

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

School Based Services

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 School Based Services, specifically, to expand services provided in the school setting. 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 December 2024 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2024, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding School Based Services.

Background

The school setting provides a unique opportunity to deliver health care services to children and adolescents, especially those enrolled in Medicaid and the Children's Health Insurance Program (CHIP). School-based services (SBS), including but not limited to preventive care, mental health and substance use disorder (SUD) services, physical and occupational therapy, and disease management have been shown to improve both health and academic outcomes. Schools can play an important role in bridging equity gaps among students in low-income and rural communities where access to health care services may be more limited. To deliver SBS, it is essential that State Medicaid and CHIP agencies (hereafter, "State Medicaid/CHIP agencies"), State Educational Agencies (SEAs), and schools all work together to support students.

Statutory Authority

- Section 1905(a) of the Social Security Act (SSA)
- 42 CFR §447

Purpose

The purpose of this regulation to expand Medicaid and CHIP covered school-based services to cover those services also listed in a treatment plan or 504 plan.

Summary of Proposed Changes

Effective January 1, 2025, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to expand services provided in the school setting.

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 gave public notice and provided 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 December 31, 2024.

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

	Federal Fiscal Year 2025	Federal Fiscal Year 2026
General (State) funds	\$593,447	\$604, 467
Federal funds	\$895,755	\$884,735

Summary of Comments Received with Agency Response and Explanation of Changes

There were no public comments received.

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:

The DMMA Division Director has reviewed the proposed regulation as required by 29 Del. C. §10118(b)(3) and has determined that if promulgated, the regulation would have a de minimis impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2024 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding School Based Services, specifically, to expand services provided in the school setting and shall be final effective February 11, 2025.

1/16/2025 | 4:54 PM EST

Date of Signature

Josette D. Manning Esq., Secretary, DHSS

Attachment 3.1-A
Page 2b Addendum

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

AMOUNT, DURATION AND SCOPE OF MEDICAL
AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY - CONTINUED

LIMITATIONS:

4.a. (continued)

1) School-based Health Services - Medicaid covers the following health and mental health services provided or purchased by the Delaware Department of Education (DOE) or Local Education Agency (LEA) when they are medically necessary and furnished by providers meeting specified criteria:

(a) EPSDT screen, screening services, including vision, dental, immunization, orthopedic, mental health and developmental screening (per 42 CFR 440.40(b))

(b) Nursing Services, including provision of one-on-one individualized Health Education (per 42 CFR 440.60 and

440.170)

- (c) Physical Therapy, Occupational Therapy, Speech Therapy, Language and Hearing Services (per 42 CFR 440.110)
- (d) Rehabilitative ~~behavioral health services~~ Behavioral Health Services (per 42 CFR 440.130) designed to correct or ameliorate a mental health or developmental disability and restore a recipient to his or her best possible level of functioning as determined via an EPSDT screen and documented in an Individualized Education Plan (IEP)/ Individualized Family Service Plan (IFSP) (per 42 CFR 440.130), including: screen.
- ~~Psychological and developmental assessment~~
 - ~~Counseling and therapy~~
- (e) Specialized transportation of children with IEPs (as defined in Title 14 Del.C.§202) between home and school on days when the transportation is necessary to receive a Medicaid-covered service. Both the need for the Medicaid-covered service and the need for transportation must be documented in the child's IEP (per 42 CFR 440.170).

With the exception of EPSDT screens, all services covered under this section are diagnostic or active treatments designed to reasonably improve the student's physical or mental condition and are provided to the student whose condition or functioning can be expected to reasonably improve with interventions.

TN No. SPA # 08-004 <u>24-0019</u>	Approval Date February 23, 2014
Supersedes	
TN No. # 298 <u>08-004</u>	Effective Date July 1, 2008 <u>January 1, 2025</u>

Attachment 3.1-A
Page 2c Addendum

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

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES
PROVIDED TO THE CATEGORICALLY NEEDY

4.b. Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Services Continued

2) School-based Services Continued

With the exception of the EPSDT screening services, all services covered under this section shall be medically necessary and ~~shall be~~ prescribed in a written treatment plan signed by a licensed practitioner within the scope of practice as defined under state law or regulations and documented in the student's IEP/IFSP. A written treatment plan may include an:

- Individualized Education Plan.
- Individual Family Service Plan.
- Other medical plans of care: 504 plans, any other documented individualized health or behavioral health plan or as otherwise determined medically necessary.

These services are delivered by school providers, but are also available in the community from other providers.

