

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

**FINAL**

**ORDER**

**1915(c) Home and Community-Based Services Waiver**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) / Division of Developmental Disabilities Services (DDDS) initiated proceedings to notify the public that a 1915(c) Home and Community-Based Services Waiver (HCBS) waiver amendment has been submitted to the Centers for Medicare and Medicaid Services (CMS) to add a new core service, *Group Supported Employment*. 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 August 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2013 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 proposed provides notice to the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Services (DMMA)/Division of Developmental Disabilities Services (DDDS) has submitted a 1915(c) Home and Community-Based Services (HCBS) Waiver amendment to the Centers for Medicare and Medicaid Services (CMS) to add a new core service, *Group Supported Employment*.

**Statutory Authority**

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*

**Background**

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The waiver to provide home and community-based services to developmentally disabled adults was developed by the Division of Developmental Disabilities Services (DDDS) and the Division of Social Services (DSS) in 1982, received approval from the Center for Medicare and Medicaid Services (CMS), and became effective on July 1, 1983. The waiver includes support services necessary to maintain individuals in the community as an alternative to institutionalization. The cost of the Home and Community-Based Services Waiver for the Developmentally Disabled (HCBS/DD) shall not exceed the cost of care of the Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

DDDS is the agency that has primary responsibility for administering the HCBS/DD waiver as well as providing, or contracting for the provision of, most of the services. Providers of Pre-Vocational Training, Supported Employment and Residential Habilitation services are certified by DDDS and contract directly with the Delaware Medical Assistance Program (DMAP).

**Summary of Proposal**

Currently, the Division of Developmental Disabilities Services (DDDS) 1915(c) Home and Community Based Services (HCBS) Medicaid waiver allows consumers to receive Supported Employment with a one-to-one staffing ratio. Many states also allow Supported Employment to be provided in a group to individuals who work as a team, generally at a single worksite of a host community business or industry, with initial training, supervision, and ongoing support provided by on-site

staff.

DDDS proposes to amend its 1915(c) HCBS waiver to offer consumers the opportunity to choose a group setting as opposed to receiving a one-on-one service. What was formerly called “Supported Employment” under the waiver will now be called “Individual Supported Employment” and the service definition will be amended so that the language is consistent with the new definition for Group Supported Employment. A new reimbursement methodology for Group Supported Employment is proposed herein for which public notice of the change must be made in accordance with 42 CFR 447.205.

Furthermore, DDDS proposes to change the unit of reimbursement for Day Habilitation, Pre-vocational Service and Supported Employment under the waiver from an hourly billable unit to a fifteen (15) minute billable unit. This change is necessary in order to align the billing units with the increments in which services are actually delivered.

Finally, DDDS proposes to change the frequency of the case manager contact schedule to review the plan of care with the consumer from a monthly face to face visit with the consumer and their family or guardian to review the plan to a monthly “paper” review of the plan by the case manager without the consumer and four face to face visits per year to review the plan with the consumer/family/guardian, of which two must be in the consumer’s home.

Pursuant to the notice requirements of 42 CFR 447.205, Delaware Health and Social Services/Division of Medicaid and Medical Assistance/Division of Developmental Disabilities Services (DHSS/DMMA/DDDS), hereby affords the public notice of its intention to solicit public comment on the Department’s intent to request a 1915(c) Home and Community-Based Services (HCBS) (HCBS) Waiver amendment to add a new core service, Group Supported Employment. If implemented as proposed, the waiver amendment will have the following effect on October 1, 2013:

- 1) Defining and adding “Group Supported Employment” as a waiver service in accordance with Waiver Technical Guide Version 3.5;
- 2) Adding reimbursement methodology for Group Supported Employment;
- 3) Adding provider qualifications for Group Supported Employment (the qualifications will be the same as for Individual Supported Employment);
- 4) Revising and renaming the service definition of “Supported Employment” to “Individual Supported Employment” in accordance with Waiver Technical Guide Version 3.5;
- 5) Clarifying that staff to consumer ratio must be one to one;
- 6) Changing the currently hourly billable unit for Day Habilitation, Supported Employment and Pre-vocational service to fifteen (15) minutes; and,
- 7) Revising the frequency of the case manager review of the plan of care from a monthly face-to-face visit with the consumer and their family or guardian to review the plan to a monthly “paper” review of the plan with documentation and four (4) face-to-face visits per year to review the plan with the consumer /family/guardian.

