



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904
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November 29, 2021

David Okeke
Community Behavioral Health Bureau
Division of Substance Abuse and Mental Health
1901 North DuPont Highway
New Castle, DE 19720-0906

RE: 25 DE Reg. 500 Division of Substance Abuse and Mental Health (DSAMH) Driving Under the Influence (DUI) Programs Regulation (November 1, 2021)

Dear Mr. Okeke:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Substance Abuse and Mental Health (DSAMH) proposed regulations governing the administration of driving under the influence (DUI) programs. Per legislation passed in 2018 that amended the relevant statute (21 Del. C. § 4177D), authority over DUI programs in Delaware was transferred from the Office of Highway Safety to DSAMH. DSAMH is proposing new regulations governing DUI programs and proposing to repeal the regulations previously promulgated by the Office of Highway Safety, in accordance with that authority. These regulations do not apply to the Court of Common Pleas Driving Under the Influence program, which is separately administered by the Court, however under the law completion of that program is considered equivalent to a program operated under the authority of DSAMH for the purposes of driver's license reinstatement. Council cannot support the proposed regulation because they do not contain a sliding scale or other options for possible waiver of fees for qualifying individuals.

DSAMH has updated the fee schedule most recently set by the Office of Highway Safety in 2011 to reflect current program costs, which has resulted in increases in all base program fees. Council is concerned that the new regulations and fee schedule are not on a sliding scale based on income. The proposed fee schedule also does not allow for any other sort of fee waiver or financial aid, even though the proposed maximum fee for a treatment program is up to \$1000 per person for a 16-hour treatment program and \$1700 per person for a 27-hour program. These fees do not include a separate fee of up to \$150 for screening and referral, and fees of up to \$35 for each urine drug screen performed, which is a required element of treatment plans for participants receiving Level 2 or Level 3 treatment. They also do not include added fees that may be

imposed under the regulations for absences (up to \$50 per absence), late payments (up to \$30 per late payment) and additional fees for other various administrative costs, including program materials. Program fees are separate from any fine imposed as a criminal penalty for a DUI offense, although the statute prohibits DUI programs for charging program fees that are greater than the maximum fine under state law for a related offense. Individuals participating in DUI programs may also incur additional expenses resulting from their DUI offense, including but not limited to the need to pay for alternative transportation while a driver's license is revoked or related increases in car insurance premiums. DSAMH states in the summary of the proposed regulations that while the Division is "supportive" of a sliding scale based on ability to pay, a sliding scale or other option for waiver of fees is not included in the proposed regulations because the agency lacks the financial resources to offset program costs for providers, and also because of the administrative burdens of verifying individual income for purposes of determining financial eligibility."

The maximum program fees under the proposed regulations exceed what many low-income individuals can reasonably pay. In fact, the maximum fees far exceed what many low-income households pay per month for subsidized housing. They also exceed what many individuals with disabilities receive per month in Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits through the Social Security Administration. Imposing fees without any option for a waiver based on the ability to pay essentially shuts certain populations out of participating in required programming or significantly delays their ability to do so, resulting in prolonged periods of ineligibility to drive. Council also notes that individuals with disabilities, particularly if unable to utilize their personal vehicles, may incur additional costs in participating in such programs, or if exacerbation of their disability causes unanticipated absences or inability to complete other program requirements, additional fees could result. One may presume that in some such circumstances an individual with disabilities may have the option to request a reasonable accommodation or reasonable modification of program rules under applicable state or federal law.

Many low-income individuals and families are often dependent on vehicles to access needed services, education or health care, as well as employment, particularly those who live in rural communities or high-poverty urban neighborhoods where access to reliable public transportation is generally more limited. In fact, some research has linked vehicle ownership with the greater economic opportunity for low-income households (see, e.g., the Urban Institute's 2014 report *Driving to Opportunity: Understanding the Links among Transportation Access, Residential Outcomes, and Economic Opportunity for Housing Voucher Recipients*, available at <https://www.urban.org/research/publication/driving-opportunity-understanding-links-among-transportation-access-residential-outcomes-and-economic-opportunity-housing-voucher-recipients>). Inability to restore a driver's license for a prolonged period could have catastrophic financial consequences for these households and could potentially incentivize driving without a license out of desperation to continue to access needed services or sustain income from employment. The public costs of those outcomes could potentially be greater than the costs of administering a sliding scale or other financial support for DUI program costs.

Some states such as Oregon and New Jersey have dedicated funding to support low-income individuals' participation in DUI programs. Notably Oregon's program, under state law, also allows for the funding of "special services required to enable a person with a disability, or a person whose proficiency in the use of English is limited because of the person's national origin, to participate in treatment programs that are used for diversion agreements" regardless of the program participant's income (see Oregon Revised Statute 813.270, available at https://oregon.public.law/statutes/ors_813.270). While establishment of such a program in

Delaware may require a statutory change and/or specific allocation of funds through the state budgeting process, such measures would be worth considering.

Driving under the influence can have devastating consequences, and while it is understandable that for purposes of public safety the State would want to deter individuals by imposing severe penalties and keep certain higher-risk drivers off the road until it has been deemed safe for them to resume driving, the proposed fee framework for this program will in fact make it very difficult for a segment of the population in Delaware to get their licenses back regardless of their willingness to complete program requirements. While the proposed regulations allow for contracted providers to charge less than the maximum fees and would not prevent contracted providers from implementing their own sliding scales for fees, there would be little incentive for them to do so if the contracting entity (DSAMH) is paying a set rate for the provided services and is not offering to help offset costs.

Council notes that the fixed cost of mandatory programs may make it virtually impossible for individuals with low income (e.g., individuals with disabilities, individuals of color) to access the mandatory training. These individuals may also be the most negatively impacted by being barred from operating a motor vehicle until they complete the training owing to their dependence on vehicular transportation as a means to access employment, education and healthcare. Council suggests that DSAMH make allowances for a sliding scale or other options for possible waiver of fees for qualifying individuals.

Thank you for your time and consideration of our observations. Please feel free to contact Pam Weir or me should you have any questions.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc