

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

Licensed Chemical Dependency Professionals & Art Therapist

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 behavioral health practitioners, specifically, to add Licensed Chemical Dependency Professionals (LCDPs) and Licensed Professional Art Therapist to the list of licensed behavioral health practitioners.

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@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on May 1, 2020. Please identify in the subject line: Licensed Chemical Dependency Professionals and Art Therapist

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 behavioral health practitioners, specifically, to add Licensed Chemical Dependency Professionals (LCDPs) and Licensed Professional Art Therapist to the list of licensed behavioral health practitioners.

Statutory Authority

- 42 CFR §440.60
- 24 **Del.C.** §3060

Background

On June 7th, the Division of Professional Regulation announced new rules effective June 11, 2018 that art therapists in Delaware could apply for the new Professional Art Therapist and Associate Art Therapist licenses. Per 24 **Del.C.** §3060 "Art therapy" means a mental health discipline that integrates the use of psychotherapeutic principles, art media, and the creative process to assist individuals, families, or groups in: 1) increasing awareness of self and others, 2) coping with symptoms, stress, and traumatic experiences, 3) enhancing cognitive abilities, and 4) identifying and assessing clients' needs in order to implement therapeutic interventions to meet developmental, behavioral, mental, and emotional needs.

Licensed Chemical Dependency Professionals (LCDPs) are behavioral health practitioners licensed under 24 **Del.C.** §3060.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to add Chemical Dependency Professionals and Licensed Professional Art Therapists to the list of licensed behavioral health practitioners whose services Delaware Medicaid will reimburse.

Summary of Proposed Changes

Effective for services provided on and after June 11, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan Attachments 3.1-A Page 2e.18 Addendum, 3.1-A Page 3 Addendum, 3.1-A Page 3.1 Addendum, 3.1-A Page 6b and 4.19-B Page 3a Addendum regarding behavioral health practitioners, specifically, to add Licensed Chemical Dependency Professionals (LCDPs) and Licensed Professional Art Therapist to the list of licensed behavioral health practitioners.

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 May 1, 2020.

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

This revision imposes no increase in cost on the General Fund as licensed behavioral health practitioners, providing diagnostic, screening, preventive, and rehabilitative 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 services provided by licensed behavioral health practitioners under Medicaid, and the diagnostic, screening, preventive, rehabilitative and related services benefit to eligible beneficiaries remains the same.

AMENDED

Attachment 3.1-A
Page 2e.19 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 - CONTINUED

4.b. **Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Services Continued**

7. Rehabilitative Services - 42 CFR 440.130(d) Continued

5. Rehabilitative Residential Treatment Continued

Provider Agency qualifications: A RRT must be accredited and licensed as residential treatment facility by DHSS or its designee and may not exceed sixteen (16) beds. RRT staff must be supervised by a licensed behavioral health practitioner (LBHP). Licensed psychologists and licensed behavioral health practitioners are covered separately under the approved State Plan for Other Licensed Practitioners. The RRT must have at least one (1) personnel member immediately available at all times who is trained in: First aid; Cardiopulmonary resuscitation (CPR); and the use of emergency equipment. RRT facilities may specialize and provide care for sexually abusive behaviors, substance abuse, or dually diagnosed individuals (e.g., either mental health/developmentally disabled or mental health/substance use disorder). If a RRT provides care to any of these categories of child, the RRT must submit documentation regarding the appropriateness of the research-based, trauma-informed assessment and programming and training for the specialized treatment needs of the client. The RRT must ensure that medically necessary care not provided by the RRT including medical services and pharmaceutical services are provided without delay for the health of the child by appropriate providers in the community. For RRT, there is at least

a quarterly review of client's treatment plan; goals and progress toward goals must be completed.

6. Art Therapy Services

The following services are provided by licensed art therapists:

- a. Clinical appraisal and treatment activities during individual, family, or group sessions which provide opportunities for expression through art therapy.
- b. Process and products of art creation to tap into clients' inner conflicts, fears, and core issues.
- c. Diagnostic and assessment methods, consistent with training and experience, to determine treatment goals and implement therapeutic art interventions which meet developmental, cognitive, behavioral, and emotional needs.
- d. Art media, the creative process, and the resulting artwork to assist clients to do all of the following:
 - 1. Reduce psychiatric symptoms of depression, anxiety, post-traumatic stress, and attachment disorders.

