

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH
Statutory Authority: 21 Delaware Code, Section 4177D (21 **Del.C.** §4177D)
2 **DE Admin. Code** 1201

PROPOSED

PUBLIC NOTICE

1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees

In compliance with the *Administrative Procedures Act* (29 *Del. C.* Ch. 101) and under the authority of 21 *Del. C.* § 4177D, the State of Delaware Department of Health and Social Service's Division of Substance Abuse and Mental Health ("the Division") is proposing the repeal of 2 *DE Admin. Code* § 1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees.

A person may make suggestions or provide compilations of data, testimony, briefs, or other materials concerning the Division's proposal by written submission to the Community Behavioral Health Bureau, Division of Substance Abuse and Mental Health. The Division will receive submissions made before 4:30 p.m. on December 1, 2021, by mail to 1901 North DuPont Highway, New Castle, DE 19720-0906, by fax to (302) 255-4427, and by email to david.okeke@delaware.gov. Please identify in the subject line: 1201 DUI Regulations.

The Division's determination to adopt this proposal will include analysis and consideration of submissions received by the Division.

SUMMARY

This notice aims to advise the public that the Division is proposing to repeal 2 *DE Admin. Code* § 1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation, and Related Fees.

Statutory Authority

21 *Del. C.* § 4177D authorizes the Division to promulgate regulations related to driving under the influence programs and issue this proposal.

Background

Enacted in 2018, 81 *Del. Laws* Ch. 331 amended 21 *Del. C.* § 4177D by transferring "the responsibilities relating to courses of instruction and programs of rehabilitation for persons whose drivers' licenses have been revoked for driving while under the influence of alcohol or drugs or both" from the Office of Highway Safety to the Division. Therefore, 2 *DE Admin. Code* § 1201 no longer possesses the appropriate statutory authority under which the Office of Highway Safety promulgated it.

Summary of the Proposal

This proposal intends to repeal 2 *DE Admin. Code* § 1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation, and Related Fees in its entirety.

Fiscal Impact

There is no fiscal impact associated with this proposal.

1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees

4.0 Authority

~~The authority to promulgate this regulation is 21 **Del.C.** §302, 21 **Del.C.** §4177(D) and 29 **Del.C.** §10115.~~

2.0 Purpose

~~A program is hereby established which involves an evaluation and referral to appropriate courses of instruction and/or rehabilitation for an alcohol related violation/offense.~~

3.0 Applicability

This policy regulation concerns the following sections found in Title 21: ~~§4177, §4177A, §41778, §4177C, §4177D, 4177E, §4177F, §2742, §2743, and §4175(b).~~

4.0 Substance of Policy

~~4.1 The Delaware Evaluation & Referral Program, (DERP)~~

~~4.1.1 All persons who have been ordered to, or have volunteered to, enter a course of instruction or program of rehabilitation, shall first be evaluated by the Delaware DUI Evaluation & Referral Program. All evaluations completed by any other agencies (for out of state clients) are subject to a review and approval by DERP.~~

~~4.1.2 The minimum fee for DERP is \$100.00. The minimum fee for processing an out of state evaluation and referral is \$125.00. These fees shall be the responsibility of the clients.~~

~~4.2 The Education Program~~

~~4.2.1 A course of instruction shall be administered by any State of Delaware contracted education program provider. Any agency providing an instructional course must submit notice of completion to DERP. The Division of Motor Vehicles shall accept notice of completions from DERP for courses of instruction administered by State of Delaware contracted education program providers. Any out of state clients must be evaluated and treated by an agency approved by one of Delaware's contracted providers.~~

~~4.2.2 The minimum fee for the Education program is not to exceed the maximum fine imposed for the offense as set forth in § 4177 of the Delaware Code. These fees shall be the responsibility of the clients.~~

~~4.2.3 Persons with more than one alcohol related violation must enter treatment and cannot be referred to an educational program.~~

