

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

**PROPOSED**

**PUBLIC NOTICE**

**Third Party Liability**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan regarding third party liability.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on July 1, 2022. Please identify in the subject line: Third Party Liability.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**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 and the Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

**Statutory Authority**

Federal Budget Legislation Bipartisan Budget Act of 2018 - Third Party Liability 42 CFR 433.136

**Background**

Effective February 9, 2018, the Bipartisan Budget Act (BBA) of 2018 amended section 1902(a)(25)(E) of the Social Security Act to require states to use standard coordination of benefits cost avoidance instead of "pay and chase" when processing claims for prenatal services, including labor and delivery and postpartum care. Therefore, if the State Medicaid Agency (SMA) has determined that a third party is likely liable for a prenatal claim, it must reject, but not deny, the claim and return it back to the provider noting the third party that Medicaid believes to be legally responsible for payment. If, after the provider bills the liable third party and a balance remains, or the claim is denied payment for a substantive reason, the provider can submit a claim to the SMA for payment of the balance up to the maximum Medicaid payment amount established for the service in the state plan. Additionally, effective October 1, 2019, the BBA of 2018 amended section 1902(a)(25)(E) of the Act, to require a state to make payments without regard to third party liability for pediatric preventive services unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for 90 days. Additionally, because 1902(a)(25)(E) of the Act now applies to CHIP, states should follow the same policies in their CHIP programs.

**Summary of Proposal**

*Purpose*

The purpose of this proposed regulation is to require states to use standard coordination of benefits cost avoidance instead of "pay and chase" when processing claims for prenatal and pediatric preventive services.

*Summary of Proposed Changes*

Effective for services provided on and after April 1, 2022 DHSS/DMMA proposes to amend Delaware Health and Social Services (DHSS)/Division of Medicaid regarding third party liability.

*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 gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to

provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 1, 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**

There is no anticipated fiscal impact.

Attachment 4.22-A

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OMB.: 0938-0493

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

#### Requirements for Third Party Liability (TPL)- Identifying Liable Resources

1. ~~Data Exchange Frequency (42 CFR 433.13.138(f))~~: Data exchanges 42 CFR 433.138 (d)(1), (d)(3) and (d)(4) and (e)
  - a. SSA wage - quarterly
  - b. IV-A agency - in Delaware is the same as the Title XIX agency and updates are available, daily
  - c. State Workmen's - not Compensation files - weekly
  - d. Motor vehicle - not computerized - no match available
  - e. SWICA - quarterly
  - f. Health Insurance Carriers - no less than once every two (2) months, unless written permission is given in advance by the agency

~~The State may exercise the flexibility to make payments without regard to potential TPL for up to 100 days for claims related to child support enforcement beneficiaries.~~

2. Follow-up requirements of 42 CFR 433.138 (g)(1)(i) and (g)(2)(i):

As soon as any matches on employers are received by the Delaware Client Information System (DCIS), the system will automatically generate a letter to verify health insurance coverage. This action will be taken within 30 days of the receipt of the match data.

3. State motor vehicle match is unavailable because of the information needed for TPL is not carried in the State's motor vehicle automated system. 42 CFR 433.138(g)(3)
4. Trauma code reports are produced weekly by the fiscal agent pursuant to 42 CFR 433 (e). The TPL unit sends an accident inquiry form to the client/provider within two weeks regarding potential TPL. Positive responses result in a request for claims history and subsequent bills generated to applicable insurance company or attorney. Any information on ongoing legally liable third party resources is immediately entered into the third party database, which is part of the Medicaid Management Information System (MMIS). 42 CFR 433-138(g)(4) 433(e)

TN No. SPA	Approval Date
Supersedes	
TN No. SPA <u>08-002</u>	Effective Date

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

Requirements for Third Party Liability -  
Payment of Claims

The State's MMIS identifies liable third parties and all claims submitted for payments are processed through this system. If the provider has not compiled with TPL requirements, the claim suspends for manual review and appropriate action is taken.

The State of Delaware Title XIX Program seeks reimbursement from liable third in the following instances:

	Cost Avoidance	Post Payment Recoveries	
	Pre-payment Pended Claims	Third Party Claims for Accidental Injury	Non Accident Related Claims
Amount of money below which it is not effective to pursue a claim.	All claims where probable existence of TPL is established are cost avoided except as provided for in the TPL Action Plan.	\$500.00	\$100.00
Time limit for which reimbursement is sought.		Date of accident forward.	As accumulated over the two year period to the start of recovery proceedings.

Cost Avoidance Prenatal Services

Per 1902(a)(25)(E) The state will use standard coordination of benefits cost avoidance process when adjudicating claims for prenatal services which includes labor, delivery and postpartum care claims. If it is determined that a third party is likely liable for a prenatal claim, the claim will be rejected, but not denied and the claim will be returned back to the provider noting the third party that Medicaid believes to be legally responsible for payment. If, after the provider bills the liable third party and a balance remains or the claim is denied payment for a substantive reason, the provider can submit a claim to the state for payment of the balance, up to the maximum Medicaid payment amount established for the service.

The state will make payments without regard to third party liability for pediatric preventive services unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for within 90 days.

The State may exercise the flexibility to make payments without regard to potential TPL for up to 100 days for claims related to child support enforcement beneficiaries. Additionally, (1902(a)(25)(F)) permits states to make payment for a child support enforcement beneficiary's claim if the third party has not paid the provider's claim within a 100-day wait-and-see period. However, the state may instead choose-if the state determines doing so is cost-effective and necessary to ensure access to care-to make payment within 30 days.

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**25 DE Reg. 1103 (06/01/22) (Prop.)**