

**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**

**Physician Assistants**

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 proposing to amend Title XIX Medicaid State Plan regarding Physician Assistants (PA), specifically, to update current policy.

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, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on December 3, 2018. Please identify in the subject line: Physician Assistant.

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**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Physician Assistant (PA), specifically, to update current policy.

**Statutory Authority**

- 42 CFR 440.60

**Background**

PAs deliver medical and surgical care in teams with physicians, who provide medical supervision and delegate tasks to the PA. DMMA would like to evaluate the services provided by PAs, under the supervision of licensed physicians enrolled in DMAP. To gather that data, it is necessary first step, to facilitate, where appropriate, the inclusion of the Physician Assistant's name on claims as the rendering provider. In preparation, DMMA policy will need to be updated to bring the PAs in line with those who provide similar services.

**Summary of Proposal**

*Purpose*

The purpose of this proposed regulation is to update policy and add the Physician Assistant (PA) as a licensed practitioner where omitted.

*Summary of Proposed Changes*

Effective for services provided on and after January 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachments 3.1-A Page 3.1 Addendum and 3.1 Pages 4b Addendum, 6m, 6o, 6r and 6w of Title XIX Medicaid State Plan regarding Physician Assistants (PA), specifically, to update current policy.

*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 3, 2018.

*Centers for Medicare and Medicaid Services Review and Approval*

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid

Services (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.

#### *Provider Manuals and Communications Update*

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal 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. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

#### **Fiscal Impact**

The proposed regulation imposes no increase in costs on the General Fund.

Attachment 3.1-A  
Page 3.1 Addendum

### STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE/TERRITORY: **DELAWARE**

#### LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

#### **6.d. 2. Licensed Behavioral Health Practitioner Continued:**

Services which exceed the initial pass-through authorization must be approved for re-authorization prior to service delivery. In addition to individual provider licensure, *service* providers employed by addiction treatment services and co-occurring treatment services agencies must work in a program licensed by the Delaware Division of Substance Abuse and Mental Health (DSAMH) and comply with all relevant licensing regulations. Licensed Psychologists may supervise up to seven (7) unlicensed assistants or post-doctoral professionals in supervision for the purpose of those individuals obtaining licensure and billing for services rendered. Services by unlicensed assistants or post- doctoral professionals under supervision may not be billed under this section of the State Plan.

Instead, those unlicensed professionals must qualify under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program or rehabilitation sections of the State Plan or provide services under Home and Community-based authorities.

Inpatient hospital visits are limited to those ordered by the beneficiary's physician. Visits to a nursing facility are allowed for LBHPs if a Preadmission Screening and Resident Review (PASRR) indicates it is a medically necessary specialized service in accordance with PASRR requirements. Visits to Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) are non-covered. All LBHP services provided while a person is a resident of an Institute for Mental Disease (IMD) such as a free standing psychiatric hospital or psychiatric residential treatment facility are part of the institutional service and not otherwise reimbursable by Medicaid.

Evidence-based Practices require prior approval and fidelity reviews on an ongoing basis as determined necessary by Delaware Health and Social Services (DHSS) and/or its designee. A unit of service is defined according to the Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) approved code set consistent with the National Correct Coding Initiative unless otherwise specified.

#### 6.d. Other Practitioners' Services

3. Physician assistants must be licensed under state law and provide services under the supervision, control, and direction of one or more physicians. The scope of physician assistants' services is defined by state law. Physician assistants' services must be authorized by state law (or otherwise approved by the state medical board) and within the scope of practice of the physician assistant's supervising physician.

TN No. SPA <u>#13-0018</u>	Approval Date <u>September 18, 2014</u>
Supersedes	
TN No. SPA <u>NEW</u>	Effective Date <u>July 1, 2014</u>

AMENDED

Attachment 3.1-A  
Page 4b Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

Health care professionals that provide the above services at the SBWCs include: physicians, nurse practitioners, licensed clinical social workers, certified and licensed drug and alcohol counselors, certified sexual assault counselors, ~~and~~ registered dietitians and Physician Assistants. Licensure requirements for each practitioner type are specified in the Title 24 of the Delaware Code, Professions and Occupations and in the Delaware Administrative Code.

10. Dental Clinic Services are only available as ESPDT services to children under age 21.

TN No. SPA <u>#18-003</u>	Approval Date
Supersedes	
TN No. SPA <u>#10-004</u>	Effective Date <u>July 1, 2018</u>

Attachment 3.1-A  
Page 6m

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

**13.d. Rehabilitative Services: 42 CFR 440.130(d) Continued:**

***3. Crisis Intervention (CI) Services for Adults with Mental Illness, Alcoholism Or Drug Dependence Continued:***

A beneficiary in crisis may be represented by a family member or other collateral contact who has knowledge of the beneficiary's capabilities functioning. Beneficiaries in crisis who require this service may be using substance during the crisis. Substance use should be recognized and addressed in an integrated fashion as it may be add to the risk increasing the need for engagement in care. The assessment of risk, mental status, and medical stability must be completed by a credentialed mental health screener, Licensed Behavioral Health Practitioner (LBHP), advanced practice nurse (APN), nurse practitioner (NP), Physician Assistant (PA), or physician with experience regarding this specialized mental health service, practicing within the scope of their professional license or certification. The crisis plan developed from this assessment and all services delivered during a crisis must be by qualified staff provided under a certified program. Crisis services cannot be denied based upon substance use. The CI specialist must receive regularly scheduled clinical supervision from a person meeting the qualifications of a LBHP, APN, NP, or physician with experience regarding this specialized mental health service. The beneficiary's chart must reflect resolution of the crisis which marks the end of the current episode. If the beneficiary has another crisis within twenty-four (24) hours of a previous episode, it shall be considered part of the previous episode and a new episode will not be allowed.