~~4.3 The Out Patient Treatment Program~~

~~4.3.1 The program of rehabilitation shall be administered by any State of Delaware contracted treatment provider. Any agency providing rehabilitation treatment must submit a discharge summary for each client to DERP. The Division of Motor Vehicles shall accept notice of completions from DERP for courses of rehabilitation administered by State of Delaware contracted treatment program providers. Any out of state clients must be evaluated and treated by an agency approved by one of Delaware's contracted providers.~~

~~4.3.2 The minimum fee for this program is not to exceed the maximum fine imposed for the offense as set forth in § 4177 of the Delaware Code. These fees shall be the responsibility of the clients.~~

~~4.3.3 The program of rehabilitation may be required for persons who have one alcohol related violation, and shall be required for persons who have two or more alcohol related violations. Further, this rehabilitation program may be required for persons regardless of blood alcohol content or refusal to submit to the chemical test and shall be required for persons with a blood alcohol content of 0.15 or greater.~~

~~4.4 Alternative Treatment Programs~~

~~Programs shall be made available through existing contracted agencies to provide treatment services for those clients with alternative needs. Programs shall administer programs for those individuals under the age of 21 years, as well as for those individuals with mental health issues. In addition, if the treatment providers reach a clinical determination that the client needs further services not available at the providers' level, the client may be referred outside the network for those necessary services. (i.e. residential treatment services) Monitoring of additional treatment services and satisfactory completion release from the program shall be made by the designated contracted agency.~~

~~4.5 Failure To Appear~~

~~Additional fees may be charged by the evaluation unit, the educational program, and the treatment program for those clients failing to keep scheduled appointments or classes. If clients are unable to keep scheduled appointments, they must contact the evaluation unit or treatment unit, present an acceptable excuse, and request a rescheduling of their appointment or class. The fee for failure to appear shall not exceed \$35.00. All fees shall be the responsibility of the clients.~~

~~4.6 Non-Compliance~~

~~The absence of client contact within a 30 day period is cause for non-compliance. More specifically, clients who miss two subsequent appointments, or miss three appointments over the course of treatment, are subject to non-compliance processing as well. The fee for a client to be reinstated in the program (within a 2 year period) shall not exceed \$35.00. Any clients waiting longer than 2 years to re-enter the program will be required to pay all DERP fees in full as indicated in Section 1.~~

~~4.7 Program Evaluation~~

~~The Secretary of Public Safety or designee retains the authority to evaluate, whenever he/she deems appropriate, the above courses of instruction, programs of rehabilitation, and alcohol evaluation agency.~~

~~4.8 Schedule of Fees~~

The schedule of fees for ,the courses of instruction, programs of rehabilitation, and alcohol evaluation agency shall be established by the Secretary of the Department of Public Safety and shall be posted within the standard operating procedures manual for the programs. All changes to the schedule of fees must be approved by the Secretary of Public Safety, and such fees not exceed the maximum fine imposed for the offense as set forth in 21 ~~Del. C. §4177~~

4.9 ~~Definition of Alcohol Related Violations And Offenses~~

For purposes of this policy regulation, alcohol related violation/offense shall mean any violation under 21 Del C. that is a violation of, Sections 2740, 2742, 4177, 4177B, 4175 and all conforming statutes of any other state or the District of Columbia, or local ordinances in conformity therewith.

~~14 DE Reg. 907 (03/04/11)~~

5.0 Severability

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulations shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 ~~Del. C. § 10118(e)~~.

7.0 DUI Service Provider Fees (Effective March 11, 2011)

Service	Current Fee
Screening by DERP	\$100.00
Out of State Processing	\$125.00
No Show (DERP)	\$35.00
Administrative Reentry* (DERP)	\$35.00
Education Program	\$250.00
Outpatient Treatment	\$750.00
Urinalysis	\$35.00
Administrative Re Screening**	\$65.00

*This is an administrative fee is for non-complied clients that do not require a new evaluation, but must be re-entered and referred to a program. The client will also be charged this fee at the Provider Agency for administrative costs associated with processing the client referral.

**This is an administrative fee for clients who tamper with their urine specimens to achieve dilute readings, which results in the need for further urine drug testing and further clinical evaluation.

14 DE Reg. 907 (03/01/11)

25 DE Reg. 496 (11/01/21) (Prop.)