

**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**

**Reimbursement Methodology for Certain Medicaid Services**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Title XIX Medicaid State Plan regarding the reimbursement methodology for certain Medicaid services. 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 2011 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2011 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 proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan to clarify the reimbursement methodology for certain Medicaid services.

**Statutory Authority**

- 42 CFR §440, Subpart A, *Definitions*; and,
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*; and,
- 42 CFR §447, *Payments for Services*.

**Background**

In accordance with 42 CFR §447.205 and Section 1902(a)(13)(A) of the Social Security Act, Delaware Health and Social Services (DHSS), Division of Medicaid and Medicaid Assistance (DMMA) is required to give public notice of any significant proposed change in its methods and standards for setting payment rates for services.

**Summary of Proposal**

The Centers for Medicare and Medical Assistance (CMS) requires that reimbursement methods for setting payment rates for services be consistent with the statutory and regulatory requirements of Section 1902(a) of the Social Security Act, Section 1902(a)(30)(A) of the Act and 42 CFR §430.10.

To more clearly define the comprehensive payment methodology used to base individual practitioner rates, the following significant changes are proposed.

Effective for dates of service provided on or after January 1, 2012:

- 1) Reimbursement Methodology for **Medical Free-Standing and Dental Free-Standing Clinics**: Licensed free-standing emergency room are paid a negotiated flat rate per encounter. Dialysis clinics are paid 100% of the applicable Medicare rate. Dental free-standing clinics are paid the same as non-clinic dentists per EPSDT Dental Treatment. All other medical clinics are paid as physicians are paid as described in Attachment 4.19-B, Other Types of Care, Physician, Podiatry and Independent Radiology Services.
- 2) Reimbursement Methodology for **Extended Services for Pregnant Women**: Government providers are reimbursed on a negotiated rate basis which will not exceed actual costs which result from efficient and economic operation of the provider. Reimbursement of non-governmental providers will be based on reasonable charges which will not exceed the prevailing charges in the locality for comparable services as determined from the annual DMMA Nursing Wage Survey. The agency's fee schedule rate was set as of June 1, 2002 and is effective for services on or after that date. The fee schedule and any periodic adjustments are published on the DMAP website at: <http://www.dmap.state.de.us/downloads.html>.
- 3) Reimbursement Methodology for **Optometrists and Opticians**: Optometrists and Opticians are reimbursed for examinations as physicians and are paid as described in Attachment 4.19-B, Other Types of Care, Physician, Podiatry and Independent Radiology Services.

- 4) Reimbursement Methodology for **Emergency Transportation**: Emergency transportation is reimbursed as a percentage of the Medicare Fee Schedule for Delaware as follows:
- Ground Mileage, per Statute Mile will be 22%
  - Advanced Life Support, Emergency Transport will be 13%
  - Basic Life Support, Emergency Transport will be 17%
  - Conventional Air Services, Transport One Way (Rotary Wing) will be 39%
  - Rotary Wing Air Mileage, per Statute Mile will be 38%.

The provisions of this state plan amendment are subject to approval by the CMS.

#### **Fiscal Impact Statement**

The proposed revision imposes no increase in cost on the General Fund.

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

Two representatives from the Delaware Optometric Association (DOA) offered the following similar observations and recommendation summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

#### **DOA**

Having reviewed the proposed Reimbursement Methodology for Certain Medicaid Services, it appears to us that opticians should not be referenced in the language regarding reimbursement for examinations as physicians. They are not physicians and as such are not licensed regulated health care providers. Both Optometrists and Opticians may supply materials to Medicaid beneficiaries. They SHOULD be included in the section referring to rates for eyeglass frames and lenses (DME). That can be accomplished by deleting "and Opticians" in the first sentence.

**Agency Response:** Thank you for your comments about the revised State Plan language regarding reimbursement for Optometrist and Optician Services. This State Plan Amendment was submitted at the request of CMS who requested that DMMA should provide more detail about its current methodology. The sentence "Optometrists and Opticians are paid as physicians" does not intend to imply that either of those professions meets the licensure or other requirements for physicians. It means that these disciplines are paid as physicians *are paid* under the Delaware State Plan for Medical Assistance. That means that they are paid based on rates in the Delaware Medicaid Physician Fee Schedule, which is paid as a percentage of the Medicare Physician Fee Schedule. There are rates for many procedure codes on the Medicare and Medicaid Fee Schedules that can be performed by other practitioner types than physicians.

