DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PROPOSED

PUBLIC NOTICE

School-Based Health Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan related to School-Based Health Services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSED AMENDMENT

The proposed amends the Title XIX Medicaid State Plan as it relates to School-Based Health Services.

Statutory Authority

- Section 504 of the Rehabilitation Act of 1973;
- 45 CFR Part 84, *Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance*;
- Individuals with Disabilities Education Act (IDEA) - P.L. 94-142;
- Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 - P.L. 100-360;
- 42CFR§440.40, *Early and Periodic Screening and Diagnosis and Treatment;*
- 42CFR§431.53, *Assurance of Transportation*; and,
- 42CFR§433.20, *Rates of FFP for Administration: Reimbursement for School-Based Administrative Expenditures (NEW)*

Background

School-Based Health Services

The Medicaid program can pay for certain medically necessary services which are specified in Medicaid law when provided to individuals eligible under the state plan for medical assistance. The Individuals with Disabilities Education Act (IDEA) formerly called the Education of the Handicapped Act, authorized Federal funding to states for programs that impact Medicaid payment for services provided in schools.

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under IDEA through a child's Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP). This amendment was enacted to ensure that Medicaid would cover the health-related services under IDEA.

Under Part B of IDEA, school districts must prepare an IEP for each child which specifies all special education and "related services" needed by the child. The Medicaid program can pay for some of the "health related services" required by Part B of IDEA in an IEP, if they are among the services specified in Medicaid law. In addition, the services must be included in the state's Medicaid plan or available through the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Program. Examples of such services include physical therapy, speech pathology services, occupational therapy, psychological services and medical screening and assessment services.

In summary, the Centers for Medicare and Medicaid Services' (CMS) policy is that health-related services included in a child's IEP or IFSP can be covered under Medicaid if all relevant statutory and regulatory requirements are met. A state may cover services often included in an IEP or IFSP as long as: 1) the services are medically necessary and coverable under a Medicaid coverage category (speech therapy, physical therapy, etc.); 2) all other Federal and state regulations are followed, including those for provider qualifications, comparability of services and the amount, duration and scope provisions; and, 3) the services are included in the state's plan or available under the EPSDT Program.

School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School.

On December 28, 2007, CMS published a final rule, at 72 Federal Register 73635, which would eliminate Federal Medicaid payment for school administration expenditures and costs related to transportation of school-aged children between home and school. The Secretary has found that these activities are not necessary for the proper and efficient administration of the Medicaid State plan and are not within the definition of the optional transportation benefit.

Based on these determinations, under this final rule, Federal Medicaid payments will no longer be available for administrative activities performed by school employees or contractors, or anyone under the control of a public or private educational institution, and for transportation from home to school.

This regulation is effective on February 26, 2008. Under legislation passed by Congress, there is a six-month delay in implementing these changes so school budgets in the 2007-2008 school year will not be affected. However, Congress is making new efforts to delay CMS's rules to allow time for further review of the financial impact the rules will have on states, local government agencies and providers. The current moratorium that precludes CMS from implementing these rules will expire on June 30, 2008.

Summary of Proposed Amendment

CMS reviewed both the School-Based Health Services program and reimbursement methodology included in the Title XIX Medicaid State Plan. Pending that review, CMS only approved the current methodology until July 1, 2008. The Division of Medicaid and Medical Assistance (DMMA) must amend the State Plan at Attachment 3.1-A to clarify and update the description of covered categories of services and revise the reimbursement methodology for these services at Attachment 4.19-B.

Therefore, effective July 1, 2008, reimbursement for covered services provided or purchased by the Department of Education (DOE) or Local Education Agencies (LEA) is determined on a fee-for-service basis. Rates include allowable direct costs (salaries, benefits, purchase of service and other costs directly related to the delivery of the medical services) and indirect costs, allocated as part of an approved Cost Allocation Plan per OMB Circular A-87. Rates must be consistent with efficiency, economy and quality of care. Also, upon implementation by CMS, Federal Financial Participation (FFP) will not be available for the cost of transportation of school-age children between home and school pursuant to 42 CFR §§431.53(b) and 433.20.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

DMMA PROPOSED REGULATIONS #08-17
REVISIONS:

ATTACHMENT 3.1-A
Page 2 Addendum

State of Delaware

AMOUNT, DURATION, AND SCOPE OF MEDICAL
AND REMDIAL CARE AND SERVICES PROVIDED TO THE
CATEGORICALLY NEEDY

LIMITATIONS:

4.b. EPSDT services are limited only by medical necessity criteria and are not arbitrarily limited in amount, duration, or scope. Limitations on organ transplants are identified in Attachment 3.1-A, Page 1 Addendum.

