

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

1915(i) Home and Community-Based Services State Plan Option Amendment

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) / initiated proceedings to notify the public that a 1915(i) Home and Community-Based Services (HCBS) state plan amendment (SPA) was submitted to the Centers for Medicare and Medicaid Services (CMS) to offer HCBS as an optional Medicaid state plan benefit. 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 1, 2014 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 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 proposed provides notice to the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Services (DMMA) submitted a 1915(i) Home and Community-Based Services (HCBS) state plan amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS) to offer HCBS as an optional Medicaid state plan benefit. The purpose of this SPA is to provide services to support individuals with disabilities in attaining and sustaining competitive employment.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*
- Social Security Act §1915(i), *State Plan Amendment Option to Provide Home and Community-Based Services for Elderly and Disabled Individuals*
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*

Background

Section 6086 of the Deficit Reduction Act of 2007 (DRA) and the Affordable Care Act (ACA) of 2010 established and amended section 1915(i) of the Social Security Act to add an optional State Plan service that has many of the features of a Home and Community Based (HCBS) Waiver. Like an HCBS waiver, states can target services to persons based on age, diagnosis and condition, and also apply functional criteria such as limitations caused by disability. States can also provide community based services that would not otherwise be able to be covered under the Medicaid State Plan to allow persons to live independently in the community. Two notable differences from HCBS waivers are that a 1915(i) State Plan Amendment does not require individuals to meet an institutional level of care in order to qualify for HCBS and states are not permitted to limit participation in the program once an individual meets established eligibility criteria.

Purpose and Rationale

The Department proposes to provide a set of services and supports to enable individuals with physical disabilities, intellectual disabilities, autism spectrum disorder, Aspergers Syndrome and visual impairment to seek and maintain competitive employment. The program is called Pathways to Employment (Pathways). The benefit is targeted to transition-age individuals, ages fourteen (14) to twenty-five (25), across the spectrum of disabilities to put into practice the State’s Employment First Act. The Pathways program will expand choices and opportunities in Delaware for individuals seeking to enter the job market while ensuring investments made by the public education system are not lost. Using the 1915(i) HCBS SPA presents a unique opportunity in Medicaid to serve individuals in identified target groups and to structure a cross-disability, employment-focused benefit based on work-related, needs-based criteria.

The Pathways to Employment program will be jointly administered by the Division of Developmental Disabilities Services (DDDS), Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) and Division for the Visually Impaired (DVI). The Division of Medicaid and Medical Assistance (DMMA) will provide oversight. While the goal of

competitive employment crosses all of the partnering Divisions, the supports needed to effectively meet the needs of the target groups require disability-specific expertise and knowledge. Pathways is designed to establish common goals, expectations, and opportunities for individuals with disabilities, while providing individually tailored supports, reflective of population-specific considerations, to meet the specific needs of the persons served.

Goals and Objectives of Pathways to Employment

Pathways will expand the choices available within Delaware for individuals ages fourteen (14) to twenty-five (25) who seek employment opportunities for individualized, competitive jobs. Ensuring seamless transitions from school (high school and post-secondary) to work, and across the array of employment options and supports, Pathways will enable individuals to gain skills needed to obtain and maintain employment, and continue to build their careers.

The Pathways program:

- Serves low income individuals, across disabilities, who have a desire to work in a competitive work environment;
- Provides individually tailored services for individuals with visual impairments, physical disabilities, intellectual disabilities, autism spectrum disorder and Aspergers to help them obtain or sustain competitive employment;
- Offers an array of services that will support individuals to explore and plan career paths and build career readiness. Pathways will include important services such as on-the-job supports, transportation, personal care, orientation and mobility training, assistive technology and employment navigation to help individuals maintain employment based on their specific needs;
- Stretches limited state dollars by partnering with the Federal government in the provision of these services – thereby, increasing individual independence and strengthening the State's workforce; and
- Provides a strong foundation for Delaware's ongoing efforts to ensure that individuals with disabilities have a clear path to employment now and into the future.

