



STATE OF DELAWARE
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MEMORANDUM

DATE: November 24, 2015

TO: Glyne Williams
Planning, Policy and Quality Unit

FROM: Daniese McMullin-Powell, Chairperson
DM-PLS.
State Council for Persons with Disabilities

RE: 19 DE Reg. 373 (DMMA Proposed EPSDT Mental Health Services Regulation)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to amend the Medicaid State Plan in the context of coverage and reimbursement methodology for rehabilitative mental health services. The proposed regulation was published as 19 DE Reg. 373 in the November 1, 2015 issue of the Register of Regulations. 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". 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. In response, DMMA proposes to add clarifying language to the Medicaid State Plan through the following:

- 1) defining the reimbursable unit of service;
- 2) describing payment limitations;
- 3) providing a reference to the provider qualifications; and
- 4) publishing the location of State fee schedule rates.

For unlicensed providers, DMMA proposes to adopt the same rate setting methodology applied to the PROMISE program.

The Division anticipates "no increase in cost on the General Fund" but a significant federal budget impact, i.e., \$837,865.32 in FFY17. The logical inference is that the changes will result in drawing down considerable federal matching funds.

SCPD has the following observations.

First, in §4.b., Attachment 3.1-A, Page 2c Addendum, the text categorically requires school provided services to be included in an IEP/IFSP. SCPD has the following two concerns in this context:

A. Many students with disabilities have Section 504 plans, not an IEP or IFSP. If CMS standards do not categorically require Medicaid services in schools to be listed in an IEP/IFSP, it would be preferable to remove this limitation.

B. There may be students with acute, but short-term disabilities (e.g. PTSD from child abuse) who will not qualify for classification under the IDEA. However, the school may wish to provide mental health services given the acute nature of the disability. It would be preferable to allow Medicaid billing under these circumstances.

Second, in Attachment 3.1-A, Page 2d Addendum, DMMA proposes to strike an authorization to cover “any other medical or remedial care provided by licensed medical providers as authorized under 42 CFR 440.60....” No rationale is provided for striking the provision. SCPD recommends retention.

Third, several sections require a covered service to be “face to face”. See, e.g., Attachment 3.1-A, Page 2e.5 Addendum, Psychosocial Rehabilitation; Attachment 3.1-A, Page 2e.7 Addendum, Crisis Intervention; Attachment 3.1-A, Page 2e.9 Addendum, Crisis Intervention and Family Peer Support. There is some “tension” between these categorical limitations and the DMMA State Plan Amendment authorizing any Medicaid-funded services to be provided via telemedicine. See 18 DE Reg. 227 (September 1, 2014).

Fourth, there are multiple sections requiring a provider to be at least 21 years old. See, e.g., Attachment 3.1-A, Page 2e.6 Addendum, Psychosocial Rehabilitation; Attachment 3.1-A, Page 2e.7 Addendum, Crisis Intervention; Attachment 3.1-A, Page 2e.10 Addendum, Family Peer Support; Attachment 3.1-A, Page 2e.16 Addendum, Direct Care Staff. This ostensibly violates the regulations to the federal Age Discrimination Act, 45 CFR Part 91, which limits age discrimination in federally funded programs. If an adult meets licensing, degree, or skill-set standards, age is not a sustainable basis to bar qualifying as a federally funded provider.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Mr. Stephen Groff
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

19reg373 dmma-EPST mental health services 11-25-15

The agency's proposal involves no change in the definition of those eligible to receive mental health services benefit under the Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, and the mental health services benefit available to eligible recipients remains the same.

Summary of Proposed Changes

The proposed Medicaid Rehabilitative Mental Health Services SPA clarifies coverage for outpatient and residential mental health services for children under the Medicaid program including care by unlicensed practitioners and Evidence-Based Practices (EBPs). If implemented as proposed, the coverage and reimbursement methodology plan amendments will accomplish the following, effective July 1, 2016:

Crisis intervention for children, unlicensed mental health practitioners (including Community Psychiatric Support and Treatment, Psychosocial Rehabilitation, and family peer support services) and all residential programs providing children's mental health services to reflect the current rehabilitative services not covered under other Medicaid authorities. The rates for these services will be set using the same modeled rate methodology as the Division of Substance Abuse and Mental Health (DSAMH) PROMISE (*Promoting Optimal Mental Health for Individuals through Supports and Empowerment*) fee schedule for unlicensed practitioners and programs. The rates may vary from PROMISE depending upon the need for adaptations to the rates for accessibility of services by children and differences in service delivery.

