

**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**

**Reimbursement Methodology for State Plan Personal Care Services**

**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 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*. 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 October 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 30, 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 (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 were due 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.

## **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 and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

## GACEC and SCPD

First, the change may result in a reduction in available providers for non-monetary reasons. Licensing of “personal assistance services agencies” is separate from licensing of “home health agencies”. Compare Title 16 **Del.C.** §122x and 16 **DE Admin Code** 4469 (personal assistance licensing) with 16 **Del.C.** §122(o) and 16 **DE Admin. Code** 4406 (home health licensing). Agencies currently providing “personal assistance services” will ostensibly have to apply for new licenses as “home health agencies”.

Second, it would be unfortunate if the change results in a reduction in the scope of currently-covered services. Consider the following:

A. Licensed “personal assistance” agencies can perform any acts individuals could normally perform themselves but for functional limitations consistent with Title 24 **Del.C.** §1921(a)(15) and Title 16 **Del.C.** §122x.2. CMS has historically adopted the same broad approach for “personal care assistance” as including “a range of human assistance provided to persons with disabilities and chronic conditions of all ages which enables them to accomplish tasks that they could normally do for themselves if they did not have a disability.” See attached CMS, State Medicaid Manual, §4480C. Licensed “home health” agencies lack that authority.

B. Services provided by licensed “personal assistance” agencies are not required to be supervised by a nurse. All services provided by licensed “home health” agencies must be supervised by a registered nurse. See Title 16 **Del.C.** §122oB(V)2.C.

C. The required qualifications of persons providing “home health services” are much more extensive than the qualifications of persons providing “personal assistance”. Compare 16 **DE Admin Code** 4406.1.1, definition of “home health aide”, with 16 **DE Admin. Code** 4469.1.1, definition of “direct care worker”.

Third, when we initially reviewed the proposed regulation, it appeared unclear what effect the change would have on attendant services provided under the DSHP+ program. DMMA notes that “personal care services” are also known by other names “such as personal attendant services, personal assistance services, or attendant care services, etc.”. At 259. The DSHP+ contracts with MCOs require coverage of “attendant care services” independent of coverage of “home health services”. See attached excerpts from 2015 DMMA-MCO contract. One could infer that DMMA’s elimination of “personal care services” from the Medicaid program represents either actual program elimination of “attendant services” or is a precursor to such elimination. However, we communicated with the DMMA Director who stated that “(t)here is no actual or planned elimination of attendant services.” See attached October 12, 2015 email communication.

**Agency Response:** DMMA is not proposing a change in the delivery and authorization of these services to eligible individuals. These services will continue to be provided as a component of home health services for eligible individuals.

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

## FINDINGS OF FACT:

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding State Plan Personal Care Services, 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* is adopted and shall be final effective January 10, 2016.

Rita M. Landgraf, Secretary, DHSS

## DMMA FINAL ORDER REGULATION #15-27a

### REVISION:

Revision:	HCFA-PM-91-4 AUGUST 1991	(BPD)	ATTACHMENT 3.1-A Page 9 Addendum OMB No.: 0938
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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 FINAL ORDER REGULATION #15-27b  
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. 632 (01/01/16) (Final)**