Proposed 1915(i) HCBS State Plan Amendment

Pathways will increase the options available to support Medicaid individuals aged fourteen (14) to twenty-five (25) with disabilities who wish to work. Income eligibility will generally be the same for most individuals, however individuals participating through certain income groups that allow for higher income levels will be able to have incomes at or below 150% of the Federal Poverty Level (FPL). The 1915(i) HCBS SPA will provide an unprecedented opportunity within Medicaid to serve individuals based on need rather than on diagnosis alone.

Pathways will target the following groups:

- Individuals with visual impairments
- Individuals with physical disabilities, which may include individuals with brain injury
- Individuals with intellectual disabilities, individuals with autism spectrum disorder and individuals with Aspergers.

Using needs-based criteria that must be less stringent than institutional level of care criteria, per the 1915(i) requirements, Delaware will make the benefit available to anyone in the target groups who has a desire to work in a competitive work environment and for whom the services provided through the benefit are not otherwise available to the individual under either special education and related services as defined in section 602(16) and (17) of the Education of the Handicapped Act (20 U.S.C. 1401(16) and (17)) or vocational rehabilitation services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730). This is a federal requirement.

Pathways will offer a rich continuum of services to assist individuals to build skills needed and to obtain and maintain individualized, competitive employment. The service array provided through Pathways recognizes that each individual may need specific and individualized supports to better position them for ongoing employment. Delaware has specially designed service packages for the target groups to ensure that the right services are available based on population needs.

The following array of services will be offered to prepare individuals for competitive work environments as well as providing the employment supports for individuals to be successful:

- Career exploration and assessment
- Supported employment (small group)
- Supported employment (individual)
- Employment Navigators
- Benefits Counseling
- Financial Coaching
- Non-Medical Transportation
- Personal Care (including a self-directed care option)
- Orientation, mobility, assistive technology

Pathways will be operated as a fee-for-service program administered by the DHSS, the Single State Medicaid Agency. The Divisions noted above will jointly administer the program. Using a standard evaluation, enrollment and assessment process, with tailoring for each of the target groups, to determine eligibility and to inform a person-centered care planning

approach, DHSS will ensure consistency in operations for each of the target groups, while still maintaining the key expertise needed to effectively meet their needs. The Divisions will ensure standards and quality for the administration of the Pathways to Employment program through the newly-established cross-division workgroup, which will provide ongoing oversight for the benefit. These entities will also ensure ongoing quality improvement, measuring the efficacy of the overall systems and the effectiveness of individually tailored service strategies.

Pursuant to the notice requirements of 42 CFR §447.205, Delaware Health and Social Services/Division of Medicaid and Medical Assistance hereby affords the public notice of the intent to solicit public comment on the Department's proposal to request a 1915(i) Home and Community-Based Services (HCBS) State Plan amendment to offer HCBS as an optional state plan benefit to support Medicaid-covered individuals aged fourteen (14) to twenty-five (25) with disabilities who wish to seek competitive employment. The effective date for statewide implementation of the 1915(i) HCBS State Plan Amendment is July 1, 2014, subject to approval by the Centers for Medicare and Medicaid Services.

Draft of Proposed 1915(i) HCBS State Plan Amendment and Concept Paper

A copy of Delaware's proposed 1915(i) HCBS Concept Paper and a copy of the proposed 1915(i) HCBS State Plan Amendment is accessible on the Division of Medicaid and Medical Assistance website at:

<http://www.dhss.delaware.gov/dhss/dmma/>

Fiscal Impact Statement

With the availability of these services through the 1915(i) HCBS State Plan Option, Delaware expects that there will be a reduction in federal claims for services currently provided under the State Plan Rehabilitative benefit.

Through the identification of existing resources, the expectation is that there will be no net new General Fund cost to the State of Delaware in State Fiscal Year 2014 and the net new funds needed in State Fiscal Year 2015 will be approximately \$380,000.00.

