

**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**

**Affordable Care Act Section 4106 Preventive Services**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings regarding the provision of *preventive services described in section 4106 of the Affordable Care Act*. 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 March 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2014 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 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding the provision of *preventive services described in section 4106 of the Affordable Care Act*.

**Statutory Authority**

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*
- Section 1905(a)(13) of the Social Security Act, *Other diagnostic, screening, preventive, and rehabilitative services*
- 45 CFR 440.130(c), *Preventive services*

**Background**

Section 4106 amends Section 1905(a)(13) of the Social Security Act to enable states to provide clinical preventive services and adult vaccines in accordance with the United States Preventive Services Task Force (USPSTF) recommendations and the Advisory Committee on Immunization Practices (ACIP) recommendations, respectively.

Section 4106(b) of the Affordable Care Act (ACA) establishes a one percentage point increase in the Federal Medical Assistance Percentage (FMAP) applied to expenditures for adult vaccines and clinical preventive services to states that cover, without cost-sharing, a full list of specified preventive services and adult vaccines. The increase would apply to such expenditures whether the services are provided on a fee-for-service (FFS) or managed care basis, or as an alternative benefit plan.

States seeking to claim the one percentage point FMAP increase must amend their state plans to reflect that they cover and reimburse all USPSTF grade A and B preventive services and approved vaccines recommended by ACIP, and their administration, without cost-sharing. The State must maintain documentation supporting expenditures claimed for these preventive services and must ensure that coverage and billings codes comply with any changes made to the USPSTF or ACIP recommendations.

States should provide an assurance in the state plan indicating that they have documentation available to support the claiming of federal match for such services. States should provide an additional assurance stating that they have a method to ensure that, as changes are made to USPSTF or ACIP recommendations, they will update their coverage and billing codes to comply with those revisions.

**Summary of Proposal**

DHSS/DMMA will seek approval from the Centers for Medicare and Medicaid Services (CMS) for a state plan amendment: 1) to recognize that Delaware Medicaid covers and reimburses all United States Preventive Services Task Force (USPSTF) grade A and B clinical preventive services and approved adult vaccines and their administration recommended by the Advisory Committee on Immunization Practices (ACIP), without cost-sharing; and, 2) to establish a one percentage point increase in federal medical assistance percentage (FMAP) for expenditures whether the services are

provided on a fee-for-service (FFS) or managed care basis, or as an alternative benefit plan.

The preventive services specified in section 4106 of the Affordable Care Act are currently available under Attachment 3.1-A of Delaware's Medicaid state plan and covered under the physician, clinics, and other licensed practitioner service benefits and are reimbursed according to the methodologies provided in Attachment 4.19-B of the state plan for such services.

#### *Assurances*

The State will maintain documentation supporting expenditures claimed for these preventive services and will ensure that coverage and billing codes comply with any changes made to the USPSTF and ACIP recommendations.

The proposed plan amendment will be effective on April 1, 2014, and will apply to claims with dates of service on or after that date.

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

#### **Fiscal Impact Statement**

As section 4106 establishes a one percentage point increase in the Federal Medical Assistance Percentage applied to a specified preventive services and adult vaccines, the State expects to realize savings of one percentage (1%) for these services State Fiscal Years 2014 and 2015.

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

The American Heart Association and American Stroke Association, 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.

#### **American Heart Association and American Stroke Association**

On behalf of the American Heart Association, we are writing in regards to clinical preventive services such as screenings, counseling services, and preventive medications for the Medicaid expansion population and traditional Medicaid populations. The ACA will require the Medicaid expansion population to be covered, without cost-sharing, for the list of preventive services that have a rating of A or B as assigned by the U.S. Preventive Services Task Force; however, the traditional Medicaid population was not specifically addressed by these provisions of the new law. We strongly support the Delaware Medicaid program's proposed regulation to offer the same expanded preventive coverage to all of Delaware's Medicaid clients.

Making this change is not merely permissible but is encouraged by the Centers for Medicare and Medicaid Services in the form of a 1% FMAP "bonus" for states who offer this expanded preventive services coverage to all of their Medicaid clients. The American Heart Association and American Stroke Association is eager to work together with the State of Delaware to ensure all Delawareans have access to high quality health insurance coverage and care as we reform our health care system. And providing preventive benefits to this vulnerable population will not only result in improved health but also cost savings for the Medicaid program.

**Agency Response:** DMMA appreciates the support for the state plan amendment from the American Heart and Stroke Associations.

#### **Governor's Advisory Council for Exceptional Citizens (GACEC) and State Council for Persons with Disabilities (SCPD)**

As background, Section 4106 of the Affordable Care Act authorizes states to adopt a Medicaid State Plan amendment in the context of preventive services. In a nutshell, a State can secure an additional 1% federal Medicaid match for specified preventive services if it agrees to cover the following: preventive services assigned a grade of A or B by the U.S. Preventive Services Task Force (USPSTF) and approved vaccines and their administration recommended by the Advisory Committee on Immunization Practices (ACIP). CMS guidance was provided in a State Medicaid Director Letter, SMD#13-002 (February 1, 2013) and Q&A document.

Delaware DMMA proposes to adopt a State Plan amendment to qualify for the additional match effective April 1, 2014. The actual amendment is brief and appears to conform to the CMS guidance.

GACEC and SCPD endorse the proposed regulation since it will result in confirmation of Delaware Medicaid coverage of specified preventive services and increase federal funding.

**Agency Response:** DMMA thanks both Councils for their endorsement.

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

The Department finds that the proposed changes as set forth in the March 1, 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Medicaid state plan regarding the provision

of preventive services described in section 4106 of the Affordable Care Act is adopted and shall be final effective May 10, 2014.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #14-12  
REVISION:**

Attachment 3.1-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Delaware

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

13.c. Preventive Services

In accordance with section 4106 of the Affordable Care Act, Delaware Medicaid covers and reimburses all preventive services assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF) and all approved vaccines and their administration, recommended by the Advisory Committee on Immunization Practices (ACIP), without cost-sharing.

Preventive Services are any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts acting within the scope of their practice under State law and are reimbursed according to the methodologies for services described in Attachment 4.19-B, *Methods and Standards for Establishing Payment Rates – Other Types of Care*, of the state plan.

The State assures the availability of documentation to support the claiming of federal reimbursement for these preventive services.

The State assures that the benefit package will be updated to reflect the changes that are made to USPSTF and ACIP recommendations, and that the State will update the coverage and billings codes to comply with these revisions.

**17 DE Reg. 1067 (05/01/14) (Final)**