



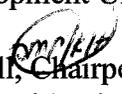
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MEMORANDUM

DATE: September 29, 2011

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

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

RE: 15 DE Reg. 276 [DMMA Proposed Provider Preventable Conditions Non-payment Regulation]

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's) proposal to amend its regulation regarding nonpayment and reporting requirements for provider preventable conditions. The regulation was published as 15 DE Reg. 276 in the September 1, 2011 issue of the Register of Regulations.

As background, CMS issued a final regulation in June 2011 implementing Section 2702 of the federal Patient Protection and Affordable Care Act. The CMS regulation bars Medicaid payments to hospitals for services rendered related to provider-preventable conditions. Such conditions include foreign objects retained after surgery, blood transfusions with incompatible blood, falls and trauma occurring in the hospital, etc. The bar on payment does not apply to services related to pre-existing conditions, *i.e.*, "present on admission" ("POA"). *Id.* Moreover, covered hospitals must report all provider preventable conditions. Finally, States have some discretion to apply the regulation to non-hospital providers. At 32823. DMMA is now proposing to implement the new CMS regulation through a Medicaid State Plan amendment. The brief amendment essentially adopts the CMS requirements. Hospitals will be required to report provider preventable conditions to DMMA and be barred from submitting claims for services related to such conditions. SCPD has the following observations on the proposed DMMA Plan Amendment.

First, the CMS regulation [§447.26(c)(5), reproduced at 76 Fed. Reg. 32837], contains the following provision:

A State plan must ensure that non-payment for provider-preventable conditions does not prevent access to services for Medicaid beneficiaries.

One concern addressed by this provision is that hospitals anticipating Medicaid non-payment to remediate a provider-preventable condition may opt to decline to treat the condition. This could be very harmful to Medicaid beneficiaries who have developed a provider-preventable condition. A related concern would be imposing the costs of treatment of the provider-preventable condition on the Medicaid beneficiary through direct billing. It would be preferable for DMMA to include the following clarification in the regulation:

Providers identifying a provider-preventable condition whose costs of treatment are barred under this section shall not deny medically necessary treatment to the affected patient nor attempt to impose financial liability on the affected patient.

Second, CMS expects states to include “provider-preventable condition” payment and reporting standards in MCO contracts. At 32828-32829. DMMA may wish to review the DSHP and DSHP Plus proposed contract provisions to ensure incorporation of the reporting and billing standards.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations 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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