

**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**

**Ambulatory Surgical Center Services Rate**

**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 September 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 3, 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**

Effective for services provided on and after October 1, 2022, DHSS/DMMA proposes to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology.

**Background**

The Centers for Medicare and Medicaid Services (CMS) defines an Ambulatory Surgical Center (ASC) as "any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission. An ASC satisfies the criterion of being a 'distinct' entity when it is wholly separate and clearly distinguishable from any other health care facility or office-based physician practice.

DMMA currently covers medical surgical procedures in an ASC. During the COVID 19 PHE, access to outpatient hospital surgical space became very limited, and effective October 1, 2021, DMMA expanded access by allowing surgical dental procedures to take place in an ASC. After almost a year of operating this way, it was determined that the ASC reimbursement methodology was not adequate to cover the costs of providing these services in the ASC. As a result, DMMA performed research, including surveys of other state Medicaid programs, and develop a new rate methodology to ensure that these services remain accessible to Medicaid members.

**Statutory Authority**

42 CFR 416 - Ambulatory Surgical Services

**Purpose**

The purpose of this proposed regulation is to adjust the reimbursement methodology for Ambulatory Surgical Center Services.

*Summary of Proposed Changes*

Effective for services provided on and after October 1, 2022 DHSS/DMMA proposes to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology.

*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 October 3, 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.

#### **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) supports these regulations as it aligns with the increasing accessibility of dental care to patients using Medicaid while ensuring such centers receive proper compensation for provision of services.

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

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

#### **FINDINGS OF FACT:**

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology is adopted and shall be final effective November 11, 2022.

10/12/2022  
Date of Signature

Molly Magarik, Secretary, DHSS

Attachment 4.19-B  
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#### STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE/TERRITORY: **DELAWARE**

#### REIMBURSEMENT FOR FREE STANDING SURGICAL CENTER I AMBULATORY SURGICAL CENTER SERVICES

Delaware Medicaid uses the reimbursement methodology and formulae of the Medicare program, as described in Section 5243 of the Medicare Carriers Manual, in determining per diem rates for payment of Free Standing Surgical Centers (FSSCs) I Ambulatory Surgical Centers (ASCs). Effective April 1, 2009, Delaware Medicaid reimburses 95 percent of the Medicare calculated ASC rates for Delaware.

~~Effective October 1, 2021 an ambulatory surgical center being used for patient dental services will be reimbursed by Medicaid for such services at 50 percent of the current Medicare Outpatient Prospective Payment System (OPPS) rate for procedure codes specified by the State for these dental services.~~

Effective October 1, 2022, an ambulatory surgical center being used for patient dental services will be reimbursed by Medicaid for such services at the facility's usual and customary charge or a maximum fee for their service, whichever is lower.

Except as otherwise noted in the plan, State developed rates are the same for both government and private providers. The fee schedule of ASC rates is available on the DMAP website at the following address: <http://www.dmap.state.de.us/>

[downloads.](#)

This amendment adds the reimbursement methodology for an ambulatory surgical center being used to provide dental services.

TN No. SPA# <u>21-0008</u>	Approval Date
Supersedes	
TN No. SP# <u>09-002</u>	Effective Date: <u>October 1, 2022</u>

**26 DE Reg. 396 (11/01/22) (Final)**