

**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**

**Diamond State Health Plan 1115 Demonstration Waiver Amendment – Promoting Optimal Mental Health for Individuals through Supports and Empowerment**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver to coordinate coverage of the new Home and Community-Based Services (HCBS) behavioral health program, identified as *PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment)*. 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 September 1, 2014 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 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 the Division of Medicaid and Medical Assistance (DMMA) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver to coordinate coverage of the new Home and Community-Based Services (HCBS) behavioral health program, identified as *PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment)*.

**Statutory Authority**

- 42 U.S.C. §1315, *Demonstration projects*
- Social Security Act §1115, *Demonstration projects*
- 42 CFR 431 Subpart G, *Section 1115 Demonstrations*

**Background**

Under a waiver of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Goals of the DSHP are to improve and expand access to healthcare to more adults and children throughout the State, create and maintain a managed care delivery system emphasizing primary care, and to strive to control the growth of healthcare expenditures for the Medicaid population.

Specifically, the proposed waiver amendment provides home- and community-based services (HCBS) for individuals in a target population with behavioral health needs in order to support those individuals in the community and prevent institutionalization.

The Department proposes to comprehensively meet the needs of individuals with behavioral health (BH) needs, including individuals identified under the State’s Olmstead settlement with the United States Department of Justice.

**Summary of Proposal**

In accordance with the public notice requirements of 42 U.S.C. §1315(d), 42 CFR Part 431, Subpart G, 42 CFR 447.205 and Title 29, Chapter 101 of the **Delaware Code**, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA), Division of Substance Abuse and Mental Health (DSAMH) gives notice of their intent to file an application with the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver.

If implemented as proposed, the proposed 1115 demonstration amendment will have the following effect on July 1, 2014:

- For adult Medicaid populations meeting the Olmstead settlement behavioral health (BH) target population as well as Medicaid-eligible adults requiring HCBS to live and work in the most integrated setting and meeting targeting

and functional limitations statewide, the State will offer an enhanced benefit package of HCBS using the 1915(i)-like authority in the 1115 demonstration in addition to the State Plan services to help maintain individuals in home- and community based settings. The enhanced Medicaid benefit package will be coordinated by DSAMH through the fee-for-service program in compliance with home- and community-based standards and assurances and the signed Olmstead agreement. This population will continue to receive non-BH and most non-enhanced BH Medicaid State Plan services through the managed care organization (MCO) benefit. See the benefit sections below for a description of the covered services. The State is also considering including non-medical transportation services in the State's existing transportation broker contract and the amendment would provide the freedom of choice authority necessary for that contract amendment.

- For adults served in MCOs throughout the State who are not in the PROMISE target populations, the MCOs will integrate all covered services for mental illness, SUDs, and physical health conditions under this demonstration.

#### *Draft of Proposed 1115 Waiver Amendment*

A draft of Delaware's waiver amendment is currently available for review on the Division of Medicaid and Medical Assistance (DMMA) website at <http://dhss.delaware.gov/dhss/dmma/> and the Division of Substance Abuse and Mental Health website at <http://www.dhss.delaware.gov/dhss/dsamh/>.

The provisions of this waiver amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

#### **Fiscal Impact Statement**

There is no increase in cost on the General Fund. Demonstrations 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.

### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

A Client, the Disabilities Law Program of Community Legal Aid Society, Inc., (CLASI), the State Council for Persons with Disabilities (SCPD), the Governor's Advisory Council for Exceptional Citizens (GACEC) and a comment from an individual identified for publication purposes as Public Comment #5 offered the following observations and recommendations summarized below. Each comment has been considered and the agency's response follows.

**Agency Response Note:** With regard to the following comments, please note that each "Agency Response" provided below was developed and prepared by staff of the Division of Substance Abuse and Mental Health (DSAMH) in collaboration with the Division of Medicaid and Medical Assistance (DMMA).

#### **Client Comment**

*Please Note: For purposes of confidentiality, the name of the letter writer and the location of the mental health facility are not identified.*

This letter is to lodge a complaint against the changes that are occurring to the XXXX Mental Health Facility.

The planned changes, forcing the patients out of this facility, were not, I think, made with the patients' well-being in mind. As a client of this facility, I am greatly opposed to the changes. The XXXX Mental Health Clinic has not only provided me with a safe place, but the groups offered have been invaluable as well. My therapist there is someone I have put my complete trust in and any headway I have made in therapy will now be completely derailed. Forcing mental health clients to start all over again is detrimental to their well-being. I would not be surprised if there was an increase in hospitalizations after the implementation of your new plan.