Services must be provided by:

- ~~licensed~~ Licensed qualified providers who meet the requirements of the regulations cited above in this section and other applicable state law and regulations as per 42 CFR 440.60, including School Psychologists certified by the Department of Education, as recognized by State Law.
- Unlicensed professionals may operate under the direction of a licensed practitioner who acts as supervisor and is responsible for the work, plans the work and methods, who regularly reviews the work performed and is accountable for the results. Supervision must adhere to the requirements of the practitioner's applicable licensing board.

- The licensed practitioner must co-sign documentation for all services provided by practitioners under his or her direction.

Providers must maintain all records necessary to fully document the nature, quality, amount and medical necessity of services furnished to Medicaid recipients.

TN No. SPA # 16-003 <u>24-0019</u>	Approval Date August 24, 2016
Supersedes	
TN No. # 08-004 <u>16-003</u>	Effective Date July 1, 2016 <u>January 1, 2025</u>

~~Attachment 4.1-B~~ Attachment 4.19-B
Page 19a

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

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

5. Other EPSDT Services

Reimbursement for services not otherwise covered under the State Plan is determined by the Medicaid agency through review of a rate setting committee. Non-institutional services are paid on a fee-for- service basis. Institutional services are per diem rates based on reasonable costs. These services include:

(a) Prescribed Pediatric Extended Care - see ATT. 4.19-B, Page 7

(b) School-Based Health Service (SBHS) Providers:

School based health service providers include Delaware school districts and charter schools and may provide the following Medicaid services per Attachment 3.1-A, Page 2 Addendum:

- EPSDT Screens
- Nursing Services
- Physical Therapy
- Occupational Therapy
- Speech Therapy, Language and Hearing Services
- ~~Psychological and Developmental Treatment Assessment~~
- ~~Counseling and Therapy~~
- Rehabilitative Behavioral Health Services
- ~~Residential Mental Health or Developmental Disability Treatment~~
- Specialty Transportation Services

TN No. SPA # 16-004 <u>24-0019</u>	Approval Date June 7, 2016
Supersedes	
TN No. # 08-004 <u>16-004</u>	Effective Date July 1, 2016 <u>January 1, 2025</u>

~~Attachment 4.19~~ Attachment 4.19-B
Page 19d

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

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT

RATES - OTHER TYPES OF CARE

(d) School-Based Health Service (SBHS) Providers

Continued: Allowable Costs shall include:

- a. Direct Medical Services including Salaries, Benefits and contracted medical services which may be traced directly to the provider's audited yearly trial balance.
- b. Indirect Costs using the provider specific Unrestricted Indirect Cost Rate (UICR) applicable for the dates of service in the rate year. The UICR is the unrestricted indirect cost rate approved by Delaware's cognizant agency for education services, the U.S. Department of Education.

2. ~~Direct medical percentage as determined by the CMS Approved Time Study data.~~

~~The time study is used to determine the percentage of time that medical service personnel spend on direct medical services, general and administrative time and all other activities to account for 100 percent of time to assure that there is no duplicate claiming. This time study methodology will utilize two mutually exclusive cost pools representing individuals performing Direct Medical Services: one for nursing staff and one for all other healthcare professionals. A sufficient number of personnel for each cost pool will be sampled to ensure time study results that will have a confidence level of at least 95 percent (95%) with a precision of plus or minus five percent (5%) overall. The Direct Medical Service time study percentage is applied against the Direct Medical Service cost pool. Results will be District wide so every school will have the same time study percentages.~~

Data Capture for the Cost of Providing Health-Related Services

Data capture for the cost of providing health-related services will be accomplished utilizing the following data sources:

1. Total direct and indirect costs, less any federal payments for these costs, will be captured utilizing the following data:

- a. School-Based Health Services cost reports received from school districts.
- b. Delaware Department of Education Unrestricted Indirect Cost Rate (UICR);
- c. Random Moment Time Study (RMTS) Activity Code 4B (Direct Medical Services), Activity Code 4C (Free Care or Direct Medical Service pursuant to other medical plans of care) and Activity Code 10 (General Administration);
 - i. Direct Medical Services RMTS percentage
 - ii. Free Care RMTS percentage
- d. School district specific Medicaid Ratios:
 - i. Medicaid Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) Ratio
 - ii. Medicaid Ratio for Other Medical Plan(s) of Care

TN No. SPA# 08-004 24-0019

Approval Date ~~February 23, 2011~~

Supersedes

TN No. SP# ~~298~~ 08-004

Effective Date ~~July 1, 2008~~ January 1, 2025

Attachment 4.19-B

Page 19d cont.

