

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

Adult Dental

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES |
IN THE MATTER OF

REVISION OF THE REGULATION |
OF DELAWARE'S |
ALTERNATIVE BENEFIT PLAN (ABP) |
SECTION ABP1, ABP2a, ABP3, ABP4, APB5, APB7, APB8, APB10, APB11 |

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Alternative Benefit Plan (ABP) regarding Dental Services, specifically, to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid. 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 August 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2021 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 11, 2021 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Alternative Benefit Plan (ABP) regarding Dental Services, specifically, to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid.

Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) Assurance (42 CFR 440.345)

The State assures that there will be full access to EPSDT services (42 CFR 440.345) for individuals under 21 years of age through the adoption of a benchmark plan which will mirror the State's current Medicaid State Plan benefits, including the provision of the EPSDT benefit. EPSDT services include all medically necessary, federally allowed services for individuals under age 21 regardless of their avenue of Medicaid eligibility. As such, newly eligible adults under age 21 will automatically be covered for EPSDT services. These services are covered both as fee-for-service benefits and through the State's Managed Care delivery system. EPSDT services are described in the managed care organization (MCO) member handbooks. The State's Diamond State Health Plan 1115 Demonstration Waiver and MCO contracts require coverage of EPSDT medical services. Children's dental services are covered as FFS. The State will alert providers about the continuity of EPSDT services for qualifying newly eligible individuals through its periodic provider alerts and newsletters.

Background

Senate Substitute No. 1 for Senate Bill No. 92 was signed by the Governor of Delaware on August 6, 2019 and provided dental services for adult Medicaid Recipients. The effective date of the Act was April 1, 2020. The adult dental benefit offers basic dental services to eligible adults 21 and over. The Centers for Medicare and Medicaid Services approved Delaware State Plan Amendment (SPA) 20-0001 which amends Title XIX Medicaid State Plan to add adult dental services with an effective date of October 1, 2020.

Under section 1937 of the Social Security Act, states have the flexibility to design an ABP entirely based on commercial market benefits or the state's approved Medicaid state plan, or a combination of both. When a state designs its ABP benefit package to be the same benefits or richer benefits than the state's approved Medicaid state plan, the state has achieved alignment between the ABP benefit package and the state's approved underlying Medicaid state plan. To date, most states have chosen the path of aligning their ABP benefit package fully or in part with the state's approved Medicaid state plan. ABPs must be kept in full or partial alignment with the state's approved underlying state plan on an ongoing basis.

Statutory Authority

- 42 CFR 440.100, Dental Services
- Section 1937 of the Social Security Act, State Flexibility in Benefit Packages

Purpose

The purpose of this proposed regulation is to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid.

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 were to have been received by 4:30 p.m. on August 31, 2021.

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

No comments were received related to this change.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Alternative Benefit Plan (ABP) regarding Dental Services, specifically, to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid is adopted and shall be final effective October 11, 2021.

9/10/2021

Date of Signature

Molly K. Magarik, MS
Cabinet Secretary, DHSS

***Please Note: Due to the formatting requirements of ABP5 of the regulation, it is being attached here as a PDF document:**

<http://regulations.delaware.gov/register/october2021/final/ABP5 Dental MARKED UP.pdf>

***Please Note: Due to the size and formatting of the Alternative Benefit Plan, it is being attached here as a series of PDF documents:**

<http://regulations.delaware.gov/register/october2021/final/ABP1 Dental.pdf>
<http://regulations.delaware.gov/register/october2021/final/ABP2a Dental.pdf>
<http://regulations.delaware.gov/register/october2021/final/ABP3 Dental.pdf>
<http://regulations.delaware.gov/register/october2021/final/ABP4 Dental.pdf>
<http://regulations.delaware.gov/register/october2021/final/ABP5 Dental.pdf>
<http://regulations.delaware.gov/register/october2021/final/ABP7 Dental.pdf>
<http://regulations.delaware.gov/register/october2021/final/ABP8 Dental.pdf>

[http://regulations.delaware.gov/register/october2021/final/ABP10 Dental.pdf](http://regulations.delaware.gov/register/october2021/final/ABP10%20Dental.pdf)
[http://regulations.delaware.gov/register/october2021/final/ABP11 Dental.pdf](http://regulations.delaware.gov/register/october2021/final/ABP11%20Dental.pdf)

25 DE Reg. 419 (10/01/21) (Final)