

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PROPOSED

PUBLIC NOTICE

Fair Hearing Practice and Procedures, 5304 Jurisdiction

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Fair Hearing Practice and Procedures.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) related to Fair Hearing Practice and Procedures, specifically to clarify jurisdiction for hearings over Medicaid program waiver services.

Statutory Authority

- 42 CFR Part 431 Subpart E, *Fair Hearings for Applicants and Recipients*

Summary of Proposal

1) DSSM 5304.2, *Nursing Facility Discharge Notice Hearings*: This rule text is deleted from the Division of Social Services Manual as the Division of Long-Term Care Residents Protection (DLTCRP) now has jurisdiction over these types of hearings. Reference is made to DLTCRP's Patient's Bill of Rights, Appendix A of Regulation No. 3201, *Nursing Home Regulations for Skilled Care* and Regulation No. 3205, *Nursing Home Regulations for Intermediate Care*.

2) DSSM 5304.5, *Jurisdiction for Hearings over Medicaid Program Services*: This new rule clarifies that the Division of Social Services (DSS) has jurisdiction over fair hearings involving Medicaid program waiver services.

DSS PROPOSED REGULATIONS #08-19

REVISIONS:

5304.2 ~~Nursing Facility Discharge Notice Hearings~~

~~Consistent with 42 CFR 438.202 and 438.204 (a)(1), a person who has received a notice of intent to discharge or transfer a person from his/her residential nursing facility may take an appeal of the decision to the Division of Social Services.~~ RESERVED

(Break in Continuity of Sections)

5304.5 Jurisdiction for Hearings over Medicaid Program Services

The Delaware Medicaid Program operates Medicaid waiver projects offering home and community-based services (HCBS). These projects include waivers for the mentally retarded for the elderly and disabled, for persons with acquired immune deficiency syndrome and other HIV-related diseases, for persons with acquired brain injuries, for residential services under an Assisted Living waiver, and for other types of conditions that require special services. (See DSSM 20700 et seq.)

The Division of Social Services ("DSS") has jurisdiction for hearings over disputes involving these services. The delivery of these services is managed by other Divisions within the Department of Health and Social Services ("DHSS") including the Division of Services for Aging and Adults with Physical Disabilities ("DSAAPD"), the Division of Developmental Disabilities Services ("DDDS") and the Division of Medicaid and Medical Assistance ("DMMA"). For these hearings, the Division taking the action in dispute will prepare the §5312 hearing summary and defend the action at the hearing.

11 DE Reg. 1583 (06/01/08) (Prop.)