

**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**

**Transportation Services**

**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 Transportation Services, specifically, to attest that the Delaware Medicaid transportation program is in compliance with section 1902(a)(87) of the Social Security Act. 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 October *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2022 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after October 1, 2022, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) proposes to amend Title XIX Medicaid State Plan attachment 3.1-D regarding Transportation Services.

**Background**

In July of 2021 the Centers for Medicare & Medicaid Services provided guidance to states of the provisions added by the Consolidated Appropriations Act, 2021, Division CC, Title II, Section 209, that codify in statute longstanding regulatory requirements for states to assure necessary transportation for beneficiaries to and from covered services and added driver and provider requirements for state Medicaid transportation programs. The requirements include:

- Each provider and individual driver is not excluded from participation in any federal health care program (as defined in section 1128B(f) of the Act) and is not listed on the exclusion list of the Inspector General of the U.S. Department of Health and Human Services;
- Each such individual driver has a valid driver's license;
- Each such provider has in place a process to address any violation of a state drug law; and,
- Each such provider has in place a process to disclose to the state Medicaid program the driving history, including any traffic violations, of each such individual driver employed by such provider, including any traffic violations.

The updated requirements apply to existing and new providers.

**Statutory Authority**

- Consolidated Appropriations Act, 2021, Division CC, Title II, Section 209
- Section 1902(a)(87) 1902(a)(87) of the Social Security Act

**Purpose**

The purpose of this proposed regulation is to attest that the Delaware Medicaid transportation program is in compliance with section 1902(a)(87) of the Social Security Act.

**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 October 31, 2022.

*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**

There is no anticipated fiscal impact.

**Summary of Comments Received with Agency Response and Explanation of Changes**

No comments were received during the public comment period.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Transportation Services, specifically, to attest that the Delaware Medicaid transportation program is in compliance with section 1902(a)(87) of the Social Security Act., is adopted and shall be final effective December 11th, 2022.

12/1/2022

Date of Signature

Molly K. Magarik, Secretary, DHSS

Attachment 3.1-D  
Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE/TERRITORY: **DELAWARE**

METHODS OF PROVIDING TRANSPORTATION SERVICES

The State of Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/ DMMA) provides transportation services as an "optional medical service" which includes emergency medical transportation and non-emergency medical transportation (NEMT) of eligible recipients in accordance with 42 CFR440.170, 42 CFR431.53, 45 CFR92.36. Further detail on these services is outlined in Attachment 3.1-A: Amount, Duration, and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy.

In addition, the State of Delaware attests that all the minimum requirements outlined in Section 1902(a)(87) of the Social Security Act are met.

**26 DE Reg. 484 (12/01/22) (Final)**