

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

Statutory Authority: 29 Delaware Code, Section 7909(A) (29 Del.C. §7909(A))

PROPOSED

PUBLIC NOTICE

A. Type of Regulatory Action Proposed:

Establishment of new regulation.

B. Synopsis of Subject Matter:

The Division of Developmental Disabilities (DDDS) intends to publish in regulation a description of the agency's appeal process. The regulations shall include a definition of appeal, issues that can be appealed, the time requirements for requesting an appeal, how the process works and how to request an appeal.

Any person who wishes to make written suggestions, submit compilations of data, briefs or other written materials concerning the proposed new regulations must submit same to Mary T. Anderson, M.S.W., Director of Policy Development, Division of Developmental Disabilities Services, 26351 Patriots Way, Georgetown, DE 19947 or by fax to (302) 934-8704 by March 30, 2010. The action concerning the determination of whether to adopt the proposed regulation will be based upon the Department and Division's analysis and consideration of the comments and written materials filed by interested persons.

2101 Agency Appeal Process

1.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Appeal" means a DDDS internal evidentiary review of a decision by an objective committee assigned by the Division Director or designee.

"Applicant" means any person who is applying for services from the DDDS.

"Individual Rights Complaint" means the DDDS formal process for asserting that the rights of an individual served have been violated, an internal review concerning the reported rights violation and the identification of a plan to improve the situation.

"Risk Management Committee" means the internal Division committee responsible for reviewing identified focus areas situations that present actual or potential danger to individuals served and staff; subsequently developing risk reduction strategies.

2.0 Situations/issues that are eligible to be reviewed via the DDDS appeals process include the following:

- 2.1 Decisions that involve the omission of choice between institutional care and home and community based services.
- 2.2 Denial of eligibility for DDDS services.
- 2.3 Denial of service provider of choice.
- 2.4 Denial, reduction, suspension or termination of services.
- 2.5 Dissatisfaction with the outcome of an Individual Rights Complaint.

3.0 Efforts shall be made to resolve the situation being contested prior to requesting an appeal DDDS.

4.0 The implementation of a DDDS decision shall be postponed pending the decision of a DDDS appeal or Medicaid Fair Hearing, unless it has already been implemented.

5.0 A Medicaid recipient may request a Division of Social Services (DSS) Medicaid Fair hearing at any point in the appeals process, up to ninety (90) days following receipt of a written notice of the DDDS decision that the recipient decides to appeal.

6.0 The DDDS Appeals Committee chairperson shall make efforts to contact the appellant within five (5) working days of receiving the appeals request, unless that appeal is for a disputed eligibility decision. In that case, the DDDS Appeals Committee chairperson shall request a copy of the appellant's intake record within five (5) days of receiving the appeal request and make efforts to contact the appellant within five (5) working days of receiving a copy of the intake record.

7.0 The DDDS Appeals Committee chairperson shall review the appeals request with the appellant, provide clarification as necessary, explain the appeals process and schedule an appeal review at the following month's appeal hearing contingent on providing a 14 calendar days notice.

8.0 The DDDS Appeals Committee shall meet with the appellant in person, unless otherwise requested, and listen to the reason(s) that a decision is disputed. The appellant has the right to invite guests to the appeal hearing and present additional information for consideration. The appellant shall have the opportunity to ask questions, request clarification and receive answers. The person or designee who initially made the decision being disputed shall also appear at the appeal hearing and explain the rationale for his/her decision.

9.0 The Division Director shall be notified of the Appeals Committee's recommendations relative to the issue(s) being appealed, with five (5) working days of the appeal hearing.

10.0 The Division Director shall send written notification to the appellant of the final appeal disposition, within fifteen (15) working days of the appeal hearing. The notification shall include a notice regarding the right to request a Division of Social Services (DSS) Medicaid Fair Hearing, if the aggrieved person is a Medicaid recipient or applying for a Medicaid service.

11.0 A DDDS Appeal shall not be a pre-requisite for requesting a DSS Medicaid Fair Hearing.

12.0 The DDDS Risk Management Committee shall review appeal statistics and trends, on an annual basis or as requested by the committee chair or Division Director.