DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

FINAL

ORDER

Reimbursement Methodology for Inpatient Hospital Services

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA). The Department's proceedings to amend the Title XIX Medicaid State Plan to revise the inpatient hospital outlier reimbursement methodology for were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the September 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED AMENDMENT

The purpose of this proposal is to amend the Title XIX Medicaid State Plan to revise the hospital outlier reimbursement methodology.

Statutory Authority

- 42 CFR §440.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates;
- 42 CFR §447, Subpart C - Payment for Inpatient Hospital and Long-Term Care Facility Services

Summary of Proposed Amendment

The proposed amendment is intended to revise the calculation of high cost outlier payments. Currently, high cost outliers will be identified when the cost of the discharge exceeds the threshold of three times the hospital operating rate per discharge. Effective October 1, 2009, the proposal changes the threshold to four times the hospital operating rate per discharge. The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

The proposal will result in reduced spending of $4.9 million in total funds.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. DMMA has considered the comments and responds as follows:

The current standards authorize a compensation "add on" for "high cost outliers" whose cost of discharge exceeds the threshold of 3 times the hospital operating cost per discharge. The "add on" is 79% of the difference between the outlier threshold and the total cost of the case.

The revision would authorize a compensation "add on" for those whose cost of discharge exceeds the threshold of 4 times the hospital operating cost per discharge. The "add on" would also be reduced to 70% of the difference between the outlier threshold and the total cost of the case. The combined effect of the revision would be to reduce compensation for very expensive Medicaid patients who may tend to be persons with severe

disabilities.

St. Francis Hospital has presented testimony in legislative hearings confirming its precarious financial circumstances. Other hospitals may also be under financial stress. The proposed regulation would ostensibly reduce Medicaid reimbursement for "deep end" beneficiaries (who may tend to be persons with severe disabilities) which could adversely affect patient care. For example, the reduction in compensation provides an incentive to hospitals to discharge earlier in the recovery process and/or exercise any discretion involving treatment in favor of "bare-bones" or minimally adequate services. For these reasons, SCPD has reservations with the proposed regulation.

Agency Response: DMMA believes the revised outlier methodology will not adversely impact the quality of care to our Medicaid beneficiaries. We thank the Council for their comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2009 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding the inpatient hospital outlier reimbursement methodology for is adopted and shall be final effective November 10, 2009.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #09-40
REVISIONS:

ATTACHMENT 4.19-A
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METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - INPATIENT HOSPITAL CARE (Continued)

Rate Setting Methods - Development of Implementation Year Operating Rates, Updates and Rebasing (Continued)

The implementation year rates will be updated in FY96 using published TEFRA inflation indices. Rates will be rebased using fiscal year 1994 claims and cost report data for implementation in State FY97.

Effective for admission dates on or after April 1, 2009, payment rates for inpatient hospital care will be adjusted to the rates that were in effect on December 31, 2008. Future rate adjustments will be suspended until further notice.

Other Related Inpatient Reimbursement Policies

Outliers - High cost outliers will be identified when the cost of the discharge exceeds the threshold of ~~three~~ four times the hospital operating rate per discharge. Outlier cases will be reimbursed at the discharge rate plus ~~79~~ 70 percent of the difference between the outlier threshold and the total cost of the case. Costs of the case will be determined by applying the hospital-specific cost to charge ratio to the allowed charges reported on the claim for discharge.

Effective January 1, 2006, any provider with a high cost client case (outlier) will receive an interim payment; that is, a payment prior to the discharge of that patient when the charge amount reaches the designated level. An interim payment will be made for that inpatient stay when the client's charges have reached twenty-five (25) times the general discharge rate of that facility, or when the client's stay is greater than sixty (60) days. Additional interim payments will be made when either of the outlier conditions for an interim payment is met again. The interim payment amount is based on the current reimbursement methodology used to pay outliers. Upon the discharge of the client, the facility will receive the balance of the payment that would have been paid if the case were paid in full at the time of discharge.

6 DE Reg. 885 (1/1/03)
9 DE Reg. 783 (11/01/05)

13 DE Reg. 259 (8/1/09)
13 DE Reg. 656 (11/01/09) (Final)