



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621


The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: September 27, 2023

TO: Planning and Policy Unit, Division of Medicaid and Medical Assistance,
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720- 0906

FROM: Benjamin Shrader – Chairperson 
State Council for Persons with Disabilities

➤ RE: Proposed Delaware Health and Social Services (DHSS)/Division of
Medicaid and Medical Assistance (DMMA) Rulemaking to Amend Title
XIX Medicaid State Plan Regarding Pharmacy Over the Counter (OTC) &
Physician Administered Drugs (PAD), 27 Del. Register of Regulations
147 (September 1, 2023).

The State Council for Persons with Disabilities (SCPD) has reviewed the proposed legislation by the Delaware Health and Social Services Department/Division of Medicaid and Medical Assistance pertaining to Over the Counter and Physician Administered Drugs and has the following observations:

- The purpose of this proposed legislation is to “to align Delaware's Medicaid State Plan with current reimbursement policy, provide for future flexibility with less administrative burden, and to update the State Plan in anticipation of future OTC drugs/drug classes that Medicaid will be required to cover, thus reducing the need to submit multiple State Plan Amendments.”

- DHSS/DMMA made changes to language relating to requirements for outpatient drugs covered by Medicaid (Attachment 3.1-A.1). DHSS/DMMA states that these changes are partially to allow flexibility in programs because they anticipate that Medicare programs will be required to cover new over the counter products, including OTC naloxone and OTC oral contraceptives.
- DHSS/DMMA made the following changes to its schedule for drug reimbursement (Attachment 4.19-B): changing from “[f]or drugs where the maximum cost is less than \$50, the cost will be based on direct price of Average Sales Price plus 6%” to “[f]or drugs where the maximum cost is less than \$50, the cost will be based on direct price or the Medicare fee schedule.” DHSS/DMMA states this proposed change is due to changes in quarterly Centers for Medicare and Medicaid Services (CMS) Medicare fee schedules and to avoid unnecessary administrative work.

The State Council for persons with Disabilities supports the proposed changes in order to more easily allow for anticipated changes in drug coverage, reimbursement policies and requirements.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations or position on the proposed regulation.

cc: Ms. Marissa Band, Esquire CLASI, DLP
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council