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State Name: Delaware

State Plan Amendment (SPA) #12-002

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS-179
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



Center for Medicaid and CHIP Services

Rosanne Mahaney
Director
Department of Medicaid and Medical Assistance
P.O. Box 906
New Castle, DE 19720-0906

APR - 3 2012

RE: DE SPA 12-002

Dear Ms. Mahaney:

We have completed our review of State Plan Amendment (SPA) 12-002. This SPA modifies Attachments 4.19-A of Delaware's Title XIX State Plan. Specifically, SPA 12-002 modifies qualification criteria for Disproportionate Share Hospitals and their reimbursement methodology.

We conducted our review of this SPA according to the statutory requirements at sections 1902(a)(3), 1902(a)(13), 1902(a)(30), 1903(a) and 1923 of the Social Security Act (the Act) and the regulations at 42 CFR 447 Subpart C. We are approving Medicaid State plan amendment 12-002 with an effective date of May 1, 2012. Enclosed are the HCFA-179 and the amended plan pages.

If you have any questions, or require additional information, please call Gary Knight at (304) 347-5723.

Sincerely,

Cindy Mann
Director, CMCS

Enclosures

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

1. TRANSMITTAL NUMBER:
SPA #12-002

2. STATE
DELAWARE

FOR: HEALTH CARE FINANCING ADMINISTRATION

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
MAY 1, 2012

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN

☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN

☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

Social Security Act §1923(j)

42 CFR §447

42 CFR §455

7. FEDERAL BUDGET IMPACT:

a. FFY 2012 \$ 4.5 million

b. FFY 2013 \$ 4.9 million

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

ATTACHMENT 4.19-A, PAGE 4

ATTACHMENT 4.19-A, PAGE 5

ATTACHMENT 4.19-A, PAGES 4 through 12

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):

ATTACHMENT 4.19-A, PAGE 4

ATTACHMENT 4.19-A, PAGE 5

NEW

10. SUBJECT OF AMENDMENT: Inpatient Hospital: Disproportionate Share Hospital Program – Reimbursement Methodology

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☒ OTHER, AS SPECIFIED:

Governor's comments under separate
correspondence

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

Rosanne Mahaney, Director, Division of Medicaid and Medical
Assistance

14. TITLE: Designee for Rita M. Landgraf, Secretary, Delaware
Health and Social Services

15. DATE SUBMITTED:

February 9, 2012

16. RETURN TO:

Rosanne Mahaney

Director

Division of Medicaid and Medical Assistance

P.O. Box 906

New Castle, Delaware 19720-0906

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

18. DATE APPROVED:

APR - 3 2012

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: MAY - 1 2012

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME: Penny Thompson

22. TITLE: Deputy Director, CMCS

23. REMARKS:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
INPATIENT HOSPITAL CARE

A.I. DUPONT INSTITUTE OF THE NEMOURS FOUNDATION

Reimbursement Principle

Effective for discharges on or after January 1, 1995 the Medicaid Program will reimburse A.I. duPont Institute on the basis of prospective per discharge rates. Costs determined for A.I. duPont are hospital-specific but otherwise determined using the same methodology as the other acute care hospitals.

A.I. duPont's per discharge rate will be discounted by the Institute through agreement with the Medicaid agency, not to exceed the rate established for comparable care in Delaware's other large teaching hospital. Rebasing and indexing of A.I. duPont's costs will be done on the same schedule as the other in-State acute care hospitals but specific to their fiscal year.

OUT-OF-STATE HOSPITALS

The operating, capital and medical education rates for acute care hospitals located outside of Delaware will be paid at the lowest Delaware rate for the hospital category to which they are assigned. Three categories of Delaware hospitals have been identified: urban, rural and major teaching. Out-of-State teaching hospitals are defined as those facilities which are members of the Council of Teaching Hospitals. Out-of-State urban hospitals are defined as non-teaching hospitals located in a metropolitan statistical area (MSA) as identified by the U.S. Bureau of Census. Out-of-State rural hospitals are defined as non-teaching hospitals located outside a metropolitan statistical area "MSA" as defined by the U.S. Bureau of Census. Out-of-State specialty/rehab hospitals will be paid at the Medicaid rate established by the State in which they are located.

HOSPITALS WITH NEW PROGRAMS/SERVICES

For hospitals that begin a new medical education program for which there is no historical cost or claims data, the medical education payment will be paid at the average percentage for the Delaware teaching hospital category to which they are assigned. There are two categories of Delaware hospitals with regard to teaching: major teaching hospitals are defined as those facilities which are members of the Council of Teaching Hospitals. Minor teaching hospitals are all other hospitals in the state with a medical education program recognized by the Delaware Medicaid program.

