

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

**GENERAL NOTICE**

**Delaware Diamond State Health Plan  
1115 Demonstration Waiver Amendment and Extension Requests**

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) intends to submit a request to the Centers for Medicare and Medicaid Services (CMS) to immediately amend Delaware's Section 1115 Diamond State Health Plan (DSHP) Demonstration Waiver to address Medicaid coverage of substance use disorder (SUD) treatment services when provided in a setting that qualifies as an institution for mental diseases (IMD).

In compliance with federal public notice requirements of 42 U.S.C. §1315(d) and 42 CFR Part 431, Subpart G, as well as 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, DHSS / DMMA also gives notice of its intent to file an application with CMS to request a five year extension of the DSHP 1115 Demonstration Waiver, which is currently approved through December 31, 2018. The requested extension period is from January 1, 2019 through December 31, 2023. DHSS/DMMA is not currently requesting any changes to the DSHP 1115 Demonstration Waiver for the extension period, with the exception of the amendment described below.

**Purpose**

The purpose of this posting is to: (1) provide public notice and receive input for consideration regarding Delaware's DSHP Waiver amendment for SUD treatment services; and (2) provide public notice and receive public input for consideration regarding Delaware's DSHP 1115 Waiver five-year extension request. Delaware is proposing an amendment and an extension that will be submitted to CMS at the same time.

**Proposed Amendment: Overview and Summary of Proposed 1115 DSHP Waiver Amendment for SUD Services in IMDs**

Federal Medicaid rules generally prohibit Medicaid coverage of services for individuals ages 21-64 provided in settings that qualify as IMDs. However, Delaware's Medicaid managed care program has had a long-standing exception to these rules due to separate policies that govern Medicaid managed care contracts and payment rates, known as Medicaid "in lieu of" services. These policies allowed Delaware to provide coverage in settings that qualify as IMDs if an IMD is a cost-effective alternative setting to an allowable Medicaid state plan setting. In 2016, CMS revised the managed care regulations to limit such IMD stays to no more than 15 days in a month. In recognition of the national opioid/ SUD epidemic and the need for potentially longer, medically necessary residential treatment stays as part of a comprehensive continuum of care for SUD, CMS is now offering states the opportunity to apply for and receive 1115 waiver authority to include IMD settings as Medicaid-covered settings for SUD treatment.

If Delaware does not amend the 1115 waiver, Medicaid funding will no longer be available for SUD services provided in settings that qualify as IMDs. This amendment is needed to avoid unnecessarily disrupting Delaware's substance use continuum of care during the addiction epidemic in Delaware. This amendment will also remove federal Medicaid payment barriers for SUD treatment in IMD settings, regardless of whether the SUD treatment services are delivered through managed care or fee-for-service.

**Proposed Extension: Overview and Summary of Proposed DSHP 1115 Waiver Extension**  
**DSHP 1115 Waiver Program Description, Goals and Objectives**

Delaware's DSHP 1115 Demonstration Waiver was initially approved in 1995, and implemented on January 1, 1996. The original goal of DSHP 1115 Waiver was to improve the health status of low-income Delawareans by expanding access to healthcare to more individuals throughout the state; creating and maintaining a managed care delivery system with an emphasis on primary care; and controlling the growth of healthcare expenditures for the Medicaid population.

In order to achieve this goal, the DSHP 1115 Waiver was designed to mandatorily enroll eligible Medicaid recipients into managed care organizations (MCOs) and create efficiencies in the Medicaid program. Initial savings achieved under managed care enabled the expansion of coverage to certain individuals who would otherwise not be eligible for Medicaid, leading up to Medicaid expansion under the Affordable Care Act in 2014. Since 2012, the DSHP 1115 Waiver provides long-term services and supports (LTSS) to eligible individuals through DSHP Plus, as well as enhanced behavioral health services and supports for targeted Medicaid beneficiaries through a voluntary program begun in 2015 called Promoting Optimal Mental Health for Individuals through Supports and Empowerment (PROMISE).

A complete description of the current DSHP 1115 Waiver is available at:

<http://dhss.delaware.gov/dhss/dmma/medicaid.html>

Delaware's goal today in operating the DSHP 1115 Waiver demonstration is to improve the health status of low-income Delawareans by:

- Improving access to health care for the Medicaid population, including increasing options for those who need long-term care (LTC) by expanding access to home and community based services (HCBS);
- Rebalancing Delaware's LTC system in favor of HCBS;
- Promoting early intervention for individuals with, or at-risk, for having, LTC needs;
- Increasing coordination of care and supports;
- Expanding consumer choices;
- Improving the quality of health services, including LTC services, delivered to all Delawareans;
- Creating a payment structure that provides incentives for resources to shift from institutions to community-based LTSS services where appropriate;
- Improving coordination and integration of Medicare and Medicaid benefits for full-benefit dual eligibles;
- Expanding coverage to additional low-income Delawareans;
- Improving overall health status and quality of life of individuals enrolled in PROMISE; and
- Increasing and strengthening overall coverage of former foster care youth to improve health outcomes for this population.