**Agency Response:** Thank you for sharing your thoughts and concerns with us regarding PROMISE. We received your letter, and wanted to let you know that we will consider your thoughts and concerns as we move forward with PROMISE. Our goal in making these changes is to improve the quality of behavioral health care and provide a more robust array of services to more people.

#### **Disabilities Law Program of Community Legal Aid Society, Inc. and the State Council for Persons with Disabilities**

Please consider this letter and attachments as commentary submitted in response to the solicitation appearing at <http://www.dhss.delaware.gov/dhss/dsamh/>. A link at that Web location connects to a 38-page document dated August 22, 2014 entitled "1115 Demonstration Amendment for State of Delaware PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment) Program Changes", hereinafter "Amendment".

As background, we understand that DHSS is proposing an amendment to the DSHP 1115 Waiver to offer an enhanced benefits package to eligible persons. The target population is described as "individuals meeting the Olmstead settlement BH target population as well as other Medicaid-eligible adults with serious mental illness and/or substance abuse disorder needs requiring HCBS to live and work in the most integrated setting." Amendment, p. 1. Specific eligibility standards are outlined at pp. 3-6.

The enhanced benefit package (pp. 7-8) includes the following fifteen (15) supports:

- care management

- benefits counseling
- community psychiatric support and treatment
- community-based residential supports, excluding assisted living
- financial coaching
- independent activities of daily living/chore
- individual employment supports
- non-medical transportation
- nursing
- peer support
- personal care
- psychosocial rehabilitation
- respite
- short-term small group supported employment
- community transition services

Individuals enrolled in the Pathways program would be categorically ineligible for enrollment in the PROMISE program. Amendment, p. 3. For individuals enrolled in the DSHP and DSHP+ program, case management and services would be coordinated. Amendment, p. 3.

The Disabilities Law Program and the SCPD endorse the initiative subject to consideration of the following.

First, we highly recommend that Target Criteria A (pp. 3-5) be amended to include “Major Neurocognitive Disorder Due to TBI” (DSM-5), a/k/a Dementia Due to Head Trauma (294.1x) under DSM-IV. Consistent with Attachment “A”, characteristics associated with Dementia Due to Head Trauma are described as follows:

These symptoms include aphasia, attentional problems, irritability, anxiety, depression or affective liability, apathy, increased aggression, or other changes in personality. Alcohol or other Substance Intoxication is often present in individuals with acute head injuries, and concurrent Substance Abuse or Dependence may be present.

Concomitantly, Target Criteria B should be amended to include at least trauma-based “Major Neurocognitive Disorders”.

On a practical level, individuals with a diagnosis of “Major Neurocognitive Disorder Due to TBI” will generally present with an array of symptoms at least equivalent to the included PTSD, OCD, and anxiety-based disorders. The former individuals also frequently have co-occurring physical/spinal cord deficits which could be addressed with many of the supports in the services menu, including personal care, nursing, and respite. Moreover, the diagnosis of Major Neurocognitive Disorder Due to TBI requires persistent and significant impairments:

In DSM-5, not all brain injuries can be considered potentially causative of NCD (neurocognitive disorder). The diagnostic criteria for NCD due to TBI require that the TBI be associated with at least one of four features: loss of consciousness, posttraumatic amnesia, disorientation and confusion, or neurological signs, such as neuroimaging findings, seizures, visual field cuts, anosmia, or hemiparesis (Ref.5, p. 624). Furthermore, the NCD must have its onset either immediately after the TBI or after recovery of consciousness and must persist past the acute post injury period. Thus, trauma that produced no cognitive or neurological changes at the time of the incident cannot produce an NCD under this scheme.

J. Simpson, M.D, Ph.D., DSM-5 and Neurocognitive Disorders, Journal of the American Academy of Psychiatry and the Law (June 1, 2014) (Attachment “B”).

**Agency Response:** Thank you for your comment. Individuals may have a diagnosis in addition to one of the required diagnostic categories (ie: TBI) and receive services under PROMISE as long as the PROMISE criteria are met.

Second, there is some inconsistency/tension in the descriptions of choice of providers. Compare the following:

All adults receiving PROMISE services will have a choice of practitioner among the contracted and qualified providers. At 8.

If the individual is identified as a CRISP individual, the individual will be enrolled in the PROMISE program only and will receive all services necessary for community living from the PROMISE program through CRISP. At 3.