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TN No. SP <u>#16-003</u>	Effective Date <u>January 1, 2019</u>

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- 2. Enhance neurological, cognitive, and verbal abilities; develop social skills; aid sensory impairments; and move developmental capabilities forward in specific areas.
- 3. Cope with symptoms of stress, anxiety, traumatic experiences, and grief.
- 4. Explore feelings, gain insight into behaviors, and reconcile emotional conflicts.
- 5. Improve or restore functioning and a sense of personal well-being.
- 6. Increase coping skills, self-esteem, awareness of self, and empathy for others.
- 7. Improve healthy channeling of anger and guilt.
- 8. Improve school performance, family functioning, and parent/child relationships.

Licensed Professional Art Therapist provider qualification are covered separately under the approved State Plan for Scope of Medical And Remedial Care And Services Provided to The Categorically Needy.

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AMENDED

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Page 3 Addendum

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

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PROVIDED TO THE CATEGORICALLY NEEDY

6. Medical Care and other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law (continued).

6.b. Optometrists' Services

These services are reimbursed:

1. For Medicaid-eligible Individuals under age 21, as an EPSDT service (routine eye exams including refraction and provision of eyeglasses); or
2. For Medicaid-eligible individuals over age 21, medically necessary diagnostic and treatment services provided under the scope of optometric practice in State law for symptomatic Medicaid recipients (i.e. disease, injury, illness, or other medical disorder of the eyes), excluding routine eye exams or refractions related to the provision of eyeglasses and excluding coverage of eyeglasses.

6.c. Chiropractors' Services

Chiropractic services are furnished in accordance with 42 CFR 440.60(b) and include only services that are provided by a chiropractor who is licensed by the State, and consists of treatment by means of manual manipulation of the spine that the chiropractor is legally authorized by the State to perform. Services are provided as follows:

1. For Medicaid-eligible Individuals under age 21, as an EPSDT service, per 42 CFR §441 Subpart B, furnished upon medical necessity; or
2. For Medicaid-eligible individuals over age 21, furnished upon medical necessity and following the service utilization criteria below:
 - a. One (1) office visit per year;
 - b. One (1) set of X-rays per year, and
 - c. Twenty (20) manipulations per year.

Provider Qualifications: Qualified chiropractors must be licensed per Delaware licensure requirements codified in ~~Chapter 7, Title 24 of the Delaware Administrative Code~~ **24 DE Admin. Code 700**, Professions and Occupations.

6.d. Other Practitioners' Services

1. Licensed Midwife services are services permitted under scope of practice authorized by state law for the licensed midwife.
2. Licensed Behavioral Health Practitioner: A licensed behavioral health practitioner (LBHP) is a professional who is licensed in the State of Delaware to diagnose and treat mental illness or substance abuse acting within the scope of all applicable state laws and their professional license. A LBHP includes professionals licensed to practice independently:
 - Licensed Chemical Dependency Professionals (LCDPs)
 - Licensed Clinical Social Workers (LCSWs)
 - Licensed Marriage and Family Therapists (LMFTs)
 - Licensed Professional Art Therapist
 - Licensed Professional Counselors of Mental Health (LPCMHe)
 - Licensed Psychologists

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Page 3.1 Addendum

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

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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.

Licensed Professional Art Therapists provide clinical appraisal and treatment activities utilizing a mental health discipline that integrates the use of psychotherapeutic principles, art media, and the creative process to assist individuals, families, or groups.

Provider Qualifications: Qualified Professional Art Therapists must be licensed per Delaware licensure requirements codified in 24 DE Admin. Code 3000, Professions and Occupations. When services are provided by a licensed associate art therapist, the services must be supervised by a licensed professional art therapist.

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 not covered. All LBHP services provided while a person is a resident of an Institute for Mental Disease (IMD) such as a ~~free standing~~ 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~~ 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.

