



STATE OF DELAWARE
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MEMORANDUM

DATE: November 19, 2010

TO: Ms. Barbara Brown, Executive Director
Victims' Compensation Assistance Program

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

RE: 14 DE Reg. 383 [VCAP Proposed Payment of Claims Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Victims' Compensation Assistance Program (VCAP) proposed payment of claims regulation published as 14 DE Reg. 383 in the November 1, 2010 issue of the Register of Regulations. As background, the (VCAP) pays approved medical claims for crime victims. The federally-funded VCAP is the payor of last resort and covers costs not paid by private insurance, Medicaid, or Medicare. The VCAP adopted a comprehensive set of procedural regulations in March, 2010. It now proposes to adopt a single new regulation covering payment of claims. SCPD is aware that the Disabilities Law Program (DLP) was involved with the drafting of the new regulation and it generally incorporates recommended language. SCPD has the following observations.

First, the regulation establishes that a provider receiving VCAP payment accepts it as payment in full. There was a concern whether out-of-state providers might not uniformly honor that aspect of the regulation. For example, if a patient signs a standard agreement to pay for services of an out-of-state provider, it may recite that the patient agrees to pay 100% of charges regardless of insurance or third party coverage and that the laws of X state govern the relationship. Under such circumstances, the out-of-state provider could argue that the patient is subject to balance billing, i.e., the difference between the 80% of usual/customary charges and the full bill. To provide increased consumer protection, the last sentence in §28.1 authorizes the VCAP to include a notice accompanying payment that "provider acceptance constitutes acknowledgment of payment in full." This provides additional protection to the patient through contract and estoppel defenses to provider balance billing claims.

Second, there was a concern that the regulation protect not only the victim from balance billing, but also other third parties (e.g. parent; guardian). The regulation addresses this by disallowing

balance billing of the “victim or third parties”.

Third, there was a concern that providers occasionally may receive less than 80% of the usual/customary charge if payment in that amount would exceed the aggregate compensation cap set by statute or regulation. That possibility is addressed in §28.2 through the following sentence: “The VCAP may pay a lesser amount if payment under this section would exceed a statutory or regulatory cap.”

SCPD endorses the proposed regulation since it is straightforward and easy to understand. Moreover, its rate of compensation (80% of the usual and customary charge), compared to insurance, Medicaid, and Medicare, is fair. Finally, it includes sufficient protection from balance billing to the victim and third parties.

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

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

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