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

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

(d) School-Based Health Service (SBHS) Providers Continued:

Data Sources and Cost Finding Steps

The following provides a description of the data sources and steps to complete the cost finding and reconciliation:

1. Allowable Costs: Direct costs for direct medical services include unallocated payroll costs and other unallocated costs that can be directly charged to direct medical services. Costs are included in accordance with 2 CFR 200 and 45 CFR 75. Costs for transportation personnel are reported as defined later in this section. Direct payroll costs include total compensation (i.e., salaries and benefits and contract compensation) of direct services personnel listed in the descriptions of the covered Medicaid services delivered by school districts, excluding transportation personnel. These direct costs will be calculated on a district-specific level and will be reduced by any federal payments for these costs, resulting in adjusted direct costs.

Other direct costs include costs directly related to the approved direct services personnel for the delivery of medical services, such as medically related purchased services, supplies and materials. These direct costs are accumulated on the annual School Health Services Cost Report and are reduced by any federal payments for these costs, resulting in adjusted direct costs. The cost report contains the scope of cost and methods of cost allocation that have been approved by the Centers for Medicare & Medicaid Services (CMS).

The source of this financial data will be audited Chart of Account records kept at the school district. The Chart of Accounts is uniform throughout the State of Delaware. Costs will be reported on a cash basis.

a) Direct Medical Services

Non-federal cost pool for allowable providers consists of:

- i. Salaries;
- ii. Benefits;
- iii. Medically-related purchased services; and
- iv. Medically-related supplies and materials.

- b) Medically related purchased services include contracted services. LEAs report the amounts they pay to contracted providers as salaries. Benefits are not reported by the LEA for contracted staff.

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TN No. # NEW

~~Effective Date~~ January 1, 2025

Attachment 4.19-B

Page 19d cont. 1

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

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

(d) School-Based Health Service (SBHS) Providers Continued:

2. Contracted costs: LEAs can include contracted service costs for and contracted clinicians that were included on the Staff Pool List for the RMTS process. The contracted service costs represent the amounts charged to the LEA by the contractor or contracting agency and may include the costs associated with the clinician and any overhead incurred by the contractor that is charged back to the LEA. This cost does not include any overhead or other indirect costs incurred by the LEA to support the contracted clinician.
- i. Contracted service costs are subjected to the same factors that are applied to the LEA's direct medical service personnel costs (salaries and benefits) including the Direct Medical Services RMTS percentage, the LEA's Unrestricted Indirect Cost Rate, and the LEA's Medicaid IEP Ratio.

- ii. The LEA's Unrestricted Indirect Cost Rate is applied to contracted service costs to reflect the overhead and administrative costs incurred by the LEA to support the contracted service clinician and are non-duplicative of any agency indirect costs charged to the LEA by the contractor.

3. Indirect Costs: Indirect costs are determined by applying the school district's specific Unrestricted Indirect Cost Rate (UICR) to its adjusted direct costs. Delaware public school districts use predetermined fixed rates for indirect costs. The Delaware Department of Education (DDOE) has, in cooperation with the United States Department of Education (DOE), developed an indirect cost plan to be used by school districts in Delaware. Pursuant to the authorization in 34 CFR\$75.561(b), DDOE approves unrestricted indirect cost rates for school districts for the DOE, which is the cognizant agency for school districts. Providers are permitted only to certify Medicaid- allowable costs and are not permitted to certify any indirect costs that are outside their unrestricted indirect cost rate.

Indirect Cost Rate

- a. Apply the Delaware Department of Education Cognizant Agency UICR applicable for the dates of service in the rate year.
- b. The UICR is the unrestricted indirect cost rate calculated by the Delaware Department of Education. To ensure non-duplication of costs, LEAs are instructed that costs from accounting codes that are used in the calculation of the unrestricted indirect cost rate are not to be included in the reported expenditures on the annual cost report.

TN No. SPA # NEW 24-0019

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Supersedes

TN No. # NEW

Effective Date January 1, 2025

Attachment 4.19-B

Page 19d cont. 2

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

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

(d) School-Based Health Service (SBHS) Providers Continued:

4. Time Study Percentages: After the state receives a CMS-approved approval letter for the time study implementation guide (TSIG) to run the RMTS, a time study is used to determine the percentage of time that medical service personnel spend on IEP/IFSP, other medical plans of care, or where medical necessity has been otherwise established direct medical services, general and administrative time and all other activities to account for 100 percent of time to assure that there is no duplicate claiming. The RMTS methodology will utilize two distinct cost pools: one cost pool for Direct Medical Services which includes all eligible staff except School Health Aides Providers and one also for Direct Medical Services staff but only to include School Health Aide Providers. Participants will complete time studies for three quarters. An average of the three quarters is used to calculate claims for the July - September (summer) quarter.

