DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 and 29 Delaware Code, Section 7931
(31 **Del.C.** §512 & 29 **Del.C.** §7931)

PROPOSED

PUBLIC NOTICE

DSSM 80000 Authorization and Regulation of Medicaid/CHIP Accountable Care Organizations

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Division of Social Services Manual (DSSM) regarding Accountable Care Organizations, specifically, to set standards for the authorization and regulation for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2019. Please identify in the subject line: Authorization and Regulation of Medicaid/CHIP Accountable Care Organizations.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Division of Social Services Manual (DSSM) regarding Accountable Care Organizations, specifically, to set standards for the authorization and regulation for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs.

Statutory Authority

- 42 CFR 438.6(c)(i)
- 29 **Del.C.** §7931(c)

Background

Four years ago, the Centers for Medicare & Medicaid Services (CMS) awarded Delaware a State Innovation Model grant to achieve five state-defined objectives, one of which was to engage payers to move health care payment to a pay-for-value model based on total cost of care budgeting. Since that time, and following considerable intensive stakeholder work, it has become apparent there are limits to the scope and pace of progress through voluntary adoption of payment and delivery reform by payers and providers. In states that have initiated or implemented reform, state government and stakeholders have collaborated to create mechanisms that bolster and accelerate system transformation.

In its 2017 Report to the Delaware General Assembly on Establishing a Health Care Benchmark, DHSS identified five strategies to advance the adoption of value-based payment (VBP) models, one of which was the implementation of total cost of care alternative payment models within Medicaid managed care contracts and the State Employee Benefit Contracts. In 2018, DHSS increased its focus on alternative payment strategies by adding VBP requirements to its Medicaid managed care contracts for calendar year 2018. Furthermore, in 2019, DHSS released a request for information on the design and development of Medicaid Accountable Care Organizations (ACOs) in Delaware.

In an effort to improve health outcomes for Medicaid patients, lower health care costs, and increase provider accountability for quality and cost, Delaware DHSS is now creating a Medicaid ACO program in which ACOs will work with Medicaid managed care organizations (MCOs) as part of their network providers. An ACO is a group arrangement in which health care practitioners (e.g., hospitals, physicians, and other health care providers) agree to assume responsibility for the quality, outcomes and cost of health care for a designated group of Medicaid and/or CHIP beneficiaries.

Summary of Proposal

Purpose

The purpose of these regulations is to set forth standards for the authorization and regulation of ACOs for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs.

Summary of Proposed Changes

Effective for services provided on and after February 11, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 80000 of Division of Social Services Manual (DSSM) regarding Accountable Care Organizations, specifically, to set standards for the authorization and regulation for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs.

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 on the proposed regulation. Comments must be received by 4:30 p.m. on December 31, 2019.

Provider Manuals and Communications Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: https://medicaid.dhss.delaware.gov/provider

Fiscal Impact

ACOs will be required to contract with MCOs; will not be contracting with DHSS. DHSS only reviews and authorizes them to contract with the MCOs.

80000 Authorization and Regulation of Medicaid/CHIP Accountable Care Organizations

1.0 Authority and Purpose

1.1 This regulation is promulgated pursuant to Section 7931(e) of Title 29, Delaware Code.

1.2 Pursuant to 42 CFR 438.6(c)(1), states may require a Medicaid Managed Care Organization (MMCO) to implement value-based purchasing (VBP) models for provider reimbursement and to participate in Medicaid-specific delivery system reform initiatives.

1.3 Pursuant to 29 **Del.C.** §7931(c), the Division of Medicaid and Medical Assistance ("DMMA"), which is under the direction and control of the Secretary of the Department of Health and Social Services ("DHSS"), is responsible for the performance of all of the powers, duties, and functions specifically related to Medicaid. This includes regulation and administration of MMCO activity, such as contracting with Accountable Care Organizations (ACOs).

1.4 The purpose of these regulations is to set forth standards for the authorization and regulation of ACOs for Medicaid/CHIP beneficiaries in the State of Delaware to improve health outcomes while reducing costs through VBP arrangements which include downside financial risk for participating ACOs.

2.0 Definitions

"**Accountable Care Organization**" or "**ACO**" means a group arrangement in which health care practitioners (e.g., hospitals, physicians, other health care providers) agree to assume responsibility for the quality, outcomes and cost of health care for a designated group of Medicaid and/or CHIP beneficiaries.

"**ACO Contract**" means a contract formed between an ACO and an MMCO that includes payment via a value-based purchasing arrangement as defined by DHSS.

"**ACO Requirements**" means standards developed by DHSS outlining the qualifications needed for an ACO to participate in the program.

"**Value-Based Purchasing**" or "**VBP**" means a model for provider reimbursement that promotes value over volume, such as a shared savings or risk-based arrangement.

3.0 Formation and Existence

3.1 Each ACO seeking approval from DHSS shall demonstrate to the satisfaction of DHSS that:

3.1.1 The ACO is duly formed and validly existing under the laws of the State of Delaware.

3.1.2 The ACO has the necessary corporate or company power to perform its obligations under the ACO Requirements and to enter into ACO Contracts with MMCOs.

3.1.3 The ACO has taken all necessary corporate or company action to authorize the execution, delivery, and performance of ACO Contracts.

3.1.4 The execution and delivery of ACO Contracts, and the performance of the ACO's obligations under the ACO Contract, will not result in a violation of any provision of the ACO's certificate of incorporation, bylaws, or other governing instrument or document whether at the State or Federal level.

4.0 Duties and Obligations

4.1 Each ACO seeking approval from DHSS shall demonstrate to the satisfaction of DHSS that:

4.1.1 The ACO has an organizational/governance structure that will have sufficient authority to ensure the delivery of high quality, cost-effective care to Medicaid/CHIP beneficiaries, as determined by DHSS.

4.1.2 The ACO has demonstrated the capability to offer a comprehensive array of coordinated primary care services, specialty care services, and the ability to provide access, either directly or through affiliations/ contractual relationships, to behavioral health, acute care, community and social support, long term care, and oral health providers, and other organizations as determined by DHSS or as required in the ACO Contract.

4.1.3 The ACO has a plan to support care coordination across the continuum of care, including services that address health-related social needs, within and outside the ACO.

4.1.4 The ACO has an electronic health record ("EHR") system in place and has the capability to exchange data with MMCOs and DHSS, and other designated entities such as the Delaware Health Information Network (DHIN).

4.1.5 The ACO has a plan in place to monitor, report, and improve patient health outcomes and quality.

4.1.6 The ACO attests that it will not limit beneficiary provider choice and access to providers that are outside the ACO.

4.1.7 Any additional requirements that DHSS determines necessary to meet the goals of improving health outcomes and patient experience, while reducing costs.

5.0 Authorization

5.1 If upon completion of its application, DHSS finds that the ACO has met the requirements therefor under this regulation, DHSS shall authorize the ACO to enter into an ACO Contract with the Delaware MMCOs for purposes of the Delaware Medicaid/CHIP managed care program.

5.2 DHSS's authorization of an ACO shall be limited to the ACO's business related to the Delaware Medicaid/ CHIP managed care program and shall not authorize the ACO to conduct business that would otherwise require licensure under Title 18 of the Delaware Code.

5.3 The ACO shall at all times comply with the requirements set forth under this regulation. DHSS may immediately revoke the ACO's authorization in accordance with its policies or as a result of a breach thereof by the ACO, or upon the determination of DHSS that the ACO is no longer able to meet the duties and obligations