

July 27, 2012

Sharon L. Summers  
Planning and Policy Development Unit  
Division of Medicaid and Medical Assistance  
1901 North DuPont Highway  
P.O. Box 906  
New Castle, DE 19720-0906

**RE: DMMA Proposed Nursing Facility Quality Assessment Reg. [16 DE Reg. 38 (July 1, 2012)]**

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Medicaid and Medical Assistance (DMMA) proposal to adopt a Medicaid State Plan amendment to implement Senate Bill No. 227 which was signed by the Governor on June 28, 2012.

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 Senate Bill No. 227, lines 35-38 and 118-119. Ninety percent of the collected quality assessment funds will be deposited in a Nursing Facility Quality Assessment Fund (lines 71-72) and ten percent 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. Council 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.

The GACEC would like to share one technical observation. Senate Bill No. 227 literally 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 in advance for your time and consideration of our observation. Please feel free to contact me or Wendy Strauss should you have questions or concerns.

Sincerely,

Terri A. Hancharick  
Chairperson

TAH:kpc