Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

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

State Plan Telemedicine Services

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 Delaware Title XIX Medicaid State Plan regarding telemedicine, specifically, to sunset the telemedicine pages of the Medicaid State Plan.

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 Melissa.Dohring@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 31, 2022. Please identify in the subject line: State Plan Telemedicine Services.

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 Delaware Title XIX Medicaid State Plan regarding telemedicine, specifically, to remove telemedicine as a state plan services from the Medicaid State Plan.

Statutory Authority
42 CFR 410.78, Telehealth services
42 CFR Part 440, Services
Background
Telemedicine is a cost-effective alternative to the more traditional face-to-face way of providing medical care (e.g., face-to-face consultations or examinations between provider and patient). States have the flexibility to determine whether (or not) to cover telemedicine; what types of telemedicine to cover; wherein the state it can be covered; how it is provided or covered; what types of telemedicine providers may be covered or reimbursed, as long as such providers are "recognized" and qualified according to Medicaid statute or regulation; and how much to reimburse for telemedicine services, as long as such payments do not exceed Federal Upper Limits.

In 2012, DMMA submitted a Medicaid State Plan, and received approval from CMS, to cover Telemedicine Services. Since telemedicine is a mode for delivery of services, and not an actual service itself, the Centers for Medicare & Medicaid Services (CMS) has subsequently provided guidance indicating States are not required to submit a (separate) SPA for coverage or reimbursement of telemedicine services if they decide to reimburse for telemedicine services the same way and in the same amount that they pay for face-to-face services, visits, and consultations. However, if a state does have a telemedicine SPA, they are required to submit a SPA whenever any changes are made to the way the state implements telemedicine coverage, including expansion of coverage.

During the COVID-19 Public Health Emergency (PHE), DMMA received emergency authority to expand telehealth services and received greater flexibility in administering them. Additionally, the Delaware Medical Assistance Program (DMAP) reimburses for telemedicine services the same way and in the same amount that it pays for face-to-face services, visits, and consultations. As a result, it does not require SPA authority to cover telemedicine. Therefore, DMMA will sunset telemedicine as a service from the Medicaid State Plan. This will allow the DMMA to continue covering telemedicine and telehealth, the way that it has during the PHE. Additionally, it will allow DMMA to be more flexible and respond more quickly to necessary changes in the way that medical services are delivered in the state. If DMMA does not sunset telemedicine from the Medicaid State Plan, the flexibilities that were put in place during the PHE will be lost.

Summary of Proposal

Purpose

This proposed regulation aims to remove telemedicine as a state plan service from the Medicaid State Plan so as to allow DMMA to administer this mode of service delivery more effectively and timely.

Summary of Proposed Changes

Effective for services provided on and after September 1, 2022 DHSS/DMMA proposes to amend Delaware Title XIX Medicaid State Plan regarding telemedicine, specifically, to remove telemedicine as a state plan service from the Medicaid State Plan.

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 October 31, 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 associated with this policy change.

~~Attachment 3.1-A~~
~~Introductory Page 1~~

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

~~AMOUNT, DURATION, AND SCOPE OF MEDICAL~~
~~AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY~~

~~TELEMEDICINE~~

~~The Delaware Medical Assistance Program (DMAP) covers medically necessary health services furnished to eligible DMAP members as specified in the Medicaid State Plan. To facilitate the ability of recipients to receive medically necessary services, DMAP allows for the use of a telemedicine delivery system for providers enrolled under Delaware Medicaid.~~

~~Telemedicine services under DMAP are subject to the specifications, conditions, and limitations set by the State. Telemedicine is the practice of health care delivery by a practitioner who is located at a site, known as the distant site, other than the site where the patient is located, known as the originating site, for the purposes of consultation, evaluation, diagnosis, or recommendation of treatment. An approved originating site may include the DMAP member's place of residence, day program, or alternate location in which the member is physically present and telemedicine can be effectively utilized.~~

~~Providers rendering telemedicine must be able to use interactive telecommunications equipment that includes, at a minimum, audio and video equipment permitting two-way, real time, interactive communication between the recipient and the practitioner to provide and support care when distance separates participants who are in different geographical locations. The provision of services through telemedicine must include accommodations, including interpreter and audio-visual modification, where required under the Americans with Disabilities Act (ADA), to ensure effective communication.~~

Telephone conversations, chart reviews, electronic mail messages, facsimile transmissions or internet services for online medical evaluations are not considered telemedicine.
All equipment required to provide telemedicine services is the responsibility of the providers.

TN No. SPA Supersedes TN No. SP# 15-004	Approval Date Effective Date:

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

TELEMEDICINE-CONTINUED

PROVIDER QUALIFICATIONS
In order to provide telemedicine under DMAP, providers at both the originating and distant site must be enrolled with DMAP or have contractual agreements with the managed care organizations (MCOs) and must meet all requirements for their discipline as specified in the Medicaid State Plan.
For services delivered through telemedicine technology from DMAP or MCOs to be covered, healthcare practitioners must:

- Act within their scope of practice;
- Be licensed (in Delaware, or the State in which the provider is located if exempted under Delaware State law to provide telemedicine services without a Delaware license) for the service for which they bill DMAP;
- Be enrolled with DMAP/MCOs;
- Be located within the continental United States.

COVERED SERVICES
DMAP covers medically necessary telemedicine services and procedures covered under the Title XIX State Plan. Qualifying provider services include any covered State Plan service that would typically be provided to an eligible individual in a face-to-face setting by an enrolled provider. Telemedicine is not limited based on the diagnosed medical condition of the eligible recipient. All telemedicine services must be furnished within the limits of provider program policies and within the scope and practice of the provider's professional standards as described and outlined in DMAP Provider Manuals which can be found at:
http://www.dmap.state.de.us/downloads/manuals.html

NON-COVERED SERVICES
If a service is not covered in a face-to-face setting, it is not covered if provided through telemedicine. A service provided through telemedicine is subject to the same program restrictions, limitations and coverage exist for the service when not provided through telemedicine.

TN No. SPA Supersedes TN No. SP# 14-001	Approval Date Effective Date:

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

Payment for the telehealth originating site facility fee is made at the same percentage of the Medicare rate that is used for practitioner services on the date of service. The State currently pays practitioners at 98% of Medicare rates. The originating site fee will also be paid at 98% of the Medicare fee for the same service.
The site fee is only for the originating site and the site provider would not be entitled to any other payment for the telemedicine service which was delivered by the distant site.

Qualifying provider services include office visits, consultations, psychotherapy, medication management, psychiatric interview or examination, substance abuse screening and brief intervention, neurobehavioral examination, end stage renal disease services and medical nutrition therapy, etc.
Federally Qualified Health Centers and School-Based Wellness Centers acting in the role of an originating site provider with no other separately identifiable service being provided will only be paid the originating site telehealth fees and will not receive reimbursement for an encounter.

The telemedicine payment methodology shall be effective with dates of service on or after January 1, 2020.
Fee schedules for telemedicine provided services are available on the DMAP website at: https://medicaid.dhss.delaware.gov/provider.

Except as otherwise noted in the Medicaid State Plan, State-developed fee schedule rates are the same for both government and private providers. Separate reimbursement is not made for the use of technological equipment and systems associated with a telemedicine application to render the service.