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 – March 12, 2014 Comments

GACEC and SCPD commented on this initiative originally published in the January 2014 *Register of Regulations*. A copy of the January 30, 2014 memo is attached for facilitated reference. However, since a concept paper and draft Plan amendment were not included in a DMMA link until January 17th, DMMA is extending the opportunity to comment until March 31, 2014. Since the only document which the Councils lacked when compiling the previous analysis of the regulation in January was the 55-page Plan amendment, Council is providing a supplemental analysis focusing on that document.

Agency Response: With regard to your specific comments, responses are provided below. Your comments provided on March 12, 2014 are included verbatim first, followed by comments (paraphrased) from Mr. Kyle Hodges from January 30, 2014 that were not otherwise addressed.

1. P. 1. The Council questions why individuals with visual impairments are eligible for only 5 services while individuals with all other qualifying impairments are eligible for 9 services. Individuals with visual impairments would be categorically barred from receiving the following Pathways services available to individuals with other qualifying impairments: 1) Career Exploration and Assessment; 2) Small Group supported Employment; 3) Individual supported Employment; and 4) Personal Care. The Council recommends uniformity in the services menu.

Agency Response: Career Exploration and Assessment, Small Group supported Employment, Individual supported Employment, and Personal Care are services that Delaware anticipates will be utilized by individuals who have not had or are not eligible for vocational rehabilitation and/or who require ongoing support due to the nature of their disability. For individuals with visual impairments, Career Exploration and Assessment is widely available through the Division for the Visually Impaired's (DVI) vocational rehabilitation program. Small Group supported Employment, Individual supported Employment, and Personal Care are ongoing supports for individuals who require longer-term support services for successful employment. Based on historical data and information, Delaware does not expect that individuals with a sole diagnosis of visual impairment will present a need for such supports. In the event that such a need is present, Delaware expects that the individual would likely be eligible in one of the remaining, broad-based target groups and therefore would have access to the needed service.

2. P. 4. The Division envisions the establishment of "a consumer council within the organization to monitor issues of choice." The Council did not identify any other references to the council. It could be useful to include the council in the quality improvement section (pp. 40 et seq) and otherwise clarify the structure and role of the council.

Agency Response: DVI is exploring how the engagement of an existing council in this critical role of monitoring will ensure that individuals receiving services through Pathways are assured independence in both their choice of service providers and services.

3. P. 4. In its January commentary, the Council recommended an explicit recital that the fair hearing process applies to disputes. This is clarified at p. 4 (Par. 5) and p. 13.

Agency Response: Delaware affirms that all applicable Medicaid due process requirements apply for the Pathways program.

4. P. 4. On p. 4, Par. 7, as well as on p. 8, the Division of Medicaid & Medical Assistance (DMMA) represents that the program will not cover services otherwise available to an individual under the Individuals with Disabilities Education Act (IDEA). There is some “tension” between such an approach and Federal law, which generally bars Medicaid programs from refusing to cover services available to a student under the IDEA. See attached materials. The NHLP memo (pp 2 and 3) offers the following guidance:

Some related services can be paid for by Medicaid. In fact, the Medicaid statute specifically forbids the Federal government from refusing to pay for Medicaid services that are provided to a child with a disability as part of the child’s IEP. 42 USC §1396b(c). In addition, 34 CFR §300.501 provides that “Part B of the [IDEA] may not be construed to permit a state to reduce medical or other assistance available to children with disabilities or to alter the eligibility of a child with a disability, under title V (Maternal and Child Health) or title XIX (Medicaid) of the Social Security Act, to receive services that are also part of FAPE.”

For example, if a student could receive habilitation services through the special education system, DMMA could not deny Medicaid funded habilitation simply because it is available through the student’s special education program. Between Medicaid and the IDEA, Medicaid is generally the payer of first resort.

Agency Response: Delaware intends to operate the Pathways program in full compliance with all applicable Federal statutes. We would note, however, that not all Medicaid services are treated similarly with regard to IDEA. In fact, regulations at 42 CFR 441.720 specifically note that in applying the requirements of section 1915(i)(1)(F) of the Act, the State must:

...(7) Include in the assessment, for individuals receiving habilitation services, documentation that no Medicaid services are provided which would otherwise be available to the individual, specifically including, but not limited to services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973, or the IDEA.

