



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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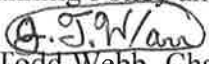
The Honorable John Carney
Governor

John A. McNeal
Director

MEMORANDUM

DATE: March 29, 2019

TO: Ms. Nicole Cunningham, DMMA
Planning Policy and Development Unit

FROM: 
J. Todd Webb- Chairperson
State Council for Persons with Disabilities

RE: 22 DE Reg. 728 [Proposed Regulation on Providing EPSDT Services to Children in IMDs (March 1, 2019)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Medicaid and Medical Assistance's (DMMA) regulation on providing Early Periodic Screening, Diagnostic, and Treatment [EPSDT] services to children in IMDs. This proposed regulations was published as 22 DE Reg. 728 in the March 1, 2019 issue of the Register of Regulations. SCPD endorses the proposed regulations and has the following observations.

The Division of Medicaid and Medical Assistance is proposing to amend the Medicaid State Plan to "insure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary services." 22 DE Reg. 728 (Prop.). These changes are to meet requirements of amendments to the Social Security Act by the 21st Century Cures Act ("the Cures Act"), Pub.L. 114 - 255 114 - 255.

The Cures Act was enacted by Congress in December 2016. Section 12005 of the Cures Act requires that children under the age of 21 who are receiving care in inpatient psychiatric settings have access to all EPSDT services. According to the informational bulletin issued by the Center for Medicaid and CHIP Services (CMCS, part of the Centers for Medicare and Medicaid Services) on June 20, 2018, states are not required to amend their state plans to comply with this provision of the Cures Act but must ensure that all requirements described in the guidance are met effective January 1, 2019. See CMCS Bulletin, p. 3.

The purpose of the EPSDT benefit is “providing early and periodic screening and diagnosis of eligible Medicaid beneficiaries under age 21 to ascertain physical and mental defects, and providing treatment to correct or ameliorate defects and chronic conditions found.” 42 U.S.C. § 441.50. Historically individuals under 21 have been one of the exceptions to the broader “IMD exclusion” under 1905(a) of the Social Security Act, which prohibits the use of Medicaid payment for services in institutions for mental disease, commonly referred to as “IMDs.” Within this category, non-hospital facilities providing psychiatric care to individuals under 21 are generally referred to as psychiatric residential treatment facilities (PTRFs). Prior to the Cures Act, outside of the care provided by the facility, other services reimbursable by Medicaid for children in PTRFs were limited. Reimbursement was generally limited to items or services that were “included by the state as part of the rate paid to the facility for care” or were otherwise “authorized under the child’s plan of care” and provided under an arrangement with the PTRF. CMCS Bulletin, p. 2. In effect this meant coverage for services that would otherwise be covered by the EPSDT benefit for children residing elsewhere were not reimbursable for children residing in a PTRF. See CMCS Bulletin, p. 2.

The Cares Act’s amendments require that children under 21 are guaranteed access to any EPSDT items or services, regardless of the provider of the services or whether the item or service is part of the individual’s plan of care at the IMD. Accordingly, DMMA’s proposed amendments to the Medicaid State Plan make clear that PTRFs will be reimbursed through EPSDT for any needed medical service provided on or after January 1, 2019, regardless of whether they are included in the PTRF’s per diem reimbursement rate or already identified in the child’s treatment plan.

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

cc: Mr. Stephen Groff, DMMA
Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

22reg728 - DMMA Providing EPSDT Services to Children 3-29-19