

January 26, 2015

Sharon Summers
Planning & Policy Development Unit
Division of Medicaid & Medical Assistance
1901 N. DuPont Hwy.
P.O. Box 906
New Castle, DE 19720-0906

RE: DMMA Proposed Certification and Regulation of Medicaid MCOs Regulation [18 DE Reg. 504 (01/01/15)]

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 standards for fiscal solvency of Medicaid managed care organizations (MCOs).

DMMA contracts with MCOs to administer the Diamond State Health Plan and Diamond State Health Plan Plus programs. At pp. 504-505. Federal regulation [42 C.F.R. §438.116] requires MCOs to either meet state solvency standards for private health maintenance organizations or be licensed or certified by the state as a risk-bearing entity. Delaware DMMA is adopting the second option, i.e., it will certify MCOs which meet certain standards contained in the proposed regulation.

The GACEC would like to share the following concerns.

First, on p. 504, the references to 42 C.F.R. §483.1 and 42 C.F.R. §483.116 are incorrect. The correct citations are 42 C.F.R. §438.1 and 42 C.F.R. §438.116 respectively.

Second, §3.1.2 requires an MCO to demonstrate "net equity in excess of \$[10] million." At a minimum, the brackets should be deleted. On a substantive level, Council questions whether net equity of \$10 million is sufficient. The Medicaid population in Delaware has grown to approximately 230,000 individuals. Most of the Medicaid population in Delaware is served by two MCOs (Highmark; United Health Care). Assuming equal enrollment, each MCO would serve 115,000 individuals and have approximately \$86 in equity for each participant. Some of the \$10

million in equity could be in fixed or non-liquid assets out-of state or out of the country. Council recognizes that the managed care system is intended to not tap equity, i.e., monthly State capitation payments (§5.2) should ideally cover MCO outlays. Moreover, DMMA enjoys the protection of a performance bond equal to one month's capitation payment. In reality, an MCO could suffer huge losses if an epidemic or natural disaster resulted in unanticipated health costs. An MCO with only \$10 million in net equity may be unable to absorb such costs.

Third, §5.0 may merit further review to ensure consistency. On the one hand, an MCO is required to submit a performance bond equal to the projected first month's capitation payment "up front". See §§5.1 and 5.2. On the other hand, §5.4 requires MCO supplementation of the bond "if the performance bond falls below 90% of the first month's capitation in any month". Literally, this could never occur since the performance bond based on 100% of the first month's capitation amount was already submitted to DMMA up front. If DMMA intends that the MCO increase the bond based on later increases in monthly capitation amounts, the regulation should be reworded.

Fourth, §9.1 contemplates MCO maintenance of a system for tracking incurred but unreported costs and unpaid claims by category (e.g. hospital; nursing facility). The MCO is expected to review its system annually and DHSS can prompt adjustments. DMMA may wish to consider requiring a six-month report of data under this section. If a year passes and the system/methodology has resulted in grossly inadequate reservation of funds, it may be too late to intervene in the face of huge unpaid bills.

Fifth, it is unclear when the performance bond required by §5.0 lapses. Obviously, an MCO which terminates its participation as an MCO will still have to cover bills incurred during the contract period. It is possible that the DMMA-MCO contract addresses the duration of the performance bond. If it does not, the regulation could be revised to include some standards.

Sixth, Council would also recommend that GAAP and STAT be spelled out in sections 3.1.2 and 4.1.1.

If you have any questions on our comments, please contact me or Wendy Strauss at the GACEC office.

Sincerely,

Robert D. Overmiller
Chairperson

RDO:kpc