(8) Include in the assessment and subsequent service plan, for individuals receiving Secretary approved services under the authority of §440.182 of this chapter, documentation that no State Plan home and community based services (HCBS) are provided which would otherwise be available to the individual through other Medicaid services or other Federally funded programs.

With these provisions in mind, however, DHSS is committed to working with our partners at the Department of Education and the Division of Vocational Rehabilitation to ensure that individuals receive the services they need to be successful in employment.

5. P. 5. DMMA identifies an income cap, but does not address whether any resource cap applies. Consistent with the Council’s January commentary, “First” paragraph, it would be preferable to clarify that there is no resource cap.

Agency Response: Delaware appreciates this comment. While the SPA does not directly address the issue of a resource cap, by checking Box #1 on page 5 of the application, Delaware is indicating that in order to be eligible for the Pathways benefit, a person must be eligible for Medicaid based on the eligibility criteria for one of the categorical groups. The Delaware Medicaid State Plan does not indicate a resource test for any of the categorical groups.

6. P. 7. The standard defining the credentials of persons conducting reevaluations is rather meager: For all target groups, reevaluations are conducted by individuals holding an associate’s degree or higher in a behavioral, social sciences, or a related field or experience in health or human services support which includes interviewing individuals and assessing personal, health, employment, social, or financial needs in accordance with program requirements.

This standard is reiterated on pp. 11, 12, and 15. An Employment Navigator preparing a plan of care does not even need a high school diploma. A telephone receptionist for a non-profit or public agency will generally meet the standard of “experience in health or human services support which includes interviewing individuals and assessing needs in accordance with program requirements.” Moreover, an individual with only geriatric experience would qualify under the above standard despite no familiarity with services for teens and young adults. This represents a major weakness in the proposal, especially for low-incidence populations (e.g., – [traumatic brain injury] TBI) who have very specialized needs.

Agency Response: These functions will be conducted by Delaware state staff, and the qualifications articulated there are reflective of state classifications. Delaware is committed to ensure that the individuals performing these tasks are of the highest caliber and are prepared to effectively carry out these responsibilities and support individuals in gaining and maintaining employment. These individuals will be individually trained, initially and ongoing, on the specific requirements of the program, the use of established tools for determining whether individuals continue to meet targeting and needs based criteria, and who will receive tailored disability-specific training.

We draw your attention to the provider qualifications for Employment Navigators as contained on p. 15 that stipulate that Employment Navigators must:

- “Complete Department required training, including training on the participant’s service plan and the participant’s unique and/or disability specific needs, which may include, but is not limited to, communication, mobility, and behavioral needs. “and
- “Comport with other requirements as determined by the Department.”

7. P. 7. There are no timelines for screening and processing of applications. Timelines would be useful.

Agency Response: Delaware is committed to getting people into service at the earliest possible date, and will ensure that all timelines comport with reasonable promptness requirements. Once timeframes have been established, this will become part of the routine performance monitoring.

8. P. 10. The table on p. 10 does not match the DDDS eligibility standards. See attached 16 DE Admin Code Part 2100. Under DDDS standards, some conditions require low I.Q. scores while others (e.g., autism) do not. The table would literally permit Pathways eligibility of individuals with brain injury without low I.Q. scores. We would strongly favor this approach. However, as the Councils stressed in its January 30 memo, the absence of an explicit reference to brain injury under the “physical disabilities” is very troublesome. This concern could be addressed by amending the reference to Group B on p. 10 as follows: “Individuals age 14 to 25 with a physical disability (including brain injury); whose physical condition is anticipated to last 12 months or more.”

Agency Response: Delaware will add parenthetical as suggested. The chart on p. 10 is intentionally structured. All clients eligible for Pathways services served by DDDS must have a functional limitation in addition to the diagnostic criteria indicated on page 10 of the application. CMS describes eligibility for HCBS services by defining both target criteria (age, diagnosis or condition) and “needs based” or functional criteria. Target criteria (page 10) and the functional criteria (page 8) are separated into two separate sections in the SPA application. The current DDDS eligibility criteria includes both target and needs based criteria.

