

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

Telemedicine

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to submit a state plan amendment regarding telemedicine, specifically, *to clarify provider types authorized to deliver medically necessary services via telemedicine*. 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 July 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 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/Division of Medicaid and Medical Assistance (DHSS/DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding telemedicine *to clarify provider types authorized to deliver medically necessary services via telemedicine*.

Statutory Authority

- 42 CFR 410.78, *Telehealth services*
- 42 CFR Part 440, *Services*

Background

For the purposes of Medicaid, telemedicine seeks to improve a patient's health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site. This electronic communication means the use of interactive telecommunications equipment that includes, at a minimum, audio and visual equipment. This definition is modeled on Medicare's definition of telehealth services (42 CFR §410.78).

According to the Centers for Medicare and Medicaid Services (CMS), the Medicaid program and the federal Medicaid statute (Title XIX of the Social Security Act) does not recognize telemedicine as a distinct service. CMS does note, however, that "telemedicine is viewed as a cost-effective alternative to the more traditional face-to-face way of providing medical care" (e.g., face-to-face consultations or examinations between provider and patient) that states can choose to cover under Medicaid and that there is "flexibility inherent in federal law to create innovative payment methodologies for services that incorporate telemedicine technology."

Summary of Proposal

Effective July 2, 2012, the Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to use the telemedicine delivery system for providers enrolled under the Delaware Medical Assistance Program (DMAP).

The Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 3.1-A of the Medicaid State Plan to clarify that qualifying provider services include any covered state plan services that would typically be provided to an eligible individual in a face-to-face setting by an enrolled provider.

The provisions of this state plan amendment are subject to approval by CMS.

Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund as current policy allows for the use of telemedicine.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

GACEC and SCPD

As background, CMS approved a Delaware Medicaid Plan in 2012 to use a telemedicine delivery system for providers enrolled in the Delaware Medical Assistance Program (DMAP). A July 23, 2012 memo was issued endorsing the concept of using telemedicine and prompted adoption of an amendment to include accommodations, including interpreter and audio-visual modification, where required by the ADA. See 16 DE Reg. 314, 317 (September 1, 2012).

We endorse the proposed amendment. Consistent with the attached June 16, 2014 *Delaware News Journal* article, telemedicine offers a useful option for individuals with disabilities seeking specialty care, particularly downstate residents. The attached April 12, 2014 *Delaware News Journal* article also reinforces the merits of telemedicine and predicts that Smartphone applications and body sensors will evolve to support telemedicine. The article notes the advantage of avoiding a doctor's office "only to wait in line with patients who have other diseases that we may catch."

Agency Response: DMMA thanks both Councils for their endorsement.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation telemedicine, specifically, *to clarify provider types authorized to deliver medically necessary services via telemedicine* is adopted and shall be final effective September 10, 2014.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #14-35

REVISION:

ATTACHMENT 3.1-A
Introductory Page 2

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

TELEMEDICINE – CONTINUED

PROVIDER QUALIFICATIONS

In order to provide telemedicine under DMAP, providers at both the originating and distant site must be enrolled with DMAP or have contractual agreements with the managed care organizations (MCOs) and must meet all requirements for their discipline as specified in the Medicaid State Plan.

For services delivered through telemedicine technology from DMAP or MCOs to be covered, healthcare practitioners must:

- Act within their scope of practice;
- Be licensed (in Delaware, or the State in which the provider is located if exempted under Delaware State law to provide telemedicine services without a Delaware license) for the service for which they bill DMAP;
- Be enrolled with DMAP/MCOs;
- Be located within the continental United States.

COVERED SERVICES

DMAP covers medically necessary telemedicine services and procedures covered under the Title XIX State Plan. Qualifying provider services include any covered State Plan services that would typically be provided to an eligible individual in a face-to-face setting by an enrolled provider. Telemedicine is not limited based on the diagnosed medical condition of the eligible recipient. All telemedicine services must be furnished within the limits of provider program policies and within the scope and practice of the provider's professional standards as described and outlined in DMAP Provider Manuals which can be found at:

<http://www.dmap.state.de.us/downloads/manuals.html>

NON-COVERED SERVICES

If a service is not covered in a face-to-face setting, it is not covered if provided through telemedicine. A service provided through telemedicine is subject to the same program restrictions, limitations and coverage which exist for the service when not provided through telemedicine.

18 DE Reg. 227 (09/01/14) (Final)