

**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**

**Increased Primary Care Service Payment**

**NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding *increased Medicaid payments for designated primary care services*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the March 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2013 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 the Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan, pursuant to section 1202 of the Affordable Care Act, to modify reimbursement for primary care services.

**Statutory Authority**

Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act

**Background**

Section 1202 adds new requirements in sections 1902(a)(13), 1902(jj), 1932(f), and 1905(dd) of the Social Security Act, as amended by the Affordable Care Act.

Specifically, Section 1202 requires state Medicaid agencies to increase payments to certain specialties for certain primary care services provided to Medicaid recipients during calendar years 2013 and 2014. Under this provision, certain physicians that provide eligible primary care services would be paid the Medicare rates in effect in calendar years (CYs) 2013 and 2014 (or if greater, the Medicare rate in effect in 2009) instead of their usual state-established Medicaid rates, which may be lower than federally established Medicare rates. Increased payment applies to primary care services delivered by a physician with a specialty designation of family medicine, general internal medicine, or pediatric medicine or related subspecialists. States will receive 100 percent Federal financial participation (FFP) for the difference between the Medicaid State plan payment amount as of July 1, 2009 and the applicable Medicare rate. The increase applies to a specific set of services and procedures that Centers for Medicare and Medicaid Services (CMS) designates as "primary care services".

In 42 CFR §447.410, States are required to submit a State Plan Amendment (SPA) to reflect the fee schedule rate increases for eligible primary care physicians under section 1902(a)(13)(A) of the Social Security Act. The purpose of this requirement is to assure that when States make the increased reimbursement to providers, they have State Plan authority to do so and they have notified providers of the change in reimbursement as required by Federal regulations.

**Summary of Proposal**

Pursuant to 42 CFR §447.205, the Division of Medicaid and Medical Assistance (DMMA) is required to give public notice of any significant proposed change in its method and standards for setting payment rate for services. On December 22, 2012 in the *News Journal* and on December 21, 2012 in the *Delaware State News*, DMMA issued public notice of its intent to submit a Medicaid State Plan amendment to implement the provisions of Section 2012 of the Affordable Care Act.

Effective January 1, 2013, this State Plan Amendment (SPA) will (1) amend the fees for selected services provided by certain primary care physicians to match 100% of Medicare rates for calendar years 2013 and 2014 and (2) amend the fees for vaccine administration under the Vaccines for Children Program to match 100% of Medicare rates for calendar years 2013 and 2014.

## Changes to the Medicaid State Plan

Effective January 1, 2013, this State Plan Amendment, Transmittal Number 13-001, will amend the fees for services provided by certain primary care physicians to match 100% of Medicare rates for calendar years 2013 and 2014, calculated pursuant to 42 USC §1396a(a)(13)(C) and 42 CFR §447.405(a). These increased rates will apply to the primary care procedure codes identified pursuant to 42 USC §1396a(jj) and 42 CFR §447.400(c). Primary care physicians identified pursuant to 42 USC §1396a(13)(C) and 42 CFR §447.400(a) will be eligible to receive 100% of the Medicare rates for those primary care services.

Effective January 1, 2013, this State Plan Amendment will also amend the fees for vaccine administration provided under the Vaccines for Children program to match 100% of Medicare rates for calendar years 2013 and 2014, calculated pursuant to 42 CFR §447.405(b).

Due to the extensive delay in finalizing the federal rule and the requirement that CMS approve the State methodology for increased payments, DMMA and its contractors will initially reimburse qualifying providers according to the current rates beginning January 1, 2013. DMMA and its contractors will then reimburse qualifying providers the amount above the current rate attributable to the increase required by the federal rule, retroactive to January 1, 2013.

The provisions of this state plan amendment relating to methodology and payment of the enhanced rate are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

## Fiscal Impact Statement

Due to the availability of 100% FMAP for these primary care services, the DMMA projects no fiscal impact in Calendar Years 2013 and 2014.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

In a nutshell, states are required to adjust Medicaid payment rates for certain primary care services in 2013 and 2014 to ensure that they at least match certain Medicare rates. States are also required to adjust fees for vaccine administration under the Vaccines for Children (VFC) program to match the greater of a Medicare rate and VFC regional maximum amount. The federal government will cover 100% of the costs of the difference between the current State payment rates and the new rates so there is no State fiscal impact.

GACEC and SCPD endorse the proposed regulation since the changes are required to conform to federal law and CMS guidance.

**Agency Response:** DMMA thank the Councils for the endorsement.

DMMA Note: The proposed regulation has been amended upon receipt of further guidance from the Centers for Medicare and Medicaid Services (CMS). Those changes can be viewed as bold, bracketed type on pages 3 and 4 of the final order regulation.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2013 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding increased Medicaid payments for designated primary care services is adopted and shall be final effective May 10, 2013.

