

July 25, 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: DSS Proposed Expedited Fair Hearing Regulation [16 DE Reg. 6 and 30 (July 1, 2012)]

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed both the Division of Social Services (DSS) emergency and proposed regulations amending its fair hearing process to specifically address expedited fair hearings available to Medicaid and Delaware Healthy Children Program (DHCP) participants. Council understands that the Delaware Health and Social Services (DHSS) acknowledges that information was omitted during the Centers for Medicare and Medicaid Services (CMS) review of the Diamond State Health Plan (DSHP) Plus review process and is correcting the omission. At p. 31. The GACEC has identified and would like to share two concerns with the proposed revisions.

First, §5304.3, Par. 1 (p. 36) indicates that the "MCO must issue an expedited resolution within 3 working days after receiving the appeal." Obviously, a claimant attempting to persuade an Managed Care Organization (MCO) to issue a favorable decision within the "3 working days" timeframe would ordinarily benefit from reviewing the MCO's case records to facilitate any submission of justification or expert medical evidence. Unfortunately, there is no DSS regulation addressing expedited access to MCO case records. It would be preferable to add a provision requiring prompt access to such records in the context of a request for expedited resolution.

Second, if a claimant requests a fair hearing to contest an MCO's adverse decision processed under the expedited resolution regulation [§5403.3, Par. 1], the DSS hearing officer is expected to issue a decision within three working days. See §5500, Par. 1; and 42 C.F.R. §431.244(f)(2). However, §5403, Par. 2, allows the MCO or agency to wait "3 working days" to provide access to case records. Thus, a claimant would be "hamstrung" in preparing for the expedited hearing since he/she would lack timely access to MCO or State agency case records. CMS regulations mandate that beneficiaries will have access to records before the date of hearing to allow meaningful participation in the appeal process. See, e.g., 42 C.F.R. §431.242(a). Therefore, the GACEC recommends that §5403, Par. 2, be revised as follows:

For expedited resolution requests, case records must be promptly made available within ~~3 working days~~ 1 working day of the receipt of the appeal.

Thank you in advance for your time and consideration of our comments. Should you have any

questions please feel free to contact me or Wendy Strauss.

Sincerely,

Terri A. Hancharick
Chairperson

TAH:kpc

CC: The Honorable Rita Landgraf, Secretary, Delaware Health & Social Services
Deborah Gottschalk, Delaware Health & Social Services