



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: December 28, 2010

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit

FROM: Daniese McMullin-Powell, *Dmcpk* Chairperson
State Council for Persons with Disabilities

RE: 14 DE Reg. 513 [DMMA Proposed Medicaid Recovery Audit Contractor Program]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) proposal to amend its Medicaid State Plan published as 14 DE Reg. 513 in the December 1, 2010 issue of the Register of Regulations. Consistent with the "Background" section of this proposed regulation, the DMMA is required by a change in federal law (Affordable Care Act) to contract with one or more entities to conduct audits of Medicaid providers to identify overpayments and underpayments. The contractors would be paid for overpayments on a contingency fee basis out of amounts recovered. Contractors would be paid for underpayments based on a rate to be determined by DMMA. DMMA must amend the State Plan by December 31, 2010 to comply with federal law and ensure implementation by April 1, 2011.

SCPD has misgivings about a model in which the auditor is compensated through identification of overpayments. Logically, this may lead to any benefit of the doubt in "gray" areas being resolved against the medical provider and prompt "overzealous" collection. As a result, providers may simply withdraw from the Medicaid program. This concern is partially offset by the Plan amendment provision that the contractor would be "paid an equivalent percentage contingency fee for the identification of underpayments." However, in theory, audit results could be skewed if there are offsetting overpayments and underpayments. For example, it would be against the auditor's interests to identify offsetting overpayments and underpayments since the auditor could then be paid zero. The same zero payment occurs if no overpayment or underpayment is identified.

Since this initiative is prompted by CMS, SCPD endorses a Plan amendment by December 31, 2010. However, the Council recommends that DMMA adopt arrangements with audit

contractors which promote application of principled restraint in audits. If medical providers are beset by auditors with a “feeding frenzy” orientation, the result may be a mass exodus from participation in the Medicaid program. Findings should be based on definitive evidence of incorrect payment and the appeal process could include some informal options which supplement the administrative hearing process.

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

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

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