

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

Telehealth Services Originating Site Fees

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 telehealth services specifically, to add facilities to which originating site fees can be paid. 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 September 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 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 January 1, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 4.19-B Page 24 of Title XIX Medicaid State Plan regarding telehealth services originating site fees.

Background

For the purposes of Medicaid, telehealth seeks to improve a patient's health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site. This electronic communication means the use of interactive telecommunications equipment that includes, at a minimum, audio and visual equipment.

According to the Centers for Medicare and Medicaid Services (CMS), the Medicaid program and the federal Medicaid statute (Title XIX of the Social Security Act) does not recognize telehealth as a distinct service. CMS does note, however, that telehealth "is viewed as a cost-effective alternative to the more traditional face-to-face way of providing medical care" (e.g., face-to-face consultations or examinations between provider and patient) that states can choose to cover under Medicaid and that there is "flexibility inherent in federal law to create innovative payment methodologies for services that incorporate telemedicine technology."

Statutory Authority

- 42 CFR 410.78, *Telehealth services*
- 42 CFR Part 440, *Services*

Purpose

The purpose of this proposed regulation is to add facilities to which originating site fees can be paid, specifically Federally Qualified Health Centers and School Based Wellness Centers.

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 October 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 anticipated fiscal impact. There is the potential to improve access to services and implementation will likely reduce cost in higher cost settings such as emergency rooms.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: One commenter endorsed the proposed changes to the Medicaid State Plan to add facilities to which originating site fees can be paid.

Agency Response: DMMA appreciates the endorsement.

Comment: One commenter inquired about any impact on the Telehealth Parity Regulation.

Agency Response: The proposed regulation changes will not impact TITLE 18 INSURANCE DELAWARE ADMINISTRATIVE CODE – 14 Health Insurance Specific Provisions – 1409 Insurance Coverage for Telemedicine and Telehealth.

Comment: One commenter asked for questioned if the originating site fee claims and the PPS triggering claims need to be billed separately or if they could be billed on one claim?

Agency Response: Agency Response: According to Attachment 4.19-B, Page 24 of the STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT, STATE/TERRITORY: DELAWARE, METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES “The site fee is only for the originating site and the site provider would not be entitled to any other payment for the telemedicine service which was delivered by the distant site. Fee schedules for telemedicine provided services are available on the DMAP website at: <https://medicaid.dhss.delaware.gov/provider>.

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

- State Council for Persons with Disabilities; and
- Westside Family Healthcare.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding telehealth services specifically, to add facilities to which originating site fees can be paid, is adopted and shall be final effective December 11, 2019.

10/29/19

Date of Signature

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

Attachment 4.19-B
Page 24

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES (Continued)

Payment for the telehealth originating site facility fee is made at the same percentage of the Medicare rate that is used for practitioner services on the date of service. The State currently pays practitioners at 98% of Medicare rates. The originating site fee will also be paid at 98% of the Medicare fee for the same service.

~~If either the delivering or originating site telemedicine fee methodology conflicts with the State defined reimbursement methodology for the particular provider type, the existing reimbursement methodology will apply. For Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs), where federal regulations mandate specific reimbursement~~

~~methodologies, that requirement will take precedence over the originating site fee.~~

The site fee is only for the originating site and the site provider would not be entitled to any other payment for the telemedicine service which was delivered by the distant site.

Qualifying provider services include office visits, consultations, psychotherapy, medication management, psychiatric interview or examination, substance abuse screening and brief intervention, neurobehavioral examination, end stage renal disease services and medical nutrition therapy, etc.

Federally Qualified Health Centers and School-Based Wellness Centers acting in the role of an originating site provider with no other separately identifiable service being provided will only be paid the originating site telehealth fees and will not receive reimbursement for an encounter.

The telemedicine payment methodology shall be effective with dates of service on or after ~~July 2, 2012~~ September 1, 2019.

Fee schedules for telemedicine provided services are available on the DMAP website at: <http://www.dmap.state.de.us/downloads> <https://medicaid.dhss.delaware.gov/provider>.

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

Separate reimbursement is not made for the use of technological equipment and systems associated with a telemedicine application to render the service.

TN No. SPA	Approval Date
Supersedes	
TN No. SPA <u>12-011</u>	Effective Date <u>January 1, 2020</u>

23 DE Reg. 461 (12/01/19) (Final)