

## DELAWARE

*This summary of state regulations and policy represents only a snapshot at a point in time, is not comprehensive, and should not be taken to constitute legal advice or guidance. State Medicaid requirements are included at the end of this summary.*

### Types of Facilities

*Mental Health (MH):* Delaware regulates:

- *Group Homes for Persons with Mental Illness (Group Homes)*, which are defined as any group home residences that provide mental health treatment, rehabilitation and housing, staffed substantially full-time when residents are present for between three (3) and ten (10) adults with primary diagnosis of psychiatric disabilities.
- An *Intensive Behavioral Support and Educational Residence (IBSER)* is defined as a residential facility which provides services to residents with autism, and/or developmental disabilities, and/or severe mental or emotional disturbances and who also have specialized behavioral needs. They may house no more than 10 residents.

*Substance Use Disorder (SUD):* Delaware regulates:

- All SUD treatment programs or co-occurring treatment programs (these are not defined):
  - Residential Detoxification
  - Residential Treatment
  - Transitional Residential Treatment
- Categories of residential facilities that are publicly funded programs providing services to Delaware residents lacking insurance or receiving reimbursement under the state Medicaid FFS program:
  - Clinically Managed Low-Intensity Residential Treatment ASAM Level 3.1
  - Clinically Managed Residential Withdrawal Management ASAM Level 3.2
  - Clinically Managed Population-Specific High Intensity Residential Treatment ASAM Level 3.3
  - Clinically Managed High Intensity Residential Treatment ASAM Level 3.5
  - Medically Monitored Intensive Inpatient Treatment ASAM Level 3.7 (offered in residential settings in Delaware)
  - Medically Monitored Intensive Inpatient Withdrawal Management ASAM Level 3.7-WM (offered in residential settings in Delaware)

*Unregulated Facilities:* There are no unregulated residential SUD treatment facilities in Delaware. According to state staff, however, at the time these regulations were reviewed, DSAMH did not have the ability to regulate all community mental health providers as it did SUD facilities. This authority was granted with the enactment of 82 Del. Law c. 50 in June of 2019.<sup>1</sup> With this authority, DSAMH will be able to draft regulations for these types of facilities. It also was noted that, although these facilities and program were potentially unregulated in code, DSAMH ensured the quality and standards of these programs through contracts.

## **Approach**

The Delaware Department of Health and Social Services (DHSS) regulates and licenses residential treatment providers in the state. Its Department of Health Care Quality licenses Group Homes; its Division of Long Term Care Residents Protection licenses IBSEs; its Division of Substance Abuse and Mental Health (DSAMH) licenses all residential SUD treatment facilities, including those that are publicly funded.

## **Processes of Licensure or Certification and Accreditation**

*Mental Health (MH):* Licensure by the DHSS is required for operation of Group Homes and IBSEs.

- Accreditation is not required.
- Researchers did not find requirements for inspection at application or renewal for either Group Homes or IBSEs, although inspections may occur at any time.
- A Certificate of Need is not required.
- Licensure duration is one year, by which time a renewal application must be submitted. Provisional licenses may be issued for up to 90 days.

*Substance Use Disorder (SUD):* Licensure by the DHSS is required for operation of all SUD residential treatment programs.

- Unless it is providing opioid treatment medication, accreditation is not required. However, accreditation by the Joint Commission or CARF confers deemed status, allowing the license applicant to qualify for a two year license.

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<sup>1</sup> See <https://delcode.delaware.gov/sessionlaws/ga150/chp050.shtml#TopOfPage>.

- An inspection is required for licensure and renewal (unless the renewal is for only one year).
- A Certificate of Need is not required.
- Duration of licensure may be either up to one or two years. A provisional license of up to 180 days also may be awarded with possible renewal for 90 days. A temporary license of up to 90 days also may be awarded.

