

**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**

**Third Party Liability**

**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 Third Party Liability, specifically, to comply with Consolidated Appropriations Act of 2022 (CAA), 2022 and Senate Bill (SB) 220. 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 May 2024 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 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 Third Party Liability.

**Background**

Medicaid is generally the "payer of last resort," meaning that Medicaid only pays claims for covered items and services if there are no other liable third-party payers for the same items and services. When Medicaid beneficiaries have one or more additional sources of coverage for health care services, third-party liability (TPL) rules govern the legal obligation of such third parties. Section 1902(a)(25)(A) of the Social Security Act defines third-party payers as health insurers, managed care organizations, and group health plans, among others.

The federal Consolidated Appropriations Act of 2022 (CAA 2022), enacted March 15, 2022, increased state flexibility with respect to TPL. Section 202 of the CAA, 2022 amended section 1902(a)(25)(I) of the Act to require a state plan for medical assistance to provide assurances satisfactory to the Secretary that the state has state laws in place that bar responsible third-party payers (other than Medicare plans) from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under the third-party payer's rules. Specifically, if the responsible third party requires prior authorization for an item or service furnished to a Medicaid-eligible individual, the responsible third party must accept the authorization provided by the state that the item or service is covered under the state plan (or waiver of such plan) for such individual, as if such authorization was made by the third party for such item or service. Authorization by the state means that the item or service an individual received (and for which third-party reimbursement is being sought) is a covered service or item under the Medicaid state plan (or waiver of such plan) for that individual.

On March 28, 2024, Senate Bill 220 of the 152nd General Assembly, An Act to Amend Title 18 Relating to Health Insurance for Children And Persons On Medicaid received enough votes to pass the both the Senate and House, moving the bill forward for Governor's signature. This bill updates the provisions of Title 18, § 4003 to make them consistent with federal law contained in the Consolidated Appropriations Act of 2022.

**Statutory Authority**

- Section 1902(a)(25)(A) of the Social Security Act
- Consolidated Appropriations Act of 2022 (CAA 2022)

**Purpose**

The purpose of this proposed regulation is to comply with current law revise the Medicaid State Plan to align with the CAA, 2022 requirements and SB 220.

*Summary of Proposed Changes*

Effective April 1, 2024, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan regarding Third Party Liability,

specifically, to comply with CAA, 2022 and SB 220.

#### *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 May 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**

This change will result in a cost avoidance therefore there is no fiscal impact.

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

There were no public comments received.

#### **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 May 2024 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan Attachment 4.11-A - Attachment 7.7.C Supplement to Attachment 4.22, specifically, to comply with the Consolidated Appropriations Act of 2022 and Senate Bill 220 of the 152nd Delaware General Assembly and shall be final effective July 11, 2024.

6/12/2023 | 3:39 PM EDT

Date of Signature

Josette D. Manning Esq.  
Cabinet Secretary, DHSS

Supplement to Attachment 4.2.2

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

STATE LAWS REQUIRING THIRD PARTIES TO PROVIDE  
COVERAGE ELIGIBILITY AND CLAIMS DATA

1902(A)(25)(I)	The State has in effect laws that require third parties to comply with the provisions, including those which require third parties to provide the State with coverage, eligibility and claims data, of 1902(A)(25)(I) of the Social Security Act.
	<u>The Medicaid agency ensures that laws are in effect that bar liable third-party payers from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under the third-party payer's rules. These laws comply with the provisions of section 202 of the Consolidated Appropriations Act, 2022.</u>

TN No. SPA # <del>08-002</del> <u>24-0010</u> Supersedes TN No. # <del>N/A</del> <u>08-002</u>	Approval Date <del>September 24, 2008</del> Effective Date <del>July 1, 2008</del> <u>April 1, 2024</u>
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**28 DE Reg. 51 (07/01/24) (Final)**