



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: October 24, 2016

TO: Ms. Kimberly Xavier, DMMA
Planning & Policy Development Unit

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 20 DE Reg. 291 [(DMMA Final Autism Disorder Services Regulation (10/1/16))]

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) final regulation regarding a State Medicaid Plan amendment which would establish coverage and reimbursement for treatment services for Medicaid recipients up to age 21 who have a diagnosis of Autism Spectrum Disorder. The final regulation was published as 20 DE Reg. 291 in the October 1, 2016 issue of the Register of Regulations.

As background, SCPD commented on the initial version of this proposed regulation in April, 2016. The Division of Medicaid & Medical Assistance then published a revised proposed regulation in July which incorporated some amendments prompted by the Councils' commentary. The Councils submitted three (3) comments on the July version of the proposed regulation. The attached August 19 DMMA memo summarizes the latest comments and the Division's response. The memo "mirrors" the DMMA analysis in the published regulation, 20 DE Reg. at 293-295. SCPD has the following observations.

First, the Council observed that substitution of "behavioral interventions" for "services to treat Autism Spectrum Disorder" was unduly limiting. In response, DMMA amended several references.

Second, the Council objected to a provision conferring unilateral control over caregiver participation/implementation of the service plan to a "practitioner". SCPD recommended adoption of a more collaborative sentence. The Division adopted the Council's suggested sentence verbatim.

Third, the Council identified a grammatical error which the Division corrected.

SCPD certainly appreciates the Division's consideration in adopting the Council's recommendations.

cc: Mr. Stephen Groff
Ms. Teresa Avery, Autism Delaware
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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**DELAWARE HEALTH
AND SOCIAL SERVICES**

Division of Medicaid & Medical Assistance

Telephone: (302) 255-9500

DATE: August 19, 2016

TO: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities
410 Federal Street, Suite 1
Dover, DE 19901

FROM: Glyne Williams, DMMA
Planning, Policy and Quality Unit

RE: 20 DE Reg. 11 [DMMA Proposed Medicaid Autism Services Disorder Regulation
(7/1/16)]

Thank you for your recent memorandum regarding the Division of Medicaid and Medical Assistance (DMMA) notice soliciting comments on its proposal to amend the Medicaid State Plan to address coverage and reimbursement of treatment services for beneficiaries up to age 21 with a diagnosis of autism spectrum disorder (ASD). The proposed regulation was published as 20 DE Reg. 11 in the July 1, 2016 issue of the Register of Regulations. DMMA has considered your comments and responds as follows.

State Council for Persons with Disabilities (SCPD) thanks DMMA for making changes to the proposed regulation based on its earlier comments. SCPD offered additional comments on the revised regulation which are summarized below.

Your comments are as follows:

(A) SCPD questions the change in wording from "services to treat Autism Spectrum Disorder" to "behavioral interventions" because you believe that the revised wording is more limiting in scope. SCPD also indicates that ASD treatment is not limited to modification of behavior.

Agency Response: It was not DMMA's intention to limit the scope of ASD services by using the words "behavioral interventions," but we can understand why this language may appear to be more limiting. Accordingly, DMMA has changed the reference to "interventions" to "services" or "assessments and services" where appropriate. Council is correct that ASD treatment is not limited to modification of behavior. However, it was the intent of this SPA to establish and clarify coverage of behavioral services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of ASD. These services addressing behaviors have not heretofore been well articulated in the State Plan, and have been added to augment, not replace, other services already covered under the State Plan. The practitioner types enumerated in the proposed regulation are consistent with the delivery of behavioral health services. However, non-behavioral ASD treatment services, such as therapies, physician services, and other licensed practitioner services are already, and continue to be, covered under other sections of the Medicaid State Plan.

(B) SCPD objected to language in the Plan that the council believes confers unilateral control over caregiver participation in the implementation of a treatment plan to a "practitioner". SCPD proposed alternative language that indicates a more collaborative approach to determining the level of caregiver participation.

Agency Response: DMMA acknowledges this comment and has adopted the alternative language proposed. Page 6 Addendum 1e of Attachment 3.1-A, (c) ASD Treatment Services, (12) now reads:

"Include recommendations for training, support, and participation of the parent/guardian, and other persons chosen by the child as appropriate, to benefit the Medicaid eligible child, as described in the treatment plan. The expected level of participation of all caregivers shall be included in the Behavior Support Plan or ABA Treatment Plan. This participation also acts as training of the caregiver for the benefit of the child and enables the caregiver to be able to reinforce the services for the child in a clinically effective manner."

(C) SCPD pointed out a grammatical error on page 20 of the proposed regulation.

Agency Response: DMMA has made this correction.

DMMA is appreciative of the qualified endorsement by SCPD. DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given. DMMA will publish this regulation as final in the October 1, 2016 Delaware Register.

Cc: Stephen M. Groff, Director, DMMA