
Delaware Register of Regulations

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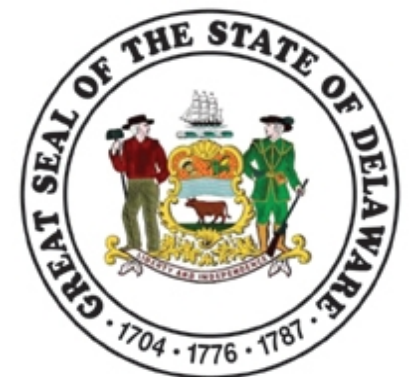


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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before March 15, 2019.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

19 **DE Reg.** 1100 (06/01/16)

Refers to Volume 19, page 1100 of the *Delaware Register* issued on June 1, 2016.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

| ISSUE DATE | CLOSING DATE | CLOSING TIME |
|-------------|--------------|--------------|
| May 1 | April 15 | 4:30 p.m. |
| June 1 | May 15 | 4:30 p.m. |
| July 1 | June 17 | 4:30 p.m. |
| August 1 | July 15 | 4:30 p.m. |
| September 1 | August 15 | 4:30 p.m. |

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The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

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Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

**DEPARTMENT OF AGRICULTURE
PLANT INDUSTRIES SECTION**

Statutory Authority: 3 Delaware Code, Sections 1102, 1103 and 1106 (3 **Del.C.** §§1102, 1103 & 1106)

ORDER

804 Rules and Regulations for Spotted Lanternfly

WHEREAS, the Department of Agriculture (the "Department") has been charged by the Delaware legislature pursuant to 3 **Del.C.** §1102(a) with the power to "adopt reasonable regulations to implement and carry out the purposes of this chapter to eradicate, repress and prevent the spread of plant pests (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State."; and

WHEREAS, the Department published proposed regulations (the "Proposed Regulations") in the February 1, 2019 edition of the *Register of Regulations* to establish for the plant pest, spotted lanternfly, appropriate quarantine restrictions, permitting process, and discovery and suppression measures within the State of Delaware that provided for a public comment period through March 4, 2019; and

WHEREAS, the Secretary finds that adoption of an emergency regulation to eradicate, repress and prevent the spread of the plant pest Spotted Lanternfly (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State must occur on an emergency basis in order to properly protect the agricultural interests of the State from damage resulting from the transport of spotted lanternfly eggs until such time as the Proposed Regulations become effective; and

WHEREAS, the Secretary will accept, consider and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of Plant Industries Section, Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901; and

WHEREAS, in accordance with the provisions of 29 **Del.C.** §10119(3), this Order shall be effective for 120 days from the date of execution and may be renewed once for a period not exceeding 60 days; and

WHEREAS, a copy of this Order will be submitted to the Registrar for publication in the next issue of the Delaware *Register of Regulations*.

NOW, THEREFORE, IT IS ORDERED this 28th day of February, 2019 that the following "Rules and Regulations for Spotted Lanternfly" shall take effect immediately.

SO ORDERED this 28th day of February, 2019.

SECRETARY OF AGRICULTURE

Michael T. Scuse

804 Rules and Regulations for Spotted Lanternfly

1.0 Authority

These regulations are promulgated pursuant to the authority of Sections 1102, 1103 and 1106 of Title 3 of the Delaware Code.

2.0 Purpose

- 2.1 Spotted Lanternfly, *Lycorma delicatula*, is a new pest to the United States and has been detected in Delaware. This is a dangerous insect to forests, ornamental trees, orchards, and grapes and is not native to Delaware or the United States. It is not yet widely prevalent or distributed within or throughout Delaware, but it has been found in numerous locations since its first appearance in Delaware in 2017.
- 2.2 The Spotted Lanternfly has been determined by the Department to be dangerous and destructive to the agriculture, horticulture, and forests of the State of Delaware and is hereby declared a "dangerously injurious plant pest." Therefore, the importation of any living life stage of the Spotted Lanternfly and Regulated Articles that may carry or spread the pest is prohibited except as outlined in this regulation.
- 2.3 These regulations govern the establishment of quarantine restrictions, permitting process, and discovery and suppression of the plant pest, Spotted Lanternfly, within the State of Delaware. The Plant Industries Administrator or designee shall have the authority to administer these regulations and shall be solely responsible for making the determinations required herein. These regulations have been developed to eradicate, repress, and prevent the spread of the plant pest, Spotted Lanternfly, (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State.

3.0 Definitions

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

"Control (of a pest)" means to curb or hold in check and includes, but is not limited to, abatement, containment, eradication, extermination or suppression.

"Dangerously injurious plant pest" means a plant pest that constitutes a significant threat to the agricultural, forest or horticultural interests of this State, or the State's general environmental quality.

"Department" means the State of Delaware Department of Agriculture and includes, but is not limited to, its officers, inspectors, employees, agents, or representatives.

"Designated employee" means the owner, manager, supervisor, or other person with authority to bind the entity and train other employees.

"Designee" means the person designated by the Plant Industries Administrator to act on their behalf.

"Eradicate" means the elimination or removal of a pest from a defined geographic area.

"Living Life Stage" means the entire life stage of the Spotted Lanternfly, including, but not limited to, adults, nymphs, or viable egg mass of Spotted Lanternfly.

"Person" means any individual, family, group, firm, association, business, company, corporation, entity or organization.

"Pest" means any biotic agent that is known to cause damage or harm to agriculture or the environment.

"Plant" means all plant parts, including whole plants, roots, scions, seeds and/or cuttings.

"Plant Pest" means, but is not limited to, any pest of plants, agricultural commodities, crop seed, farm products, horticultural products, nursery stock or noncultivated plants. This includes, but is not limited to, insects, snails, nematodes, fungi, viruses, bacterium, microorganisms, mycoplasma-like organisms, weeds, plants or parasitic higher plants.

"Regulated Articles" means the plant pest Spotted Lanternfly, along with any material or object that may carry or spread the Spotted Lanternfly as provided in subsection 5.1 of these regulations.

"Spotted Lanternfly" means the invasive insect having scientific name *Lycorma delicatula*.

4.0 Quarantine

4.1 A Spotted Lanternfly quarantine is established in order to control the spread of the dangerously injurious insect, the Spotted Lanternfly, a menace to the State's agricultural industries, environment, and residential areas of Delaware, the following Delaware counties and/or zip code areas are hereby quarantined in their entirety:

4.1.1 Following zip code areas in New Castle County: 19702, 19703, 19707, 19711, 19801, 19802, 19803, 19805, 19807, 19809, and 19810.

4.2 The Plant Industries Administrator or designee shall have the authority to designate any nonquarantined area in Delaware as a quarantined area, if the Administrator has reason to believe that the Spotted Lanternfly is present based on positive confirmation of any living life stage of this insect by the Department, or by agents of the USDA APHIS.

4.3 The purpose of this quarantine is as follows:

4.3.1 To establish provisions to control and eradicate the plant pest Spotted Lanternfly.

4.3.2 To establish requirements and parameters under which individuals and persons may move Regulated Articles within and from the areas covered by this quarantine, and any future added areas.

4.3.3 To establish treatment provisions for all properties within the area subject to this quarantine, and any future added areas.

5.0 Regulated Articles and Limitations Imposed

5.1 The plant pest Spotted Lanternfly and its eggs and nymphs can exist on and be spread through conveyance of any object to which it may attach are considered Regulated Articles under these regulations. Regulated Articles may not be moved out of or within the quarantined area except in accordance with Section 6.0 of these regulations. The following list provides examples of Regulated Articles, but is not an all-inclusive list. Any object capable of carrying the plant pest, Spotted Lanternfly, shall be considered to be Regulated Articles under these Regulations:

5.1.1 Any living life stage of the Spotted Lanternfly.

5.1.2 Plants and plant parts: This shall include, but is not limited to, all live or dead trees, nursery stock, budwood, green lumber, firewood, logs, perennial plants, garden plants and produce, stumps, roots, branches, mulch, composted and uncomposted chips, bark, and yard waste.

5.1.3 Outdoor industrial and construction materials and equipment, concrete barriers or structures, stone, quarry material, ornamental stone or concrete, construction, landscaping and remodeling waste.

5.1.4 Packing materials, such as wood crates or boxes.

5.1.5 Outdoor household articles including recreational vehicles, lawn tractors and mowers, mower decks, grills, grill and furniture covers, tarps, mobile homes, tile, stone, deck boards, mobile fire pits, any equipment, trucks or vehicles not stored indoors.

- 5.1.6 Conveyances of any type, whether utilized for movement of the materials previously listed or personal use, and any trailers, wagons or other equipment attached thereto.
- 5.1.7 Any other article, materials or means of conveyance when it is determined by an inspector to present a risk of spread of any life stage of Spotted Lanternfly.

6.0 Requirements for Movement of Regulated Articles Within or From a Quarantined Area

- 6.1 Individuals not conducting business, referred to as general members of the public, are not permitted to move Regulated Articles within or from the quarantine area without a checklist issued by the Department. Regulated Articles include any vehicle or conveyance. The valid signed checklist shall accompany the Regulated Articles. The checklist is available from the Department's website and is to be completed by the individual seeking to move Regulated Articles.
- 6.2 A permit is required for any Person conducting business requiring the movement of any Regulated Articles within or from the quarantine area.
 - 6.2.1 The movement of Regulated Articles without a permit is prohibited. A person conducting business may not move any Regulated Articles within or from the quarantine area without a permit.
 - 6.2.2 Permit Process and Requirements. A Person required to obtain a permit for movement of Regulated Articles within or from the quarantine area shall comply with the following:
 - 6.2.2.1 Designated employees shall take training provided by the Department, University of Delaware Cooperative Extension, reciprocating state programs, or others, who have completed a Train the Trainer course approved by the Department. Designated employees shall have passed an examination, administered by an employee or agent of the Department, demonstrating they have an understanding and knowledge of the pest and of the procedures necessary to prevent the spread of the pest.
 - 6.2.2.2 Upon successful completion of the training and passing the required test, the designated employee shall be responsible for training other employees of that entity and documenting such training. Multiple employees in a business may take the training and examination if the business deems that necessary to build sufficient training capacity within their organization.
 - 6.2.2.3 In conjunction with taking the examination, the designated employee shall record, preserve, maintain and provide to the Department as needed, at a minimum, the following information:
 - 6.2.2.3.1 The name, telephone number, and e-mail address of the designated employee taking the required test.
 - 6.2.2.3.2 The legal name, address, business telephone number, and e-mail address of the business location or locations operating within the quarantine.
 - 6.2.2.3.3 The number of vehicles and conveyances utilized.
 - 6.2.2.3.4 An attestation that the permit holder shall comply with all requirements of this regulation.
 - 6.2.2.4 Any employee responsible for driving any vehicle or conveyance, or handling, shipping, packaging or loading any Regulated Articles shall be trained by a designated employee who has taken the training, and passed the exam.
 - 6.2.2.5 All Regulated Articles, including conveyances and vehicles, shall be inspected and all egg masses and other life stages of the Spotted Lanternfly shall be removed and destroyed prior to movement within or out of the quarantine area. A record of such inspection shall be kept and recorded.
 - 6.2.2.6 Regulated Articles, other than the vehicles and conveyances themselves, shall be packaged and safeguarded sufficiently, such as within a closed container, shrink wrap, tight tarp or similar covering, to maintain isolation from the environment during storage or transportation.
 - 6.2.2.7 Any stage of living life cycle of the insect, Spotted Lanternfly, found during any inspection shall remain within the quarantine area, be placed in a separate area away from other

Regulated Articles, and shall be processed, treated, burned, or buried, in accordance with all federal, state or local laws. Final disposal of Regulated Articles shall be in a manner that does not leave material that may be infected or allow movement of the Spotted Lanternfly.

6.2.2.8 The Department may request in writing, additional information from the permit holder, for the purpose of evaluating the potential risk to the State.

7.0 Issuance of Permit

7.1 Until the Department develops a permitting issuing process, submission to the Department of a valid permit issued by the Pennsylvania Department of Agriculture, or any other State issuing such permit for the Spotted Lanternfly, will be accepted in satisfaction of the elements required in subsection 6.2 above.

7.2 Upon receipt of all required information as outlined in subsection 6.2.2.3 above, and the successful completion of the training and testing requirements of this quarantine, the Department will:

7.2.1 Issue a permit to the person that has successfully completed the testing and training, with sufficient copies to display in each business location and vehicle or conveyance.

7.2.2 Authorize any designated employee compliant with subsection 6.2.2.1, and issued a permit in accordance with the provisions of this quarantine, to train other employees of the business or entity.

7.3 Maintenance of Permit

7.3.1 Permits shall be valid for one year from the date of issuance, with extensions permissible upon notice by the Department. A permit shall be required until such time as the quarantine is rescinded by the Department.

7.3.2 A permit holder shall, prior to or immediately upon a change of information, provide the Department with notice of and describe any change to permit information previously submitted.

7.4 Display of Permit and Certificate

7.4.1 The permit issued to the person, business or other entity shall be displayed in a visible and conspicuous place at each business, entity, or individual location to which it was issued. A permit issued by the Department shall be placed in each vehicle or conveyance when being operated.

7.4.2 Subcontractors and Agents

7.4.2.1 A person required to have a permit shall assure any subcontractor or agent of that person has also obtained the proper permit and training as applicable, prior to subcontracting with that person or allowing that person to act as a subcontractor or an agent, for activity within the quarantine area.

8.0 Other Movement Provisions

8.1 Regulated Articles, including any vehicle or conveyance, may be shipped through the quarantine area if the Regulated Articles and the vehicle and conveyance originates outside the quarantine area and all the following criteria are met:

8.1.1 The points of origin and destination are outside of the quarantine area established by the Department, and are indicated on a waybill accompanying the Regulated Articles.

8.1.2 No point of origin is within an area of the State where the presence of the Spotted Lanternfly has been confirmed by a federal, state, or other regulatory agency.

8.1.3 If moving during the period of April through December, the Regulated Articles are moved into the quarantine area in an enclosed vehicle or conveyance or is completely covered, such as by a tarp or full shrink wrapping, to prevent exposure to the Spotted Lanternfly. The covering must be kept on the Regulated Articles until leaving the quarantine area and thereafter be inspected, decontaminated, or destroyed.

- 8.1.4 The Regulated Articles, including the vehicle and conveyance, are moved directly through the quarantine area without stopping (except for refueling, traffic control devices, or emergency conditions) and has been stored, packed, or handled only at locations outside the quarantine area.
- 8.2 If any other area inside or outside of this State is determined by a federal, state or other regulatory agency to have the Spotted Lanternfly present, movement from that area into the State shall require a permit issued either under the provisions of these regulations, Department approved permitting process or other program carried out by the State of origin.

9.0 Discovery and Suppression of Spotted Lanternfly

In order to prevent the introduction of or to control Spotted Lanternfly, the Department shall seek out this dangerously injurious plant pest within the State, issue orders for control measures it deems necessary, and apply regulatory provisions of Title 3, Chapter 11, §1103 of the Delaware Code.

10.0 Recordkeeping

- 10.1 Documentation of required inspections and compliance measures taken when shipping Regulated Articles, including vehicles and conveyances within or from the quarantine area, shall be kept by each individual, employee or person conducting activity within the quarantine area. These inspection records shall include recording of any living life stage finds and method utilized for destruction of the Spotted Lanternfly.
- 10.2 Documentation shall be kept listing each individual trained as a designated employee as set forth in subsection 6.2.2.
- 10.3 Incoming and outgoing shipment records are to detail the kind and quantity of Regulated Articles shipped, shipper name, date of shipment, source or destination information, and corresponding inspection treatment and mitigation records.
- 10.4 Inspection, treatment and mitigation records, including dates and outcomes, shall be kept in accordance with this section.
- 10.5 Records are to be maintained for a minimum of two (2) years with copies provided to the Department upon request.

11.0 Violations

- 11.1 In accordance with the provision of 3 **Del.C.** §1108, and 3 **Del.C.** §1110, it shall be unlawful to violate or fail to comply with any provisions of these regulations and the person charged with a violation of these regulations shall be assessed a civil penalty, in accordance with 3 **Del.C.** §1110.
- 11.2 Revocation of a Permit: Any permit may be canceled orally or in writing by the Department whenever the Department determines that the holder of the permit has not complied with a provision of these regulations or permit requirements in Sections 6.0 and 7.0. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow.

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**Statutory Authority: 14 Delaware Code, Section 1270 (14 **Del.C.** §1270)14 **DE Admin. Code** 108A**PUBLIC NOTICE****Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 **Del.C.** §1270, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. This regulation is being amended to reflect changes in the appraisal system to align evaluation criterion with the Professional Standards of Educational Leaders (PSEL), adopted by Delaware in 2015.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 6, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulations does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 816RFA 04-01-19.pdf>

**108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised
(Break in Continuity of Sections)**

2.0 Definitions

In this regulation, the following words and terms shall have the following meaning unless the context clearly indicates otherwise:

(Break in Continuity Within Section)

"DPAS II Revised Guides Guide for Administrators" means the ~~manuals~~ manual created by the Department that contain contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that are used to implement the appraisal process. ~~The Department shall create up to four (4) manuals differentiated by administrator role.~~ The DPAS II Revised Guides Guide for Administrators may also be referred to collectively as "Guides" or individually as "Guide."

"DSBA" means the Delaware School Boards Association.

"Goal-Setting Conference" means a meeting that occurs between the administrator and the Credentialed Evaluator at the beginning of the Annual Appraisal Cycle, which typically is in the summer or fall. The meeting shall include but not be limited to establishing goals for the year and discussing areas of support, as described in the DPAS II Revised Guides Guide for Administrators.

(Break in Continuity Within Section)

"Leadership Priorities" means a document for annually recording specific areas of leadership practices where improvement would contribute to overall growth as a leader and to improved student outcomes.

"Mid-Year Conference" means a meeting that occurs between the administrator and the Credentialed Evaluator as part of the Annual Appraisal Cycle, which typically occurs midway through the school

PROPOSED REGULATIONS

year. The meeting shall include but not be limited to discussion of progress toward goals and areas of support, as described in the DPAS II ~~Revised Guides~~ Guide for Administrators.

"**Satisfactory Evaluation**" shall be equivalent to the overall ~~"Highly Effective"~~ "Distinguished" or ~~"Effective"~~ "Accomplished" rating on the Summative Evaluation. An overall rating of "Emerging" may also be deemed a satisfactory evaluation using the discretion of the credentialed evaluator. Discretion shall be based on the length of time in a position, change in assignment, and/or previous ratings.

