

**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**

**PRTFs – Provision of EPSDT Services**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Psychiatric Residential Treatment Facilities (PRTFs), specifically, *to ensure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary 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 March 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 1, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after July 1, 2019 Delaware Health and Social Services/ Division of Medicaid and Medical Assistance proposes to amend Title XIX Medicaid State Plan regarding Psychiatric Residential Treatment Facilities (PRTFs), specifically, *to ensure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary services*.

**Background**

The Medicaid program’s benefit for enrolled children and adolescents is known as the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit. EPSDT provides a comprehensive array of prevention, diagnostic, and treatment services for low-income individuals under age 21 as specified in section 1905(r) of the Act.

Previously, covered services not provided by or in the psych under 21 hospital or facility could be reimbursed when they were 1) provided to a child residing in an inpatient psychiatric hospital or facility, 2) authorized under the child’s plan of care, and 3) provided by individual practitioners or suppliers under an arrangement with the hospital or facility. The Section 12005 of the Cures Act requires that individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to the full range of EPSDT services. A plan of care is not necessary to authorize any other medically necessary services and Medicaid services may be provided by community practitioners not affiliated with the facility.

**Statutory Authority**

Section 12005(a) of the 21<sup>st</sup> Century Cures Act

**Purpose**

*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 were to have been received by 4:30 p.m. on April 1, 2019.

*Centers for Medicare and Medicaid Services Review and Approval*

The provisions of this state plan amendment (SPA) 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 and Communications Update*

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal 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 DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

### Fiscal Impact Statement

There is no fiscal impact associated with this policy.

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

The following summarized comments were received:

**Comment:** Two commenters endorsed the proposed changes to the Medicaid State Plan to insure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary services.

**Agency Response:** DMMA appreciates the endorsement.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Governor's Advisory Council for Exceptional Citizens; and
- State Council for Persons with Disabilities.

### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Psychiatric Residential Treatment Facilities (PRTFs), specifically, *to ensure individuals under 21 in qualified inpatient psychiatric hospitals and facilities are guaranteed access to necessary services*, is adopted and shall be final effective July 11, 2019.

6/10/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary,  
DHSS

FINAL

ATTACHMENT 4.19-A.3

### STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT State: DELAWARE

#### METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR UNDER AGE 21

##### 1. Psychiatric Residential Treatment Facility (PRTF) Reimbursement

Reimbursement for services are based upon a Medicaid fee schedule established by the State of Delaware.

Psychiatric residential treatment facilities will be reimbursed the lesser of:

- The Delaware Medicaid per diem reimbursement rate for activities in the per diem plus additional fee-for-service reimbursement using the Delaware Medicaid fee schedule for ~~activities on the plan of care~~ any other medical services under 1905(a) of the Social Security Act that children under age 21 who are residing in a PRTF are determined to need in order to correct or ameliorate health conditions, regardless of whether such services are identified in the child's plan of care, but not in the per diem PRTF reimbursement rate;
- The facility's usual and customary charge to privately insured or private-pay beneficiaries; or
- If an out of state facility, the lesser of a negotiated per diem reimbursement rate, the facility's usual and customary charge, or the Delaware Medicaid per diem rate. For ~~plan of care activities not included in the per diem~~ any other medical services under 1905(a) of the Social Security Act that children under age 21 who are residing in a PRTF are determined to need in order to correct or ameliorate health conditions, regardless of whether such services are identified in the child's plan of care, that are not included in the per diem PRTF reimbursement rate, additional fee-for-service reimbursement using the Delaware Medicaid fee schedule is available.

Except as otherwise noted in the State Plan, the State-developed fee schedule is the same for both governmental and private individual providers and the fee schedule and any annual/periodic adjustments to the fee schedule are published in the Delaware *Register of Regulations*. The Agency's fee schedule rate

was set as of July 1, 2016 and is effective for services provided on or after that date. All rates are published on the Delaware Medical Assistance Program (DMAP) website at <http://www.dmap.state.de.us/downloads/feeschedules.html> <https://medicaidpublications.dhss.delaware.gov/dotnetnuke/search?EntryId=17>

- A. Community-Based Delaware Medicaid per diem PRTF reimbursement rate includes the following covered inpatient psychiatric residential treatment facility (PRTF) activities for individuals under twenty-one years of age ~~when included on the patient's inpatient psychiatric active treatment plan of care:~~

- a. Behavioral Health care by staff who are not physicians
- b. Occupational Therapy / Physical Therapy / Speech Therapy
- c. Laboratory
- d. Transportation
- e. ~~Dental~~
- f. ~~Vision~~
- g. Diagnostics/radiology (x-ray)

