

---

# Delaware Register of Regulations

---

Issue Date: April 1, 2020  
Volume 23 - Issue 10, Pages 790 - 897

---



## IN THIS ISSUE:

### Regulations:

- Errata
- Emergency
- Proposed
- Final

### General Notices

### Calendar of Events & Hearing Notices



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, 2020.

Cover Photo, "Daisies at Brown's Branch" by Dolores Michels

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

791

## 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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

---

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF 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.

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 15      | 4:30 p.m.    |
| August 1    | July 15      | 4:30 p.m.    |
| September 1 | August 17    | 4:30 p.m.    |

---

## DIVISION OF RESEARCH STAFF

**Mark Brainard**, Joint Legislative Oversight Sunset Committee Analyst; **Mark J. Cutrona**, Director; **Deborah Gottschalk**, Legislative Attorney; **Robert Lupo**, Graphics and Printing Technician IV; **Colinda Marker**, Executive Assistant; **Amanda McAtee**, Joint Legislative Oversight Sunset Committee Analyst; **Kathleen Morris**, Office Manager; **Nathan Poore**, Graphics and Printing Technician I; **Joel Rudnick**, Legislative Librarian; **Erika Schrader**, Assistant Registrar of Regulations; **Victoria Schultes**, Administrative Specialist III; **Don Sellers**, Print Shop Supervisor; **Yvette W. Smallwood**, Registrar of Regulations; **Amy Tricarico**, Administrative Specialist II; **Holly Wagner**, Deputy Director; **Cara Wilson**, Legislative Attorney; **Natalie White**, Administrative Specialist III.

---

---

# TABLE OF CONTENTS

---

793

|                        |     |
|------------------------|-----|
| Cumulative Tables..... | 795 |
|------------------------|-----|

---

## ERRATA

|   |     |
|---|-----|
| <b>DEPT. OF EDUCATION: Professional Standards Board</b> |     |
| 1521 Elementary Teacher.....                            | 801 |

---

## EMERGENCY

|   |     |
|---|-----|
| <b>DEPT. OF LABOR: Division of Unemployment Insurance</b> |     |
| 1201 Unemployment Insurance Appeal Board Regulations..... | 802 |

---

## PROPOSED

|   |     |
|---|-----|
| <b>DEPT. OF AGRICULTURE: Thoroughbred Racing Commission</b>   |     |
| 1001 Thoroughbred Racing Rules and Regulations.....   | 806 |
| <b>DEPT. OF EDUCATION: Professional Standards Board</b>   |     |
| 1571 Special Education Teacher of Students with Disabilities .....  | 808 |
| <b>DEPT. OF HEALTH AND SOCIAL SERVICES: Division of Health Care Quality</b>   |     |
| 3325 Financial Capability Reporting .....   | 814 |
| 4404 Free Standing Emergency Centers.....   | 817 |
| 4469 Personal Assistance Services Agencies.....   | 818 |
| <b>Division of Medicaid and Medical Assistance</b>  |     |
| Title XIX Medicaid State Plan - Licensed Chemical Dependency Professionals & Art Therapist.....                             | 820 |
| <b>Division of Social Services</b>  |     |
| Case Processing Procedures - Burial Assistance & Fraudulent Receipt of Benefits in Multiple States: DSSM 2020 and 2024..... | 827 |
| <b>DEPT. OF INSURANCE: Office of the Commissioner</b>   |     |
| 903 Prompt Payment of Settled Claims.....   | 831 |
| 1411 Registration of Pharmacy Benefits Managers.....  | 834 |
| <b>DEPT. OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL: Division of Air Quality</b>  |     |
| 1151 Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses.....  | 841 |
| <b>DEPT. OF SAFETY AND HOMELAND SECURITY: Division of State Police</b>  |     |
| 2400 Board of Examiners of Constables.....  | 842 |
| <b>DEPT. OF STATE: Division of Professional Regulation</b>  |     |
| 100 Board of Accountancy .....  | 843 |
| 1100 Board of Dentistry and Dental Hygiene.....   | 844 |
| 2930 Council on Real Estate Appraisers .....  | 846 |

---

# TABLE OF CONTENTS

---

## FINAL

|  |     |
|--|-----|
| <b>DEPT. OF AGRICULTURE: Delaware Nutrient Management Commission</b>                       |     |
| 1201 Nutrient Management Certification Regulations .....                                   | 851 |
| <b>DEPT. OF EDUCATION: Office of the Secretary</b>   |     |
| 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education.....  | 858 |
| 1206 Speech Language Pathologist Incentive Loan Program.....                               | 860 |
| 1207 Delaware Nursing Incentive Program .....  | 863 |
| <b>Professional Standards Board</b>  |     |
| 1521 Elementary Teacher .....  | 866 |
| <b>DEPT. OF HEALTH AND SOCIAL SERVICES: Division of Medicaid and Medical Assistance</b>    |     |
| Medicaid Long Term Care Program – Community Spouse: DSSM 20910.....                        | 871 |
| <b>Division of Social Services</b>   |     |
| Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T): DSSM 10001   | 873 |
| Child Care Subsidy Program: DSSM 11006.....  | 878 |
| <b>DEPT. OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL: Division of Fish and Wildlife</b> |     |
| 3300 Non-Tidal Finfish: 3301 Definitions .....   | 882 |
| <b>DEPT. OF STATE: Office of the State Bank Commissioner</b>                               |     |
| 2301 Operating Regulation .....  | 885 |
| <b>Public Service Commission</b>   |     |
| 3007 Electric Service Reliability and Quality Standards.....                               | 888 |

---

## GENERAL NOTICES

|   |     |
|---|-----|
| <b>DEPT. OF HEALTH AND SOCIAL SERVICES: Division of Medicaid and Medical Assistance</b>                     |     |
| Access to Care Monitoring Review Plan (AMRP).....   | 890 |
| <b>DEPT. OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL</b>   |     |
| <b>Division of Watershed Stewardship</b>  |     |
| Regulatory Guidance Memorandum RGM-2 Supporting Regulation 5101 Sediment and<br>Stormwater Regulations..... | 891 |

---

## CALENDAR OF EVENTS/HEARING NOTICES

|  |           |
|--|-----------|
| Dept. of Agriculture, Thoroughbred Racing Commission; Notice of Public Comment Period.....   | 892       |
| Dept. of Education, Notice of Monthly Meeting.....   | 892       |
| Dept. of Health and Social Services; Div. of Health Care Quality; Div. of Medicaid and Medical Assistance;<br>Div. of Social Services; Notices of Public Comment Periods.....                        | 892 - 894 |
| Dept. of Insurance; Office of the Commissioner; Notices of Public Comment Periods.....   | 894 - 895 |
| Dept. of Natural Resources and Environmental Control; Div. of Air Quality; Notice of Public Hearing<br>and Public Comment Period.....  | 896       |
| Dept. of Safety and Homeland Security; Div. of State Police; Notice of Public Comment Period.....  | 896       |
| Dept. of State; Div. of Prof. Regulation; Board of Accountancy; Board of Dentistry and Dental Hygiene;<br>Council on Real Estate Appraisers; Notices of Public Hearings and Public Comment Periods . | 896 - 897 |

---

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

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.).

**DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM**

1301 Delaware Criminal Justice Information System Rules and Regulations..... 23 **DE Reg.** 144 (Prop.)

**DELAWARE STATE FIRE PREVENTION COMMISSION**

710 Ambulance Service Regulations..... 23 **DE Reg.** 504 (Prop.)

**DEPARTMENT OF AGRICULTURE**

**Delaware Nutrient Management Commission**

1201 Nutrient Management Certification Regulations..... 23 **DE Reg.** 601 (Prop.)

**Harness Racing Commission**

501 Harness Racing Rules and Regulations..... 23 **DE Reg.** 340 (Prop.)  
23 **DE Reg.** 556 (Final)

**Plant Industries Section**

805 Rules and Regulations for Delaware Domestic Hemp Production Program 23 **DE Reg.** 494 (Emer.)  
23 **DE Reg.** 704 (Emer.)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

240 Recruiting and Training of Professional Educators for Critical Curricular Areas ..... 23 **DE Reg.** 607 (Prop.)

251 Family Educational Rights and Privacy Act (FERPA)..... 23 **DE Reg.** 416 (Prop.)

258 Federal Programs General Complaint Procedures\* ..... 23 **DE Reg.** 645 (Final)  
23 **DE Reg.** 343 (Prop.)

290 Approval of Educator Preparation Programs..... 23 **DE Reg.** 557 (Final)

292 Post Secondary Institutions and Degree Granting Institutions of Higher Education..... 23 **DE Reg.** 505 (Prop.)  
23 **DE Reg.** 748 (Final)

410 Satellite cool Agreements..... 23 **DE Reg.** 506 (Prop.)

508 Multi-Tiered System of Support (MTSS)..... 23 **DE Reg.** 708 (Prop.)

545 K to 12 School Counseling Programs..... 23 **DE Reg.** 613 (Prop.)

603 Compliance with the Gun Free Schools Act..... 23 **DE Reg.** 299 (Final)  
23 **DE Reg.** 147 (Prop.)

605 Student Rights and Responsibilities..... 23 **DE Reg.** 368 (Final)  
23 **DE Reg.** 345 (Prop.)

609 District and School Based Intervention Services..... 23 **DE Reg.** 559 (Final)  
23 **DE Reg.** 109 (Final)

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems..... 23 **DE Reg.** 149 (Prop.)  
23 **DE Reg.** 370 (Final)

614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion..... 23 **DE Reg.** 507 (Prop.)

615 School Attendance..... 23 **DE Reg.** 751 (Final)

624 School District/Charter School Policy Prohibiting Cyberbullying..... 23 **DE Reg.** 347 (Prop.)

705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States..... 23 **DE Reg.** 263 (Prop.)  
23 **DE Reg.** 561 (Final)

705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States..... 23 **DE Reg.** 111 (Final)