## **Cause-Based Monitoring**

*Mental Health (MH):* The DHSS monitors compliance with its regulations and procedures for Group Homes. The DHSS has the right of access to any information directly or indirectly related to the service provider's operation of the group home and site visits are permitted at any time. IBSEs are periodically inspected by a representative of the DHSS. Inspections include the review of current facility policies and procedures. Inspections must be unannounced.

*Substance Use Disorder (SUD):* The DHSS may conduct inspections and investigations with or without notice as needed to ascertain regulatory compliance, including inspection of documents. If a survey occurs and a corrective action plan is required, the program must submit it and will be subject to follow-up on-site compliance inspections. Licenses may be revoked, suspended, or denied.

## **Access Requirements**

*Mental Health (MH):* For Group Homes, a service provider must ensure that no applicant is denied any benefits or services or is subject to illegal discrimination based on age, sex, race, nationality, religion, sexual orientation or disability. Researchers did not locate requirements related to access for IBSEs. Wait time requirements were not located.

*Substance Use Disorder (SUD):* Facilities may not deny “any person equal access to its facilities or services on the basis of race, color, religion, ancestry, sexual orientation, gender expression, national origin, or disability. No program shall deny any person equal access to its facilities or services on the basis of age or gender, except those programs that specialize in the treatment of a particular age group (such as adolescents) or gender (such as mothers and infants)”. All must comply with the ADA and other requirements. Wait time requirements were not located.

## Staffing

*Mental Health (MH):* For Group Homes, the regulations establish staff qualifications for a psychiatrist, other clinical positions, a residence director, and direct care staff. Training and core competencies are required, including but not limited to those related to medications, mental illness, patient rights, first aid and CPR, confidentiality, emergency and safety procedures, and de-escalation and other behavioral interventions. Policies must include requirements for continuing education and development. Minimum staffing requirements and duties for clinicians and direct care staff are included. A psychiatrist must be on-call at all times and visit the facility at least once a week and spend a minimum of one-half hour per resident per month providing direct services to residents on site, participating in the assessment of residents' needs, planning service provision, and providing supervision/consultation to other program staff.

For IBSEs, qualifications are established for the director, direct care supervisor and staff, and service worker supervisor and staff. Minimum staffing ratios are included. Orientation and training, including on-going training, for employees and volunteers include but are not limited to requirements related to reporting abuse, emergencies, confidentiality, crisis management, cultural sensitivity, CPR and first aid, behavior management, and restraint training. Regulations also include requirements related to personnel records, use of volunteers, and employee/volunteer health requirements.

*Substance Use Disorder (SUD):* All SUD facilities must have personnel policies and procedures and meet standards for personnel files, supervision, and training. All SUD facilities must meet standards for staff education and other qualifications, including for administrators, clinical directors, clinical supervisors, and counselors. Each category of residential facilities has additional staffing standards:

- Residential detoxification: Requires a physician to be on-call 24 hours a day and on-site as necessary, medical personnel when clients are present, awake staff when clients are present, and a counselor available on-site or on-call at different times.
- Residential treatment: Requires awake staff at all times and a counselor available on-site or on-call at different times.
- Transitional residential treatment: Requires staff on site at all times when clients are present and a counselor available 24 hours a day.

The standards applicable to DSAMH-funded and Medicaid FFS services have supplemental staffing requirements by category. Levels 3.1, 3.3, 3.5, and 3.7 have varying requirements regarding frequency of availability of an addiction-credentialed physician and different requirements related to psychiatric practitioners, primary care physicians, nurses, licensed practitioners, unlicensed counselors, certified recovery coaches, and credentialed behavioral

health technicians, and staffing ratios. Level 3.7 and 3.7-WM also requires medical personnel including physicians or physician extenders knowledgeable about addiction treatment.

## **Placement**

*Mental Health (MH):* Admission to a Group Home is limited to adults with a psychiatric disability who apply for admission to the group home, meet the criteria below, and require intensive home and community-based support services as a result of their psychiatric disability. To be accepted as a resident of a group home, specific criteria must be met, including, among others, that the person not be a current user of illegal drugs during the assessment period. With the assistance of the facility's psychiatrist, the Group Home must complete an assessment, using a format approved by the Division of Substance Abuse and Mental Health to gather specified information, prior to admission.

