

**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**

**Lactation Counseling Services**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding services provided to pregnant and postpartum individuals, specifically, *to provide lactation counseling services as separately reimbursed pregnancy-related 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 April Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 1, 2017 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 the Title XIX Medicaid State Plan regarding services provided to pregnant and postpartum individuals, specifically, *to provide lactation counseling services as separately reimbursed pregnancy-related services*.

**Statutory Authority**

- 42 CFR §440.60, *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.170, *Any other medical care or remedial care recognized under State law and specified by the Secretary*
- 42 CFR §440.210, *Required services for the categorically needy*
- 42 CFR §440.225, *Optional services for the categorically needy*
- 42 CFR §447, *Payments for services*
- §1902(a) of the Social Security Act, *State plans for medical assistance, service requirements*

**Background**

Improving the health of the population and reducing preventable causes of poor health, such as obesity, is a priority of the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS). Current research shows that the practice of breastfeeding for the first 6 to 12 months of life is highly beneficial for both the mother and infant. On January 20, 2011, the United States Surgeon General released "The Surgeon General's Call to Action to Support Breastfeeding." This report indicates that there is a 32% higher risk of childhood obesity and a 64% higher risk of type 2 diabetes for children who are not breastfed. An extensive body of research supports these assertions and provides evidence of the positive effects of breastfeeding on both short and long term infant and maternal health. Breastfeeding also serves additional advantages for low birth weight infants. Human milk consumption is associated with a reduction in sepsis infections and gastrointestinal illnesses among very low birth weight newborns in the neonatal intensive care unit (NICU).

The U.S. Preventive Services Task Force (USPSTF) specifically recommends coordinated interventions throughout pregnancy, birth, and infancy to increase breastfeeding initiation, duration, and exclusivity. Such recommended interventions include formal breastfeeding education for mothers and families, direct support of the mother during breastfeeding observations, and the training of health professional staff about breastfeeding and techniques for breastfeeding support. The opportunity to promote and provide support for breastfeeding occurs many times throughout the interactions that women have with various types of health care providers during and after pregnancy.

Due to the multiple health benefits associated with breastfeeding, CMS encourages States to go beyond the requirement of solely coordinating and referring enrollees to the Special Supplemental Food Program for Women, Infants, and Children (WIC) (established in 42 C.F.R. § 431.635) and include lactation services as separately reimbursed pregnancy-related services. Because lactation services are not specifically mentioned in the Medicaid statute or Federal Medicaid regulations, not all States separately reimburse lactation services as pregnancy-related services. Delaware Medicaid and Medical Assistance (DMMA) currently supports lactation counseling when provided as part of a pregnant or

postpartum individuals inpatient stay. DMMA would like to expand this coverage and to separately reimburse lactation counseling services provided in outpatient settings for pregnant and postpartum individuals when such services are ordered by a licensed practitioner, operating within the scope of their license, and provided by a certified lactation consultant.

### **Summary of Proposal**

If implemented as proposed, this state plan amendment will accomplish the following, effective April 1, 2017:

- Amend the following state plan pages by adding a provision that allows providers to bill separately for lactation counseling services provided in outpatient settings for pregnant and postpartum individuals when such services are ordered by a licensed practitioner, operating within the scope of their license, and provided by a certified lactation consultant.
  - Attachment 3.1-A Page 3 Addendum - Other Practitioners' Services;
  - Attachment 3.1-A Page 8 and Page 8 Addendum - Extended Services for Pregnant Individuals;
  - Attachment 3.1-A Page 11 and Page 11 Addendum - Licensed or Otherwise State-Recognized covered professionals in the Freestanding Birthing Center Services;
  - Supplement 1 to Attachment 3.1-A - Case Management Services for High-Risk Pregnant Individuals; and
  - Attachment 4.19-B Page 18 - Methods and Standards for Establishing Payment Rates, Lactation Counseling Services.
  - Attachment 4.19-B Page 8 and 8a – Delaware Rates for Obstetrical Care;
  - Attachment 4.19-B Page 9, 9a and 9b – Delaware Rates for Pediatric Care.
- Sunset Attachment 4.19-B Pages 8, 8a, 9, 9a, and 9b as these state plan pages contain out-of-date rates and codes for obstetrical and pediatric care. This was identified while reviewing the state plan to identify the appropriate areas to update with lactation counseling services. Rates are no longer listed in the state plan; the fee schedule and any annual periodic adjustments to these, and all DMMA rates, are published on the Delaware Medical Assistance Program (DMAP) website at: <https://medicaid.dhss.delaware.gov/provider>.

### **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 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on proposed regulations. Comments were to have been received by 4:30 p.m. on May 1, 2017.