9. P. 14. In its January 30 commentary, Tenth Paragraph, the Council supported inclusion of references to “self-employment.” The Plan amendment includes such references at pp. 14, 16, and 18.

Agency Response: Yes. The Pathways program will provide support to individuals in gaining competitive or self-employment.

10. P. 19. For individuals receiving Individual supported Employment services, job placement support appears to be capped at 6 months in a benefit year. The same cap is applied to persons receiving Group supported Employment services (p. 22). No rationale is provided. DMMA may wish to reconsider the merits of such a cap.

Agency Response: This limitation is proposed to ensure that providers supporting individuals, even those with complex needs, are incented toward successful employment outcomes and not toward perpetual job search activities, an issue that other states have encountered. We will add in the SPA, however, that exceptions to this limitation may be considered, requiring strong justification and explicit Department approval.

11. Individuals receiving Group supported Employment are subject to a presumptive (but not absolute) cap of 12 continuous months. There is no comparable cap for Individual supported Employment (p. 19). This may be a deterrent to successful outcomes for persons with the most severe disabilities who may need more time to prove successful.

Agency Response: You correctly note that the 12 continuous months limitation is not absolute. Delaware believes that all individuals with the proper support can successfully engage in individualized employment, and have designed the benefit package of Pathways to continue offering such opportunities to individuals.

12. P. 26. The standards for financial coaches appear to be very generic, that is, persons with some financial planning experience may serve as financial coaches despite little experience with disability based planning. The Council suspects that few financial planners are familiar with Miller Trusts, the Delaware CarePlan Trust, the Social Security PASS program, housing assistance programs, and the Social Security Administration’s Ticket to Work Program. Perhaps this level of sophistication with disability-related financial planning is achieved through the training identified on p. 27. If that training does not address programs such as the Delaware CarePlan Trust, PASS program, and Ticket to Work, this section should be revised to require background at least equivalent to DVR’s benefits planners.

Agency Response: The Financial Coaching service, modeled after the successful Stand by Me program in Delaware, is aimed at helping individuals identify and achieve financial goals, and to provide key, basic financial education. This service is intended to complement and refer individuals to, rather than duplicate the functions of, the Benefit Counseling service, which requires specific Social Security Administration's certification and knowledge of programs you indicate.

13. P. 29. DMMA recites that the non-medical transportation service "does not provide for mileage reimbursement for a person to drive himself to work." This is objectionable and unrealistic. The transportation broker should be allowed to pay the participant to drive himself/herself to an employment or training site. This is the approach adopted by DVR. See Delaware DVR Casework manual Section 9.3. As a practical matter, if someone lives in Sussex County, use of a personal vehicle may be the only realistic and affordable option. There is negligible taxi service and no accessible taxi service. Paratransit is limited and often results in lengthy delays in reaching destinations. Finally, it is possible that the assistive technology benefit could be used to retrofit a vehicle (e.g., with hand controls). It makes no sense to facilitate a participant's driving capacity and then categorically exclude mileage reimbursement as an option.

Agency Response: During the initial period of implementation, we will monitor this service carefully to ascertain the demand for this mode of transportation. As with other Medicaid benefits, we can adjust the parameters for allowable reimbursement within Federal guidelines as deemed appropriate.

14. P. 34. There are several references to the "Department of Vocational Rehabilitation" rather than the Division of Vocational Rehabilitation.

Agency Response: Thank you for pointing this out. We will make all necessary corrections.

15. P. 35. It is somewhat "odd" to solely authorize spouses (among all relatives) to provide personal care services. Many individuals between 14 and 25 will not be married. It would be preferable to authorize siblings and other relatives to provide personal care service. See attached September 29, 2008 CMS Press Release and DSAAPD PAS Services Specifications, Section 6.2.2.2.

Agency Response: We will add that a non-legally responsible relative (e.g. parent of an adult child, adult sibling, aunt, uncle, cousin) may render Personal Care services pursuant to the same circumstances when individuals are exercising employer authority. We will monitor the demand for the provision of services by relatives and/or other legally responsible relatives to determine whether further adjustment is needed.