IBSERs must develop, adopt, follow and maintain on file a current written description of the facility's or program's admission policies governing the specific characteristics, and treatment or service needs of residents accepted for care.

*Substance Use Disorder (SUD):* All programs must have policies and procedures with admission criteria. Each of the three types of programs require an assessment that gathers specific information, including but not limited to, mental health status as part of the client's diagnostic assessment.

Categories of SUD residential facilities established by the DHSS for any residential facilities receiving DHSS funds or reimbursement under the state Medicaid FFS program must all utilize ASAM criteria and have additional requirements, in all cases including a mental status exam and a urine drug screen and tuberculosis test. Details for admission and assessment vary by level and follow the ASAM criteria for levels 3.1, 3.2-WM, 3.3, 3.5, 3.7, and 3.7-WM.

## **Treatment and Discharge Planning and Aftercare Services**

*Mental Health (MH):* For Group Homes, the service provider and resident must develop an initial individualized treatment plan no later than the date of the resident's admission to the group home. The treatment plan is reviewed in full at least every six months by the resident and the resident's treatment team. Prior to discharge, the provider must develop a written discharge plan in consultation with the resident; his guardian or legal representative, if any; anticipated post-discharge providers; and a multidisciplinary team which shall include a psychiatrist. Facility policies and procedures must include a process of transition or termination from the program which complies with state and federal laws and regulations and is intended to ensure continuity of service.

For IBSEs, a Behavior Management Committee (BMC) establishes a Specialized Behavior Support Plan (SBS Plan) upon admission and conducts SBS Plan reviews on each resident at least monthly. Each SBS Plan that has been approved and implemented must be reviewed at least monthly by the BMC for the first 90 days following implementation and quarterly thereafter. The plan must also address acceptable use of restraints. Researchers did not locate regulations for IBSEs related to discharge or aftercare planning or follow-up.

*Substance Use Disorder (SUD):* An individualized Recovery Plan must be developed in partnership with the client. A discharge plan is required. Setting-specific Recovery Plan requirements follow:

- Residential Detoxification: The Recovery Plan must be completed within 72 hours of admission. Recovery plans are reviewed and revised by the client and his/ her counselor, with periodic review by the seventh day and every 5th day thereafter and address issues remaining to be treated.
- Residential Treatment: The Recovery Plan must be completed within 72 hours of admission. Recovery plans are reviewed and revised by the client and his/ her counselor, with periodic review by the 30th day and every 30th day thereafter and address issues remaining to be treated.
- Transitional Residential Treatment: The Recovery Plan must be completed within 7 days of admission. Recovery plans are reviewed and revised every 30 days thereafter.

All SUD residential treatment categories established by DHSS for facilities that are DHSS funded or that receive reimbursement under the state Medicaid FFS program require a treatment plan, discharge planning that begins at admission (other than level 3.7-WM, where it is within 24 hours of admission), and aftercare planning that may include referral and assistance as needed for the beneficiary to gain access to other needed SUD or mental health services. The treatment/service plan must be developed within 72 hours of admission for all levels (3.1, 3.3, 3.5, 3.7) other than levels 3.2-WM and 3.7-WM, for which it must be within 24 hours of admission. For level 3.7-WM, that is an initial plan and a comprehensive plan must be developed within three days. Treatment plans are reviewed every 30 days for levels 3.3, 3.5, 3.7, and every 60 days for level 3.1 and “as indicated” for level 3.7-WM.

