

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

Transportation 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 Title XIX Medicaid State Plan regarding Transportation Services.

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: Transportation 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 Title XIX Medicaid State Plan regarding Transportation Services.

Statutory Authority

- Consolidated Appropriations Act, 2021, Division CC, Title II, Section 209
- Section 1902(a)(87) 1902(a)(87) of the Social Security Act

Background

In July of 2021 the Centers for Medicare & Medicaid Services provided guidance to states of the provisions added by the Consolidated Appropriations Act, 2021, Division CC, Title II, Section 209, that codify in statute longstanding regulatory requirements for states to assure necessary transportation for beneficiaries to and from covered services and added driver and provider requirements for state Medicaid transportation programs. The requirements include:

- Each provider and individual driver is not excluded from participation in any federal health care program (as defined in section 1128B(f) of the Act) and is not listed on the exclusion list of the Inspector General of the U.S. Department of Health and Human Services;
- Each such individual driver has a valid driver's license;
- Each such provider has in place a process to address any violation of a state drug law; and,
- Each such provider has in place a process to disclose to the state Medicaid program the driving history, including any traffic violations, of each such individual driver employed by such provider, including any traffic violations.

The updated requirements apply to existing and new providers.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to attest that the Delaware Medicaid transportation program is in compliance with section 1902(a)(87) of the Social Security Act.

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 Transportation Services to provide the above mentioned attestation.

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.

Attachment 3.1-D

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE/TERRITORY: **DELAWARE**

METHODS OF PROVIDING TRANSPORTATION SERVICES

The State of Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/ DMMA) provides transportation services as an "optional medical service" which includes emergency medical transportation and non-emergency medical transportation (NEMT) of eligible recipients in accordance with 42 CFR440.170, 42 CFR431.53, 45 CFR92.36. Further detail on these services is outlined in Attachment 3.1-A: Amount, Duration, and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy.

In addition, the State of Delaware attests that all the minimum requirements outlined in Section 1902(a)(87) of the Social Security Act are met.

26 DE Reg. 296 (10/01/22) (Prop.)