

**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**

**Pharmacy Value Based Purchasing (VBP)**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Value Based Purchasing, specifically, to participate in the Pharmacy Value Based Purchasing Program.

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, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [DHSS\\_DMMA\\_Publiccomment@Delaware.gov](mailto:DHSS_DMMA_Publiccomment@Delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on October 31, 2023. Please identify in the subject line: Pharmacy Value Based Purchasing (VBP)

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 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 regarding Pharmacy Value Based Purchasing (VBP).

**Statutory Authority**

- 42 CFR 447.502

**Background**

CMS has implemented Value Based Purchasing that has manufacturers reporting to the agency multiple best prices for a drug that is connected to a VBP arrangement (as defined at 42 CFR 447.502) and is made available to all states. The VBP arrangements will hold manufacturers more accountable for the clinical outcomes of their medications, while giving states the opportunity to earn additional rebates depending on how a drug works for patients. Delaware currently does not have a SPA that will allow participation in the VBP process.

**Summary of Proposal**

*Purpose*

The purpose of this proposed regulation is to add language to the state Medicaid plan allowing Delaware to participate in the Pharmacy Value Based Purchasing program.

*Summary of Proposed Changes*

Effective October 1, 2023, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to allow Pharmacy Value Based Purchasing.

*Public Notice*

In accordance with the *federal* public notice requirements established in 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 gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on October 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 provide 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**

Projected impact is not available at this time. There is currently only one VBP offer available in the CMS MDRP Portal at the present and Delaware does not have plans to accept this offer at the present.

**Pharmacy Value Based Purchasing (VBP)**

**\*Please Note: Due to the formatting requirements of the regulation, it is being attached here as a PDF document:**  
[http://regulations.delaware.gov/register/october2023/proposed/Attachment\\_3.1-A\\_page\\_5\\_Addendum\\_1-2\\_Amended.pdf](http://regulations.delaware.gov/register/october2023/proposed/Attachment_3.1-A_page_5_Addendum_1-2_Amended.pdf)

**27 DE Reg. 237 (10/01/23) (Prop.)**