#### *Draft of Proposed Waiver Amendment Application*

A draft of Delaware’s waiver amendment application is currently available for review on the Division of Developmental Disabilities Services website at <http://www.dhss.delaware.gov/ddds/>

The provisions of this waiver are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

#### **Fiscal Impact Statement**

There is no increase in cost on the General Fund. Demonstrations must be “budget neutral” over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver.

Supported Employment in a group setting is being offered as an alternative for individuals who are most likely already receiving Supported Employment Services or Pre-Vocational Services, so there is no expected additional cost.

#### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES**

The Governor’s Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

#### **GACEC and SCPD**

First, the current “supported employment” definition contains an exclusion for transportation: “Transportation is not included in supported employment services.” At page 158. In contrast, the proposed definitions of individual and group supported employment include transportation as an included expense.<sup>1</sup> At pages 158-159. GACEC advises that this change merits the endorsement of the Council; and, SCPD strongly endorses this revision.

Second, the State proposes to revamp its standards for case manager monitoring of progress on plans of care. The

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1. Transportation costs are also included in rates for day programs and pre-vocational services. See attached p. 153 from “Waiver”.

current standard requires a direct interview with the client every month. The proposed standard requires monthly “paper” monitoring supplemented by a face-to-face direct interview 4 times/year, 2 of which must be in the client’s home. At page 159. See also attached page 91 from Waiver. The Councils identified the following concerns in this context.

- A. The “Waiver” still contains references to the old standard. See, e.g., attached page 92: “The DDDS Case Manager reviews and monitors the implementation of services at least monthly through a direct, person to person meeting and discussion with the participant.”
- B. The new standards do not literally permit any flexibility. For example, other sections in the Waiver contemplate updating a plan when the participant’s needs change (Waiver, attached pages 85 and 99) and the ELP can require “other progress reports” (Waiver, attached page 91). Literally, a case manager could view the schedule as a rigid “cap” which cannot be exceeded. Thus, there may be circumstances in which more than four (4) face-to-face interviews are needed annually to address a participant’s needs. It would be preferable to clarify that the monthly review protocol is a “minimum” which case managers may exceed.
- C. It’s unclear what documentation would be analyzed by the case manager conducting a monthly “paper” review. Attendance reports may be available on a monthly basis but would not be informative in the context of progress on ELP vocational goals. See attached page 156 from Waiver. The Waiver only contemplates submission of vocational work reports on a quarterly, not a monthly basis. See attached page 91. DHSS could consider either making submission of vocational work reports a monthly requirement or requiring submission of other documentation to allow for meaningful monthly review. For example, Chimes prepares a detailed monthly vocational report. See attached form.

Third, one of the principal rationales for adopting a 15-minute billable unit for day program, pre-vocational services, and supported employment services is flexibility. DDDS wishes to ensure that participants can engage in combinations of supported employment and pre-vocational services. Authorizing billing in small increments facilitates this approach. However, there is some “tension” between this intended flexibility and language in the Waiver itself. Consider the following recitals:

Day Habilitation services can be provided as a full day or hourly. ...Day habilitation may not be provided to a participant during the same hours that Supported Employment, Work Services or Community Inclusion is provided.

Pre-Vocational services can be provided as a full day or hourly. ... Pre-vocational services may not be provided to a participant during the same hours that Supported Employment, Work Services, or Community Inclusion is provided.

Waiver, pages 48 and 50 (attached).

Consider a participant who engages in supported employment between 11-11:30 and pre-vocational services between 11:30-12. Using the 15 minute billing increment, the provider could bill 2 units of supported employment and 2 units of pre-vocational services. However, the above language would literally bar such billing. Alternatively, consider a participant who engages in supported employment between 9-11:05 and pre-vocational services between 11:05-12:00. The provider could not bill for pre-vocational services for the period 11:05-12:00 since within the same hour as supported employment. For maximum flexibility, the State could consider revising the above “limiting” language and adopting a “quarter hour” unit akin to that used for behavioral consultative services and nursing consultative services. See attached p. 167 from Waiver. See also attached page 153: “Small group will be paid in 15 minute billable units.” It would simply be less confusing to adopt a “quarter hour” standard than to sometimes refer to “hourly” units (page 166) and sometimes refer to “15 minute billable units” (page 153).

