

**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**

**Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services - Inpatient Psychiatric Hospital Services for Individuals under Age 21**

**NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services, addressing Inpatient Psychiatric Hospital Services for Individuals under Age 21, specifically, *coverage and reimbursement methodology for psychiatric residential treatment facilities (PRTFs)*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del.C.** §10115 in the November 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 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 purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Title XIX Medicaid State Plan regarding the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program addressing Inpatient Psychiatric Hospital Services for Individuals under Age 21, specifically, *coverage and reimbursement methodology for psychiatric residential treatment facilities (PRTFs)*.

**Statutory Authority**

- Section 1905(r) of the Social Security Act, *Early and Periodic Screening, Diagnostic, and Treatment Services*
- Section 1905(a)(16), *Inpatient Psychiatric Hospital Services for Individuals under Age 21*
- 42 CFR §441 Subpart B, *Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) of Individuals under Age 21*
- 42 CFR §440.60, *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.130, *Diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- State Medicaid Manual, Section 5010, *Early and Periodic Screening, Diagnostic, and Treatment Services*

**Background**

*Early and Periodic Screening, Diagnostic and Treatment Services*

The Medicaid program's benefit for children and adolescents is known as Early and Periodic Screening, Diagnostic and Treatment services, or EPSDT. Under federal Medicaid law at 42 U.S.C. § 1396d(r) [1905(r) of the Social Security Act], EPSDT provides a comprehensive array of prevention, diagnostic, and treatment services for low-income infants, children and adolescents under age 21, as specified in Section 1905(r) of the Social Security Act (the Act). The EPSDT benefit is more robust than the Medicaid benefit for adults and is designed to assure that children receive early detection and care, so that health problems are averted or diagnosed and treated as early as possible. The goal of EPSDT is to assure that individual children get the health care they need when they need it - the right care to the right child at the right time in the right setting.

Within the scope of EPSDT benefits under the federal Medicaid law, states are required to cover any service that is medically necessary "to correct or ameliorate a defect, physical or mental illness, or a condition identified by screening," whether or not the service is covered under the Medicaid State Plan. The services covered under EPSDT are limited to those within the scope of the category of services listed in the federal law at 42 U.S.C. § 1396d (a) [1905(a) of the Social Security Act].

States have an affirmative obligation to make sure that Medicaid-eligible children and their families are aware of EPSDT and have access to required screenings and necessary treatment services. States also have broad flexibility to

determine how to best ensure such services are provided. In general, they either administer the benefit outright (through fee-for-service arrangements) or provide oversight to private entities with whom they have contracted to administer the benefit (e.g., managed care entities). States must arrange (directly or through delegations or contracts) for children to receive the physical, mental, vision, hearing, and dental services they need to treat health problems and conditions.

### *Medicaid Rehabilitative Services*

Treatment for mental health and substance use issues and conditions is available under a number of Medicaid service categories, including hospital and clinic services, physician services, and services provided by a licensed professional such as a psychologist. States also make use of rehabilitative services. While rehabilitative services can meet a range of children's treatment needs, they can be particularly critical for children with mental health and substance use issues. Rehabilitative services are defined to include:

*any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.*

Like other services covered under EPSDT, rehabilitative services need not actually cure a disability or completely restore an individual to a previous functional level. Rather, such services are covered when they ameliorate a physical or mental disability, as discussed above. Moreover, determinations of whether a service is rehabilitative must take into consideration that a child may not have attained the ability to perform certain functions. That is, a child's rehabilitative services plan of care should reflect goals appropriate for the child's developmental stage.

Depending on the interventions that the individual child needs, services that can be covered as rehabilitative services include:

- Community-based crisis services, such as mobile crisis teams, and intensive outpatient services;
- Individualized mental health and substance use treatment services, including in non-traditional settings such as a school, a workplace or at home;
- Medication management;
- Counseling and therapy, including to eliminate psychological barriers that would impede development of community living skills; and
- Rehabilitative equipment, for instance daily living aids.

With respect to the provision of rehabilitative services, including those noted above, CMS requires more specificity of providers and services due to the wide spectrum of rehabilitative services coverable under the broad definition. CMS expects a state to include in their State Plan the services, and providers with their qualifications, as well as a reimbursement methodology for each service it provides.

