

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

Increased Medicaid Payment for Primary Care Services – Section 1202 of the Affordable Care Act

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 regarding Increased Medicaid Payment for Primary Care, specifically, *Additional Codes Eligible for Enhanced Primary Care Payments*. 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 July 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 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 purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan regarding Increased Medicaid Payment for Primary Care, specifically, *Additional Codes Eligible for Enhanced Primary Care Payments*.

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*
- 42 CFR 447.405, *Amount of required minimum payments*
- 42 CFR 447.410, *State plan requirements*
- 42 CFR 447.415, *Availability of Federal financial participation (FFP)*

Background

In compliance with Section 1202 of the Patient Protection and Affordable Care Act, Delaware Health and Social Services/Division of Medicaid and Medical Assistance increased certain Medicaid primary care and vaccine administration payments made to designated providers to 100% of the Medicare physician fee schedule in effect as of January 1, 2013 through December 31, 2014. To implement this increase, the Centers for Medicare and Medicaid Services approved Delaware's state plan amendment on June 24, 2013 with an effective date of the increase retroactive to January 1, 2013. The services eligible for the rate increase are billed under the Healthcare Common Procedures Coding System (HCPCS) Evaluation and Management (E & M) codes and also apply to the administration of vaccines under the Vaccines for Children Program.

Summary of Proposal

Recent guidance from the Centers for Medicaid and Medicaid Services (CMS), dated April 14, 2014, advises that if a state uses vaccine product codes to pay for vaccine administration that it must submit a new section 1202 of the Affordable Care Act (ACA) state plan amendment (SPA) when those product codes change. Also, a state must submit a revised SPA page updating that list of codes eligible for higher payment if it chooses to provide coverage for a new Current Procedural Terminology (CPT) billing code that is within the range of Evaluation and Management (E & M) codes specified in the law and regulation.

Therefore, pursuant to public notice requirements of 42 CFR §447.205, Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) gives notice of a significant proposed change in its method and standards for setting payment rate for services.

DHSS/DMMA intends to submit a SPA to CMS to comply with certain provisions in the Affordable Care Act. With an effective date of the increase retroactive to January 1, 2014, this SPA includes the following additional Evaluation and Management (E & M) and vaccine product codes to the list of eligible codes for enhanced primary care payments:

Additional Evaluation and Management Codes

99481
99482
Additional Vaccine Code
90673

The provisions of this state plan amendment relating to methodology and payment of the enhanced Medicaid rates are subject to approval by CMS.

Fiscal Impact Statement

Due to the availability of 100% FMAP for these primary care services, the DMMA projects no fiscal impact on the General Fund in Calendar Year 2014.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

GACEC and SCPD

As background, the Affordable Care Act authorized an increase in Medicaid payments for certain primary care and vaccine administration. CMS approved a Delaware DMMA Medicaid Plan amendment in 2013 to implement the authorization. However, CMS issued April 14, 2014 guidance which is prompting DMMA to propose another "housekeeping" amendment to specify eligible CPT codes, including vaccine codes and evaluation and management codes.

We endorse the proposed regulation since it is designed to conform to CMS guidance.

Agency Response: DMMA thanks both Councils for their endorsement.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding Increased Medicaid Payment for Primary Care, *specifically, Additional Codes 99481, 99482 and 90673 Eligible for Enhanced Primary Care Payments*, is adopted and shall be final effective September 10, 2014.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #14-34 REVISION:

ATTACHMENT 4.19-B
Introduction - Page 4
OMB No. 0938-1148

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

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE

Physician Services
Increased Primary Care Service Payment 42 CFR 447.405, 447.410, 447.415

Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment Continued
(Primary Care Services Affected by this Payment Methodology – continued)

The state will make payment under this SPA for the following codes which have been added to the fee schedule since July 1, 2009 (specify code and date added).

99408 - Added October 10, 2010
99409 - Added October 10, 2010

90673 - Added January 1, 2014
99481 - Added January 1, 2014

99224 - Added January 1, 2011

99482 - Added January 1, 2014

99225 - Added January 1, 2011

99226 - Added January 1, 2011

Physician Services – Vaccine Administration

For calendar years (CYs) 2013 and 2014, the state reimburses vaccine administration services furnished by physicians meeting the requirements of 42 CFR 447.400(a) at the lesser of the state regional maximum administration fee set by the Vaccines for Children (VFC) program or the Medicare rate as implemented by the state in CYs 2013 and 2014.

- Medicare Physician Fee Schedule rate as implemented by the state and using the 2009 conversion factor.
- State regional maximum administration fee set by the Vaccines for Children program.

18 DE Reg. 229 (09/01/14) (Final)