

November 30, 2015

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

RE: DMMA Proposed Medicaid Outpatient Drug Reimbursement Regulation [19 DE Reg. 369 (November 1, 2015)]

Dear Mr. Williams:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Medicaid and Medical Assistance (DMMA) proposal to adopt some discrete changes to its reimbursement standards for prescription drugs. Council **endorses** the proposed changes since this will remove an impediment to drug manufacturer rebate payments to the State.

As background, federal law authorizes states to negotiate rebate agreements with drug manufacturers. Federal law (340B program) also requires drug manufacturers to enter into agreements with the Health Resources and Services Administration (HRSA) to provide discounts on drugs to covered entities. The interplay of these laws is complicated. However, State Medicaid agencies must exclude from State rebate requests drugs that have already by discounted under the 340B program:

State Medicaid agencies should exclude claims for 340B purchased drugs (340B claims) from Medicaid rebate requests to prevent subjecting drug manufacturers to duplicate discounts (i.e. selling 340B-purchased drugs to covered entities at the discounted ceiling prices and providing Medicaid rebates on the same drugs).

At 371.

DMMA has determined that its providers do not generally use 340B discounted drugs for Medicaid

patients:

To date, with few exceptions, every contracted entity listed on the 340B participating providers' file has responded in writing that they do not use these products for Delaware Medicaid patients.

At 371.

To obviate drug manufacturer argument, DMMA is amending the State Plan to categorically bar providers from using 340B discounted drugs for Medicaid patients:

Entities that purchase Section 340B of the Public Health Services products are prohibited from using their stock for DMAP patients either directly or through coverage of the Managed Care Organization.

At 373.

Thank you for the proposed amendment and your consideration of our observations. Please contact me or Wendy Strauss at the GACEC office if you ever have questions on any of our observations.

Sincerely,

Robert D. Overmiller
Chairperson

RDO:kpc