs and is close to the entrance of the building)

The proposed draft will also be presented to the Medicaid Medical Care Advisory Committee meeting on September 11, 2013 at the following time and location:

9:00 a.m. - 11:00 a.m.

Easter Seals

61 Corporate Circle

New Castle, Delaware 19720

(Visitor parking is designated by signs and is close to the entrance of the building)

In addition, three (3) public hearings were held on July 8<sup>th</sup>, July 9<sup>th</sup> and July 11<sup>th</sup> to allow for a presentation of the

proposed waiver amendment by agency staff and public input.

The provisions of this waiver are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

**Public Comments**

The public is invited to review and comment on the State's proposed waiver amendment request. Written comments may be sent to: Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or via fax to 302-255-4425. For consideration, written comments must be received by 4:30 p.m. on August 31, 2013. Please identify in the subject line: Proposed Division of Developmental Disabilities Services 1915(c) Home and Community-Based Services Waiver Amendment, Group Supported Employment.

**Fiscal Impact Statement**

There is no increase in cost on the General Fund. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver. Supported Employment in a group setting is being offered as an alternative for individuals who are most likely already receiving Supported Employment or Pre-Vocational Service, so there is no expected additional cost.

Stephen M. Groff, Director, Division of Medicaid and Medical Assistance

July 9, 2013

**17 DE Reg. 156 (08/01/13) (Prop.)**