# CUMULATIVE TABLES

|  |                        |
|--|------------------------|
| 714 Professional Employee Work Stoppage or Strike.....   | 23 DE Reg. 153 (Prop.) |
|  | 23 DE Reg. 375 (Rep.)  |
| 718 Health Examinations for Employees of School Districts, Charter Schools,<br>and Alternative Programs.....                                 | 23 DE Reg. 265 (Prop.) |
|  | 23 DE Reg. 447 (Rep.)  |
| 725 School Administrator Contracts and Agreements.....   | 23 DE Reg. 154 (Prop.) |
| 734 Financial Responsibility Training for District School Board, Charter School<br>Board and Citizen Budget Oversight Committee Members..... | 23 DE Reg. 266 (Prop.) |
|  | 23 DE Reg. 648 (Final) |
| 735 Standardized Financial Reporting and Transparency.....   | 23 DE Reg. 349 (Prop.) |
|  | 23 DE Reg. 563 (Final) |
| 742 Compensation of School District and Charter School Personnel Under<br>Federal Projects.....  | 23 DE Reg. 351 (Prop.) |
|  | 23 DE Reg. 565 (Final) |
| 775 New Teacher Hiring Date Reporting.....   | 23 DE Reg. 711 (Prop.) |
| 804 Immunizations.....   | 23 DE Reg. 713 (Prop.) |
| 805 The School Health Tuberculosis (TB) Control Program.....   | 23 DE Reg. 269 (Prop.) |
|  | 23 DE Reg. 448 (Final) |
| 815 Health Examinations and Screening.....   | 23 DE Reg. 6 (Prop.)   |
|  | 23 DE Reg. 208 (Final) |
| 851 K to 12 Comprehensive Health Education Program.....  | 23 DE Reg. 353 (Prop.) |
|  | 23 DE Reg. 756 (Final) |
| 877 Tobacco Policy.....  | 23 DE Reg. 419 (Prop.) |
|  | 23 DE Reg. 651 (Final) |
| 881 Releasing Students to Persons Other Than Their Parent, Guardian or<br>Relative Caregiver.....  | 23 DE Reg. 356 (Prop.) |
| 901 Education of Homeless Children and Youth.....  | 23 DE Reg. 33 (Final)  |
| 902 Gifted or Talented Education Plan.....   | 23 DE Reg. 273 (Prop.) |
|  | 23 DE Reg. 568 (Final) |
| 917 Accelerated Academic Programs.....   | 23 DE Reg. 301 (Final) |
| 920 Educational Programs for English Language Learners (ELLs).....   | 23 DE Reg. 357 (Prop.) |
|  | 23 DE Reg. 653 (Final) |
| 922 Children with Disabilities Subpart A, Purposes and Definitions.....  | 23 DE Reg. 617 (Prop.) |
| 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination,<br>Individualized Education Programs.....                  | 23 DE Reg. 618 (Prop.) |
| 930 Supportive Instruction (Homebound).....  | 23 DE Reg. 275 (Prop.) |
|  | 23 DE Reg. 452 (Final) |
| 1001 Participation in Extra Curricular Activities.....   | 23 DE Reg. 113 (Final) |
| 1006 Delaware Interscholastic Athletic Association (DIAA).....   | 23 DE Reg. 376 (Final) |
| 1007 DIAA Sportsmanship.....   | 23 DE Reg. 114 (Final) |
| 1008 DIAA Junior High and Middle School Interscholastic Athletics.....   | 23 DE Reg. 122 (Final) |
| 1009 DIAA High School Interscholastic Athletics.....   | 23 DE Reg. 123 (Final) |
| 1150 School Transportation.....  | 23 DE Reg. 361 (Prop.) |
| 1206 Speech Language Pathologist Incentive Loan Program.....   | 23 DE Reg. 513 (Prop.) |
| 1207 Delaware Nursing Incentive Program.....   | 23 DE Reg. 516 (Prop.) |
| <b>Professional Standards Board</b>  |                        |
| 1501 Knowledge, Skills, and Responsibility Based Salary Supplements for<br>Educators.....  | 23 DE Reg. 155 (Prop.) |
|  | 23 DE Reg. 571 (Final) |
| 1508 Special Institute for Teacher Licensure and Certification.....  | 23 DE Reg. 717 (Prop.) |
| 1509 Meritorious New Teacher Candidate Designation.....  | 23 DE Reg. 719 (Prop.) |
| 1510 Issuance of Initial License .....   | 23 DE Reg. 38 (Final)  |
| 1511 Issuance and Renewal of Continuing License.....   | 23 DE Reg. 40 (Final)  |
| 1513 Denial of Licenses and Permits.....   | 23 DE Reg. 760 (Final) |
| 1515 Hearing Procedures and Rules.....   | 23 DE Reg. 764 (Final) |
| 1516 Professional Standards Board Standing Committees.....   | 23 DE Reg. 572 (Final) |

|   |                        |
|---|------------------------|
| 1521 Elementary Teacher.....                              | 23 DE Reg. 421 (Prop.) |
| 1522 Elementary School Counselor.....                     | 23 DE Reg. 278 (Prop.) |
|   | 23 DE Reg. 574 (Final) |
| 1545 Secondary School Counselor.....                      | 23 DE Reg. 285 (Prop.) |
|   | 23 DE Reg. 576 (Final) |
| 1549 Dance Teacher.....                                   | 23 DE Reg. 162 (Prop.) |
| 1558 Theater Teacher.....                                 | 23 DE Reg. 167 (Prop.) |
| 1563 Music Teacher.....                                   | 23 DE Reg. 173 (Prop.) |
| 1582 School Nurse.....                                    | 23 DE Reg. 721 (Prop.) |
| 1595 Certification Programs for Leaders in Education..... | 23 DE Reg. 771 (Final) |

**DEPARTMENT OF ELECTIONS**

**Office of the State Election Commissioner**

|   |                        |
|---|------------------------|
| 101 Procedures for Addressing Post-Election Voting Machine Audit Discrepancies..... | 23 DE Reg. 727 (Prop.) |
|---|------------------------|

**DEPARTMENT OF FINANCE**

**Office of the State Lottery**

|  |                       |
|--|-----------------------|
| 204 Delaware Sports Lottery Rules and Regulations..... | 23 DE Reg. 42 (Final) |
|--|-----------------------|

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**Delaware Health Care Commission**

|   |                        |
|---|------------------------|
| Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund..... | 23 DE Reg. 178 (Prop.) |
|   | 23 DE Reg. 455 (Final) |

**Division of Developmental Disabilities Services**

|  |                        |
|--|------------------------|
| 2103 Reportable Incident Management and Corrective Measures..... | 23 DE Reg. 182 (Prop.) |
|--|------------------------|

**Division of Health Care Quality**

|  |                        |
|--|------------------------|
| 3320 Intensive Behavioral Support and Educational Residence..... | 23 DE Reg. 43 (Final)  |
| 3325 Financial Capability Reporting.....                         | 23 DE Reg. 45 (Final)  |
| 3335 Office-Based Surgery.....                                   | 23 DE Reg. 125 (Final) |
| 4404 Free Standing Emergency Centers.....                        | 23 DE Reg. 9 (Prop.)   |

**Division of Medicaid and Medical Assistance**

|  |                        |
|--|------------------------|
| Acute Inpatient Hospital Readmission Claims.....   | 23 DE Reg. 186 (Prop.) |
| Documentation of State Residency: DSSM 14110 and 14340.....                                    | 23 DE Reg. 83 (Prop.)  |
|  | 23 DE Reg. 303 (Final) |
| DSSM 80000 - Authorization and Regulation of Medicaid/CHIP Accountable Care Organizations..... | 23 DE Reg. 428 (Prop.) |
|  | 23 DE Reg. 659 (Final) |
| Medicaid Long Term Care Program - Community Spouse: DSSM 20910.....                            | 23 DE Reg. 526 (Prop.) |
| Over-the-Counter Drugs Without a Prescription.....   | 23 DE Reg. 10 (Prop.)  |
|  | 23 DE Reg. 211 (Final) |
| PRTFs – Provision of EPSDT Services.....   | 23 DE Reg. 46 (Final)  |
| SSI Related Programs: DSSM 17000.....  | 23 DE Reg. 127 (Final) |
| Title XIX Medicaid State Plan - Adult Dental.....  | 23 DE Reg. 523 (Prop.) |
| Title XIX Medicaid State Plan - Drug Utilization Review (DUR).....                             | 23 DE Reg. 184 (Prop.) |
|  | 23 DE Reg. 427 (Prop.) |
|  | 23 DE Reg. 657 (Final) |
| Title XIX Medicaid State Plan - Excluded Earnings of Temporary Census Workers.....             | 23 DE Reg. 193 (Prop.) |
|  | 23 DE Reg. 466 (Final) |
| Title XIX Medicaid State Plan - Non-Emergency Medical Transportation (NEMT)                    | 23 DE Reg. 519 (Prop.) |
| Title XIX Medicaid State Plan - Prescribed Drugs - Obesity Drugs.....                          | 23 DE Reg. 191 (Prop.) |
|  | 23 DE Reg. 464 (Final) |
| Title XIX Medicaid State Plan - Telehealth Services Originating Site Fees.....                 | 23 DE Reg. 188 (Prop.) |
|  | 23 DE Reg. 461 (Final) |



|   |   |
|---|---|
| Title XXI Delaware Healthy Children Program State Plan - Children's Health Insurance Program (CHIP).....                                | 23 DE Reg. 51 (Final)   |
| Title XXI Delaware Healthy Children's Program State Plan - Health Services Initiatives - Vision Services - School-Based Initiative..... | 23 DE Reg. 528 (Prop.)  |
| <b>Division of Public Health</b>  |   |
| 4107 Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders.....                     | 23 DE Reg. 195 (Prop.)  |
| 4202 Control of Communicable and Other Disease Conditions.....  | 23 DE Reg. 378 (Final)<br>23 DE Reg. 431 (Prop.)                          |
| 4452 Clean Indoor Air Act.....  | 23 DE Reg. 665 (Final)<br>23 DE Reg. 12 (Prop.)                           |
| 4455 Delaware Regulations Governing a Detailed Plumbing Code.....   | 23 DE Reg. 213 (Final)<br>23 DE Reg. 200 (Prop.)                          |
| 4458 State of Delaware Food Code Regulations.....   | 23 DE Reg. 384 (Final)  |
| 4458A Cottage Food Regulations.....   | 23 DE Reg. 432 (Prop.)<br>23 DE Reg. 52 (Final)                           |
| 4463 Licensing and Registration of Operators of Public Water Supply Systems   | 23 DE Reg. 729 (Prop.)  |
| 4465 Delaware Radiation Control Regulations.....  | 23 DE Reg. 89 (Prop.)<br>23 DE Reg. 306 (Final)<br>23 DE Reg. 362 (Prop.) |
| 4470 State of Delaware Medical Marijuana Code.....  | 23 DE Reg. 433 (Prop.)<br>23 DE Reg. 667 (Final)                          |
| <b>Division of Social Services</b>  |   |
| Child Care Subsidy Program Terms: DSSM 11002.....   | 23 DE Reg. 539 (Prop.)  |
| Child Care Subsidy Program: DSSM 11006.....   | 23 DE Reg. 624 (Prop.)  |
| Determination of Child Care - Parents Under Age 18: DSSM 11003.9.4.....   | 23 DE Reg. 292 (Prop.)<br>23 DE Reg. 577 (Final)                          |
| Determining Special Needs and Income Eligibility for Child Care: DSSM 11003   | 23 DE Reg. 531 (Prop.)  |
| DSS Application Process: DSSM 2000.....   | 23 DE Reg. 53 (Final)   |
| Income Reporting Requirements for Child Care: DSSM 11003.....   | 23 DE Reg. 60 (Final)   |
| POC - Determining and Reviewing Child Care: DSSM 11004.11.....  | 23 DE Reg. 98 (Prop.)<br>23 DE Reg. 388 (Final)                           |
| Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T): DSSM 10001.....   | 23 DE Reg. 619 (Prop.)  |
| TANF CMR School Attendance Requirement: DSSM 3012.....  | 23 DE Reg. 89 (Prop.)<br>23 DE Reg. 384 (Final)                           |
| TANF and GA Eligibility - Excluded Income: DSSM 4006.....   | 23 DE Reg. 92 (Prop.)<br>23 DE Reg. 308 (Final)                           |
| Temporary Assistance for Needy Families (TANF) - CMR: DSSM 3000.....  | 23 DE Reg. 63 (Final)   |
| <b>DEPARTMENT OF INSURANCE</b>  |   |
| <b>Office of the Commissioner</b>   |   |
| 606 Proof of Automobile Insurance.....  | 23 DE Reg. 628 (Prop.)  |
| 802 Delaware Workplace Safety Regulation.....   | 23 DE Reg. 434 (Prop.)<br>23 DE Reg. 676 (Final)                          |
| 903 Prompt Payment of Settled Claims [Formerly Regulation 81].....  | 23 DE Reg. 730 (Prop.)  |
| 1101 Listed Surplus Lines Carriers Intending to Establish an Office in Delaware   | 23 DE Reg. 102 (Prop.)<br>23 DE Reg. 310 (Final)                          |
| 1313 Arbitration of Health Insurance Disputes Between Carriers and Providers  | 23 DE Reg. 312 (Final)  |
| 1319 Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers.....                               | 23 DE Reg. 314 (Final)  |
| 1410 Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug And Alcohol Dependency.....      | 23 DE Reg. 316 (Final)  |
| 1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions.....   | 23 DE Reg. 317 (Final)  |
| 2001 Insurance Premium Finance Companies.....   | 23 DE Reg. 129 (Final)  |