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 rehabilitative mental health services under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. Comments must 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-B) sections of the Medicaid State Plan that primarily address rehabilitative services 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.

Federal budget impact for federal fiscal years 2016 and 2017 is projected as follows:

Federal Fiscal Year 2016	Federal Fiscal Year 2017
\$195,802.39	\$837,865.32

DMMA PROPOSED REGULATION #15-21a

REVISION:

State/Territory: Delaware

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

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

With the exception of the EPSDT screens, all services covered under this section shall be medically necessary and shall be prescribed in a written treatment plan signed by a licensed practitioner within the scope of practice as defined under state law or regulations and documented in the student's IEP/IFSP. Services must be performed by qualified professionals operating within the scope of their practice under State law and regulations. The services described below, which are delivered by school providers, are also available in the community from other providers.

Services must be provided by qualified providers who meet the requirements of the regulations cited above in this section and other applicable state law and regulations as per 42 CFR 440.60. Unlicensed professionals may operate under the direction of a licensed practitioner who acts as supervisor and is responsible for the work, plans the work and methods, who regularly reviews the work performed and is accountable for the results. Supervision must adhere to the requirements of the practitioner's applicable licensing board. The licensed practitioner must co-sign documentation for all services provided by practitioners under his or her direction.

Providers must maintain all records necessary to fully document the nature, quality, amount and medical necessity of services furnished to Medicaid recipients.

~~3) Mental Health and Drug/Alcohol services approved and monitored through the Department of Services for Children, Youth and their Families. These include:~~

- ~~(a) Mental Health Outpatient Services~~
- ~~(b) Mental Health Case Management~~
- ~~(c) Professional Medical Services (i.e., neurologists, clinical psychologists, psychiatric social workers and other licensed medical providers)~~
- ~~(d) Psychiatric facility services~~
- ~~(e) Drug/Alcohol Rehabilitation Services.~~

DMMA PROPOSED REGULATION #15-21b

REVISION:

Attachment 3.1-A
Page 2e 2d Addendum

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LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

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

- 4) 3) Medical Equipment and Supplies per 42 CFR 440.70
- 5) 4) Orthotics and Prosthetics
- 6) 5) Chiropractic Services

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

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

1. Community Psychiatric Support and Treatment (CPST) Continued

- Enhancing community living skills specific to managing their own home including managing their money, medications, and using community resources and other self care requirements;
- Enhance resiliency/recovery-oriented attitudes such as hope, confidence and self-efficacy;
- Improving Self-Advocacy, Self-Efficacy & Empowerment skill building to -
 - Develop, link to and facilitate the use of formal and informal resources, including connection to peer support groups in the community;
 - Serve as an advocate, mentor or facilitator for resolution of issues; and,
 - Assist in navigating the service system.

Provider qualifications: Must have a Bachelor of Arts/Bachelor of Science (BA/BS), Master of Arts/Master of Science (MA/MS) or doctorate degree in social work, counseling, psychology or a related human services field to provide all aspects of CPST including counseling. Other aspects of CPST except for counseling may otherwise be performed by an individual with BA/BS degree in social work, counseling, psychology or a related human services field or four years of equivalent education and/or experience working in the human services field. Certification in the State of Delaware to provide the service includes criminal, professional background checks, and completion of a state approved standardized basic training program.

Service Utilization: Caseload size must be based on the needs of the individuals/families with an emphasis on successful outcomes and individual satisfaction and must meet the needs identified in the individual's treatment plan. The CPST provider must receive regularly scheduled clinical supervision from a person meeting the qualifications of a physician, nurse practitioner or licensed behavioral health practitioner (LBHP) as defined in 3.1-A Page 3 Addendum with experience regarding this specialized mental health service.

Attachment 3.1-A
Page 2e.5 Addendum

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

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

2. Psychosocial Rehabilitation (PSR) Services are designed to assist the individual compensate for or eliminate functional deficits and interpersonal and/or environmental barriers associated with his or her mental illness. Activities included must be intended to achieve the identified goals or objectives as set forth in the individual's individualized treatment plan. The intent of psychosocial rehabilitation is to restore the fullest possible integration of the individual as an active and productive member of his or her family, community, and/or culture with the least amount of ongoing professional intervention. These services provide the training and support necessary to ensure engagement and active participation of the youth in the treatment planning process and with the ongoing implementation and reinforcement of skills learned throughout the treatment process. The structured, scheduled activities provided by this service emphasize

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

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

3. Crisis Intervention Services Continued

Crisis Intervention is a face-to-face intervention and can occur in a variety of locations, including an emergency room or clinic setting, in addition to other community locations where the individual lives, works, attends school, and/or socializes.