The Department may wish to conform the reference on p. 8 to acknowledge the “CRISP” exception described on p. 3.

**Agency Response:** Thank you for your comment. Individuals in the CRISP program will be able to choose from the CRISP providers because they are the providers who are contracted and qualified to provide CRISP services.

## GACEC

The Governor’s Advisory Council for Exceptional Citizens (GACEC) has been given the responsibility to provide advocacy and advice on the human service needs of exceptional citizens of all ages in the State of Delaware. The GACEC would like to express support for the comments provided by the Disabilities Law Program (DLP) in reference to the proposed Diamond State Health Plan proposed amendments to coordinate coverage in the *PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment)* program. PROMISE is the new Home and Community-Based Services (HCBS) behavioral health program. A copy of the DLP letter is attached for your reference. The GACEC endorses the commentary and recommendations provided by the DLP.

**Agency Response:** Thank you for your comments. Responses to the DLP comments are provided in the above response.

#### **Public Comment #5**

*Please Note: For purposes of confidentiality, the name of the letter writer and the location of the mental health facility are not identified.*

XXXX Mental Health [XMH] was providing stable services for mental health clients such as: individual counseling, Psychiatric Medicine Prescribing, Nurse Evaluations and Group Support for both women and men.

Presently, they are mainstreaming these clients into different programs thus taking away the stability of services for the clients. Many clients were told if they tried the new program they could return to XMH if they were not satisfied. However, when clients wanted to return to their original services provided by XMH they were denied.

Majority of the clients at XMH were very satisfied with the services they offered. In other words, it was working!! So now someone thinks they have a better idea which will save money etc. etc. However, they have no real understanding about the impact this is having on the clients. You are doing a great disservice to mental health patients and their needs.

Please reconsider PROMISE 1115, as it is, not what the mental health patient's need nor want. Go back and find another program to save money which DOES NOT affect individuals who have any form of disability.

Remember you also thought changing Detox to Recovery was a good idea which it has not been. (No reflection on the employees they are doing their best.) Learn to understand the true affect your decisions are making on people with disabilities who really often cannot stand up and rally for their best interests.

**Agency Response:** Thank you for sharing your thoughts and concerns with us regarding PROMISE. Our goal in making these changes is to improve the quality of behavioral health care and provide a more robust array of services to more people.

#### **FINDINGS OF FACT:**

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Diamond State Health Plan 1115 Demonstration Waiver Amendment to cover *PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment)* is adopted and shall be final effective November 10, 2014.

Rita M. Landgraf, Secretary, DHSS

#### **DMMA FINAL ORDER REGULATION #14-43 PUBLIC NOTICE**

### **DELAWARE HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH**

#### **DELAWARE DIAMOND STATE HEALTH PLAN 1115 DEMONSTRATION WAIVER AMENDMENT**

In accordance with the public notice requirements of 42 U.S.C. §1315(d), 42 CFR Part 431, Subpart G, 42 CFR 447.205 and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA), Division of Substance Abuse and Mental Health (DSAMH) gives notice of their intent to file an application with the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver.

#### **Background**

Specifically, this waiver amendment provides home- and community-based services (HCBS) for individuals in a target population with behavioral health needs in order to support those individuals in the community and prevent institutionalization.

While this HCBS service package includes many similarities to options and services available through the State's Diamond State Health Plan PLUS (DSHP PLUS) program, a significant difference is that this waiver amendment does not require individuals to meet an institutional level of care in order to qualify for HCBS. The State will be using the 1115 demonstration to target HCBS to individuals with behavioral health, to make HCBS accessible to more individuals, and to ensure the quality of the HCBS. The demonstration will also authorize Delaware to waive Section 1902(a)(10)(B) of the Act pertaining to comparability of Medicaid services and 1902(a)(23)(A) pertaining to Freedom of Choice of Medicaid providers.

#### **Current Program**

Delaware Medicaid currently provides medical model mental health services to adults with psychiatric disabilities

through contracts with private agencies. These services include Assertive Community Treatment Teams, Intensive Case Management Teams, group homes, and clinic-based services. All additional support services, to maintain adults with psychiatric disabilities in the community, must be accessed through DSAMH and are subject to limited state funds under the Olmstead settlement.

### **Purpose and Rationale**

The Department proposes to comprehensively meet the needs of individuals with behavioral health (BH) needs, including individuals identified under the State's Olmstead settlement with the United States Department of Justice.