**DEPARTMENT OF JUSTICE**

**Fraud and Consumer Protection Division**

|  |  |
|--|--|
| Rules Pursuant to the Delaware Securities Act..... | 23 DE Reg. 540 (Prop.)<br>23 DE Reg. 776 (Final) |
|--|--|

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**Division of Air Quality**

|  |  |
|--|--|
| 1124 Control of Volatile Organic Compound Emissions..... | 23 DE Reg. 438 (Prop.)                           |
| 1125 Requirements for Preconstruction Review.....        | 23 DE Reg. 201 (Prop.)<br>23 DE Reg. 579 (Final) |
| 1150 Outer Continental Shelf Air Regulations.....        | 23 DE Reg. 319 (Final)                           |

**Division of Climate, Coastal & Energy**

|  |                        |
|--|------------------------|
| 2101 Regulations for State Energy Conservation Code..... | 23 DE Reg. 363 (Prop.) |
|--|------------------------|

**Division of Fish and Wildlife**

|  |                        |
|--|------------------------|
| 3300 Non-Tidal Finfish: 3301 Definitions.....  | 23 DE Reg. 543 (Prop.) |
| 3502 Striped Bass Spawning Season and Area Restrictions.....   | 23 DE Reg. 633 (Prop.) |
| 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel<br>Limit; Possession Limit..... | 23 DE Reg. 705 (Emer.) |
| 3504 Striped Bass Possession Size Limit; Exception.....  | 23 DE Reg. 705 (Emer.) |
| 3550 Cobia ( <i>Rachycentron canadum</i> ).....  | 23 DE Reg. 635 (Prop.) |
| 3723 Jonah Crab ( <i>Cancer Borealis</i> ).....  | 23 DE Reg. 217 (Final) |
| 3755 Lobsters.....   | 23 DE Reg. 217 (Final) |

**Division of Waste and Hazardous Substances**

|  |  |
|--|--|
| 1351 Underground Storage Tank Systems..... | 23 DE Reg. 104 (Prop.)<br>23 DE Reg. 581 (Final) |
|--|--|

**Office of the Secretary**

|  |  |
|--|--|
| 101 Regulations Governing Delaware's Coastal Zone..... | 23 DE Reg. 222 (Final)<br>23 DE Reg. 322 (Final) |
|--|--|

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

**Delaware Council on Police Training**

|   |                        |
|---|------------------------|
| 801 Regulations of the Delaware Council on Police Training..... | 23 DE Reg. 637 (Prop.) |
| 803 COPT Firearms Instructors Standards and Requirements.....   | 23 DE Reg. 638 (Prop.) |

**Division of State Police**

|  |  |
|--|--|
| 1300 Board of Examiners of Private Investigators & Private Security Agencies | 23 DE Reg. 440 (Prop.)<br>23 DE Reg. 469 (Final) |
| 2400 Board of Examiners of Constables.....                                   | 23 DE Reg. 226 (Final)                           |
| 5500 Bail Enforcement Agents.....  | 23 DE Reg. 72 (Final)                            |

**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**

**Division of Family Services**

|                                 |                        |
|---------------------------------|------------------------|
| 201 Child Placing Agencies..... | 23 DE Reg. 233 (Final) |
|---------------------------------|------------------------|

**DEPARTMENT OF STATE**

**Division of Corporations**

|  |                        |
|--|------------------------|
| 102 Business Entity Name Standards and Procedures..... | 23 DE Reg. 105 (Prop.) |
| 102 Business Entity Name Standards and Process.....    | 23 DE Reg. 323 (Final) |

**Division of Historical and Cultural Affairs**

|   |  |
|---|--|
| 901 Historic Preservation Tax Credit Program..... | 23 DE Reg. 294 (Prop.)<br>23 DE Reg. 470 (Final) |
|---|--|

**Division of Professional Regulation**

|  |  |
|--|--|
| 1770 Respiratory Care Practice Advisory Council..... | 23 DE Reg. 366 (Prop.)   |
| 1900 Board of Nursing.....                           | 23 DE Reg. 130 (Final)<br>23 DE Reg. 296 (Prop.)<br>23 DE Reg. 682 (Final) |

|  |                               |
|--|-------------------------------|
| 2000 Board of Occupational Therapy Practice.....   | 23 <b>DE Reg.</b> 733 (Prop.) |
| 2900 Real Estate Commission.....   | 23 <b>DE Reg.</b> 442 (Prop.) |
|  | 23 <b>DE Reg.</b> 738 (Prop.) |
| 2925 Real Estate Commission Education Committee.....   | 23 <b>DE Reg.</b> 443 (Prop.) |
|  | 23 <b>DE Reg.</b> 777 (Final) |
| 3100 Board of Funeral Services.....  | 23 <b>DE Reg.</b> 742 (Prop.) |
| <b>Controlled Substance Advisory Committee</b>   |                               |
| Uniform Controlled Substance Act Regulations.....  | 23 <b>DE Reg.</b> 16 (Prop.)  |
| <b>Office of the State Bank Commissioner</b>   |                               |
| 701 Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code..... | 23 <b>DE Reg.</b> 17 (Prop.)  |
| 1103 Instructions for Preparation of Franchise Tax.....  | 23 <b>DE Reg.</b> 21 (Prop.)  |
|  | 23 <b>DE Reg.</b> 236 (Final) |
| 1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks.....   | 23 <b>DE Reg.</b> 26 (Prop.)  |
|  | 23 <b>DE Reg.</b> 241 (Final) |
| 2301 Operating Regulation.....   | 23 <b>DE Reg.</b> 641(Prop.)  |
| <b>Public Service Commission</b>   |                               |
| 1001 Rules of Practice and Procedure of the Delaware Public Service Commission.....  | 23 <b>DE Reg.</b> 778 (Final) |
| 3007 Electric Service Reliability and Quality Standards.....   | 23 <b>DE Reg.</b> 444 (Prop.) |
| 4001 Rules for the Provision of Telecommunications Services (Dockets 10 and 45).....   | 23 <b>DE Reg.</b> 545 (Prop.) |
| 4005 Regulations for the Implementation of the Telecommunications Technology Investment Act (Docket 41).....   | 23 <b>DE Reg.</b> 552 (Prop.) |
| <b>DEPARTMENT OF TRANSPORTATION</b>  |                               |
| <b>Division of Planning</b>  |                               |
| 2309 Development Coordination Manual.....  | 23 <b>DE Reg.</b> 203 (Prop.) |
|  | 23 <b>DE Reg.</b> 392 (Final) |
| 2312 Regulations Governing the Practice and Procedure for Administering the Transportation Infrastructure Investment Fund.....                                     | 23 <b>DE Reg.</b> 204 (Prop.) |
|  | 23 <b>DE Reg.</b> 400 (Final) |
| <b>Division of Transportation Solutions</b>  |                               |
| 2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....  | 23 <b>DE Reg.</b> 107 (Prop.) |
|  | 23 <b>DE Reg.</b> 326 (Final) |
| <b>OFFICE OF THE STATE TREASURER</b>   |                               |
| <b>Division of Debt and Cash Management</b>  |                               |
| 1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds.....   | 23 <b>DE Reg.</b> 297 (Prop.) |
|  | 23 <b>DE Reg.</b> 584 (Final) |

---

## DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 and 1205(b))  
14 DE Admin. Code 1521

### ERRATA

#### 1521 Elementary Teacher

**\*Please Note:** The proposed regulation for 1521 Elementary Teacher as published in the December 1, 2019 issue of the Delaware *Register of Regulations* (23 DE Reg. 421) contained a typographical error for the ETS Test Code Number for the Praxis Elementary Education: Content Knowledge for Teaching Reading and Language Arts CKT Subtest in subsection 4.1.2.4.1. The correct Test Code Number is 7812 and it was inadvertently published as 7.8.1.2. The subsection is reprinted below with the error corrected. The error does not appear in the final regulation appearing in the April 2020 *Register*.

#### 1521 Elementary Teacher

##### *(Break in Continuity of Sections)*

#### 4.0 ~~Prescribed Knowledge, Skill, and Education~~ Education, Knowledge, and Skill Requirements

- 4.1 For an applicant who is applying for his or her first Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.

##### *(Break in Continuity Within Section)*

- 4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:

##### *(Break in Continuity Within Section)*

- ~~4.1.2.3.14.1.2.4~~ The applicant shall have achieved a Passing Score on each of the following subtests:  
~~4.1.2.3.14.1.2.4.1~~ Praxis Subject Assessment - Elementary Education: Reading Language Arts Subtest (ETS Test Code # 5002) a Passing Score of 157 or Praxis Elementary Education: Content Knowledge for Teaching Reading and Language Arts CKT Subtest (ETS Test Code # 7802 or 7812) a Passing Score of 156; and

**\*Please Note:** The full text of the proposed regulation is not being republished. Please see 23 DE Reg. 866 for the final amendments to 1521 Elementary Teacher. A copy of the proposed regulation is available at: <http://regulations.delaware.gov/register/december2019/proposed/23 DE Reg 421 12-01-19.htm>

## 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 LABOR**

**DIVISION OF UNEMPLOYMENT INSURANCE**

Statutory Authority: 19 Delaware Code, Section 3122 and 29 Delaware Code, Section 10119(4)  
(19 **Del.C.** §3122 & 29 **Del.C.** §10119(4))  
19 **DE Admin. Code** 1201

**ORDER**

**1201 Unemployment Insurance Appeal Board Regulations**

**EMERGENCY REGULATION AMENDING SECTION 4.2 OF THE UNEMPLOYMENT INSURANCE APPEAL BOARD REGULATIONS RELATING TO HEARINGS AND IN PERSON APPEARANCE REQUIREMENTS**

**WHEREAS**, The Centers for Disease Control and Prevention has determined that a novel coronavirus ("COVID-19") presents a serious public health threat.

**WHEREAS**, the Delaware Department of Health & Social Services' Division of Public Health has determined that it is vital for the State of Delaware to prepare for the possible community transmission of COVID-19 and take steps to avoid the transmission of the virus, which may include avoiding public gatherings.

**WHEREAS**, on March 12, 2020, Governor Carney declared a State of Emergency in Delaware, effective as of Friday, March 13, 2020 at 8:00 a.m. E.S.T., which shall continue until terminated as provided under state law.

**WHEREAS**, on March 13, 2020, the President of the United States of America declared a National State of Emergency due to the public health threat caused by COVID-19.

**WHEREAS**, the Board regularly conducts hearings involving the attendance of parties, witnesses, attorneys, Board staff, and other interested persons.

**WHEREAS**, in the interest of protecting the foregoing individuals and the public, the Board finds that adoption of a regulation temporarily amending the personal appearance requirement for Board hearings set forth in Regulation 4.2 must occur on an emergency basis because the Board has determined that COVID-19 presents an imminent peril to the public health, safety or welfare of the public; 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 18<sup>th</sup> day of March, 2020:

1. Section 4.2 of the Board Regulations entitled "Presence of Parties Required" is amended as follows:
  - a. Following the existing Regulation 4.2, insert a new Regulation 4.2.1 as follows:

4.2.1 The Board will consider conducting hearings telephonically, when it believes it would be practicable and efficient to do so and will promptly consider any written request by a party to change a hearing from being held in-person to a telephonic hearing or absent any written request by a party, the Board may, on its own initiative, change a hearing from being in-person to a telephonic hearing when it believes it would be practicable and efficient to do so.

