

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

**FINAL**

**ORDER**

**Chiropractors' Services**

IN THE MATTER OF:

REVISION OF THE REGULATION  
OF DELAWARE'S  
TITLE XIX MEDICAID STATE PLAN  
Attachment 3.1-A Page 3,  
Attachment 3.1-A Page 3 Addendum, and  
Attachment 4.19-B Page 26

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding Medical and other types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for chiropractors' services*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the December 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 2, 2017 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**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 the Title XIX Medicaid State Plan regarding Medical and other types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for chiropractors' services*.

**Statutory Authority**

- §1905(a)(6) of the Social Security Act, *Medical care furnished by licensed practitioners*
- §1905(g) of the Social Security Act, *State plan provision of chiropractors' services*
- 42 CFR §440.60, *Medical or remedial care provided by licensed practitioners*
- 42 CFR §440.225, *State plan optional services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- 42 CFR §440, *Subpart C, Benchmark benefit and benchmark equivalent coverage*

**Background**

As a result of the Affordable Care Act, states were required to expand Medicaid eligibility to low-income adults beginning January 1, 2014, under section 1937 of the Social Security Act (hereafter referred to as the Act). Enacted as part of the Deficit Reduction Act of 2005, section 1937 of the Act provides states with significant flexibility to design Medicaid benefit packages under the State plan. As a result, State Medicaid programs have the option to provide certain groups of Medicaid enrollees with "benchmark" or "benchmark-equivalent" coverage based on one of three commercial insurance products, or a fourth, "Secretary-approved" coverage option through an Alternative Benefit Plan. "Benchmark" means that the benefits are at least equal to one of the statutorily specified benchmark plans; "benchmark-equivalent" means that the benefits include certain specified services, and the overall benefits are at least actuarially equivalent to one of the statutorily specified benchmark coverage packages. These section 1937 benchmark options are minimum standards and states can augment coverage with additional benefits.

In May of 2014, the Center for Medicaid Services (CMS) approved Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) submitted Delaware's Alternative Benefit Plan (ABP) with an

effective date of January 1, 2014. The ABP included benchmarks and benchmark equivalent services reflective of the current Medicaid State Plan. Additionally, DMMA added chiropractors' services to the ABP for this newly eligible low-income, adult population. Previously, Delaware's Medicaid State Plan only covered chiropractors' services for children under the authority of 42 CFR §441 Subpart B, Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) of Individuals under Age 21. However, DMMA would like to extend coverage of chiropractors' services to all Delaware Medicaid beneficiaries in an effort to increase the quality of care, as well as reduce long-term costs of treating chronic pain.

Pain is a leading cause of disability and a major contributor to healthcare utilization. Musculoskeletal pain disorders include a wide range of acute and chronic injuries or inflammatory conditions that cause pain in the body's joints; ligaments; muscles; nerves; tendons; and structures that support the limbs, neck, and back. Conventional medical treatment for chronic musculoskeletal pain (e.g., nonsteroidal anti-inflammatory drugs and surgery) and use of opioids often lack long-term benefit or subject patients to other risks, such as medication side effects and opioid dependency. It is also costly to the United States, not just in terms of health care expenses and disability compensation, but with respect to lost productivity and employment, reduced incomes, lost school days, and decreased quality of life. According to the National Health Statistics Report, No. 98, issued on October 12, 2016, "Use of Complementary Health Approaches for Musculoskeletal Pain Disorders Among Adults: United States, 2012," there is increasing clinical trial evidence for the efficacy of some complementary health approaches in treating specific musculoskeletal pain disorders, such as chiropractic care and other functional medicine techniques.

## **Summary of Proposal**

### *Purpose*

The purpose of this proposed regulation is to expand coverage and allow reimbursement for chiropractors' services for all Medicaid eligible individuals.

### *Summary of Proposed Changes*

Effective for services provided on and after January 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1-A Page 3, Attachment 3.1-A Page 3 Addendum, and 4.19-B Page 26 of the Medicaid State Plan to expand coverage and allow reimbursement for chiropractors' services for all Medicaid eligible individuals.

### *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 to the establish coverage and reimbursement methodologies for chiropractors services. Comments must be received by 4:30 p.m. on December 31, 2016.

### *Centers for Medicare and Medicaid Services Review and Approval*

The provisions of this state plan amendment (SPA) relating to coverage and payment methodology for services are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

### *Provider Manuals Update*

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

## **Fiscal Impact**

The expansion of chiropractic services is proposed as a cost effective alternative to traditional pain treatment and management services. There is no estimated fiscal impact.

