

November 30, 2015

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Division of Medicaid & Medical Assistance
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RE: DMMA Proposed EPSDT Mental Health Services Regulation [19 DE Reg. 373 (November 1, 2015)]

Dear Mr. Williams:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Medicaid and Medical Assistance (DMMA) proposal to amend the Medicaid State Plan in the context of coverage and reimbursement methodology for rehabilitative mental health services.

As background, the Division notes that federal Early and Periodic Screening, Diagnosis and Treatment EPSDT standards require State Medicaid programs to offer a comprehensive array of services for individuals under age 21. At 374. In the mental health and substance abuse contexts, such services include "rehabilitative services". On February 23, 2011, CMS sent DMMA a letter sharing concerns with the Division's monthly bundled rates for rehabilitative child mental health and substance abuse services under the EPSDT program. At 375. In response, DMMA proposes to add clarifying language to the Medicaid State Plan through the following:

- 1) defining the reimbursable unit of service;
- 2) describing payment limitations;
- 3) providing a reference to the provider qualifications; and
- 4) publishing the location of State fee schedule rates.

At 375.

For unlicensed providers, DMMA proposes to adopt the same rate setting methodology applied to the Promoting Optimal Mental Health for Individuals through Supports and Empowerment (PROMISE) program. Id.

The Division anticipates "no increase in cost on the General Fund" but a significant federal budget

impact, i.e., \$837,865.32 in FFY17. The inference is that the changes will result in drawing down considerable federal matching funds.

Council would like to share the following observations.

First, in §4.b., Attachment 3.1-A, Page 2c Addendum, the text categorically requires school provided services to be included in an Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP). Council would like to share two concerns in this context:

A. Many students with disabilities have Section 504 plans, not an IEP or IFSP. If the Centers for Medicare and Medicaid Services (CMS) standards do not categorically require Medicaid services in schools to be listed in an IEP/IFSP, it would be preferable to remove this limitation.

B. There may be students with acute, but short-term disabilities (e.g. Post-Traumatic Stress Disorder (PTSD) from child abuse) who will not qualify for classification under the Individuals with Disabilities Education Act (IDEA). However, the school may wish to provide mental health services given the acute nature of the disability. It would be preferable to allow Medicaid billing under these circumstances.

Second, in Attachment 3.1-A, Page 2d Addendum, DMMA proposes to strike an authorization to cover “any other medical or remedial care provided by licensed medical providers as authorized under 42 CFR 440.60....” No rationale is provided for striking the provision. Council recommends retention of this authorization.

Third, several sections require a covered service to be “face to face”. See, e.g., Attachment 3.1-A, Page 2e.5 Addendum, Psychosocial Rehabilitation; Attachment 3.1-A, Page 2.e.7 Addendum, Crisis Intervention; Attachment 3.1-A, Page 2.e.9 Addendum, Crisis Intervention and Family Peer Support. There is some tension between these categorical limitations and the DMMA State Plan Amendment authorizing any Medicaid-funded services to be provided via telemedicine. See 18 DE Reg. 227 (September 1, 2014).

Fourth, there are multiple sections requiring a provider to be at least 21 years old. See, e.g., Attachment 3.1-A, Page 2e.6 Addendum, Psychosocial Rehabilitation; Attachment 3.1-A, Page 2e7 Addendum, Crisis Intervention; Attachment 3.1-A, Page 2e10 Addendum, Family Peer Support; Attachment 3.1-A, Page 2e.16 Addendum, Direct Care Staff. This seemingly violates the regulations to the federal Age Discrimination Act, 45 CFR Part 91, which limits age discrimination in federally funded programs. If an adult meets licensing, degree or skill-set standards, age is not a sustainable basis to bar qualifying as a federally funded provider.

Thank you for your consideration of our observations. If you have any questions, please contact me or Wendy Strauss at the GACEC office.

Sincerely,

Robert D. Overmiller
Chairperson

RDO:kpc