2. In accordance with the provisions of 29 Del.C. §10119(4), the Board will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Emergency Order.

3. In accordance with the provisions of 29 Del.C. §10119(3), this Emergency Order shall be effective for 120 days from the date of execution unless withdrawn earlier by the Board. At the end of 120 days, the Board may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 Del.C. §10119(3).

**IT IS SO ORDERED** this 18<sup>th</sup> day of March, 2020.

**UNEMPLOYMENT INSURANCE APPEAL BOARD MEMBERS:**

|                           |                  |
|---------------------------|------------------|
| Elmer L. Newlin, Chairman | Sarah L. Buttner |
| Vance G. Daniels, Sr.     | Drew A. Dorak    |
| Beverly G. Bell           |                  |

**1201 Unemployment Insurance Appeal Board Regulations**

**1.0 Definitions**

As used in these Rules and Regulations, the following definitions shall apply:

**"Board"** shall mean the Unemployment Insurance Appeal Board.

**"Chairman"** shall mean the Chairman of the Board.

**"Hearing Officer"** shall mean the Appeals Referee or his or her designate who heard the initial appeal.

**"Hearsay Evidence"** shall be such evidence so designated by the Delaware Rules of Evidence (D.R.E.).

**"Relevant Evidence"** shall mean evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without this evidence, as set forth in D.R.E. 401.

**2.0 Location of Unemployment Insurance Appeal Board**

- 2.1 All correspondence or other papers or documents filed with the Board shall be filed, either by mail or by hand delivery, at the following address: Unemployment Insurance Appeal Board, Department of Labor, 4425 North Market Street, Wilmington, DE 19802. The Board phone number is (302) 761-8370 and the Board's fax number is (302) 761-6635.
- 2.2 Notices of Appeal to the Board may be filed, by mail or personal delivery, at any local Unemployment Office or at the Board Office listed at Rule 2.1. All notices of Appeal must be in writing.

**3.0 Commencement**

A hearing before the Board may be initiated by:

- 3.1 Either party to the action heard by the Hearing Officer upon filing a timely Notice of Appeal with the Board;

- 3.2 A party whose appeal was dismissed by the Hearing Officer for failure of that party to appear at the scheduled hearing before the Hearing Officer, upon filing of a timely Notice of Appeal with the Board, in which case the Board may, at its sole discretion, remand the case to the Hearing Officer for a prompt hearing to make a full and complete record; or
- 3.3 The Board *sua sponte* with notice to the parties below or their counsel.

#### **4.0 Hearings**

- 4.1 Purpose. The purpose of a hearing before the Board is to examine the factual and legal bases for the decision rendered by the Hearing Officer. The parties shall not re-litigate the case presented to the Referee, but may present additional evidence. Both the referee's record and any new evidence presented to the Board shall be considered by the Board in making its decision.
- 4.2 Presence of parties required. All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.
- 4.2.1 The Board will consider conducting hearings telephonically, when it believes it would be practicable and efficient to do so and will promptly consider any written request by a party to change a hearing from being held in-person to a telephonic hearing or absent any written request by a party, the Board may, on its own initiative, change a hearing from being in-person to a telephonic hearing when it believes it would be practicable and efficient to do so.
- 4.3 Representation.
- 4.3.1 At any hearing, a party may appear *pro se* or be represented by an attorney-at-law duly admitted to practice law in the State of Delaware. A corporation or other artificial entity desiring legal representation must be represented by an attorney-at-law duly admitted to practice law in the State of Delaware.
- 4.3.2 The Board or its attorney may examine any witnesses, and move the admissions of documents and things into evidence.
- 4.4 Continuances and Postponements.
- 4.4.1 Applications for a continuance or postponement of any hearing shall be made in writing to the Board office no later than 6 days prior to the hearing. The request shall state the reasons for which the continuance or postponement is requested. The grant or denial of any request for continuance or postponement is within the discretion of the Board Chairman or his or her designee.
- 4.4.2 Applications for any continuance or postponement of any hearing made less than 6 days prior to the hearing shall set forth with specificity the reason(s) for the continuance or postponement, and shall typically be granted only for reasons of unanticipated emergencies.
- 4.4.3 An appealing party may request to withdraw its appeal at any time prior to hearing. All requests for withdrawal must be made in writing.
- 4.5 Length of hearing. Hearings are scheduled to last 20 minutes from the time the presiding member calls the case, except that the Board may extend the length of the hearing at its discretion.
- 4.6 Record. A record shall be made of all hearings before the Board. The record may be made either by a stenographic record or by audio recording. The record does not need to be transcribed unless and until an appeal is taken to Superior Court from the Board's decision.
- 4.7 Evidence.
- 4.7.1 The Board follows the Delaware Rules of Evidence. The Board may admit and consider hearsay evidence, however, the Board shall not base its decision solely on hearsay or other evidence not admissible under the Rules of Evidence.
- 4.7.2 The Board may consider any relevant evidence relating to any issue raised below, whether or not that issue was decided by the Hearing Officer.
- 4.7.3 The admissibility of evidence and determinations of the weight to be given evidence and the credibility of witnesses shall be within the sound discretion of the Board.

4.7.4 The Board shall not receive into evidence any new testimony offered by means of a telephone or other electronic or electromagnetic device, however the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device.

4.8 Subpoenas.

4.8.1 A party may request subpoenas to compel a witness or witnesses to appear at a hearing or to compel the production of documents at or prior to a hearing. Such a request shall be in writing, be received by the Board at least 7 days prior to the hearing, and state the full name and address of the person(s) to be subpoenaed and a detailed description of the documents to be produced. The issuance of such subpoena(s) shall be at the sole discretion of the Board and its attorney.

4.8.2 The Board *sua sponte* may issue subpoenas to compel witnesses to appear at a hearing or documents to be produced at or prior to a hearing.

4.9 Exhibits. Any party offering any document into evidence at a hearing shall provide at least 4 copies of such document at the time of the hearing.

4.10 Written Submissions. The Board or its attorney may at their discretion request written submissions from the parties prior to or following the hearing.

**5.0 Remand**

The Board may remand any case to the Hearing Officer at any time and for any purpose at its sole discretion.

**6.0 Decisions**

6.1 The Board shall render its decision promptly, usually within 14 days after the hearing.

6.2 The Board may affirm, modify, or reverse, in whole or in part, the decision of the Appeals Referee.

6.3 The Board may *sua sponte* affirm, modify or set aside any decision of an appeal tribunal on the basis of evidence previously submitted, without further hearing, or direct the taking of additional evidence or may permit any of the parties to the decision to initiate further appeal before it.

6.4 Final decisions shall be accompanied by a notice of the right to appeal the Board's decision to Superior Court pursuant to 19 **Del.C.** §3323.

**7.0 Rehearing**

At any time subsequent to a Board decision but prior to the Board's decision becoming final, any party to the appeal may request by motion, with notice to all parties, a rehearing before to Board. The motion shall set forth briefly and distinctly the grounds for the motion. The Board shall promptly consider the motion for reconsideration. A copy of the Board's decision on the motion for rehearing shall be mailed to all parties or their counsel if represented by an attorney.

7.1 The grant or denial of a motion for rehearing is solely within the discretion of the Board.

7.2 The Board shall not consider any motion for rehearing filed after the Board's decision has become final.

7.3 The Board shall not consider any motion for rehearing of the Board's denial of a prior motion for rehearing.



**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 AGRICULTURE****THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))  
3 **DE Admin. Code** 1001

**PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations****Summary**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend Rule 13 by amending Rule 13.20 to change the minimum days since last race from 180 to 120, amend Rule 15 by adding new Rule 15.1.3.1.3 relating to Foreign Substances to allow electrolytes to be administered to a horse within twenty four hours prior to the scheduled post time for the first race subject to certain provisions, new Rule 15.28 relating to Bisphosphonates, new Rule 15.29 relating to Non-Steroidal Anti-Inflammatory Drugs, new Rule 15.30 relating to Intra-articular Joint Injections, and new Rule 15.31 relating to Stacking of Corticosteroids. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

**Comments**

A copy of the proposed regulations is being published in the April 1, 2020 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the Register of Regulations website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before May 1, 2020. Written materials submitted will be available for inspection at the

above address.

**Adoption of Proposed Regulation**

On or after May 1, 2020, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

**\*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/april2020/proposed/23 DE Reg 806RFA 04-01-20.pdf>

**1001 Thoroughbred Racing Rules and Regulations**

*(Break in Continuity of Sections)*

**2.0 Permits, Registrations and Authorizations**

*(Break in Continuity Within Section)*

**2.10 Applicability of Regulations to Arabian Horses**

*(Break in Continuity Within Section)*

This regulation was adopted pursuant to the emergency regulation authority granted by 29 **Del.C.** §10119 and the regulatory authority granted by former 28 **Del.C.** §328(m).

*(Break in Continuity of Sections)*

**13.0 Claiming Races**

*(Break in Continuity Within Section)*

13.20 Option to Declare Horse Ineligible to be Claimed: At the time of entry into a claiming race, the owner may opt to declare a horse ineligible to be claimed provided that the horse has been laid-off and has not started for a minimum of ~~480~~ 120 days since its last race and is entered for a claiming price equal to or greater than the claiming price of the horses last start.

*(Break in Continuity of Sections)*

**15.0 Medication; Testing Procedures****15.1 Prohibition and Control of Medication:**

*(Break in Continuity Within Section)*

**15.1.3 Foreign Substances:**

15.1.3.1 No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.1.3.1.3:

*(Break in Continuity Within Section)*

15.1.3.1.3 A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Association of Racing Commissioners International (ARCI). The Commission hereby adopts by reference the ARCI Controlled Therapeutic Medication Schedule, Version 2.1. If there is any inconsistency between the Commission's regulations and the ARCI Controlled Therapeutic Medication Schedule, the provisions of the Commission's regulations shall prevail. Androgenic-Anabolic Steroids are subject to the provisions of Rule 15.17. Electrolytes may be administered to a horse within 24 hours prior to the scheduled post time for the first race so long as they do not contain any other drug or create a positive test under the Commission's drug testing program.

*(Break in Continuity Within Section)*

15.28 Bisphosphonates. It is a prohibited practice to administer bisphosphonates to any horse under four years of age. Horses four years of age or older may only be administered bisphosphonates under the following circumstances:

# PROPOSED REGULATIONS

15.28.1 Only bisphosphonates that are FDA approved for use in the horse may be administered according to label requirements and only for diagnosed cases of navicular disease.

15.28.2 If a horse older than four years of age is administered bisphosphonates the Commission Veterinarian must be notified within 24 hours of the administration, and the horse shall be placed on the Veterinarian's List for a minimum of six months after the last administration. Prior to returning to racing, the horse must work for the Commission Veterinarian as required by ARCI 011-030(B)(4).

15.28.3 If any bisphosphonate is detected in an out of competition or post-race test sample and the Commission has not received timely notification (24 hours as provided in Rule 15.28.2) of an administration, the detection shall be treated as the finding of an illicit substance. The horse shall be placed on the Veterinarian's List for a minimum of six months from the date of sampling and be required to work for the Commission Veterinarian as described in ARCI Model Rules section ARCI 011-030(B)(4).

15.29 ARCI Non-Steroidal Anti-Inflammatory Drugs (NSAIDs) Rule.

15.29.1 The Commission hereby adopts by reference the Association of Racing Commissioners International Non-Steroidal Anti-Inflammatory Drugs (NSAIDs) Rule, (ARCI-Item 3, December 12, 2019). If there is any inconsistency between the Commission's regulations and the ARCI Non-Steroidal Anti-Inflammatory Drugs (NSAIDs) Rule, the provisions of the Commission's regulations shall prevail.

