

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

Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders

Hippotherapy

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program Provider Specific Policy Manual to revise and update the Independent Therapist Provider Specific Policy Manual regarding Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders, specifically, *to establish coverage criteria, provider qualifications, service limitations and reimbursement methodology for Hippotherapy*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del.C.** §10115 in the September 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 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 and the Delaware Medical Assistance Program (DMAP) Provider Specific Policy Manual to revise and update Independent Therapist Provider Specific Policy Manual regarding Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders, specifically, *to establish coverage criteria, provider qualifications, service limitations and reimbursement methodology for Hippotherapy*.

Statutory Authority

- Section 1905(a)(11) of the Social Security Act, *includes physical therapy and related services in the definition of medical assistance*
- 42 CFR §440.110 *defines physical therapy, occupational therapy, and services for individuals with speech, hearing and language disorders*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

Background

Physical therapy and related services under 42 Code of Federal Regulations (CFR) 440.110 is an optional service under State Medicaid Programs. Medicaid reimbursement for outpatient physical therapy, occupational therapy, and services for individuals with speech, hearing and language disorders is based on the provision of medically necessary therapy services for an illness or injury resulting in functional limitations which can respond or improve as a result of the prescribed therapy treatment plan in a reasonable, predictable period of time.

Physical Therapy Services

In accordance with 42 CFR 440.110(a), physical therapy means services prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under state law and provided to a beneficiary by or under the direction of a qualified Physical Therapist. It includes any necessary supplies and equipment. Physical Therapy Services involve evaluation and treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems for maximum reduction of physical or mental disability and restoration of a beneficiary to his/her best possible functional level.

A "qualified physical therapist" is an individual who meets personnel qualifications for a physical therapist at 42 CFR §484.4.

Occupational Therapy Services

In accordance with 42 CFR 440.110(b)(1), occupational therapy means services prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under state law and provided to a beneficiary by or under the direction of a qualified occupational therapist. It includes any necessary supplies and equipment. Occupational therapy services are channels to improve or restore functional abilities for maximum reduction of physical or mental disability and restoration of a beneficiary to his/her best possible functional level.

A "qualified occupational therapist" is an individual who meets personnel qualifications for an occupational therapist at 42 CFR §484.4.

Services for Individuals with Speech, Hearing and Language Disorders

In accordance with 42 CFR 440.110(c)(1), services for individuals with speech, hearing and language disorders means diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech pathologist or audiologist, for which a patient is referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law. It includes any necessary supplies and equipment. Reimbursable Speech-Language Pathology Services are evaluative tests and measures utilized in the process of providing Speech-Language Pathology Services and must represent standard practice procedures.

A "speech pathologist" means an individual who meets one of the conditions defined in 42 CFR 440.110(c)(2).

A "qualified audiologist" means an individual with a master's or doctoral degree in audiology that maintains documentation to demonstrate that he or she meets one of the conditions defined in 42 CFR 440.110(c)(3).

Hippotherapy

Hippotherapy is a form of physical, occupational and speech-language therapy in which a therapist uses the multidimensional movements of a horse to provide carefully graded motor and sensory input. A foundation is established to improve neurological function and sensory processing, which can be generalized to a wide range of daily activities. Hippotherapy involves therapeutic exercise, neuromuscular education, kinetic activities, therapeutic activities, sensory integration activities and individual speech therapy. This treatment strategy utilizes the movement of the horse as part of an integrated rehabilitation plan of care to achieve functional outcomes.

Hippotherapy is specialized and is always directed by a licensed healthcare professional. Functional riding and horsemanship skills are not taught during hippotherapy. Rather, the emphasis is on the achievement of specific therapeutic goals facilitated by the movement of the horse. Despite the unusual nature of hippotherapy, its rationale is based on current theories of motor development and control and established neurophysiologic treatment principles.

Summary of Proposal

Purpose

To establish the requirements and reimbursement provisions that governs hippotherapy services.