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Attachment 3.1-A
Page 6b

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
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LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES
PROVIDED TO THE CATEGORICALLY NEEDY

13d. Rehabilitative Services (Continued)

QUALIFIED STAFF

Community support programs may bill Medicaid for community support services only when authorized as medically necessary by a physician and delivered by qualified staff. Services rendered by any qualified staff other than a physician must be provided under a physician's supervision as defined in the Medicaid Provider Manual for Rehabilitative/Community Support Service Programs. Component community service activities require specific staff qualifications as defined in the Medicaid Provider Manual for Rehabilitative/Community Support Service Programs. Following are illustrative definitions of staff listed as qualified to provide one or more community support service activities.

1. Physician: a person with a Medical Degree or Doctor of Osteopathy degree, who is licensed to practice Medicine in Delaware and has completed (or is enrolled in) an accredited residency training program in psychiatry, internal medicine or family practice.
2. Clinician: a person with a doctoral or master's degree in psychology, social work, nursing, ~~rehabilitation or rehabilitation~~, counseling, chemical dependency or art therapy from an accredited college or university (or a registered nurse with a certificate in mental health nursing from the American Nurses Association).
3. Associate Clinician: a person with a bachelor's degree in a human service field or a registered nurse.
4. Assistant Clinician: a person with an associate degree, a licensed practical nurse or a certified counselor lacking the academic credentials of an associate clinician.
5. Rehabilitative Services Assistant: a person with a high school diploma or GED who has received documented training that shall, at a minimum, include: 1) a complete course in medications used in the treatment used in the treatment of mental illness including side effects assigned; 2) a course in mental illness including symptoms of the major mental illnesses, mood and personality disorders; 3) a course in first aid, including CPR training.

A clinician with clinical/administrative experience in provision of community support services serves as program coordinator. A physician serves as clinical supervisor, providing direct supervision of the aspects of the program that relate to client treatment and providing clinical supervision of staff. The physician is available full- or part-time at provider sites to provide direct service, to provide direct supervision to other staff, and to participate in assessment of client needs and planning of service provision. The physician has 24-hour backup arrangements with other physicians for coverage when ~~he/she~~ the clinical supervisor is unavailable.

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Attachment 4.19-B
Page 3a Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
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METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
OTHER TYPES OF CARE

Other Licensed Behavioral Health Practitioners

Reimbursements for services are based upon a Medicaid fee schedule established by the State of Delaware.

If a Medicare fee exists for a defined covered procedure code, then Delaware will pay Psychologists at 100% of the Medicaid physician rates as outlined under Attachment 4.19-B, item 5. If a Medicare fee exists for a defined covered procedure code, then Delaware Medicaid will pay Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), Licensed Chemical Dependency Professionals (LCDPs), and Licensed Professional Art Therapist at 75% of the Medicaid physician rates as outlined under Attachment: 4.19-B, item 5.

When Medicare fees do not exist for a covered code, the fee development methodology will build fees considering each component of provider costs as outlined below. These reimbursement methodologies will produce rates sufficient to enlist enough providers so that services under the State Plan are available to beneficiaries at least to the extent that these services are available to the general population, is required by 42

CFR 447.204. These rates comply with the requirements of Section 1902(a)(3) of the Social Security Act and 42 CFR 447.200, regarding payments and are consistent with economy, efficiency and quality of care. Provider enrollment and retention will be reviewed periodically to ensure that access to care and adequacy of payments are maintained. The Medicaid fee schedule will be equal to or less than the maximum allowable under the same Medicare rate, where there is a comparable Medicare rate. Room and board costs are not included in the Medicaid fee schedule.

Except as otherwise noted in the State Plan, the State-developed fee schedule is the same for both governmental and private individual providers and the fee schedule and any annual/periodic adjustments to the fee schedule are published in the *Delaware Register of Regulations*. The Agency's fee schedule rate was set as of October 2, 2013 and is effective for services provided on or after that date. All rates are published on the Delaware Medical Assistance Program (DMAP) website at www.dmap.state.de.us/downloads/hcpcs.html.

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23 DE Reg. 820 (04/01/20) (Prop.)