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MEMORANDUM

DATE: November 30, 2016

TO: Ms. Kimberly Xavier, DMMA
Planning & Policy Development Unit

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 20 DE Reg. 342 [DMMA Proposed Medicaid Outpatient Drug Reimbursement Regulation (11/1/16)]

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 the Medicaid State Plan in the context of reimbursement for outpatient drugs. The proposed regulation was published as 20 DE Reg. 342 in the November 1, 2016 issue of the Register of Regulations.

As background, the Division notes that CMS issued a regulation effective April 1, 2016 which directs states to reimburse outpatient drugs based on actual acquisition costs plus a dispensing fee, if applicable. The Division has been using that methodology since April 1, 2016 and the current proposal would amend the State Plan to conform to the CMS regulation and actual practice. The methodology applies in both the MCO and fee-for-service contexts. Since the State Plan amendment reflects current practice, DMMA indicates there "is no impact on the General Fund".

SCPD has the following observations.

First, the dispensing fee standard is less "blunt" under the initiative. Instead of a blanket $10 fee, a table is inserted which has higher dispensing rates in a few contexts ("specialty drugs-mailed"; "clotting factor"). There is also an apt "catch-all" provision "carried over" from the current version of the State Plan: "Exceptions will be made if documentation provided demonstrates that the product can only be obtained at a higher rate."

Second, the Plan amendment (p. 346) includes the following deletion:

~~Exceptions of the reimbursement of FUL and DMAC can be made if a physician certifies~~

~~in their own handwriting that a specific brand is medically necessary. The medical necessity must be documented on a FDA Med Watch form based on the client experiencing an adverse reaction.~~

DMMA has traditionally implemented a system in which physicians could request approval of a non-generic drug based on medical necessity for an individual client considering factors such as efficacy and adverse reactions.

SCPD generally endorses the proposed regulation since the revision is necessary to conform to CMS regulation and actual practice, but requests clarification that the above deletion is not intended to reflect a systemic change in that practice .

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

cc: Mr. Stephen Groff
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

20reg342 dmma-medicaid outpatient drug reimbursement 11-28-16