## **Treatment Services**

*Mental Health (MH):* For Group Homes, residents should have involvement and choice in all aspects of their care, rehabilitation and support; development and maintenance of supportive social networks; access to services, programs, and activities in the most integrated setting; and access to rehabilitative support during the course of day to day activities. The service provider must ensure that residents receive needed medical, dental, visual and behavioral health care. A

full range of rehabilitation, treatment and support services must be provided for each resident including, but not limited to, the following: 365 day per year services; psychiatric treatment and linkage to community support programs or day hospital programs; clinical liaison during periods of psychiatric hospitalization; outreach and crisis response; teaching and counseling on-site to improve interpersonal skills and to assist residents to control psychiatric symptoms;; transportation of residents to community activities; and support and encouragement to promote resident participation in mutual support and self-advocacy groups. Each resident must have a primary clinician on staff.

For IBSEs, the program must have, follow, and maintain a current written description of the facility's or program's services provided to residents, including those provided directly by the licensee or arranged through another source.

*Substance Use Disorder (SUD):* Services required by licensure category include, among other things:

- Residential Detoxification: Admission assessment, physical exam and medical care plan, diagnostic assessment, recovery planning, emergency services at a licensed hospital as needed, and daily individual and group counseling.
- Residential Treatment: Medical assessment, physical exam, TB and urine screening, diagnostic assessment, and recovery planning.
- Transitional Residential Treatment: Physical exam, diagnostic assessment, recovery planning, medical evaluation as needed, and emergency services at a licensed hospital as needed.

Services required for level 3.1, 3.3, and 3.5 facilities that receive DHSS funding or reimbursement under the state Medicaid FFS program include a specified number of hours of clinical and recovery-focused services and a specified number of hours a week of individual, group, family therapy, medication management, and/or psycho-education. Level 3.2-WM requires 24-hour medication monitoring observation and support in a supervised environment for a person served to achieve initial recovery from the effects of the addiction.

## **Patient Rights and Safety Standards**

*Mental Health (MH):* For Group Homes, residents are to be informed of their rights and responsibilities including but not limited to regarding behavioral expectations, privacy, confidentiality, and appeal processes. A grievance system must be established. The provider must follow all laws regarding reporting abuse and neglect. No requirements related to restraint or seclusion were located.

For IBSEs, there are requirements related to reporting abuse or neglect; informed consent; and incident reports and requirements for reporting to the Division. Chemical and mechanical restraints, as well as involuntary seclusion, are prohibited. Physical restraints are regulated and must be reported to the Division.

*Substance Use Disorder (SUD):* Requirements related to patient rights generally include, but are not limited to, those regarding nondiscrimination, filing a grievance, freedom from abuse and exploitation, privacy, and informed consent. Standards regarding restraint and seclusion were not found, nor a requirement that grievances be reported to the state. For Residential Treatment, additional rights include but are not limited to ones related to visitation, communication, and religious freedom.

## **Quality Assurance or Improvement**

*Mental Health (MH):* For Group Homes, the service provider must develop, implement, and adhere to a documented, ongoing, quality assurance program that includes an internal monitoring process that tracks performance and measures resident satisfaction. Requirements specific to quality improvement were not located for IBSEs.

*Substance Use Disorder (SUD):* Every agency must have a quality assurance plan that is reviewed and revised annually. The plan should provide for the review of: clinical services to include culturally competent services including an annual self-assessment that focuses on the needs of the community, professional/administrative services, environment of care, and infection control. The results of the review should document the problem(s) identified, the recommendations made, the actions taken, the individual(s) responsible for implementation of any actions, and any follow-up. Every agency must develop and implement performance indicators and assess outcome measures. Every program must provide a mechanism to collect opinions from service recipients, personnel and other stakeholders regarding the quality of service provided. Information shall be submitted to the appropriate committee for quality assurance review. Every program shall conduct a needs assessment at a minimum of every five (5) years. The results of the needs assessment should determine staffing patterns and types of services to be provided with changes and updates recorded as part of the agency's quality assurance plan.

## **Governance**

*Mental Health (MH):* IBSEs must have an identifiable functioning governing body which designates a Director. Governance requirements specific to Group Homes were not located.



