



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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The Honorable John Carney  
Governor

John McNeal  
SCPD Director

**MEMORANDUM**

DATE: September 28, 2017

TO: Ms. Leslie W. Ledogar, Regulatory Specialist  
Department of Insurance

FROM: Ms. Jamie Wolfe, Chairperson  
State Council for Persons with Disabilities

RE: 21 DE Reg. 196 [Department of Insurance Arbitration of Health Insurance Disputes Between  
Individuals and Carriers Regulation (9/1/17)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Insurance's proposal to amend its regulations covering the arbitration process which enables covered persons to contest adverse insurer decisions. This proposed regulation was published as 20 DE Reg. 196 in the September 1, 2017 issue of the Register of Regulations.

As background, State-regulated health insurers must participate in a Department of Insurance-sponsored arbitration system consistent with 18 DE Admin Code Part 1315. The proposed amendments are intended to implement H.B. No. 100 which was enacted earlier this year. That legislation authorizes the Attorney General's Office, through employees or contractors, to represent individuals contesting adverse insurer decisions involving substance abuse treatment. The Attorney General's Office issued a second RFQ in August soliciting private attorney applications to provide legal assistance in this context. Issuance of the initial RFQ apparently did not result in viable applications.

The proposed regulation is limited in scope. Apart from some formatting changes, its principal revision is the addition of an explicit authorization for an Attorney General's representative to qualify as an "authorized representative":

In cases involving the existence or scope of private or public coverage for substance abuse treatment, an attorney retained or employed by the Delaware Department of Justice may serve as an authorized

representative, regardless of whether the covered person has been determined by a physician to be incapable of assigning the right or representation. The Department of Justice may be reached by calling 302-577-4206.

Section 2.0.

SCPD has the following observations.

First, although H.B. No. 100 (lines 37-38) and the current RFQ contemplate retention of attorneys to represent individuals in substance abuse insurance disputes, it may be preferable to not categorically limit DOJ assistance to attorneys. For example, non-attorney family members and providers are included in the scope of “authorized representatives” in the current regulation. Non-attorney representation in grievance procedures prior to arbitration is also contemplated by Department of Insurance regulation. See 18 DE Reg. 1301.2.0, definition of “authorized representative”. It would therefore be anomalous to limit DOJ assistance solely to attorneys. The Department could consider inserting the following underlined sentence to the proposed revision to §2.0:

In cases involving the existence or scope of private or public coverage for substance abuse treatment, an attorney retained or employed by the Delaware Department of Justice may serve as an authorized representative, regardless of whether the covered person has been determined by a physician to be incapable of assigning the right of representation. Such attorney may authorize an expert to act on the attorney’s behalf in arbitration proceedings within the scope of this regulation. The Department of Justice may be reached by calling 302-577-4206.<sup>1</sup>

The addition of the sentence would clarify that the DOJ can utilize substance abuse experts to represent covered persons in arbitration proceedings. Cf. §2.0, definition of “provider” which lists several types of experts who could be well qualified to present arbitration cases on behalf of a covered person.

Second, the Department should consider providing a specific DOJ website address (with description of its substance abuse legal assistance program) in addition to a phone number.

Third, H.B. No. 100 can only be effective if covered persons denied substance abuse treatment receive timely and prominent notice of the availability of DOJ assistance. The Department of Insurance is charged with developing the language in such notices (lines 51-53). Unfortunately, this arbitration regulation omits any reference to such notice and does not otherwise inform persons of the availability of such assistance. At a minimum, the Department should consider adding a provision notifying an aggrieved person contesting denial of substance abuse treatment of possible DOJ assistance in §3.14 and §3.5

The SCPD is endorsing the proposed regulation subject to the above recommended revisions.

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<sup>1</sup>H.B. No. 100 (line 24) contemplates the use of “experts” in substance abuse insurance disputes. The term “expert” is not defined and could encompass professionals in the field of addiction who, under attorney supervision, could appear on a covered person’s behalf in arbitration proceedings authorized by 18 DE Admin Code Part 1315.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed regulation.

cc: The Honorable Matthew Denn, Attorney General  
Mr. Jim Martin, Chair-DSAMH Advisory Council  
Ms. Barbara Messick, Chair-DPBHS Advisory Council  
The Honorable Helene Keeley  
The Honorable Margaret Rose Henry  
The Honorable Stephanie Hansen  
The Honorable Anthony Delcollo  
The Honorable Dave Lawson  
The Honorable Michael Mulrooney  
The Honorable Ruth Briggs King  
The Honorable Timothy Dukes  
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Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

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