"**Student Achievement**" means:

(Break in Continuity Within Section)

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other ~~measure~~ measures of student achievement that are rigorous and comparable across classrooms.

(Break in Continuity Within Section)

"**Unsatisfactory Evaluation**" shall be the equivalent to the overall ~~"Needs Improvement"~~ or ~~"Ineffective"~~ "Developing" rating on the Summative Evaluation. An overall rating of "Emerging" may also be deemed an unsatisfactory evaluation using the discretion of the credentialed evaluator. Discretion shall be based on the length of time in a position, change in assignment or previous ratings.

3.0 Annual Appraisal Cycles

All administrators shall receive a yearly appraisal in all five (5) Appraisal Components, including Student Improvement, that includes a minimum of one (1) Goal Setting Conference, one (1) Mid-Year Conference and one (1) Summative Evaluation each year. The Annual Appraisal Cycle shall be led by the administrator's Credentialed Evaluator and may include other supports and opportunities for feedback from his or her Credentialed Evaluator or other Credentialed Evaluators, as outlined in the DPAS II ~~Revised Guides~~ Guide for Administrators.

4.0 DPAS II ~~Revised Guides~~ Guide for Administrators

4.1 All districts and charter schools shall use the manuals entitled DPAS II ~~Revised Guides~~ Guide for Administrators as developed and as may be amended by the Department of Education in collaboration with administrators, which shall include but not be limited to representatives from DSBA and DASA to implement the appraisal system. ~~For any administrator role for which a Guide is not available, Credentialed Evaluators shall use the Appraisal Components in Section 5.0 of this regulation for the purpose of the Annual Appraisal Cycle until such time as a Guide becomes available.~~

4.1.1 The ~~Guides~~ Guide shall contain at a minimum the following:

5.0 Appraisal Components and Appraisal Criteria

5.1 The following five (5) Appraisal Components, including Appraisal Criteria specified for each in the ~~Guides~~ Guide, shall be the basis upon which the performance of an administrator shall be evaluated by his or her ~~the~~ Credentialed Evaluator; ~~Appraisal Criteria for each Appraisal Component, as appropriate, shall be differentiated by administrator role in the DPAS II Revised Guides for Administrators.~~

5.1.1 ~~Vision and Goals: Focuses on the administrator's actions to establish, implement, promote and communicate the vision and goals of the school or district, including the use of data to establish goals aligned to the school or district success plan. The goals and strategies contained within the district or school success plan also align to an administrator's individual goals in Component Five.~~ Component 1: Leadership for Purpose and Improvement: Focuses on the administrator's actions to develop, advocate, and enact systems aligned to the mission, vision, and core values of the school or district, including the alignment to the school or district success plan(s) to promote each student's academic success and well-being.

5.1.2 ~~Teaching and Learning: Focuses on the administrator's actions to implement rigorous curricula, assessments and high-quality instructional practices and to monitor student progress to inform~~

~~instructional practices.~~ Component 2: Leadership for Self and Others: Focuses on the administrator's actions to act ethically and strive for enacting systems that promote the equity of educational opportunities and culturally responsive practices for each student's academic success and well-being.

- 5.1.3 ~~People, Systems and Operations: Focuses on the administrator's actions to create and implement a strategic plan, manage resources and organize time, ensuring alignment with mandated policies and creating a safe, efficient and effective environment in the school or district that supports student learning. Also focuses on the administrator's actions to attract, support, develop, evaluate and retain educators based upon performance indicators.~~ Component 3: Leadership for Student Success: Focuses on the administrator's actions to enact intellectually rigorous and coherent systems of curriculum, instruction, and assessment within an environment that is inclusive, caring, and supporting to promote each student's academic success and well-being.
- 5.1.4 ~~Professional Responsibilities: Focuses on the administrator's personal leadership actions, including building trusting relationships, engaging in self-reflection and ongoing learning, problem solving with a constant focus on student learning, constructively managing change and effectively communicating with and engaging families and other stakeholders.~~ Component 4: Leadership for the Learning Community: Focuses on the administrator's actions to systematically develop the professional capacity of teachers, staff, and personnel, as well as meaningfully engaging families and community members in ways that promote each student's academic success and well-being.
- 5.1.5 Component 5: Student Improvement: Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

6.0 Summative Evaluation Ratings

- 6.1 ~~Each of the five (5) Appraisal Components 1 through 4 shall be assigned a rating of Highly Effective, Effective, Needs Improvement or Ineffective~~ "Distinguished", "Accomplished", "Emerging", or "Developing" on the Summative Evaluation. Component 5: Student Improvement shall be assigned a rating of "Highly Effective", "Effective", "Needs Improvement", or "Ineffective" on the Summative Evaluation. The rating for each of the five (5) Appraisal Components shall reflect the standards as described in the DPAS II Revised Guides Guide for Administrators.
- 6.1.1 Each Component rating shall be equal to an assigned point value. A "Distinguished" or "Highly Effective" Component rating shall earn four (4) points, an "Accomplished" or "Effective" Component rating shall earn three (3) points, a "Emerging" or "Needs Improvement" Component rating shall earn two (2) points, and a "Developing" or "Ineffective" Component rating shall earn one (1) point. No partial points shall be awarded.
- 6.1.2 Once all Component ratings are assigned, a Summative Evaluation rating is determined by the sum of all five (5) Components.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: ~~"Highly Effective", "Effective", "Needs Improvement" or "Ineffective"~~ "Distinguished", "Accomplished", "Emerging", or "Developing".
- 6.2.1 ~~"Highly Effective"~~ "Distinguished" means that the administrator has earned a sum of 19 or 20 Component rating points.
- 6.2.2 ~~"Effective"~~ "Accomplished" means that the administrator has earned a sum of 14 to 18 Component rating points.
- 6.2.3 ~~"Needs Improvement"~~ "Emerging" means that the administrator has earned a sum of 9 to 13 Component rating points.
- 6.2.4 ~~"Ineffective"~~ "Developing" means that the administrator has earned a sum of 5 to 8 Component rating points.

7.0 Pattern of Ineffective Administrative Performance

- 7.1 A pattern of ineffective administrative performance shall be based on the most recent Summative Evaluation ratings of an administrator using the DPAS II process. ~~Two~~ At least two consecutive ratings

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of "~~Ineffective~~" "Developing" or three consecutive ratings that are a combination of "Emerging" and "Developing" shall be deemed as a pattern of ineffective administration administrative performance. The following chart shows the consecutive Summative Evaluation ratings determined to be a pattern of ineffective administrative performance:

| Year 1 | Year 2 | Year 3 |
|-------------------|-------------------|-------------------|
| Ineffective | Ineffective | - |
| Needs Improvement | Needs Improvement | Needs Improvement |
| Needs Improvement | Ineffective | Needs Improvement |
| Needs Improvement | Needs Improvement | Ineffective |
| Ineffective | Needs Improvement | Ineffective |
| Ineffective | Needs Improvement | Needs Improvement |
| Needs Improvement | Ineffective | Ineffective |

8.0 ~~Improvement Plan~~ Supports for Improvement

- 8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of "~~Needs Improvement~~" or "~~Ineffective~~" "Developing" on the Summative Evaluation or a rating of Needs Improvement or Ineffective on any Appraisal Component Five, Student Improvement, in Section 5.0 on the Summative Evaluation regardless of the overall rating.
- 8.1.1 An Improvement Plan may also be developed if an administrator's performance during the Annual Appraisal Cycle is unsatisfactory, as outlined in the DPAS II ~~Revised Guides~~ Guide for Administrators.
- ~~8.28.1.2~~ The Improvement Plan shall be developed cooperatively by the administrator and his or her Credentialed Evaluator. If the plan cannot be cooperatively developed, the administrator's Evaluator shall have the authority and responsibility to determine the plan as specified in subsection 8.1 above.
- ~~8.38.1.3~~ The administrator shall be held accountable for the implementation and completion of the Improvement Plan.
- ~~8.48.1.4~~ Upon completion of the Improvement Plan, the administrator and his or her Credentialed Evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.
- 8.2 Leadership Priorities shall be developed for an administrator who receives an overall rating of "Emerging" on the Summative Evaluation or a rating of "Developing" or "Emerging" in Component 1, Component 2, Component 3, or Component 4. Leadership Priorities shall be completed as outlined in the DPAS II Guide for Administrators.

(Break in Continuity of Sections)

10.0 Evaluator(s) Credentials

(Break in Continuity Within Section)

- 10.2 Evaluator credentials for the utilization of each of the DPAS II ~~Revised Guides~~ Guide are earned upon successful completion of the credentialing assessment ~~for the appropriate Guide~~. Evaluator credentials are valid for five years from the date of issue. Evaluators may seek to renew their credentials within 24 months prior to the expiration date. ~~Credentialing assessment(s) for all Guides shall be established and implemented no later than August 1, 2018.~~
- 10.2.1 Completion of a foundational DPAS II training ~~for the appropriate Guide(s)~~ shall allow evaluators to conduct administrator evaluations until the credentialing assessment is established and implemented ~~for the applicable DPAS II Revised Guide~~ for Administrators.
- 10.2.2 Upon the initial implementation of the credentialing assessment, the Department shall establish a time period during which the assessment will be offered at least three (3) times in order to provide multiple opportunities for an individual to earn the credential. Once available, an administrator shall have the opportunity to take the assessment ~~for each applicable Guide~~ at least three times.

Administrators shall earn their credential during one of those opportunities before continuing their work. If administrators do not earn a credential, they will not be permitted to conduct administrator evaluations ~~in the applicable Guide(s)~~, but, in order to earn their credential, shall have the opportunity to take the assessment again during the next time period that such a credentialing assessment is offered.

~~40.2.3 Thereafter, the Department shall establish a schedule during which each administrator shall have no less than three opportunities to renew a credential, for each applicable Guide, prior to its expiration.~~

11.0 Evaluator Training

- 11.1 Training opportunities shall be offered annually and shall include techniques for observation and conferencing and a review of the DPAS II ~~Revised Guides~~ Guide for Administrators. Activities in which participants practice implementation of DPAS II procedures may be included.
- 11.2 Evaluators shall complete a DPAS II training ~~for the appropriate Guide(s)~~ as developed by the Department of Education upon notice from the Department subsequent to substantive changes to an applicable DPAS-II ~~Revised Guides~~ Guide for Administrators.

(Break in Continuity of Sections)

13.0 Evaluation of Process

The Department of Education shall conduct a biennial evaluation of the administrator appraisal process. The evaluation shall, at a minimum, include a survey of administrators and interviews with a sampling of administrators. Data from the evaluation and proposed changes to DPAS II ~~Revised~~ shall be presented to the State Board of Education for review on a biennial basis.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapter 89 (14 Del.C. Ch. 89)
14 DE Admin. Code 235

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

235 Teacher of the Year Award

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. Chapter 89, the Secretary of Education intends to amend 14 DE Admin. Code 235 Teacher of the Year. This regulation is being amended to clarify the conditions under which these awards will be given, to clarify how Teacher of the Year Award funds may be used by the award recipient, and to comply with the Delaware Administrative Code Style Manual.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 6, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not address equitable education of students.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 821RFA 04-01-19.pdf>

235 Teacher of the Year Award

~~This program shall be administered in accordance with 14 Del.C. Ch. 89, and the following rules and regulations.~~

1.0 Purpose

~~Pursuant to 14 Del.C. Ch. 89, this regulation provides guidance to Delaware public schools, districts and charter schools regarding the qualifications and nomination of candidates for Teacher of the Year.~~

2.0 Definitions

~~The words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:~~

~~**"Department"** means the Delaware Department of Education.~~

~~**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.~~

~~**"Teacher of the Year Award"** means recognition and a monetary award given by either their employing school, district or charter school, or the Department of Education as a way to reward outstanding teachers in the state.~~

“Teacher of the Year Award Fund” means a \$5000 set aside fund within the budget of the Department to be used for the statewide Teacher of the Year Award recipient’s exclusive assignment and disbursement.

4-03.0 Qualifications for a local Teacher of the Year Award

- 3.1 To be considered for the local Teacher of the Year award Award a person shall:
- 4-13.1.1 Have taught, continuously or intermittently, for an accumulative period of three years or more in a Delaware public school previous to the date of such person’s ~~nomination~~; nomination;
 - 4-23.1.2 Have been formally ~~nominated~~; nominated;
 - 4-33.1.3 Be actively teaching in their district or charter school in ~~this state~~ Delaware at the time of their nomination.
- 4.4 Continue to actively teach in the nominating district or charter school for the duration of the school year of their nomination:
- 4.4.1 If the nominee chooses to leave the district or charter school during the selection period the district or charter school shall submit another nominee.
 - 4-53.1.4 Meet all the requirements for a Standard Certificate for the position held and hold a valid and current license, as approved by the Professional Standards Board, the Department of Education and the State Board of Education.

2-04.0 Nominations Nomination Procedure for state Teacher of the Year Award

- 4.1 The following procedure shall apply in ~~preparing nominations in accordance with the requirements of the Act~~; for identifying and nominating candidates for the state Teacher of the Year:
- 2-14.1.1 The Department of Education shall meet annually with the ~~district coordinators of the Teacher of the Year Program~~ appropriate district personnel and the representative for the charter schools for the purpose of providing them with detailed instructions and proper forms for the presentation nomination of nominees. ~~Each district is invited to nominate one teacher employed by the district and the charter schools are invited to select one nominee to represent all of the charter schools candidates for the state Teacher of the Year Award.~~
 - 4.1.2 Each district is invited to nominate one teacher employed by the district who has been chosen as a Teacher of the Year from amongst one of its school buildings.
 - 4.1.3 Charter schools are invited to select one teacher to represent all of the charter schools.
 - 2-1-14.1.4 Nominees for the state Teacher of the Year Award shall be skillful and dedicated teachers; teachers who teach a grade prekindergarten through grade 12. Administrative personnel such as principals and guidance counselors are not eligible to be considered for State Teacher of the Year. Nominees for State Teacher of the Year who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 2.2 below shall be disqualified.
 - 4.1.5 Nominees for State Teacher of the Year Award who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 5.0 below shall be disqualified.
 - 4.1.6 Administrative personnel such as principals and school counselors are not eligible to be considered for the State Teacher of the Year Award.

5.0 Requirements for state Teacher of the Year Award nominees

- 2-2 Nominees shall submit a portfolio describing themselves and setting forth their positions on educational issues. ~~Format will be based on issues in a Department-approved format that is also consistent with~~ the National Teacher of the Year program.

6.0 Evaluation and Selection of the state Teacher of the Year Award Recipient

- 6.1 The following procedure shall occur to evaluate and select the state Teacher of the Year award recipient from amongst all nominated candidates:

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- ~~2-36.1.1~~ Following the submission of the portfolios, selected Department of Education staff members and selected former state and local district Teachers of the Year shall be assigned in pairs to read the portfolios of two nominees and observe those nominees in the classroom based on the criteria stipulated in the Teacher of the Year Program Guide that is updated each year.
- ~~6.1.2~~ Another group of Department of Education Staff staff members shall be assigned to read all of the portfolios and rate them based on forms found in the Teacher of the Year Program Guide. Based on the numerical ratings from both the portfolio readers and from the observations, three nominees shall be identified as finalists for consideration by a panel of judges.
- ~~2-46.1.3~~ The panel of judges shall include: the current State Teacher of the Year; the President of the State Parent Teacher Association; the President of the Future Educators Association; a member of the State Board of Education; a representative of the Chamber of Commerce; the President of the Delaware State Education Association; and the Chair of the Professional Standards Board or, if necessary, their designees.
- ~~2-56.1.4~~ The judges shall recommend one person for the Secretary of Education to declare as the State Teacher of the Year.
- ~~6.1.5~~ The final selection of the state Teacher of the Year Award recipient is made solely at the discretion of the Secretary of Education and the Secretary's decision shall be final.

7.0 Funding and Use of Funds

- ~~7.1~~ The Teacher of the Year Award Fund, in the amount of \$5,000, shall be set aside within the budget of the Department to be used for the statewide Teacher of the Year Award Recipient's exclusive assignment and disbursement.
- ~~7.1.1~~ The Teacher of the Year Award Funds, shall not be used for the personal benefit of the award recipient, but shall be used solely to accomplish educational purposes or objectives for students; however that in the use of such funds for educational purposes, the recipient may be an indirect or incidental beneficiary as teacher of the benefited pupils.
- ~~7.1.1.1~~ In the event all funds for an Award recipient have not been completely expended by the time a subsequent award is granted, the remainder of the former recipient's award shall not revert, but shall remain set aside in the name of the former recipient such time as it is totally expended or the recipient dies or leaves the state.
- ~~7.1.2~~ In order to withdraw funds, the Recipient shall present to the superintendent of the local school district in which the recipient is employed a plan for utilization of the award in order to avoid wasteful duplication of materials or violation of school district policy.
- ~~7.1.3~~ Possible use of funds includes, but is not limited to:
- ~~7.1.3.1~~ Purchase of non-consumable materials and supplies (library books, audio/visual equipment, computer equipment, etc.);
- ~~7.1.3.2~~ Purchase of otherwise consumable materials that are used in the production of a student designed item (artist's paper, canvas, instruments, wood, etc.);
- ~~7.1.3.3~~ Payment for student travel (museum, theatres, historic sites, etc.);
- ~~7.1.3.4~~ Employment of performers or consultants (musical group, author, poet or historian; or
- ~~7.1.3.5~~ Reimbursements to the recipient, not to exceed \$500, for personal expenses.
- ~~7.1.4~~ Materials, equipment or other items purchased with such funds shall be the property of the Delaware public school district in which the recipient is employed at the time of expenditure.
- ~~7.1.5~~ Invoices, purchase orders or personal reimbursement forms related to withdrawals from the Teacher of the Year Award Fund shall be retained by the local school district and shall be available for inspection as public records and subject to regular audit by the State Auditor of Accounts.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(e) and 3460 (14 **Del.C.** §§122(e) & 3460)
14 **DE Admin. Code** 245

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

245 Michael C. Ferguson Achievement Awards Scholarship

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 **Del.C.** §122(e) and Chapter 34 §3460, the Secretary of Education intends to amend 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship. This regulation is being amended to clarify the conditions under which these awards will be given and to align with changes made to the state's accountability system pursuant to the Elementary and Secondary Education Act of 1965 as reauthorized as the Every Student Succeeds Act (ESSA).

