

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

Title XIX Medicaid State Plan, State Plan Rehabilitative Services - Coverage and Reimbursement for Community Support 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 State Plan Rehabilitative Services, specifically, *Coverage and Reimbursement for Community Support 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 December 1, 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2014 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 State Plan Rehabilitative Services specifically, *Coverage and Reimbursement for Community Support Services*.

Statutory Authority

- §1905 of the Social Security Act (a)(13), *Other diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §440.130(d), *Diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §440.60, *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.225, *Optional services*
- 42 CFR §440.20, *Outpatient hospital services and rural health clinic services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

Background

Section 1905(a)(13) of the Social Security Act (the Act) includes rehabilitative services as an optional Medicaid State plan benefit. Current Medicaid regulations at 42 CFR §440.130(d) provides a definition of rehabilitative services. Rehabilitative services are defined as "any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice under State law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level." The broad general language in this regulatory definition has afforded States considerable flexibility under their State plans to meet the needs of their State's Medicaid population. Rehabilitative services are specialized services of a medical or remedial nature delivered by uniquely qualified practitioners designed to treat or rehabilitate persons with mental illness or substance use disorder diagnoses. These services will be provided to recipients on the basis of medical necessity.

Community Support Services

Community support services are medically related treatment, rehabilitative and support service provided through self-contained programs by teams of clinicians, associate clinicians and assistant clinicians under the supervision of a physician. Currently, the Delaware Medical Assistance Program (DMAP) covers behavioral health rehabilitative services for persons with disabilities caused by mental illness and substance use disorder. The three (3) categories of community support programs are:

- 1) Community Continuum of Care (CCC) program: CCC provides a comprehensive array of non-residential support services in community-based settings to improve the capacity for self-care and productive daily living of persons whose disabilities markedly impair their ability to live independently without support.

- 2) Psychosocial Rehabilitation Center (PRC) program: PRC provides non-residential facility-based group therapies to improve the capacity for self-care and productive daily living of persons whose disabilities markedly impair their ability to live independently without support.
- 3) Residential Rehabilitation Facility (RRF) program: RRF provides residential facility-based group and individual therapies to improve the capacity for self-care and productive daily living of persons whose disabilities preclude their ability to live independently.

Summary of Proposal

Overview

On September 18, 2014, the Centers for Medicare and Medicaid Services (CMS) approved Delaware Medicaid State Plan Amendment (SPA) #13-0018. This SPA targets service delivery, specifically, substance use disorder treatment services, crisis intervention services, and other licensed behavioral health practitioners. SPA #13-0018 makes the changes and clarifications necessary for Delaware to be responsive to the United States Department of Justice (DOJ) Settlement through the addition of new services and modifications to existing services.

Effective July 1, 2014, the coverage and reimbursement methodology plan amendments of #DE SPA #13-0018 accomplish the following:

1. Removes mental health clinics from the Medicaid Clinic Option and cover the services provided by those facilities in the Other Licensed Practitioner Section of the State Plan. This allows Medicaid to reimburse Psychologists, Licensed Clinical Social Workers, Licensed Professional Counselors of Mental Health, and Licensed Marriage and Family Therapists (LMFTs) services when provided in a clinic or community setting when permitted under State practice laws.
2. Includes Crisis Intervention and Outpatient and Residential Substance Use Disorder Treatment in the Rehabilitation State Plan. This allows the State to provide Medicaid eligible individuals with mobile and site-based crisis intervention for individuals experiencing a behavioral health crisis. In addition, the State will be able to provide recovery-oriented treatment for individuals with substance use disorders.
3. Removes the Community Support Service Program from the State Plan effective January 1, 2015. On that date, a new 1915(j)-like service under the 1115 demonstration waiver begins operating for individuals under the DOJ settlement agreement to ensure that individuals with serious mental illness (SMI) receive the supports necessary to remain in the community.

Proposal

As referenced in item #3 above, reimbursement and coverage of Community Support Service Program shall cease in the Medicaid State Plan on January 1, 2015. As long as the State is continuing to provide this service, the reimbursement language remains in the reimbursement section of state plan.

With the approval of SPA #13-0018 and anticipated approval of Diamond State Health Plan 1115 Waiver Amendment Covering PROMISE, current community support services coverage and reimbursement language becomes obsolete. Delaware Medicaid is processing a technical amendment to the Medicaid State Plan as directed by the Centers for Medicare and Medicaid Services (CMS) to submit a new SPA prior to January 1, 2015 with an effective date of January 1, 2015, removing all State Plan coverage and reimbursement provisions related to community support services at Attachment 4.19-B Page 4. The proposed rule is necessary for the department to administer and maintain compliance with federal funding requirements.

In accordance with public notice requirements established at 42 CFR 447.205, Section 1902(a)(13)(A) of the Social Security Act, and Title 29, Chapter 101 of the **Delaware Code**, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is seeking public comment on the draft Community Support Service State Plan Amendment.

The provisions of this state plan amendment relating to methodology and payment rates of Community Support Services are subject to approval by 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.

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. 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

There will be no fiscal impact as a result of this amendment because it is a technical amendment, and it does not represent a significant change in the payment methods or standards. The fiscal impact for this regulatory action was captured in Delaware Medicaid State Plan Amendment (SPA) #13-0018.

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) considered your comments and respond as follows.