Rita M. Landgraf, Secretary, DHSS

## DMMA FINAL ORDER REGULATION #13-15

### REVISION:

**ATTACHMENT 4.19-B  
Introduction - Page 1  
[OMB No. 0938-1148]**

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE  
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
OTHER TYPES OF CARE  
Physician Services**

**Increased Primary Care Service Payment 42 CFR 447.405, 447.410, 447.415  
Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment**

The state reimburses for services provided by physicians meeting the requirements of 42 CFR 447.400(a) at the Medicare Part B fee schedule rate using the Medicare physician fee schedule rate in effect in calendar years 2013 and 2014 or, if greater, the payment rates that would be applicable in those years using the calendar year 2009 Medicare physician fee schedule conversion factor. If there is no applicable rate established by Medicare, the state uses the rate specified in a fee schedule established and announced by CMS.

- The rates reflect all Medicare site of service and locality adjustments.
- The rates do not reflect site of service adjustments, but reimburse at the Medicare rate applicable to the office setting.
- The rates reflect all Medicare geographic/locality adjustments.
- The rates are statewide and reflect the mean value over all counties for each of the specified evaluation and management and vaccine billing codes.
- The following formula was used to determine the mean rate over all counties for each code: \_\_\_\_\_

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**Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment Continued**

**Method of Payment**

- The state has adjusted its fee schedule to make payment at the higher rate for each E&M and vaccine administration code.
- The state reimburses a supplemental amount equal to the difference between the Medicaid rate in effect on July 1, 2009 and the minimum payment required at 42 CFR 447.405.

Supplemental payment is made  monthly  quarterly

**Primary Care Services Affected by this Payment Methodology**

- This payment applies to all Evaluation and Management (E&M) billing codes 99201 through 99499.

~~[The State did not make payment as of July 1, 2009 for the following codes and will not make payment for those codes under this SPA (specify codes). (To Be Determined)]~~

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**Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment Continued  
(Primary Care Services Affected by this Payment Methodology – continued)**

- The State did not make payment as of July 1, 2009 for the following codes and will not make payment for those codes under this SPA (specify codes).

99288	99324	99327	99335	99339	99359	99366	99374
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99315	99325	99328	99336	99340	99363	99367	99375
99316	99326	99334	99337	99358	99364	99368	99376
99377	99380	99403	99407	99420	99442	99450	99261
99378	99401	99404	99411	99429	99443	99455	99262
99379	99402	99406	99412	99441	99444	99456	99263
99271	99274	99290	99295	99298	99301	99311	99321
99272	99275	99293	99296	99299	99302	99312	99322
99273	99289	99294	99297	99300	99303	99313	99323
99331	99351	99361	99372	99432	99436		
99332	99352	99362	99373	99433	99438		
99333	99353	99371	99431	99435	99440]		

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Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment Continued  
(Primary Care Services Affected by this Payment Methodology – continued)

The state will make payment under this SPA for the following codes which have been added to the fee schedule since July 1, 2009 (specify code and date added). ~~[(To Be Determined)]~~

99408 99409 99224 99225 99226]

Physician Services – Vaccine Administration

For calendar years (CYs) 2013 and 2014, the state reimburses vaccine administration services furnished by physicians meeting the requirements of 42 CFR 447.400(a) at the lesser of the state regional maximum administration fee set by the Vaccines for Children (VFC) program or the Medicare rate in effect in CYs 2013 and 2014 or, if higher, the rate using the CY 2009 conversion factor. ~~[(To Be Determined Upon Release of the Vaccine Administration Rate by the Centers for Medicare and Medicaid Services)]~~

Medicare Physician Fee Schedule rate

State regional maximum administration fee set by the Vaccines for Children program

~~Rate using the CY 2009 conversion factor]~~

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Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment Continued  
Documentation of Vaccine Administration Rates in Effect 7/1/09

The state uses one of the following methodologies to impute the payment rate in effect at 7/1/09 for code 90460, which was introduced in 2011 as a successor billing code for billing codes 90465 and 90471.

The imputed rate in effect at 7/1/09 for code 90460 equals the rate in effect at 7/1/09 for billing codes 90465 and 90471 times their respective claims volume for a 12 month period which encompasses July 1, 2009. Using this methodology, the imputed rate in effect for code 90460 at 7/1/09 is: \_\_\_\_\_.

A single rate was in effect on 7/1/09 for all vaccine administration services, regardless of billing code. This 2009 rate is: \$8.00 (eight dollars).

Alternative methodology to calculate the vaccine administration rate in effect 7/1/09:

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Note: This section contains a description of the state's methodology and specifies the affected billing codes.

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**Attachment 4.19-B: Physician Services 42 CFR 447.405 Amount of Minimum Payment Continued**  
**Effective Date of Payment**

**E & M Services**

This reimbursement methodology applies to services delivered on and after January 1, 2013, ending on December 31, 2014 but not prior to December 31, 2014. All rates are published at (<http://www.dmap.state.de.us/home/index.html>).

**Vaccine Administration**

This reimbursement methodology applies to services delivered on and after January 1, 2013, ending on December 31, 2014 but not prior to December 31, 2014. All rates are published at (<http://www.dmap.state.de.us/home/index.html>).

Supersedes Page: None

**PRA Disclosure Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1148. The time required to complete this information collection is estimated to average 20 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

**16 DE Reg. 1176 (05/01/13) (Final)**