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 6, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by clarifying the available funding for this award.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 825RFA 04-01-19.pdf>

245 Michael C. Ferguson Achievement Awards Scholarship

1.0 Purpose

The Michael C. Ferguson Achievement Awards Scholarship Program, included in the Educational Accountability Act of 1998, recognizes students who demonstrate superior performance on the state assessments pursuant to 14 Del.C. §153 (c).

2.0 Definitions

The words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Award" means a scholarship under the Michael C. Ferguson Achievement Awards program, to be used at a post-secondary institution of higher education as specified in 14 Del.C. §153(c).

"Delaware Higher Education Office" or "DHEO" is the Department of Education's office which administers specific programs related to higher education, including, but not limited to, scholarship and loan programs.

"Department" means Delaware Department of Education.

"Direct Educational Expenses" means tuition, room and board, mandatory fees, books and supplies.

"Institution of Higher Education" means a college, university or other post-secondary institution authorized to offer programs and degrees or to confer degrees. For the purpose of this regulation, "post-secondary institutions" and "Institutions of Higher Education" shall have the same meaning.

4.03.0 Basis for Granting Scholarships Awards

~~4.13.1~~ Subject to available funding, the Michael C. Ferguson Achievement Awards shall be made based on the student's score on the ~~results of the annual spring summative administration of the state assessment~~ summative assessments in English language arts and mathematics. The student's score that is used for ~~federal Adequate Yearly Progress (AYP) to determine proficiency in the state accountability system~~ shall be used to determine this award. The ~~Scholarships awards~~ may be awarded to a maximum of 300 eighth grade students in the content areas of reading and mathematics and to a maximum of 300 ~~tenth~~ eleventh grade students in the content areas of reading and mathematics. The high school award year is subject to change based on the year the state high school summative assessment is offered to students.

~~4.23.2~~ The awards shall be provided to the highest scoring eighth and ~~tenth~~ eleventh grade students in the state in reading and mathematics as well as the highest scoring eighth and ~~tenth~~ eleventh grades students in the state in reading and mathematics who participate in the free and reduced lunch program pursuant to the provisions below:

~~4.2.13.2.1~~ The highest scoring eighth and ~~tenth~~ eleventh grade students in the state in reading and in mathematics shall receive the ~~scholarships awards~~.

~~4.2.1.13.2.1.1~~ The eighth grade awards may be given to a maximum of 150 students in the combined areas of reading and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be awarded in the priority order of highest reading score then highest mathematics score.

~~4.2.1.23.2.1.2~~ The ~~tenth~~ eleventh grade awards may be given to a maximum of 150 students in the combined areas of reading and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be allocated in the priority order of highest reading score then highest mathematics score.

~~4.2.23.2.2~~ The highest scoring eighth and ~~tenth~~ eleventh grade students in the state in reading and in mathematics, who participate in the free and reduced lunch program and who are not already

identified as one of the students in ~~section 4.2~~ subsection 3.2 shall receive the ~~scholarships awards~~.

~~4.2.2.43.2.2.1~~ The eighth grade awards may be given to a maximum of 150 students in the combined areas of reading and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be allocated in the priority order of highest reading score then highest mathematics score.

~~4.2.2.23.2.2.2~~ The ~~tenth~~ eleventh grade awards may be given to a maximum of 150 students in the combined areas of reading, writing and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be allocated in the priority order of highest reading score then highest mathematics score.

~~4.33.3~~ A Foreign Exchange student who is on a temporary visa is not eligible to receive the Michael C Ferguson Achievement Award ~~Scholarship~~.

2-04.0 Eligibility for More Than One Scholarship Award

Students may who receive a scholarship an award in ~~more than one content area and may also receive scholarships for their 8th and their 10th grade scores~~ eighth grade will also be eligible for the award in eleventh grade.

3-05.0 Use of Scholarship Award Funds

The Michael C. Ferguson ~~Scholarship~~ Achievement Award can only be used at a regionally or nationally accredited ~~post-secondary institution~~ Institution of Higher Education or at a Delaware or other ~~state approved~~ state-approved private business and trade school in the United States of America and its territories. The award cannot exceed ~~direct educational costs~~ Direct Educational Expenses.

4-06.0 Higher Education (Commission) Office Account and Notification Procedures

~~4.16.1~~ All ~~scholarship~~ awards shall be deposited in an account at the Delaware Higher Education Office in an interest bearing account. Interest earned or forfeited ~~scholarships~~ shall be utilized by the Department of Education and ~~Delaware Higher Education Office~~ DHEO to offset administrative expenses associated with the program.

~~4.26.2~~ Funds deposited for ~~scholarships~~ awards through the Michael C. Ferguson Achievement Awards shall cease to be available to the recipient if the recipient does not attend a ~~post-secondary institution~~ an Institution of Higher Education within five calendar years after graduating from high school. Provided further that a recipient may have one additional year of availability of the funds for each year the recipient serves as an active duty member of the military.

~~4.36.3~~ It is the responsibility of the ~~parent or guardian to notify the Delaware Higher Education Office of any change of address during the scholarship eligibility period~~. Students may receive their ~~scholarship awards even if they are living in another state at the time they attend a post-secondary institution~~ DHEO to publish, on its website, instructions for receiving the award funds and notify high schools of the award winners. Students who move out of state during the Award eligibility period are responsible for monitoring instructions posted online by the DHEO.

~~4.46.4~~ The When funding permits the awards to be given, the Department of Education shall annually announce the winners of Michael C. Ferguson ~~Scholarships~~ Awards.

~~4.56.5~~ The ~~Delaware Higher Education Office~~ shall send a "Request for Information" form to ~~Michael C. Ferguson Scholarship recipients annually to update their account information~~ Students have up to five years after high school graduation to request the award fund, unless they meet the active duty exemption listed in subsection 6.2 above.

~~4.5.16.5.1~~ The ~~Delaware Higher Education Office~~ Awarded students will contact the DHEO when they are ready to request the award funds be sent to their Institution of Higher Education. The DHEO shall send enrollment verification forms to institutions request enrollment verification from the Institution of Higher Education identified by recipients. When completed verification forms are

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received by the ~~Delaware Higher Education Office DHEO~~, disbursement of scholarship award funds will be made to the ~~institution~~ Institution of Higher Education.

~~4.5.26.5.2~~ If a student does not plan to attend a post secondary institution immediately after high school graduation, it is the parent or guardian's responsibility to provide timely notification to the ~~Delaware Higher Education Office~~ prior to enrollment in order to receive payment of the scholarship Awarded funds will be distributed directly to the Institution of Higher Education and can be used for any Direct Educational Expenses.

~~4.5.3~~ Recipients may defer all or a portion of payment of Michael C. Ferguson Scholarships beyond their first post secondary year, but must assume the responsibility to notify the ~~Delaware Higher Education Office~~ of their plans to claim the Scholarship, and may not extend payment beyond the five year limit.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(e) (14 **Del.C.** §122(e))
14 **DE Admin. Code** 247

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 **Del.C.** §122(e), the Secretary of Education intends to amend 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars. This regulation is being amended to clarify the conditions under which these awards will be given.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 6, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOeregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not directly help to ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 828RFA 04-01-19.pdf>

247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars

1.0 Purpose

The Washington Center (TWC) for Internships and Academic Seminars is an independent, nonprofit educational organization founded in 1975. Its mission is to utilize the resources of the nation's ~~capitol~~ capital to provide participatory learning experiences in order to enhance students' academic, civic and professional development. The Washington Center (TWC) seeks to promote future leadership for public, private and nonprofit sectors of our society. The purpose of this regulation is to define the terms and the procedures used for the operation of this internship program.

4-02.0 Definitions:

"Department" means the Delaware Department of ~~Education~~ Education.

"Financial Aid Package" means the identification of all of the costs to the student to participate in the internship program and all sources of funding to meet those costs. Funding sources may include scholarships, grants, tuition waivers, loans, family contributions and contributions from the Student Intern.

"Grant" means funds that are applied against a student's cost of attending The Washington Center (TWC) for Internships and Academic Seminars program. These funds do not have to be reimbursed by the Student Intern.

"Institution of Higher Education" or "Institution" means one of the eligible colleges or universities including, Delaware State University, University of Delaware, Wesley College, Wilmington University, Goldey-Beacom College, Delaware Technical Community College or Delaware College of Art and Design.

"Student Intern(s)" means a matriculated student at a ~~Delaware State University or the University of Delaware~~ Institution of Higher Education who has been selected by his or her respective ~~University~~ Institution to participate in The Washington Center (TWC) for Internships and Academic Seminars program and is placed in a full time internship for one semester at The Washington Center (TWC) for Internships and Academic Seminars.

"University" means the ~~two universities participating in The Washington Center (TWC) for Internships and Academic Seminars program, Delaware State University and the University of Delaware.~~

2-03.0 Division of Funds

Funds appropriated to the Department for the Washington Center (TWC) for Internships and Academic Seminars shall be divided evenly ~~between Delaware State University and the University of Delaware for the purpose of providing Grants to Student Interns at The Washington Center (TWC) for Internships and Academic~~

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~~Seminars across a maximum of ten students per year. The maximum Grant for a Student Intern shall be a one-time grant of \$5,000 per student for one semester, provided further that grant amounts per student may change based on the appropriation made by the General Assembly to fund this program not exceed the maximum cost of program participation and housing for one semester. Grant amounts per student may change based on the appropriation made by the General Assembly to fund this program.~~

3.04.0 Each University Institution of Higher Education shall be responsible for the following:

- ~~3.14.1~~ Identifying a University an Institution of Higher Education liaison to The Washington Center (TWC) for Internships and Academic Seminars;
- ~~3.24.2~~ Establishing a selection process for the applicants;
- ~~3.34.3~~ Identifying all sources of financial aid for the Student Interns; and
- ~~3.44.4~~ Arranging for each Student Intern to receive between 12 and 16 credits for a successful term spent at the Washington Center (TWC) for Internships and Academic Seminars.

4.05.0 Submission of Financial Aid Packages Student Applications

- ~~5.1~~ Each University Institution of Higher Education shall submit Financial Aid Packages for up to eight (8) applicants listed in priority order to the Department's Student Assistance Program in accordance with timelines established by The Washington Center (TWC); provided further that the number of applicants may change based on the appropriation made by the General Assembly to fund this program student applications, which include financial aid packages. The Washington Center shall award the one-time grant equitably to student applicants based on their financial need. Financial need shall be determined based on available institutional aid and access to local housing in proximity to the internship.
- ~~4.1~~ The Department's Student Assistance Program staff shall review the Financial Aid Packages and forward the approved Financial Aid Packages to the appropriate University for their selection of the four Student Interns. The number of Student Interns that may be selected to participate in this internship shall be based on 2.0 and 4.0 of this regulation.
- ~~4.25.2~~ If either University selects fewer than their allotted number of Student Interns for the program, the unused funds at that University shall be made available to the other University in order to provide for additional internships. In the event there are more applications than the maximum ten allowed, the Washington Center shall prioritize students enrolled at Delaware State University and University of Delaware.

5.06.0 Annual Reports Required

The Washington Center (TWC) for Internships and Academic Seminars shall provide annual reports to the Delaware Department of Education on the Student Intern program. Reports will be required in advance of payment.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a)(16) and 122(b)(8) and 8 Delaware Code, Section 125 (14 **Del.C.** §§122(a)(16) & 122(b)(8) & 8 **Del.C.** §125)
14 **DE Admin. Code** 292

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

292 Post Secondary Institutions and Degree Granting Institutions of Higher Education

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to Pursuant to 14 Del.C. §§121(a)(16) and 122(b)(8), and 8 Del.C. §125, the Secretary of Education seeks the approval of the State Board of Education to amend 14 DE Admin. Code 292 Post-Secondary Institutions and Degree Granting Institutions of Higher Education. This regulation is being amended to clarify eligibility and procedural matters for the post-secondary institutions and degree-granting institutions of higher education.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 6, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address student achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will continue to help ensure that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation will continue to help ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendments.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendments are consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

*Please Note:

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 830RFA 04-01-19.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

[292 Post Secondary Institutions and Degree Granting Institutions of Higher Education](#)

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 202(c) (14 Del.C. §§122(b) & 202(c))
14 DE Admin. Code 901

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

901 Education of Homeless Children and Youth

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. §202(c) the Secretary of Education intends to amend 14 DE Admin. Code 901 Education of Homeless Children and Youth. This amendment changes the title of the regulation, provides clarification of the dispute resolution process, and amends the regulation to comply with changes made to the federal Every Student Succeeds Act (ESSA). One clarification was changing the definition of “homeless children and youths”. Prior to ESSA, a student “awaiting foster care” was considered homeless and this is no longer the case. Delaware law was amended through Senate Bill 87 of the 149th General Assembly for compliance with the federal law.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 6, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation’s website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students’ health and safety are adequately protected? The amendments do not address students’ health and safety.
4. Will the amended regulation help to ensure that all students’ legal rights are respected? The amended regulation continues to help ensure that all student’s legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 832RFA 04-01-19.pdf>

901 Education of Homeless Children and Youth Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness

1.0 Purpose

~~Consistent with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.), the intent of this regulation is to ensure the educational rights and protections for children and youth experiencing homelessness. The intent of this regulation is to outline the dispute resolution process for children and youth experiencing homelessness.~~

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:

~~"Awaiting foster care placement" as defined by the provisions of 14 Del.C. §202(c) includes all children in foster care.~~

"Best Interest Meeting" means the convening of certain individuals to determine if the student should remain in the School of Origin or enroll in the School of Residence.

"Charter School" means a school established pursuant to Chapter 5 of Title 14 of the Delaware Code.

"Department" means the Delaware Department of Education.

"Guardian" means a non-parent legally appointed by the court with the powers, rights, and duties which are necessary to protect, manage, and care for a child.

"Homeless Children and Youths" as defined by the provisions of the 42 U.S.C. §11434a(2), means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. §11302(a)(1)); and includes:

- Children and youths who are sharing the housing of other persons due to loss of housing, economic ~~hardship~~ hardship, or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; or are living in emergency or transitional shelters; or are abandoned in hospitals; ~~or are Awaiting foster care placement;~~
- Children and youths who have a primary nighttime residence that is ~~in~~ a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. §11302(a)(2)(C));
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and Migratory children (as such term is defined in section 20 U.S.C. §6399 of ~~Title 20~~, the Elementary and Secondary Education Act of 1965, as amended) who qualify as homeless because the children are living in circumstances described above.

"Inter-Local Education Agency" or "Inter-LEA" means between Local Education Agencies.

"LEA Homeless Liaison" means the Local Educational Liaison for Homeless Children and Youths designated under 42 U.S.C. §11432(g)(1)(J)(ii).

"Local Education Agency" or "LEA" means a reorganized traditional school district, vocational/technical school district, or Charter School, legally constituted and established under Delaware law for either administrative control or direction of public elementary or secondary school(s).

"Local School District" means a reorganized school district or vocational technical school district established pursuant to 14 Del.C., Ch. 10.

PROPOSED REGULATIONS

"Relative Caregiver" means an adult who by blood, marriage or adoption is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, niece, nephew, first cousin or first cousin once removed but who does not have legal custody or legal guardianship of the child.

"School of Origin" means the specific public school building that the student attended when permanently housed, the school in which the student was last enrolled before becoming homeless or the next receiving school the student would attend for all feeder schools.

"School of Residence" means the specific public school building that the student would attend based on where the student is currently residing.

"Secretary" means the Secretary of Education.

"State Coordinator" means the Delaware Coordinator for Education of Homeless Children and Youths designated under 42 U.S.C. §11432(d)(3).

"Unaccompanied Youth" as defined by the provisions of 42 U.S.C. §11434a(6) includes means a homeless child or youth not in the company physical custody of a parent Parent or guardian Guardian.

3.0 Federal Regulations

Local school districts shall comply with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.) and any regulations issued pursuant thereto.

Local School Districts and Charter Schools shall comply with the provisions of the federal McKinney-Vento Homeless Education Assistance Improvement Act 42 U.S.C. §11431 et. seq and federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. §6301 et seq. and any regulations issued pursuant thereto.

4.0 Procedures for the Resolution of Disputes Concerning the Educational Placement of Homeless Children and Youths

- 4.1 ~~If a dispute arises over school selection or enrollment, the local school district must immediately enroll the homeless student in either the school of origin (as defined in 42 U.S.C. 11432(g)(3)(G)) or the school that nonhomeless students who live in the attendance area in which the homeless student is actually living are eligible to attend, whichever is sought by the parent, guardian, Relative Caregiver or homeless youth, pending resolution of the dispute.~~
- 4.24.1 The local school shall provide the parent Parents, guardian Guardians, Relative Caregiver Caregivers or homeless youth Unaccompanied Youth with a written notice of the school's decision regarding school selection or enrollment. The notice shall include:
- 4.2.14.1.1 A written explanation of the school's decision regarding school selection or enrollment;
 - 4.2.24.1.2 Contact information for the LEA Homeless Liaison Liaisons and State Coordinator, with a brief description of their roles;
 - 4.2.34.1.3 A simple, detachable form that parents Parents, guardians Guardians, Relative Caregiver Caregivers or homeless youth Unaccompanied Youth can complete and turn into in to the school to initiate the dispute resolution process;
 - 4.2.44.1.4 Instructions as to how to dispute the school's decision at the district Local School District or Charter School level;
 - 4.2.54.1.5 Notice of the right to enroll immediately in the school of choice pending resolution of the dispute;
 - 4.2.64.1.6 Notice that immediate enrollment includes full participation in all school activities for which the student is eligible;
 - 4.2.74.1.7 Notice of the right to appeal to the State if the district Local School District or Charter School level resolution is not satisfactory; and
 - 4.2.84.1.8 Time lines Timelines for resolving district Local School District or Charter School and State level appeals.

