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| LOCAL COMMISSIONERS MEMORANDUM |
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DSS-4037EL (Rev. 9/89)

Transmittal No: 93 LCM-174

Date: December 14, 1993

Division: Health and Long Term
Care

TO: Local District Commissioners

SUBJECT: Personal Care Rates Stipulation of Settlement

ATTACHMENTS: Stipulation of Settlement: NYS Association of Health Care
Providers, Inc. et al v. Kaladjian and Bulgaro
(Available On-Line)

Background:

On February 24, 1993, as part of the process of developing a uniform methodology for determining rates for the provision of personal care services, the Department of Social Services filed emergency regulations in support of an interim method for the calendar year 1992. Rates for 1992 were based on costs reported for calendar year 1990 and trended forward two years, with administrative and general costs subject to statutory ceilings imposed by the New York State Legislature as part of Chapter 41 of the Laws of 1992. Due to a number of delays resulting primarily from the initiation of a new and unfamiliar cost report, the 1992 rates were not promulgated until February of 1993, retroactive to January of 1992. Based on the interim methodology, approximately two-thirds of the providers experienced an increase in their 1992 rates over 1991, while approximately one-third were to have rates reduced.

As a result of these actions, the Department and the State Division of the Budget were challenged by the New York State Association of Health Care Providers, Inc., et al, on the legality of retroactively adopting a Medicaid reimbursement methodology and retroactively promulgating rates. An injunction also was sought against any net reduction in aggregate Medicaid reimbursement to agencies as a result of the methodology and a challenge was made to the calculation of the "administrative and general expense" caps imposed by Chapter 41 of the Laws of 1992.

A stipulation of settlement was filed in Supreme Court, State of New York, County of Albany, on November 3, 1993. The following is a summary of the terms of the settlement and the effects it will have on local departments of social services. A copy of the full settlement is included as the attachment to this memorandum. This stipulation pertains to all districts outside of New York City for which the Department promulgated, and the Division of the Budget approved, personal care rates for calendar year 1992.

The terms of the settlement and its impact on social services districts are as follows:

1. Department of Social Services Amendments to 18 NYCRR Sections 505.14 (c), (h), and 1993 Rates

Department of Social Services Amendments to 18 NYCRR Sections 505.14 (c) and (h), filed with the Secretary of State on February 24, 1993 on an emergency basis and, more recently, refiled September 13, 1993, have been withdrawn, effective November 17, 1993. The withdrawn regulations authorized this Department to collect cost reports from personal care agencies and promulgate rates for 1992 based on the reported costs.

The withdrawal of these regulations means that personal care rates for 1993 will not be promulgated based on cost reports submitted to this Department by personal care agencies under contract with local social services districts. This action thereby reinstates the prior rate setting process which involved negotiation of personal care rates by local commissioners of social services and providers. However, districts are neither obligated nor precluded from negotiating retroactive rates for the 1993 calendar year if contracts so permit. Any new rates which a local commissioner may wish to establish for 1993 should not exceed a trend factor of 3.2 % above the 1992 rate. Any decreases from 1992 rates do not have to be within a trend factor. Any 1993 rate negotiated above the trend factor must be substantiated for each provider as outlined in the exception criteria in DSS Regulation 505.14 (h)(5)(iv)(a)-(c), and 91 ADM-24, "Personal Care Services: Exceptions to the Mandatory Trend Factor for 1991 Medical Assistance Personal Care Rates".

Rates for 1993 must be submitted on the forms supplied to you in 89 ADM-17, "Personal Care Services : Form for Rate Request and Justification" or 91 ADM-24, and must be submitted by March 31, 1994.

2. Administrative and General Expense Cap

The Administrative and General Expense cap adopted by the Legislature through Chapter 41 of the Laws of 1992 sets forth a sliding scale for the calculation of administrative and general costs and excluded capital costs from the calculation. Rental costs for plant, equipment, vehicles and property interest were not treated as capital costs in the original calculation of the 1992 personal care rates.

As part of the stipulation of settlement, all 1992 rates will be recalculated by the Department to reflect the exclusion of rent and property interest from the Administrative and General cost category.

3. Revisions

Technical amendments to the 1992 rate calculations, identified within 90 days of the initial issuance of those rates, will be reviewed by the Department and the State Division of the Budget. Upon approval of any such amendments, adjusted rates will be issued.

4. Provider's Net Aggregate Reimbursement for 1/1/92 - 2/28/93

After the rates are promulgated based on the recalculations for both the Administrative and General Expense cap and any approved technical revisions as noted above, the Department will determine on an individual county contract-specific basis which provider agencies incurred a net loss or a net gain as a result of the methodology for the period 1/1/92-2/28/93.

Any provider who had an aggregate net loss, i.e., whose total compensation for all personal care services delivered to Medicaid clients in a given county during the fourteen month period as a result of the methodology, was reduced when compared with what it would have been had the 1991 rates remained in effect; such providers will receive a lump sum payment to cover the amount of the loss only. Local commissioners will be notified of the providers with whom they contract that were determined to have experienced an aggregate net loss in revenues between 1991 and 1992, and of the amount to be repaid to each provider as soon as the calculations are finalized. Providers who experienced an aggregate net gain as a result of the 1992 rates will receive no further adjustments.

It should be noted that the terms of this stipulation of settlement apply only to 1992 and 1993, as outlined above. The stipulation permits social services districts to negotiate with providers for new rates for the period of January 1, through December 31, 1993. Proposed regulations implementing a Statewide methodology were published in the State Register on October 13, 1993, to become effective January 1, 1994. These regulations will apply to all personal care rates for 1994 and subsequent years.

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