Below the job categories in each of the cost pools is outlined based on the current eligible provider job categories.

Direct Service Cost Pool

The following positions that are eligible to bill direct medical services include providers of:

- EPSDT Screens
- Physical Therapy
- Occupational Therapy
- Speech Therapy, Language and Hearing Services
- Rehabilitative Behavioral Health Services

Nursing Cost Pool

The following positions that are eligible to bill direct medical services include:

- Skilled Nursing

The RMTS will generate the Direct Medical Services time study percentages; one for Direct Medical Services pursuant to an IEP/IFSP and one for Direct Medical Services pursuant to other medical plans of care. The two Direct Medical Service time study percentages will be applied to only those costs associated with direct medical services to generate a Direct Medical Service cost amount for services provided pursuant to an IEP/IFSP and a Direct Medical Services cost amount for services provided pursuant to other medical plans of care for each cost pool. The direct medical services costs and time study results must be aligned to ensure proper cost allocation. The CMS approval letter for the time study will be maintained by the State of Delaware and CMS.

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Attachment 4.19-B
Page 19e

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

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

(d) School-Based Health Service (SBHS) Providers Continued:

3. ~~School District-specific IEP Medicaid Eligibility Rates (MER)~~

~~A District-wide MER will be established that will be applied to all participating schools. When applied, this MER will discount the Direct Medical cost pool by the percentage of Medicaid students with IEPs.~~

~~The names and birthdates of students with a health-related IEP will be identified from ESchool Plus, the statewide pupil accounting system and matched against the Medicaid eligibility file to determine the percentage of those that are eligible for Medicaid. The numerator of the rate will be the students with an IEP that are eligible for Medicaid, and the denominator will be the total number of students with an IEP.~~

~~Computation of Total Medicaid Reimbursable Cost~~

~~For each district or school participating in the Delaware Medicaid program, the SBS Allowable Costs from Step 1 will be multiplied by the Direct Medical Percentage from Step 2. The product will then be multiplied by the Medicaid Eligibility Rate from Step 3 to determine the total Medicaid reimbursable cost for each participating provider.~~

5. Medicaid Ratio Determination: Two distinct Medicaid ratios will be established for each participating school district. When applied, these ratios will discount the associated Direct Medical Service cost pools by the percentage of Medicaid enrolled students.

a. Medicaid IEP Ratio: The Medicaid IEP Ratio will be used in the calculation of the Medicaid Direct Medical Service costs pursuant to an IEP/IFSP. The names, gender, and birthdates of students with an IEP/IFSP will be identified from the Delaware Annual Unit Count (currently September 30th) and matched against the Medicaid enrollment file to determine the percentage of those that are enrolled for Medicaid. The numerator of the rate will be the number of Medicaid enrolled special education students with a medical service on their IEP/IFSP and the denominator will be the total number of enrolled special education students with a medical service on

their IEP/IFSP The IEP ratio will be calculated for each district participating in the SBHS program on an annual basis. The IEP/IFSP reimbursement uses the percentage of time spent annually and utilize the Activity Code 4B results.

b. Medicaid Enrollment Ratio for Other Medical Plans of Care: The Medicaid Enrollment Ratio for Other Medical Plans of Care will be used in the calculation of the Medicaid Direct Medical Service costs pursuant to medical plans of care other than an IEP/IFSP. The names, gender, and birthdates of all students from the Delaware Annual Unit Count (currently September 30th) and matched against the Medicaid enrollment file to determine the percentage of those that are enrolled for Medicaid. The numerator of the rate will be the number of Medicaid enrolled students and the denominator will be the total number of students. The Medicaid Enrollment Ratio for Other Medical Plans of Care will be calculated for each district participating in the SBHS program on an annual basis. This ratio will be applied to the calculation to determine the reimbursement level for services provided to students with medical necessity documented in a method other than an IEP/IFSP. This reimbursement uses the percentage of time spent annually and utilize the Activity Code 4C results.

6. Total Medicaid Reimbursable Cost: The result of the previous steps will be a total Medicaid reimbursable cost for each school district for Direct Medical Services.

TN No. SPA # 08-004 24-0019

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Supersedes

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Effective Date ~~July 1, 2008~~ January 1, 2025

28 DE Reg. 579 (02/01/25) (Final)