Hospitals with other categories of new services can appeal their reimbursement rates using the appeals process.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: **DELAWARE**
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
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DISPROPORTIONATE SHARE HOSPITAL

Disproportionate Share Hospital (DSH) Payments

Delaware hospitals participating in the Delaware Medical Assistance (Medicaid) program that serve a disproportionate share of Medicaid and low income patients may be eligible for reimbursement from the Delaware Hospital DSH Fund. DHSS, DMMA has established criteria regarding the hospital qualifications and the maximum amount of reimbursement for hospitals that apply. For purposes of the DSH program, hospitals that have multiple geographic locations providing inpatient services will be treated as a single hospital when the hospital submits a consolidated Medicare cost report for its locations.

DSH Definitions

Note: The terms "costs", "charges" and "revenue/payment", as defined below, do not include the costs, charges and revenue/payment related to serving inmates of public institutions for which Medicaid funds are not available.

- Delaware Hospital DSH Fund – the total annual amount of funds available for distribution to DSH qualified hospitals. The amount is computed each year by the Medicaid agency based on the availability of state matching funds, the FMAP up to the maximum of Delaware's annual Federal DSH allotment.
- Hospital Specific DSH Limit – the maximum annual DSH payment amount a hospital can receive in accordance with section 42 CFR 447.299 (c) (16).
- Low Income Utilization Rate (per section 1923 (b) (3) of the Social Security Act) - In general, for an annual period, the Low Income Utilization Rate is the sum of the percentages computed by dividing:
 - Medicaid payments for inpatient and outpatient care by total hospital inpatient and outpatient payments received from all sources, plus
 - Inpatient charity care charges by total inpatient charges.
- Medicaid Inpatient Utilization Rate (per section 1923 (b) (2) of the Social Security Act) - In general, for an annual period, the Medicaid Inpatient Utilization Rate is the percentage computed by dividing inpatient days attributable to patients who were eligible for Medicaid by total inpatient hospital bed days.
- Revenue – as used in connection with the DSH program means payments received from any source.

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Disproportionate Share Hospital (DSH) Payments (cont'd)

- Uncompensated Care – as used in connection with the DSH program means the sum of the differences between:
 - The annual COST of inpatient and outpatient services to Medicaid eligible patients minus the inpatient and outpatient REVENUE (payments) received for Medicaid eligible patients (including both fee-for-service payments and payments made by Medicaid managed care organizations); plus
 - The annual COST of inpatient and outpatient hospital services provided to uninsured patients (excluding the cost of providing physician services to the uninsured) minus any payments received from or on behalf of the uninsured (including any Federal section 1011 payments for eligible aliens)
- Uninsured – as used in connection with the DSH program means a person who has no source of third party coverage (creditable coverage as defined in Federal regulations at 45 CFR 144 and 146). However, if adopted in final form, the term uninsured shall be defined in accordance with 42 CFR 447.295

(a) Minimum Criteria:

No hospital shall receive disproportionate share hospital payments unless it meets the criteria in this section (a) and other criteria as specified in sections (b) or (c) or (d):

- 1) The hospital has a Medicaid Inpatient Utilization rate of at least 1% , and
- 2) The hospital has at least two obstetricians (or in the case of a rural hospital, two physicians) with staff privileges at the hospital who have agreed to provide obstetric services to individuals who are entitled to Medicaid as per section 1923(d)(1) and (2) of the Social Security Act. This requirement does not apply to a hospital which did not offer non-emergency obstetric services to the general population as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age, and
- 3) The hospital's inpatient facility is physically located within the geographic boundaries of the State of Delaware, and
- 4) The hospital must agree to comply and cooperate with the DSH audit requirements, and
- 5) The hospital must submit a timely application with accurate data in accordance with section (f) below unless a waiver is granted by DMMA.

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Disproportionate Share Hospital (DSH) Payments (cont'd)

Hospitals that meet the criteria in this section (a) must also meet the criteria identified in either section (b) or (c) or (d) below in order to qualify for the Delaware DSH program.

(b) Additional Federal Criteria

If a hospital meets the criteria specified in section (a) above, the following subparagraphs 1 and 2 describe additional criteria that a hospital must meet to qualify as a disproportionate share hospital unless the hospital qualifies under sections (c) or (d):

1. The hospital's Medicaid inpatient utilization rate is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payment in the State; OR
2. The hospital's low income utilization rate exceeds 25%.

