

**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**

**Chiropractors' Services**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend chiropractors' services, specifically, to allow coverage guidelines for treatment more consistent with the licensure scope of practice for chiropractors. 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 December 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2021 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after January 1, 2022 Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) proposes to amend chiropractors' services, specifically, to allow coverage guidelines for treatment more consistent with the licensure scope of practice for chiropractors.

**Background**

In May of 2014, the Center for Medicaid Services (CMS) approved the Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) Alternative Benefit Plan (ABP) with an effective date of January 1, 2014. The ABP included benchmarks and benchmark equivalent services reflective of the current Medicaid State Plan. Additionally, DMMA added chiropractors' services to the ABP for this newly eligible low-income adult population. Previously, Delaware's Medicaid State Plan only covered chiropractors' services for children under the authority of 42 CFR §441 Subpart B, Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) of Individuals under Age 21. In May of 2017, CMS approved DMMA's extended coverage of chiropractors' services to all Delaware Medicaid beneficiaries to increase the quality of care and reduce long-term costs of treating chronic pain.

Effective October 24, 2018, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) became public law. This healthcare act outlines national strategies to help address the nation's opioid crisis. As part of the SUPPORT Act, CMS has promoted appropriate opioid prescribing and person-centered pain management. States began strategizing with providers and beneficiaries to increase non-opioid treatments and technologies to help treat acute and chronic pain. To that end, DMMA would like to expand the coverage of chiropractors' services to allow coverage guidelines for treatment more consistent with the licensure scope of practice for chiropractors.

**Statutory Authority**

- §1905(g) of the Social Security Act, State plan provision of chiropractors' services
- H.R. 6, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act)

*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 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 31, 2021.

*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 Statement

The anticipated fiscal impact is below.

	Federal Fiscal Year 2022	Federal Fiscal Year 2023
Federal funds	\$148,273	\$151,238
General (State) funds	\$108,522	\$108,892

### Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend chiropractors' services, specifically, to allow coverage guidelines for treatment more consistent with the licensure scope of practice for chiropractors, is adopted and shall be final effective March 11, 2022.

2/14/2022

Date of Signature

Molly K. Magarik, Secretary, DHSS

Attachment 3.1-A  
Page 3 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

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 medically necessary treatment by means of manual manipulation ~~of the spine~~ and allowable adjunctive therapy associated with the treatment of neck, back, pelvic/sacral, and extraspinal pain and/or dysfunction, that the chiropractor is legally authorized by the State to perform. Services may be subject to prior authorization and/or medical review, and include:

1. Evaluation and management services;
2. Diagnostic x-rays; ~~and~~

3. Chiropractic manipulative ~~treatment.~~ treatment; and
4. Allowable adjunctive therapy service.

Provider Qualifications: Qualified chiropractors must be licensed per Delaware licensure requirements codified in Chapter 7, Title 24 of the Delaware Administrative Code, 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 Psychologists
  - Licensed Clinical Social Workers (LCSWs)
  - Licensed Professional Counselors of Mental Health (LPCMHe)
  - Licensed Marriage and Family Therapists (LMFTs)

TN No. SPA	Approval Date
Supersedes	
TN No. SPA <u>#19-001</u>	Effective Date <u>October 1, 2021</u>