

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

Title XIX Medicaid State Plan Attachment 4.19-D Pediatric Nursing Facility Care Reimbursement

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding the pediatric nursing facility care reimbursement. 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 June 2007 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

Statutory Authority

- 42 CFR Part 447, Subpart C – *Payment for Inpatient Hospital and Long-Term Care Facility Services*;
- 42 CFR §440.170(d), *Skilled Nursing Facility Services for Individuals Under Age 21*; and,
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*.

Summary of Proposal

The reason for this amendment is to establish a class of pediatric nursing care facility that offers specialized nursing care for a defined group of children under the age of 21 years. These children are not able to be served in the Prescribed Pediatric Extended Care (PPEC) Program because of their increased service requirements.

The amendment defines the requirements of a certain group of children under the age of 21 years that are eligible to be served in a pediatric nursing facility. These children must be determined to require this level of care by the DMMA Medical Evaluation Team.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC), 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. DMMA has considered each comment and responds as follows.

First, the Councils would like to note its strong preference for keeping children out of nursing homes if adequate care is available in community-based settings. The "Summary of Proposal" indicates that nursing home placement is not contemplated for children who qualify for PPEC services. We would also like to confirm our view that the availability of pediatric nursing home care not be considered preferable to other day programs such as the First State School or the Exceptional Care for Children program.

Agency Response: The placing of children in any nursing facility needs to be an option for Medicaid

eligible children in Delaware. Some children have needs that must be addressed in an inpatient nursing care facility setting. Medicaid will make every effort to support the client's needs in a community setting if they can be met. Delaware is fortunate to be able to offer inpatient nursing care facility services to its citizens within Delaware. Previously, Delaware children who required these services had to be placed out-of-state.

Second, the rate adjustment standards are rather weak. Rates for each level of care are computed "for a base year and may be inflated each year thereafter using a nationally recognized inflation index". Use of an appropriate index merits endorsements since it is simple and does not require extensive assessment. However, there is no requirement of reassessment of rates nor any indication that annual reassessment will be a norm. In other contexts, DMMA has required rebasing at least every three (3) years. See 6 DE Reg. 885, 886 (January 1, 2003) [inpatient hospital care]. Providers often complain that the State establishes a base rate and then continues to reimburse based on that rate for several years without adjustment. It would be preferable to amend the regulation with the following italicized sentence:

Rates for each level of care shall be computed for a base year and may be inflated each year thereafter using a nationally recognized inflation index. At a minimum, such rebasing shall occur at least every three years.

Agency Response: By applying this methodology the facility is encouraged to be efficient. Medicaid will utilize a nationally recognized inflation index that best reflects the costs that are occurring in the operation of the facility. Medicaid has every intention of indexing rates regularly and feels that the facility costs will be effectively addressed applying this methodology.

Third, for similar reasons, it would be preferable to establish 2007 as the rebase year. As written, the State could adopt a 2005 base year which would artificially depress the reimbursement rate.

Agency Response: In establishing the rates, Delaware Medicaid utilizes the most current available information at the time.

Fourth, the "special case" authorization in the last paragraph of the regulation merits endorsement. Medically involved children are not "fungible" and may require individual consideration beyond an assessment of skilled or super-skilled services eligibility.

Agency Response: Thank you for the endorsement. Medicaid recognizes that some children may need special care beyond their assessment levels and Medicaid will address these issues and needs as they arise to ensure that appropriate care is given.

Thank you for your comments. Please be assured that the issues apprised of are being considered.

Findings of Fact:

The Department finds that the proposed changes as set forth in the June 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding pediatric nursing facility care reimbursement is adopted and shall be final effective September 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 8/14/07

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IX. Reimbursement for Pediatric Nursing Facility Care

Certain Medicaid-eligible children under the age of 21 years require facility-based nursing care and would be best served in a specialized pediatric nursing facility (that is, other than a traditional nursing facility). In order to qualify for this care, clients must be determined to require this level of care by the DMMA Medical Evaluation Team.

The level of reimbursement for each client will be based on the level of care determined by the DMMA Medical Evaluation Team. A per diem rate shall be established for each level of care based on reasonable costs for comparable DMMA services that have a demonstrated cost history and that serve a similar population, adjusted as necessary to reflect substantive differences in program operation. Rates for each level of care shall be computed for a base year and may be inflated each year thereafter using a nationally recognized inflation index. In addition to all nursing and operational costs, per diem rates are inclusive of all services, including but not limited to all therapies, supplies, non-custom durable medical equipment and over-the-counter (OTC) drugs required to treat the child's medical condition but do not include custom durable medical equipment for the individual use of a client or prescription ("legend product") drugs, which will be billed directly to Medicaid by the appropriate medical care provider in accordance with Medicaid policy.

Eligible recipients meeting the eligibility criteria for pediatric nursing facility care but who are being cared for in a facility other than a Pediatric Nursing Care Facility shall be reimbursed at the lowest appropriate Pediatric Nursing Facility rate after an assessment by the DMMA Medical Evaluation Team.

Eligible children in Pediatric Nursing Facilities located outside of Delaware are reimbursed at the lowest Delaware Pediatric Nursing Facility rate for each client category level to which they are assigned after being assessed by the DMMA Medical Evaluation Team.

In special cases, the State has the option to provide additional reimbursement if circumstances warrant, where such additional reimbursement is necessary to ensure that the appropriate level of care is given to assure that the child's health status is not jeopardized.

11 DE Reg. 312 (09/01/07) (Final)