

**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**

**DSSM: 14370 Coverage of Emergency Services and Labor and Delivery**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual regarding *Coverage of Emergency Services and Labor and Delivery Only*. 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 November 2011 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 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 amends the Division of Social Services Manual regarding *Coverage of Emergency Services and Labor and Delivery Only*.

**Statutory Authority**

42 CFR §440.255, *Limited services available to certain aliens*

**Background**

Aliens who are not otherwise eligible for full Medicaid because of immigration status may be eligible for emergency services and labor and delivery only.

For the purposes of emergency services and labor and delivery only, federal Medicaid regulations define emergency services (including labor and delivery) as a sudden onset of a physical or mental condition which causes acute symptoms, including severe pain, where the absence of immediate medical attention could reasonably be expected to:

- Place the person's health in serious jeopardy, or
- Cause serious impairment to bodily function, or
- Cause serious dysfunction of any bodily organ or part.

**Summary of Proposal**

**DSSM 14370**, *Coverage of Emergency Services and Labor and Delivery Only*: The Division of Medicaid and Medical Assistance (DMMA) is proposing a change to the Medicaid emergency services for undocumented aliens' benefit. The primary change is to include birthing centers as a place of service for emergency labor and delivery services, effective November 1, 2011.

**Fiscal Impact Statement**

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

**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.

In June 2011, DMMA adopted a regulation limiting Medicaid services eligibility of qualifying legally residing noncitizens to "emergency services and labor and delivery only." [14 DE Reg. 998 (April 1, 2011) (proposed); 14 DE Reg. 1361 (June 1, 2011)] The Division now proposes to adopt a regulation clarifying that labor and delivery services may be rendered not only in a hospital, but in a birthing center as well. The Councils endorse this clarification, but has the following observations on the proposed regulation.

**Agency Response:** Thank you for the endorsement.

The current regulation categorically limits emergency services to those “rendered in an acute care emergency room or in an acute care inpatient hospital”. [Section 14370] Since DMMA is not limiting labor and delivery to hospital sites, it should consider whether covered emergency services can only be provided in a hospital. The DMAP definition of “emergency” includes a “severe acute illness or accidental injury that demands immediate medical attention or surgical attention” which, “without the treatment a person’s life could be threatened or he or she could suffer serious long lasting disability.” At 621.

There are free-standing emergency or urgent care centers which treat conditions covered by this standard. See attachments. For example, the Newark Emergency Center treats pneumonia, asthma, and fractures. If a patient presented with acute shortness of breath due to asthma and was treated with a nebulizer and concomitant treatment, that should be covered as a life-threatening emergency. Similarly, the fracture of three fingers could be treated in the Center which would meet the standard of an accidental injury” which could result in “serious long-lasting disability.” Consistent with the attachment, the Silverside Medical Aid Network similarly covers broken bones, asthma, and pneumonia. It would be preferable for DMMA to expand the sites in which compensable emergency services can be provided. If free-standing center costs are less than hospital costs, such a change could also result in cost saving to the State.

**Agency Response:** Urgent care is the delivery of ambulatory medical care outside of a hospital emergency department on a walk-in basis without a scheduled appointment. Urgent care centers provide immediate care for acute, non-life threatening illnesses and injuries. Urgent care medicine differs from emergency medicine in that its primary focus is on acute medical problems at the lower end of the severity spectrum. Individuals who present to an urgent care center and are judged to need emergency care are transferred to a hospital emergency department. The subsequent triage and treatment costs in the hospital emergency room would incur more costs. No change will be made to the regulation as a result of this comment.

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

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding *Coverage of Emergency Services and Labor and Delivery Only* is adopted and shall be final effective January 10, 2012.

Date of Signature

Rita M. Landgraf, Secretary, DHSS

#### **DMMA FINAL ORDER REGULATION #11-63**

##### **REVISION:**

##### **14370 Coverage of Emergency Services and Labor and Delivery Only**

These Emergency services must be rendered in an acute care hospital emergency room or in an acute care inpatient hospital. Labor and delivery only services must be rendered in an acute care hospital emergency room, an acute care inpatient hospital, or a birthing center.The DMAP defines an emergency as:

- a sudden serious medical situation that is life threatening; or
- a severe acute illness or accidental injury that demands immediate medical attention or surgical attention; and
- without the treatment a person's life could be threatened or he or she could suffer serious long lasting disability.

Medically necessary physician (surgeon, pathologist, anesthesiologist, emergency room physician, internist, etc.) or midwife services rendered during an emergency service that meets the above criteria are covered. Ancillary services (lab, x-ray, pharmacy, etc.) rendered during an emergency service that meets the above criteria are also covered. Emergency ambulance services to transport these individuals to and from the services defined above are also covered.

Services not covered for aliens who are determined to be eligible for emergency services and labor and delivery only include but are not limited to:

- any service delivered in a setting other than an acute care hospital emergency room or an acute care inpatient hospital. Exception: labor and delivery services may be rendered in a birthing center.
- any service (such as pharmacy, transportation, office visit, lab or x-ray, home health) that precedes or is subsequent to a covered emergency service. Exception: ambulance transportation that is directly related to the emergency is covered.
- organ transplants
- long term care or rehabilitation care
- routine prenatal and post partum care

**13 DE Reg. 1540 (06/01/10)**

**15 DE Reg. 1023 (01/01/12) (Final)**