There are no changes to the proposed regulation as a result of this comment.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the December 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for certain Medicaid services including *Medical and Dental Free-Standing Clinics, Optometrists and Opticians, Extended Services for Pregnant Women and Emergency Transportation Services* is adopted and shall be final effective February 10, 2012.

Rita M. Landgraf, Secretary, DHSS

#### **DMMA FINAL ORDER REGULATION #12-01 REVISION:**

ATTACHMENT 4.19-B  
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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**

Medical~~/Dental~~ free-Standing Clinics are paid either a negotiated flat rate or as physicians are paid (see above) that are licensed as a free standing emergency room under section 4404 of Title 16 of the Delaware Administrative Code are paid a negotiated flat rate per encounter. Dialysis clinics are paid 100% of the applicable Medicare rate. All other medical clinics are paid as physicians are paid as described in Attachment 4.19-B Other Types of Care, Physician, Podiatry and Independent Radiology Services.

The agency's fee schedule for free standing emergency rooms was set as of April 1, 2005 and is effective for services

provided on or after that date. The fee schedule and any periodic adjustments are published on the Delaware Medical Assistance Program (DMAP) DMAP website at: <http://www.dmap.state.de.us/downloads.html>.

Dental free-standing Clinics are paid the same as non-clinic dentists per EPSDT Dental Treatment, Attachment 4.19-B page 19.

ATTACHMENT 4.19-B  
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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**

Transportation Services are reimbursed as follows:

1. Emergency Transportation: is reimbursed a flat rate for any trip up to the first 10 miles and an additional amount for each additional mile: Effective for dates of service on or after January 1, 2012, emergency transportation is reimbursed as a percentage of the Medicare Fee Schedule for Delaware as follows:

- Ground Mileage, per Statute Mile will be 22%
- Advanced Life Support, Emergency Transport will be 13%
- Basic Life Support, Emergency Transport will be 17%
- Conventional Air Services, Transport One Way (Rotary Wing) will be 39%
- Rotary Wing Air Mileage, per Statute Mile will be 38%.

2. Non-emergency Transportation: The broker is reimbursed a monthly capitated rate for each Medicaid client residing in the State.

Optometrists and Opticians are reimbursed a set fee for examinations and another set fee for stock lenses. The reimbursement for non-stock lenses is made by prior approval by the Medicaid agency's Optometric Consultant. The agency's rates were set as of March 1 of each year and are effective for services on or after that date are reimbursed for examinations as physicians and are paid as described in Attachment 4.19-B Other Types of Care, Physician, Podiatry and Independent Radiology Services.

Except as otherwise noted in the Plan, State-developed fee schedule rates are the same for both governmental and private ~~providers of optometrist and optician services individual practitioners, and the~~. The fee schedule and any annual/periodic adjustments to the fee schedule are ~~available to providers upon request~~ published and found at: <http://www.dmap.state.de.us/downloads/hcpcs.html>.

Rates for eye glass frames and lenses are contained in the National Heritage Insurance Corporation (NHIC) CMS Contractor file for Durable Medical Equipment (DME). Their website is located at: <http://www.medicarenhic.com/dme/dmfees.shtml>.

Extended Services to Pregnant Women: will be reimbursed at a unit rate for individual services: Government providers are reimbursed on a negotiated rate basis which will not exceed actual costs which result from efficient and economic operation of the provider. Reimbursement of non-governmental providers will be based on reasonable charges which will not exceed the prevailing charges in the locality for comparable services as determined from the annual DMAP Nursing Wage Survey. The agency's fee schedule rate was set as of June 1, 2002 and is effective for services on or after that date. The fee schedule and any periodic adjustments are published on the DMAP website at: <http://www.dmap.state.de.us/downloads.html>.

**15 DE Reg. 1160 (02/01/12) (Final)**