



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: December 21, 2015

TO: Mr. Glyne Williams, DMMA
Planning, Policy and Quality Unit
DMP/ARR

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

RE: 19 DE Reg. 507 [DMMA Final Private Duty Nursing Services Regulation - (12/1/15)]

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) final regulations regarding amendments to the Medicaid State Plan and relevant policy manual by revising the private duty nursing (PDN) standards. The final regulation was published as 19 DE Reg. 507 in the December 1, 2015 issue of the Register of Regulations. SCPD commented on the proposed version of this regulation in October, 2015. SCPD noted that DMMA had previously adopted revisions to a pre-publication draft based on Disabilities Law Program (DLP) commentary. SCPD endorsed the published proposed regulation subject to nine (9) considerations. SCPD certainly appreciates the Division's consideration in adopting many of the recommendations Council submitted. SCPD has the following observations on the final regulation.

First, the Council characterized a recital that costs of PDN not exceed institutional costs as inconsistent with the ADA and CMS guidance. DMMA did not amend the reference but did clarify that a variety of factors should be considered, including cost, "with an emphasis on the importance of preventing or delaying institutionalization".

Second, the Council questioned a reference to "certified registered nurse practitioner". DMMA consulted the Board of Nursing and revised the reference to "advance practice registered nurse (APRN)".

Third, the Council recommended substituting "prescribing practitioner" for "attending practitioner" in §3.1.1.2. DMMA agreed and effected the substitution.

Fourth, the Councils recommended expanding a prior authorization reference to cover not only a DMMA nurse, but an MCO nurse as well. DMMA adopted no amendment.

Fifth, the Council recommended substituting “DMAP” for “DMMA” in §5.2.2. DMMA agreed and effected the substitution.

Sixth, the Council observed that a reference to “face to face” nursing assessment was being deleted inferentially based on the availability of telemedicine. DMMA thanked the Councils for the comment without embellishing intent.

Seventh, the Council recommended reconsideration of a requirement of a consumer-provided caregiver during non-authorized PDN hours. DMMA declined to amend the requirement.

Eighth, the Council prompted reconsideration of a recital that parental consent to an IEP which includes PDN equates to parental consent to use of Medicaid to fund PDN. The Council submitted contrary federal guidance. DMMA amended the reference to authorize PDN “with parental consent”.

Ninth, the Council noted that DMMA was adopting an incorrect legal standard by requiring a school to demonstrate an inability to meet the medical needs of school age children as a prerequisite to Medicaid coverage of PDN. DMMA deleted the reference.

Finally, one of the Medicaid MCOs, Highmark Health Options, submitted comments generally objecting to many provisions as “expanding coverage”. DMMA disagreed and effected no amendments based on Highmark’s comments. .

Again, thank you for effecting many amendments based on SCPD’s comments.

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

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