- 4.2 If a dispute arises over school selection or enrollment, the child or youth shall be immediately enrolled in the school in which enrollment is sought by the Parents, Guardians, Relative Caregivers, or Unaccompanied Youth, pending final resolution of the dispute, including all available appeals.
- 4.3 Local School District and Charter School Level Dispute Resolution Process
- 4.3.1 ~~Local school districts~~ School Districts and Charter Schools shall develop a dispute resolution process at the ~~district~~ Local School District or Charter School level. The dispute resolution process shall be as informal and accessible as possible, but shall allow for impartial and complete review. Parents, ~~guardians~~ Guardians, Relative Caregivers and ~~homeless youth~~ Unaccompanied Youth shall be able to initiate the dispute resolution process directly at the school they choose or the ~~school district~~ Local School District or Charter School or LEA Homeless Liaison's office.
- 4.3.2 Within ten (10) business days of the initiation of the ~~district~~ Local School District and Charter School level dispute resolution ~~process;~~ process, the ~~school district~~ Local School District or Charter School shall inform the parties in writing of its determination, along with notice of the right to appeal to the State if the ~~district~~ Local School District or Charter School level resolution is not satisfactory.
- 4.4 ~~Interdistrict~~ Inter-LEA Resolution Process
- 4.4.1 When ~~interdistrict~~ Inter-LEA issues arise, including transportation, representatives from all involved ~~school districts~~ School Districts and Charter Schools, the State Coordinator, or ~~his or her~~ their designee, and the ~~parent(s)~~ Parents, guardian(s) Guardians, Relative Caregivers or ~~unaccompanied youth~~ Unaccompanied Youth shall meet within ten (10) business days of the initiation of the dispute process to attempt to resolve the dispute.
- 4.4.2 The State Coordinator's role is to facilitate the meeting.
- 4.4.3 If the parties are unable to resolve the ~~interdistrict~~ Inter-LEA dispute, it shall be referred to the Secretary or designee within ten (10) business days of the meeting. Subsection ~~4.5.4 through 4.5.9~~ 4.5 shall govern the Secretary's or ~~review official's~~ designee's determination. The Secretary or ~~review official~~ designee shall consider the entire record of the dispute, including any written statements submitted and shall make a determination based on the child's or youth's best interest, as defined in 42 U.S.C. §11432(g)(3).
- 4.4.3.1 Notwithstanding 4.4.3, where the ~~interdistrict~~ Inter-LEA dispute is limited solely to the issue of the apportionment of responsibility and costs for providing the child transportation to and from the school of origin, there shall be no referral to the Secretary. Pursuant to 42 USC 11432 (g)(1)(J)(iii)(II), if the ~~school districts~~ School Districts and Charter Schools are unable to agree upon such a method of appropriation, the responsibility for the costs for transportation shall be shared equally.
- 4.5 State Level Dispute Resolution Process
- 4.5.1 The State level dispute resolution process is available for appeals from ~~district level~~ Local School District and Charter School level decisions and ~~interdistrict~~ Inter-LEA disputes. Appeals may be filed by ~~parents, guardians, homeless youths or school districts~~ Parents, Guardians, Homeless Youth, Local School Districts or Charter Schools. Appeals filed by a local school board within a Local School District shall not be accepted.
- 4.5.2 To initiate the State level dispute resolution process, the appellant must file a written notice of appeal with the Secretary no later than ten (10) business days after receiving written notification of the ~~district~~ Local School District or Charter School level or ~~interdistrict~~ Inter-LEA decision. The notice of appeal shall state with specificity the grounds of the appeal, and shall be signed by the appellant. Where the appeal is being initiated by a ~~school district~~ Local School District or Charter School, the superintendent of the ~~district~~ Local School District or Charter School head of school must sign the notice of appeal.
- 4.5.3 A copy of the notice of appeal shall be delivered by hand or certified mail or electronically to all other parties to the proceeding at the time it is sent to the Secretary. A copy of any other paper or document filed with the Secretary or ~~review official~~ designee shall, at the time of filing, also be provided to all other parties to the proceeding.

PROPOSED REGULATIONS

- 4.5.4 Upon receipt of a notice of appeal, the Secretary or ~~his/her~~ designee, shall within five (5) business days decide whether to hear the appeal or assign it to an independent and impartial review official and shall so advise the parties.
- 4.5.5 The ~~local district~~ Local School District or Charter School shall file a certified record of the ~~district~~ Local School District or Charter School or ~~inter-district~~ Inter-LEA level dispute proceeding with the Secretary or ~~review official~~ designee within five (5) business days of the date the Secretary notifies the parties that an appeal has been filed. The record shall contain any written decision, any written minutes of the meeting(s) at which the disputed action was taken, all exhibits or documentation presented at the ~~district~~ LEA or ~~interdistrict~~ Inter-LEA level dispute proceeding, and any other evidence relied on by the ~~District(s)~~ Local School District or Charter School in making ~~(their)~~ its decision.
- 4.5.6 Appeals are limited to the record. The parties may support their positions in written statements limited to matters in the existing record. In order to be considered, written statements must be filed with the Secretary or ~~review official~~ designee no later than ~~twenty (20)~~ fifteen (15) business days after the appeal is filed.
- 4.5.7 The Secretary or ~~review official~~ shall consider the entire record of the dispute, including any written statements submitted in reaching ~~his or her~~ a decision. The Secretary or ~~review official~~ designee shall overturn the ~~district~~ Local School District or Charter School or ~~interdistrict~~ Inter-LEA decision only if ~~he or she decides~~ it is decided that the ~~district's~~ Local School District or Charter School decision was not supported by substantial evidence or was arbitrary or capacious or is inconsistent with state and federal law or regulation.
- 4.5.8 Within thirty (30) business days of the receipt of the notice of appeal, the Secretary or ~~review official~~ designee shall inform the parties of ~~his or her~~ the appeal determination.
- 4.5.9 The determination of the Secretary or ~~review official~~ designee shall be final and is not subject to further appeal within the Department of ~~Education~~.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 303(a) (14 **Del.C.** §§122(b) & 303(a))
14 **DE Admin. Code** 1008

PUBLIC NOTICE

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

1008 DIAA Junior High and Middle School Interscholastic Athletics

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education, developed the amendments to 14 **DE Admin. Code** 1008. The amendments include adding the definitions of two terms in subsection 1.1; revising the practice and competition dates for the fall, winter, and spring sports seasons in subsection 4.1; adding subsection 5.3, which concerns the process for sanctioning out of season athletic camps and clinics; revising subsection 6.1, which concerns sponsoring out of season athletic camps and clinics; striking open gyms and conditioning programs; and revising subsection 7.6, which concerns coaching out of season.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or

before May 3, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns interscholastic athletics at the junior high and middle school level.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns interscholastic athletics at the junior high and middle school level.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation is intended, in part, to help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to interscholastic athletics at the junior high and middle school level.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of the amended regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with the amended regulation.

*Please Note:

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 836RFA 04-01-19.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

[1008 DIAA Junior High and Middle School Interscholastic Athletics](#)

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 303(a) (14 **Del.C.** §§122(b) & 303(a))
14 **DE Admin. Code** 1009

PUBLIC NOTICE

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

1009 DIAA High School Interscholastic Athletics

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics. The Delaware Interscholastic Athletic Association (“DIAA”), working in consultation and cooperation with the Department of Education, developed the amendments to 14 **DE Admin. Code** 1009. The amendments include adding the definitions of two terms in subsection 1.1; revising the practice and competition dates for the fall, winter, and spring sports seasons in subsection 4.1; adding subsection 5.3, which concerns the process for sanctioning out of season athletic camps and clinics; revising subsection 6.1, which concerns sponsoring out of season athletic camps and clinics; striking open gyms and conditioning programs; and revising subsection 7.6, which concerns coaching out of season.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 3, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOeregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns interscholastic athletics at the high school level.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns interscholastic athletics at the high school level.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation is intended, in part, to help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to interscholastic athletics at the high school level.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with the amended regulation.

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 838RFA 04-01-19.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

1009 DIAA High School Interscholastic Athletics

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1102(4)b.9., 29 Delaware Code, Section 10114, and 31 Delaware Code, Section 512 (16 **Del.C.** §1102(4)b.9., 29 **Del.C.** §10114, & 31 **Del.C.** §512)

16 DE Admin. Code 3320

PUBLIC NOTICE

3320 Intensive Behavioral Support and Educational Residence

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Health Care Quality initiated proceedings to amend the Intensive Behavioral Support and Educational Residence (IBSER) regulations. The Department's proceedings to amend its regulations are initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department will publish its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the April 2019 Delaware *Register of Regulations*. Written comments and suggestions from the public concerning the proposed regulations are to be produced by May 1, 2019, at which time the Department will receive information, factual evidence and public comment to the said proposed changes to the regulations.

Comments can be sent via email to Renee.Purzycki@delaware.gov, or by mail to Renee Purzycki, 3 Mill Road, Suite 308, Wilmington, DE 19806.

SUMMARY OF PROPOSAL

The proposal amends the Division of Health Care Quality' Regulation 3320, IBSER. The regulations are being re-written in their entirety.

Statutory Authority

16 **Del.C.** §1102(4)b.9., "*An intensive behavioral support and educational residence.*"

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 839RFA 04-01-19.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

3320 Intensive Behavioral Support and Educational Residence

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)u.1 (16 **Del.C.** §122(3)u.1)
16 **DE Admin. Code** 4458A

PUBLIC NOTICE

4458A Cottage Food Regulations

Pursuant to 16 **Del.C.** §122(3)(u)(1), Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Cottage Foods. On April 1, 2019, the Division of Public Health plans to publish as "proposed" revised Cottage Food Regulations. The revisions include the introduction of language related to food allergens, clarification of the period of time for which a permit is valid, and other technical corrections.

Copies of the proposed regulations are available for review in the April 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Wednesday, May 1, 2019, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.mozeik@delaware.gov
Phone: (302) 744-4951

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 840RFA 04-01-19.pdf>

4458A Cottage Food Regulations

1.0 General Provisions

(Break in Continuity Within Section)

1.5 Variance

(Break in Continuity Within Section)

1.5.2 The variance is rendered void if:

- 1.5.2.1 Establishment undergoes renovation in the area addressed by the ~~variance.~~ variance.
- 1.5.2.2 Establishment ceases to operate for a period of greater than one ~~year.~~ year.
- 1.5.2.3 There is a change of ownership of the ~~establishment.~~ establishment; or
- 1.5.2.4 The producer relocates to a different establishment.

1.6 Inspections

1.6.1 The Division may conduct one or more preoperational inspections to verify that the cottage food establishment:

- 1.6.1.1 ~~is~~ is constructed and equipped in accordance with the registration ~~application,~~ application;
- 1.6.1.2 ~~has~~ Has established standard operating procedures as ~~specified,~~ specified; and
- 1.6.1.3 ~~is~~ is otherwise in substantial compliance with these Regulations.

2.0 Definitions

(Break in Continuity Within Section)

“Cottage Food Establishment” ~~(CFE)~~ or **“CFE”** refers to facilities/locations where food items are made in a home-style kitchen for sale to and consumption by consumers.

(Break in Continuity Within Section)

“Major Food Allergen” means milk, egg, fish (such as bass, flounder, cod and including crustacean shellfish such as crab, lobster or shrimp), tree nuts (such as almonds, pecans or walnuts), wheat, peanuts and soybeans. This definition includes food ingredients that contain milk, eggs, fish, tree nuts, wheat, peanuts and soybeans.

(Break in Continuity Within Section)

“Temperature Measuring Device” ~~(TMD)~~ or **“TMD”** means a thermometer, thermocouple, thermistor or other device that indicates the temperature of food, air or water.

“Time/Temperature Control for Safety Food (TCS)” or **“TCS”** means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

3.0 Registration

3.1 Fees, Registration and Limitations

3.1.1 Annual registration fees will be in the amount of \$30.00 per CFE.

3.1.2 Registrations shall remain effective only during a year beginning April 1 and ending March 31 or any remaining portion of the year beginning on the date the registration is issued and ending March 31.

~~3.1.2~~ 3.1.3 Limitations

~~3.1.2.1~~ 3.1.3.1 CFE operating under these regulations are limited to gross annual sales of \$25,000 or less.

~~3.1.2.2~~ 3.1.3.2 CFE are only permitted to engage in direct sales with consumers in the State of Delaware.

~~3.1.2.3~~ 3.1.3.3 Online sales are not permitted. Online advertising and marketing are permitted.

~~3.1.2.4~~ 3.1.3.4 Wholesale or other sales to resellers or food establishments are not permitted by a CFE.

~~3.1.2.5~~ 3.1.3.5 A CFE shall only produce those specific food products listed on their registration. This registration shall be displayed at farmers markets, craft fairs, charitable organization or other approved venues/functions where cottage foods are sold.

(Break in Continuity Within Section)

4.0 Cottage Food Establishment Registrant Requirements

4.1 Conditions of the Cottage Food Registration

4.1.1 Upon acceptance of the registration to operate a CFE issued by the Division the registration holder shall:

(Break in Continuity Within Section)

4.1.1.6 Immediately contact the Division to report an illness of an employee who is diagnosed with Norovirus, Salmonella typhi (Typhoid fever), Shigella spp., Shiga toxin-producing E. Coli including 0157:H7, Hepatitis A virus or nontyphoidal ~~salmonella.~~ salmonella;

(Break in Continuity of Sections)

6.0 Producer Requirements

6.1 The producer shall ensure that:

PROPOSED REGULATIONS

6.1.1 Only approved cottage food items shall be made in the registered ~~CFE~~ CFE;

(Break in Continuity Within Section)

6.1.7 Producers or employees are properly cooking TCS ingredients, being particularly careful in cooking those foods known to cause severe foodborne illness and death, and routinely monitor cooking temperatures using appropriate temperature measuring devices properly scaled and ~~calibrated~~ calibrated;

(Break in Continuity Within Section)

6.1.10 Producers and employees are properly trained in food safety, including food allergy awareness, as deemed by the Office of Food Protection; and

7.0 Facility Requirements

7.1 Outdoor Areas

(Break in Continuity Within Section)

7.1.2 Outer Openings, Doors and ~~Windows~~ Windows. All holes and gaps along floors, walls and roof lines shall be filled or closed.

(Break in Continuity Within Section)

7.2 Indoor Areas

7.2.1 Materials that are smooth, durable and easily-cleanable shall be installed in the following areas:

7.2.1.1 Food preparation; and

7.2.1.2 Dry food ~~storage~~ storage.

7.2.2 Carpeting of any kind, shall not be used in the following areas:

7.2.2.1 Food preparation; and

7.2.2.2 Dry food ~~storage~~ storage.

(Break in Continuity Within Section)

7.3 Artificial Interior Lighting

7.3.1 Provide minimum illumination ~~intensities~~ intensities.

7.3.1.1 At least 50 foot candles at a surface where a producer or employee is working with food or working with utensils or equipment such as knives, slicers, grinders or where the producer or employee safety is a factor.

7.4 Animals

7.4.1 No animals/pets shall be permitted in the CFE during the preparation, packaging, or handling of any cottage food products. ~~Poisonous and Toxic Materials~~.

7.5 Poisonous and Toxic Materials

7.5.1 Toxic substances shall be stored so they cannot contaminate food preparation or cooking equipment in home- style kitchen ~~areas~~ areas.

(Break in Continuity Within Section)

8.0 Product Requirements

(Break in Continuity Within Section)

8.2 Labeling

(Break in Continuity Within Section)

8.2.3 Labels shall include the name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient.

~~8.2.38.2.4~~ 8.2.4 Labels shall include the following ~~statement~~ statement: "This food is made in a Cottage Food Establishment and is NOT subject to routine Government Food Safety Inspections".

~~8.2.48.2.5~~ 8.2.5 Labels shall be printed in at least 10-point type in a color that provides a clear contrast to the background label.

~~8.2.58.2.6~~ Additional information as required by the Division must be made available for review upon request from the consumer.

(Break in Continuity Within Section)

8.4 Recall Plan

8.4.1 The CFE shall ~~shall~~ shall:

(Break in Continuity Within Section)

9.0 Compliance and Enforcement Procedures

9.1 A person may not operate a CFE without a valid registration to operate issued by the ~~Division~~ Division.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

4458A Cottage Food Regulations

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 3343 and 3571U, and 81 Del. Laws, c. 406, Section 4) (18 **Del.C.** §§311, 3343 and 3571U & 81 Del. Laws, c. 406, §4)

PUBLIC NOTICE

1410 Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug And Alcohol Dependency

A. Type of Regulatory Action Required

Proposed New Regulation

B. Synopsis of the Subject Matter of the Regulation

1. Mental health and substance abuse coverage in Delaware

Sections 3343 and 3578 of the Delaware Insurance Code, 18 **Del.C.** §§3343 and 3578, govern insurance coverage for serious mental illness, including drug and alcohol dependency disorders under individual and group and blanket health insurance plans, respectively. These sections provide, in relevant part, that:

- All health benefit plans offered in Delaware must include coverage for serious mental illnesses and drug and alcohol dependencies (see 18 **Del.C.** §§3343(b)(1)a and 3578(b)).
- Coverage for serious mental illnesses and drug and alcohol dependencies must include:
 - (1) Inpatient coverage for the diagnosis and treatment of drug and alcohol dependencies; and
 - (2) Unlimited medically necessary treatment for drug and alcohol dependencies as required by the Mental Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a) (MHPAEA), and determined by the use of the full set of American Society of Addiction Medicine (ASAM) criteria, in treatment provided in residential setting, intensive outpatient programs, and inpatient withdrawal management (see 18 **Del.C.** §§3343(b)(1)a1-2 and 3578(b)(1)a1-2);
- Subject to other provisions of the law, a carrier is prohibited from issuing any health benefit plan containing terms that “place a greater financial burden on an insured for covered services provided in the diagnosis and treatment of a serious mental illness and drug and alcohol dependency than for covered services provided in the diagnosis and treatment of any other illness or disease covered by the health benefit plan” (see 18 **Del.C.** §§3343(b)(1)b and 3578(b)(1)b); and
- A health benefit plan that provides coverage for prescription drugs must, in pertinent part, provide coverage for the treatment of serious mental illnesses and drug and alcohol dependencies that includes immediate access, without prior authorization, to a 5-day emergency supply of prescribed medications covered under the health benefit plan for the medically necessary treatment of serious mental illnesses

and drug and alcohol dependencies where an emergency medical condition exists, including a prescribed drug or medication associated with the management of opioid withdrawal or stabilization, except where otherwise prohibited by law (see 18 **Del.C.** §§3343(b)(2)a and 3578(b)(2)a).

