



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: July 23, 2012

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

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

RE: 16 DE Reg. 38 [DMMA Proposed Nursing Facility Quality Assessment 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) proposal to adopt a Medicaid State Plan amendment to implement S.B. 227 which was signed by the Governor on June 28, 2012. The proposed regulation was published as 16 DE Reg. 38 in the July 1, 2012 issue of the Register of Regulations. SCPD has the following observations.

As the Summary of Proposal section (p. 39) indicates, Medicaid reimbursement rates to nursing facilities "have been frozen since April 1, 2009 at the level they were as of December 31, 2008." DMMA proposes to impose a quality assessment "tax" on nursing home providers which would generate federal Medicaid matching funds. See S.B. No. 227, lines 35-38 and 118-119. Ninety percent (90%) of the collected quality assessment funds will be deposited in a Nursing Facility Quality Assessment Fund (lines 71-72) and ten percent (10%) will be diverted to the Delaware's General Fund (line 73). The "90%" in the Quality Assessment Fund would be used to increase nursing facility rates. DMMA anticipates increasing payments to nursing facilities by \$29 million in State FY13. See regulatory "Fiscal Impact Statement" at p. 39. SCPD infers that the federal match is being used to essentially offset the additional payments to nursing facilities. Some nursing facilities would be exempt from the assessment, including State-run facilities and facilities that exclusively serve children. See regulatory Section "(c)" on p. 41.

SCPD has one (1) technical observation. Literally, S.B. No. 227 requires all nursing facilities to be charged a quality assessment unless exempt under §6502(d). See lines 35-38 and 58-68. One would therefore expect the exemptions in the regulation (p. 41) to match the exemptions in §6502(d). They do not match. For example, the bill requires DHSS to exempt facilities with 46 or fewer beds and continuing care retirement communities (lines 62-65). The regulation [§(c)]

on p. 41], does not exempt such facilities. Moreover, the regulation lists several facilities as exempt which are not exempt under the legislation.

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

cc: Ms. Rosanne Mahaney
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Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

16reg38 dmma-nh assessment 7-23-12