



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: October 25, 2013

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit

FROM: *JW/ps*
Jamie Wolfe, Vice-Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 395 [DMMA Prop. Medicaid State Plan Rehabilitative Services Reg.]

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 "rehabilitative services". The primary impetus is "to be responsive to the United States Department of Justice (DOJ) Settlement through the addition of new services and modifications to existing services." The proposed regulation was published as 17 DE Reg. 395 in the October 1, 2013 issue of the Register of Regulations. SCPD has the following observations.

First, in Attachment 3.1-A, Page 6a, the definition of "crisis intervention services" recites that it is "a face-to-face intervention". This may be unduly limiting and could prove problematic if DMMA contemplates provider billing for many of the "specific activities" listed in the same section, including contact with collateral sources for information, follow-up with the individual and family members, and consultation with a physician. The listed activities would often occur by phone and would not be "face-to-face".

Second, in Attachment 3.1-A, Page 6b, there are multiple references to "consumers". In contrast, there are also references to "Medicaid eligible individuals" or "individuals". The term "consumer" is not a common description of Medicaid beneficiaries. The Division may wish to adopt alternate and consistent language.

Third, in Attachment 3.1-A, Page 6c and Page 6d, the term "certified screener" is used. SCPD assumes this refers to a "credentialed mental health screener" as defined in Title 16 Del.C. §5122(a)(1). DMMA includes definitions of some terms (e.g. "Licensed Behavioral Health Practitioner" in Attachment 3.1-A, Page 3 Addendum) but there is no definition of "certified screener". Moreover, neither the above statute nor the applicable regulation (16 DE Admin

Code 6002) authorizes “certification” of screeners. Rather, they are “credentialed”. DMMA may wish to conform the reference to the terminology used in the statute and regulation and provide a definition of the term.

Fourth, in Attachment 3.1-A, Page 6d, DMMA refers to “Advanced Practice Nurse and employment under a formal protocol with a Delaware licensed physician”. This makes no sense grammatically and substantively. SCPD assumes the Division intended to refer to an advanced practice nurse operating “in collaboration with” a physician. See Title 24 Del.C. §1902(b)(1). There is no requirement that an APN be employed by a physician.

Fifth, in the same Attachment 3.1-A, Page 6d, the list of practitioners includes “Licensed Physician Assistant and employment under the delegated authority of a licensed physician.” This makes no sense grammatically and substantively. There is no requirement that an LPA be “employed” by a physician. See Title 24 Del.C. §1770. The LPA must be “supervised” by a physician. Moreover, this is the only reference to licensed physician assistant in the entire regulation. There are many lists of practitioners authorized to provide Medicaid-reimbursable services. LPAs are omitted from the lists. See, e.g., Attachment 3.1-A, Pages 6b, 6c, 6e, 6h, 6i; and Attachment 4.19-B, Page 3a Addendum. The Division may wish to assess whether LPAs should be included in some of these sections. Finally, the Division may wish to correct the grammar in the final bullet on Page 6d.

Sixth, there is an anomaly in the age standards within the regulation. A “certified peer” must be at least 21 years of age. See Attachment 3.1-A, Page 6e. Other unlicensed staff, including a “recovery coach”, can be 18 years of age. See Attachment 3.1-A, Page 6h and Page 6i. Moreover, page 6h includes “certified peers” as “unlicensed staff” who can be age 18. The references are inconsistent and the rationale for the divergent standards is not intuitive.

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.
Delaware Academy of Physician Assistants
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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