Fourth, in a related context, guidance on the 15 minute billable units for behavioral consultative services and nursing consultative services addresses “rounding”:

Units of time 1-8 minutes shall not be billed. Units of time 8-15 minutes shall be billed as one 15 minute unit.

See attached page 154 from Waiver. The Councils could not locate any analog for “rounding” for 15 minute billable units for supported employment, pre-vocational services, and day programming. Clarification would be preferable.

**Agency Response:** DMMA/DDDS appreciate the Councils’ endorsement of our intention to make transportation available to individuals receiving Supported Employment.

Thank you also for your comments regarding the proposed changes to the frequency of the case manager review of the plan of care for each waiver participant. As a result of your comments, we have proposed alternate language to the Centers for Medicare and Medicaid Services (CMS) as follows:

*The DDDS State Case Manager monitors the contracted agency’s implementation of the participant’s plan of care (the ELP) on a monthly basis with the participant and/or appropriate team members. At least once each calendar*

*quarter, the case manager will conduct a face to face interview with the participant. The case manager must conduct at least two of the face to face interviews in the participant's home, during which the plan is reviewed with the participant, his/her or guardian, if applicable, and/or appropriate team members to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her stated priority outcomes.*

The new language now indicates that the case manager must have a face to face meeting with the participant at least once each calendar quarter. We have also correct page 92 of the application to be consistent with the new standard. We hope this has addressed your concerns.

Thank you for pointing out that the service description in Appendix C still referred to the billable units for Day Habilitation and Pre-Vocational Service as "full day" and "hourly", as opposed to full day and 15 minute units. The two references you cited have been removed from Appendix C, as a description of the reimbursement methodology is in Appendix I and does not belong in Appendix C. The example you provided in your letter would not be problematic if both services are billed in 15 minute increments.

Regarding your comment regarding the lack of language around how to "round" minutes up or down to determine how many 15 minute increments may be billed, this level of billing detail is usually not specified in a waiver application and is, instead part of the billing instructions published by DMMA for providers. We will remove this language in the renewal of the waiver effective July 1, 2013 for the Clinical Consultative service and will ensure that this billing guidance language is included for all services which may be billed in 15 minute increments in the Medicaid Provider-Specific on line manual which we are in the process of working with DMMA to revise.

Please note related changes on DMMA Final Order Regulation #13-36 Attachment indicated by **[Bracketed Bold language]** for text added at the time the final order was issued and by ~~**[Bracketed bold stricken through]**~~ for language deleted at the time the final order was issued.

Thank you again for your excellent comments.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the August 1, 2013 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to publish for public comment a draft of the Division of Developmental Disabilities Services (DDDS) 1915(c) Home and Community-Based Services Waiver (HCBS) waiver to add a new core service, *Group Supported Employment*, is adopted and shall be final effective October 10, 2013.

Rita M. Landgraf, Secretary, DHSS

#### **DMMA FINAL ORDER REGULATION #13-36 ATTACHMENT**

DDDS Waiver Amendment  
Public Notice Attachment

#### Current Definition of Supported Employment

Supported employment services consists of intensive, ongoing supports that enable participants, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who, because of their disabilities, need supports, to perform in a regular work setting. Supported employment may include assisting the participant to locate a job or develop a job on behalf of the participant. Supported employment is conducted in a variety of settings, particularly work sites where persons without disabilities are employed. Supported employment includes activities needed to sustain paid work by participants, including supervision and training. When supported employment services are provided at a work site where persons without disabilities are employed, payment is made only for the adaptations, supervision and training required by participants receiving waiver services as a result of their disabilities but does not include payment for the supervisory activities rendered as a normal part of the business setting.

Documentation is maintained in the file of each participant receiving this service that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.).

Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

1. Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;
2. Payments that are passed through to users of supported employment programs; or
3. Payments for training that is not directly related to an individual's supported employment program.

Transportation is not included in supported employment services.

#### Proposed Definition of Individual Supported Employment (new)

Individual Supported Employment Services are provided to participants, at a one to one staff to consumer ratio, who because of their disabilities, need ongoing support to obtain and maintain an individual job in competitive or customized employment, or self-employment position, in an integrated work setting in the general workforce for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. The outcome of this service is sustained paid employment at or above the minimum wage in an integrated setting in the general workforce, in a job that meets personal and career goals in order to promote community inclusion.

