



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: May 26, 2011

TO: Joint Finance Committee

FROM: Kyle Hodges, Director
State Council for Persons with Disabilities

Pat Maichle, Director
Developmental Disabilities Council

Wendy Strauss, Director
Governor's Advisory Council for Exceptional Citizens

RE: Nursing Home Reimbursement Rates

It has come to our attention that there has been discussion to increase the nursing home reimbursement rate by 2 percent given the Joint Finance Committee's (JFC's) recommendation to increase the reimbursement rates to home and community-based services (HCBS) providers by 2 percent. We strongly endorse the increase to HCBS providers, but strongly oppose increasing any reimbursement rates to institutions. Council has the following observations.

As background, the Centers for Medicare & Medicaid Services (CMS) is urging the state to better comply with the Olmstead decision that requires public agencies to provide services in the most integrated setting appropriate to the needs of qualified individuals with disabilities. In addition, CMS has reported that the state is not doing an adequate job of rebalancing its long-term care dollars in which a disproportionate amount is being spent on institutional care. Currently, the Department of Health and Social Services (DHSS) is administering the following activities to rectify the CMS concerns:

- Conducting assessments of residents in its 5 long-term care facilities for the purpose of determining who can live in the community.
- Operating a Money Follows the Person (MFP) program which allows persons with disabilities to transition from institutional care to the community.
- Collaborating with housing agencies and authorities to provide better residential opportunities in the community for persons with disabilities.

- Amending the Elderly & Disabled Waiver to leverage federal dollars and provide greater HCBS.
- Supporting the JFC's recommendation for a 2 percent increase in reimbursement rates for HCBS providers.

Providing a 2 percent increase in reimbursement rates to institutions is not fair and is problematic. First, the nursing home industry was reimbursed effectively in 2008, while HCBS providers have not seen an increase in more than 8 years. Moreover, providing a 2 percent increase in reimbursement rates to nursing homes may open the state to litigation by the federal government since it will not be showing CMS that it is attempting to *shift* funds from institutional care to HCBS. Providing such an increase to nursing homes would be a "slap-in-the-face" to the state given its recent efforts and a step backward in attempting to rebalance its spending of long-term care dollars.

We certainly appreciate that the JFC has recommended a 2 percent increase in reimbursement rates to HCBS providers, but strongly oppose any increase in reimbursement rates to institutions given Delaware's commitment to rebalancing its disproportionate spending of long term care dollars on institutional care.

Thank you for your consideration.

Jfc/jfc mark-up 5-25-11