### *Inpatient Psychiatric Services for Individuals under Age 21 Benefit*

The Psychiatric Services for Individuals under Age 21 benefit at section 1905(a)(16) of the Act, is optional. The benefit must be provided in all States to those individuals who are determined during the course of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) screen to need this type of inpatient psychiatric care. Under the EPSDT provision, States must provide any services listed in section 1905(a) of the Act that is needed to correct or ameliorate defects and physical and mental conditions discovered by EPSDT screening, whether or not the service is covered under the State plan.

This benefit has a long title, and so is often referred to as "Psych under 21". Most states have chosen to provide this optional benefit. Services are provided in psychiatric hospitals or psychiatric units in a hospital, or psychiatric facilities for which states may define accreditation requirements, subject to requirements at 42 CFR 441 Subpart D. Among the requirements for this service is certification of need for inpatient care, and a plan of care for active treatment, developed by an interdisciplinary team.

This benefit is significant as a means for Medicaid to cover the cost of inpatient mental health services. The federal Medicaid program does not reimburse states for the cost of institutions for mental diseases (IMDs) except for young people, who receive this service, and individuals age 65 or older served in an IMD. No later than age 22, individuals are transitioned to community services, or non-Medicaid inpatient services.

Many states provide psych under 21 service through psychiatric residential treatment facilities (PRTFs). A PRTF provides comprehensive mental health treatment to children and adolescents (youth) who, due to mental illness, substance abuse, or severe emotional disturbance, are in need of treatment that can most effectively be provided in a residential treatment facility. All other ambulatory care resources available in the community must have been identified, and if not accessed, determined to not meet the immediate treatment needs of the youth.

PRTF programs are designed to offer a short term, intense, focused mental health treatment program to promote a successful return of the youth to the community. Specific outcomes of the mental health services include the youth returning to the family or to another less restrictive community living situation as soon as clinically possible and when treatment in a PRTF is no longer medically necessary. The residential treatment facility is expected to work actively with the

family, other agencies, and the community to offer strengths-based, culturally competent, medically appropriate treatment designed to meet the individual needs of the youth including those identified with emotional and behavioral issues.

#### *What is a Psychiatric Residential Treatment Facility?*

A Psychiatric Residential Treatment Facility (PRTF) is any non-hospital facility with a provider agreement with a State Medicaid Agency to provide the inpatient services benefit to Medicaid-eligible individuals under the age of 21 (psych under 21 benefit). The facility must be accredited by Joint Commission on Accreditation of Healthcare (JCAHO) or any other accrediting organization with comparable standards recognized by the State. PRTFs must also meet the requirements in §441.151 through 441.182 of the CFR. The regulatory authority for PRTFs includes Section 1864(a) of the Social Security Act (the Act), which authorizes the Secretary to enter into an agreement with the State. Authority also includes Section 1902(a)(9)(A), which authorizes the state agency or other appropriate medical agency, to be responsible for establishing and maintaining health standards, and Section 1902(a)(33)(B), licensing requirement.

#### **Summary of Proposal**

*Note: This Inpatient Psychiatric Hospital Services for Individuals under Age 21 state plan amendment (SPA) is third of three (3) proposed SPA actions related to Medicaid rehabilitative services under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program.*

#### *Purpose*

The purpose of this notice is to clarify service descriptions and reimbursement methodologies for Inpatient Psychiatric Hospital Services for Individuals under Age 21 and to request comments from the public.

On February 23, 2011, the Centers for Medicare and Medicaid Services (CMS) sent a companion letter to the Division of Medicaid and Medical Assistance (DMMA) concerning a previously approved State Plan Amendment #08-004, School-Based Health Services. CMS performed a program analysis of corresponding coverage sections not originally submitted with this SPA. This analysis revealed concerns regarding the monthly bundled rates for rehabilitative child mental health and substance use disorder services under the EPSDT program. CMS determined that the service descriptions and reimbursement language for rehabilitative child mental health and substance use disorder services fails to comply with 42 CFR 430.10 and 42 CFR 447.252 which implement in part Section 1902(a)(30)(A) of the Social Security Act, to require collectively that States comprehensively describe the methodologies that they use to reimburse service providers. The methodologies must be understandable, clear, unambiguous and auditable.

#### *Proposal*

In order to comport with 42 CFR 430.10 and 42 CFR 447.252, DMMA proposes to clarify existing rehabilitative child mental health and substance use disorder services reimbursement methodology language currently described at Medicaid State plan page Attachment 3.1-A and new Attachment 4.19-A.3 by:

- defining the reimbursable unit of service;
- describing payment limitations;
- providing a reference to the provider qualifications per the State Plan;
- publishing location to access State developed fee schedule rates.

