

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

Ambulatory Surgical Center Services Rate

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 Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology.

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 Kimberly.Xavier@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 3, 2022. Please identify in the subject line: Ambulatory Surgical Center Services Rate.

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 proposed regulation is to adjust the reimbursement methodology for Ambulatory Surgical Center Services.

Statutory Authority

42 CFR 416 - Ambulatory Surgical Services

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 Public Health Emergency (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.

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.

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 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

There is no anticipated fiscal impact

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>