

August 25, 2014

Sharon L. Summers  
Planning & 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 Preadmission Screening and Resident Review (PASRR) Regulation [18 DE Reg. 106 (August 1, 2014)]**

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Medicaid and Medical Assistance (DMMA) proposal to amend the Medicaid State Plan Proposed Preadmission Screening and Resident Review (PASRR) standards to conform to a Centers for Medicare and Medicaid Services (CMS) template. The proposed amendment contains two main features. First, DMMA is identifying seven qualifiers for a "categorical determination": 1) convalescent care; 2) terminal illness; 3) medical dependence; 4) delirium; 5) emergency situations; 6) respite; and 7) dementia combined with intellectual disability. At p. 114. Second, DMMA is defining each of these qualifiers. At pp. 112-113.

Background to this initiative is provided at p. 107. Federal law was adopted decades ago to prevent the inappropriate placement of individuals with mental illness or intellectual disabilities in nursing facilities. States are required to conduct an initial Level 1 screening to determine if an applicant for nursing facility admission may have a mental illness or intellectual/developmental disability. If that screening supports the existence of a mental illness or intellectual disability, a Level II screening is undertaken which results in a determination of need, appropriate setting, and identification of any "specialized services" if the individual is admitted to the nursing facility. States are authorized to adopt a "short cut" to the Level II screening if certain criteria are met. Such "categorical determinations" may be based on certain diagnoses, severity of illness, or brevity of anticipated stay.

Council would like to share the following observations.

First, at the top of page 112, the definition of "convalescent care" may have omitted a word. It recites as follows:

X. Convalescent Care: NF services are needed for from an acute physical illness which required hospitalization, and does not meet all the criteria for an exempt hospital discharge.

The serial prepositions (for from) are grammatically odd. Council suspects the term should be “for or from” an acute physical illness. DMMA may wish to review this sentence.

Second, in the past, there was considerable discussion of which agency issues the final PASRR decision. See, e.g., 15 DE Reg. 86, 88, “Seventh” Paragraph (July 1, 2011). The proposed regulation would benefit from a clarifying amendment to avoid confusion. There is some “tension” between the recital that DSAMH/DDDS adopt “the final determination” versus the recital that DMMA issues the final determination. See Pars. 9 and 10 at p. 115. For example, Par. 9 could be revised as follows:

9. DSAMH/DDDS notifies DMMA of the agency’s Level II Evaluation determination.

Third, it may not be intuitive that the final DMMA PASRR is appealable to the Division of Social Services (DSS). See 16 DE Admin Code 5001, Subsection 2.D; 5304; 5304.1; and 5401, Subsection 1.C.4. DMMA could consider amending Par. 10 on p. 115 as follows:

10. Final PASRR determinations will be issued by DMMA and are subject to 16 DE Admin Code 5000.

Fourth, DMMA and DSS may wish to review 16 DE Admin Code 5304.1 which reads as follows:

Individuals adversely affected by determinations made by the Division of Substance Abuse and Mental Health (DSAMH) or the Division of Developmental Disabilities Services (DDDS) as a result of a pre-admission screening resident review PASRR may appeal the decision to the Division of Social Services (DSS). The hearing is conducted by DSS and the decision is binding on the Department of Health and Social Services. ... Final PASRR determinations will be issued by DMMA.

There is some “tension” between the notion that DMMA issues the final PASRR determination but the decision subject to hearing is the DSAMH or DDDS determination. DMMA may wish to consider whether this regulation merits prospective modification.

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

Sincerely,

Robert D. Overmiller

RDO:kpc