2. New Delaware statutory reporting requirements

Senate Bill No. 230 as amended by Senate Amendment No. 1 (SB 230/SA1) became effective on September 1, 2018. See Del. S.B. 230/Del. S.A. 1, 149th Gen. Assem. § 1 (2018). Carriers are now required to submit a report to the Delaware Health Information Network, Inc., in conjunction with the Delaware Department of Insurance (the Department) on or before July 1, 2019, and “every year thereafter in which the carrier makes significant changes to how it designs and applies its medical management protocols.” *Id.*

In the report, the carrier must:

- Describe how the carrier designs and applies its medical management protocols (see 18 **Del.C.** §§3343(g)(1) and 3571U(1));
- Within each classification of benefits, describe all non-quantitative treatment limitations (NQTLs) (for example, preauthorization requirements, first-fail requirements) that are applied to mental health treatment and treatment for substance abuse disorders (MH/SUD) benefits, and to all medical and surgical (M/S) benefits (this subsection also specifically prohibits the use of an NQTL that applies to a MH/SUD benefit that does not also apply to a M/S benefit) (see 18 **Del.C.** §§3343(g)(2) and 3571U(2));
- Describe how the medical management protocols and the NQTLs that are applied to each MH/SUD benefit are applied on parity with the corresponding M/S benefit within the corresponding classification of benefits (the Parity Analysis) (see 18 **Del.C.** §§ 3343(g)(3) and 3571U(3)). The five parts of the Parity Analysis include:
 1. Identifying the factors used to determine that an NQTL will apply to a benefit, including factors that were considered but rejected;
 2. Identifying and defining the specific evidentiary standards used to define the factors and any other evidence relied upon in designing each NQTL;
 3. Providing the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to design each NQTL, as written, for mental illness and drug and alcohol dependencies benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, for medical and surgical benefits;
 4. Providing the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to apply each NQTL, in operation, for mental illness and drug and alcohol dependencies benefits are comparable to, and applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits; and
 5. Disclosing the specific findings and conclusions reached by the carrier that the results of the analyses made in the four steps above indicate that the carrier is in compliance with Sections 3343 and 3571U and the Mental Health Parity and Addiction Equity Act of 2008 and its implementing regulations, which includes 45 CFR 146.136, 45 CFR 147.160, and any other related federal regulations found in the Code of Federal Regulations.

Section 3 of SB 230/SA1 amended Section 25 of Title 31 to now require identical reporting requirements for coverage for serious mental illness and drug and alcohol dependency for recipients of aid under the Federal Medicaid assistance program, which is administered through Delaware’s Department of Health and Social Services.

At Section 4 of SB 230/SA1, the General Assembly charged the Department with adopting regulations regarding the format and submission timing of the reports required under Sections 1 through 3 of SB 230/SA1.

3. Federal Parity Reporting Requirements

As mentioned above, the Parity Analysis required under new Title 18 Delaware Code Sections 3343(g) and 3571U includes a five factor test, the fifth of which involves the parity analysis required under the federal

MHPAEA, 42 U.S.C. 300gg-26, and its implementing regulations, 45 CFR 146.136 and 45 CFR 147.160.

Like 18 **Del.C.** §§3343 and 3571U, the MHPAEA and its implementing regulations require that any financial requirement such as copayments, deductibles, coinsurance, or out-of-pocket maximums, or quantitative treatment limitations such as day or visit limits, imposed on MH/SUD benefits be no more restrictive than the predominant financial requirement or treatment limitation of that type that applies to substantially all M/S benefits, on a classification-by-classification basis.

Both the Delaware Code at 18 **Del.C.** §§3343 and 3571U and the MHPAEA regulations prohibit imposing an NQTL with respect to MH/SUD benefits in any classification. However, the prohibition against imposing an NQTL does not apply if, pursuant to the terms of the plan as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefits in the classification are comparable to, and are applied no more stringently than the processes, strategies, evidentiary standards, or other factors used in applying the limitation to M/S benefits in the same classification.

Neither Delaware law nor MHPAEA applies to excepted benefit plans or to short-term limited duration insurance.

4. Enforcement of mental health parity requirements

Federal law relies on state insurance regulators as the first-line enforcers of health reform provisions in the individual, small group, and large group insurance markets. State Departments of Insurance investigate the conduct of insurers in the marketplace by conducting Market Conduct Examinations.

On December 19, 2018, the Market Conduct Examination Standards (D) Working Group of the National Association of Insurance Commissioners (NAIC) adopted revisions to its model *Market Regulation Handbook* that include a general guidance document addressing mental health parity review. The revisions include a series of questions to be posed to health insurance carriers by insurance department examiners, and a regulator data collection tool for mental health parity analysis.

Drafts of the two documents, which “were developed with the assistance of regulator subject matter experts in mental health parity review,” were circulated to the Working Group for review on July 9, 2018 and were discussed during the Group’s monthly conference calls thereafter. See Market Conduct Examination Standards (D) Working Group Conference Call minutes (November 29, 2018), available for download at https://www.naic.org/documents/cmte_d_market_conduct_exam_standards_181219_materials.pdf?79.

The NAIC anticipates that the development of state market conduct compliance tools for MHPAEA “will result in enhanced state collaboration, to provide more consistent interpretation and review of parity standards.” See of NAIC Market Conduct Examination Standards (D) Working Group Conference Call minutes (May 10, 2018), available for download at https://www.naic.org/documents/cmte_d_market_conduct_exam_standards_180725_materials.pdf

5. Proposed new Regulation 1410

To the extent that the NAIC has adopted a model enforcement mechanism concerning mental health parity reporting which is designed to standardized data requests on this issue, insurers are on notice of the data that they will likely be required to provide during a market conduct examination that includes a review of the carrier’s administration of its mental health and substance abuse coverage benefits.

The Department believes that it is important to synchronize the data reporting that is required under SB230/SA1, the data reporting under MHPAEA’s implementing regulations and the data reporting that will likely be required under a Market Conduct Examination. Accordingly, the Department is proposing to satisfy the SB230/SA1 requirement for regulations by codifying the NAIC model state market conduct compliance tools for MHPAEA as new 18 **DE Admin. Code** 1410, entitled “Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug and Alcohol Dependency.”

The proposed new regulation appears below and may also be viewed at the Department’s website at <http://insurance.delaware.gov/information/proposedregs/>. The Department does not intend to hold a public meeting regarding these proposed new regulations.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation by email to leslie.ledogar@delaware.gov or by mailing to:

Delaware Department of Insurance

Attn.: Leslie W. Ledogar, Esq., Regulatory Specialist

Docket No. 4042-2019
841 Silver Lake Boulevard
Dover, DE 19904

Any written or emailed submission in response to this notice and relevant to the proposed new regulation must be received by the Department no later than 4:30 p.m. on the 1st day, May, 2019.

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 843RFA 04-01-19.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

[1410 Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug And Alcohol Dependency](#)

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 3403 (18 Del.C. §§311 & 3403)
18 DE Admin. Code 1501

PUBLIC NOTICE

1501 Medicare Supplement Insurance Minimum Standards

A. Type of Regulatory Action Required

Amendments to an existing regulation.

B. Synopsis of Subject Matter of the Regulation

Regulation 1501 sets forth the minimum standards for Medicare Supplement Insurance in Delaware. It implements Chapter 34 of Title 18, Medicare Supplement Insurance Minimum Standards.

States that wish to retain regulatory authority over Medicare Supplement products offered for sale in their state must implement any changes to federal laws impacting Medicare Supplement policies. Failure to implement the current laws could result in a state losing regulatory authority over these products; authority to regulate these products would revert back to the Federal Government.

The Insurance Code at 18 Del.C. §3403(e) provides in relevant part, "The Commissioner may adopt from time to time, such reasonable regulations as are necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations promulgated thereunder . . ." Accordingly, the Department of Insurance has the statutory authority to adopt amendments to Regulation 1501 to comport with any changes to federal laws that impact Medicare Supplement policies.

A. Description of changes to federal laws impacting Medicare Supplement policies

On April 16, 2015, Congress adopted the Medicare Access and CHIP Reauthorization Act (MACRA). Section 401 of MACRA prohibits the sale of Medigap policies that cover Part B deductibles to "newly eligible" Medicare beneficiaries. For 2019, the Medicare Part B deductible is \$185.

Insurers selling such policies to "newly eligible" Medicare beneficiaries on or after January 1, 2020 are subject to fines, and/or imprisonment of not more than five years, and/or civil monetary penalties of not more than \$25,000 for each prohibited act. For "newly eligible" persons, references in the law to Medigap plans C and F are deemed as references to plans D and G.

1. What "newly eligible" means.

“Newly eligible” Medicare beneficiaries are defined as those individuals who: (a) have attained age 65 on or after January 1, 2020; or (b) first become eligible for Medicare due to age, disability or end-stage renal disease, on or after January 1, 2020.

To be considered a “newly eligible Medicare beneficiary” who is ineligible to purchase a Plan C or F, an individual must BOTH have turned 65 on or after January 1, 2020, AND first become Medicare eligible on or after that date. If an individual becomes Medicare eligible before January 1, 2020 based on disability or end-stage renal disease status, OR turns 65 before January 1, 2020, whether eligible for Medicare on that date or not, they would be eligible to buy a Plan C or F when they are entitled to Medicare Part A and enrolled in Part B.

The Centers for Medicare Services provides the following example of “newly eligible”:

Question: I turn 65 in November 2019 and am eligible for Medicare. If I’m still working and covered by my employer-group employee medical plan, there might not be any reason for me to enroll in Part B during my birthday month. If I elect not to enroll, and end up enrolling when I retire sometime after January 1, 2020, would I be viewed as a “newly eligible” Medicare beneficiary and as a result would not be able to by C or F?

Answer: You are NOT considered “newly eligible” because you turned age 65 before January 1, 2020; and although you must enroll in Part B to purchase Medigap and that would occur after January 1, 2020, you could purchase C or F because you turned age 65 before January 1, 2020.

Current enrollees (those eligible for Medicare PRIOR to January 1, 2020) are not affected. Current enrollees can continue with their Plan C or Plan F, including F High Deductible plan, and may continue to buy Plans C or F beyond January 1, 2020.

2. Discussion of the substance of the amendments

The MACRA amendments achieve efforts to eliminate Medigap “first dollar coverage” (coverage of all claims without paying any out of pocket cost) by discontinuing sale of Plan C and Plan F to “newly eligible” Medicare Beneficiaries. The Federal Government wanted to eliminate coverage for the Part B deductible by making consumers responsible for that first dollar coverage. The only difference between Plans C and F and Plans D and G is the coverage of the Part B deductible under Plans C and F. All other benefits are exactly the same for D and G.

MACRA did not change federal law regarding the offer of Plans C or F for individuals who are Medicare eligible before January 1, 2020. Section 1882(o)(5) of the Social Security Act provides that if an issuer offers a plan other than the core benefits, that the issuer must also offer Plans C or F.

Since two of the current guaranteed issue plans, Plans C and F, will no longer be available for “newly eligible” Medicare beneficiaries on or after January 1, 2020, Plans D and G will become two of the guaranteed issue plans for these individuals. Enrollees who became eligible for Medicare prior to January 1, 2020 can remain with or buy Plans C or F and individuals who do not fall within the definition of “newly eligible” Medicare beneficiary will still be able to purchase Plans C or F.

Insurers can continue to sell Plans C or F to Medicare beneficiaries who became eligible for Medicare prior to January 1, 2020. However, “newly eligible” Medicare beneficiaries cannot apply for or be sold Plan C or F. Instead, the “newly eligible” individuals could be offered Plans D or G on a guaranteed issue basis. All other currently available plans may continue to be offered to all Medicare beneficiaries, regardless of their date of eligibility for Medicare.

The phase out of Medigap Plans C & F for the “newly eligible” on or after January 1, 2020 does not apply to employer group coverage. In defining a “Medigap” policy under federal law, Section 1882(g)(1) of the Social Security Act excludes “any such policy or plan of one or more employers or labor organizations” Only employer-sponsored “Medigap” is excluded, but an association group like AARP is not because it is not employer-sponsored.

Since Plans C and F will no longer be available for “newly eligible” beneficiaries, it was necessary to designate Plans C and F as Plans D and G for these individuals.

Since Plan F High Deductible cannot be sold to those “newly eligible” Medicare beneficiaries, a new Plan G High Deductible is created for those “newly eligible” Medicare beneficiaries as of January 1, 2020. The effective date of coverage for Plan G High Deductible must be on or after January, 1 2020. A beneficiary not “newly eligible”

and enrolled in a Plan F High Deductible prior to January 1, 2020 is able to continue this coverage beyond January 1, 2020 and to purchase this coverage on or after January 1, 2020.

Those eligible for Medicare prior to January 1, 2020 and “newly eligible” beneficiaries can buy Plan G High Deductible in 2019, but coverage for a newly eligible Medicare beneficiary cannot begin before January 1, 2020. For Plan G High Deductible, while the Part B deductible is not covered (reimbursed), it does count towards the High Deductible plan's deductible. If, in the rare circumstance, the Plan G's High Deductible is met with all Part A expenses and Part B Deductible expenses are then incurred, these expenses will not be covered expenses until the beneficiary meets the Medicare Part B deductible.

B. Development of amendments to the NAIC Model Regulation

The National Association of Insurance Commissioners (NAIC) Senior Issues Task Force Medigap Subgroup revised the *Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act* (#651) to develop MACRA-related amendments and plan charts. The Senior Issues (B) Task Force adopted the model changes on April 3, 2016. The Health Insurance and Managed Care (B) Committee adopted the model changes on April 4, 2016.

The NAIC Ex/Plenary adopted the model changes on August 29, 2016. The model was sent to the Centers for Medicare & Medicaid Services (CMS) for review and publication as amending the federal minimum standards. The NAIC sent the approved Model to the federal Centers for Medicare & Medicaid Services (CMS) on October 14, 2016 for publication of a notice in the Federal Register recognizing the NAIC revisions to the federal minimum standard. CMS published that notice in the Federal Register on September 1, 2017.

The NAIC Medigap Model Regulation is now the federal minimum standard. States must timely adopt the changes necessary to implement MACRA to be effective January 1, 2020.

The NAIC Model Regulation – also a federal minimum standard - provides at Section 9.1.A(2) that an issuer shall make available the core benefits and, if any other plans, either C or F.

C. Description of proposed amendments to Regulation 1501

The purpose of adding the last sentence to Section 11.5.7 is to clarify and make consistent that the mandate by MACRA to re-designate Medicare Supplement Plan F as Medicare Supplement Plan G also includes Medicare Supplement Plan F With High Deductible to be re-designated as Medicare Supplement Plan G With High Deductible.

The purpose of adding new Section 12 is to comply with the mandate of MACRA to prohibit the sale of Medigap policies that cover Part B deductibles to “newly eligible” Medicare beneficiaries defined as those individuals who become eligible for Medicare due to age, disability or end-stage renal disease, on or after January 1, 2020.

Plan F charts are also updated, and a new chart for Plan G is added for plans in effect on or after January 1, 2020.

The Department is also taking this opportunity to update style and correct erroneous cross-references as necessary.

D. Notice and Public Comment

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 1501. The regulation with proposed amendments appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 1st day, May, 2019. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
ATTN: Docket 4043-2019

841 Silver Lake Blvd.
Dover, 19904
(302) 674-7379
Email: Leslie.Ledogar@delaware.gov

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/april2019/proposed/22 DE Reg 846RFA 04-01-19.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

[1501 Medicare Supplement Insurance Minimum Standards](#)

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **Bracketed Bold language**] indicates text added at the time the final order was issued. ~~Bracketed bold stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DEPARTMENT OF AGRICULTURE
PLANT INDUSTRIES SECTION

Statutory Authority: 3 Delaware Code, Sections 1102, 1103 and 1106 (3 **Del.C.** §§1102, 1103 & 1106)

ORDER

804 Rules and Regulations for Spotted Lanternfly

Date: March 15, 2019

Adoption of Rules and Regulations for Spotted Lanternfly by the Department of Agriculture

The Department of Agriculture ("Department") issues this Order to take effect ten (10) days after the publication of this Order in the Delaware *Register of Regulations*:

1. Pursuant to its statutory authority (3 **Del.C.** §§ 1102, 1103 and 1106), the Department proposed for adoption Rules and Regulations for Spotted Lanternfly at 3 **DE Admin. Code** 804. The purpose of the amended regulations is to establish for the plant pest, spotted lanternfly, appropriate quarantine restrictions, permitting process, and discovery and suppression measures within the State of Delaware. Other regulations issued by the Department of Agriculture are not affected by this Order.

2. A copy of the proposed regulations was published in the February 1, 2019 edition of the Delaware *Register of Regulations* and has been available for inspection in the office of the Department at 2320 South DuPont Highway, Dover, Delaware 19901 during regular office hours.

3. The Department did not receive any written comments on the proposed regulations during the 30 day period following publication of the proposed regulations on February 1, 2019.

4. THEREFORE, IT IS ORDERED, that the proposed regulations are adopted and shall become effective April 11, 2019, after publication of the final regulation in the April 1, 2019 edition of the Delaware *Register of Regulations*.

Department of Agriculture

Secretary Michael T. Scuse

*Please note that no changes were made to the regulation as originally proposed and published in the February 2019 issue of the *Register* at page 650 (22 DE Reg. 650). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[804 Rules and Regulations for Spotted Lanternfly](#)

DEPARTMENT OF FINANCE

OFFICE OF UNCLAIMED PROPERTY, STATE ESCHEATOR

Statutory Authority: 12 Delaware Code, Section 1132 and 29 Delaware Code, Section 10113(b)(1) (12 **Del.C.** §1132 & 29 **Del.C.** §10113(b)(1))
12 **DE Admin. Code** 104

ORDER

104 Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual

SUMMARY OF REGULATION

This regulation amends the existing regulation by making non-substantive changes to the description of agency organization, operations and procedures for obtaining information.

STATUTORY AUTHORITY

12 Delaware Code, Section 1132: "...[T]he State Escheator may make such rules and regulations as the State Escheator may deem necessary to administer and enforce this chapter."

29 Delaware Code, Section 10113(b)(1) exempts regulations from the procedural requirements of Chapter 101 if the changes are "[d]escriptions of agency organization, operations and procedures for obtaining information."

PROCEDURAL HISTORY AND FINDINGS OF FACT

The Department of Finance, acting through the State Escheator, adopted Regulation 104, *Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual* effective October 11, 2017. That Regulation contained contact information for the Office of Unclaimed Property which has since changed.