Activities include:

- A. A preliminary assessment of risk, mental status, and medical stability and the need for further evaluation or other behavioral health services. Includes contact with the client, family members or other collateral sources (e.g., caregiver, school personnel) with pertinent information for the purpose of a preliminary assessment and/or referral to other alternative mental health services at an appropriate level.
- B. Short-term crisis interventions including crisis resolution and de-briefing with the identified Medicaid eligible individual.
- C. Follow-up with the individual, and as necessary, with the individual's caretaker and/or family members.
- D. Consultation with a physician or with other qualified providers to assist with the individual's specific crisis.

Provider Qualifications: Must be at least 21 years old and have an Associate of Arts/Associate of Science (AA/AS) degree in social work, counseling, psychology or a related human services field or two years of equivalent education and/or experience working in the human services field. Additionally, the provider must be at least three (3) years older than an individual under the age of 18. Certification in the State of Delaware to provide the service, which includes criminal and professional background checks, and completion of basic training in topics including recovery resiliency, cultural competency, safety, care coordination, risk management and suicide prevention, post-intervention, person-centered care, and de-escalation techniques.

Attachment 3.1-A
Page 2e.8 Addendum

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

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

3. Crisis Intervention Services Continued

The assessment of risk, mental status, and medical stability must be completed and/or approved with care recommended by a physician, nurse practitioner or licensed behavioral health practitioner (LBHP) as defined in 3.1-A Page 3 Addendum with experience regarding this specialized mental health service, practicing within the scope of his or her professional license. This assessment and recommendation is billed separately by the physician, nurse practitioner, or licensed behavioral health practitioner (LBHP) per 3.1-A Page 3 Addendum.

Service Utilization: All individuals who self-identify as experiencing a seriously acute psychological/emotional change which results in a marked increase in personal distress and which exceeds the abilities and the resources of those involved to effectively resolve it are eligible. An individual in crisis may be represented by a family member or other collateral contact who has knowledge of the individual's capabilities and functioning. Individuals in crisis who require this service may be using substances during the crisis. Substance use should be recognized and addressed in an integrated fashion as it may add to the risk increasing the need for engagement in care. The crisis plan developed by the unlicensed professional from the assessment and all services delivered during a crisis must be provided under the supervision of a physician, nurse practitioner, or licensed behavioral health practitioner (LBHP) as defined 3.1-A Page 3 Addendum with experience regarding this specialized mental health service and as such must be available at all times to provide back up, support, and/or consultation. Crisis services may require a medical clearance if substance use is suspected to ensure that the individual is not a danger to himself or others.

Crisis Intervention – Emergent is authorized up to (six) 6 hours per episode.

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Page 2e.9 Addendum

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

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

Crisis Intervention – Ongoing is authorized up to seventy-two (72) hours per episode. An episode is defined as the initial face to face contact with the individual until the current crisis is resolved, not to exceed seventy-two (72) hours without prior authorization by DHSS or its designee. The individual's chart must reflect resolution of the crisis, which marks the end of the current episode. If the individual has another crisis within seven (7) calendar days of a previous episode, it shall be considered part of the previous episode and not a new episode. Initial authorization can be exceeded when medically necessary through prior authorization.

4. Family Peer Support Services (FPSS) are an array of formal and informal services and supports provided to families caring for/raising a child who is experiencing social, emotional, medical, developmental, substance use and/or behavioral challenges in their home, school, placement, and/or community. FPSS provide a structured, strength-based relationship between a Family Peer Advocate (FPA) and the parent/family member/caregiver for the benefit of the child/youth.

Family is defined as the primary caregiving unit and is inclusive of the wide diversity of primary caregiving units in our culture. Family is a birth, foster, adoptive or self-created unit of people residing together or those with a significant relationship outside the home, consisting of adult(s) and/or child(ren), with adult(s) performing duties of parenthood/care-giving for the child(ren).

the opportunity for the youth to expand the skills and strategies necessary to move forward in meeting his or her personal life goals and to support his or her transition into adulthood. PSR is a face-to-face intervention with the individual present with all activities directly related to goals on the Medicaid individual's rehabilitation treatment plan. Services may be provided individually or in a group setting. PSR contacts may occur in community or residential locations where the individual lives, works, attends school, and/or socializes. PSR components include:

- A. Restoration, rehabilitation and support with the development of social and interpersonal skills to increase community tenure, enhance personal relationships, establish support networks, increase community awareness, develop coping strategies, and promote effective functioning in the individual's social environment including home, work and school.
- B. Restoration, rehabilitation and support with the development of daily living skills to improve self-management of the negative effects of psychiatric or emotional symptoms that interfere with the individual's daily living. Supporting the individual with enhancement and implementation of rehabilitative daily living skills and daily routines critical to remaining in home, school, work, and community.

