



STATE OF DELAWARE
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MEMORANDUM

DATE: March 30, 2010

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

FROM: Daniese McMullin-Powell, *DMMA* Chairperson
State Council for Persons with Disabilities

RE: 13 DE Reg. 1166 [DMMA Proposed Medicaid Prior Authorization 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 a Medicaid prior authorization "policy" published as 13 DE Reg. 1166 in the March 1, 2010 issue of the Register of Regulations. Specifically, the Division proposes to delete an existing policy with specific standards in favor of revising a general policy which then cross references 16 separate policy manuals (§1.21.6). SCPD has the following observations.

First, DMMA is required to issue its standards as regulations in conformity with the Administrative Procedures Act. See Title 29 Del.C. §§10161(b), 10111, and 10113. The preface to the proposal indicates that DMMA is amending "the Delaware Medical Assistance Program (DMAP) General Policy Provider Manual." At 1166. The preface then invites comments on "the proposed new regulations". Id. Unfortunately, it is, at best, unclear that the Manual is a regulation.

The Delaware Administrative Code is available on-line and contains an index for "Title 16 Health & Social Services" at <http://regulations.delaware.gov/AdminCode/title16/index.shtml>. The index lists DDDS, DLTCRP, DPH, DSS, and DSAMH, but not DMMA. The DSS site includes the DSSM (containing Medicaid regulations) but does not include DMAP provider manuals. If someone accesses the DHSS website, clicks DMMA, and then clicks "regulations", you are referred to the Administrative Code (which lacks a DMMA entry) and the DSSM. Only if you click "manuals", then "downloads", then "manuals" again on the DMMA website will you discover the 186-page General Provider Manual and thirty-one (31) policy provider specific manuals containing a host of prescriptive, substantive standards. See attachment.

There are multiple problems with this system:

A. The manuals should be adopted as regulations consistent with the APA since they contain many substantive standards. If they are regulations, they should appear in the Administrative Code.

B. The manuals are very difficult to locate without an extensive search.

C. If the manuals are not regulations, they can be changed without the benefit of publication for public comment.

Second, Section 1.21.6 contains a list of sixteen (16) contexts in which prior authorization is required. However, it also recites that the list is “not all-inclusive” and directs the reader to the 21 manuals for more specific information. This is not very informative or “user-friendly”. A Medicaid beneficiary will often be unable to determine whether prior authorization is required due to the “maze” of standards and the catch-all recital that the list is “not all-inclusive.” A provider who fails to obtain prior approval when required by these obtuse standards is not paid. See §1.21.2. The unpaid provider may then pressure the beneficiary to pay. Although an informed beneficiary could rely on §1.16.1 protections, this presupposes the beneficiary somehow locates the manual. Moreover, providers can nevertheless pressure payment through other means (e.g. threatening to “drop” as patient).

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

cc: Ms. Rosanne Mahaney
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council



Delaware Medical Assistance Program

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Provider Specific Billing Sections

[Manual Archives](#)

Name	Description
CMS-1500 Billing	CMS-1500 Billing Manual Revision Date: 10/16/07 Sections Revised 2.3 Diagnosis code directives simplified.
UB-04 Billing	UB04 Billing Manual Revision Date: 7/1/08 Section Revised: 2.11 Added information for billing HCPCS Drug Codes on Outpatient claims
Pharmacy Billing	Pharmacy Billing Manual Revision Date: 1/23/09 Section Revised: 2.3.2 Updates have been made to the NCPDP layouts. The updates are effective 3/2/09.
Dental Billing	Dental Billing Manual Revision Date: 02/12/09 Sections Revised: 2.3 Added required legal wording for use of ADA coding.

Common Sections

Name	Description
General Policy	DMAP policy applicable to all providers
General Billing	Billing guidelines applicable to all providers
EVS Section	Overview of the Electronic Verification System components

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Provider Specific Policy Sections

Name	Description
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ABI Waiver Provider Policy Specific	DMAP policy related to the ABI Waiver Program
AIDS Waiver Provider Policy Specific	DMAP policy related to the AIDS Waiver Program
Ambulance Provider Policy Specific	DMAP policy related to emergency transportation services
Ambulatory Surgical Provider Policy Specific	DMAP policy related to the Ambulatory and Free-Standing Surgical Centers
Assisted Living Provider Policy Specific	DMAP policy related to the Assisted Living Waiver Program
Clinic Provider Policy Specific	DMAP policy related to clinic services
Community Support Services Provider Policy Specific	DMAP policy related to community support services covered under the Rehab Option
Dental Policy Provider Specific	DMAP policy related to dental services
DME Policy Provider Specific	DMAP policy related to Durable Medical Equipment
Elderly/Disabled Provider Policy Specific	DMAP policy related to the Elderly and Disabled Waiver Program
EPSDT Policy Provider Specific	DMAP policy related to the Early Periodic Screening Treatment and Diagnosis Program
Extended Pregnancy Policy Provider Specific	DMAP policy related to the Smart Start Program
FSER Provider Specific	DMAP policy related to free standing emergency rooms
FQHC Provider Specific	DMAP policy related to federally qualified health centers
Home Health Policy Provider Specific	DMAP policy related to home health services
Hospice Policy Provider Specific	DMAP policy related to hospice services
Independent Laboratory Policy Provider Specific	DMAP policy related to clinical lab services
Independent Therapist Policy Provider Specific	DMAP policy related to services by an independent therapist
Inpatient Policy Provider Specific	DMAP policy related to services in an inpatient hospital setting
Long Term Care Policy Provider Specific	DMAP policy related to services defined as long term care
MR Waiver Provider Policy Specific	DMAP policy related to the Mentally Retarded Waiver Program
Optician Policy Provider Specific	DMAP policy related to optical services
Outpatient Policy Provider Specific	DMAP policy related to services in an outpatient hospital setting
Part C Birth to Three Provider Policy Specific	DMAP policy related to the Birth to Three Program
Pharmacy Policy Provider Specific	DMAP policy related to pharmacy services
Practitioner Provider Specific	DMAP policy related to providers defined as general practitioners
Prescribed Pediatric Extended Care Policy Provider Specific	DMAP policy related to the PPEC Program
Private Duty Nursing Policy Provider Specific	DMAP policy related to private duty nursing services
Rehabilitation Agency Provider Specific	DMAP policy related to rehabilitation agency providers and their services.

Renal Dialysis Facility Policy Provider Specific	DMAP policy related to renal dialysis providers and their services.
School Based Health Services Policy Provider Specific	DMAP policy related to the (EPSDT) School Based Health Services Program

Last updated: May 19, 2009