Delaware will continue working to improve the health status of low-income Delawareans during the DSHP 1115 Waiver extension. During the extension, DHSS/DMMA continues to plan and prepare for the future of healthcare in Delaware, including the roles of Medicaid and the Children's Health Insurance Program (CHIP).

#### **DSHP 1115 Waiver Eligibility**

No changes to the DSHP 1115 Waiver eligibility are proposed for the extension period. Most eligibility groups in the DSHP 1115 Waiver are approved in the Medicaid and CHIP State Plan. The 1115 Waiver extends eligibility to additional groups as necessary for their receipt of LTSS through DSHP Plus and behavioral health services through PROMISE. These groups are described in detail as "Demonstration Population Expenditures" in the current approved 1115 Waiver. A waiver amendment was recently approved to add coverage for out-of-state former foster care youth.

#### **DSHP 1115 Waiver Benefits**

No changes are proposed to the DSHP 1115 Waiver benefits for the extension period. Individuals enrolled in the DSHP 1115 Waiver receive most Medicaid and CHIP State Plan benefits through the DSHP 1115 Waiver delivery system (described below). Individuals eligible for DSHP Plus receive comprehensive, integrated LTSS and individuals eligible for PROMISE services receive an enhanced package of behavioral health services.

#### **DSHP 1115 Waiver Delivery System**

No changes are currently proposed to the DSHP 1115 waiver delivery system for the extension period. The delivery system for DSHP and DSHP-Plus benefits during the extension period will continue to be mandatory enrollment in MCOs. A limited number of benefits, such as children's dental and non-emergency transportation, are delivered through fee-for-service. PROMISE benefits will continue to be delivered through the fee-for-service PROMISE program administered through the Division of Substance Abuse and Mental Health (DSAMH). A waiver amendment was recently approved to include DDDS Lifespan Waiver enrollees in MCOs. The SUD amendment proposes to include IMDs as allowable settings for SUD treatment in managed care and fee-for-service.

#### **DSHP Cost Sharing**

No changes to cost sharing are proposed for the extension period. Cost-sharing will not differ from the approved Medicaid and CHIP State Plans.

#### **DSHP Waiver Hypotheses and Evaluation**

Once the SUD amendment has been approved by CMS, those hypotheses and evaluation plans will be incorporated into the extension period. The SUD amendment proposes to test whether Delaware can enhance the effectiveness of the SUD treatment system in Medicaid by maintenance and expansion of SUD residential services as part of a coordinated, full continuum of care, resulting in increased access and improved health outcomes for individuals with SUD. Delaware expects to evaluate whether the SUD amendment:

- Increases enrollee access to and utilization of appropriate SUD treatment services based on the American Society of Addiction Medicine (ASAM) Criteria;
- Decreases the use of medically inappropriate and avoidable high-cost emergency department and hospital services by enrollees with SUD;

- Increases initiation of follow-up after discharge from emergency department for alcohol or other drug dependence; and
- Reduces readmission rates for SUD treatment.

Details on the SUD amendment can be found in the draft application for public comment.

No other changes to the DSHP 1115 waiver proposed hypotheses and evaluation parameters are planned for the extension period. Delaware's proposed hypotheses and evaluation approach is in its draft Waiver Evaluation Plan pending before CMS. Delaware has proposed various methodologies to evaluate the impact of the 1115 Waiver on access to care, quality of care, cost-containment/cost-effectiveness, and the impact of rebalancing LTC in favor of HCBS. For example, Delaware has proposed to evaluate the following questions:

#### Access to Care

- Is access to primary care providers sufficient?
- Has access to specialists increased under the 1115 Waiver?
- Is access to HCBS providers sufficient in the community?
- Are the members satisfied with the services received under DSHP Plus?
- Has there been a shift in where services are being received from Nursing Home to community based care?
- What is the Nursing Home admission rate in the DSHP Plus population?
- What is the Nursing Home discharge rate (other than death) in the DSHP Plus population?

#### Quality of Care

- Has the health status of waiver enrollees improved?
- Has the quality of care improved for select performance measures?
- What is the level of enrollee satisfaction with MCOs?

#### Cost Containment/Cost Effectiveness

- Are actual expenditures less than the per member per month projections for the 1115 waiver?
- Did emergency room care utilization and expenditures decrease for select populations?
- Is there a decrease in nursing home utilization?

The proposed evaluation will use data from a variety of sources as follows:

- Provider Satisfaction Surveys
- Member Satisfaction Survey
- MCO member surveys
- External Quality Review Reports
- Enrollment files and reports.
- Fee-for-service claims and encounter data as applicable.
- Data submitted to the State for review such as contracts, quality management plans; select utilization reports.

An interim evaluation report will be submitted to CMS on ten of the eleven goals in place during the most recent waiver period. (The eleventh goal related to foster-care youth is too new to evaluate.) Overall, this interim evaluation concludes that Delaware has been successful in meeting the DSHP Waiver's goals, but additional efforts may be needed with respect to PROMISE behavioral health services and improving coordination for full-benefit dual eligibles. A summary of this interim evaluation is included in the draft application for public comment.