## **Summary of Comments Received with Agency Response and Explanation of Changes**

No public comments were received for this regulation.

The Department finds that the proposed changes as set forth in the December 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Medical and other types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for chiropractors' services*, is adopted and shall be final effective February 11, 2017.

Rita M. Landgraf, Secretary, DHSS  
1/17/2017

**DMMA FINAL REGULATION APA 17-007a  
REVISION**

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

AMOUNT, DURATION AND SCOPE OF MEDICAL  
AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

b. Optometrists' Services

- ☒ Provided:      ☐ No Limitations      ☒ With Limitations\*  
☐ Not Provided

c. Chiropractors' Services

- ~~☐ Provided:      ☐ No Limitations      ☐ With Limitations\*~~  
~~☒ Not Provided~~  
☒ Provided:      ☐ No Limitations      ☒ With Limitations\*  
☐ Not Provided

d. Other Practitioners' Services

- ☒ Provided: Identified on attached sheet with description of limitations, if any.  
☐ Not Provided

7. Home Health Services

a. Intermittent or part-time nursing services provided by a home health agency or by a registered nurse when no health agency exists in the area.

Provided:      ☒ No Limitations      ☐ With Limitations\*

b. Home health aide services provided by a home health agency.

Provided:      ☒ No Limitations      ☐ With Limitations\*

c. Medical supplies, equipment, and appliances suitable for use in the home.

Provided:      ☒ No Limitations      ☐ With Limitations\*

\* Description provided on attachment.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State: DELAWARE  
LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

6.b. Optometrists' Services

These services are reimbursed:

1. For Medicaid-eligible Individuals under age 21, as an EPSDT service (routine eye exams including refraction and provision of eyeglasses); or
2. For Medicaid-eligible individuals over age 21, medically necessary diagnostic and treatment services provided under the scope of optometric practice in State law for symptomatic Medicaid recipients (i.e. disease, injury, illness, or other medical disorder of the eyes), excluding routine eye exams or refractions related to the provision of eyeglasses and excluding coverage of eyeglasses.

6.c. Chiropractors' Services

The following chiropractic services are reimbursed:

1. One (1) office visit per year;
2. One (1) set of X-rays per year, and
3. Twenty (20) manipulations per year.

Provider Qualifications: Qualified chiropractors must be licensed per Delaware licensure requirements codified in Chapter 7, Title 24 of the Delaware Administrative Code, Professions and Occupations.

6.d. Other Practitioners' Services

- 6.d.1 Licensed Midwife services are services permitted under scope of practice authorized by state law for the licensed midwife.
- 6.d.2 Licensed Behavioral Health Practitioner: A licensed behavioral health practitioner (LBHP) is a professional who is licensed in the State of Delaware to diagnose and treat mental illness or substance abuse acting within the scope of all applicable state laws and their professional license. A LBHP includes professionals licensed to practice independently:
  - Licensed Psychologists
  - Licensed Clinical Social Workers (LCSWs)
  - Licensed Professional Counselors of Mental Health (LPCMHs)
  - Licensed Marriage and Family Therapists (LMFTs)

**DMMA FINAL REGULATION APA 17-007c  
REVISION**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES (Continued)

28. CHIROPRACTIC SERVICES

~~Chiropractic Services are defined per Attachment 3.1-I, New Adult Alternative Benefit Plan, page 5 of the ABP5, are available to the Medicaid low-income new adult population under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act.~~

~~Chiropractic Providers are identified in the State Plan, Attachment 3.1-I, page 5 of the ABP5.~~

Chiropractic services and qualified providers are defined per Attachment 3.1-A, Page 3 Addendum.

The reimbursement methodology is a “fee schedule” methodology. Under the fee schedule methodology, reimbursement services for chiropractic services is made at the lower of the provider’s billed charge for the services, the Resource Based Relative Value Scale (RBRVS) methodology used for physicians (which Delaware Medicaid currently pays at 98% of the Medicare rate), or the maximum allowable fee for chiropractic services under the Delaware Medicaid provider reimbursement fee schedule. The reimbursement rates are effective for dates of service on or after April 1, 2014.

Fee schedules for chiropractic services are available on the Delaware Medical Assistance Program (DMAP) website at <http://www.dmap.state.de.us/downloads/feeschedules.html>.

Except as otherwise noted in the Medicaid State Plan, State-developed fee schedule rates are the same for both governmental and private providers.

~~This payment methodology applies to services specified in the Delaware Alternative Benefit Plan.~~

**20 DE Reg. 636 (02/01/17) (Final)**