THEREFORE IT IS ORDERED, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revisions to 12 **DE Admin. Code** 104: *Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual*, be adopted and promulgated as follows, to wit:

1. Subsection 1.1 Contact Information for Holders shall be modified by removing the email address, "escheat.holderquestions@state.de.us" and replacing it with "escheat.holderquestions@delaware.gov."
2. Subsection 1.1 Contact Information for Holders shall be modified by removing the website address, "<http://revenue.delaware.gov/unclaimedproperty.shtml>," and replacing it with "<https://unclaimedproperty.delaware.gov>."
3. Subsection 1.2 Contact Information for Owners and Claims shall be modified by removing the email address, "escheat.claimquestions@state.de.us," and replacing it with "escheat.claimsquestions@delaware.gov."

4. Subsection 1.2 Contact Information for Owners and Claims shall be modified by removing the website address, ["http://revenue.delaware.gov/unclaimedproperty.shtml,"](http://revenue.delaware.gov/unclaimedproperty.shtml) and replacing it with ["https://unclaimedproperty.delaware.gov."](https://unclaimedproperty.delaware.gov)

The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Brenda M. Mayrack, State Escheator
Department of Finance

104 Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual

Introduction

On February 2, 2017, the Governor of Delaware signed into law Senate Bill 13 of the 149th General Assembly, which revised and updated the Delaware Abandoned or Unclaimed Property Law. On June 29, 2017, the Governor signed into law Senate Substitute 1 for Senate Bill 79, which further updated the Delaware Abandoned or Unclaimed Property Law and clarified portions of Senate Bill 13.

Section 1176(b) states as follows:

The Secretary of Finance, in consultation with the Secretary of State, shall, on or before December 1, 2017, adopt regulations regarding the method of estimation to create consistency in any examination or voluntary disclosure. These regulations must include permissible base periods, items to be excluded from the estimation calculation, aging criteria for outstanding and voided checks, and the definition of what constitutes complete and researchable records.

Statutory Authority

12 Del.C. §1132 Rule-making.

Except as provided in §§1167, 1173(a), and 1176(b) of this title, the State Escheator may make such rules and regulations as the State Escheator may deem necessary to administer and enforce this chapter.

These Regulations replace the following existing provisions in the Delaware Administrative Code:

12 **DE Admin. Code** 100, *Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager*

12 **DE Admin. Code** 101, *Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property*

12 **DE Admin. Code** 102, *Regulation on Practices and Procedures for Records Examinations by the State Escheator*

12 **DE Admin. Code** 103, *Abandoned or Unclaimed Property Examination Guidelines*

These Regulations replace the following existing Regulations:

Abandoned or Unclaimed Property Voluntary Disclosure Agreement and Audit Program, 9 DE Reg. 771 (11/01/05).

Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program, 10 DE Reg. 699 (10/01/06) (Final).

Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager, 15 DE Reg. 1323 (03/01/12) (Final).

Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property, 15 DE Reg. 1330 (03/01/12).

Regulation on Practices and Procedures for Records Examinations by the State Escheator, 16 DE Reg. 530 (11/01/12) (Final).

Abandoned or Unclaimed Property Audit Examination Guidelines, 16 DE Reg. 630 (12/01/12) (Final).

Regulations

1.0 General Information

1.1 Contact Information for Holders

Mailing Address: Delaware Department of Finance
Office of Unclaimed Property
8th Floor
820 North French Street
Wilmington, DE 19801

Phone Number 302-577-8782

Fax Number: 302-577-7179

E-mail: -escheat.holderquestions@state.de.us escheat.holderquestions@delaware.gov

Website: <http://revenue.delaware.gov/unclaimedproperty.shtml>

<https://unclaimedproperty.delaware.gov>

1.2 Contact Information for Owners and Claims

Mailing Address: Delaware Department of Finance
Office of Unclaimed Property
8th Floor
820 North French Street
Wilmington, DE 19801

Phone Number: 302-577-8782

E-mail: escheat.claimquestions@state.de.us escheat.claimquestions@delaware.gov

Website: <http://revenue.delaware.gov/unclaimedproperty.shtml>

<https://unclaimedproperty.delaware.gov>

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

104 Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 122(3)aa. (16 Del.C. §122(3)aa.)

ORDER

3330 Regulations Governing Dialysis Centers

Nature of The Proceedings

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Dialysis Centers. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122 (3)aa.

On January 1, 2019 (Volume 22, Issue 7), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by January 31, 2019, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Summary of Proposal

Effective April 1, 2019, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations

governing Dialysis Centers.

Background

On September 2, 2014, House Bill (HB) 360 with House Amendment 2 became law. HB 360 amended 16 **Del.C.** §122 to require the DHSS to establish and enforce dialysis center quality assurance standards, which includes a standard requirement for an appropriate emergency energy source capable of use for at least 48 hours and at least a monthly test of those emergency sources.

Subsequently, Senate Bill (SB) 131 with Senate Amendment 1 (signed into law June 30, 2015) amended 16 **Del.C.** §122 to define a dialysis center as an independent or hospital-based unit approved to furnish outpatient dialysis services (maintenance dialysis services or home dialysis training and support, or both) directly to end stage renal disease patients. In addition, SB 131 includes a standard requirement for all dialysis machines to be connected to an emergency power source so that all dialysis machines will operate for at least four (4) hours following a power shutdown or outage. The emergency power source must be in working condition at all times and the dialysis center must conduct and document at least a monthly test of those emergency power sources.

Statutory Authority

16 **Del.C.** §122(3)(aa)

Purpose

The Division of Health Care Quality published “proposed” regulations governing Dialysis Centers and held them out for public comment per Delaware law. These regulations establish standards for public health quality assurance in the operation of dialysis centers and regulate the public health practice of such programs, which shall include but not be limited to a standard requirement for all dialysis machines to be connected to an emergency power source so that all dialysis machines will operate for at least 4 hours following a power shutdown or outage. In addition, the emergency power source must be in working condition at all times and the dialysis center must conduct and document at least a monthly test of those emergency power sources. For purposes of this section, a “dialysis center” means an independent or hospital-based unit approved to furnish outpatient dialysis services, including maintenance dialysis services, or home dialysis training and support services, or both to end stage renal disease patients.

Fiscal Impact

16 **Del.C.** §122(3)(aa) gives the DHSS authority to impose licensure fees. The amount charged for each fee imposed shall approximate and reasonably reflect all costs necessary to defray the expenses incurred by the DHSS. There shall be a separate fee charged for each service or activity.

| Proposed Initial Fee | Proposed Renewal Fee |
|--|---|
| \$1000 + \$500 for each additional service above 1 | \$600 + \$300 for each additional service above 1 |

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Dialysis Centers were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (January 1, 2019 through January 31, 2019).

Public comments and the DHSS (Department) responses are as follows:

Ann C. Fisher, Chairperson Governor’s Advisory Council for Exceptional Citizens

Comment: The Governor’s Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) proposal to establish quality assurance standards for dialysis centers thus implementing the 2014 and 2015 changes to 16 **Del.C.** §122(3)(aa). The proposed regulation also gives DHSS the authority to charge licensing fees to offset the costs of performing their responsibilities under the statute and regulation. Dialysis is a medical service that is necessary for individuals with kidney disease. Council endorses the proposed regulation as it is a comprehensive regulation that aims to protect the public in obtaining dialysis services from an independent or hospital based center. However, we would like to share one observation with you.

Section 10.4.14 under Patient Rights notes that the dialysis center must provide written notice to the patient on his/her right to “Be informed of the dialysis centers policies for transfer, routine or involuntary discharge and discontinuation of services.” Council queries who discharge information is reported to and what happens to the patient if they are involuntarily discharged. We would suggest a transparent discharge policy be shared with all patients and some type of follow up when patients are involuntarily discharged.

Please feel free to contact me or Wendy Strauss at the GACEC office if you have questions on our endorsement. Thank you for the opportunity to share our comments with you.

Response: Thank you for your comments. Involuntary discharges should be a rare occurrence and preceded by demonstrated efforts on the part of the dialysis center to address issues in a mutually beneficial manner. All involuntary discharges are to be reported to the Department as required by regulations 17.10 and 17.10.2.5. The dialysis center regulations adopt the provisions of 42 CFR Ch. IV, Part 494, Subparts A, B, C and D, which are the federal Conditions for Coverage (CfCs) for End-Stage Renal Disease Facilities (dialysis centers). The federal CfCs contain more specific requirements related to involuntary discharges.

J. Todd Webb, Chairperson, State Council for Persons with Disabilities (SCPD)

Comment: The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health & Social Services/Division of Health Care Quality’s (DHSS/DHCQs) proposed regulations governing dialysis centers. This proposed regulation was published as 22 DE Reg. 565 in the January 1, 2019 issue of the *Register of Regulations*.

The purpose of this regulation is to establish quality assurance standards for dialysis centers to implement the 2014 and 2015 changes in the law [16 **Del.C.** §122(3)(aa)]. It also gives DHSS authority to charge licensing fees to offset the costs of performing their responsibilities under the statute and regulation. This is a comprehensive regulation that aims to protect the public in obtaining dialysis services from an independent or hospital based center.

The regulation applies to dialysis centers and they are defined in both the statute and regulation as “an independent or hospital-based unit approved and licensed to furnish outpatient dialysis services (maintenance dialysis services, home dialysis training and support services or both) directly to end stage renal disease (ESRD) patient(s).”

In summary, this regulation is comprehensive and deals with all aspects of dialysis, including independent and hospital based centers, as well as home dialysis services offered by those centers. It mandates licensing requirements and gives the Department authority to impose a variety of sanctions for non-compliance with the regulation. It requires a center to have a governing body and imposes numerous duties and responsibilities on that body. Each center is required to have medical staff which includes a medical director, nurse manager, charge and staff nurses, a dietitian, social worker, patient care technicians, and water treatment system technicians. Patients or their representatives must be informed of the patient’s rights and responsibilities. An interdisciplinary team consisting of the patient or patient’s representative, nurse, social worker, dietitian, and doctor must prepare a comprehensive assessment of the patient which is then used to formulate a treatment plan. If home dialysis is provided by the center, it must be approved by the Department to provide this service and the interdisciplinary team must oversee the training to the patient and patient caregivers. The center must also provide support services to home dialysis patients. Detailed medical records of all patients must be kept and be accessible for review by the Department. There are several patient rights measures, including a provision that requires the center to report the involuntary discharge or transfer of a patient to DHSS. This is an important safety measure. Lastly, the center must have emergency preparedness in that the dialysis machines must operate for at least four (4) hours on an alternative power source if there is a power outage.

SCPD endorses the regulation as it comprehensively addresses this crucial outpatient service. The regulation deals with a medical service that is necessary for those individuals with kidney disease. This regulation should meet its intended goal of protecting dialysis patients by establishing standards and guidelines so that they receive competent medical care for a life-saving procedure. However, SCPD has the following recommendation which would strengthen the regulation:

Currently, the proposed regulation requires dialysis centers to have a discharge policy and share it with the patient. However, it does not include language regarding what is required to be in the involuntary discharge/release policy. The regulation could be strengthened by including language which provides more specifics about what is included in the discharge policy such as procedures, alternative treatment options, and a requirement to follow-up with the patient who is involuntarily discharged.

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

Response: Thank you for your comments. Involuntary discharges should be a rare occurrence and preceded by demonstrated efforts on the part of the dialysis center to address issues in a mutually beneficial manner. The dialysis center regulations adopt the provisions of 42 CFR Ch. IV, Part 494, Subparts A, B, C and D, which are the federal Conditions for Coverage (CfCs) for End-Stage Renal Disease Facilities (dialysis centers). The federal CfCs contain more specific requirements related to involuntary discharges.

Carole Finamore RN, BSN, Field Vice President Regulatory Affairs, Fresenius Kidney Care

Comment: Fresenius Medical Care North America (FMCNA) is submitting comments in response to the "Regulations Governing Dialysis Centers" that was published in the DE Federal Register on December 31, 2018. Thank you for providing us the opportunity to comment on these regulations.

As background, FMCNA is the largest supplier of dialysis products and services in the country. We operate over 2,200 outpatient dialysis clinics and care for over 190,000 patients in the United States each year. In Delaware, FMCNA is currently the predominant dialysis provider to nearly 1500 Delawareans with kidney failure in 25 programs that provide outpatient hemodialysis, inpatient acute hemodialysis, and home dialysis training and support across the state.

As previously stated, Delaware has not been a licensing state for dialysis facilities and FMCNA is concerned that these new regulations will create more stress on an already fragile delivery system. While we have provided comments to individual regulations below, we initially wish to highlight some overarching concerns.

First; the regulations do not consider the impact of the additional financial burden being placed on dialysis providers. The cost of the license will be \$1000 per facility and an additional \$500 per service and the renewal will be \$600 and \$300 per service. Considering that DE Medicaid reimbursement is below the cost of providing the dialysis treatment any additional financial burdens to dialysis providers further highlights how this industry continues to be over-regulated and underfunded. There are no safeguards in place to protect providers from increased licensing fees if the State has not budgeted accordingly.

Response: Thank you for your comment. The 148th General Assembly passed legislation, which was signed by the Governor, to regulate dialysis centers to ensure safe, quality healthcare. This legislation also gave the Department the authority to collect fees which shall approximate and reasonably reflect all costs necessary to defray the expenses incurred by the Department. The fees published in the proposed regulations approximate all costs related to the dialysis center licensure program.

Second; dialysis providers are already following the CMS Conditions for Coverage (CfC) and some of the new DE regulations that do not follow the "CfC" create additional burdens on providers who are already following the proven regulations that industry professionals helped develop. It would benefit the State to closely follow the "CfC" to eliminate any unintended consequences of these new DE licensing regulations.

Response: Thank you for your comment. The regulations published as proposed on January 1, 2019 closely reflect the "CMS Conditions for Coverage". The regulations that contain more stringent requirements were added to protect this vulnerable patient population and ensure the provision of safe and quality care.

FMCNA has reviewed the regulations and offers the following comments for your consideration:

Comment:

3.3 Issuance of Licenses

3.1.5 Separate licenses are required for dialysis centers maintained in separate locations, even though operated under the same management

FMCNA requests clarity on whether this would impact home programs located in separate space from in-center, where Home programs may be located on a second floor or different suite from the in-center unit. The State responded that if a home program was located in the same building it would not need a separate license. FMCNA would like to see this language in the regulations.

Response: Thank you for your comment. Per Department policy, a provider which has a home therapies program located in the same building, which is considered the same location even though in a separate suite/floor, would fall under the same license.

Comment:

3.1.6 Any dialysis center that undergoes a modification of ownership and control is required to re-apply as a new dialysis center and must meet the current design and construction standards recognized by the Department.

If a change in clinic ownership, or converting to a Joint Venture, will require reapplication as a new dialysis center, certain older locations could have some major challenges having been constructed under different, older code requirements. Bringing an existing and operating clinic up to the very latest code requirements would overly burden that clinic financially and be very disruptive to the patient care in that clinic. Oftentimes a relocation is the best option, which can also be challenging if the clinic is in a long-term lease situation that they cannot be released from. With proper guidance, planning and training, an existing older clinic can implement an evacuation plan that will allow all staff and patients to leave the building quickly in the case of a fire. We continue to see this as a concern and believe a clinic that undergoes an MOC should be grandfathered in. A clinic that is fully operational and converts from a wholly owned to JV would be affected by this requirement.

Response: Thank you for your comment. If a facility undergoes an MOC, it is in the interest of patient safety that the facility be brought up to current standards. We have other provider regulations that contain this same requirement; therefore, this regulation will stand as written.

Comment:

3.1.8 Patients shall not be admitted to a dialysis center until a license has been issued.

The State indicated that it would work with providers to ensure continuity of care as long as all paperwork and applications have been timely filed. FMCNA would like to see this language added to the above.

Response: Thank you for your comment. The Department routinely works with all of our licensed providers to ensure continuity of care for all patients. The regulation will stand as written.

Comment:

3.2 Application Process

3.2.1.3 The names, addresses and types of facilities previously and currently owned or managed by the applicant:

The State has indicated that it needs a list of previous facilities previously or currently owned or managed by the applicant and has indicated that this is not specific to the State of Delaware. FMCNA operates over 2200 facilities and manages numerous dialysis programs which makes this a burdensome proposition, but to also need previously owned business for a company that is decade's old makes FMCNA's ability to grow business in DE extremely burdensome and not business friendly. FMCNA is currently the largest dialysis provider in DE with a footprint in DE for decades. FMCNA requests this section be changed to be specific to DE.

Response: Thank you for your comment. This requirement is the standard operating procedure for healthcare facilities/agencies licensed by the Department. This regulation will stand as written.

Comment:

3.3 Issuance of Licenses

3.3.1 Initial License

3.3.1.3 All dialysis centers shall have an on-site survey, conducted by the Department, during the first three (3) calendar months of operation.

FMCNA would like clarification on whether the clinic can continue to operate with existing patients while applying with MOC. It is also critical that the effective date on the license is consistent with the effective date of MOC and not the date of survey to ensure there is no gap in time that would affect billing for treatments.

Response: Thank you for your comment. A dialysis center that is applying for an MOC can operate with the existing patients to ensure continuity of care. The effective date on the license will be the date the MOC occurred, provided that the provider has submitted all of the required documentation.

Comment:

3.3.1.3.2 Facilities that, at the time of the onsite survey, do not meet the definition of a dialysis center or that are not in substantial compliance with these regulations will not be granted a license.

It is very rare that a state conducts a survey as part of the licensure process when there is a MOC, and we are unaware of a similar requirement in other states. The proposed regulation is unclear as to whether a license will be denied if there is a deficiency in the MOC survey, and whether the license will be granted to the new owner as of the date of the MOC transaction. It is not typical that a deficiency in a survey would negatively affect a dialysis center's license to operate. If facility is found to not be in substantial compliance, and a license is denied, do the facility's current patients have to be moved, or would it just be closed to new admissions until compliance is achieved? How does the state define not being in substantial compliance – is that condition, or IJ, or both? Also: would the facility be allowed an opportunity to write a Plan of Correction? The answer here implies they would not – that the state would just revoke their ability to operate. That seems inconsistent with other regulations & disruptive to patients. It is critical that we ensure the effective date on the license is consistent with the effective

date of MOC and not the date of survey to ensure there is no gap in time that would affect billing for treatments. FMCNA is not aware of other states conducting a survey as part of the licensure process when there is a MOC.

