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

Pharmacists as Providers

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 Pharmacists as Providers, specifically, to add the role of pharmacist as a provider type. 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 July 2024 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2024, 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 regarding Pharmacists as Providers.

Background

This change proposes to add coverage and reimbursement for services within the pharmacists' scope of practice and state regulations.

Statutory Authority

- Delaware Code Title 24, Chapter 25, subchapter 1, § 2502
- 42 CFR 440
- 42 CFR 447

Purpose

The purpose of this regulation is to add the role of pharmacist as a provider type.

Summary of Proposed Changes

Effective September 1, 2024, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan regarding Pharmacists as Providers, specifically, to add the role of pharmacist as a provider type.

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 July 31, 2024.

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 2024	Federal Fiscal Year 2025
General (State) funds	$25,250	$105,000
Federal funds	$48,750	$145,000

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: There were comments supporting the proposed changes.

Agency response: DMMA appreciates the support.

Comment: Our organizations suggest the Division publish an administrative notice.

Agency response: Thank you for the suggestion, we will take that under consideration.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- American Pharmacists Association

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:

The DMMA Division Director has reviewed the proposed regulation as required by 29 Del. C. §10118(b)(3) and has determined that if promulgated, the regulation would have a de minimis impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2024 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan Attachment 3.1-A page 3.1 Addendum, page 5 Addendum, page 9 Addendum, Attachment 3.1-B page 2a and Attachment 4.19-B page 1, specifically, to add the role of pharmacist as a provider type and shall be final effective September 11, 2024.

8/14/2024 | 9:31 AM EDT
Date of Signature

Josette D. Manning Esq., Secretary, DHSS

Attachment 3.1-A
Page 3.1 Addendum

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

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

6.d. 2. Licensed Behavioral Health Practitioner Continued:

Services which exceed the initial pass-through authorization must be approved for re-authorization prior to service delivery. In addition to individual provider licensure, *service* providers employed by addiction treatment services and co-occurring treatment services agencies must work in a program licensed by the Delaware Division of Substance Abuse and Mental Health (DSAMH) and comply with all relevant licensing regulations. Licensed Psychologists may supervise up to seven (7) unlicensed assistants or post-doctoral professionals in supervision for the purpose of those individuals obtaining licensure and billing for services rendered. Services by unlicensed assistants or post- doctoral professionals under supervision may

not be billed under this section of the State Plan.
Instead, those unlicensed professionals must qualify under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program or rehabilitation sections of the State Plan or provide services under Home and Community-based authorities.

Inpatient hospital visits are limited to those ordered by the beneficiary's physician. Visits to a nursing facility are allowed for LBHPs if a Preadmission Screening and Resident Review (PASRR) indicates it is a medically necessary specialized service in accordance with PASRR requirements.
Visits to Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) are non-covered. All LBHP services provided while a person is a resident of an Institute for Mental Disease (IMD) such as a free standing psychiatric hospital or psychiatric residential treatment facility are part of the institutional service and not otherwise reimbursable by Medicaid.
Evidence-based Practices require prior approval and fidelity reviews on an ongoing basis as determined necessary by Delaware Health and Social Services (DHSS) and/or its designee. A unit of service is defined according to the Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) approved code set consistent with the National Correct Coding Initiative unless otherwise specified.

6.d.3

Licensed and registered Delaware pharmacist providers may provide services within a scope of practice, Delaware state regulations, or both.

Criteria for Medicaid Coverage of Pharmacist Provider Services means that the services are:

1) Provided in accordance with the scope of practice as defined by the State Board of Pharmacy, Delaware State Regulations, or both
2) Service provided by pharmacy interns are provided under the supervision of a licensed and registered pharmacist.

TN No. SPA # ~~13-0018~~ 24-0008	Approval Date ~~September 18, 2014~~
Supersedes	
TN No. # ~~NEW~~ 13-0018	Effective Date ~~July 1, 2014~~ September 1, 2024

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

LIMITATIONS

12.a. Prescribed Drugs Continued:

2. Quantity limits are placed on therapeutic categories that will allow for coordinated care and improve outcomes. Limits exist for:
   a. Sedative hypnotics- ~~15~~ 30 doses per 30 days
   b. Triptans, acute treatment of migraines, 9 doses per 45 days
   c. Opioid analgesics-720 immediate release doses per 365 days. 120 doses for 30 days for acute treatment of pain and 60 doses per 30 days for chronic pain treatment
   d. Oxycodone 15 mg-maximum of 240 doses per year
   e. Oxycodone 20 mg-maximum of 120 doses per year
   f. Oxycodone 30 mg-maximum of 60 doses per year
   ~~d.~~ g. Skeletal muscle relaxants-120 doses per 30 days
   h. Carisoprodol-84 tablets per 30 days
   i. Baclofen-excluded from quantity limit
   j. Depo-Provera-1 dose per 84 days
   ~~e.~~ k. Benzodiazepines-120 doses per 30 days

~~f.~~ l. Tramadol or tramadol immediate release combinations-240 tablets per 30 days
~~g.~~ m.Narcotic cough medications- 240 ml per 30 days and 480 ml per 90 days without comorbid diagnosis. Tussionex 120 ml per 84 days and 480 ml per year.
~~h.~~ n.Adjunctive anticonvulsants-240 doses per 30 days
~~i.~~ o. Rescue Nebulizer solutions- 2 boxes per 30 days
p. Injectable anticoagulants-10 day supply
q. Pseudoephedrine 3600 mg per 84 days
~~j.~~ r. Clients utilizing greater than 15 unique medications per 30 days
~~k.~~ s.Medications that are dosed once a day are limited to one dose per day unless that total dosage required is within the limits stated above and require more than one tablet/capsule to obtain the required therapeutic amount.

