

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

Reimbursement Methodology for State Plan Personal Care Services

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 the Delaware Title XIX Medicaid State Plan regarding State Plan Personal Care Services, specifically, regarding State Plan Personal Care Services (PCS), specifically, *to remove personal care as a service option from the Medicaid State Plan as coverage of PCS will be provided under the Home Health Services benefit.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 30, 2015. Please identify in the subject line: Sunset State Plan Personal Care Services.

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) proposes to amend the Title XIX Medicaid State Plan regarding State Plan Personal Care Services (PCS), specifically, *to remove personal care as a service option from the Medicaid State Plan as coverage of PCS will be provided under the Home Health Services benefit.*

Statutory Authority

- 1902(a)(24) of the Social Security Act, *Personal Care Services*
- Section 4480 of the State Medicaid Manual, *Personal Care Services*
- 42 CFR 440.167, *Personal care services*
- 1902(a)(10)(D) of the Social Security Act, *Home health services*
- 42 CFR 440.70, *Home health services*
- 42 CFR.447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

Background

Personal Care Services are an optional Medicaid benefit described under sections 1905(a)(24) and 1902(10) of the Social Security Act and further defined in section 4480 of the State Medicaid Manual.

Section 1905(a)(24) defines personal care services as services furnished to an individual who is not an inpatient or resident of a hospital, Nursing Facility (NF), Intermediate Care Facility for the Mentally Retarded (ICF/MR) or institution for mental diseases that are:

- a. authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State;
- b. provided by an individual who is qualified to provide such services and who is not a member of the individual's family; and,
- c. furnished in a home or other location.
- d. Regulatory oversight is found in 42 CFR 440.167 of the Code of Federal Regulations.

DISCLAIMER: The terminology used to describe people with disabilities has changed over time. Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) supports the use of "People First" language. Federal laws, regulations and policies use the term "intermediate care facilities for the mentally retarded (ICF/MR)". DHSS/DMMA does not endorse this term and uses the accepted term "individuals with intellectual disability" (ID) instead of "mental retardation." However, as ICF/MR is the abbreviation currently used in all Federal requirements, that acronym will

be used here. The revised terminology will not alter the meaning of this rule nor will it impact any determinations for eligibility of services.

Personal Care Services (also known in States by other names such as personal attendant services, personal assistance services, or attendant care services, etc.) covered under a State's program may include a range of human assistance provided to persons with disabilities and chronic conditions of all ages which enables them to accomplish tasks that they would normally do for themselves if they did not have a disability. Assistance may be in the form of hands-on assistance (actually performing a personal care task for a person) or cuing so that the person performs the task by him/herself. Such assistance most often relates to performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). ADLs include eating, bathing, dressing, toileting, transferring, and maintaining continence. IADLs capture more complex life activities and include personal hygiene, light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication management, and money management. Personal care services can be provided on a continuing basis or on episodic occasions. Skilled services that may be performed only by a health professional are not considered personal care services.

Summary of Proposal

Purpose

During review and subsequent approval on December 31, 2014 of Delaware's 1915(i) Home and Community State Plan Option Amendment (Pathways to Employment), the Centers for Medicare and Medicaid Services (CMS) performed a program analysis of corresponding coverage sections not originally submitted with this SPA. This analysis revealed an issue that requires a state plan amendment (SPA) to sunset coverage and reimbursement methodology for Personal Care Services as personal care as a service will be provided as a component of home health services.

Proposal

DHSS/DMMA intends to remove coverage and reimbursement methodology for the Personal Care Services (PCS) option from the Delaware Medicaid State Plan as those services will now be delivered through the Home Health Services benefit. Therefore, the sunset language in the SPA reflects that current coverage for PCS in Attachment 3.1-A and the reimbursement methodology for PCS in Attachment 4.19-B will cease on December 31, 2015.

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 to the coverage, methods and standards governing payment methodology for personal care services. Comments must be received by 4:30 p.m. on October 30, 2015.

CMS Review and Approval

The provisions of this state plan amendment relating to coverage, methodology and payment rates of State Plan Personal Care Services are subject to approval by 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 Manual Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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 manual updates.

Fiscal Impact Statement

Personal Care Services will now be delivered through Home Health Services.

This revision imposes no increase in cost on the General Fund as home health services is already a covered benefit under the Delaware Medical Assistance Program (DMAP) to eligible beneficiaries.

DMAP's proposal involves no change in the definition of those eligible to receive personal care services under Medicaid, and the personal care services benefit to eligible beneficiaries remains the same.

DMMA PROPOSED REGULATION #15-19a

REVISION:

Revision:

HCFA-PM-91-4

(BPD)

ATTACHMENT 3.1-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: DELAWARE

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

24.f. Personal Care Services

Coverage for Personal Care Services (PCS) described below will sunset on December 31, 2015 as coverage of PCS will be provided under the Home Health Services benefit.

Eligible recipients of personal care are Medicaid recipients who are disabled by mental illness, alcoholism, or drug addiction as defined in the Medicaid Provider Manual for Community Support Service Programs.

Persons eligible to provide personal care services are those who are qualified as an Assistant Clinician as defined in the Medicaid Provider Manual for Community Support Service Programs.

The recipient's physician must certify medical necessity for personal care services based on a completed comprehensive medical/psycho-social evaluation and treatment plan as defined in the Medicaid Provider Manual for Community Support Service Programs.

**DMMA PROPOSED REGULATION #15-19b
REVISION:**

ATTACHMENT 4.19-B
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

STATE PLAN PERSONAL CARE SERVICES

Personal Care Services

The payment methodology for Personal Care Services described below will sunset on December 31, 2015 as coverage of PCS will be provided under the Home Health Services benefit.

Payment for personal care services is based on a fee-for-service, the rate for which is set by a rate setting committee (including representatives of the Department of Health and Social Services' Division of Social Services, Management Services, and Alcohol, Drug Abuse and Mental Health) on an annual and provider specific basis.

19 DE Reg. 258 (10/01/15) (Prop.)