15.30 ARCI Intra-articular Joint Injections Rule.

15.30.1 The Commission hereby adopts by reference the Association of Racing Commissioners International Intra-articular Joint Injections Rule (ARCI-011-020 F.). If there is any inconsistency between the Commission's regulations and the ARCI Intra-articular Joint Injections Rule, the provisions of the Commission's regulations shall prevail.

15.31 ARCI Stacking of Corticosteroids Rule.

15.31.1 The Commission hereby adopts by reference the Association of Racing Commissioners International Stacking of Corticosteroids Rule (ARCI-011-020 G.). If there is any inconsistency between the Commission's regulations and the ARCI Stacking of Corticosteroids Rule, the provisions of the Commission's regulations shall prevail.

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

**1001 Thoroughbred Racing Rules and Regulations**

---

## DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))  
14 DE Admin. Code 1571

### PUBLIC NOTICE

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

**1571 Special Education Teacher of Students with Disabilities**

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board (“Board”), acting in consultation and cooperation with the Delaware Department of Education (“Department”), developed amendments to 14 **DE Admin. Code** 1571 Special Education Teacher of Students with Disabilities pursuant to 14 **Del.C.** §1203 and 14 **Del.C.** §1205(b). The regulation concerns the requirements for a Special Education Teacher of Students with Disabilities Standard Certificate pursuant to 14 **Del.C.** §1220. The proposed amendments include clarifying changes to Section 1.0; adding defined terms to Section 2.0; clarifying the requirements for issuing a Special Education Teacher of Students with Disabilities Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Special Education Teacher of Students with Disabilities Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Special Education Teacher of Students with Disabilities Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 4, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to [DOEregulations.comment@doe.k12.de.us](mailto: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](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 will help to 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 will help ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure all students’ health and safety are adequately protected? The amended regulation addresses a standard certificate for educators, not students’ health and safety.
4. Will the amended regulation help to ensure that all students’ legal rights are respected? The amended regulation addresses a standard certificate for educators, not students’ legal rights.
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 Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.
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, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.
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 this 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 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/april2020/proposed/23 DE Reg 808RFA 04-01-20.pdf>

## 1571 Special Education Teacher of Students with Disabilities

### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Special Education Teacher of Students with Disabilities (Category).
- 1.1.1 This ~~certification~~ Certification is required for an ~~educator within the Delaware public school system~~ Educator whose primary assignment is teaching children with disabilities in grades K to 12 in Delaware public schools.
- 1.1.1.1 The Early Childhood Exceptional Children Special Education Teacher ~~certification~~ Standard Certificate may be used for grades K to grade 2 in lieu of Special Education Teacher of Students with Disabilities ~~certification~~ Standard Certificate.
- 1.1.1.2 ~~Teachers of Students Who Are Deaf or Hard of Hearing Certification; and Teacher of Students with Visual Impairments Certification; and Teacher of Students with Autism or Students with severe Intellectual Disabilities Certification shall be used for grades K to 12 when the teacher's primary assignment is serving the special population designated within those category certifications. The Teacher of Students with Autism or with Severe Intellectual Disabilities Standard Certificate, Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate, and Teacher of Students with Visual Impairments Standard Certificate shall be used when the teacher's primary assignment providing instruction to the category of students designated within those category certifications.~~
- 1.1.2 This ~~certification~~ Certification is a category ~~certificate~~ Standard Certificate and does not certify an ~~educator~~ Educator to practice in a particular area or teach a particular subject. A category ~~certification~~ Standard Certificate only establishes that an ~~educator~~ Educator has met the prescribed education, knowledge, skill, or education or skill to instruct the a particular category of students ~~specified~~. This ~~certification~~ Certification is limited to the ~~specific~~ category of teaching ~~students with disabilities~~ Students with Disabilities.
- 1.1.3 ~~Subject or area certification also required.~~ An Educator shall hold at least one content area Standard Certificate.
- 1.1.3.1 ~~A category certificate may not be issued alone and an educator shall hold at least one subject or area certification.~~
- 1.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

### 2.0 Definitions

- 2.1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2.2 The following words and terms, when used in this regulation, have the following meaning ~~unless the context clearly indicates otherwise:~~
- "Certification"** means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.
- "Department"** means the Delaware Department of Education.
- "Educator"** means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.
- "Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.
- "15 Credits or the Equivalent in Professional Development"** means college credits or an equivalent number of hours with one credit equating to 15 hours taken either as part of a degree program or in

addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a Regionally Accredited college or university or other Department-approved provider.

**"Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Major or Its Equivalent"** means a minimum of thirty (30) semester hours of coursework in a particular content area.

**"Passing Score"** means a minimum score as established by the Standards Board, in consultation with the Department, and with the approval of the State Board of Education.

**"Professional Development"** means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and/or perspectives; and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

**"Regionally Accredited"** means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher 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.

**"Standards Board"** means the Professional Standards Board established pursuant to 14 Del.C. §1201.

**"Students with Disabilities"** means the same as "Child with a Disability" as provided in 14 Del.C. §3101(2).

**"Valid and Current License or Certificate"** means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

### 3.0 **Issuance of a Standard Certificate**

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as for Special Education Teacher of Students with Disabilities to an educator applicant who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; ~~or a Limited Standard, or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; 2003 and meets the requirements set forth in Section 4.0 of this regulation; or~~

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; Has met the requirements for licensure and holds a Valid and Current License or Certificate in special education or teaching students with disabilities.

3.1.3 Holds a Standard Certificate in a subject or area; and

3.1.4 Has satisfied the additional requirements in this regulation.

3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Special Education Teacher of Students with Disabilities Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of

# PROPOSED REGULATIONS

Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

## 4.0 **Additional Requirements Prescribed Education, Knowledge, and Skill Requirements**

- 4.1 ~~An educator shall also have satisfied one of the following additional education requirements:~~
- 4.1.1 ~~Holding a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent, in special education or students with disabilities, from a National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate standards; or~~
- 4.1.2 ~~Completion of a minimum of fifteen (15) credits or their equivalent in professional development as approved by the Department, with a focus in special education or in students with disabilities in the following content areas:~~
- 4.1.2.1 ~~Diagnosis and Instruction for Reading / Literacy (3 credits);~~
- 4.1.2.2 ~~Education Evaluation and IEP Development (3 credits);~~
- 4.1.2.3 ~~Curriculum and Instruction in Special Education (3 credits);~~
- 4.1.2.4 ~~Applied Behavior Analysis (3 credits); and~~
- 4.1.2.5 ~~One of the following areas:~~
- 4.1.2.5.1 ~~Legislation, Policy & Procedures/ Special Issues in Special Education (3 credits);~~
- 4.1.2.5.2 ~~Transitions from Secondary Special Education or Secondary Transition Planning (3 credits);~~
- 4.1.2.5.3 ~~Collaborative Teaming in Special Education (3 credits); or~~
- 4.1.2.5.4 ~~Assistive Technology (3 credits).~~
- 4.1 An applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 An applicant shall have satisfied one of the following education requirements:
- 4.1.1.1 Obtained and currently maintain an Exceptional Needs Specialist certificate from the National Board for Professional Teaching Standards; or
- 4.1.1.2 Earned a bachelor's, master's, or doctoral degree from a Regionally Accredited college or university with a Major or Its Equivalent in special education or teaching students with disabilities from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach students with disabilities as provided in 14 Del.C. §§1260 – 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in special education; or
- 4.1.1.5 Earned a bachelor's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 15 Credits or the Equivalent in Professional Development with a focus in special education or in students with disabilities in the following areas:
- 4.1.1.5.1 Diagnosis and Instruction for Reading / Literacy (3 credits);
- 4.1.1.5.2 Education Evaluation and IEP Development (3 credits);
- 4.1.1.5.3 Curriculum and Instruction in Special Education (3 credits);
- 4.1.1.5.4 Applied Behavior Analysis (3 credits); and
- 4.1.1.5.5 One of the following areas:
- 4.1.1.5.5.1 Legislation, Policy & Procedures/ Special Issues in Special Education (3 credits);

4.1.1.5.5.2 Transitions from Secondary Special Education or Secondary Transition Planning (3 credits):

4.1.1.5.5.3 Collaborative Teaming in Special Education (3 credits); or

4.1.1.5.5.4 Assistive Technology (3 credits).

4.1.2 The applicant shall have achieved on the *Praxis* Subject Assessment – Special Education: Core Knowledge and Applications (ETS Test Code # 5354) a Passing Score of 151.

## **5.0 ~~Past Certification Recognized~~ Application Requirements**

~~The Department shall recognize a Standard Certificate Exceptional Children Special Education Teacher or other valid equivalent Special Education Certification including Exceptional Children Special Education – Elementary and Exceptional Children Special Education – Secondary issued before July 1, 2016. A teacher holding such a Standard Certificate issued by the Department before July 1, 2016 shall be considered certified to instruct classes to students with disabilities.~~

5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with application for an Initial License, and the applicant shall also provide all required documentation for the License.

5.2 The following documentation is required with the application for a Special Education Teacher of Students with Disabilities Standard Certificate:

5.2.1 Evidence of obtaining an Exceptional Needs Specialist certificate from the National Board for Professional Teaching Standards, if applicable.

5.2.2 Official transcript from the applicant's Regionally Accredited college or university.

5.2.2.1 Electronic transcripts may be submitted by the applicant's Employing Authority or Regionally Accredited college or university.

5.2.2.2 Sealed paper transcripts may be submitted by the applicant, the applicant's Employing Authority, or the applicant's Regionally Accredited college or university.

5.2.2.3 The Department will not accept copies of transcripts.

5.2.3 Evidence of completing the equivalent of 15 Credits or the Equivalent in Professional Development, as provided in subsection 4.1.1.5, if applicable.

5.2.4 Official score on the *Praxis* Subject Assessment as provided in subsection 4.1.2.

5.2.5 Additional documentation as required by the Department.

5.3 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate in special education or teaching students with disabilities, the following documentation is required in the application for a Special Education Teacher of Students with Disabilities Standard Certificate:

5.3.1 An official copy of the educator license or certificate from another state or jurisdiction.

5.3.2 Additional documentation as required by the Department.

## **6.0 ~~Effective Date~~ Validity of a Standard Certificate**

~~Section 4.0 of this regulation shall be effective on July 1, 2016.~~

6.1 A Special Education Teacher of Students with Disabilities Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

6.2 A Special Education Teacher of Students with Disabilities Standard Certificate is not subject to renewal.

## **7.0 ~~Disciplinary Action~~**

7.1 An Educator's Special Education Teacher of Students with Disabilities Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.



# PROPOSED REGULATIONS

- 7.2 An Educator's Special Education Teacher of Students with Disabilities Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

## **8.0 Secretary of Education Review**

The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Special Education Teacher of Students with Disabilities Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Special Education Teacher of Students with Disabilities Standard Certificate but whose effectiveness is documented by the local school district or charter school.

## **9.0 Past Certificate Recognized**

The Department shall recognize a Special Education Teacher of Students with Disabilities Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to instruct Students with Disabilities.