### **Centers for Medicare and Medicaid Services Review and Approval**

The provisions of this state plan amendment (SPA) relating to coverage and payment methodology for services 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 CMS feedback. The final version may be subject to significant change.

### **Provider Manuals Update**

Also, there may be additional provider manuals that will require small updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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 manual updates. DMAP provider manuals and official notices are available on the Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>

### **Fiscal Impact Statement**

The following fiscal impact was developed using data from the Center for Disease Control and Prevention (CDC) regarding the percentage of women who breastfeed and would seek lactation counseling services in a physician's office by a certified lactation consultant. This percentage was then applied to the projected childbirths for Federal Fiscal Year (FFY)

2018 and FFY 2019 to identify the potential fiscal impact of this regulation.

	Federal Fiscal Year 2017 <sup>(1)</sup>	Federal Fiscal Year 2018
General (State) funds	\$ 26,254	\$ 34,110
Federal funds	\$ 31,069	\$ 40,367

(1) Represents April – September 2017 only

#### Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period.

#### FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding services provided to pregnant and postpartum individuals, specifically, *to provide lactation counseling services as separately reimbursed pregnancy-related services*, is adopted and shall be final effective June 11, 2017.

Kara Odom Walker, MD, MPH, MSHS, Secretary, DHSS  
5/17/17

#### DMMA FINAL ORDER 17-019 REVISION

ATTACHMENT 3.1-A  
Page 8

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

#### 19. Case Management services and Tuberculosis related services

- a. Case management services as defined in, and to the group specified in, Supplement 1 to Attachment 3.1-A (in accordance with section 1905(a)(19) or section 1915(g) of the Act).

☒ Provided      ☒ With limitations\*

☒ Not Provided

- b. Special tuberculosis (TB) related services under section 1902(z)(2)(F) of the Act.

☐ Provided      ☐ With limitations\*

☒ Not Provided

#### 20. Extended services for pregnant women

- a. Pregnancy-related and postpartum services for a 60-day period after pregnancy ends and for any remaining days in the month in which the 60<sup>th</sup> day falls.

☒ Additional coverage ++

- b. Services for any other medical conditions that may complicate pregnancy.

☒ Additional coverage ++

++ Attached is a description of increases in covered services beyond limitations for all groups described in this attachment and/or any additional services provided to pregnant women only.

\* Description provided on attachment

TN No. SPA 17-00  
Supersedes  
TN No. SP-339

Approval Date \_\_\_\_\_

Effective Date **April 1, 2017**

**DMMA FINAL REGULATION 17-019  
REVISION**

ATTACHMENT 3.1-A  
Page 8 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

**20. a & b Limitations on Extended Services for Pregnant Women**

Those services normally covered by Medicaid for all ~~eligibles~~ Medicaid beneficiaries are available to pregnant women.

In addition, the following services are available with prior authorization:

- Nutrition assessment, counseling, and education;
- Nursing assessment, education, and referral to needed medical services;
- Lactation counseling services for pregnant and postpartum individuals when such services are ordered by a licensed practitioner, ~~[opportuning operating]~~ within the scope of their license, and provided by a certified lactation consultant; and
- Social services as medically necessary to assure that home, family, community, and environmental issues are not complicating the pregnancy.

~~Extended services to pregnant women will include the above services when given as part of a medical service provided by agencies organized and licensed by the State of Delaware, to provide medical care.~~

Prior authorization will be based on complicating medical and social problems that would have a negative impact on the outcome of the pregnancy.

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TN No. SP-261

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**DMMA FINAL REGULATION 17-019  
REVISION**

ATTACHMENT 3.1-A  
Page 11

State/Territory: DELAWARE  
AMOUNT, DURATION, AND SCOPE OF MEDICAL AND REMEDIAL CARE  
AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

25. (i) Licensed or Otherwise State-Approved Freestanding Birthing Center Services

Provided: ☐ No limitations ☒ With limitations\* ☐ None licensed or approved

Please describe any limitations: *See ATTACHMENT 3.1-A Page 11 Addendum*

25. (ii) Licensed or Otherwise State-Recognized covered professionals in the Freestanding Birthing Center Services

Provided: ☐ No limitations ☒ With limitations\* (please describe below)

☐ Not Applicable (there are no licensed or State approved Freestanding Birth Centers)

Please describe any limitations: *See ATTACHMENT 3.1-A Page 11 Addendum*

Please check all that apply:

