

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PUBLIC NOTICE

PROPOSED

MEDICAID/MEDICAL ASSISTANCE PROGRAMS
Client Cost Sharing for Pharmaceutical Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to establish the provisions relating to imposing and collecting co-payments for pharmaceutical services from Medicaid/Medical Assistance clients.

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, Policy and Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by November 30, 2004.

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 THE PHARMACY SERVICES CO-PAYMENT POLICY

Title of Notice

Medicaid/Medical Assistance Client Cost Sharing

Overview

42 USC 1396a(a)(14) permits state Medicaid programs to require certain clients to share some of the costs of Medicaid by imposing enrollment fees, premiums, deductibles, coinsurance, co-payments, or similar cost sharing charges. The Delaware Medicaid/Medical Assistance Program (DMAP) exercises this option to impose a co-payment for prescription drugs for Medicaid clients. Having elected to impose this co-payment, DMAP must comply with the specific provisions of 42 U.S.C. 1396o, 42 CFR §§447.15, 447.21, 447.53, 447.54, 447.55 and, 447.57.

Summary of Pharmacy Services Co-Payment Policy

This notice is being given to provide information of public interest with respect to the intent of DSS to amend the Division of Social Services Manual (DSSM) and to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Title XIX Medicaid State Plan to establish and implement co-payments for pharmacy services. The following provisions of this amendment shall be implemented on January 10, 2005:

- All clients, other than those specifically excluded, are liable for sharing the cost of Medicaid covered prescription drugs. Medicaid clients are required to pay a specific pharmacy co-pay amount for each initial and refilled prescription and over-the-counter drug filled at a pharmacy participating in the Medicaid program.
- In accordance with 42 CFR §447.54, the pharmacy co-pay amount is based on the Medicaid fee for the drug being dispensed. The co-pay amounts imposed are as follows:

<u>Medicaid Fee</u>	<u>Co-Pay Amount</u>
\$10.00 or less	\$.50
\$10.01-\$25.00	\$1.00
\$25.01-\$50.00	\$2.00

under age 18, or under--
Age 19
Age 20
Age 21

Reasonable categories
of individuals who are
age 18 or older, but
under age 21, to whom
charges apply are listed
below, if applicable.

- (ii) Services to pregnant women related to the pregnancy or any other medical condition that may complicate the pregnancy.

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Citation

4.18 (b) (2) (Continued)

**42 CFR 447.51
through
447.58**

- (iii) All services furnished to pregnant women.
 - Not applicable.
Charges apply for services to pregnant women unrelated to the pregnancy.
- (iv) Services furnished to any individual who is an inpatient in a hospital, long-term care facility, or other medical institution, if the individual is required, as a condition of receiving services in the institution, to spend for medical care costs all but a minimal amount of his or her income required for personal needs.
- (v) Emergency services if the services meet the

requirements in 42 CFR 447.53 (b) (4).

(vi) Family planning services and supplies furnished to individuals of childbearing age.

(vii) Services furnished by a health maintenance organization in which the individual is enrolled.

**1916 of the Act,
P.L. 99-272,
(Section 9505)**

(viii) Services furnished to an individual receiving hospice care, as defined in section 1905 (o) of the Act.

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4.18(b) (Continued)

**42 CFR 447.51
through
447.48**

(3) Unless a waiver under 42 CFR 431.55 (g) applies, nominal deductible, coinsurance, co-payment, or similar charges are imposed for services that are not excluded from such charges under item (b) (2) above.

Not applicable. No such charges are imposed.

(i) For any service, no more than one type of charge is imposed.

(ii) Charges apply to services furnished to the following age groups:

18 or older
19 or older
20 or older
21 or older

Charges apply to services furnished

to the following reasonable categories of individuals listed below who are 18 years of age or older but under age 21.

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Citation

4.18 (b) (3) (Continued)

42 CFR 447.51 through 447.58

- (iii) For the categorically needy and qualified Medicare beneficiaries, **ATTACHMENT 4.18-**
A specifies the:
- A. Service(s) for which a charge(s) is applied;
 - B. Nature of the charge imposed on each service;
 - C. Amount(s) of and basis for determining the charge(s);
 - D. Method used to collect the charge(s);
 - E. Basis for determining whether an individual is unable to pay the charge and the means by which such an individual is identified to providers;
 - F. Procedures for implementing and enforcing the exclusions from cost sharing contained in 42

CFR 447.53 (b);and

- G. Cumulative maximum that applies to all deductible, coinsurance or co-payment charges imposed on a specified time period.

Not applicable.
There is no
maximum.

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Citation
1916 (c) of
the Act

- 4.18 (b) (4) A monthly premium is imposed on pregnant women and infants who are covered under section 1902 (a)(10)(A) (ii) (IX) of the Act and whose income equals or exceeds 150 percent of the Federal poverty level applicable to a family of the size involved. The requirements of section 1916 (c) of the Act are met **ATTACHMENT 4.18-D** specifies the method the State uses for determining the premium and the criteria for determining what constitutes undue hardship for waiving payment of premiums by recipients.