---

## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF HEALTH CARE QUALITY**

Statutory Authority: 29 Delaware Code, Section 7903(9) (29 Del.C. §7903(9))  
16 DE Admin. Code 3325

### **PUBLIC NOTICE**

#### **3325 Financial Capability Reporting**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the Delaware Code, Section 7903(9), Delaware Health and Social Services (DHSS) / Division of Health Care Quality is proposing to amend Regulation 3325, Financial Capability Reporting, the Division's assessment of the financial capability of licensed providers revise the process for establishing capital availability for newly established facilities or facilities with a parent organization as well as to make some minor technical changes to other regulations.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Gabriela Kejner, Chief of Staff, Office of the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Thursday, May 1, 2020, Yrene E. Waldron, of the Division of Health Care Quality, 3 Mill Road, Wilmington, DE 19806, (302) 421-7410 is the Division contact person.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

### **SUMMARY OF PROPOSED CHANGES**

The proposal amends Regulation 3325 at the following sections:

- 4.1.4 Surety Bond
- 4.1.5 Memorandum of Understanding
- 5.3.6 Capital availability

- 5.3.6.1 Capital availability form
- 5.3.6.1.1 Surety Bond designee
- 5.3.6.1.2 Memorandum of Understanding
- 14.1.6 Emergency financial support

## Statutory Authority

29 Del.C. §7903(9), Powers, duties and functions of the Secretary

**\*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/april2020/proposed/23 DE Reg 814RFA 04-01-20.pdf>

## 3325 Financial Capability Reporting (Break in Continuity of Sections)

### 2.0 Purpose and Scope

- 2.1 The purpose of this regulation is to detail the Department of Health and Social Services' (DHSS) authority to monitor the financial capability of licensed ~~long-term~~ long-term care (LTC) providers. It details the level of information that must be provided by the licensee, or potential licensee, under various circumstances. It also defines when and in what form the Department will require the submission of audited financial statements reporting the financial position and the results of operations of facilities by accountants.

*(Break in Continuity of Sections)*

### 3.0 Definitions

*(Break in Continuity Within Section)*

**"Financial Distress"** means a finding by the Department following the analysis of an audit, complaint or data indicating that the financial condition of the facility threatens the health or safety of a ~~resident(s)~~ resident of a facility.

**"Generally Accepted Accounting Principles (~~GAAP~~)" or "GAAP"** means those principles that are recognized as the standard framework of guidelines for financial accounting.

*(Break in Continuity Within Section)*

**"Material Adverse Change"** means a change in the financial position of the facility or the controlling organization that threatens the health or safety of a ~~resident(s)~~ resident of a facility.

**"~~Reasonable Profit~~"** means a net profit of 1-1.5 percent of Gross Receipts/Sales/Revenue.

### 4.0 Requirements for the Submission of Financial Documents Upon Application for Renewal of a License.

- 4.1 With the exception of Family Care Homes, which are addressed in Section 13.0 of these regulations, all annual applications for renewal of a license shall be submitted at least thirty (30) calendar days prior to the expiration date of the license. The application must include a transmittal letter containing:
- 4.1.1 The type of ownership for the facility as well as senior, subordinate and affiliated organizations, i.e. proprietorship, partnership, corporation, Subchapter S Corporation or Limited Liability Company ~~and~~;
  - 4.1.2 The place of incorporation/registration, including names and addresses for all persons/entities with a 5% or greater ownership;
  - 4.1.3 Year-end financial ~~statement(s)~~ statement – balance sheet, income statement, and statement of cash flows for the facility (most recent year at year-end). If the year-end statement that is provided is three (3) or more months old when it is received by the Department a supplemental statement through the most recent month must be submitted. If the supplemental ~~statement(s)~~ statement is

# PROPOSED REGULATIONS

- not prepared by independent accountants, it is to be attested to by the treasurer and a second officer;
- 4.1.4 Evidence of a surety bond in an amount equal to ~~or greater than the sum of the previous four (4) months of all expenses~~ 2 months expenses based on an average of the previous 12 months average expenses as indicated on the most recent year-end profit and loss ~~statement.~~ statement;
- 4.1.5 A copy of the Memorandum of Understanding executed by and between the principal and chief financial officer of the facility and the DHSS Cabinet Secretary, or their designee, agreeing and acknowledging any and all expenditures from this account will be at the call of and with the express written consent of DHSS or their designee, to provide for the emergency maintenance of the health services, housing and to protect the welfare of the residents. ~~residents.~~
- (Break in Continuity Within Section)***
- 4.1.12 All items ~~submitted separately must bear the~~ A signed certification statement for each item submitted separately: "I certify, under penalty of perjury, the attached statement is true, complete and correct"; and

## 5.0 Requirements for the Submission of Financial Documents Upon Application for New Facility/ Change of Ownership

### ***(Break in Continuity Within Section)***

- 5.3 Financial Documents to include:

### ***(Break in Continuity Within Section)***

- 5.3.6 Any newly established Facility without a parent, or any new or newly owned facility with a newly established parent without a financial history of at least thirty-six (36) months must provide evidence of capital availability in the name of the facility equal to ~~four (4) months~~ the last 2 months of the first year of anticipated facility expenses as evidenced presented on the pro forma profit and loss statement to obtain a provisional license. Before an annual license is issued, the newly established Facility must provide evidence of a surety bond in an amount equal to 2 months actual expenses based on an average of a minimum of 6 months actual average expenses.
- 5.3.6.1 The capital availability shall be in the form of ~~Cash or a~~ Surety Bond.
- 5.3.6.1.1 All ~~cash and~~ surety bonds shall be in the name of the facility and the DHCQ and a copy of the bond must be provided to DHCQ before licensure is issued. The DHCQ Director or their designee shall have the authority to call the Surety Bond.
- 5.3.6.1.2 Further, a Memorandum of Understanding will be executed by and between the principal and Chief Financial Officer of the facility and the Director of DHCQ or their designee agreeing and acknowledging any and all expenditures from this account will be at the call of and with the express written consent, direction and supervision of the DHCQ ~~for the emergency health, housing and welfare of the residents.~~ Director or their designee, to provide for emergency-health services, housing and to protect the welfare of the residents.
- 5.3.6.1.3 Said capital availability shall be maintained at a local financial institution for the first ~~twenty-four (24) months of operation of the facility, and the facility will provide a copy of a letter from it to the local financial institution instructing it to notify DHSS immediately if the agreed upon balance is not maintained.~~

### ***(Break in Continuity of Sections)***

## 7.0 Audited Financial Disclosure Requirement

- 7.1 When DHSS determines that financial conditions exist which threaten the health or safety of a ~~resident(s)~~ resident in a facility, DHSS may require the facility to submit certified in-house financial statements within 15 days of request and an audited financial report prepared by an accountant within 60 days. The foregoing time frames may be extended by DHSS upon written request.

### ***(Break in Continuity of Sections)***

**14.0 Enforcement and Oversight Authority**

- 14.1 DHSS is authorized to impose the below listed actions to monitor the financial capability of a facility it has determined to be in financial distress. Noncompliance with any imposed action may result in the imposition of civil penalties or other remedies for compliance as authorized by 16 Del.C., Chapter 11, Subchapter I.

*(Break in Continuity Within Section)*

- 14.1.6 Requirement that the Controlling Organization (if any) of the facility provide a written assurance to DHSS that the Controlling Organization will step in to provide financial support to ensure that the residents continue to receive quality care. The written assurance is to include text as provided by DHSS. In an emergency, to the extent ongoing expenses exceed bond monies available, the Controlling Organization will be responsible to provide the financial support necessary to subject facility to ensure residents continue to receive quality care.
- 14.1.7 Query courts of local jurisdiction for pending or past legal actions or judgments against the facility by suppliers ~~and/or~~ and government agencies
- 14.1.8 Notification to The Centers for Medicare and Medicaid Services of the facility's financial difficulty (federally certified facilities).
- 14.1.9 The issuance of an emergency order temporarily transferring the management of the facility to another qualified entity in cases where the physical health or safety of a ~~resident(s)~~ resident is in imminent risk.

*(Break in Continuity Within Section)*

- 14.1.10 Require written notification from the facility, to each individual resident and, if known, a family member or legal representative that the financial capability of the facility is under review by DHSS. The notification must be written in a language and manner that is easily understood by the individual resident ~~and/or~~ and individual resident's representative.

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

**3325 Financial Capability Reporting**

---

**DIVISION OF HEALTH CARE QUALITY**

Statutory Authority: 16 Delaware Code, Section 122(3)p. (16 Del.C. §122(3)p.)  
16 DE Admin. Code 4404

**PUBLIC NOTICE**

**4404 Free Standing Emergency Centers**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 1, Section 122(3)(p), Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Free Standing Emergency Departments.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Office of Health Facilities Licensing and Certification, Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov) or by fax to 302-292-3931 by 4:30 p.m. on May 1, 2020. Please identify in the subject line: Regulations Governing Free Standing Emergency Departments

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Health Care Quality is proposing regulations governing Free Standing Emergency Departments.

**Statutory Authority**

16 Del.C. §122(3)(p)

**Background**

Current literature makes it clear that any free standing emergency department must be required to meet the same standards as a hospital emergency department. Recent legislation updated Delaware Code to clearly define the scope of practice required of a free standing emergency department. This clarification provides a level of protection for the public that seek services in a free standing emergency department.

\*Please Note: The proposed Regulations for Free Standing Emergency Departments, published in the July 1, 2019 issue of the *Delaware Register of Regulations* (21 DE Reg. 184) is being republished as Proposed to provide additional public notice and comment due to substantive changes.

**Summary of Proposal***Summary of Proposed Changes*

The Division of Health Care Quality plans to publish the “proposed” amendments to the regulations governing free standing emergency departments and hold them out for public comment per Delaware law. The amendments update the regulatory language to clearly define the scope of practice required of a free standing emergency department. In addition, the amendments provide a level of protection for the public that seeks services at free standing emergency departments by ensuring the delivery of safe and adequate care.

*Public Notice*

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality 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 must be received by 4:30 p.m. on May 1, 2020.

**Fiscal Impact**

Not applicable

**\*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/april2020/proposed/23 DE Reg 817RFA 04-01-20.pdf>

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

[4404 Free Standing Emergency Centers](#)

---

**DIVISION OF HEALTH CARE QUALITY**

Statutory Authority: 16 Delaware Code, Section 122(3)x. (16 Del.C. §122(3)x.)  
16 DE Admin. Code 4469

**PUBLIC NOTICE**

[4469 Personal Assistance Services Agencies](#)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 1, Section 122(3)(x), Delaware Health

---

and Social Services (DHSS)/ Division of Health Care Quality (DHCQ) is proposing regulations governing Personal Assistance Services Agencies.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Office of Health Facilities Licensing and Certification, Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov) or by fax to 302-292-3931 by 4:30 p.m. on May 1, 2020. Please identify in the subject line: Regulations Governing Personal Assistance Services Agencies

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

## SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Personal Assistance Services Agencies.

### Statutory Authority

16 Del.C. §122(3)(x)

### Background

As more services are being provided in the home and community setting, it is necessary to clearly define the scope of services offered by a personal assistance services agency, which is a non-medical model of care. In addition, the "Share the Care Act" (Senate Bill 27), signed by the Governor on June 13, 2019, enables an individual employed by a personal assistance services agency to administer medications to an adult consumer who resides in the individual's own home if all requirements are met.

### Summary of Proposal

#### *Summary of Proposed Changes*

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing personal assistance services agencies and hold them out for public comment per Delaware law. The amendments update and clarify the regulatory requirements to ensure consumers receive safe and quality care/services from personal assistance services agencies. In addition, the proposed regulations contain new language to implement the "Share the Care Act" (Senate Bill 27) which permits an individual employed by a personal assistance services agency to administer medications to an adult consumer who resides in the individual's own home if all requirements are met.

#### *Public Notice*

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality 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 must be received by 4:30 p.m. on May 1, 2020.

### Fiscal Impact

Not applicable

### \*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/april2020/proposed/23 DE Reg 818RFA 04-01-20.pdf>

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

[4469 Personal Assistance Services Agencies](#)

---

# PROPOSED REGULATIONS

---

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Licensed Chemical Dependency Professionals & Art Therapist

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding behavioral health practitioners, specifically, to add Licensed Chemical Dependency Professionals (LCDPs) and Licensed Professional Art Therapist to the list of licensed behavioral health practitioners.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on May 1, 2020. Please identify in the subject line: Licensed Chemical Dependency Professionals and Art Therapist

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding behavioral health practitioners, specifically, to add Licensed Chemical Dependency Professionals (LCDPs) and Licensed Professional Art Therapist to the list of licensed behavioral health practitioners.

