

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

Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions, specifically, to request that an extension for co-pays and premiums to be waived.

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, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on July 3, 2023. Please identify in the subject line: Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions.

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 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 Title XIX Medicaid State Plan regarding the Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions.

Statutory Authority

- Title XIX of the Social Security Act

Background

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency. Additionally, on March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS). This is to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

During the Public Health Emergency (PHE) Delaware waived copays and premiums for members. On January 27, 2023, CMS approved an amendment to Delaware's Medicaid State Plan to extend the waiving of copays and premiums for 6 months following the end of the month in which the PHE ended. CMS has since instructed states that members may not be charged a premium until they have received a full redetermination and provided states guidance regarding the resumption of premiums. Additionally, the end of the PHE has been announced and CMS has required states to assign dates to the end of temporary extension SPAs to reflect this.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to align the resumption of premiums with the end of the unwinding period and to assign dates to the temporarily extended suspension of member copays and premiums.

Summary of Proposed Changes

Effective for services provided on the day after the end of the PHE until December 1, 2023, DHSS/DMMA proposes to amend Section 7.4-B of the Medicaid State Plan to temporarily extend the provision approved by CMS to waive member

copays.

Effective for services provided on the day after the end of the PHE until July 1, 2024, DHSS/DMMA proposes to amend Section 7.4-B of the Medicaid State Plan to temporarily extend the provision approved by CMS to waive premiums.

Public Notice

In accordance with the *federal* public notice requirements established in Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 3, 2023.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) 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 public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals and Communications Update

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

Fiscal Impact

There is no anticipated fiscal impact as co-pays and premiums have been waived since March of 2020.

Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions

State/Territory: Delaware

Section 7 - General Provisions

7.4.-B Temporary Extension to the Medicaid Disaster Relief Policies for the COVID-19 National Emergency

Effective the day after the end of the PHE until ~~6 months following the end of the month in which the PHE ends~~ December 1, 2023, the agency temporarily extends the following election(s) in section 7.4 (approved on 05/27/2020 in SPA Number DE-20-0002) of the state plan.

- Section C.1 - DHSS suspends all copayments for all beneficiaries effective March 26, 2020.

Effective the day after the end of the PHE until July 1, 2024, the agency temporarily extends the following election(s) in section 7.4 (approved on 05/27/2020 in SPA Number DE-20-0002) of the state plan.

- Section C.2 - DHSS suspends all premiums for all beneficiaries effective April 1, 2020.

• **Section C - Premiums and Cost Sharing**

1. X The agency suspends deductibles, copayments, coinsurance, and other cost sharing charges as follows:

DHSS suspends all copayments for all beneficiaries effective March 26, 2020.

2. X The agency suspends enrollment fees, premiums and similar charges for:

a. X All beneficiaries

b._____ The following eligibility groups or categorical populations:

DHSS suspends all premiums for all beneficiaries effective April 1, 2020.

26 DE Reg. 690 (02/01/23)

26 DE Reg. 1019 (06/01/23) (Prop.)