

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 Services

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 services specifically, *to recognize the Medicaid beneficiary's place of residence as an originating site*. 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 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2015 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 services, specifically, *to recognize the Medicaid beneficiary's place of residence as an originating site*.

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."

Coverage of Telemedicine in the Delaware Medical Assistance Program

Telemedicine is the real-time or near real-time two-way transfer of medical data and information using an interactive audio/video connection for the purposes of medical diagnosis and treatment. The Medicaid member is located with a provider at the originating site, while the "remote" provider renders services via the audio/video connection at the distant site. The Delaware Medical Assistance Program (DMAP) has covered telemedicine on a statewide basis since July 2012. Consistent with guidance from the Centers for Medicare and Medicaid Services (CMS), DMAP considers telemedicine as a cost-effective alternative for delivering covered services to the Medicaid-eligible populations.

The following are DMAP objectives for reimbursing providers for services delivered via telemedicine:

- Improved access to health care services;
- Improved member compliance with treatment plans;
- Medical services rendered at an earlier stage of disease, thereby improving long-term patient outcomes; and,
- Reduced DMAP costs for covered services such as hospitalization and transportation.

Originating Site and Distant Site

CMS defines the originating site as the location of the Medicaid patient at the time the service being furnished via a

telecommunications system occurs; and, the distant site as the site at which the physician or other licensed practitioner delivering the service is located at the time the service is provided via telecommunications system.

Summary of Proposal

Traditional approaches to telemedicine coverage require that the patient be served from a specific type of healthcare facility, such as a hospital or physician's office. Not included are sites where people spend much of their time, such as homes. With advances in decentralized computing power, such as cloud processing, and mobile telecommunications, such as 4G wireless, the current approach is to cover health services to patients wherever they are.

For conditions of coverage and payment, the Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 3.1-A of the Medicaid State Plan to recognize the Medicaid beneficiary's place of residence as an originating site. Upon CMS approval, the proposed state plan amendment (SPA) is effective for dates of service on or after July 1, 2015.

Public Notice

In accordance with the 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 proposed state plan amendment. Comments must be received by 4:30 p.m. on July 31, 2015.

CMS Review and Approval

The provisions of this state plan amendment relating to eligible originating sites for telemedicine 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.

Federal Financial Participation

Federal financial participation (FFP) means the federal government's share of expenditures made by a state agency in implementing a medical assistance program. CMS will not provide FFP for any State plan amendment until it is approved.

Provider Manuals 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

Current policy allows for the use of telemedicine. The Delaware Medical Assistance Program could potentially achieve savings by reducing transportation expenses, increasing treatment compliance and monitoring for patients with chronic conditions, and other delivery improvements.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

Teladoc

After providing background information on Teladoc including the Teladoc Delivery Model and noting the company's work with Delaware legislators on House Bill (HB) 69, *An Act to Amend Title 18 and 24 of the Delaware Code Relating to Telemedicine Services*, Teladoc, Inc. offered the following comments:

Teladoc applauds the initiative that the Department has taken in removing the healthcare facility requirement as the originating site and allowing the patient to access healthcare from their home. We suggest that the State also consider that not all patients have access to broadband technology or are skilled in the use of computers or smart phones. You appropriately noted that technology moves at a much faster pace than regulation and legislation. Further, it is understood that electronic communication "means the use of interactive telecommunications equipment that includes, at minimum audio and visual equipment" and that "telemedicine is the real-time or near real-time two way transfer of medical data and information..."

Therefore, we suggest that the State clarify that the intent is to remain "technology neutral", and that video and interactive audio using store and forward technologies are appropriate in telemedicine. By remaining technology, the state is able to incorporate new advances [which] can be applied as they are proven and available. As HB 69 points out, the

standard of care should be the same, whether in a traditional office visit or a telemedicine visit.

Agency Response: Your comments raised policy or operational issues that are outside the scope of the proposed rule. Store and forward technologies will be addressed in a future rulemaking. Thank you for your comments.

No change to the regulation was made as a result of these comments.

SCPD and GACEC

As background, DMMA has covered telemedicine in its Medicaid program on a statewide basis since July, 2012. The State has generally been expanding use of telemedicine in recent years. For example, the Legislature passed House Bill (H.B.) 69 in the Spring of 2015 to promote health insurer support of telemedicine. The synopsis to the bill suggests that it is also intended to "encourage all state agencies to evaluate and amend their policies and rules to foster and promote telemedicine services". SCPD endorses and GACEC supports this initiative (subject to amendments referenced below) since it clarifies that an approved originating site can include a patient's place of residence. We recommend the following amendments.

First, the reference to place of residence could be construed to mean that other non-traditional sites are excluded. By solely citing "place of residence", application of interpretive guidance could result in limiting the scope of other settings. At a minimum, it would therefore be preferable to amend the reference as follows: "Without limitation, (A)an approved originating site may include the Delaware Medical Assistance Program (DMAP) member's place of residence."

Second, H.B. 69 broadly defines "originating site" to include "a site in Delaware at which a patient is located at the time health care services are provided....". This would include anywhere the patient is physically present, including non-residential settings such as day programs (e.g. Easter Seal; Elwyn). DMMA could consider the following more expansive standard: "An approved originating site may include the DMAP member's place of residence, day program, or alternate location in which the member is physically present and telemedicine can be effectively utilized."

Agency Response: DMMA agrees. The revision appears in **[bracketed bold type]**.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 1, 2015 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding telemedicine services, specifically, *to recognize the Medicaid beneficiary's place of residence as an originating site*, is adopted and shall be final effective September 10, 2015.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #15-16

REVISION:

ATTACHMENT 3.1-A
Introductory Page 1

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

TELEMEDICINE

The Delaware Medical Assistance Program (DMAP) covers medically necessary health services furnished to eligible DMAP members as specified in the Medicaid State Plan. To facilitate the ability of recipients to receive medically necessary services, DMAP allows for the use of a telemedicine delivery system for providers enrolled under Delaware Medicaid.

Telemedicine services under DMAP are subject to the specifications, conditions, and limitations set by the State. Telemedicine is the practice of health care delivery by a practitioner who is located at a site, known as the distant site, other than the site where the patient is located, known as the originating site, for the purposes of consultation, evaluation, diagnosis, or recommendation of treatment. An approved originating site may include the DMAP member's place of residence, **day program, or alternate location in which the member is physically present and telemedicine can be effectively utilized**.

Providers rendering telemedicine must be able to use interactive telecommunications equipment that includes, at a minimum, audio and video equipment permitting two-way, real time, interactive communication between the recipient and the practitioner to provide and support care when distance separates participants who are in different geographical locations.

The provision of services through telemedicine must include accommodations, including interpreter and audio-visual modification, where required under the Americans with Disabilities Act (ADA), to ensure effective communication.

Telephone conversations, chart reviews, electronic mail messages, facsimile transmissions or internet services for online medical evaluations are not considered telemedicine.

All equipment required to provide telemedicine services is the responsibility of the providers.

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