(c) Delaware-Specific DSH Criteria for Acute Care General Hospitals

If a hospital meets the criteria specified in section (a) above, a hospital may qualify to receive disproportionate share hospital payments under this section if it meets all of the following criteria:

- 1) It is a not-for-profit hospital and is categorized under Delaware Medicaid criteria as an acute care general hospital and is not categorized as an Institution for Mental Diseases (IMD), and
- 2) The hospital has an inpatient facility located within an incorporated city in Delaware with a population greater than 50,000 and provides obstetric services at that facility to the general population including both fee-for-service and managed care Medicaid/CHIP recipients, and
- 3) During the consecutive twenty four (24) month period immediately prior to the month of issuance of the DSH payment, the hospital has been an enrolled provider with all participating Delaware Medicaid/CHIP managed care organizations and the Delaware Medicaid/CHIP fee-for-service program for all inpatient and outpatient services offered by the hospital, and
- 4) The hospital's low income utilization rate exceeds 15%.

(d) Delaware Specific DSH Criteria for Psychiatric Hospitals (Institutions of Mental Disease - IMD):

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Disproportionate Share Hospital (DSH) Payments (cont'd)

If a hospital meets the criteria specified in section (a) above, a psychiatric hospital (IMD) may qualify as a disproportionate share hospital under this section if it meets all of the following criteria:

- 1) It must be a public psychiatric hospital (owned or operated by an agency of Delaware State government), and
- 2) It must serve a disproportionate share of low-income patients. For the purpose of this section (d), the term "disproportionate share" shall be defined as follows: sixty percent (60%) or more of the service revenue is attributable to a combination of the following:
 - Public funds
 - Bad debts
 - Free care

(e) Payments to DSH Qualified Hospitals Under Delaware's Disproportionate Share Program:

1) DSH Payment Limits – All Delaware DSH Qualified Hospitals

- A) The state share of payments made to all DSH qualified hospitals cannot exceed the State's maximum annual Delaware Hospital DSH Fund.

Per section 1923(f)(2) of the Social Security Act, an annual maximum Federal DSH allotment is computed for each state each federal fiscal year. Federal DSH funds can only be spent up to the corresponding amount of state matching funds that are available. The amount of federal DSH funds, the amount of state matching funds and the Medicaid federal/state match rate (FMAP) could change every year. Therefore, each year, the exact amount of the Delaware Hospital DSH Fund cannot be known in advance and will be computed by DMMA each year.

- B) The amount of an annual DSH payment to an individual hospital must be the lesser of:

- i) the Hospital-Specific DSH limit; or
- ii) the amount determined in accordance with sections (e) (2), (e) (3) and (e) (4) below, or
- iii) the amount determined in accordance with section (e) (1) (C) below.

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Disproportionate Share Hospital (DSH) Payments (cont'd)

- C) In the event that the State's annual Delaware Hospital DSH Fund amount is not sufficient to make all of the payments described in sections (e) (2), (e) (3) and (e) (4) below, then payments will be made as follows:
- i) from the available funds in the Delaware Hospital DSH Fund, the full amount of DSH payments or the total amount of the Delaware Hospital DSH Fund, whichever is less, will be made first to hospitals that qualify under section (d) above in accordance with section (e) (2) below. If the funds available are not sufficient to make the full payment amount to each hospital qualifying under section (e) (2), then the remaining funds will be allocated proportionately based on each hospital's percentage of the total payments due to all hospitals qualifying under section (e) (2).
 - ii) from the amount of any funds remaining in the Delaware Hospital DSH Fund after the payments described in section (e) (1) (C) (i) above, the full amount of DSH payments or the total amount remaining in the Delaware Hospital DSH Fund, whichever is less, will be made to hospitals that qualify under section (e) (3) below. If the funds remaining are not sufficient to make the full payment amount to each hospital qualifying under section (e) (3), then the remaining funds will be allocated proportionately based on each hospital's percentage of the total payments due to all hospitals qualifying under section (e) (3).
 - iii) from the amount of any funds remaining in the Delaware Hospital DSH Fund after the payments described in sections (e) (1) (C) (i) and (ii) above, payments will be made to other hospitals that qualify in accordance with section (e) (4) below. If the funds remaining are not sufficient to make the full payment amount to the other qualifying hospitals, then the remaining funds will be allocated proportionately based on each of the other qualifying hospital's percentage of the total payments due to all other qualifying hospitals in accordance with section (e) (4).