#### Statutory Authority

- 42 CFR §440.60
- 24 Del.C. §3060

#### Background

On June 7<sup>th</sup>, the Division of Professional Regulation announced new rules effective June 11, 2018 that art therapists in Delaware could apply for the new Professional Art Therapist and Associate Art Therapist licenses. Per 24 Del.C. §3060 "Art therapy" means a mental health discipline that integrates the use of psychotherapeutic principles, art media, and the creative process to assist individuals, families, or groups in; 1) increasing awareness of self and others, 2) coping with symptoms, stress, and traumatic experiences, 3) enhancing cognitive abilities, and 4) identifying and assessing clients' needs in order to implement therapeutic interventions to meet developmental, behavioral, mental, and emotional needs.

Licensed Chemical Dependency Professionals (LCDPs) are behavioral health practitioners licensed under 24 Del.C. §3060.

#### Summary of Proposal

##### *Purpose*

The purpose of this proposed regulation is to add Chemical Dependency Professionals and Licensed Professional Art Therapists to the list of licensed behavioral health practitioners whose services Delaware Medicaid will reimburse.

##### *Summary of Proposed Changes*

Effective for services provided on and after June 11, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan Attachments

3.1-A Page 2e.18 Addendum, 3.1-A Page 3 Addendum, 3.1-A Page 3.1 Addendum, 3.1-A Page 6b and 4.19-B Page 3a Addendum regarding behavioral health practitioners, specifically, to add Licensed Chemical Dependency Professionals (LCDPs) and Licensed Professional Art Therapist to the list of licensed behavioral health practitioners.

### *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 must be received by 4:30 p.m. on May 1, 2020.

### *Centers for Medicare and Medicaid Services Review and Approval*

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

### *Provider Manuals and Communications Update*

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

### **Fiscal Impact**

This revision imposes no increase in cost on the General Fund as licensed behavioral health practitioners, providing diagnostic, screening, preventive, and rehabilitative services is already a covered benefit under the Delaware Medical Assistance Program (DMAP) to eligible beneficiaries.

DMAP's proposal involves no change in the definition of those eligible to receive services provided by licensed behavioral health practitioners under Medicaid, and the diagnostic, screening, preventive, rehabilitative and related services benefit to eligible beneficiaries remains the same.

**\*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/april2020/proposed/23 DE Reg 820RFA 04-01-20.pdf>

AMENDED

Attachment 3.1-A  
Page 2e.19 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY - CONTINUED

#### 4.b. **Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Services Continued**

7. Rehabilitative Services - 42 CFR 440.130(d) Continued



# PROPOSED REGULATIONS

5. Rehabilitative Residential Treatment Continued

Provider Agency qualifications: A RRT must be accredited and licensed as residential treatment facility by DHSS or its designee and may not exceed sixteen (16) beds. RRT staff must be supervised by a licensed behavioral health practitioner (LBHP). Licensed psychologists and licensed behavioral health practitioners are covered separately under the approved State Plan for Other Licensed Practitioners. The RRT must have at least one (1) personnel member immediately available at all times who is trained in: First aid; Cardiopulmonary resuscitation (CPR); and the use of emergency equipment. RRT facilities may specialize and provide care for sexually abusive behaviors, substance abuse, or dually diagnosed individuals (e.g., either mental health/developmentally disabled or mental health/substance use disorder). If a RRT provides care to any of these categories of child, the RRT must submit documentation regarding the appropriateness of the research-based, trauma-informed assessment and programming and training for the specialized treatment needs of the client. The RRT must ensure that medically necessary care not provided by the RRT including medical services and pharmaceutical services are provided without delay for the health of the child by appropriate providers in the community. For RRT, there is at least a quarterly review of client’s treatment plan; goals and progress toward goals must be completed.

6. Art Therapy Services

The following services are provided by licensed art therapists:

- a. Clinical appraisal and treatment activities during individual, family, or group sessions which provide opportunities for expression through art therapy.
- b. Process and products of art creation to tap into clients' inner conflicts, fears, and core issues.
- c. Diagnostic and assessment methods, consistent with training and experience, to determine treatment goals and implement therapeutic art interventions which meet developmental, cognitive, behavioral, and emotional needs.
- d. Art media, the creative process, and the resulting artwork to assist clients to do all of the following:
  - 1. Reduce psychiatric symptoms of depression, anxiety, post-traumatic stress, and attachment disorders.

|                           |                                       |
|---------------------------|---------------------------------------|
| TN No. SPA <u>#19-000</u> | Approval Date                         |
| Supersedes                |                                       |
| TN No. SP <u>#16-003</u>  | Effective Date <u>January 1, 2019</u> |

- 2. Enhance neurological, cognitive, and verbal abilities; develop social skills; aid sensory impairments; and move developmental capabilities forward in specific areas.
- 3. Cope with symptoms of stress, anxiety, traumatic experiences, and grief.

4. Explore feelings, gain insight into behaviors, and reconcile emotional conflicts.

5. Improve or restore functioning and a sense of personal well-being.

6. Increase coping skills, self-esteem, awareness of self, and empathy for others.

7. Improve healthy channeling of anger and guilt.

8. Improve school performance, family functioning, and parent/child relationships.

Licensed Professional Art Therapist provider qualification are covered separately under the approved State Plan for Scope of Medical And Remedial Care And Services Provided to The Categorically Needy.

|                           |                                       |
|---------------------------|---------------------------------------|
| TN No. SPA <u>#19-000</u> | Approval Date                         |
| Supersedes                |                                       |
| TN No. SP <u>#16-003</u>  | Effective Date <u>January 1, 2019</u> |

AMENDED

Attachment 3.1-A  
Page 3 Addendum

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE/TERRITORY: **DELAWARE**

## LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

6. Medical Care and other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law (continued).

**6.b. Optometrists' Services**

These services are reimbursed:

1. For Medicaid-eligible Individuals under age 21, as an EPSDT service (routine eye exams including refraction and provision of eyeglasses); or
2. For Medicaid-eligible individuals over age 21, medically necessary diagnostic and treatment services provided under the scope of optometric practice in State law for symptomatic Medicaid recipients (i.e. disease, injury, illness, or other medical disorder of the eyes), excluding routine eye exams or refractions related to the provision of eyeglasses and excluding coverage of eyeglasses.

**6.c. Chiropractors' Services**

Chiropractic services are furnished in accordance with 42 CFR 440.60(b) and include only services that are provided by a chiropractor who is licensed by the State, and consists of treatment by means of manual manipulation of the spine that the chiropractor is legally authorized by the State to perform. Services are provided as follows:

1. For Medicaid-eligible Individuals under age 21, as an EPSDT service, per 42 CFR §441 Subpart B, furnished upon medical necessity; or
2. For Medicaid-eligible individuals over age 21, furnished upon medical necessity and following the service utilization criteria below:
  - a. One (1) office visit per year;
  - b. One (1) set of X-rays per year, and
  - c. Twenty (20) manipulations per year.

Provider Qualifications: Qualified chiropractors must be licensed per Delaware licensure requirements codified in ~~Chapter 7, Title 24 of the Delaware Administrative Code~~ **24 DE Admin. Code 700**, Professions and Occupations.

## 6.d. Other Practitioners' Services

1. Licensed Midwife services are services permitted under scope of practice authorized by state law for the licensed midwife.
2. Licensed Behavioral Health Practitioner: A licensed behavioral health practitioner (LBHP) is a professional who is licensed in the State of Delaware to diagnose and treat mental illness or substance abuse acting within the scope of all applicable state laws and their professional license. A LBHP includes professionals licensed to practice independently:
  - : Licensed Chemical Dependency Professionals (LCDPs)
  - Licensed Clinical Social Workers (LCSWs)
  - Licensed Marriage and Family Therapists (LMFTs)
  - : Licensed Professional Art Therapist
  - Licensed Professional Counselors of Mental Health (LPCMHe)
  - Licensed Psychologists

|                           |                                       |
|---------------------------|---------------------------------------|
| TN No. SPA                | Approval Date                         |
| Supersedes                |                                       |
| TN No. SPA <u>#17-001</u> | Effective Date <u>January 1, 2019</u> |

AMENDED

 Attachment 3.1-A  
 Page 3.1 Addendum

 STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
 STATE/TERRITORY: **DELAWARE**

 LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
 PROVIDED TO THE CATEGORICALLY NEEDY

### 6. d. 2. **Licensed Behavioral Health Practitioner Continued:**

Services which exceed the initial pass-through authorization must be approved for re-authorization prior to service delivery. In addition to individual provider licensure, *service* providers employed by addiction treatment services and co-occurring treatment services agencies must work in a program licensed by the Delaware Division of Substance Abuse and Mental Health (DSAMH) and comply with all relevant licensing regulations.

Licensed Psychologists may supervise up to seven (7) unlicensed assistants or post-doctoral professionals in supervision for the purpose of those individuals obtaining licensure and billing for services rendered. Services by unlicensed assistants or post- doctoral professionals under supervision may not be billed under this section of the State Plan. Instead, those unlicensed professionals must qualify under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program or rehabilitation sections of the State Plan or provide services under Home and Community-based authorities.

Licensed Professional Art Therapists provide clinical appraisal and treatment activities utilizing a mental health discipline that integrates the use of psychotherapeutic principles, art media, and the creative process to assist individuals, families, or groups.

Provider Qualifications: Qualified Professional Art Therapists must be licensed per Delaware licensure requirements codified in 24 DE Admin. Code 3000, Professions and Occupations. When services are provided by a licensed associate art therapist, the services must be supervised by a licensed professional art therapist.

Inpatient hospital visits are limited to those ordered by the beneficiary's physician. Visits to a nursing facility are allowed for LBHPs if a Preadmission Screening and Resident Review (PASRR) indicates it is a medically necessary

specialized service in accordance with PASRR requirements. Visits to Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) are not covered. All LBHP services provided while a person is a resident of an Institute for Mental Disease (IMD) such as a ~~free-standing~~ free-standing psychiatric hospital or psychiatric residential treatment facility are part of the institutional service and not otherwise reimbursable by Medicaid. Evidence-based Practices require prior approval and fidelity reviews on an ongoing basis as determined necessary by Delaware Health and Social Services (DHSS) ~~and/or~~ or its designee. A unit of service is defined according to the Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) approved code set consistent with the National Correct Coding Initiative unless otherwise specified.

|                            |                                       |
|----------------------------|---------------------------------------|
| TN No. SPA                 | Approval Date                         |
| Supersedes                 |                                       |
| TN No. SPA <u>#13-0018</u> | Effective Date <u>January 1, 2019</u> |

AMENDED

Attachment 3.1-A  
Page 6b

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY

13d. Rehabilitative Services (Continued)

QUALIFIED STAFF

Community support programs may bill Medicaid for community support services only when authorized as medically necessary by a physician and delivered by qualified staff. Services rendered by any qualified staff other than a physician must be provided under a physician's supervision as defined in the Medicaid Provider Manual for Rehabilitative/Community Support Service Programs. Component community service activities require specific staff qualifications as defined in the Medicaid Provider Manual for Rehabilitative/Community Support Service Programs. Following are illustrative definitions of staff listed as qualified to provide one or more community support service activities.