~~Starting on 1/1/2019, dental, vision, laboratory, and diagnostics/radiology are excluded from this rate and paid through EPSDT under authority of the 21st Century Cures Act.~~

No. SPA# _____	Approval Date _____
TN Supersedes	
TN No. SPA# <u>17-012</u>	Effective Date _____

FINAL

ATTACHMENT 4.19-A.3.1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES  
– INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21 CONTINUED

1. Psychiatric Residential Treatment Facility (PRTF) Reimbursement (continued)
- B. Hospital-Based Delaware Medicaid per diem PRTF reimbursement rate includes the following covered inpatient psychiatric residential treatment facility (PRTF) activities for individuals under twenty-one years of age ~~when included on the patient's inpatient psychiatric active treatment plan of care:~~
- a. Behavioral Health care by staff who are not physicians
  - b. Occupational Therapy / Physical Therapy / Speech Therapy
  - c. Laboratory
  - d. Transportation
  - e. Dental
  - f. Vision
  - g. Diagnostics/radiology (x-ray)
- C. Pharmaceuticals and physician activities provided to the youth in a PRTF, when on the active treatment plan of care, are components of the Medicaid covered PRTF service. These activities will be paid directly to the treating pharmacy or physician, using Medicaid pharmacy and physician fee schedule rates excluded from the psychiatric residential treatment facility (PRTF) State of Delaware Medicaid per diem reimbursement rates.
- D. ~~Medical services under 1905(a) of the Social Security Act that are listed on the inpatient psychiatric active treatment plan and~~ Any other medical services under 1905(a) of the Social Security Act that children under age 21 who are residing in a PRTF are determined to need in order to correct or ameliorate health conditions, regardless of whether such services are identified in the child's plan of care, that are excluded in A, B, or C above, shall be paid directly to the treating provider, using

Medicaid fee schedule rates. Such services are excluded from the psychiatric residential treatment facility (PRTF) State of Delaware Medicaid per diem reimbursement rates.

- E. The Medicaid PRTF per diem reimbursement rates shall also exclude ~~such costs, other than pharmaceutical, physician, and other medical services that could be covered under 1905(a) of the Social Security Act on the inpatient psychiatric active treatment plan~~ any additional costs that are unrelated to providing inpatient psychiatric care for individual less than twenty-one (21) years of age including, but not limited to the following:

- 1) Group education, including elementary and secondary education.
- 2) Medical services that are not listed in Items A, B, and C A or B above.
- 3) Activities not on the inpatient psychiatric active treatment plan.

2. Psychiatric Residential Treatment Facility (PRTF) Reimbursement Rate Methodology

- A. ~~Medicaid certified providers will be reimbursed for covered PRTF services using a Medicaid per diem reimbursement rate consistent with the principles in section 1 above. The Medicaid per diem reimbursement rate paid to the provider will be determined by the following service criteria:~~

- 1) ~~PRTF specializing in sexually-based treatment programs.~~
- 2) ~~PRTF specializing in substance use disorder treatment programs.~~
- 3) ~~PRTF treating children with mental health diagnoses.~~

No. SPA# \_\_\_\_\_  
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TN No. SPA# 17-012

Approval Date \_\_\_\_\_

Effective Date \_\_\_\_\_

AMENDED

ATTACHMENT 4.19-A.3.2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES  
– INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21 CONTINUED

2. Psychiatric Residential Treatment Facility (PRTF) Reimbursement Rate Methodology (continued)

- A. Medicaid certified providers will be reimbursed for covered PRTF services using a Medicaid per diem reimbursement rate consistent with the principles in section 1 above. The Medicaid per diem reimbursement rate paid to the provider will be determined by the following service criteria:

- 1) PRTF specializing in sexually-based treatment programs.
- 2) PRTF specializing in substance use disorder treatment programs.
- 3) PRTF treating children with mental health diagnoses.

The Delaware Medicaid PRTF fee development methodology will build fees considering each component of provider costs as outlined below. These reimbursement methodologies will produce rates sufficient to enlist enough providers so that services under the State Plan are available to beneficiaries at least to the extent that these services are available to the general population, as required by 42 CFR 447.204. These rates comply with the requirements of Section 1902(a)(3) of the Social Security Act and 42 CFR 447.200, regarding payments and are consistent with economy, efficiency, and quality of care. Provider enrollment and retention will be reviewed periodically to

ensure that access to care and adequacy of payments are maintained.

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**23 DE Reg. 46 (07/01/19) (Final))**