

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF DEVELOPMENTAL DISABILITIES

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

### FINAL

### ORDER

#### Disabilities Services Eligibility Criteria

#### 2100 Eligibility Criteria

#### Nature of the Proceedings:

Delaware Health and Social Services ("Department")/ Division of Developmental Disabilities Services (DDDS) initiated proceedings to adopt the State of Delaware Regulations Governing the Division of Developmental Disabilities Services Eligibility Criteria. The Department's proceedings to adopt the regulations were initiated pursuant to 29 **Delaware Code** Sections 7903(10) and 7909A(e).

The Department published its notice of the proposed regulatory change pursuant to 29 **Delaware Code** Sections 7903(10) and 7909A(e) in the October 1, 2007, *Delaware Register of Regulations* (Volume 11, Issue 4), requiring written materials and suggestions from the public concerning the proposed regulations be produced by November 2, 2007, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulation.

#### Summary of Proposed Changes

##### Statutory Authority

- 29 **Del.C.**, §7903(10)
- 29 **Del.C.**, §7909A(e)

##### Summary of Proposed Changes

1) The definition/diagnosis of mental retardation has been modified to correspond with the American Association on Intellectual and Developmental Disabilities Classification Manual definition of 2002. The proposed criteria, therefore, is consistent with the most current diagnostic nomenclature in the field of developmental disabilities.

2) Asperger's Disorder has been added to the eligibility criteria. Currently, DDDS includes Autism in the eligibility criteria. Recently, there has been a national effort at viewing autism as a spectrum of disorders of which both Autism and Asperger's are considered core disorders. From a programmatic and service delivery standpoint, Asperger's fits in the DDDS service system model. The addition of Asperger's Disorder to the Division's eligibility criteria is also consistent with what some other states are doing and with what the Department of Education did in adding Asperger's Disorder to its Autism special education classification.

3) Addition of two legal requirement statements: a) "citizen or a lawful alien of the United States"; b) "resident of the State of Delaware". This is consistent with **Delaware Code** regarding eligibility for state services and consistent with Department policy.

#### Summary of Comments Received with Agency Response and Explanation of Changes

The **State Council for Persons with Disabilities**; the **Delaware Developmental Disabilities Council**; and the **Governor's Advisory Council For Exceptional Citizens** presented identical comments on the proposed regulation. DDDS has considered those comments together and responds as follows:

**Comment:** The preface to the regulation and public notice recites that the Division will convene a public hearing to receive comments. However, no time or date of a public hearing are provided. This violates the APA.

**Agency Response:** The two newspaper public notices regarding the publishing of the proposed regulation