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

Medicaid Nonpayment and Reporting Requirements For Provider Preventable Conditions

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 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding *Medicaid nonpayment and reporting requirements for provider preventable conditions*.

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 September 30, 2011.

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 PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan regarding *Medicaid nonpayment and reporting requirements for provider preventable conditions*.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act;
- 42 CFR §434.6, *General requirements for all contracts and subcontracts;*
- 42 CFR §438.6, *Contract requirements;*
- 42 CFR §447.26, *Prohibition on payment for provider-preventable conditions.*

Background

On June 6, 2011, the Centers for Medicare and Medicaid Services (CMS) issued a final rule outlining its planned implementation of non-payment for Medicaid healthcare-associated conditions (HCACs). The final rule is available at http://www.gpo.gov/fdsys/pkg/FR-2011-06-06/pdf/2011-13819.pdf. The rule implements Section 2702 of the Patient Protection and Affordable Care Act (ACA) of 2010, which prohibits federal payments to state Medicaid programs for the costs associated with HCACs.

In addition, the law allows states to identify other conditions for which they may deny provider payments. States must ensure that any non-payment rules they put into effect do not result in a loss of access to care or services for Medicaid beneficiaries. The rule requires providers to self-report the occurrence of HCACs through their existing claims systems.

Section 2702 of the ACA requires the Secretary to identify current State practices that prohibit Medicaid payment for health care-acquired conditions (HCACs), determine which practices are appropriate for the Medicaid program, and apply them to the Medicaid program through regulations to be effective July 1, 2011. The regulations are to prohibit federal payment for specified HCACs and ensure that the prohibition will not result in loss of access to care for Medicaid beneficiaries. For this purpose, HCACs are defined as medical conditions for which an individual was diagnosed that could be identified by a secondary diagnostic code described in the Medicare requirements at section 1886(d)(4)(D)(iv) of the Social Security Act. (In the Medicare program, this section applies to prohibition of certain inpatient hospital payments, and the identified conditions are referred to as Hospital Acquired Conditions, or HACs.) In implementing the Medicaid payment prohibition, the Secretary must apply, as appropriate, the Medicare inpatient hospital payment regulations promulgated under section 1886(d)(4)(D). In doing so, the Secretary may exclude certain Medicare HACs if they are inapplicable to Medicaid beneficiaries.

While the rule's requirements will take effect July 1, 2011, as required by the statute, CMS intends to delay compliance action on the provision until July 1, 2012.

Summary of Proposal

In response to the requirements outlined in Section 2702 of the Affordable Care Act (ACA), the Delaware Medical Assistance Program (DMAP) is implementing new policy that prohibits Medicaid payment for services related to Provider Preventable Conditions (PPCs). In addition, DMAP will require that providers self-report the occurrence of a PPC. DMAP will implement Section 2702 and prohibit Medicaid payments for care associated with PPCs. The new policy is effective for dates of service on and after July 1, 2011.

Specifically, upon receipt of CMS-approved state plan amendment preprint templates, the Medicaid state plan will be amended at Attachment 3.1-A and Attachment 4.19-B to allow enforcement of payment prohibitions for services related to provider preventable conditions. The DMAP will update its payments systems to improve enforcement and, consistent with Section 2702 of the ACA, which takes effect July 1, 2011, implement policies to prohibit Medicaid payment for provider preventable conditions. DMAP provider manual(s) will also be updated, as appropriate. DMAP provider manual(s) will also be updated, as appropriate.

The provision of this state plan amendments are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact

It is anticipated that there will be minimal fiscal impact to the General Fund as these Provider Preventable Conditions are generally not billed to the Medicaid program.

DMMA PROPOSED REGULATION #11-35
REVISION:

Delaware Medical Assistance Program Provider Specific Policy Manual

(Policy Number Undetermined) Provider Preventable Conditions

The following applies to any healthcare service provided to Medicaid recipients and dual eligible beneficiaries:

(1) In accordance with 76 FR 32837, which is incorporated by reference, the Delaware Medical Assistance Program (DMAP) will not reimburse providers or contractors for provider preventable conditions (PPCs) as defined in this Centers for Medicare and Medicaid Services (CMS) rule. Providers and contractors are prohibited from submitting claims for payment of these conditions except as permitted in 76 FR 32837 when the provider preventable condition existed prior to the initiation of treatment by the provider.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider preventable conditions whether or not reimbursement for the services is sought.

(3) Providers must report the occurrence of a PPC through the appropriate claim(s) type submission process.

(4) DMAP will not accept Medicare primary, Medicaid secondary professional, or institutional crossover claims resulting in zero liability.

(5) DMAP will align with Medicare's policy and billing guidelines for all providers impacted by this policy, and adopt CMS' changes.

15 DE Reg. 276 (09/01/11) (Prop.)