- ☒ (a) Practitioners furnishing mandatory services described in another benefit category and otherwise covered under the State plan (i.e., physicians and certified nurse midwives).
- ☒ (b) Other licensed practitioners furnishing prenatal, labor and delivery, or postpartum care in a freestanding birth center within the scope of practice under State law whose services are otherwise covered under 42 CFR 440.60 (e.g., lay midwives, certified professional midwives (CPMs), and any other type of licensed midwife). \*
- ☒ (c) Other health care professionals licensed or otherwise recognized by the State to provide these birth attendant services (e.g., doulas, lactation consultant, etc.).\*\*

\*Licensed Midwife

\*\* Certified Lactation Consultant

<b>TN No. <u>SPA #17-00</u></b> <b>Supersedes</b> <b>TN No. <u>SPA #11-008</u></b>	<b>Approval Date</b> _____ <b>Effective Date</b> <u>April 1, 2017</u>
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**DMMA FINAL REGULATION 17-019  
REVISION**

ATTACHMENT 3.1-A  
Page 11 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

25. (i) Limitations on Licensed or Otherwise State-Approved Freestanding Birth Center Services

- (a) Subject to the specifications, conditions, limitations, and requirements established by the single state agency or its designee, birth center facility services, under this State Plan, are limited to birth centers licensed by the State of Delaware and in compliance with regulations found in the Delaware Administrative Code or other legally authorized licensing authority under applicable state laws.

- (b) Birth center facility services are those services determined by the attending physician (MD or DO), ~~or~~ certified nurse-midwife (CNM), or licensed midwife to be reasonable and necessary for the care of the mother and newborn child following the mother's pregnancy. The center and attending physician, ~~or CNM certified nurse-midwife~~, or licensed midwife must be licensed at the time and place the services are provided. Reimbursable services are limited to services provided by the birthing center during the labor, delivery, and postpartum periods.

25. (ii) Limitations on Licensed or Otherwise State-Recognized covered professionals in the Freestanding Birthing Center Services

- (a) Services provided by a physician, ~~or CNM certified nurse-midwife~~, ~~or~~ licensed midwife, ~~or~~ certified lactation consultant, which are described in another benefit category and otherwise covered under the State plan, are not considered to be birth center services by the Delaware Medical Assistance Program.

TN No. SPA #17-00  
Supersedes  
TN No. SPA #11-008

Approval Date \_\_\_\_\_

Effective Date April 1, 2017

**DMMA FINAL REGULATION 17-019  
REVISION**

Supplement 1 to ATTACHMENT 3.1-A  
Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: DELAWARE  
CASE MANAGEMENT SERVICES

A. Target Group:

High risk pregnant individuals

B. Areas of state in which services will be provided:

☒ Entire State

☐ Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide):

C. Comparability of Services:

☒ Services are provided in accordance with section 1902(a)(10)(B) of the Act.

☐ Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of Services:

Case management of high risk pregnant ~~women~~ individuals must include at least the following components:

1. NUTRITION

- a. Nutrition assessment and counseling;

- b. WIC - Food Stamps application assistance; and
- c. Infant feeding, breast feeding, child care information classes.

TN No. SPA #17-00  
 Supersedes  
 TN No. SP-250

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**DMMA FINAL REGULATION 17-019  
 REVISION**

Supplement 1 to ATTACHMENT 3.1-A  
 Page 1a

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
 State/Territory: DELAWARE  
 CASE MANAGEMENT SERVICES

D. Definition of Services (cont.):

2. SOCIAL WORK

- a. Counseling, access to needed services to resolve problems such as with education, creditors, mental health, etc.;
- b. Referrals to child watch, child abuse help groups, and parenting skills;
- c. Long-term planning for self-sufficiency through employment/training/education/referrals following delivery;
- d. Substance abuse counseling;
- e. Stop smoking clinic referral and assistance in attending; and
- f. Referral to genetic screening and counseling services.

3. NURSING

- a. Weekly/monthly health assessment by ~~RN~~ Registered Nurse with report of suspected problems to attending physician; and
- b. Education on appropriate pregnancy topics, such as childbirth, newborn care (anticipating guidance), lactation counseling, etc.

4. OUTREACH

- a. Contact client prior to pre-natal visit (phone/home visit);
- b. Arrange transportation and babysitting, especially to assure all medical appointments are kept;
- c. Accompany client to meetings, appointments as necessary;
- d. Follow up to reschedule missed appointments;
- e. Act as translator; and
- f. Facilitate implementation of goals of the care plan as directed by professional staff.

5. POST PARTUM

- a. Continue services and resolve problems in 60 day postpartum period including pregnancy prevention, infant care, lactation counseling, assisting clients to plan for self-sufficiency through referral to appropriate employment and training counseling services.

