

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

Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions

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 Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology. 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 December 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 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

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 the Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions.

Background

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency. Additionally, on March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS). This is to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

Statutory Authority

Section 1135(b) of the Social Security Act

Purpose

The purpose of this proposed regulation is to temporarily extend the suspension of member copays and premiums for six months following the end of the PHE.

Summary of Proposed Changes

Effective for services provided on the day after the end of the PHE until 6 months following the end of the month in which the PHE ends, DHSS/DMMA proposes to amend Section 7.4-B of the Medicaid State Plan to temporarily extend the provision approved by CMS to waive member copays and premiums.

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 December 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 as co-pays and premiums have been waived since March of 2020.

Summary of Comments Received with Agency Response and Explanation of Changes

There were no comments received during the comment period.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2022 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions is adopted and shall be final effective February 11, 2023.

1/13/23

Date of Signature

Molly Magarik, Secretary, DHSS

State/Territory: Delaware

Section 7 - General Provisions

7.4. Temporary Extension to the Medicaid Disaster Relief Policies for the COVID-19 National Emergency

***Please Note: Due to the formatting requirements of the regulation, it is being attached here as a PDF document:
[https://regulations.delaware.gov/register/february2023/final/Section 7.4.B - Temporary Extension to COVID-19 DR
Provisions AMENDED.pdf](https://regulations.delaware.gov/register/february2023/final/Section 7.4.B - Temporary Extension to COVID-19 DR Provisions AMENDED.pdf)**

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