~~Non-State Plan~~ EPSDT services include:

1) Prescribed Pediatric Extended Care (PPEC) ~~services~~ facilities that are licensed as such by the State's Office of Health Facilities, Licensing and Certification and that are provided as an alternative to more expensive institutionalization or as an alternative to community/home care for children who are determined to be in medical need of the service. These services include nursing, nutrition, developmental assessment, speech therapy, physical therapy and occupational therapy provided in an outpatient setting, up to twelve hours per day, five days a week.

PPEC services ~~will~~ must be prior authorized ~~on an individual basis,~~ using policy established by the Delaware Medicaid program.

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4.b. (continued)

2) School-Based Health Services – Medicaid covers the following health and mental health services provided ~~in a school setting~~ 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 screens, including vision, dental, immunization, orthopedic and developmental screening (per 42 CFR §440.40(b) and 441 Subpart B)
   (b) Nursing Services, including provision of one-on-one individualized Health Education (per 42 CFR §440.60 and §440.170)
   (c) ~~Assessment and/or Treatment as follows:~~
   Physical Therapy, Occupational Therapy, Speech Therapy, Language~~,~~ and Hearing Services, ~~Vision, Dental, Immunizations, Developmental/Orthopedic, Health Education, Psychological~~ (per 42 CFR §440.110)
   (d) Medically necessary behavioral health services 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 and 440.160), including:
      - Mental health assessment
      - Psychological and developmental testing
      - Counseling and therapy
      - Facility-based mental health or developmental disability treatment
      - Inpatient psychiatric services for individuals under age 21

   If the regulatory changes at 42 CFR §§431.53(b) and 433.20 regarding the elimination of reimbursement for the cost of transportation of school-age children between home and school either as a reimbursable service or administrative activity are implemented, Delaware will cease claiming for those costs as of the effective date.

With the exception of EPSDT screens, all services provided 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.

Such services 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. Services must be performed by qualified professionals operating within the scope of their practice under State law and regulations.

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Services must be provided by qualified providers who meet the requirements of the regulations cited above in this section and other applicable state law and regulations. Unlicensed professionals may operate under the direction of a licensed practitioner who acts as supervisor and is responsible for the work, who plans the work and methods, who regularly reviews the work performed and who 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.

3) Mental Health and Drug/Alcohol services approved and monitored through the Department of Services for Children, Youth and their Families. These include:
   (a) Mental Health Outpatient Services
   (b) Mental Health Case Management
   (c) Professional Medical Services (i.e., neurologists, clinical psychologists, psychiatric social workers and other licensed medical providers)
   (d) Psychiatric facility services
   (e) Drug/Alcohol Rehabilitation Services

4) Assistive Technology

5) Orthotics and Prosthetics

6) Chiropractic Services

7) Any other medical or remedial care provided by licensed medical providers

8) Any other services as required by §6403 of OBRA '89 as it amended §1902(a)(43), §1905(a)(4)(B) and added a new §1905(r) to the Act

(Break in Continuity of Sections)

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) Inpatient and Partial Hospital Psychiatric Services – reimbursed on a per diem basis

(c) Outpatient Psychiatric Facility Services - fee-for-service

(d) School-Based Health Services - ~~fee-for-service: this reimbursement methodology will expire effective July 1, 2008~~ reimbursement for covered services provided or purchased by the Department of Education (DOE) or Local Education Agencies (LEA) is determined on a fee-for-service basis. Rates include allowable direct costs (salaries, benefits, purchase of service and other costs directly related to the delivery of the medical services) and indirect costs, allocated as part of an approved Cost Allocation Plan per OMB Circular A-87. Rates must be consistent with efficiency, economy and quality of care. Upon implementation by CMS, FFP will not be available for the cost of transportation of school-age children between home and school pursuant to 42 CFR §§431.53(b) and 433.20

(e) Mental Health and Drug/Alcohol Rehabilitation Services:
- Institutional - per diem
- Non-Institutional - fee-for-service or, if managed by the Department of Services for Children, Youth and Their Families' Division of Child Mental Health (see ATTACHMENT 4.19-B, Page 19 Addendum).