2) DSH Payments to Psychiatric Hospitals:

Per section 1923(h)(2)(A) of the Social Security Act, no more than 33 percent of the annual Federal DSH allotment for Delaware will be used with the appropriate amount of State matching funds to make an annual DSH payment to psychiatric hospitals that meet the Delaware DSH Criteria in sections (b) and/or (d) above. These annual DSH payments will be made in a lump sum to each qualifying hospital.

Unless the payment amount is restricted by other sections of this DSH policy, a psychiatric hospital that meets the criteria specified in section (b) but not section (d) above will receive a payment in accordance with section (e) (4) (A) or (C) below.

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Disproportionate Share Hospital (DSH) Payments (cont'd)

A psychiatric hospital that meets the criteria specified in section (d) above will receive a payment of 33 percent of the annual Federal DSH allotment for Delaware plus the appropriate amount of State matching funds minus the total amount of any payments made to other psychiatric hospitals

3) Payments to Hospitals that Meet the Delaware DSH Criteria in section (c) above

Unless the payment amount is restricted by other sections of this DSH policy, each hospital that meets the criteria specified in section (c) above shall receive an annual payment under Delaware's DSH program equal to the Hospital Specific DSH limit. DSH payments will be made in a lump sum each year.

4) Payments to Hospitals that Meet the Delaware DSH Criteria in section (b) above

Unless the payment amount is restricted by other sections of this DSH policy, each hospital that qualifies under the criteria specified in section (b), but does not meet the criteria specified in sections (c) and (d) above will receive a payment of:

- A) \$10,000 if the hospital is a psychiatric hospital that does not meet the criteria specified in section (d) above and has been an enrolled provider with all participating Delaware Medicaid/CHIP managed care organizations and the Delaware Medicaid/CHIP fee-for-service program for both inpatient and outpatient services offered by the hospital during the consecutive twenty four (24) month period immediately prior to the month of issuance of the DSH payment, or
- B) \$1,000,000 if the hospital is not a psychiatric hospital and has been an enrolled provider with all participating Delaware Medicaid/CHIP managed care organizations and the Delaware Medicaid/CHIP fee-for-service program for both inpatient and outpatient services offered by the hospital during the consecutive twenty four (24) month period immediately prior to the month of issuance of the DSH payment; or
- C) \$5,000 if the hospital has not been an enrolled provider with all Delaware Medicaid/CHIP managed care organizations and the Delaware Medicaid/CHIP fee-for-service program for both inpatient and outpatient services offered by the hospital during the consecutive twenty four (24) month period immediately prior to the month of issuance of the DSH payment.

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Disproportionate Share Hospital (DSH) Payments (cont'd)

(f) Application Process:

Each year after June 30, the Medicaid agency will compute the amount of funds available in the Delaware Hospital DSH Fund. After September 30 each year, the Medicaid agency will use the applications timely submitted by the hospitals to compile the data and perform any necessary calculations to determine the DSH payment amounts for each hospital. A hospital cannot qualify under section (b) (1) above unless a completed application is timely received from all hospitals in the state that receive Medicaid payments. The other qualifying criteria are hospital specific.

A hospital requesting Medicaid DSH payments must submit a completed application in a format approved by the Medicaid agency. The application must be received on or before September 30 of each year. The application will provide hospital specific inpatient and outpatient financial and other data for the hospital's fiscal year that ended in the prior calendar year.

On or before December 31 of each year, the Medicaid agency will send a written notice of action taken on each hospital's application. Each hospital that applied will be informed either that it does not qualify or that it qualifies and the amount of the hospital's DSH payment. Once a year, the Medicaid agency will issue the full DSH payment amount in a lump sum to hospitals that qualify for a payment.

In the initial year of the Delaware DSH program, the timing for submissions of applications for a hospital's fiscal year that ended in 2010 and the timing of payments to qualifying hospitals will be announced by the Medicaid agency after this DSH State Plan Amendment is approved.

(g) Audit Requirement:

Within one (1) year after receiving a DSH payment, the Medicaid agency will arrange for an independent audit of each hospital that receives a DSH payment in accordance with section 1923 (j) (2) of the Social Security Act. The auditor will take such steps as determined necessary to verify:

- 1) the extent to which the hospital reduced uncompensated care costs to reflect the total DSH payment received by the hospital; and
- 2) that the total amount of the DSH payment received by the hospital did not exceed the hospital-specific DSH payment limit; and

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