

**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**

**Medicaid and CHIP coverage of COVID-19 Treatment, Vaccines, & Testing**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Medicaid and CHIP coverage of COVID-19 Treatment, Vaccines, & Testing. Specifically, to assure coverage of COVID-19 treatment, vaccines, vaccine administration, vaccine counseling, and testing consistent with the Centers for Disease Control and Prevention (CDC) definitions of screening, testing, and diagnosis for COVID-19 and its recommendations for who should receive diagnostic and screening tests for COVID-19 with no cost sharing for Medicaid and CHIP plans. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the January 2023 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2023, 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 Title XIX Medicaid State Plan and Title XXI CHIP State Plan regarding the coverage of COVID-19 treatment, vaccines, & testing. Specifically, to assure coverage of COVID-19 treatment, vaccines, vaccine administration, vaccine counseling, and testing consistent with the Centers for Disease Control and Prevention (CDC) definitions of screening, testing, and diagnosis for COVID-19 and its recommendations for who should receive diagnostic and screening tests for COVID-19 with no cost sharing for Medicaid and CHIP plans.

**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 by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Social Security Act (Act). 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 COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), 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.

CMS has issued subsequent guidance that required states to assure coverage of COVID-19 testing, vaccines, vaccine administration, and vaccine counseling without cost sharing. CMS also issued guidance that required states to assure coverage of COVID-19 treatment, including specialized equipment and therapies (including preventive therapies). Delaware has been compliant with this requirement for the duration of the PHE and is publishing these pages to attest to this assurance.

**Statutory Authority**

American Rescue Plan Act of 2021

Section 1135(b)(1)(C) and section 1135(b)(5) of the Social Security Act

**Purpose**

The purpose of this proposed regulation is to amend Delaware's Medicaid State Plan by modifying language on Attachment 7.7-A Pages 1-3, Attachment 7.7-B Pages 1-3, and Attachment 7.7-C Pages 1-3. Also, the Delaware Health

Children's Program State Plan will be amended by modifying language in Sections 1.4 and 6.2.27.

#### *Summary of Proposed Changes*

Effective March 11, 2021, Delaware's State Plan will be amended by modifying language on Attachment 7.7-A Pages 1-3 regarding COVID-19 vaccines, vaccine administration, and vaccine counseling; Attachment 7.7-B Pages 1-3 regarding COVID-19 testing; and Attachment 7.7-C Pages 1-3 regarding COVID-19 treatment. The Delaware Health Children's Program State Plan will be amended by modifying language in Sections 1.4 and 6.2.27 regarding COVID-19 testing, vaccines, and treatment for CHIP plans.

Effective on and after April 1, 2021, Delaware's State Plan will be amended by modifying language in Section 7.7-A Page 3, regarding rates for any medically necessary stand-alone COVID-19 vaccine counseling.

#### *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 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 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 to provide any 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 Statement**

	Federal Fiscal Year 2022	Federal Fiscal Year 2023
Federal funds	\$ 8,206,000	\$ 7,584,000
General (State) funds	\$ 4,633,000	\$ 5,383,000

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

The following summarized comments were received:

**Comment:** The Governor's Advisory Council for Exceptional Citizens (GACEC) supports the proposed amendment.

**Agency Response:** DMMA appreciates your support.

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

The Department finds that the proposed changes as set forth in the January 2023 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Medicaid and CHIP coverage of COVID-19 Treatment, Vaccines, & Testing Provisions is adopted, specifically, to assure coverage of COVID-19 treatment, vaccines, vaccine administration, vaccine counseling, and testing consistent with the Centers for Disease Control and Prevention (CDC) definitions of screening, testing, and diagnosis for COVID-19 and its recommendations for who should receive diagnostic and screening tests for COVID-19 with no cost sharing for Medicaid and CHIP plans and shall be final effective May 11, 2023.

3/29/23

Date of Signature

Molly Magarik, Secretary, DHSS

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**\*Please Note: Due to the formatting requirements of the regulation, it is being attached here as a series of PDF documents:**

<http://regulations.delaware.gov/register/may2023/final/Attachment 7.7 A Amended.pdf>

<http://regulations.delaware.gov/register/may2023/final/Attachment 7.7-B Amended.pdf>

<http://regulations.delaware.gov/register/may2023/final/Attachment 7.7-C Amended.pdf>

<http://regulations.delaware.gov/register/may2023/final/CHIP COVID coverage Amended.pdf>

**26 DE Reg. 950 (05/01/23) (Final)**