TN No. SPA #17-00  
 Supersedes  
 TN No. SP-250

Approval Date \_\_\_\_\_  
 Effective Date April 1, 2017

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: DELAWARE  
CASE MANAGEMENT SERVICES

E. Qualification of Providers:

Qualified providers of case management services for high risk pregnant ~~women~~ individuals will be those that can provide all of the service components described in item D, ~~on page 1a~~ Definition of Services, above, and who have staff or contractual arrangements to make up a case management team as defined below:

Qualifications of Case Management Team Members

NUTRITION

Shall be a registered Dietitian or Nutritionist.

SOCIAL WORKER

Shall be an employee with a Bachelors of Art or Bachelors of Science degree in social work, counseling or related social services field.

NURSING

Shall be a Registered Nurse licensed in the State of Delaware. Lactation counseling services for pregnant and postpartum individuals shall be provided by a certified lactation consultant.

OUTREACH

These members shall be experienced para-professionals operating under the supervision of the professional staff.

CLERICAL/SUPPORT

Contractor shall have adequate clerical support staff to track, file, type, etc. all necessary documentation required to the case management team.

<p><b>TN No. <u>SPA #17-00</u></b>  <b>Supersedes</b>  <b>TN No. <u>SP-250</u></b></p>	<p><b>Approval Date _____</b>   <b>Effective Date <u>April 1, 2017</u></b></p>
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F. The State assures that the provision of case management services will not restrict an individual's free choice of providers in violation of section 1902(a)(23) of the Act.



1. Eligible recipients will have free choice of the providers of case management services.
  2. Eligible recipients will have free choice of the providers of other medical care under the plan.
- G. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

TN No. SPA #17-00  
Supersedes  
TN No. SP-250

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**DMMA FINAL ORDER REGULATION 17-019  
REVISION**

ATTACHMENT 3.1-A  
Page 3 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

6.d. Other Practitioners' Services Continued

6.d.2. Licensed Behavioral Health Practitioner Continued:

Services which exceed the initial pass-through authorization must be approved for re-authorization prior to service delivery. In addition to individual provider licensure, service providers employed by addiction treatment services and co-occurring treatment services agencies must work in a program licensed by the Delaware Division of Substance Abuse and Mental Health (DSAMH) and comply with all relevant licensing regulations. Licensed Psychologists may supervise up to seven (7) unlicensed assistants or post-doctoral professionals in supervision for the purpose of those individuals obtaining licensure and billing for services rendered. Services by unlicensed assistants or post-doctoral professionals under supervision may not be billed under this section of the State Plan. Instead, those unlicensed professionals must qualify under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program or rehabilitation sections of the State Plan or provide services under Home and Community-based authorities.

Inpatient hospital visits are limited to those ordered by the beneficiary's physician. Visits to a nursing facility are allowed for LBHPs if a Preadmission Screening and Resident Review (PASRR) indicates it is a medically necessary specialized service in accordance with PASRR requirements. Visits to Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) are non-covered. All LBHP services provided while a person is a resident of an Institute for Mental Disease (IMD) such as a free standing psychiatric hospital or psychiatric residential treatment facility are part of the institutional service and not otherwise reimbursable by Medicaid. Evidence-based Practices require prior approval and fidelity reviews on an ongoing basis as determined necessary by Delaware Health and Social Services (DHSS) and/or its designee. A unit of service is defined according to the Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) approved code set consistent with the National Correct Coding Initiative unless otherwise specified.

6.d.3. Lactation Consultant Services

Breastfeeding health education and lactation counseling services are permitted for pregnant and postpartum individuals when such services are ordered by a licensed practitioner. ~~opportuning~~ operating within the scope of their license, and provided by a certified lactation consultant.

TN No. SPA #17-00  
Supersedes  
TN No. SPA #13-0018

Approval Date \_\_\_\_\_

Effective Date April 1, 2017

[Link to PDF of Delaware Rates for Obstetrical Care](#)

**DMMA FINAL REGULATION 17-019 REVISED**

[Link to PDF of Delaware Rates for Pediatric Care](#)

**DMMA FINAL REGULATION 17-019  
REVISION**

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: DELAWARE  
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
OTHER TYPES OF CARE

(RESERVED FOR FUTURE USE)

Lactation Counseling Services

Effective April 1, 2017 reimbursement will be provided for breastfeeding health education and counseling services provided by a certified lactation consultant using the billing fee schedule for lactation counseling services found on the Delaware Medical Assistance Program (DMAP) website.

Except as otherwise noted in the plan, fee schedule rates are the same for both governmental and private providers of these services. Rates are published on the agencies website at the following link:

The fee schedule and any annual periodic adjustments to these rates are published on the Delaware Medical Assistance Program (DMAP) website at: <https://medicaid.dhss.delaware.gov/provider>

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**Approval Date \_\_\_\_\_**

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