



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904  
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December 27, 2017

Dr. Jan Lee, Chief Executive Officer  
Delaware Health Information Network (DHIN)  
107 Wolf Creek Blvd., Suite 2  
Dover, DE 19901

**RE: DHIN Proposed Health Care Claims Database Data Access Regulation [21 DE Reg. 463 (December 1, 2017)]**

Dear Dr. Lee:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health Information Network (DHIN) proposal to adopt standards defining "the allowable purposes for access to claims data, the process by which a request for access to claims data will be reviewed and evaluated, and factors that will be considered in granting or denying such requests." At 463. It also delineates the structure and duties of the Health Care Claims Database Committee. Council would like to share the following observations.

First, §2.0. Definitions, could be improved. The predicate describing a defined term varies as follows: "means"; "shall mean"; "refers"; "shall refer"; and "includes". The Delaware Administrative Code Drafting and Style Manual counsels that the predicate should uniformly be "means". See §4.3. The DHIN may wish to edit this section to conform to the Manual.

Second, in §2.0, the definition of "mandatory reporting entity" is generally based on 16 Del.C. §10312(4). However, unlike the statute, the proposed regulation does specifically refer to Medicare Parts C and D while omitting a reference to Medicare Parts A and B. For internal consistency, the DHIN could consider a revision to specifically refer to Medicare Parts A and B.

Third, in §2.0, the definition of "mandatory reporting entity" generally conforms to the enabling statute, 16 Del.C. §10312(4). However, it omits some programs which could logically be included. For example, it omits Division of Public Health programs such as the cancer treatment

program (16 DE Admin Code 4203) which provides medical insurance coverage for cancer treatment. The DHIN may wish to consider whether the regulatory definition could be expanded.

Fourth, §2.0, the definition of “provider” is based on 16 Del.C. §10312. However, the DHIN could consider substituting “designated” for “designed”. It is possible that the statutory reference to “designed group of beneficiaries” was an inadvertent typographical error.

Fifth, as noted above, in §2.0, the definition of “provider” is based on 16 Del.C. §10312. However, the definition may literally exclude the Veterans Administration from participating in the DHIN since it is not “licensed, certified, or authorized under State law”. This may be intended. However, if the V.A. does participate in the DHIN, regulatory clarification and/or a revised definition of provider may be needed.

Sixth, §7.2 lists agencies which will be exempt from fees. It is based on 16 Del.C. §10314(c). Although the entire Department of Health & Social Services (DHSS) is a DHIN partner [16 Del.C. §§10311(c) and 10315(c)], only two divisions are listed as exempt from fees (Division of Medicaid and Medicare Assistance and Division of Public Health). The DHIN could consider, consistent with §7.3, creating a categorical fee exemption for the Division of Substance Abuse and Mental Health (DSAMH), the Division of Developmental Disabilities Services (DDDS), and the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). These agencies could be listed in §7.3.

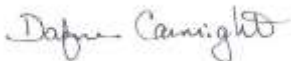
Seventh, §8.0 merits revision. The proposed regulation limits action on DHIN violations to the following: 1) revocation of permission to use data; and 2) civil remedies. In contrast, the statute [16 Del.C. §10307(c)] envisions mandatory reporting to the Attorney General for consideration of criminal action. A reference to the statutory reporting should be included in the regulation. In its discretion, the DHIN could also consider adding the following option:

8.1.3 Issue a referral to a licensing or accreditation body.

See 24 DE Admin Code §1700.17.13 and 24 DE Admin Code §1900.10.4.

Thank you for your consideration of our observations. Please contact me or Wendy Strauss at the GACEC office if you have any questions.

Sincerely,



Dafne A. Carnright  
Chairperson

DAC:kpc

CC: The Honorable Matthew Denn, Attorney General  
The Honorable Kara Odom Walker, Secretary, DHSS