Response: Thank you for your comment. In the event of an MOC, an initial license would be issued which would require an unannounced onsite survey during the initial licensure period. This process is routine for all provider types licensed by the Department. Substantial compliance means a level of compliance with the regulations such that any identified deficiencies pose no greater risk to patient health or safety than the potential for causing minimal harm. Substantial compliance constitutes compliance with regulatory requirements. This regulation refers to facilities that are not in substantial compliance with the regulations. If the facility does have deficiencies that are not substantial, they would be permitted to submit a plan of correction to pursue further licensure.

Comment:

5.9 Supervision of clinical services

5.9.3 The nurse manager shall

5.9.3.1 Be a registered nurse with at least:5.9.3.1.2 Six (6) months of experience providing maintenance dialysis; and

FMCNA recommends changing this requirement to match the CMS requirement that a nurse manager is a registered nurse who has 12 months of nursing experience, including 3 months of experience in maintenance dialysis.

Response: Thank you for your comment. This regulation will not be changed as it is consistent with the CMS regulations which also require the nurse manager to have 6 months of experience in maintenance dialysis.

Comment:

6.0 Infection Prevention and Control

6.2 The dialysis center must designate in writing, a qualified licensed healthcare professional who will lead the facility's infection prevention and control program. The dialysis center must determine that the individual has had training in the principles and methods of infection prevention and control.

6.2.1 The individual designated to lead the dialysis center's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify and manage infections and communicable diseases. The plan of action must include mechanisms that result in immediate action to take preventive or corrective measures that improve the dialysis center's infection control outcomes.

This is not consistent with the Conditions for Coverage. FMCNA would like clarification about what is considered a "Qualified" licensed health care professional to lead the infection control program.

Response: Thank you for your comment. Due to the complexity and nature of the ESRD patients' care, infection prevention is crucial. Based on the past compliance history of existing dialysis centers, the need for improved infection prevention and control is evident. In addition, the requirement for a designated infection preventionist is not new to other healthcare providers; therefore, this regulation will stand as written. The dialysis center must determine that the individual designated to lead the dialysis center's infections prevention and control program has had training in the principals and methods of infection prevention and control. While it would be highly desirable for this individual to be certified in infection control, it is not required as long as there is evidence that the individual has training that qualifies him/her to lead the facility's infection prevention and control program. This individual must also maintain the qualifications through ongoing education and training.

As a Corporate partner in the State of Delaware, FMCNA wants to assure our patients receive only the highest quality of care available through the most efficient means for the State. Thank you again for your consideration and allowing FMCNA to comment on the regulations.

Response: Thank you for your comments.

Findings of Fact:

There were no changes made to the regulations based on the comments received and detailed in the "Summary of Evidence". The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Dialysis Centers is adopted and shall become effective April 11, 2019, after publication of the final regulation in the Delaware Register of Regulations.

3/22/19

Date

Kara Odom Walker, MD, MPH, MSHS, Secretary, DHSS

[3330] Regulations Governing Dialysis Centers

***Please note that no additional changes were made to the regulation as originally proposed and published in the January 2019 issue of the *Register* at page 565 (22 DE Reg. 565). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

3330 Regulations Governing Dialysis Centers

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 DE Admin. Code 17000

ORDER

Eligibility Determination

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend Delaware Social Services Manual (DSSM) regarding Eligibility Determination, specifically, to align state and federal policy. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after April 11, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 17160.1 of Delaware Social Services Manual (DSSM) regarding Eligibility Determination, specifically, *to align state and federal policy*.

Background

A review of DMMA policy identified the need for provisions of 16 Del. Admin. C. § 17160.1 to more closely track the federal language which is set forth more fully in the section directly preceding it in 16 Del. Admin. C. 17160. More specifically, the second eligibility criterion “have been receiving SSI prior to age 22 because of disability or blindness” sets forth a different parameter than what the federal statute contemplates. It is the disability or blindness itself which must have begun prior to reaching 22 years of age, rather than the receipt of SSI benefits prior to 22 years of age.

Statutory Authority

Section 1634(c) of the Social Security Act

Purpose

Purpose

The purpose of this proposed regulation is to align state and federal policy.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives

public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 2019.

Provider Manuals and Communications Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

No fiscal impact is projected as a result of this policy update.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: One commenter endorsed the proposed amendment as it clarifies that it is the disability or blindness which must have begun prior to reaching 22 years of age.

Agency Response: DMMA appreciates the endorsement.

Comment: One commenter suggested that the “proposed change removes the impermissible requirement that existed in the previous regulation, but is still not entirely correct. It reads: ‘have been receiving SSI because of disability or blindness, which began before he or she attained the age of 22.’

It is not a requirement of the federal statute that the SSI be received because of disability that began before age 22. The recommendation is to drop the words after “SSI” in the above sentence. The statute requires loss of SSI and current eligibility for Social Security benefits for a disability that began before age 22. There is no need to inquire regarding the basis for receipt of SSI. If a person is receiving Social Security Disability benefits on the account of a parent, by definition, that means that he or she has established to the satisfaction of the SSA that the disability began before age 22.”

Agency Response: DMMA agrees and has made the suggested change.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- State Council for Persons with Disabilities
- Governor’s Advisory Council For Exceptional Citizens

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the January 2019 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding Eligibility Determination, specifically, to align state and federal policy is adopted and shall be final effective April 11, 2019.

3/14/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS,
Secretary, DHSS

17160.1 Eligibility Determination

To be eligible the individual must meet all the following criteria:

- be age 18 or older,
- have been receiving SSI[,] prior to age 22 [~~because of disability or~~] blindness; [~~blindness which began before he or she attained the age of 22,~~]
- lost their SSI benefit because they started to receive Child's Insurance Benefits after 7/1/87 or
- received an increase in Child's Insurance Benefit after 7/1/87.

Child's Insurance Benefit is a type of Title II Social Security benefit as defined below:

A child is entitled to Child's Insurance Benefits on the Social Security record of a parent if:

1. an application for Child's Insurance Benefit is filed, and
2. the child is (or was) dependent upon the parent, and
3. the child is unmarried, and
4. the child is:
 - under age 18, or
 - under age 19 and a full-time elementary or secondary school student, or
 - age 18 or over and under a disability (which must have begun before age 22) and
5. the parent:
 - is entitled to disability insurance benefits, or
 - is entitled to retirement insurance benefits, or
 - died and was either fully or currently insured at the time of death.

Determine eligibility using SSI income and resource standards and methodologies. The Child's Insurance Benefit is excluded from income. Complete redeterminations annually.

DEPARTMENT OF HUMAN RESOURCES DIVISION OF STATEWIDE BENEFITS

Statutory Authority: 29 Delaware Code, Section 5256 (29 **Del.C.** §5256)
19 **DE Admin. Code** 2007

ORDER

2007 Disability Insurance Program Rules and Regulations

Pursuant to House Bill No. 4 amended by House Amendment No. 1(149th General Assembly), the Department of Human Resources and the Division of Statewide Benefits of the Department of Human Resources was established effective July 1, 2017, having powers, duties and functions as follows:

“(1) With the exception of deferred compensation pursuant to Chapter 60A of this title and any other investment or retirement savings plan, the Director of Statewide Benefits shall be responsible for the management and administration of all currently existing and future state employee benefits programs, including but not limited to group health, group life, flexible benefits, dental, vision, prescription, long-term care, disability, supplemental benefits and the Blood Bank.”

Epilogue language referenced below from Section 30 of House Substitute No. 1 for House Bill No. 275 (149th General Assembly) allows the State Employee Benefits Committee (SEBC) to amend the Disability Insurance Program (DIP) Rules & Regulations.

“Section 30. Notwithstanding the provisions of the Administrative Procedures Act, 29 **Del.C.** Ch. 101 or any other laws to the contrary, the State Employee Benefits Committee is authorized to amend the rules for Employees Eligible to Participate in the Group Health Insurance Program and the State Disability Insurance Program by approving such amendments and causing the amendments to be published in the Register of Regulations with such amendments to be effective as of the date of such publication unless otherwise specified by the State Employee Benefits Committee.”

The attached version of the Disability Insurance Program (DIP) Rules & Regulations, effective April 1, 2019, reflect several amended sections to incorporate specific provisions of House Bill No. 3 as Amended by House Amendment No. 4 (149th General Assembly). Legislation and the SEBC mandate the effective date of this change

to be April 1, 2019.

This order is effective March 15, 2019.

**STATE OF DELAWARE
DEPARTMENT OF HUMAN RESOURCES**

By: Faith L. Rentz
Director, Statewide Benefits and Insurance Coverage Office

Date: March 15, 2019

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

2007 Disability Insurance Program Rules and Regulations

**DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Chapter 69 and 29 Delaware Code, Section 10113
(18 **Del.C.** Ch. 69 & 29 **Del.C.** §10113)
18 **DE Admin. Code** 302

ORDER

302 Captive Insurance Financial Regulation

Regulation 302 sets forth the financial, reporting and other requirements which the Commissioner of the Department of Insurance deems necessary to the regulation of captive insurance companies, as authorized by the Delaware Revised Captive Insurance Company Act, 18 **Del.C.** Ch. 69.

Recently, the Legislature passed HB 289, which amended 18 **Del.C.** §6907(b) and (c)2 to change the deadline by which annual reports are to be submitted from March 1 to April 15 of each year.

Accordingly, by way of this notice, the Department is updating subsection 2.1 of Regulation 302 to comport the regulation with HB 289.

This amendment is exempt from the requirement of public notice and comment because it is an amendment to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations, pursuant to 29 **Del.C.** §10113(b)(5).

This order shall be effective 10 days after publication in the *Register of Regulations*.

It is so ordered. This 27 day of February, 2019

Trinidad Navarro
Commissioner, Delaware Department of Insurance

**302 Captive Insurance Financial Regulation
(Break in Continuity of Sections)**

2.0 Annual Reporting Requirements.

- 2.1 Except as provided in 18 **Del.C.** §6907(c), a company doing business in this State shall annually prior to ~~March 4~~ April 15, submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers or other authorized persons. The annual report shall comply with the requirements of 18 **Del.C.** §6907 and the provisions of this regulation.

*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:

302 Captive Insurance Financial Regulation

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 1902(a) (7 **Del.C.** §1902(a))
7 **DE Admin. Code** 7402

Secretary's Order No.: 2019-WS-0016

RE: Approving Final Regulations to Amend 7 DE Admin. Code 7402: *Shellfish Sanitation Regulations*

Date of Issuance: March 12, 2019

Effective Date of the Amendment: April 11, 2019

7402 Shellfish Sanitation Regulations

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("DNREC," "Department"), pursuant to 7 **Del.C.** §1902(a), and any other relevant statutory authority, the following findings of fact based on the record, reasons, and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History, and Findings of Fact

This Order relates to proposed Amendments ("Amendments") to 7 **DE Admin. Code** 7402: *Shellfish Sanitation Regulations*, under the Division of Watershed Stewardship. This action is being taken by the Department to change the classification of Delaware's jurisdictional waters of the Atlantic Ocean for bi-valve shellfish, to prohibit shellfish harvesting within seagrass beds, and to add shellfish seed provisions to the regulations.

The Department proposes to change the classification of the Atlantic Ocean Shellfish Growing Area (GA-7) from Approved to Prohibited for shellfish harvesting. Currently, there is no commercial or recreational bi-valve shellfish harvest that occurs in this growing area. The Approved classification requires costly routine sampling and classification work. This modification will result in saving the State thousands of dollars annually with no impact to the public which utilizes the State's shellfish resources. In the event that a viable shellfish fishery was determined to exist in GA-7 in the future, this area could be re-classified to support the fishery.

In addition, the Department also proposes to add seagrass beds, also known as Submerged Aquatic Vegetation (SAV) beds, to the list of areas where shellfish harvesting is prohibited, consistent with the *Delaware Fishing Guide*.

The Department also seeks to add juvenile shellfish seed definitions and provisions consistent with the Department's Fish and Wildlife regulations on shellfish aquaculture in the Inland Bays. Seed could be grown in Prohibited waters with oysters reaching a maximum seed size of 25 mm and clams reaching a maximum seed size of 15 mm before transfer to non-Prohibited waters is necessary. This change will benefit the public by establishing a statewide standard for the growth of seed in Prohibited waters consistent with current aquaculture regulations.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed Amendments to 7 **DE Admin. Code** 7402: *Shellfish Sanitation Regulations*, pursuant to 7 **Del.C.** §1902(a). The Department published its proposed Amendments in the December 1, 2018 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on January 17, 2019.

Members of the public attended the aforementioned public hearing, with comment being received by the Department. Pursuant to Delaware law, the record remained open for fifteen additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at close of business on February 1, 2019, with comments having been received by the Department.

It should be noted that all noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

After the close of the comment period, the Department performed a thorough review of the hearing record, including comments received. At the request of this Hearing Officer, a Technical Response Memorandum (TRM) was prepared by Department staff to serve as a comprehensive summary of comments received in this matter and to provide the Department's final recommendations. In general, comments expressed opposition to changing the GA-7 classification of Approved to Prohibited for shellfish harvesting, but were supportive of statewide shellfish seed regulations. No comments were received regarding prohibiting shellfish harvesting in SAV beds.

The primary concern expressed by commenters was regarding the Rehoboth Beach wastewater treatment plant (WWTP) outfall and that the State should retain the current classification of Approved to maintain water testing. The proposed changes are unrelated to the Rehoboth Beach WWTP. The current water quality testing method for Approved shellfish areas is to collect surface water samples, a method that is not designed to detect water quality changes from a WWTP outfall located on the seafloor. Use of shellfish water quality data to determine effluent quality of a WWTP outfall would not be practical or accurate.

Hearing Officer Bethany A. Fiske prepared a Hearing Officer's Report dated March 4, 2019. The report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the report as Appendix A.

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed Amendments to **7 DE Admin. Code 7402: Shellfish Sanitation Regulations** are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final. I further find that the Department's experts in the Division of Watershed Stewardship fully developed the record to support adoption of these Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to **7 DE Admin. Code 7402: Shellfish Sanitation Regulations**, pursuant to **7 Del.C. §1902(a)**;
2. The Department has jurisdiction under its statutory authority, pursuant to **7 Del.C. Ch. 60**, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on January 17, 2019, and during the 15 days subsequent to the hearing (through February 1, 2019), before making any final decision;
4. Promulgation of the proposed Amendments to **7 DE Admin. Code 7402: Shellfish Sanitation Regulations** will change the classification of Delaware's jurisdictional waters of the Atlantic Ocean for bi-value shellfish, prohibit shellfish harvesting within seagrass beds, and add shellfish seed provisions to the regulations;
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with **29 Del.C. Ch. 104**, and has selected Exemption B1, as this regulation is not substantially likely to impose additional costs or burdens to individuals or small businesses;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed Amendments as set forth in Appendix A, are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed Amendments, as published in the December 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendix A, are adequately supported, are not arbitrary or capricious, and are consistent with applicable laws and regulations. Consequently, these Amendments should be approved as final, and shall go into effect ten days after publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed Amendments to **7 DE Admin. Code 7402: Shellfish Sanitation Regulations**, to the Delaware *Register of Regulations* for publication

in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the December 2018 issue of the *Register* at page 450 (22 DE Reg. 450). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

7402 Shellfish Sanitation Regulations

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code, Section 343 (31 Del.C. §343)
9 DE Admin. Code 101

ORDER

101 DELACARE: Regulations for Early Care and Education and School-Age Centers

NATURE OF PROCEEDINGS

The Department of Children, Youth and Their Families ("DSCYF") initiated proceedings to adopt State of Delaware Regulations for Early Care and Education and School-Age Centers. The proceedings were initiated pursuant to 31 **Delaware Code**, Sections 341-345 and 29 **Delaware Code** Chapter 101.

On April 1, 2018, November 1, 2018, and January 1, 2019, DSCYF published in the Delaware *Register of Regulations* its notice of proposed regulations pursuant to 29 **Delaware Code** Section 10115. Written comments were originally accepted until January 31, 2019, as published in the January 2019 *Register of Regulations*. However, this deadline was extended until March 4, 2019, at the request of the Provider Advisory Board and notification of this extension was sent to all licensed providers and stakeholders. The Office of Child Care Licensing received almost 400 comments in response to these proposed regulations and after careful review of that feedback, DSCYF made responsive changes.

SUMMARY OF EVIDENCE

In accordance with Delaware law, the Office of Child Care Licensing (OCCL) published in the Delaware *Register of Regulations* DELACARE: Regulations for Early Care and Education and School-Age Centers in April 2018, November 2018, and January 2019. Comments were gathered from each posting and revisions were made to each subsequent posting. The last period of public comment ended on March 4, 2019, and did not result in substantive changes of the January 2019 posting. Due to the high number of comments, OCCL will not be posting the comments.

NOTICE OF RESCISSION AND PROMULGATION

The Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates the following regulations for early care and education and school-age centers as authorized in the Delaware Code, Title 31, Chapter 3, Subchapter III, Subsections 341-345, also known as "The Delaware Child Care Act." All previous requirements and regulations pertaining to such facilities are void. These regulations shall take effect on May 1, 2019.

FINAL REGULATIONS

Josette Manning, Secretary
Department of Services for Children, Youth and Their Families

3/12/19
Date

Trenee Parker, Director
Division of Family Services

3/12/19
Date

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

101 DELACARE: Regulations for Early Care and Education and School-Age Centers

DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345 (29 **Del.C.** §9003(7) & 31 **Del.C.** §§341-345)
9 DE Admin. Code 103

ORDER

103 Regulations for Family and Large Family Child Care Homes

NATURE OF PROCEEDINGS

The Department of Children, Youth and Their Families (“DSCYF”) initiated proceedings to adopt State of Delaware Regulations for Family and Large Family Child Care Homes. The proceedings were initiated pursuant to 31 **Delaware Code**, Sections 341-345 and 29 **Delaware Code** Chapter 101.

On April 1, 2018, November 1, 2018, and January 1, 2019, DSCYF published in the Delaware *Register of Regulations* its notice of proposed regulations pursuant to 29 **Delaware Code** Section 10115. Written comments were originally accepted until January 31, 2019, as published in the January 2019 *Register of Regulations*. However, this deadline was extended until March 4, 2019, at the request of the Provider Advisory Board and notification of this extension was sent to all licensed providers and stakeholders. The Office of Child Care Licensing received almost 100 comments in response to these proposed regulations and after careful review of that feedback, DSCYF made responsive changes.

SUMMARY OF EVIDENCE

In accordance with Delaware law, the Office of Child Care Licensing (OCCL) published in the Delaware *Register of Regulations* DELACARE: Regulations for Family and Large Family Child Care Homes in April 2018, November 2018, and January 2019. Comments were gathered from each posting and revisions were made to each subsequent posting. The last period of public comment ended on March 4, 2019, and did not result in substantive changes of the January 2019 posting. Due to the high number of comments, OCCL will not be posting the comments.

NOTICE OF RESCISSION AND PROMULGATION

The Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates the following regulations for family and large family child care homes as authorized in the Delaware Code, Title 31, Chapter 3, Subchapter III, Subsections 341-345, also known as “The Delaware Child Care Act.” All previous requirements and regulations pertaining to such facilities are void. These regulations shall take effect on May 1, 2019.

Josette Manning, Secretary
Department of Services for Children, Youth and Their Families

March 12, 2019
Date

Trenee Parker, Director
Division of Family Services

March 12, 2019
Date

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

103 Regulations for Family and Large Family Child Care Homes

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))
24 **DE Admin. Code** 2930

ORDER

2930 Council on Real Estate Appraisers

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on November 20, 2018 at a regularly scheduled meeting of the Delaware Council on Real Estate Appraisers ("Council") to receive comments regarding the Council's proposed revisions to its rules and regulations.

The Council proposed revisions to Section 2.0 pertaining to licensure requirements. Specifically, the proposed amendments will ensure conformity with the new Appraisal Qualifications Board criteria. In addition, subsection 2.5.2 has been amended to state that licensees will be required to complete two, rather than three, hours of continuing education on Delaware Law, Rules and Regulations.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 22, Issue 4, on October 1, 2018, the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was December 5, 2018, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on February 19, 2019.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Council Exhibit 1: *News Journal* Affidavit of Publication.

Council Exhibit 2: *Delaware State News* Affidavit of Publication.

Beverly Wilson testified at the November 20, 2018 hearing. Ms. Wilson stated that subsection 2.5.2, referencing the change in continuing education requirements, includes an effective date of November 1, 2009, when the effective date should be November 1, 2019, the beginning of the next renewal period. No written comment was submitted either before the hearing or during the 15 day period following the hearing.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §4006(a)(1), the Council has the statutory authority to promulgate rules and regulations. The public was given notice and an opportunity to provide the Council with comments in writing and by testimony on the proposed amendments to the rules and regulations. There was no written comment submitted. Ms. Wilson testified before the Council and identified a typographical error in subsection 2.5.2. The Council agrees with Ms. Wilson and accepts the rules and regulations as proposed, with the non-substantive revision to subsection 2.5.2 to correct a typographical error, in that "2009" will be changed to "2019."

Decision and Effective Date

The Council finds that the rules and regulations shall be adopted as final in the form set forth in Exhibit A attached hereto. These changes will become effective ten days following publication of this Final Order in the *Delaware Register of Regulations*.

Text and Citation

The exact text of the rules and regulations, as amended, is attached to this Final Order as Exhibit A.

IT IS SO ORDERED this 19th day of February, 2019 by the Delaware Council on Real Estate Appraisers.
 Douglas Nickel, Professional Member, Chairperson Christopher Schneider, Professional Member (absent)
 Earl Timmons, Professional Member, Patricia Ennis, Public Member (absent)
 Vice Chairperson (absent)
 Scott Brown, Professional Member Georgianna Trietley, Public Member
 Kevin Gillis, Banking Member Denise Stokes, Public Member

2930 Council on Real Estate Appraisers *(Break in Continuity of Sections)*

2.0 Appraiser Licensing and Certification

(Break in Continuity Within Section)

2.5 All licensees and certificate holders, except as provided in subsection 2.3.1.1, must complete as a condition of each renewal:

(Break in Continuity Within Section)

2.5.2 **Beginning November 1, [2009 2019], and thereafter ~~three (3)~~ two (2) hours of education on Delaware Law, Rules and Regulations.**

***Please note that no additional changes were made to the regulation as originally proposed and published in the October 2018 issue of the *Register* at page 280 (22 DE Reg. 280). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

2930 Council on Real Estate Appraisers

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Proposed Renewal for 1915(b)(4) Waiver Fee-for-Service Selective Contracting Program

In accordance with the requirements of 42 U.S.C. §1396a (a)(13) and 42 CFR §447.205, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA) gives notice related to the renewal of an application for a fee-for-service selective contracting waiver under section 1915(b)(4) of the Social Security Act.

Background

In December 2014 the Centers for Medicare & Medicaid Services (CMS) approved 1915(i) home and community-based services (HCBS) State Plan Amendment (SPA) to support individuals with disabilities in attaining and sustaining competitive employment. The Program has operated as Delaware's Pathways to Employment (Pathways). The Pathways program expanded choices and opportunities for persons with disabilities seeking to enter the job market. The program offers individually-tailored employment support services to persons with visual impairments, physical disabilities, intellectual disabilities, autism spectrum disorder and Aspergers. Pathway is targeted to persons meeting the eligibility criteria specified in the Pathways SPA, including:

- 14 to 25 years of age,
- meet defined needs-based criteria, and
- have a desire to work in a competitive work environment.

The following services will be provided to Pathways program participants:

- Employment Navigation
- Financial Coaching Plus
- Benefits Counseling
- Non Medical Transportation
- Orientation, Mobility, and Assistive Technology
- Career Exploration and Assessment
- Small Group Supported Employment
- Individual Supported Employment
- Personal Care (including option for self direction)

CMS approved the 1915(i) home and community-based services SPA for 5 years. Concurrently, CMS approved Delaware to limit providers for the Employment Navigation and Transportation services provided by the Pathways program.

Section 1915(b) of the Social Security Act gives the Secretary of Health and Human Services the discretion to waive a broad range of requirements included in Section 1902 of the Act as may be necessary to enable a State to implement alternative delivery mechanisms for its Medicaid program. However, the Secretary may exercise that discretion only insofar as the alternative delivery mechanism is found to be cost-effective, efficient, and not inconsistent with the purposes of Title XIX of the Act.

In particular, subsection (b)(4) permits a State to restrict the provider from whom Medicaid beneficiaries receive services as long as such restrictions do not substantially impair access to services of adequate quality where medically necessary. This statutory authority (as well as implementing regulations at 42 CFR §431.55) can be used in both fee-for-service as well as managed care arrangements.

The 1915(b)(4) application renewal is targeted specifically to selective contracting arrangements that will be paid on a fee-for-service basis. In order to limit the number of providers rendering covered services to Medicaid

beneficiaries, States must submit a waiver renewal to CMS, seeking permission to waive section 1902(a)(23)(A) of the Act, which otherwise permits beneficiaries free choice of providers.

Purpose

The purpose of this posting is to provide public notice and elicit public input regarding Delaware's renewal of the this waiver which seeks to limit freedom of choice of providers of the Employment Navigation service and to selectively contract a transportation broker to provide the non-medical transportation services to Pathways program participants.

Overview and Summary of the Waiver Fee-for-Service Selective Contracting Program Renewal

Delaware proposes to renew the 1915(b)(4) Waiver Fee-for-Service Selective Contracting Program. The waiver must be renewed every five years. This is the first renewal for Waiver Fee-for-Service Selective Contracting Program. The waiver seeks to limit freedom of choice of providers of the Employment Navigation service and to selectively contract a transportation broker to provide the non-medical transportation services to Pathways program participants.

Change(s) to the current Pathways to Employment 1915(b)(4):

- There are no significant changes proposed. Only minor edits have been made such as renaming the service Employment Navigator to Employment Navigation, which better describes the service, and reported staff to participant ratio data associated with the Employment Navigation program.

Public Comment Submission Process

As required by 42 CFR Part 441.304, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the waiver. Per Del. Code, Title 29, Ch. 101 §10118(a), The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations* on April 1, 2019. The public is invited to review and comment on the proposed Waiver Fee-for-Service Selective Contracting Program renewal. Comments must be received by 4:30 p.m. on May 1, 2019. Comments may be submitted in the following ways:

This public notice and the Renewal, and a summary of the Renewal are posted online at:

<https://dhss.delaware.gov/dhss/dmma/homeandc.html>

Individuals may submit written comments using one or all of the following methods:

(Please identify in the subject line: *Waiver Fee-for-Service Selective Contracting Program*)

By fax: 302-255-4481 to the attention of Glyne Williams

By email: glyne.williams@delaware.gov

By written comment:

Division of Medicaid and Medical Assistance

Planning, Policy & Quality Unit

1901 North DuPont Highway

P.O. Box 906

New Castle, Delaware 19720-0906

The hardcopy renewal will be available at the following locations from April 1, 2019 through May 1, 2019.

- DDDS Fox Run Office at: 2540 Wrangle Hill Road, Suite 200, Bear, DE 19701
- Thomas Collins Building at: 540 South Dupont Hwy, 1st Floor, Dover, DE 19901
- At the Woodbrook Office at: 1056 S. Governors Ave, Dover, DE 19904
- On the Stockley Center campus at: 26351 Patriots Way, Georgetown, DE 19947 - 101 Lloyd Lane and 101 Boyd Blvd.

Any public feedback received will be summarized including any changes that will be made as a result of the public comment to the proposed Waiver Fee-for-Service Selective Contracting Program Renewal that will be submitted to CMS.

Lisa Zimmerman for Stephen M. Groff 3/11/2019
Stephen M. Groff Date
Director
Division of Medicaid and Medical Assistance

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Proposed Renewal for Pathways to Employment 1915(i) Home and Community-Based Services State Plan Amendment (SPA)

In accordance with the requirements of 42 U.S.C. §1396a (a)(13) and 42 CFR §447.205, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA) gives notice related to the renewal of Pathways to Employment Home and Community Based State Plan Amendment authorized under 1915 (i) of the Social Security Act.

Background

Section 6086 of the Deficit Reduction Act of 2007 (DRA) and the Affordable Care Act (ACA) of 2010 established and amended section 1915(i) of the Social Security Act to add an optional State Plan service that has many of the features of a Home and Community Based (HCBS) Waiver. Like an HCBS waiver, states can target services to persons based on age, diagnosis and condition, and also apply functional criteria such as limitations caused by disability. States can also provide community based services that would not otherwise be able to be covered under the Medicaid State Plan to allow persons to live independently in the community. Two notable differences from HCBS waivers are that a 1915(i) State Plan Amendment does not require individuals to meet an institutional level of care in order to qualify for HCBS and states are not permitted to limit participation in the program once an individual meets established eligibility criteria.

Purpose

The purpose of this posting is to provide public notice and elicit public input regarding Delaware's renewal of the Pathways to Employment program that services individuals with intellectual and developmental disabilities (IDD), visual impairments, autism spectrum disorder, Asperger's Syndrome and physical disabilities ages fourteen (14) to twenty-five (25) to seek and maintain competitive employment.

Overview and Summary of the Pathways to Employment Renewal

Delaware proposes to renew the Pathways to Employment 1915 (i) State Plan Amendment (SPA). The SPA must be renewed every five years. This is the first renewal for Pathways to Employment. Pathways to Employment services are targeted to individuals with intellectual and developmental disabilities (IDD), visual impairments, autism spectrum disorder, Asperger's Syndrome and physical disabilities ages fourteen (14) to twenty-five (25) to seek and maintain competitive employment in their community.

Change(s) to the current Pathways to Employment 1915(i):

- There are no significant changes proposed. Minor edits have been made to reflect updates in the names of organizational units within the state and to change the frequency for data aggregation for

some of the performance measures. Performance measures were also added related to program eligibility.

Public Comment Submission Process

As required by 42 CFR Part 441.304, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the Medicaid HCBS program. Per Del. Code, Title 29, Ch. 101 §10118(a), The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations* on April 1, 2019. The public is invited to review and comment on the proposed Pathways to Employment renewal. Comments must be received by 4:30 p.m. on May 1, 2019. Comments may be submitted in the following ways:

This public notice and the Renewal, and a summary of the Renewal are posted online at:

<https://dhss.delaware.gov/dhss/dmma/homeandc.html>

Individuals may submit written comments using one or all of the following methods:

(Please identify in the subject line: *Pathways to Employment Renewal*)

By fax: 302-255-4481 to the attention of Glyne Williams

By email: glyne.williams@delaware.gov

By written comment:

Division of Medicaid and Medical Assistance

Planning, Policy & Quality Unit

1901 North DuPont Highway

P.O. Box 906

New Castle, Delaware 19720-0906

The hardcopy renewal will be available at the following locations from April 1, 2019 through May 1, 2019.

- DDDS Fox Run Office at: 2540 Wrangle Hill Road, Suite 200, Bear, DE 19701
- Thomas Collins Building at: 540 South Dupont Hwy, 1st Floor, Dover, DE 19901
- DDDS Woodbrook Office at: 1056 S. Governors Ave, Dover, DE 19904
- Stockley Center campus at: 26351 Patriots Way, Georgetown, DE 19947 - 101 Lloyd Lane and 101 Boyd Blvd.

Any public feedback received will be summarized including any changes that will be made as a result of the public comment to the proposed Pathways to Employment Renewal that will be submitted to CMS.

Lisa Zimmerman for Stephen M. Groff

3/11/2019

Stephen M. Groff

Date

Director

Division of Medicaid and Medical Assistance

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, April 18, 2019 at Carrcroft Elementary School (503 Crest Road, Wilmington, DE 19803).

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF HEALTH CARE QUALITY**PUBLIC NOTICE****3320 Intensive Behavioral Support and Educational Residence**

Delaware Health and Social Services ("Department") / Division of Health Care Quality initiated proceedings to amend the Intensive Behavioral Support and Educational Residence (IBSER) regulations. The Department's proceedings to amend its regulations are initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department will publish its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the April 2019 Delaware *Register of Regulations*. Written comments and suggestions from the public concerning the proposed regulations are to be produced by May 1, 2019, at which time the Department will receive information, factual evidence and public comment to the said proposed changes to the regulations.

Comments can be sent via email to Renee.Purzycki@delaware.gov, or by mail to Renee Purzycki, 3 Mill Road, Suite 308, Wilmington, DE 19806.

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE**4458A Cottage Food Regulations**

Pursuant to 16 **Del.C.** §122(3)(u)(1), Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Cottage Foods. On April 1, 2019, the Division of Public Health plans to publish as "proposed" revised Cottage Food Regulations. The revisions include the introduction of language related to food allergens, clarification of the period of time for which a permit is valid, and other technical corrections.

Copies of the proposed regulations are available for review in the April 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Wednesday, May 1, 2019, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.mozeik@delaware.gov
Phone: (302) 744-4951

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER
PUBLIC NOTICE
1410 Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug And Alcohol Dependency

Senate Bill No. 230 as amended by Senate Amendment No. 1 (SB 230/SA1) became effective on September 1, 2018. See Del. S.B. 230/Del. S.A. 1, 149th Gen. Assem. § 1 (2018). Carriers are now required to submit a report to the Delaware Health Information Network, Inc., in conjunction with the Delaware Department of Insurance (the Department) on or before July 1, 2019, and “every year thereafter in which the carrier makes significant changes to how it designs and applies its medical management protocols.” *Id.*

Section 3 of SB 230/SA1 amended Section 25 of Title 31 to now require identical reporting requirements for coverage for serious mental illness and drug and alcohol dependency for recipients of aid under the Federal Medicaid assistance program, which is administered through Delaware’s Department of Health and Social Services.

At Section 4 of SB 230/SA1, the General Assembly charged the Department with adopting regulations regarding the format and submission timing of the reports required under Sections 1 through 3 of SB 230/SA1.

To the extent that the NAIC has adopted a model enforcement mechanism concerning mental health parity reporting which is designed to standardized data requests on this issue, insurers are on notice of the data that they will likely be required to provide during a market conduct examination that includes a review of the carrier’s administration of its mental health and substance abuse coverage benefits.

The Department believes that it is important to synchronize the data reporting that is required under SB230/SA1, the data reporting under MHPAEA’s implementing regulations and the data reporting that will likely be required under a Market Conduct Examination. Accordingly, the Department is proposing to satisfy the SB230/SA1 requirement for regulations by codifying the NAIC model state market conduct compliance tools for MHPAEA as new 18 **DE Admin. Code** 1410, entitled “Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug and Alcohol Dependency.”

The proposed new regulation appears below and may also be viewed at the Department’s website at <http://insurance.delaware.gov/information/proposedregs/>. The Department does not intend to hold a public meeting regarding these proposed new regulations.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation by email to leslie.ledogar@delaware.gov or by mailing to:

Delaware Department of Insurance
 Attn.: Leslie W. Ledogar, Esq., Regulatory Specialist
 Docket No. 4042-2019
 841 Silver Lake Boulevard
 Dover, DE 19904

Any written or emailed submission in response to this notice and relevant to the proposed new regulation must be received by the Department no later than 4:30 p.m. on the 1st day, May, 2019.

OFFICE OF THE COMMISSIONER
PUBLIC NOTICE
1501 Medicare Supplement Insurance Minimum Standards

Regulation 1501 sets forth the minimum standards for Medicare Supplement Insurance in Delaware. It implements Chapter 34 of Title 18, Medicare Supplement Insurance Minimum Standards.

States that wish to retain regulatory authority over Medicare Supplement products offered for sale in their state must implement any changes to federal laws impacting Medicare Supplement policies. Failure to implement the current laws could result in a state losing regulatory authority over these products; authority to regulate these products would revert back to the Federal Government.

The Insurance Code at 18 **Del.C.** §3403(e) provides in relevant part, “The Commissioner may adopt from time

to time, such reasonable regulations as are necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations promulgated thereunder” Accordingly, the Department of Insurance has the statutory authority to adopt amendments to Regulation 1501 to comport with any changes to federal laws that impact Medicare Supplement policies.

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 1501. The regulation with proposed amendments appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m.

EST, the 1st day, May, 2019. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist

Delaware Department of Insurance

ATTN: Docket 4043-2019

841 Silver Lake Blvd.

Dover, 19904

(302) 674-7379

Email: Leslie.Ledogar@delaware.gov