### **Goals and Objectives**

The goals of the delivery system models are to improve clinical and recovery outcomes for individuals with behavioral health (BH) needs and reduce the growth in costs through a reduction in unnecessary institutional care through care coordination, including initiatives to increase network capacity to deliver community based recovery-oriented services and supports. The demonstration amendment will seek to address the issues arising from special needs populations with seriously and persistently mentally ill and/or substance use disorder (SUD) through a comprehensive, interconnected approach to providing services to all individuals with BH needs in Delaware, ensuring that the individuals served are receiving the most appropriate services to meet their needs in the most integrated settings possible.

This amendment also seeks limited freedom of choice authority for the Pathways program to ensure that sufficient authority exists to administer that innovative authority. The Pathways program is an employment supports program to serve transition age individuals with disabilities, using a Medicaid 1915(i) HCBS State Plan Amendment (SPA). Delaware will implement the Pathways to Employment program to expand choices and opportunities in Delaware for individuals seeking to enter the job market.

### **Proposed 1115 Demonstration Waiver Amendment**

The 1115 amendment will be sought to ensure coordination with the Diamond State Health Plan PLUS (DSHP PLUS) long term care program, to allow the State to include State Plan behavioral health (BH) services in the managed care organization (MCO) benefit package, and to allow the State to competitively procure vendors under its new HCBS behavioral health program, identified as PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment). The amendment will ensure that the freedom of choice waiver required for the procurement under this new HCBS program, a 1915(i) like authority granted under the State's current 1115 demonstration waiver, is in place. In particular, because of the small size of the State and low volume of services needed, the State will be competitively procuring contractors under the demonstration to meet the high quality and fidelity standards required under the Olmstead settlement.

If implemented as proposed, the proposed 1115 demonstration amendment will have the following effect on January 1, 2015:

- For adult Medicaid populations meeting the Olmstead settlement BH target population as well as Medicaid-eligible adults requiring HCBS to live and work in the most integrated setting and meeting targeting and functional limitations statewide, the State will offer an enhanced benefit package of HCBS using the 1915(i)-like authority in the 1115 demonstration in addition to the State Plan services to help maintain individuals in home- and community based settings. The enhanced Medicaid benefit package will be coordinated by DSAMH through the fee-for-service program in compliance with home- and community-based standards and assurances and the signed Olmstead agreement. This population will continue to receive non-BH and most non-enhanced BH Medicaid State Plan services through the MCO benefit. See the benefit sections below for a description of the covered services. The State is also considering including non-medical transportation services in the State's existing transportation broker contract and the amendment would provide the freedom of choice authority necessary for that contract amendment.
- For adults served in MCOs throughout the State who are not in the PROMISE target populations, the MCOs will integrate all covered services for mental illness, SUDs, and physical health conditions under this demonstration.

The demonstration services are available statewide. The provisions of this demonstration amendment are subject to approval by CMS.

### **Draft of Proposed 1115 Demonstration Waiver Amendment**

A draft of Delaware's waiver amendment is accessible on both the Division of Medicaid and Medical Assistance (DMMA) website at: <http://dhss.delaware.gov/dmma/> and the Division of Substance Abuse and Mental Health (DSAMH) website at: <http://www.dhss.delaware.gov/dhss/dsamh/>.

Hard copies are available by contacting Kathlene Brittingham at [Kathlene.Brittingham@state.de.us](mailto:Kathlene.Brittingham@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. Demonstrations 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.

#### **Delaware Waivers Page on CMS Website**

As the federal agency with oversight authority over all Medicaid programs, CMS offers its own online resources regarding the Diamond State Health Plan 1115 Demonstration Waiver. Interested parties may view these materials at: <http://www.medicare.gov/Medicare-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/de/de-dshp-fs.pdf>.

#### **Submission of Waiver Application to CMS**

Delaware intends to submit the 1115 waiver amendment application to CMS in accordance with 42 CFR §431.412. Pursuant to 42 CFR §431.416, CMS has 15 (fifteen) days from the date of receipt to determine whether the application is complete. CMS will post the application on the 1115 website and allow a thirty (30)-day public comment period on the application. Information related to the waiver amendment will be available on the CMS website: <http://www.medicare.gov/Medicare-CHIP-Program-Information/By-Topics/Waivers/1115/public-comments.html>.

Stephen M. Groff, Director  
Division of Medicaid and Medical Assistance  
August 12, 2014

**18 DE Reg. 371 (11/01/14) (Final)**