

MEMORANDUM

DATE: June 23, 2009

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 12 DE Reg. 1481 (DMMA Medicaid Reimbursement Rates)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMAs) proposal to amend its reimbursement methodology regulations published as 12 DE Reg. 1481 in the June 1, 2009 issue of the Register of Regulations. In a nutshell, the changes are as follows.

- Reimbursement rates for inpatient hospital services, outpatient hospital services based on a fee schedule, private nursing facility services, and private ICF/MRs will be rolled back to December 31, 2008 standards (pp. 1487, 1491, 1499).
- Reimbursement rates for pediatric nursing facility services and prescribed pediatric extended care will be rolled back to March 31, 2009 standards (pp.1482, 1502).
- Reimbursement rates for outpatient hospitals based on a percentage of charges will be reduced by 3% (p. 1487).
- Reimbursement rates for community pharmacy and non-traditional pharmacy drug acquisition costs will be reduced by 2%, i.e., from the average wholesale price (AWP) minus 14% and 16%, to AWP minus 16% and 18% respectively. The dispensing rate of \$3.65 is unchanged (p. 1489).
- Reimbursement rates for free standing surgical centers will be reduced from 100% of Medicare rates to a minimum of 95% of Medicare rates (p. 1490).
- Reimbursement rates for physicians and labs will be reduced to 98% of the Medicare rate.
- Reimbursement rates for dental services will be reduced from 85% of charges to 80% of charges

(p. 1490).

- Reimbursement rates for dialysis centers are reduced to 85% of charges (p. 1483).

SCPD has the following observations.

First, federal Medicaid law requires the State to offer payments that are sufficient to ensure some minimum level of availability of providers. See, e.g., attached descriptions of Massachusetts and Arizona litigation. The level of reimbursement reductions in the DMMA regulation may not be so deep as to prompt a wholesale exodus of providers from participation in the Medicaid program. However, the State must be mindful that it cannot reduce provider compensation to levels that would result in a severe lack of providers of covered services.

Second, although the summary of the regulation (pp. 1482-1483) outlines changes effected by the amendments to the State Medicaid Plan, SCPD could not locate the actual amendments for the underlined providers above, i.e., physicians, labs, and dialysis centers. Moreover, SCPD is assuming that the private ICF/MR rates may be incorporated in the nursing facility rates and that the pediatric nursing facility rates are contained in a separate document. See p. 1502 [individual rates of care established per child]. DMMA should be encouraged to review the regulation to determine if some intended amendments were inadvertently omitted from the actual regulation.

Third, consistent with the attached June 4 DHSS press release and June 5 News Journal article, Walgreens has decided to no longer accept Medicaid for prescription drugs given the 2% rate reduction. DHSS indicates that it offered to compromise at 1% but Walgreens rejected that offer. The 2% standard was expected to save the State \$1 million. The article suggests that DHSS now intends to adopt a 1% standard rather than the 2% standard reflected in the proposed regulation. Walgreens indicated that it would take a loss in filling each brand name prescription and encouraged DHSS to achieve cost savings by “pushing doctors to prescribe more generic drugs”. Alan Levin, the former Happy Harry CEO and current State director of economic development, opined that the DHSS offer was fair.

In summary, SCPD regrets the reductions in reimbursement rates but understands the justification based on the State budget. In addition, the regulation may inadvertently omit intended provisions identified above.

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

cc: Ms. Rosanne Mahaney
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council