



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: April 5, 2021

TO: Ms. Elisabeth Massa, Delaware Health Care Commission
Planning & Policy Development Unit

FROM: Terri Hancharick – Chairperson *TH*
State Council for Persons with Disabilities

RE: 24 DE Reg. 841 [Delaware Health Care Commission and
Division of Medicaid & Medical Assistance's Proposed
Regulation on Market Stabilization Reinsurance Program and
Fund (March 1, 2021)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Delaware Health Care Commission's (DHCCs) and the Division of Medicaid and Medical Assistance (DMMA) proposed regulation, which is seeking to revise the Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund. The proposed regulation was

published as 24 DE Reg. 841 in the March 1, 2021 issue of the Register of Regulations. SCPD has the following observations.

These regulations implement House Bill 193 which was signed into law by Governor Carney on June 20, 2019. The law amended Title 16 and required the Delaware Health Care Commission to establish the Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund. 16 Del. C. § 9903(g). The law also amended Title 18 to define the terms, applicability, and scope of the Delaware Health Insurance Individual Market Stabilization Reinsurance Program. The purpose of the legislation was to provide reinsurance to health insurance carriers that offer individual health care plans. In turn, the program would help to stabilize insurance premiums and provide more financial certainty to those seeking health insurance. The funds for the program come from pass-through monies to Delaware under the Affordable Care Act and a 2.75% annual assessment based on the health insurance carrier's tax liability. 16 Del. C. § 9903(h); 18 Del. C. § 8703(b). The program is administered by the DHCC.

The regulations apply to any health insurance carrier that provides health insurance, and includes insurance companies, health service corporations, health maintenance organizations, and managed care organizations. However, the regulations do not apply to carriers that issue health insurance under Medicare, Medicaid, 29 Del. C. § 5201 et seq., or other similar coverage under state or federal governmental plans. Moreover, the regulations do not apply to “stand-alone dental insurance, stand-alone vision insurance, long-term care insurance, disability income insurance, and all accident-only insurance.” (3.0 Definitions “Health insurance carrier” or “carrier”).

A reinsurance eligible health benefit plan is coverage offered in the individual marketplace that meets the standard of minimum essential coverage as set forth in the Internal Revenue Code, is approved by the Insurance Commissioner and “is delivered or issued for delivery by a carrier in the State.” (3.0 Definitions “Reinsurance eligible health benefit plan”).

Delaware entered into an agreement with the Centers for Medicare and Medicaid Services (CMS) to calculate reinsurance payments to participating carriers and to identify paid claims eligible for reimbursement under the reinsurance program based upon data submitted by the State. (4.1). “When the claim costs for at least one reinsurance eligible individual's covered

benefits in a calendar year exceed the attachment point,” a reinsurance carrier is eligible for a reinsurance payment.” (6.1). Reinsurance payments to all eligible carriers are made annually in the year following the benefit year. (6.3).

Other provisions include insurers reporting the information to the program, audits conducted by the administrator of the program, and the retention of documents by the eligible insurers.

The proposed regulations are mandated by the law establishing the reinsurance program and fund and promulgated by the DHCC. They further the purpose of the program, namely, to provide reinsurance to carriers that offer individual health plans by reimbursing eligible claims as defined in the regulations.

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

cc: Mr. Stephen Groff
Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council