

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

PROPOSED

PUBLIC NOTICE

Medicaid 1915 Home and Community-Based Services Waiver Programs - Statewide Transition Plan

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, 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) is making available for public review and comment Delaware Medicaid's *Proposed Statewide Transition Plan for Home and Community-Based Services (HCBS) Settings*.

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 and Quality 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 March 31, 2015.

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

This regulatory posting is to provide public notice and to receive public comments for consideration regarding Delaware Medicaid's *Proposed Statewide Transition Plan for Home and Community-Based Services (HCBS) Settings*. The purpose of the transition plan is to ensure Medicaid beneficiaries are receiving HCBS in settings that meet the quality requirements specified in the final rule and are appropriate based on the needs of the individual as indicated in their person-centered service plan.

Statutory Authority, Citations, and Other References

- Section 1915 of the Social Security Act, *Provisions respecting inapplicability and waiver of certain requirements of this title*
- 42 CFR §441.301, *Contents of request for a waiver*
- 42 CFR §441.710, *State plan home and community-based services under section 1915(i)(1) of the Act*

Background

The Centers for Medicare and Medicaid Services (CMS) published its final rule in the Federal Register on January 16, 2014 related to Home and Community Based Services (HCBS) for Medicaid-funded long term services and supports provided in residential and non-residential home and community-based settings. The final rule took effect March 17, 2014. States are required to submit transition plans to CMS within one year of the effective date indicating how they intend to comply with the new requirements within a reasonable time period. If states amend or renew any of their currently operating waivers or state plan amendments prior to the effective date, that action serves as a trigger for the state to submit a transition plan for all its waivers under 1915(c), as well as any state plan amendments under 1915(i) or 1915(k) within one hundred and twenty (120) days of the amendment/renewal submission.

These regulations require Delaware to submit a transition plan for the state's 1915(c) waiver, the 1915(i) HCBS state plan option and, the 1115 demonstration waiver programs. Because Delaware's 1115 Demonstration refers to the 1915(c) authority for HCBS services, the state must comply with these regulatory changes. Delaware does not have a 1915(k) waiver. The transition plan must describe the process by which the state will ensure that service settings used in each of its home and community-based waivers meet "community-like" expectations. The final rule provides for a five-year transition process that will allow states to implement this rule in a manner that supports continuity of services for Medicaid recipients and minimizes disruptions in service during implementation; as such, all such services must be in compliance with CMS requirements before March 2019.

For additional information about the CMS HCBS final rule, use the following link to the CMS website:

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>. The website includes links to the CMS rule, webinars, guidance and more.

Summary of Proposal

Purpose

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is making available for public review and comment Delaware's Proposed Statewide Transition Plan for Home and Community-Based Services (HCBS) Settings. Comments on public notices and comments received at public hearings will be used to formulate Delaware's Final Statewide Transition Plan that will be submitted to CMS by March 17, 2015.

Statewide HCBS Settings Transition Plan Summary

DHSS/DMMA initiated and completed a comprehensive review of HCBS waivers and related regulations, policy and procedures to assess and to identify changes necessary to comply and/or to demonstrate compliance with the new rule. This analysis identified areas where the new regulations are supported in Delaware as well as areas that will need to be strengthened in order to align Delaware's HCBS programs with the regulations.

Pursuant to 42 CFR 441.301(c)(6), Delaware's proposed Statewide HCBS Settings Transition Plan is composed of the following three main components: (1) Assessment Process: an assessment of regulations, standards, policies, licensing requirements, and other provider requirements to ensure settings comply with federal requirements, (2) Remedial Strategy: a description of the actions the state proposes to assure initial and ongoing compliance with the HCBS setting requirements, including timelines, milestones, and monitoring processes, and (3) Public Input, preferably from a wide range of stakeholders representing consumers, providers, advocates, families and others. Therefore, DHSS/DMMA is making the Statewide Transition Plan available for public review and comment.

Relevant Waivers/State Plan

Delaware's proposed Statewide Transition Plan for Home and Community Based Settings contains the actions the state will take to bring all Delaware waivers into compliance with requirements set forth in 42 CFR 441.301(c)(4-5) along with timelines and milestones for doing so. This plan covers the following three waivers and state plan currently operating in Delaware:

1. Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver (because the 1115 Demonstration refers to the 1915(c) authority for HCBS services);
2. Division of Developmental Disabilities Services 1915(c) Home and Community-Based Services Waiver; and,
3. 1915(i) Home and Community-Based Services State Plan Option.

Public Comment Submission Process

Under the provisions of 42 CFR §441.301(c)(6)(iii), DHSS/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 Transition Plan. Comments must be received by 4:30 p.m. on March 31, 2015. Comments and input regarding the draft transition plan may be submitted in the following ways:

By email: Sharon.Summers@state.de.us

By fax: 302-255-4425 to the attention of Sharon L. Summers

By written comments sent to:

Sharon L. Summers

Division of Medicaid and Medical Assistance

Planning, Policy & Quality Unit

1901 North DuPont Highway

P.O. Box 906

New Castle, Delaware 19720-0906

Delaware utilized two (2) prior public input procedures by 1) publishing the Transition Plan in two (2) major Delaware newspapers for a thirty-day public comment period on February 6, 2015: *The News Journal* and the *Delaware State News*; and, 2) holding two public hearings on February 23, 2015 and February 27, 2015 in New Castle County and Kent County.

A summary of comments, in addition to a summary of modifications made in response to the public comments, will be added to the Delaware HCBS Transition Plan. The state will post on the DMMA website a summary of public comments and our responses and, the final transition plan with any modifications after the receipt of public comments.

Draft of Proposed Statewide 1915 HCBS Waiver Settings Transition Plan

The proposed Statewide Transition Plan offers the steps that DMMA will facilitate and then successfully execute the transition, with the engagement of the public. A draft of the plan is available for review and/or downloads on the Division of Medicaid and Medical Assistance (DMMA) website at: <http://dhss.delaware.gov/dmma/>.

Hard copies are available by contacting Arlene Baal at Arlene.Baal@state.de.us.

Hard copies are available for review at the Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, Holloway Campus, Lewis Building, Conference Room 198, New Castle, Delaware 19720 from 8:00 a.m. – 4:30 p.m.

Fiscal Impact Statement

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

18 DE Reg. 681 (03/01/15) (Prop.)