Proposal

The Delaware Medical Assistance Program (DMAP) Provider Manual is written specifically to address the contractual and regulatory requirements of delivering health care services to Delaware Medicaid beneficiaries. From time to time the Division of Medicaid and Medical Assistance (DMMA) updates and revises these manuals as our policies or regulatory requirements change. Physical therapy and related services are those medically necessary services related to the coverage described in the Independent Therapist Provider Specific Policy Manual. The proposed rule establishes language in the designated provider manual to allow coverage for hippotherapy services.

For conditions of coverage and payment, the Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 4.19-B Page 21 of the Medicaid State Plan to reflect the above-referenced changes. Upon CMS approval, the proposed state plan amendment (SPA) is effective for dates of service on or after September 2, 2015.

In addition, language throughout the rule has been updated, restructured and replaced for clarity purposes.

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 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the requirements and reimbursement provisions governing private duty nursing services. Comments must be received by 4:30 p.m. on September 30, 2015.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) relating to coverage and payment methodology for hippotherapy services are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals Update

Also, 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. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund as Physical Therapy, Occupational Therapy, and Services for Individuals with Speech, Hearing and Language Disorders is already a covered benefit under the Delaware Medical Assistance Program (DMAP) to eligible beneficiaries.

DMAP's proposal involves no change in the definition of those eligible to receive physical therapy and related services under Medicaid, and the physical therapy and related services benefit to eligible beneficiaries remains the same.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

GACEC and SCPD

Background on hippotherapy is contained in the attached Wikipedia article. More information is available through the website of the American Hippotherapy Association, Inc.: <http://www.americanhippotherapyassociation.org/>. GACEC and SCPD endorse this initiative subject to consideration of a few amendments.

First, §1.1.6 requires therapists to have a "HCPS" certification:

1.1.6. Therapists that provide Hippotherapy must be certified by the American Hippotherapy Certification Board as a Hippotherapy Professional Clinical Specialist (HCPS).

The Board's website indicates that there is only one therapist in Delaware with the certification, a single upstate OT. See <http://www.americanhippotherapyassociation.org/find-a-therapist-2/>. The Board also maintains a list of approval "member therapists" who have completed at least some coursework. There is one ST in Delaware who has "member therapist" status. Id. Given that there is only 1 therapist in the entire State with the required certification, the Division may wish to consider expanding the scope of therapists eligible to provide Hippotherapy under the Medicaid program on a provisional basis. For example, DMMA could adopt a transitional standard in which "member therapists" could also provide Hippotherapy under the Medicaid program with a defined expiration date. This would provide some time to achieve full HCPS certification. Consider the following amendment:

1.1.6. Therapists that provide Hippotherapy must be certified by the American Hippotherapy Certification Board as a Hippotherapy Professional Clinical Specialist (HCPS). **[Given the low number of Delaware therapists with HCPS certification, a therapist enrolled as an American Hippotherapy Association "member therapist" may bill the DMAP for Hippotherapy provided through December 31, 2016.]**

Agency Response: DMMA acknowledges your endorsement, thank you. The American Hippotherapy Certification Board (AHCBS) specifically recognizes AHCBS Certified Therapist as an entry level certification. This certification includes a minimum requirement of one year or 2,000 hours experience in the practice of physical, occupational or speech and language pathology. AHCBS also requires a minimum of 25 hours of one on one direct patient treatment using Hippotherapy, prior to the application. The therapist must be experienced and comfortable with horses, riding safely at the walk and trot.

Hippotherapy includes the use of Tandem therapy, Clinical Problem Solving including ongoing diagnostic indicators, modifications to therapy horse and movement, equipment, horse handling methods, intervention strategies, team, environment and ability to ride independently. These are not included in the AHCBS Certified Therapist certification.