A unit of service is defined according to the Healthcare Common Procedure Coding System (HCPCS) approved code set

unless otherwise specified.

TN No. SPA <u>#18-003</u>	Approval Date
Supersedes	
TN No. SPA <u>#13-0018</u>	Effective Date <u>July 1, 2018</u>

Attachment 3.1-A  
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

**13.d. Rehabilitative Services: 42 CFR 440.130(d) Continued:**

**3. Crisis Intervention (CI) Services for Adults with Mental Illness, Alcoholism Or Drug Dependence Continued:**

- A Certified Peer on a CI team is an individual who has self-identified as a beneficiary or survivor of mental health and/or substance use disorder (SUD) services, is at least 21 years of age, and meets the qualifications set by the state including specialized peer specialist training, certification and registration. The training provided/contracted by the Delaware Division of Substance Abuse and Mental Health (DSAMH) shall be focused on the principles and concepts of peer support and how it differs from clinical support. The training will also provide practical tools for promoting wellness and recovery, knowledge about beneficiary rights and advocacy, as well as approaches to care that incorporate creativity. A Certified Peer must have at minimum a high school education or GED, (preferably with some college background) and be currently employed as a peer supporter in Delaware. Delaware state-approved standardized peer specialist training includes academic information as well as practical knowledge and creative activities. Each crisis program including certified peer staff is supervised by a licensed practitioner of the healing arts who is acting within the scope of his/her professional license and applicable state law.

A Crisis Intervention Specialist is an unlicensed mental health professional with a bachelors or master's degree in a mental health related field. The CI specialist must receive training and regularly scheduled clinical supervision from a person meeting the qualifications of a LBHP, APN, NP, or physician with experience regarding this specialized mental health service.

Provider Qualifications Continued:

Programs shall be certified by Medicaid and/or its designee. Each crisis program, is supervised by licensed practitioner of the healing arts who is acting within the scope of his/her professional license and applicable state law. A licensed practitioner of the healing arts who is acting within the scope of his/her professional license and applicable state law (e.g., Licensed Behavioral Health Practitioner (LBHP), physician, nurse practitioner (NP), ~~or~~ advanced practice nurse (APN), or a Physician Assistant (PA) is available for consultation and able to recommend treatment twenty-four (24) hours a day, seven (7) days a week to the CI program.

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Attachment 3.1-A  
Page 6r

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES

**13.d Rehabilitative Services: 42 CFR 440.130(d) Continued:**

**1. Substance Use Disorder (SUD) Treatment Services**

4A. Outpatient Addiction Services Continued

Outpatient activities are delivered on an individual or group basis in a wide variety of settings including site-based facility, in the community or in the beneficiary's place of residence. These services may be provided on site or on a mobile basis as defined by Delaware Health and Social Services (DHSS) or its designee. The setting will be determined by the goal which is identified to be achieved in the beneficiary's written treatment plan.

Outpatient services may be indicated as an initial modality of care for a beneficiary whose severity of illness warrants this level of treatment, or when a beneficiary's progress warrants a less intensive modality of service than they are currently receiving. The intensity of the services will be driven by medical necessity. Medication Assisted Therapies (MAT) should only be utilized when a beneficiary has an established SUD (e.g., opiate or alcohol dependence condition) that is clinically appropriate for MAT.

Provider qualifications: Outpatient addiction services are provided by licensed and unlicensed professional staff, who are at least eighteen (18) years of age with a high school or equivalent diploma, according to their areas of competence as determined by degree, required levels of experience as defined by state law and regulations and approved program guidelines and certifications approved by DHSS or its designee. All outpatient substance use disorder (SUD) programs are licensed or certified under state law. Licensed practitioners under Delaware state regulation are licensed by Delaware and include Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), nurse practitioners (NPs), advanced practice nurses (APNs), Physician Assistants (PAs), medical doctors (MD and DO), Licensed Chemical Dependency Professionals (LCDPs), and psychologists.

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TN No. SPA <u>#16-005</u>	Effective Date <u>July 1, 2018</u>

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

**13.d Rehabilitative Services: 42 CFR 440.130(d) Continued:**

**4. Substance Use Disorder (SUD) Treatment Services**

4B. Residential Addiction Services Continued

Provider qualifications: Services are provided by licensed and unlicensed professional staff, who are at least eighteen (18) years of age with a high school or equivalent diploma, according to their areas of competence as determined by degree, required levels of experience as defined by state law and regulations and departmentally approved program guidelines and certifications. All residential programs are licensed or certified under state law per Delaware Administrative Code Title 16.6001. The licensure applies to all programs providing services to beneficiaries in need of programs and services for diagnosed substance use and/or mental disorders. The licensure at a minimum requires: documentation of all

insurance coverage required in regulation; the maximum client capacity requested; and a copy of the agency's Delaware business license and home state license, when applicable. The licensure or certification also requires a description of the services to be provided by the program, including a statement of the program philosophy, goals and objectives, and a description of the methodology for each service element; and organization charts of showing incumbent names, positions, degrees and credentials (e.g., license, certification); all vacant positions; and illustrating direct and indirect reporting and supervisory relationships.

Licensed practitioners under Delaware State regulation are licensed by Delaware and include Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), nurse practitioners (NPs); advanced practice nurses (APNs), Physician Assistants (PAs), medical doctors (MD and DO), Licensed Chemical Dependency Professionals (LCDPs), and psychologists. Any staff who is unlicensed and providing addiction services must be credentialed by DHSS or its designee and/or the credentialing board or, if a Recovery Coach or Credentialed Behavioral Health Technician, be under the supervision of a qualified health professional (QHP) or Clinical Supervisor.

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**22 DE Reg. 347 (11/01/18) (Prop.)**