

October 31, 2012

Sharon L. Summers
Policy, Program and Development Unit
Division of Social Services
1901 North DuPont Highway
P. O. Box 906
New Castle, DE 19720-0906

RE: DMMA Proposed Medicaid Long Term Care Home Equity Cap Regulation [16 DE Reg. 377 (October 1, 2012)]

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Medicaid & Medical Assistance (DMMA) proposal to amend its financial eligibility standards for qualification for long-term care (LTC) Medicaid. Federal law establishes a presumptive cap on Medicaid LTC eligibility of \$500,000 subject to annual increases based on the Consumer Price Index (CPI). The DMMA is now updating its standards to reflect the increases in the cap, i.e. to \$525,000 effective January 1, 2012. Council would like to share one concern.

The regulation recites as follows: "Equity value is determined by using the current market value of the home minus any mortgages or loans on the home." This is "underinclusive" and misleading. The attached CMS guidance recites as follows:

The equity value of a resource is the current market value minus any encumbrance on it. ...An encumbrance is a legally binding debt against the resource. This can be a mortgage, reverse mortgage, home equity loan, or other debt that is secured by the home.

Other states adopt the term "encumbrance" in their regulations. This would cover judgment liens, IRS liens, lis pendens claims, and other legally binding "encumbrances" on the home. Council recommends substitution of the following sentence: "Equity value is determined by using the current market value of the home minus any encumbrance (e.g. mortgage; loan; lien) on it." The APA allows such revision without pre-publication "to correct technical errors" or "to make (regulations) consistent with changes in basic law but which do not otherwise alter the substance of the regulations". Title 29 Del.C. §10112(b).

Council endorses the proposed regulation subject to correction of the sentence noted above which omits many forms of encumbrances which can reduce equity based on the CMS guidance.

Thank you for your time and consideration of our comments and concerns. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,

Terri A. Hancharick
Chairperson

TAH:kpc

Enclosure