MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Recent Regulatory Initiatives

Date: September 2, 2010

I am providing my analysis of six (6) regulatory initiatives in anticipation of the September 9 meeting. Since there are only two (2) sets of proposed regulations this month, I assume that the meeting may be cancelled in favor of Executive Committee approval of commentary. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. DOE Final Content Standards Regulation [14 DE Reg. 167 (9/1/10)]

The SCPD and GACEC endorsed the proposed version of this regulation in July, 2010. The DOE has now acknowledged the endorsement and adopted the regulation with no further changes.

I recommend no further action.

2. DSS Final Child Care Subsidy Program Income Reg. [14 DE Reg. 178 (9/1/10)]

The SCPD and GACEC commented on the proposed version of this regulation in July, 2010. The July 19 GACEC letter is attached for facilitated reference. The Councils identified two technical problems with the proposal.

First, the Councils suggested substituting "Social Security income" for "social security pensions" to cover not only Social Security retirement benefits but Title II SSDI benefits as well. DSS thanked the Councils for the observation and effected the change.

Second, the Councils suggested amending a reference to the Food Stamp Act of 1964. DSS agreed and changed the reference.

Since the regulation is final, and DSS adopted amendments to the two sections with identified problems, I recommend no further action.

3. DSS Final Child Care Subsidy Interview & Service Authorization. Reg. [14 DE Reg. 182 (9/1/10)

The SCPD and GACEC commented on the proposed version of this regulation in July. The July 14, 2010 SCPD memo is attached for facilitated reference. The Division of Social Services has now adopted a final regulation with one (1) amendment.

First, the Councils recommended expanding the scope of professionals who could document a "special need". Based on a somewhat cryptic rationale, no change was effected.

Second, the Councils recommended expanding the scope of "travel time" to include more than time related to a work schedule or class schedule (e.g. travel to tutor or study group). DSS rejected the suggestion.

Third, the Councils recommended expansion of professionals authorized to document "protective need" beyond DFS personnel to DSCY&F contract agencies and victim services personnel employed by law enforcement or non-profit organization. DSS rejected the recommendation based on the rationale that "the Division is not in a position to expand this group of eligibles at this time". At 184.

Fourth, the Councils suggested incorporation of a cross reference or note providing guidance related to a reference that "(t)hese children may be able to get another type of child care". DSS intended the reference to only apply to parents caring for their own children. The Division therefore added a clarifying provision that "(t)hese children may be able to get child care assistance if their children are placed in another child care setting". At 184. Literally, this sentence makes no sense since it refers to children of children. It should have read "(t)hese parents may be able to get child care assistance if their children are placed in another child care setting."

Since the regulation is final, and DSS addressed each of the Councils' comments, I recommend no further action apart from informally notifying the Division of the problem identified in the "fourth" paragraph.

4. <u>DSS Final Child Care Subsidy Program Overpayment Reg. [14 DE Reg. 187 (9/1/10)]</u>

The SCPD and GACEC commented on the proposed version of this regulation in July. A copy of the GACEC's July 19 letter is attached for facilitated reference. The Division of Social Services has now adopted a final regulation with a few amendments.

First, the Councils suggested correction of a sentence in the introduction. DSS agreed and amended the sentence.

Second, the Councils shared multiple concerns with the concept of making all adults in a household liable for an overpayment. DSS declined to restrict liability. Indeed, the Division added a sentence making legal guardians and parents who sign a child care application for a minor parent liable for an overpayment even though not part of the "household".

Third, the Councils suggested substituting "overpayments" for "over payments" in the last paragraph of the regulation. DSS agreed and adopted a conforming amendment.

Fourth, the Councils recommended reconsideration of elimination of all illustrations. DSS declined to retain any illustrations but noted that it "plans to provide a compilation of examples for staff use outside of the policy manual."

Since the regulation is final, and DSS addressed each of the Councils' comments, I recommend no further action.

5. DOE Proposed Gifted Student Kindergarten Early Admission Reg. [14 DE Reg. 140 (9/1/10)]

The GACEC commented on the proposed version of this regulation in May, 2010. A copy of the GACEC's May 20 letter is attached for facilitated reference. The Council identified a combination of six (6) technical and substantive problems with the proposal. The most significant observation was that sole reliance on cognitive aptitude testing was at odds with the broad statutory authorization of considering the student's "best interests" and characteristics apart from aptitude (e.g. visual and performing arts ability; psychomotor ability).

The DOE considered the comments and reviewed the merits of the entire regulation. In deference to the broad statutory standards, the Department now proposes to repeal the regulation altogether since "the local district's assessment of the best interest of the child...is the better mechanism to determine early admission to Kindergarten for Gifted Students." At 140.

I recommend endorsement. Sole reliance on aptitude testing was unduly limiting and the statutory standards allow consideration of a wide array of child characteristics in the early admission assessment.

6. DMMA Prop. School-based Wellness Center Reimbursement [14 DE Reg. 142 (9/1/10)]

The Division of Medicaid and Medical Assistance proposes to adopt a new funding approach for school-based wellness centers. The current rate methodology "sunsets" on September 30, 2010.

As background, the current system reimburses centers based on a single rate each benefit year for any client served in a clinic. DSS is proposing to abandon this simple reimbursement system in favor of centers billing for each discrete service based on "the DMAP physician fee schedule" which DMMA notes is published on its Website. Finally, DMMA recites that the "proposal imposes no increase in cost on the General Fund." At 143.

I have the following observations.

First, I was unable to locate a document titled "DMAP physician fee schedule" at the Web

address provided in the regulation. Instead, the site publishes the attached "HCPCS" and "ASC" Schedules Assuming DMMA intends to cross reference one of these schedules, it would be preferable to adopt consistent terminology.

Second, the regulation notes that the centers provide services which are not provided by physicians (e.g. "counseling and other supportive services"). At 142. It is unclear whether adopting a "physician fee schedule" would preclude billing by non-physicians (e.g. psychologist; social worker) and would include codes covering health care services typically provided by non-physicians. If not, centers will be prompted to abandon non-physician support services to the detriment of students.

I recommend sharing the above observations with the Division.

Attachments

0. 910bils
F:pub/bjh/legis/2010p&l/910bils