

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

**FINAL**

**ORDER**

**AMBULATORY SURGICAL CENTER SERVICES**

**Title XIX Medicaid State Plan - Ambulatory Surgical Center Services**

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES  
IN THE MATTER OF

REVISION OF THE REGULATION  
OF DELAWARE'S  
TITLE XIX MEDICAID STATE PLAN  
SECTION ATTACHMENT 4.19-B PAGE 17

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**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services, specifically, to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del. C. § 10114 and its authority as prescribed by 31 Del. C. § 512.

The Department published its notice of proposed regulation changes pursuant to 29 Del. C. § 10115 in the August 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2021 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 October 1, 2021 DHSS/DMMA proposes to amend Attachment 4.19-B Page 17 of Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services, specifically, to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services.

**Background**

Centers for Medicare and Medicaid Services (CMS) defines an Ambulatory Surgical Center (ASC) as "any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission. An ASC satisfies the criterion of being a 'distinct' entity when it is wholly separate and clearly distinguishable from any other health care facility or office-based physician practice.

DMMA currently covers medical surgical procedures in an ASC and is expanding coverage by adding a reimbursement methodology for dental services provided in an ASC. Allowing dental procedures to be provided in an ASC will increase access to needed services and allow individuals to receive these services in a setting that is less costly and less restrictive than a hospital setting.

**Statutory Authority**

42 CFR 416

**Purpose**

The purpose of this proposed regulation is to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services.

**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 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/

DMMA gives public notice and provides an open comment period for 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 August 31, 2021.

*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.

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

No comments were received in response to the proposed change.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the August 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services, specifically, to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services, is adopted and shall be final effective December 11, 2021.

11/15/2021

Date of Signature

Molly K. Magarik, Secretary, DHSS

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

REIMBURSEMENT FOR FREE STANDING SURGICAL CENTER /  
AMBULATORY SURGICAL CENTER SERVICES

Delaware Medicaid uses the reimbursement methodology and formulae of the Medicare program, as described in Section 5243 of the Medicare Carriers Manual, in determining per diem rates for payment of Free Standing Surgical Centers (FSSCs) | Ambulatory Surgical Centers (ASCs). Effective April 1, 2009, Delaware Medicaid reimburses 95 percent of the Medicare calculated ASC rates for Delaware.

Effective October 1, 2021 an ambulatory surgical center being used for patient dental services will be reimbursed by Medicaid for such services at 50 percent of the current Medicare Outpatient Prospective Payment System (OPPS) rate for procedure codes specified by the State for these dental services.

Except as otherwise noted in the plan, State developed rates are the same for both government and private providers. The fee schedule of ASC rates is available on the DMAP website at the following address: <http://www.dmap.state.de.us/downloads>.

This amendment adds the reimbursement methodology for an ambulatory surgical center being used to provide dental services.

TN No. SPA#	Approval Date
Supersedes	
TN No. SP# <u>09-002</u>	Effective Date

**25 DE Reg. 628 (12/01/21) (Final)**