The agency's proposal involves no change in the definition of those eligible to receive the inpatient psychiatric hospital services for individuals under age 21 benefit under the Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, and the "Psych under 21" benefit available to eligible recipients remains the same.

#### *Summary of Proposed Changes*

The proposed "Psych under 21" SPA provides a reimbursement methodology for psychiatric residential treatment facilities (PRTFs) for children in compliance with CMS guidance. On November 28, 2012, CMS issued an informational bulletin clarifying that states may structure coverage and payment for the benefit category of inpatient psychiatric hospital or facility services for individuals under age 21 to ensure youth receiving inpatient psychiatric services would receive medically necessary Medicaid services to meet their medical, psychological, social, behavioral, and developmental needs as identified in their plan of care. This clarification is intended to describe flexibility currently available to states to ensure the provision of medically necessary Medicaid services to children in inpatient psychiatric facilities.

To view the CMCS Informational Bulletin regarding Inpatient Psychiatric Hospital Services for Individuals under age 21, use the following link to the CMS website: <http://www.medicaid.gov/Federal-Policy-Guidance/downloads/CIB-11-28-12.pdf>.

The proposed effective date for this state plan amendment is July 1, 2016.

#### *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 methods and

standards governing payment methodology for the rehabilitative inpatient psychiatric hospital services for individuals under age 21 benefit under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. Comments were to be received by 4:30 p.m. on December 1, 2015.

#### *CMS Review and Approval*

The provisions of this draft state plan amendment (SPA) are subject to the Centers for Medicare and Medicaid Services (CMS) review and approval. 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**

The purpose of this state plan amendment is to update and reorganize both the services (Attachment 3.1-A) and reimbursement (Attachment 4.19-A and Attachment 4.19-B) sections of the Medicaid State Plan that primarily address rehabilitative services under the early and periodic screening, diagnostic, and treatment (EPSDT) program.

This amendment is not for the purpose of making program changes. Rather, this is part of DHSS/DMMA's continuing effort in working with CMS to assure the reimbursement pages clearly correspond to the service sections of the state plan and to implement the required wording regarding fee schedules and the dates for which reimbursement rates were set for these services.

There are no intended content changes other than improved descriptions. The proposed amendment imposes no increase in cost on the General Fund as the proposed services in this State plan amendment will be budget neutral. The federal fiscal impact associated with this amendment will be zero dollars.

#### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES**

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.

As background, the Division notes that Federal EPSDT standards require State Medicaid programs to offer a comprehensive array of services for individuals under age 21. In the mental health and substance abuse contexts, such services include "rehabilitative services" and "inpatient psychiatric services for individuals under age 21." On February 23, 2011, CMS sent DMMA a letter sharing concerns with the Division's monthly bundled rates for rehabilitative child mental health and substance abuse services under the EPSDT program. Moreover, CMS issued a bulletin in 2012 which increased flexibility in covering costs of services to persons under age 21 in inpatient psychiatric facilities.

DMMA is now implementing the CMS guidance by adopting a Medicaid State Plan Amendment based on a CMS template. The amendment results in no increase to the General Fund.

SCPD Endorses the proposed regulation since the changes are needed to conform to CMS guidance, increases flexibility, and results in no cost in General Funds to the State.

**Agency Response:** DMMA thanks the Council for its endorsement. No change was made to the regulation as a result of this comment.

#### **FINDINGS OF FACT:**

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program addressing Inpatient Psychiatric Hospital Services for Individuals under Age 21, specifically, *coverage and reimbursement methodology for psychiatric residential treatment facilities (PRTFs)*, is adopted and shall be final effective February 11, 2016.

January 19, 2016

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #16-004a**

**REVISION:**

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

16. Inpatient psychiatric facility services for individuals under 22 years of age.

Provided:                        No limitations                       With limitations\*

\*See Attachment 3.1-A Page 2c Addendum, Item 4.b. – EPSDT

Not provided.