*Substance Use Disorder (SUD)*: Facilities must have a governing body or advisory council that includes representatives of the population it serves. Among other things, the governing body oversees management and operations, policies, finances, and staffing credentials.

## Special Populations

*Substance Use Disorder (SUD)*: The licensure regulations apply both to SUD treatment and treatment for individuals with co-occurring mental illness.

## Location of Regulatory and Licensing Requirements

Department of Health and Social Services, Group Home regulations<sup>2</sup> and IBSER regulations<sup>3</sup>, Substance Abuse Facility Licensing regulations<sup>4</sup> and Delaware Adult BH DHSS Service Certification and Reimbursement Manual<sup>5</sup>. Regulatory data collected May 9, 2019.

## Other Information Sources

R. Urey (SOTA); J. Aronson (DHSS); National Conference of State Legislatures CON Program Overview, <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>

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<sup>2</sup> See

<http://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Health%20Care%20Quality/3305.pdf>.

<sup>3</sup> See

<http://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Health%20Care%20Quality/3320.pdf>.

<sup>4</sup> See

<http://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Substance%20Abuse%20and%20Mental%20Health/6001.pdf>.

<sup>5</sup> See

<http://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Substance%20Abuse%20and%20Mental%20Health/6001.pdf>.

# DELAWARE MEDICAID

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## Approach

The Delaware Department of Health and Social Services (DHSS) oversees the state Medicaid program. Delaware also has a Section 1115 waiver permitting Medicaid expenditures for treatment and withdrawal management services for substance use disorder (SUD) provided to individuals who are short-term residents in facilities that meet the definition of an institution for mental diseases (IMD), including residential treatment. The state historically has relied on the in lieu of provision and on Disproportionate Share Hospital (DSH) payments for Medicaid coverage of some IMD services.

## Types of Facilities

*Mental Health (MH):* Group Homes for Persons with Mental Illness can be certified as a Medicaid provider.

*Substance Use Disorder (SUD):* Categories established by the DHSS for any residential facilities receiving reimbursement under the state Medicaid FFS program OR DHSS funded programs providing services to Delaware residents lacking insurance include those listed below. The standards for these facilities are addressed above because they apply to both Medicaid and DHSS-funded facilities:

- Clinically Managed Low-Intensity Residential Treatment ASAM Level 3.1
- Clinically Managed Residential Withdrawal Management ASAM Level 3.2
- Clinically Managed Population-Specific High Intensity Residential Treatment ASAM Level 3.3
- Clinically Managed High Intensity Residential Treatment ASAM Level 3.5
- Medically Monitored Intensive Inpatient Treatment ASAM Level 3.7 (offered in residential settings in Delaware)

- Medically Monitored Intensive Inpatient Withdrawal Management ASAM Level 3.7-WM (offered in residential settings in Delaware)

Under the Section 1115 waiver, the intent is to reimburse for short-term treatment in residential settings, with a statewide average length of stay of 30 days.

## **Processes of Medicaid Enrollment**

Substance Use Disorder (SUD): Certification as a Medicaid provider requires use of a form.<sup>6</sup>

## **Staffing**

*Substance Use Disorder (SUD):* Pursuant to the Section 1115 waiver, the state must establish residential treatment provider qualifications in licensure, policy or provider manuals, managed care contracts or credentialing, or other requirements or guidance that meet program standards in the ASAM Criteria or other nationally recognized, SUD-specific program standards regarding in particular the credentials of staff for residential treatment settings. The state must assess the availability of providers in the key levels of care throughout the state, or in the regions of the state participating under this demonstration, including those that offer MAT.

## **Placement**

*Substance Use Disorder (SUD):* Pursuant to the Section 1115 waiver, the state must establish a requirement that providers assess treatment needs based on SUD-specific, multidimensional assessment tools, such as the American Society of Addiction Medicine (ASAM) Criteria or other assessment and placement tools that reflect evidence-based clinical treatment guidelines. The state also must establish a utilization management approach such that beneficiaries have access to SUD services at the appropriate level of care and that the interventions are appropriate for the diagnosis and level of care, including an independent process for reviewing placement in residential treatment settings.