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Page 2e.6 Addendum

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

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

2. Psychosocial Rehabilitation (PSR) Services Continued

- C. Assisting with the implementation of daily living skills so the individual can remain in a natural community location.
- D. Assisting the individual with effectively responding to or avoiding identified precursors or triggers that result in functional impairments.

Provider Qualifications: Must be at least 21 years old, and have a high school diploma or equivalent. Additionally, the provider must be at least three (3) years older than an individual under the age of 18 years. Certification in the State of Delaware to provide the service includes criminal, professional background checks, and completion of a state approved standardized basic training program.

Service Utilization: Prior authorization is required for all services. This authorization can be exceeded when medically necessary through prior authorization. The PSR provider must receive regularly scheduled clinical supervision from a professional meeting the qualifications of a physician, nurse practitioner or licensed behavioral health practitioner (LBHP) as defined in 3.1-A Page 3 Addendum with experience regarding this specialized mental health service.

- 3. Crisis Intervention (CI) services are provided to an individual who is experiencing a psychiatric crisis, designed to interrupt and/or ameliorate a crisis experience including a preliminary assessment, immediate crisis resolution and de-escalation, and referral and linkage to appropriate community services to avoid more restrictive levels of treatment. The goals of Crisis Intervention are symptom reduction, stabilization, and restoration to a previous level of functioning. All activities must occur within the context of a potential, or actual, or perceived psychiatric crisis.

Activities included must be intended to achieve the identified goals or objectives as set forth in the individual's treatment plan. FPSS is a face-to-face intervention, recommended by a physician, nurse practitioner or licensed behavioral health practitioner (LBHP), operating within the scope of his or her practice with the child, family/caregiver or other collateral supports.

Attachment 3.1-A
Page 2e.10 Addendum

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

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

4. Family Peer Support Services Continued

FPSS can be provided through individual and group face-to-face contact and can occur in a variety of settings including community locations where the individual lives, works, attends school, engages in services and/or socializes. Components of FPSS include:

- A. Outreach and Information: Empower families to make informed decisions regarding the nature of supports for themselves and their child.
- B. Engagement, Bridging and Transition Support: Provide a bridge between families and service providers, support a productive and respectful partnership by assisting the families to express their strengths, needs and goals.
- C. Self-Advocacy, Self-Efficacy and Empowerment: Coach and model shared decision-making and skills that support collaboration, in addition to providing opportunities for families to self-advocate.
- D. Parent Skill Development: Support the efforts of families in caring for and strengthening their child(ren)'s mental health, physical health, development and well-being.
- E. Community Connections and Natural Supports: Enhance the quality of life by supporting the integration of families into their own communities.

Provider Qualifications: A Certified Peer is an individual who has self-identified as a beneficiary or survivor of mental health and/or substance use disorder (SUD) services, is at least 21 years of age, and meets the qualifications set by the state including specialized peer specialist training, certification and registration. The training provided/contracted by DHSS or its designee shall be focused on the principles and concepts of peer support and how it differs from clinical support.

Attachment 3.1-A
Page 2e.11 Addendum

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

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

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

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

5. Rehabilitative Residential Treatment Continued

For treatment planning, the program must use a standardized assessment and treatment planning tool. The specific tools and approaches used by each program must be specified in the program description and are subject to approval by the State. There is at least a quarterly review of client's treatment plan; goals and progress toward goals must be completed.

In addition, the program must ensure that requirements for pretreatment assessment are met prior to treatment commencing. 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 program provides care to any of these categories of youth, the program 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.

For service delivery, the program must incorporate at least two (2) research-based approaches pertinent to the sub-populations of RRT clients to be served by the specific program. The specific research-based models to be used should be incorporated into the program description.

Provider 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). Direct care staff must be at least 21 years old, and have a high school diploma or equivalent, certification in the State of Delaware or the state in which the facility is located to provide the service, which includes criminal, professional background checks, and completion of a state approved standardized basic training program.

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

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

5. Rehabilitative Residential Treatment Continued