**DMMA FINAL ORDER REGULATION #16-004b**

**REVISION:**

ATTACHMENT 4.19-A.3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES  
– INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21

1. Psychiatric Residential Treatment Facility (PRTF) Reimbursement

Reimbursement for services is based upon a Medicaid fee schedule established by the State of Delaware. Psychiatric residential treatment facilities will be reimbursed the lesser of:

- The Delaware Medicaid per diem reimbursement rate for activities in the per diem plus additional fee-for-service reimbursement using the Delaware Medicaid fee schedule for activities on the plan of care but not in the per diem.
- The facilities usual and customary charge to privately insured or private-pay beneficiaries, or
- If an out of state facility, the specific in-state PRTF interim Medicaid per diem reimbursement rate for the activities included in that state's per diem rate with additional fee-for-service reimbursement using the Delaware Medicaid fee schedule for activities on the plan of care but not in that state's per diem reimbursement.

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 July 1, 2016 and is effective for services provided on or after that date. All rates are published on the Delaware Medical Assistance Program (DMAP) website at:

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

A. Delaware Medicaid per diem PRTF reimbursement rate includes the following covered inpatient psychiatric residential treatment facility (PRTF) activities for individuals under twenty-one (21) years of age when included on the patient's inpatient psychiatric active treatment plan of care:

1. Behavioral Health care by staff who are not physicians
2. Occupational Therapy / Physical Therapy / Speech Therapy
3. Laboratory
4. Transportation

5. Dental
6. Vision
7. Diagnostics/radiology (x-ray).

ATTACHMENT 4.19-A.3.1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES  
– INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21 CONTINUED

- B. Pharmaceuticals and physician activities provided to the youth in a PRTF, when on the active treatment plan of care, are components of the Medicaid covered PRTF service. These activities will be paid directly to the treating pharmacy or physician, using Medicaid pharmacy and physician fee schedule rates excluded from the psychiatric residential treatment facility (PRTF) State of Delaware Medicaid per diem reimbursement rates.
  - C. Medical services under 1905(a) of the Social Security Act that are listed on the inpatient psychiatric active treatment plan and excluded in A or B above shall be paid directly to the treating provider, using Medicaid fee schedule rates. Such services are excluded from the psychiatric residential treatment facility (PRTF) State of Delaware Medicaid per diem reimbursement rates.
  - D. The Medicaid PRTF per diem reimbursement rates shall exclude such costs other than pharmaceutical, physician, and other medical services that could be covered under 1905(a) of the Social Security Act on the inpatient psychiatric active treatment plan unrelated to providing inpatient psychiatric care for individual less than twenty-one (21) years of age including, but not limited to the following:
    1. Group education including elementary and secondary education.
    2. Medical services that are not listed in Items A, B, and C above.
    3. Activities not on the inpatient psychiatric active treatment plan.
2. Psychiatric Residential Treatment Facility (PRTF) Reimbursement Rate Methodology
- A. Medicaid certified providers will be reimbursed for covered PRTF services using a Medicaid per diem reimbursement rate consistent with the principles in section 1 above. The Medicaid per diem reimbursement rate paid to the provider will be determined by the following service criteria:
    1. PRTF specializing in sexually-based treatment programs.
    2. PRTF specializing in substance use disorder treatment programs.
    3. PRTF treating children with mental health diagnoses.

ATTACHMENT 4.19-A.3.2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES  
– INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21 CONTINUED

The Delaware Medicaid PRTF 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, as 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.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

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

5. Other EPSDT Services

Reimbursement for services not otherwise covered under the State Plan is determined by the Medicaid agency through review of a rate setting committee. Non-institutional services are paid on a fee-for-service basis. Institutional services are per diem rates based on reasonable costs. These services include:

- (a) Prescribed Pediatric Extended Care - see ATT. 4.19-B, Page 7
- (b) ~~Inpatient and Partial Hospital Psychiatric Services—reimbursed on a per diem basis~~
- (c) ~~Outpatient Psychiatric Facility Services—fee for service~~
- (d) (b) School-Based Health Service (SBHS) Providers:

School based health service providers include Delaware school districts and charter schools and may provide the following Medicaid services per Attachment 3.1-A, Page 2 Addendum:

- EPSDT Screens
- Nursing Services
- Physical Therapy
- Occupational Therapy
- Speech Therapy, Language and Hearing Services
- Psychological and Developmental Treatment Assessment
- Counseling and Therapy
- Residential Mental Health or Developmental Disability Treatment
- Specialized Transportation Services

**19 DE Reg. 763 (02/01/16) (Final)**