#### Waiver and Expenditure Authorities

Expenditure authority for the proposed SUD amendment is the only change proposed for the extension period. No other changes to the DSHP 1115 waiver and expenditure authorities are proposed for the extension period. DHSS/DMMA is requesting the same waiver and expenditure authorities as approved in the current DSHP 1115 Waiver. These include:

#### Waiver authorities:

1. Amount, duration and scope of services (Section 1902(a)(10)(B) and 1902(a)(17))-To permit benefit packages for DSHP and DSHP Plus enrollees that vary from the State Plan and permit the provision of additional benefits under DSHP Plus and PROMISE.
2. Provision of Medical Assistance Section 1902(a)(8) and 1902(a)(10)-To the extent necessary to enable Delaware to limit the provision of medical assistance (and treatment as eligible) for individuals described in the eligibility group under section 1902(a)(10)(A)(ii)(XX) of the Act and the Medicaid state plan to only former foster care youth who are under 26 years of age, were in foster care under the responsibility of another state or tribe on the date of attaining 18 years of age (or such higher age as the state has elected), were enrolled in Medicaid on that date, and are now residents in Delaware applying for Medicaid.

3. Freedom of Choice (Section 1902(a)(23)(A))-To permit mandatory enrollment in MCOs and selective contracting for certain HCBS and transportation providers.
4. Retroactive Eligibility Section 1902(a)(34)-To permit Delaware to not extend eligibility to DSHP and DSHP Plus participants prior to the date that an application for assistance is made, with the exception of institutionalized individuals in nursing facilities and workers with disabilities who buy-in for Medicaid coverage.

**Current Expenditure authorities:**

Expenditures for the following 1115 Demonstration Populations receiving LTSS or PROMISE services:

1. 217-Like Elderly and Disabled Home and Community Based Services (HCBS) Group
2. 217-Like HIV/AIDS HCBS Group
3. "At-risk" for Nursing Facility Group
4. TEFRA-Like Group
5. Continuing Receipt of Nursing Facility Care Group
6. Continuing Receipt of Home and Community-Based Services Group
7. Continuing Receipt of Medicaid State Plan Services Disabled Children Group.
8. PROMISE Services Group

**SUD Expenditure authority requested for amendment and extension periods:**

Expenditures for otherwise covered services furnished to otherwise eligible individuals who are primarily receiving treatment and withdrawal management services for substance use disorder (SUD) who are short-term residents in facilities that meet the definition of an IMD.

**DSHP 1115 Waiver Estimate of Expected Increase/Decrease in Annual Enrollment and Annual Aggregate Expenditures**

The expected increase in enrollment and expenditures through the extension period reflect the program as currently approved. The estimated enrollment and expenditures for 2018-2023 also reflect the proposed SUD amendment. The SUD amendment is not expected to have a material impact on Medicaid expenditures. No other changes are currently proposed for the extension period.

	Historical Data (Current Waiver Period)				
	2014	2015	2016	2017	2018* (estimated)
Enrollment	180,879	193,774	204,641	200,155	205,158
Expenditures	\$1,577,390,016	\$1,752,418,701	\$1,843,586,926	\$1,989,261,953	2,039,318,474

	Demonstration Extension Period				
	2019	2020	2021	2022	2023
Enrollment	208,974	212,861	216,820	220,853	224,961
Expenditures	\$2,209,320,592	\$2,362,914,413	\$2,527,612,873	\$2,704,251,065	\$2,893,729,626

**Public Comment Submission Process**

As required by 42 CFR Part 441.304, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the waiver. Per Del. Code, Title 29, Ch. 101 §10118 (a), The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*, scheduled for May 1, 2018. The public is invited to review and comment on the proposed amendment for SUD treatment services. Comments must be received by 4:30 p.m. on May 31, 2018 and may be submitted as described below.

As required by 42 CFR Part 431, Subpart G, DHSS/DMMA must provide opportunity for public comment on the DSHP 1115 Waiver extension request. Per Del. Code, Title 29, Ch. 101 §10118(a), the opportunity for public comment shall be

held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*, scheduled for May 1, 2018.

The public is invited to review and comment on the proposed DSHP 1115 Waiver extension and amendment as of the date of publication of this public notice. Comments must be received by 4:30 p.m. on May 31, 2018.

Comments on the amendment and the extension may be submitted in the following ways:

This public notice and copies of the draft amendment and extension applications are posted on the DHSS/DMMA website at: <http://dhss.delaware.gov/dhss/dmma/medicaid.html>

Comments and input may be submitted in the following ways:

By email: [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us)  
By fax: 302-255-4413 to the attention of Nicole Cunningham  
By mail: Nicole Cunningham  
Division of Medicaid and Medical Assistance  
Planning, Policy & Quality Unit  
1901 North DuPont Highway  
P.O. Box 906  
New Castle, Delaware 19720-0906

Hardcopies of the public notice may also be obtained by contacting Nicole Cunningham at the address above.

Any public feedback received will be summarized including any changes that will be made as a result of the public comment to the proposed 1115 DSHP Waiver amendment or extension that will be submitted to CMS.

Stephen M. Groff                      4/15/2018  
Director  
Division of Medicaid and Medical Assistance

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