3. Duration of therapy
   a. Nicotine cessation products are limited to the duration that has been approved by the FDA.
   b. Palivizumab-6 months during the high viral period of the year.

4. Prescriptions are limited to a quantity not to exceed the greater of 100 dosing units or a 34-day supply except for drugs selected and received through mail order.

TN No. SPA # ~~13-001~~ 24-0008	Approval Date ~~May 22, 2013~~
Supersedes	
TN No. # ~~412~~ 13-001	Effective Date ~~January 1, 2013~~ September 1, 2024

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

12.a. Prescribed Drugs Continued:

Prior Authorization

1. Prior authorization requirements may be established for certain drug classes or particular drugs, or a medically accepted indication for uses and doses.
2. The Drug Utilization Review Board (DUR) determines which drugs may require prior authorization. The Board assesses data on drug use in accordance with predetermined standards. The predetermined standards shall be:
   a. monitoring for therapeutic appropriateness
   b. overutilization and underutilization
   c. appropriate use of generic products
   d. therapeutic duplication
   e. drug-disease contraindications
   f. drug-drug interactions
   g. incorrect drug dosage or duration of drug treatment
   h. clinical efficacy
   i. safety
   j. medical necessity

TN No. SPA # 24-0008	Approval Date
Supersedes	
TN No. # NEW	Effective Date September 1, 2024

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

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

24.a. Transportation for medical services is provided in two ways:

a) As an administrative service through contractual arrangements /intradepartmental agreements. Transportation provided as an administrative service includes:

i. Non-Emergency transportation through contractual broker arrangements.

b) As an optional medical service through direct vendor payment. Transportation provided as an optional medical service includes:

i. Emergency transportation, and
ii. Services provided outside the broker's contractual obligation.

24.f. Personal Care Services

Coverage for Personal Care Services (PCS) described below will sunset on December 31, 2015 as coverage of PCS will be provided under the Home Health Services benefit.

Eligible recipients of personal care are Medicaid recipients who are disabled by mental illness, alcoholism, or drug addiction as defined in the Medicaid Provider Manual for Community Support Service Programs.

Persons eligible to provide personal care services are those who are qualified as an Assistant Clinician as defined in the Medicaid Provider Manual for Community Support Service Programs.

The recipient's physician must certify medical necessity for personal care services based on a completed comprehensive medical/psycho-social evaluation and treatment plan as defined in the Medicaid Provider Manual for Community Support Service Programs.

25. Pharmacist Provider Services
X Provided Not Provided X With Limitations

TN No. SPA # ~~19-009~~ 24-0010	Approval Date ~~September 14, 2022~~
Supersedes	
TN No. # ~~17-005~~ 19-009	Effective Date ~~October 1, 2019~~ August 1, 2024

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

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

Physicians, podiatry and independent radiology services shall be reimbursed based on CPT codes and definitions. Reimbursement rates shall be based on the Medicare Relative Value (RVU), adjusted by Geographic Practice Cost Indices (GPCI) representing the medical economic conditions specific to Delaware. Each CPT code has a unique RVU consisting

of a Work Unit (WRVU), an Overhead Unit (ORVU), and a Malpractice Unit (MRVU). Delaware Medicaid may adjust the weight of each RVU up to, but not to exceed, 100% of the Medicare value.

Laboratories are reimbursed their usual and customary charge or a maximum fee for their service, whichever is lower. The maximum fee for each procedure will be reviewed annually. If such review indicates that fees should be modified, an inflation factor will be considered to apply to the fees which are currently in place; in addition, other aspects of the fee structure will be examined in light of usual and customary charges and other pertinent considerations to develop appropriate rates for the year.

Physician Assistant services, provided under the supervision, control, and direction of one or more physicians, are billed under a supervising physician's provider number, with the Physician Assistant's provider number included as the rendering provider. Physician Assistant's may not bill Medicaid directly.

This reimbursement methodology applies to services delivered on or after January 1, 1995. The fee schedule and any annual/periodic adjustments to the fee schedule are available on the Delaware Medical Assistance Program (DMAP) website at:
~~http://www.dmap.state.de.us/downloads/feeschedules.html~~
https://medicaidpublications.dhss.delaware.gov/docs/search?EntryId=1080

Pharmacist Provider Services:
Payments for Pharmacist Provider Services covered under Attachment 3.1-A.1 are equal to the lower of the submitted charge or the appropriate fee from the Provider Services Fee Schedule. All rates are published on the website at:
https://medicaidpublications.dhss.delaware.gov/docs/search?EntryId=1080
Pharmacist Provider Services are reimbursed at 100 percent of the Medicaid Physician Services Fee Schedule in effect.

TN No. SPA # ~~19-002~~ 24-0008	Approval Date ~~May 14 2019~~
Supersedes	
TN No. # ~~351~~ 19-002	Effective Date ~~January 11, 2019~~ September 1, 2024

***Please Note: Due to formatting of certain amendments to the regulation, they are not being published here. Copies of the document is available at:**
https://regulations.delaware.gov/register/september2024/final/Attachment 3.1-B page 2a Amended.pdf