

**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**

**Title XIX Medicaid State Plan Program Integrity**

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, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Program Integrity, specifically, *prohibition on payments to institutions or entities located outside of the United States*.

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 May 31, 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 proposal amends the Title XIX Medicaid State Plan regarding Program Integrity. Specifically, this plan amendment implements a Medicaid payment provision entitled, *Prohibition on Payments to Institutions or Entities Located Outside of the United States*.

**Statutory Authority**

Patient Protection and Affordable Care Act (PPACA), P.L. 111-148

**Background**

Section 6505 of the Affordable Care Act amends section 1902(a) of the Social Security Act (the Act), and requires that a State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States (U.S.).

For purposes of implementing this provision, section 1101(a)(2) of the Act defines the term "United States" when used in a geographical sense, to mean the "States." Section 1101(a)(1) of the Act defines the term "State" to include the District of Columbia, Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, when used under Title XIX.

The phrase, "items or services provided under the State plan or under a waiver" refers to medical assistance for which the State claims Federal funding under section 1903(a) of the Act. Tasks that support the administration of the Medicaid State plan that may require payments to financial institutions or entities located outside of the U.S. are not prohibited under this statute. For example, payments for outsourcing information processing related to plan administration or outsourcing call centers related to enrollment or claims adjudication are not prohibited under this statute.

However, payments for items or services provided under the State plan to financial institutions or entities such as provider bank accounts or business agents located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa are prohibited by this provision. Further, this provision prohibits payments to telemedicine providers located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa. Additionally, payments to pharmacies located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa are not permitted.

States will need to submit a State plan amendment (SPAs) to provide a statement of compliance with this prohibition on payments to any financial institution or entity located outside of the U.S. for any items or services provided under the State plan or under a waiver. States shall submit a SPA no later than June 30, 2011, with an effective date of June 1, 2011.

**Summary of Proposed Change**

The proposed change is to Section 4 (new Section 4.4), General Program Administration, with regard to compliance of 1902(a)(80) of the Social Security Act, P.L. 111-148 (section 6505) which ensures that Delaware shall not provide any payments for items or services provided under the State Plan or under a waiver to any financial institution or entity located

outside of the United States.

The provisions of this amendment are effective June 1, 2011 and subject to approval by the Centers for Medicare and Medicaid Services (CMS).

**Fiscal Impact Statement**

This amendment imposes no increase in cost on the General Fund.

**DMMA PROPOSED REGULATION #11-16**

**REVISION:**

Revision:  
OMB No.

CMS

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**  
**State/Territory DELAWARE**

**SECTION 4 – GENERAL PROGRAM ADMINISTRATION**

**4.44 Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States**

Citation

Section 1902(a)(80)  
of the Social Security Act,  
P.L. 111-148 (Section 6505)

  X  

The State shall not provide any payments  
for items or services provided under the  
State plan or under a waiver to any financial  
institution or entity located outside the  
United States.

**14 DE Reg. 1191 (05/01/11)**