

**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**

**Title XIX Medicaid State Plan, Methods and Standards for Establishing Payment Rates - Primary Care Service Payment**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding Methods and Standards for Establishing Payment Rates, specifically, *Primary Care Service Payment*. 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 December 1, 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Delaware Health and Social Services/Division of Medicaid and Medical Assistance proposes to amend the Title XIX Medicaid State Plan regarding Methods and Standards for Establishing Payment Rates, specifically, *Primary Care Service Payment*. This amendment will extend the primary care physician services rate increase required by the Health Care and Education Reconciliation Act of 2010 (HCERA), Section 1202 (Pub. L. No. 111-152) (42 U.S.C. §1396a(a)(13), that sunsets on December 31, 2014.

**Statutory Authority**

- §1905 of the Social Security Act (a)(5)(A), *Definitions, Physicians' Services*
- 42 CFR §440.50, *Physicians' Services and Medical and Surgical Services of a Dentist*
- 42 CFR §447.400, *Primary care services furnished by physicians with a specified specialty or subspecialty*
- 42 CFR §447.405, *Amount of required minimum payments*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

**Background**

Section 1202 of the Affordable Care Act required that Medicaid reimburse designated primary care providers who provide primary care services and vaccine administration services at rates that are not less than the Medicare fee schedule in effect for 2013 and 2014, or, if greater, at the payment rates that would result from applying the 2009 Medicare physician fee schedule conversion factor to the 2013 or 2014 Medicare payment rates. These reimbursement requirements apply to payments made on or after January 1, 2013 through December 31, 2014.

In accordance with 42 CFR §447.410, Delaware submitted a *State Plan Amendment (SPA)* to reflect the fee schedule rate increases for eligible primary care physicians under section 1902(a)(13)(A) of the Social Security Act. The purpose of this requirement is to assure that when States make the increased reimbursement to providers, they have State Plan authority to do so and they have notified providers of the change in reimbursement as required by Federal regulations.

The Centers for Medicare and Medicaid Services approved Delaware's Increased Primary Care Service Payment state plan amendment on June 24, 2013 with an effective date of January 1, 2013.

**Summary of Proposal**

*Purpose*

The purpose of this state plan amendment (SPA) is to extend an existing temporary reimbursement rate increase for specified Delaware Medical Assistance Program (DMAP) primary care providers beginning January 1, 2015. The 100% federal funding ends on December 31, 2014. With this SPA, DMAP will continue the increase at the regular federal matching rate.

*Statutory Authority and Payment Methodology for Changes to the Medicaid State Plan*

Beginning January 1, 2015, this State Plan Amendment continues the fees for services provided by certain primary

care physicians to match 100% of Medicare rates. These rates will apply to the primary care procedure codes identified pursuant to 42 USC §1396a(jj) and 42 CFR §447.400(c). Primary care physicians identified pursuant to 42 USC §1396a(13)(C) and 42 CFR §447.400(a) will be eligible to continue to receive 100% of the Medicare rates for those primary care services.

#### *Primary Care Services Rendered On or After January 1, 2015*

Primary care services furnished on and after January 1, 2015, by a qualified primary care physician or under the supervision of a qualified primary care physician shall be paid at the Medicare Part B fee schedule rate up to 100% of the Medicare physician fee schedule.

If there is no applicable rate under Medicare Part B, the rate specified in a fee schedule established and as published annually by the federal Centers for Medicare and Medicaid Services, pursuant to 42 CFR 447.405(a)(1).

#### *Vaccines Administration Services Rendered On or After January 1, 2015*

Payment for the administration of vaccines provided under the Vaccines for Children Program and rendered on or after January 1, 2015, shall be the lesser of the state regional maximum administration fee set by the Vaccines for Children Program.

#### *Public Notice*

This notice is published pursuant to 42 CFR §447.205, 42 U.S.C., §1902(a)(13)(A) of the Social Security Act, and Title 29, Chapter 101 of the Delaware Code, which requires Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DMMA) to give public notice of any significant proposed change in its method and standards for setting payment rates for Medicaid services.

The provisions of this state plan amendment relating to methodology and payment rates of Primary Care Services are subject to approval by 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.

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

#### **Fiscal Impact Statement**

The total computed cost of extending the increased reimbursement for specified primary care services rendered on or after January 1, 2015 is estimated, as follows:

	Federal Fiscal Year 2015 (Nine Months)	Federal Fiscal Year 2016 (Twelve Months)
General (State) Funds	\$147,691.00	\$196,922.00
Federal Funds	\$ 95,699.00	\$131,988.00

#### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

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**

As background, the Affordable Care Act required that Medicaid reimbursement for primary care providers and vaccine administration in 2013 and 2014 be no less than a Medicare fee schedule. DMMA adopted that methodology for Delaware's Medicaid program and apparently benefited from enhanced (100%) federal funding. DMMA now proposes to continue the existing reimbursement rates into 2015 albeit with a lower federal subsidy, i.e., "the regular federal matching rate". The total fiscal cost in FFY15 will be \$147,691 in General (State) Funds and \$95,699 in Federal match.

GACEC and SCPD endorse the proposed regulation subject to one concern. The Plan Amendment recites that vaccine administration "shall be paid at the lesser of the state regional maximum administration fee set by the Vaccines for Children (VFC) program." At p. 428. This is "odd" wording. It is common to recite that a standard will be the lesser of "A" or "B". It is peculiar to recite that a standard will be the lesser of "A".