The Hippotherapy Professional Clinical Specialist (HPCS) is required by the AHCBS to have at least three years of fulltime or 6,000 hours experience in the practice of physical, occupational or speech and language pathology. The HPCS has completed a minimum of 100 hours of one on one direct treatment in Hippotherapy practice, ability to ride independently and certified to provide all components of Hippotherapy.

The AHCBS Certified Therapist is an entry level certification and is not eligible to provide all components of Hippotherapy.

For these reasons, the State will retain the requirements for this therapy as described in the proposed regulation.

No change to the regulation was made as a result of these comments.

Second, the Medicaid Plan excerpt included in the proposed regulation contains the following provision which is not earmarked for revision:

3.3 Services Not Covered

3.3.1 Occupational therapy services that are not covered include but are not limited to OT services which are not intended to improve functions. is not covered by DMAP. At 169.

Apart from the obvious grammatical problems with this subsection, its substance is inconsistent with federal regulation and the DMMA medical necessity regulation. It literally limits OT to "medical improvement". In contrast, 42 C.F.R. 440.110(b) (reproduced on p. 165) authorizes OT for both "medical improvement" AND restoration of function. The DMMA "medical necessity" regulation does not require services to result in medical improvement, i.e. services can "restore" or "prevent worsening" of function. See attached regulatory definition [2 DE Reg. 1249 (1/1/99)]. See also attached correspondence from Delaware Medicaid Director disapproving an MCO denial notice based on a "chronic" condition which would "not significantly improve... with occupational therapy". Section 3.3.1 literally bars coverage of OT which would restore or prevent the worsening of effects of a condition. The entire subsection could be deleted since it is grammatically infirm, substantively incorrect, and superfluous (other sections define the scope of covered OT). The Division is authorized to informally correct this section pursuant to Title 29 **Del.C.** §10113(b)(4)(5).

Agency Response: DMMA agrees and will remove this policy statement. [~~Bracketed bold stricken through~~] indicates language deleted in the final order regulation.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program Provider Specific Policy Manual to revise and update the Independent Therapist Provider Specific Policy Manual regarding Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing and Language Disorders, specifically, *to establish coverage criteria, provider qualifications, service limitations and reimbursement methodology for Hippotherapy*, is adopted and shall be final effective December 10, 2015.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #15-24a

REVISIONS:

ATTACHMENT 4.19-B
Page 21

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES FOR PHYSICAL THERAPY AND RELATED SERVICES 42 CFR 440.110

Physical therapy and related services are reimbursed as follows:

Physical and occupational therapists and speech/language pathologists who are individually enrolled with the Delaware Medical Assistance Program (DMAP) are reimbursed at a rate using Healthcare Common Procedure Coding System (HCPCS) procedure codes. Reimbursement rates shall be based on the Medicare Relative Value (RVU).

All necessary supplies and equipment used by the therapist in the course of treatment are included in the reimbursement visit and cannot be billed separately.

Services provided by an occupational therapy assistant, physical therapy assistance, and a speech/language pathology assistant are included in the reimbursement to the qualified therapist/pathologist.

Therapists that provide Hippotherapy must be certified by the American Hippotherapy Certification Board as a Hippotherapy Clinical Specialist (HCPS). Services provided during Hippotherapy are included in the reimbursement to the qualified therapist.

When billing for PT, OT, and Speech/language pathology services, providers shall use the appropriate Physical Medicine and Rehabilitation CPT Procedure codes and specify the diagnosis with accurate ICD-9-CM codes. When billing for physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders,

providers shall use the appropriate Physical Medicine and Rehabilitation Current Procedural Terminology (CPT) codes and specify the diagnosis with accurate International Classification of Diseases, Clinical Modification (ICD-CM) codes.

When billing for services provided by a physical therapist, providers must specify the diagnosis that is being treated. For billing purposes, providers must include the medical diagnosis that may differ from the impairment-based diagnosis described in *The Guide to Physical Therapist Practice Patient/Client Management Model*.

