

**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**

**Freestanding Birth Center Services**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan to reflect the addition of *freestanding birth center services* as a mandatory Medicaid benefit, in compliance with the Patient Protection and Affordable Care Act (PPACA), P.L. 111-148. 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 September 2011 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2011 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 amends the Delaware Title XIX Medicaid State Plan to reflect the addition of *freestanding birth center services* as a mandatory Medicaid benefit, in compliance with the Patient Protection and Affordable Care Act (PPACA), P.L. 111-148.

**Statutory Authority**

- Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, enacted on March 23, 2010
- 1905(a)(28) of the Social Security Act, Freestanding Birth Center Services

**Background**

The Patient Protection and Affordable Care Act, Section 2301, added freestanding birth center services to section 1905(a) of the Social Security Act as a mandatory Medicaid state plan service, effective March 23, 2010. This provision ensures Medicaid coverage of care provided in freestanding birth centers. Section 2301 requires States that recognize freestanding birth centers to provide coverage and separate payments for freestanding birth center facility services and services rendered by certain professionals providing services in a freestanding birth center, to the extent the State licenses or otherwise recognizes such providers under State law.

States will need to submit amendments to their Medicaid State plans that specify coverage and separate reimbursement of freestanding birth center facility services and professional services in order to comply with this provision.

**Summary of Proposal**

While the State already covers this service, this state plan amendment (SPA) establishes services provided by birthing centers as a Medicaid state plan services and modifies reimbursement methodology to allow birthing centers and providers furnishing services in birthing centers to receive payment as mandated under the Patient Protection and Affordable Care Act. Attachment 3.1-A and Attachment 4.19-B are amended by identifying birthing centers as eligible Medicaid providers and providing for direct Medicaid payments for birthing center services.

The provisions of this state plan amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

**Fiscal Impact Statement**

The proposed amendment imposes no increase in cost on the General Fund.

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

No public comments were received.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the September 2011 *Register of Regulations* should be

adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan to reflect the addition of *freestanding birth center services* as a mandatory Medicaid benefit, in compliance with the Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, is adopted and shall be final effective November 10, 2011.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATIONS #11-49**

**REVISION:**

REVISION

ATTACHMENT 3.1-A

Page 11

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

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

25. (i) Licensed or Otherwise State-Approved Freestanding Birthing Center Services  
Provided: \_\_\_ No limitations X With limitations\* \_\_\_ None licensed or approved  
Please describe any limitations: *See ATTACHMENT 3.1-A Page 11 Addendum*
25. (ii) Licensed or Otherwise State-Recognized covered professionals in the Freestanding Birthing Center Services  
Provided: \_\_\_ No limitations X With limitations\* (please describe below)  
\_\_\_ Not Applicable (there are no licensed or State approved Freestanding Birth Centers)  
Please describe any limitations: *See ATTACHMENT 3.1-A Page 11 Addendum*  
Please check all that apply:  
X (a) Practitioners furnishing mandatory services described in another benefit category and otherwise covered under the State plan (i.e., physicians and certified nurse midwives).  
X (b) Other licensed practitioners furnishing prenatal, labor and delivery, or postpartum care in a freestanding birth center within the scope of practice under State law whose services are otherwise covered under 42 CFR 440.60 (e.g., lay midwives, certified professional midwives (CPMs), and any other type of licensed midwife). \*  
\_\_\_ (c) Other health care professionals licensed or otherwise recognized by the State to provide these birth attendant services (e.g., doulas, lactation consultant, etc.).\*

\*For (b) and (c) above, please list and identify below each type of professional who will be providing birth center services:

***(Break in Continuity of Sections)***

REVISION

ATTACHMENT 3.1-A

Page 11 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Delaware

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

25. Licensed or Otherwise State-Approved Freestanding Birth Center Services
- (a) Subject to the specifications, conditions, limitations, and requirements established by the single state agency or its designee, birth center facility services, under this State Plan, are limited to birth centers licensed by the State of Delaware and in compliance with regulations found in the Delaware Administrative Code or other legally authorized licensing authority under applicable state laws.
- (b) Birth center facility services are those services determined by the attending physician (MD or DO) or certified nurse-midwife (CNM) or licensed midwife to be reasonable and necessary for the care of the mother and newborn child following the mother's pregnancy. The center and attending physician or CNM must be licensed

at the time and place the services are provided. Reimbursable services are limited to services provided by the birthing center during the labor, delivery, and postpartum periods.

- (c) Services provided by a physician or CNM or licensed midwife are not considered to be birth center services by the Delaware Medical Assistance Program.
- (d) For services other than birth center facility services, other applicable provisions of the Title XIX State Plan and the Delaware Medical Assistance Program will apply.

***(Break in Continuity of Sections)***

ATTACHMENT 4.19-B  
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
FREESTANDING BIRTH CENTER SERVICES

Medicaid providers of freestanding birth center services are reimbursed as follows:

Reimbursement of freestanding birthing centers is based on a fee-for-service basis. The payment for freestanding birthing center services is limited to the lower of the billed or allowed amount. Established procedure code and revenue code rates govern the birthing center payments. The Medicaid procedure codes are set at a percentage of the Medicare rates for HCPC and CPT codes and a percentage of Medicare rates for lab and x-ray codes. The HCPC and CPT code fee schedules are available on the Delaware Medical Assistance Program (DMAP) website, at: <http://www.dmap.state.de.us/home/index.html>.

The revenue code rates were established by Medicaid. Except as noted in the State Plan, state-developed fee schedule rates are the same for both governmental and private individual practitioners and the fee schedule and any annual/periodic adjustments to the fee schedule are published on the Delaware DMAP website. The agency's fee schedule rate was set as of March 1, 2011, and is effective for services provided on or after that date. All rates are published on the Delaware DMAP website, located at: <http://www.dmap.state.de.us/home/index.html>.

The revenue codes used for the reimbursement of freestanding birthing center services will be indexed forward on an annual basis (Medicare HCPC cycle) using the Medicare outpatient hospital market basket update.

**15 DE Reg. 674 (11/01/11) (Final)**