Supported individual employment may also include support to establish or maintain self-employment, including home-based self-employment. Supported employment services are individualized and may include any combination of the following services: vocational/job-related discovery or assessment, person-centered employment planning, job placement, job development negotiation with prospective employers, job analysis, job carving, training and systematic instruction, job coaching, on the job employment supports, social skills training, benefits support, training and planning, transportation, asset development and career advancement services, implementation of assistive technology, and other workforce support services including services not specifically related to job skill training that enable the waiver participant to be successful in integrating into the job setting.

**[Documentation is maintained that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or IDEA (20 U.S.C. 1401 et seq.) Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment; or payments that are passed through to users of supported employment services.]**

#### Provider Qualifications Group Supported Employment

The Provider Qualifications for Group Supported Employment will be the same as are currently approved in the DDDS waiver for Supported Employment.

#### Proposed Definition of Group Supported Employment (new)

Supported Employment Small Group Employment Support are services and training activities provided in regular business, industry, and community settings for groups of two (2) to eight (8) workers with disabilities. Examples include mobile crews and other employment work groups. Small group employment support must be provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces. The outcome of this service is sustained paid employment and work experience leading to further career development and individual integrated community based employment for which an individual is compensated, at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Supported employment small group employment supports may be a combination of the following services: vocation/job related discovery or assessment, person center employment planning, job placement, job development, social skills training, negotiation with prospective employers, job analysis, training and systematic instruction, job coaching, benefits supports, training and planning, transportation and career advancements services.

Other workplace support services may include services not specifically related to job skill training that enable the waiver participant to be successful in integrating in to the job setting.

**[Documentation is maintained that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or IDEA (20 U.S.C. 1401 et seq.) Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment; or payments that are passed through to users of supported employment services.]**

#### Proposed Reimbursement Methodology for Group Supported Employment (new)

The payment rate for Group Supported Employment will be based on the rate for Individual Supported Employment, which is a one-to-one staff-to-consumer ratio. The payment rate for the addition of each consumer in the group shall be computed by dividing the payment rate for Individual Supported Employment by the number of participants in the group (up to a maximum of 8) and applying a gross up factor to account for additional incremental costs related to the provision of group supported employment that would not have been captured in the base Individual Supported Employment rate. Group Supported Employment will be paid in 15 minute billable units.

#### Case Manager Review of the Plan of Care - Appendix D: Participant-Centered Planning and Service Delivery, D-1: Service Plan Development

#### Current Waiver Language

The DDDS State Case Manager monitors the contracted agency's implementation of the participant's plan of care (the ELP) on a monthly basis. This monitoring includes a direct interview with the participant to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her state priority outcomes. In effect, the participant has a known advocate with the state, which maintains contractual authority over the provider agency.

#### Proposed Waiver Language

The DDDS State Case Manager monitors the contracted agency's implementation of the participant's plan of care (the ELP) on a monthly basis~~[. In addition to the monthly paper monitoring, this includes a direct interview with the participant four times per year, two of which must be in the participant's home, to review the plan with the participant and his/her family or guardian to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her state priority outcomes. with the participant and/or appropriate team members. At least once each calendar quarter, the case manager will conduct a face to face interview with the participant. The case manager must conduct at least two of the face to face interviews in the participant's home, during which the plan is reviewed with the participant, his/her or guardian, if applicable, and/or appropriate team members to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her stated priority outcomes.]~~ In effect, the participant has a known advocate with the state, which maintains contractual authority over the provider agency.

#### Current Performance Measure D-d-2

The percentage of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care on at least a monthly basis. (The number of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care on at least a monthly basis/the number of participants whose services and supports were reviewed by OQM.)

#### Proposed Performance Measure D-d-2

~~[The percentage of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care at least four times per year, of which two visits must be in the participant's home. (The number of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care at least every four months (two of which must be in the home)/the number of participants whose services and supports were reviewed by OQM.)~~ The% of participants whose Case Manager met them to review the Plan of Care at least once each calendar qtr, 2 of which must be in the participant's home w/i the plan year. (# of participants whose Case Manager met them to review the POC at least once each calendar qtr (2 of which must be in the home within the plan year)/# of participants whose services and supports were reviewed by OQM.)]