

**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**

**Early, Periodic, Screening, Diagnosis, & Treatment Coverage in the Delaware Healthy Children's Program**

**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 Early, Periodic, Screening, Diagnosis, & Treatment coverage in the Delaware Healthy Children's Program, specifically to align services provided to children under the Title XXI CHIP State Plan with services provided to children under the Title XIX Medicaid State Plan. 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 proposed regulation is to align services provided to children under the Title XXI CHIP State Plan with services provided to children under the Title XIX Medicaid State Plan.

**Background**

The Children's Health Insurance Program (CHIP) is an optional program established and administered by a State, jointly funded with the Federal government, to provide child health assistance to uninsured, low-income children through a separate child health program, a Medicaid expansion program, or a combination program. Coverage provided under a CHIP State Plan must consist of any of the four types of coverage outlined in Section 2103(a) of the Social Security Act, specifically, benchmark coverage; benchmark-equivalent coverage; existing comprehensive state-based coverage; and/or Secretary-approved coverage. Within each of these types of coverages, there are additional options.

Delaware's CHIP Program, the Delaware Healthy Children's Program (DHCP), provides Secretary-approved coverage; specifically, it provides coverage that includes benchmark coverage plus additional coverage. This coverage includes all services that are provided to children under the Medicaid State Plan, except Non-Emergency Transportation (NEMT) and Prescribed Pediatric Extended Care (PPEC).

NEMT is an important benefit provided through Medicaid and is associated with a significant reduction in missed appointments. Transportation barriers can prevent individuals from accessing vital medical care. Extension of the NEMT benefit to children enrolled in CHIP will increase access to care for these targeted low-income children. PPEC facilities are provided as an alternative to more expensive institutionalization or as an alternative to community/home care for children who are determined to be in medical need of the service. These services include nursing services, speech therapy, physical therapy, and occupational therapy provided in an outpatient setting, up to twelve hours per day, five days a week. Typically, children that are eligible for PPEC services are enrolled with Medicaid under the Children's Community Alternative Disability Program (CCADP). If a child in CHIP were to be medically complex enough to receive PPEC services, they would be referred to the CCADP to be reviewed for coverage under that benefit. However, revising the coverage provided under the CHIP State Plan, to Secretary-approved coverage, coverage the same as Medicaid State plan, including Early Periodic Screening Diagnosis and Treatment (EPSDT) will ensure that no child enrolled in the CHIP program will go without access to transportation, or in the rare instance, PPEC services until the child was able to be reviewed for the CCADP.

Additionally, this State Plan Amendment will allow for easier administration of the CHIP program by aligning services and reducing CMS administrative requirements on states that do not align services between the Medicaid and CHIP State Plans.

**Statutory Authority**

**Purpose**

The purpose of this proposed regulation is to align services provided to children under the Title XXI CHIP State Plan with services provided to children under the Title XIX Medicaid State Plan.

*Summary of Proposed Changes*

Effective for services provided on and after July 1, 2023, DHSS/DMMA proposes to amend the Title XXI Children's Health Insurance Program (CHIP) State Plan regarding Early, Periodic, Screening, Diagnosis, & Treatment (EPSDT) coverage in the Delaware Healthy Children's Program.

*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**

	Federal Fiscal Year 2023	Federal Fiscal Year 2024
Federal funds	\$125,816	\$679,212
General (State) funds	\$51,539	\$266,765

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

The following summarized comments were received:

**Comment:** The Governor's Advisory Council for Exceptional Citizens (GACEC) is concerned by DMMA's intention to update the DMAP policies and portal without public notice.

**Agency Response:** DMMA would like to clarify that updating the DMAP policies and portal is not subject to APA requirements since they are internal policies/procedures, not regulations.

**Comment:** The Governor's Advisory Council for Exceptional Citizens (GACEC) supports the expansion of NEMT to provide transportation services.

**Agency Response:** DMMA appreciates the support.

**Comment:** The Governor's Advisory Council for Exceptional Citizens (GACEC) would like to verify that DHSS will be

covering inpatient and outpatient mental health and substance abuse services, as well as wrap around and specialty dental care, in other categories, since specific language in reference to these services was removed.

**Agency Response:** DMMA would like to clarify that all benefits will be provided to CHIP members in the same manner as described in the Medicaid State Plan. There were no benefits removed. The details around the benefits were administrative requirements since the CHIP and Medicaid State Plan services were not aligned under EPSDT. These details were removed as details are maintained in the Medicaid State Plan.

**Comment:** The Governor's Advisory Council for Exceptional Citizens (GACEC) supports the adoption of EPSDT medical necessity standards for CHIP children.

**Agency Response:** DMMA appreciates the support.

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 Early, Periodic, Screening, Diagnosis, & Treatment coverage in the Delaware Healthy Children's Program is adopted and shall be final effective February 11, 2023.

1/13/23

Date of Signature

Molly Magarik, Secretary, DHSS

**\*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/CHIP EPSDT Coverage Sec. 1 and Sec. 6 AMENDED.pdf](https://regulations.delaware.gov/register/february2023/final/CHIP%20EPSDT%20Coverage%20Sec.%201%20and%20Sec.%206%20AMENDED.pdf)**

**26 DE Reg. 692 (02/01/23) (Final)**