16. P. 40 et seq. The number and disposition of fair hearing requests could be incorporated into the quality improvement standards. The emphasis on "safety," "abuse/neglect," and "incidents of emergency restrictive intervention strategies" (pp. 46 to 48) are not intuitively core benchmarks of successful employment outcomes and should be reconsidered.

Agency Response: We will review the performance measures that are to be reported to CMS in light of your comments. However, we expect that CMS will require Delaware to meet minimum thresholds around health and welfare. We also note that Delaware will institute a method of continuous quality improvement, so we will continually evaluate elements that will inform our oversight processes.

GACEC and SCPD – January 30, 2014 Comments

Agency Note: In addition to our responses above to your comments submitted on March 12, 2014, DMMA offers these additional responses to your organization's previously submitted comments (paraphrased below) on January 30, 2014 that have not been addressed above.

1. DMMA should address the interplay between Medicaid beneficiaries who enroll in both the Ticket to Work program and the Pathways program.

Agency Response: As noted in number 4 above, 1915(i) regulations require that other Federal programs be leveraged before HCBS services, but we expect that Pathways services can be well coordinated with any such services available to the individual through other funding sources to ensure that the individual obtains support key to successful employment outcomes.

2. DMMA could consider adding legal advocacy to the menu of services in the Pathways program.

Agency Response: DMMA will monitor the implementation of Pathways to determine whether different services would be warranted to achieve the goals of the program.

3. There will obviously be overlap between participants in the Pathways program and the Diamond State Health Plan Plus (DSHP+) program. DMMA should adopt disincentives and deterrents to such practices that the managed care organizations (MCOs) may employ to deflect costs to Pathways.

Agency Response: DMMA is developing strategies to ensure that the MCOs are covering all services that they are contractually obligated to provide, with close coordination with Pathways Employment Navigators to ensure that Pathways services are only provided over and above that which the MCO must provide.

4. Pathways may present a Catch 22 to participants in light of the income limitation.

Agency Response: The 150% Federal Poverty Level (FPL) income limitation is a statutory requirement of 1915(i). That said, Delaware expects that individuals will be able to utilize financial coaching and benefits counseling to help devise individualized strategies to achieve financial independence.

5. 14 to 17 year olds with covered disabilities may be financially ineligible due to parental income. DMMA may wish to consider an exception to parental deeming for the Pathways program.

Agency Response: Individuals eligible for Medicaid under the TEFRA authority in the State Plan (called the Delaware Children's Community Alternative Disability Program or CCADP) already have their parents' income disregarded in the financial eligibility determination. The Pathways program will serve individuals, including these children, who are otherwise Medicaid eligible, and meet the statutory requirements. Per the regulations at 42 CFR 440.182(b), HCBS can be made available to individuals who are eligible under the SPA and have income, calculated using the otherwise applicable rules, including any less restrictive income disregards used by the State for that group under section 1902(r)(2) of the Act, that does not exceed 150% of the FPL.

6. The Council recommends consideration of draft legislation to authorize a tax credit for hiring Pathways participants.

Agency Response: Thank you for your recommendation. The Department is not currently contemplating any legislation related to the implementation of this program.

7. The Council has requested membership on the cross-division workgroup.

Agency Response: The workgroup referenced refers to the Department workgroup that is charged with operating and overseeing Pathways as a Medicaid program with functions delegated to divisions who will be instrumental in implementation and ongoing operations. As needed, the Department will reach out to other departments and stakeholders, and, as such, will certainly engage the Council as the program progresses.

8. The Council recommends inclusion of services specific to individuals with brain injury.

Agency Response: The service package is designed to meet the support needs of persons with disabilities seeking employment. DMMA will monitor the implementation of Pathways to determine whether different services would be warranted to achieve the goals of the program.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation regarding the *1915(i) Home and Community-Based Services State Plan Option Amendment*, is adopted and shall be final effective May 10, 2014.

Rita M. Landgraf, Secretary, DHSS

17 DE Reg. 1070 (05/01/14) (Final)