**Agency Response:** The proposed wording reflects previously approved state plan language. This SPA was submitted to CMS on December 12, 2014 and is currently under review. Should CMS require any changes to the proposed language, the agency will comply.

No changes were made to the regulation as a result of these comments.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2014 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding Methods and Standards for Establishing Payment Rates, specifically, *Extension of Increased Medicaid Payment for Primary Care Service Payment Effective January 1, 2015*, is adopted and shall be final effective February 10, 2015.

Rita M. Landgraf, Secretary, DHSS

### DMMA FINAL ORDER REGULATION #15-02

#### REVISION:

ATTACHMENT 4.19-B

Introduction Page 7

OMB No. 0938-1148

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: **DELAWARE**  
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
OTHER TYPES OF CARE

#### Physician Services

Medicaid Payment for Primary Care Services 42 CFR §§447.400, 447.405, 447.410

#### Payment for Primary Care Services

This state plan amendment extends the primary care physician rate increase related to the implementation of the Health Care and Education Reconciliation Act of 2010 (HCERA), Section 1202 (Public Law 111-152) (42 U.S.C. §1396a(a)(13)(C)), that is time-limited and will sunset on December 31, 2014.

For dates of service rendered on or after January 1, 2015, the Delaware Medical Assistance Program (DMAP) will apply an increased payment rate to qualified enrolled providers for primary care services delivered by a physician with specialty designation of family medicine, general internal medicine, or pediatric medicine. The increase will apply to a specific set of services that have been designated as primary care.

Primary care services eligible for enhanced payment include evaluation and management (E & M) services and vaccine administration services covered by DMAP and designated in the Healthcare Common Procedure Coding System (HCPCS).

#### 1. Primary Care Physician Services Rendered On or After January 1, 2015

- a. Primary care services rendered on or after January 1, 2015, that are eligible for payment pursuant to the requirements of 42 CFR 447.400(a), shall be paid at the Medicare Part B fee schedule rate up to 100% of the Medicare physician fee schedule.
- b. The rates reflect all Medicare sites of service and locality adjustments.
- c. The rates do not reflect site of service adjustments, but reimburse at the Medicare rate applicable to the office setting.
- d. The rates reflect all Medicare geographic/locality adjustments.
- e. If there is no applicable rate under Medicare Part B, the rate specified in a fee schedule established and as published annually by the federal Centers for Medicare and Medicaid Services, pursuant to 42 CFR 447.405(a)(1).

ATTACHMENT 4.19-B

Introduction Page 7.1

OMB No. 0938-1148

STATE: **DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
OTHER TYPES OF CARE

Physician Services

Medicaid Payment for Primary Care Services 42 CFR §§447.405, 447.410 CONTINUED

- f. The DMAP will make payment under this SPA for the following codes which have been added to the fee schedule since July 1, 2009 (codes and date added specified).

99408 - Added October 10, 2010

99409 - Added October 10, 2010

99224 - Added January 1, 2011

99225 - Added January 1, 2011

99226 - Added January 1, 2011

90673 - Added January 1, 2014

99481 - Added January 1, 2014

99482 - Added January 1, 2014

- g. DMAP did not make payment as of July 1, 2009 for the following codes and will not make payment for those codes under this SPA (codes specified).

99288	99324	99327	99335	99339	99359	99366	99374
99315	99325	99328	99336	99340	99363	99367	99375
99316	99326	99334	99337	99358	99364	99368	99376
99377	99380	99403	99407	99420	99442	99450	99261
99378	99401	99404	99411	99429	99443	99455	99262
99379	99402	99406	99412	99441	99444	99456	99263
99271	99274	99290	99295	99298	99301	99311	99321
99272	99275	99293	99296	99299	99302	99312	99322
99273	99289	99294	99297	99300	99303	99313	99323
99331	99351	99361	99372	99432	99436		
99332	99352	99362	99373	99433	99438		
99333	99353	99371	99431	99435	99440		

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OMB No. 0938-1148

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: **DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
OTHER TYPES OF CARE

Physician Services

2. Physician Services – Vaccine Administration Rendered On or After January 1, 2015

On or after January 1, 2015, payment for the administration of vaccines rendered by physicians meeting the requirements of 42 CFR 447.400(a) and provided under the Vaccines for Children Program shall be paid at the lesser of the state regional maximum administration fee set by the Vaccines for Children (VFC) program.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: **DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
OTHER TYPES OF CARE

Physician Services

Medicaid Payment for Primary Care Services 42 CFR §§447.405, 447.410 CONTINUED

3. Fee Schedules

a. Evaluation & Management Services

This reimbursement methodology applies to services delivered on or after January 1, 2015. The fee schedule and any annual/periodic adjustments to the fee schedule are available on the Delaware Medical Assistance Program (DMAP) website at:

<http://www.dmap.state.de.us/downloads/feeschedules.html>

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

b. Vaccine Administration

This reimbursement methodology applies to services delivered on or after January 1, 2015.

The fee schedule and any annual/periodic adjustments to the fee schedule are available on the Delaware Medical Assistance Program (DMAP) website at:

<http://www.dmap.state.de.us/downloads/feeschedules.html>

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