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.

DMMA FINAL ORDER REGULATION #15-14b REVISIONS:

DELAWARE MEDICAL ASSISTANCE PROGRAM

Independent Therapist Provider Specific Policy Manual

1.1 Applicability

- 1.1.1 This manual contains policies and procedures to be utilized by therapists who shall include the following provider types:
 - Physical Therapist
 - Occupational Therapist
 - Speech/language Pathologist
 - 1.1.2 All rules and regulations in the General Policy and referenced in the provider contract are applicable to these providers.
 - 1.1.3 All therapy services must be medically necessary and ordered by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law.
 - 1.1.4 Group practices may enroll in the Delaware Medical Assistance Program (DMAP) and use their provider identification number to bill. However, individual therapists who are members of the group must also have individual contracts and individual DMAP provider numbers. The therapist's number must be used to identify the provider performing the service on the claim form submitted by the enrolled group.
 - 1.1.5 Therapists who bill the DMAP for services provided to eligible Medicaid ~~clients~~ beneficiaries are required to verify that they actually rendered the service which is being billed. The following are the documentation requirements to verify the identity of the performing provider:
 - 1.1.5.1 A therapist in a solo practice is not required to sign or initial medical records. However, a therapist who is a substitute or who is covering for a therapist in a solo practice is required to initial the medical record of the Medicaid ~~client~~ beneficiary for whom services have been provided.
 - 1.1.5.2 A performing therapist in a group practice is required to initial the entry in the ~~client's~~ Medicaid beneficiary's medical record at the time of service. Any system that a particular office may have in place that identifies the performing provider for each service will be acceptable.
 - 1.1.5.3 Therapists enrolled with the DMAP must countersign the services performed by the associate/assistant they oversee or supervise.
 - 1.1.6 Therapists that provide Hippotherapy must be certified by the American Hippotherapy Certification Board as a Hippotherapy Professional Clinical Specialist (HCPS).
-
- 2.2.4 The following are the most common physical therapy modalities and procedures used in the treatment of patients and are covered services if certain conditions are met:
 - 2.2.4.1 Hot packs, Hydrocollator, Infra-Red Treatments, Paraffin Baths and Whirlpool Baths - These types of therapy will be covered in cases when the skills, knowledge and judgment of a physical therapist is required or where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, or other complications.
 - 2.2.4.2 Gait Training - Gait evaluation and training requires the skills of a qualified physical therapist. The service is furnished to patients whose ability to walk has been impaired by neurological, muscular, or a skeletal abnormality. Gait training is provided with the expectation that it will significantly improve the patient's ability to walk.

- 2.2.4.3 Ultrasound, Shortwave, and Microwave Diathermy Treatments - Modalities must be performed by or under the supervision of a qualified physical therapist.
- 2.2.4.4 Range of Motion Tests - Range of motion tests must be performed by a qualified physical therapist.
- 2.2.4.5 Therapeutic Exercises - Therapeutic exercises must be performed by or under the supervision of a qualified physical therapist. The exercises must be part of the active treatment of a specific disease or injury which has resulted in a loss or restriction of mobility.
- 2.2.4.6 Hippotherapy – is a form of physical, occupational and speech-language therapy in which a therapist uses the multidimensional movements of a horse to provide carefully graded motor and sensory input. A foundation is established to improve neurological function and sensory processing, which can be generalized to a wide range of daily activities. Hippotherapy involves therapeutic exercise, neuromuscular education, kinetic activities, therapeutic activities, sensory integration activities and individual speech therapy. This treatment strategy utilizes the movement of the horse as part of an integrated rehabilitation plan of care to achieve functional outcomes.

[3.3 Services Not Covered

- 3.3.1 ~~Occupational therapy services that are not covered include but are not limited to OT services which are not intended to improve functions. is not covered by the DMAP.]~~**

19 DE Reg. 513 (12/01/15) (Final)