

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

Tobacco Cessation Counseling Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding *comprehensive Medicaid coverage of tobacco cessation services for pregnant women and all Medicaid beneficiaries*.

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 Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by September 30, 2011.

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 proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan regarding *Medicaid coverage of comprehensive tobacco cessation services for pregnant women and all Medicaid beneficiaries*.

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;
- 42 CFR §434.6, *General requirements for all contracts and subcontracts*;
- 42 CFR §438.6, *Contract requirements*;
- 42 CFR §447.26, *Prohibition on payment for provider-preventable conditions*.

Background

On June 24, 2011, the Centers for Medicare and Medicaid Services (CMS) issued guidance on the mandatory implementation of Section 4107 of the Patient Protection and Affordable Care Act (Affordable Care Act), P.L. 111-148, which amended Title XIX (Medicaid) of the Social Security Act (the Act) to provide for Medicaid coverage of comprehensive tobacco cessation services for pregnant women, including both counseling and pharmacotherapy, without cost sharing. The period for which these services must be covered includes the prenatal period through the postpartum period.

Section 1905(bb)(2) of the Act defines the new tobacco cessation coverage for pregnant women as services recommended in the 2008 Public Health Service (PHS) Guideline, or any subsequent modification of this Guideline, and such other services that the Secretary recognizes to be effective for cessation of tobacco use by pregnant women. This publication can be accessed at www.surgeongeneral.gov/tobacco/treating_tobacco_use08.pdf.

This new coverage offers States flexibility with respect to how the services shall be provided: 1) by or under the supervision of a physician; 2) by any other health care professional who is legally authorized to furnish such services under State law and who is authorized to provide Medicaid coverable services other than tobacco cessation services; or 3) by any other health care professional legally authorized to provide tobacco cessation services under State law and who is designated by the Secretary to provide these services.

In addition to this new benefit requirement for pregnant women described above, States are required to cover tobacco cessation services for children when medically necessary and may rely on optional Medicaid benefit categories to provide coverage of tobacco cessation services to other Medicaid beneficiaries.

To implement this new benefit requirement, States should submit an amendment to their Medicaid State plans as soon as possible.

This provision was effective October 1, 2010.

Summary of Proposal

In accordance with the requirements and options outlined in Section 4107 of the Affordable Care Act (ACA), the Delaware Medical Assistance Program (DMAP) is proposing to identify comprehensive tobacco cessation services as a covered Medicaid benefit for the Medicaid eligible population effective for dates of service on and after July 1, 2011.

The Medicaid state plan will be amended at Attachment 3.1-A and Attachment 4.19-B to reflect coverage for diagnostic, therapy and counseling services. DMAP already provides, within program limitations, reimbursement for rebated tobacco cessation products and Nicotine Replacement Therapy (NRT) products; as well as, cessation counseling services through the Delaware Tobacco Quitline.

Tobacco cessation services shall be provided by licensed providers practicing within their scope of practice and the recommended pharmacotherapy shall be based on the most current Public Health Service (PHS) guidelines.

Tobacco Cessation Telephone Quitlines as Allowable Medicaid Administrative Activities

The Delaware Division of Public Health works to prevent the use of tobacco products through its Tobacco Prevention and Control Program (TPCP). The Tobacco Program offers the Delaware Tobacco Quitline and is available to any Delaware resident to help smokers quit and is not limited to Medicaid beneficiaries. The Quitline program is a free comprehensive tobacco treatment service that follows the evidence-based protocols set forth in the PHS Guideline. This State plan amendment will also allow the State to claim expenditures related to Quitlines as administration at the 50 percent Federal Medicaid matching rate, as specified in 42 CFR §433.15(b)(7).

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

Fiscal Impact Statement

Delaware currently has a smoking cessation program that covers all of its citizens; so, there is no increase in costs on the General Fund. In addition, telephone “quitlines” will be coverable for the first time as an optional administrative activity in Medicaid and the State will be eligible for the 50 percent federal matching rate.

**DMMA PROPOSED REGULATION #11-36
REVISION:**

Revision:

ATTACHMENT 3.1-A
Page 3 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: Delaware

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

6.d. Other Practitioners' Services

6.d.2. Comprehensive Tobacco Cessation Services, as recommended in the 2008 Public Health Service (PHS) Guideline or any subsequent modification of this Guideline, and provided by 1) by or under the supervision of Medicaid-enrolled physician; or 2) by any other Medicaid-enrolled health care professional who is legally authorized to furnish such services under State law and who is authorized to provide Medicaid coverable services other than tobacco cessation services under State law to include the following:

1. Assessment of tobacco dependence, including a written tobacco cessation treatment plan of care;
2. Face-to-face counseling; and,
3. If appropriate, prescribing tobacco cessation pharmacotherapy, as medically necessary.

Vendors that contract with the State may be included in the group of eligible tobacco cessation service providers.

(Break in Continuity of Sections)

Revision:

Attachment 3.1-A
Page 8 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: DELAWARE

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

20. a. & b. Extended Services to Pregnant Women

Those services normally covered by Medicaid for all eligibles are available to pregnant women.

~~In addition, the~~ The following extended services ~~are~~ available with prior authorization include:

- Nutrition assessment, counseling and education.
- Nursing assessment, education and referral to needed medical services.
- Social services as medically necessary to assure that home, family, community and environmental issues are not complicating the pregnancy.

Prior authorization will be based on complicating and social problems that would have a negative impact on the outcome of the pregnancy.

In addition, the following extended services available without prior authorization include:

- Comprehensive tobacco cessation services, as recommended in the 2008 Public Health Service (PHS) Guideline or any subsequent modification of this Guideline, to include the following:

1) Assessing the pregnant and postpartum woman's tobacco dependence, including a written tobacco cessation treatment plan of care;

2) Face-to-face counseling; and,

3) If appropriate, prescribing tobacco cessation pharmacotherapy, as medically necessary.

Extended services to pregnant women will include the above services when given as part of a medical service provided: 1) by agencies organized, and licensed by the State of Delaware, to provide medical care or under the supervision of Medicaid-enrolled physician; or 2) by any other Medicaid-enrolled health care professional who is legally authorized to furnish such services under State law and who is authorized to provide Medicaid coverable services other than tobacco cessation services under State law.

Vendors that contract with the State may be included in the group of eligible tobacco cessation service providers.

(Break in Continuity of Sections)

ATTACHMENT 4.19-B
Page 2 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: Delaware

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE

Tobacco Cessation Counseling Services

To maximize the effectiveness of tobacco cessation medications, counseling services are available for Medicaid beneficiary use in conjunction with cessation medication.

Counseling services must be prescribed by a licensed practitioner participating in the Delaware Medical Assistance Program (DMAP).

Clinicians and other licensed practitioners must bill their usual and customary charges and must use the appropriate CPT/ CDT Codes to bill for their counseling services. Services supplied by contracted vendors are reimbursable under the terms of the agreement with the State of Delaware.

State developed fee schedule rates and any annual periodic adjustments to the fee schedule and its effective dates are published at <http://www.dmap.state.de.us/downloads/hcpcs.html>

Assurances – Cost Sharing Exemption for Tobacco Cessation Services

The State assures that cost-sharing is prohibited for tobacco cessation services for pregnant women. In accordance with Section 1916(a)(2)(B) and section 1916A(b)(3)(B)(iii) of the Act, the State does not permit cost sharing for services furnished to pregnant women, if such services are related to the pregnancy or to any other medical condition which may complicate the pregnancy. The State assures that the prohibition on cost-sharing for pregnant women specifically includes "counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in section 1905(bb))."

15 DE Reg. 278 (09/01/11) (Prop.)