As background, "rehabilitative services" are an optional Medicaid State Plan benefit. Delaware includes "rehabilitative services" within its State Plan. Under the general heading of "rehabilitative services", the Delaware Medicaid Plan included a "Community Support Service Program" which covered "behavioral health rehabilitative services per persons with disabilities caused by mental illness and substance use disorder." This program encompassed both residential and non-residential support services. CMS has already approved an amendment to remove the "Community Support Service Program" entirely from the Medicaid State Plan effective January 1, 2015. The rationale for the deletion of the Program is that the PROMISE program makes it "obsolete". In a nutshell, support services previously provided under the "Community Support Service Program" would be covered (along with other services) by PROMISE. DMMA is proposing to formally delete the "Community Support Service Program" from the State Plan through the current proposed regulation. The GACEC and the SCPD have the following observations.

First, we are concerned that eligibility for PROMISE is more circumscribed than eligibility under the Community Support Service Program. As a result, some classes of individuals who were eligible for behavioral health support services under the former program will be "left in the cold". Consider the following:

A. Per the attached §5.0 from the Community Support Service Program Provider Manual, eligibility for the program was expansive and not limited by diagnosis:

5.0 Service Limitations

5.1. Eligibility Limitations

5.1.1 Community support services are limited to eligible DMAP clients who would benefit from services designed for or associated with mental illness, alcoholism or drug addiction.

5.1.1.2 Coverage for community support services is limited to those Medicaid clients who are certified by the program physician as severely disabled according to criteria for severity of disability caused by mental illness and/or substance abuse.

B. In contrast, the PROMISE program is highly prescriptive and only covers individuals with certain diagnoses. See attached excerpt from Medicaid Plan amendment.

While individuals with a TBI diagnosis could have qualified under the "Community Support Service" eligibility standard, that diagnosis is non-qualifying under PROMISE. SCPD has requested reconsideration of DMMA's exclusion of TBI as a qualifying diagnosis under PROMISE. See attachments. Apart from TBI, there may be a host of other classes of individuals who would have been eligible under the "Community Support Service Program" but who will be barred from PROMISE based on a non-qualifying diagnosis, including the following:

- 1) intermittent explosive disorder (DSM V, 312.34);
- 2) conduct disorder (DSM V, 312.81, 312.82, and 312.89);
- 3) all neurocognitive disorders (DSM V, pp. 591-642); and
- 4) all trauma- and stressor-related disorders apart from PTSD (DSM V, pp. 265-290).

Second, DMMA indicates that PROMISE is intended to cover individuals qualifying under the DOJ-Delaware settlement. At p. 430. The population of individuals covered by the Settlement Agreement is not limited to certain diagnoses. See attached pages from Settlement Agreement. As a result, while an individual in DPC with a diagnosis of intermittent explosive disorder will qualify for services under the Settlement Agreement, DHSS will have to spend 100% State funds for the individual's community programming since the person lacks a qualifying diagnosis to be eligible for PROMISE. Alternatively, the individual will be relegated to a narrow scope of services offered by an MCO. See attached Waiver Amendment, p. 9. Query whether these results are fiscally and clinically prudent.

In closing, while the Division characterizes the Community Support Service Program as "obsolete" as supplanted by the PROMISE program, this is not entirely accurate. It is unfortunate that the Division is proposing elimination of a program with more progressive eligibility criteria and substituting a program with brittle, no-exceptions diagnosis-based eligibility criteria.

Agency Response: DMMA carefully considered your comments and believe that individuals with Acquired Brain Injury (ABI) are eligible for PROMISE if they meet the stated criteria for the PROMISE program. Individuals with ABI who are not eligible for PROMISE continue to be eligible for Home and Community-Based Services (HCBS) supports under the Diamond State Health Plan Plus program. Individuals with Acquired Brain Injury that are not eligible for PROMISE are still eligible for services through DSAAPD.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 1, 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding State Plan Rehabilitative Services specifically, *Coverage and Reimbursement for Community Support Services*

to remove all State Plan coverage and reimbursement provisions related to community support services at Attachment 4.19-B Page 4, is adopted and shall be final effective June 10, 2015.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #15-10
REVISION:**

ATTACHMENT 4.19-B
Page 4

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: **DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE

1) *Community Support Service Programs*

Reimbursement Methodology for Community Support Services

~~Rates for Community Support Services as defined in Attachment 3.1-A will be established by a rate setting committee composed of representatives of various Divisions of Delaware Health and Social Services, including the Division of Social Services (DSS), the Division of Management Services (DMS), and the Division of Substance Abuse and Mental Health (DSAMH).~~

~~A universal per diem rate for all services with the exception of Psychosocial Rehabilitation Center Services and Residential Rehabilitation Services is to be set initially and for three subsequent fiscal years based upon a trend analysis of Medicaid expenditures for individualized home and community based Community Support Services during the base period of SFY 2000 through SFY 2002 and adjusted thereafter by the rate setting committee.~~

~~Rates for Psychosocial Rehabilitation Center Services and Residential Rehabilitation Services are provider specific and are calculated by determining the total costs for each provider of the respective services, including cost of services to all clients regardless of Medicaid eligibility. The rates will be per diem for Residential Rehabilitation Services and per half day unit for Psychosocial Rehabilitation Center Services.~~

(RESERVED FOR FUTURE USE)

19 DE Reg. 60 (07/01/15) (Final)