## **Treatment and Discharge Planning and Aftercare Services**

*Substance Use Disorder (SUD):* Neither Medicaid-specific regulations nor waiver documents include requirements related to treatment or discharge planning or the provision of aftercare services.

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<sup>6</sup> See <https://dhss.delaware.gov/dsamh/files/MedicaidCertForm61317.pdf>.

## **Treatment Services**

*Substance Use Disorder (SUD):* Pursuant to the Section 1115 waiver, beneficiaries will have access to high quality, evidence-based SUD treatment services ranging from medically supervised withdrawal management to on-going chronic care for these conditions in cost-effective settings while also improving care coordination and care for comorbid physical and mental health conditions. The waiver also requires the state to establish a requirement that residential treatment providers offer MAT on-site or facilitate access to MAT off-site. In addition, the state must establish residential treatment provider qualifications in licensure, policy or provider manuals, managed care contracts or credentialing, or other requirements or guidance that meet program standards in the ASAM Criteria or other nationally recognized, SUD-specific program standards regarding in particular the types of services and hours of clinical care for residential treatment settings.

## **Care Coordination**

*Substance Use Disorder (SUD):* Pursuant to the Section 1115 waiver, beneficiaries will have improved care coordination and care for comorbid physical and mental health conditions. Under the waiver, the state must ensure establishment and implementation of policies to ensure residential facilities link beneficiaries with community-based services and supports following stays in these facilities.

## **Quality Assurance or Improvement**

*Substance Use Disorder (SUD):* Pursuant to the Section 1115 waiver, the state must establish a provider review process to ensure that residential treatment providers deliver care consistent with the specifications in the ASAM Criteria or other comparable, nationally recognized SUD program standards based on evidence-based clinical treatment guidelines for types of services, hours of clinical care, and credentials of staff for residential treatment settings.

## **Special Populations**

*Substance Use Disorder (SUD):* No Medicaid requirements regarding adult residential SUD treatment services for special populations were located other than the requirement in the Section 1115 waiver that care for comorbid physical and mental health conditions be improved by the demonstration.

## **Location of Medicaid Requirements**

Medicaid Rules and Regulations<sup>7</sup>, Substance Abuse and Mental Health Regulations<sup>8</sup>; Delaware Adult BH DHSS Service Certification and Reimbursement Manual<sup>9</sup>; DSAMH, Licensing and Medicaid Certification, DSAMH Licensed/Certified Provider Directory, Delaware's SUD/MH Provider Network, Medicaid Certification<sup>10</sup>; Delaware Diamond State Health Plan 1115 Waiver<sup>11</sup>. Regulatory data collected December 2019.

## Other Information Sources

Kaiser Family Foundation. State Options for Medicaid Coverage of Inpatient Behavioral Health Services. KFF: San Francisco. November 2019. <http://files.kff.org/attachment/Report-Brief-State-Options-for-Medicaid-Coverage-of-Inpatient-Behavioral-Health-Services>

This state summary is part of the report “**State Residential Treatment for Behavioral Health Conditions: Regulation and Policy**”. The full report and other state summaries are available at <https://aspe.hhs.gov/state-bh-residential-treatment>.

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<sup>7</sup> See

<https://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Social%20Services/Delaware%20Social%20Services%20Manual/13000.pdf>.

<sup>8</sup> See

<https://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Substance%20Abuse%20and%20Mental%20Health/6001.pdf>.

<sup>9</sup> See <https://www.dhss.delaware.gov/dhss/dsamh/files/stateplanmanual11012016.pdf>.

<sup>10</sup> See <https://dhss.delaware.gov/dsamh/regs.html>.

<sup>11</sup> See <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/de/de-dshp-ca.pdf>.