1902 (a) (52)
and 1925 (b)
of the Act

- 4.18 (b) (5) For families receiving extended benefits during a second 6-month period section 1925 of the Act, a monthly premium is

imposed in accordance with sections 1925 (b) (4) and (5) of the Act.

1916 (d) of the Act 4.18 (b) (6) A monthly premium, set on a sliding scale, imposed on qualified disabled and working individuals who are covered under section 1902 (a) (10) (E) (ii) of the Act and whose income exceeds 150 percent (but does not exceed 200 percent) of the Federal poverty level applicable to a family of the size involved. The requirements of section 1916 (d) of the Act are met.
ATTACHMENT 4.18-E
 Specifies the methods and standards the State uses for determining the premium.

DSS PROPOSED REGULATION #04-22b

NEW STATE PLAN PAGE

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4.18-A**

ATTACHMENT

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0193

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE**

A. The following charges are imposed on the categorically needy for services other than those provided under section 1905 (1) through (5) and (7) of the Act:

Service	Type of Charge			Amount and Basis for Determination
	Deductible	Coinsurance	Co-payment	
Pharmacy	-0-	-0-	<u>X</u>	This co-pay is effective January 10, 2005 and is based on the nominal ranges specified in 42 CFR 447.54(a)(3), based on the State fee for the service.

NEW STATE PLAN PAGE

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ATTACHMENT

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0193

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

B. The method used to collect cost sharing charges for categorically needy individuals:
 Providers are responsible for collecting the cost sharing charges from individuals.
 The agency reimburses providers the full Medicaid rate for services and collects the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

The Pharmacy (Pharmacist) Provider will be advised via the Point-of-Sale System regarding the client's liability for the drug co-pay and the amount of the co-pay. When a client advises a pharmacy of an inability to pay the applicable co-pay amount at the time the prescription is filled, the pharmacy cannot refuse to fill the prescription and must dispense the drug as prescribed.

The client will remain liable for reimbursement of the co-pay amount and will be responsible for paying the pharmacy when financially able. Medicaid will not pay the co-pay amount to the pharmacy where a client declares an inability to pay. Provider payment will continue to be that sum which is the Medicaid fee minus the applicable client co-pay amount.

NEW STATE PLAN PAGE

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ATTACHMENT

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0193

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b) are described below:

Exclusions from cost sharing requirements are programmed into the Medicaid Management Information System and the Point-of-Sale (POS) System.

Pharmacy Providers have been informed about applicable service and amount; and, the prohibition of service denial if client is unable to meet the co-pay amount by the following methods: (1) provider manuals, which are distributed to all providers; and (2) provider newsletters.

Co-payment requirements are set forth in provider manuals, which are distributed, to all providers. The billing

instructions

are updated and transmitted to providers via the Provider Newsletter. These instructions have been incorporated in the billing instruction section of the provider manuals, which are given to all providers.

E. Cumulative maximums on charges:

- State policy does not provide maximums.
 Cumulative maximums have been established as described below:

DSS PROPOSED REGULATION #04-22c

Division of Social Services Manual (DSSM)

14960 Cost Sharing

Section 1902(a)(14) of the Social Security Act permits states to require certain recipients to share some of the costs of Medicaid by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, co-payments, or similar cost sharing charges.

14960.1 Co-Payment Requirement

Effective January 10, 2005, a nominal co-payment will be imposed for generic and brand name prescription drugs as well as over-the-counter drugs prescribed by a practitioner.

The co-payment is based upon the cost of the drug as follows:

<u>Medicaid Payment for the Drug</u>	<u>Co-payment</u>
<u>\$10.00 or less</u>	<u>\$.50</u>
<u>\$10.01 to \$25.00</u>	<u>\$1.00</u>
<u>\$25.01 to \$50.00</u>	<u>\$2.00</u>
<u>\$50.01 or more</u>	<u>\$3.00</u>

The co-payment is imposed for each drug that is prescribed and dispensed.

14960.2 Exclusions from Co-payment Requirement

The following individuals and services are excluded from the co-payment requirement:

- a. individuals under age 21
- b. pregnant women, including the postpartum period
- c. individuals eligible under the long term care nursing
- d. facility group or the acute care hospital group
- e. emergency services
- f. family planning services and supplies
- h. hospice services

14960.3 Inability to Pay

The pharmacy provider may not refuse to dispense the prescription(s) subject to the co-payment requirement because of the individual's inability to pay the co-payment amount. When a recipient indicates that he or she is unable to meet the co-payment requirement, the pharmacy provider must dispense the prescription(s) as written. Medicaid reimbursement for the prescription(s) will be the Medicaid fee minus the applicable co-payment amount.

The recipient remains liable for the co-payment amount and is responsible for paying the pharmacy when financially able. The pharmacy provider is permitted to pursue reimbursement of the co-payment amount from the recipient.