1. Physician: a person with a Medical Degree or Doctor of Osteopathy degree, who is licensed to practice Medicine in Delaware and has completed (or is enrolled in) an accredited residency training program in psychiatry, internal medicine or family practice.
2. Clinician: a person with a doctoral or master's degree in psychology, social work, nursing, ~~rehabilitation or rehabilitation~~, counseling, chemical dependency or art therapy from an accredited college or university (or a registered nurse with a certificate in mental health nursing from the American Nurses Association).
3. Associate Clinician: a person with a bachelor's degree in a human service field or a registered nurse.
4. Assistant Clinician: a person with an associate degree, a licensed practical nurse or a certified counselor lacking the academic credentials of an associate clinician.

# PROPOSED REGULATIONS

5. Rehabilitative Services Assistant: a person with a high school diploma or GED who has received documented training that shall, at a minimum, include: 1) a complete course in medications used in the treatment used in the treatment of mental illness including side effects assigned; 2) a course in mental illness including symptoms of the major mental illnesses, mood and personality disorders; 3) a course in first aid, including CPR training.

A clinician with clinical/administrative experience in provision of community support services serves as program coordinator. A physician serves as clinical supervisor, providing direct supervision of the aspects of the program that relate to client treatment and providing clinical supervision of staff. The physician is available full- or part-time at provider sites to provide direct service, to provide direct supervision to other staff, and to participate in assessment of client needs and planning of service provision. The physician has 24-hour backup arrangements with other physicians for coverage when ~~he/she~~ the clinical supervisor is unavailable.

|                          |                                       |
|--------------------------|---------------------------------------|
| TN No. SP <u>#19-000</u> | Approval Date                         |
| Supersedes               |                                       |
| TN No. SP <u>#399</u>    | Effective Date <u>January 1, 2019</u> |

AMENDED

Attachment 4.19-B  
Page 3a Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES  
OTHER TYPES OF CARE

**Other Licensed Behavioral Health Practitioners**

Reimbursements for services are based upon a Medicaid fee schedule established by the State of Delaware.

If a Medicare fee exists for a defined covered procedure code, then Delaware will pay Psychologists at 100% of the Medicaid physician rates as outlined under Attachment 4.19-B, item 5. If a Medicare fee exists for a defined covered procedure code, then Delaware Medicaid will pay Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), Licensed Chemical Dependency Professionals (LCDPs), and Licensed Professional Art Therapist at 75% of the Medicaid physician rates as outlined under Attachment: 4.19-B, item 5.

When Medicare fees do not exist for a covered code, the fee development methodology will build fees considering each component of provider costs as outlined below. These reimbursement methodologies will produce rates sufficient to enlist enough providers so that services under the State Plan are available to beneficiaries at least to the extent that these services are available to the general population, is required by 42 CFR 447.204. These rates comply with the requirements of Section 1902(a)(3) of the Social Security Act and 42 CFR 447.200, regarding payments and are consistent with economy, efficiency and quality of care. Provider enrollment and retention will be reviewed periodically to ensure that access to care and adequacy of payments are maintained. The Medicaid fee schedule will be equal to or less than the maximum allowable under the same Medicare rate, where there is a comparable Medicare rate. Room and board costs are not included in the Medicaid fee schedule.

Except as otherwise noted in the State Plan, the State-developed fee schedule is the same for both governmental and private individual providers and the fee schedule and any annual/periodic adjustments to the fee schedule are published in the *Delaware Register of Regulations*. The Agency's fee schedule rate was set

---

as of October 2, 2013 and is effective for services provided on or after that date. All rates are published on the Delaware Medical Assistance Program (DMAP) website at [www.dmap.state.de.us/downloads/hcps.html](http://www.dmap.state.de.us/downloads/hcps.html).

|                           |                                       |
|---------------------------|---------------------------------------|
| TN No. SPA# <u>19-000</u> | Approval Date                         |
| Supersedes                |                                       |
| TN No. SP# <u>13-018</u>  | Effective Date <u>January 1, 2019</u> |

---

## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 2020 and 2024

### PUBLIC NOTICE

#### Case Processing Procedures - Burial Assistance & Fraudulent Receipt of Benefits In Multiple States

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Case Processing Procedures, specifically, to explain the procedures for providing burial assistance and disqualifying individuals from cash assistance and food benefit programs when an individual has been found guilty of fraudulently receiving these benefits in multiple states.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on May 1, 2020. Please identify in the subject line: Case Processing Procedures.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual regarding Case Processing Procedures, specifically, to explain the procedures for providing burial assistance and disqualifying individuals from cash assistance and food benefit programs when an individual has been found guilty of fraudulently receiving these benefits in multiple states.

#### Statutory Authority

- 31 **Del.C.** §110, §502 (2)
- 42 U.S.C. §608 (a)(8)
- 7 C.F.R. §273.16 (b)(5)

#### Background

DSS provides cash assistance for burial expenses to eligible individuals as specified in DSSM 2020. DSS provides burial assistance for individuals who were receiving State of Delaware Temporary Assistance for Needy Families (TANF), General Assistance (GA), or Medicaid benefits at the time of the individual's death. DSS also provides burial assistance for minor children who were eligible for State of Delaware TANF, GA, or Medicaid

benefits at the time of the child's death. The burial assistance amount cannot exceed \$100.

Additionally, Federal regulations mandate that individuals who are found guilty of fraudulently receiving cash assistance or food benefits in multiple states are disqualified from receiving these benefits for a 10-year period. DSSM 2024 identifies the disqualification criteria for multiple benefits for cash assistance programs and the Supplement Nutrition Assistance Program (SNAP) and provides case processing instructions for DSS staff.

## Summary of Proposal

### *Purpose*

The purpose is to amend DSSM 2020 and DSSM 2024 to improve the format of the policies and to include the current procedures for processing burial assistance requests and disqualifying individuals for fraudulently receiving cash assistance or food benefits in multiple states.

### *Summary of Proposed Changes*

Effective for services provided on and after June 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual sections 2020 and 2024 specifically, to explain the case processing procedures for providing burial assistance and disqualifying individuals from cash assistance and food benefit programs when an individual has been found guilty of fraudulently receiving these benefits in multiple states.

### *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/Division of Social Services (DHSS/DSS) 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 must be received by 4:30 p.m. on May 1, 2020.

## Fiscal Impact

There is no anticipated fiscal impact associated with this policy change.

**\*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/april2020/proposed/23 DE Reg 827RFA 04-01-20.pdf>

## POLICY – AMENDMENT

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

## 2020 Providing Burial Assistance

### 31 Del.C. 110, 502 (2)

~~A person who is receiving TANF, GA, or Medicaid at the time of death or a minor child of such a person who would have been eligible for TANF, GA, and Medicaid at the time of death is entitled to assistance for burial expenses from the State.~~

~~The amount paid toward these expenses cannot exceed \$100. The deceased individual's next of kin must request burial~~

~~assistance from DSS in writing and provide proof of burial expenses. Upon receipt of a request for burial assistance, the~~

~~DSS worker will complete Form 112 according to the instructions in the Forms Index Manual. The completed Form~~

112 is to be mailed to:

Division of Management Services  
Business Office  
Herman Holloway Sr. DHSS Campus  
1901 N. DuPont Highway – Main Building  
New Castle, DE 19720

The State of Delaware provides assistance for burial expenses for eligible individuals.

**1. The following individuals are eligible for burial assistance:**

- A. An individual who was receiving State of Delaware Temporary Assistance for Needy Families (TANF), General Assistance (GA), or Medicaid benefits at the time of the individual's death.
- B. A minor child who was eligible for State of Delaware TANF, GA, or Medicaid benefits at the time of the child's death, and whose parent or guardian is receiving one of these benefits.

**2. The deceased individual's next of kin must request burial assistance from the Division of Social Services (DSS) in writing and provide a copy of the death certificate and proof of the burial expenses.**

**3. Upon receipt of a request for burial assistance, the DSS case worker will:**

- A. Complete Form 112 "Vendor Payment Authorization".
- B. Submit the following documents to the Business Office of the Division of Management Services:
  - i. Form 112, completed and signed by the case worker and operations administrator;
  - ii. The written request for burial assistance from the deceased individual's next of kin;
  - iii. A copy of the death certificate; and
  - iv. Proof of the burial expenses.

**4. The Division of Management Services will make payment for an approved request directly to the vendor providing burial services.**

**5. The burial assistance amount cannot exceed \$100.**

## **POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

### **2024 Disqualification for Receipt of Multiple Benefits Disqualifying Individuals for the Fraudulent Receipt of Benefits in Multiple States**

42 USC 608 (a)(8); 7 CFR. 273.16 (b)(5)

For Cash Benefits:

- Individuals shall be ineligible to receive cash benefits as a member of any assistance unit for a ten (10)-year period if they misrepresent their place of residence in order to receive multiple benefits.
- The individual must have been convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance from



# PROPOSED REGULATIONS

~~two or more states at the same time. This provision applies to programs funded under Title IV, Title XIX-Medicaid program, the Food Stamp Act of 1977, and Title XVI Supplemental Security Income program. This does not apply to an individual for whom the President of the United States has granted a pardon.~~

- ~~• Determine income, resources, and deductions according to DSSM 4003.2 if the individual is a parent payee. Exclude the income and resources of the individual if the person is a non-parent payee.~~

~~For Food Stamps:~~

- ~~• Individuals shall be ineligible to receive food stamp benefits as a member of any household for a 10-year period if they misrepresent their identity and/or place of residence in order to receive multiple food stamp benefits.~~
- ~~• The individual(s) must be found guilty by DSS to have made a fraudulent statement or misrepresentation to the identity and/or place of residence or convicted in a Federal or State court of having made a fraudulent statement or misrepresentation to the identity and/or place of residence in order to receive the multiple benefits at the same time.~~
- ~~• Determine the income, resources and deductions of these disqualified individuals according to DSSM-9076.1.~~

Individuals who have been found guilty of fraudulently receiving cash assistance or food benefits in multiple states are disqualified from receiving these benefits.

## **1. Disqualification Criteria for Cash Assistance Recipients**

- A. An individual is ineligible to receive cash assistance as a member of any assistance unit if the individual:
  - i. Made a fraudulent statement or representation of the individual's place of residence to receive assistance from two or more states simultaneously; and
  - ii. Was convicted in federal or state court for this offense.
- B. The individual is disqualified from receiving cash assistance for a 10-year period beginning on the conviction date.
- C. The disqualification applies to programs funded under Title IV, Title XIX, and Title XVI of the Social Security Act and the Food and Nutrition Act of 2008.
- D. The disqualification does not apply to an individual for whom the President of the United States has granted a pardon for the conviction.
- E. DSS case workers must:
  - i. Determine the income, resources, and deductions according to DSSM 4003.2 if the disqualified individual is a parent payee; or
  - ii. Exclude the income and resources of the disqualified individual if the individual is a non-parent payee.

## **2. Disqualification Criteria for Food Benefit Recipients**

- A. An individual is ineligible to receive food benefits as a member of any household if the individual:
  - i. Made a fraudulent statement or representation of the individual's place of residence or identity to receive assistance from two or more states simultaneously; and
  - ii. Was convicted in federal or state court, was found guilty as the result of an Administrative Disqualification Hearing, or signed a waiver of the right to an Administrative

---

Disqualification Hearing for this offense.

- B.     The individual is disqualified from receiving food benefits for a 10-year period beginning no later than the second month following the date the individual receives written notice of the disqualification.
- C.     DSS case workers must:
- i.   Determine the income, resources, and deductions of the disqualified individual according to DSSM 9076.1.
- 

## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 520, 2304(16), and 2312 (18 Del.C. §§311, 520, 2304(16) & 2312)  
18 DE Admin. Code 903

### PUBLIC NOTICE

#### 903 Prompt Payment of Settled Claims

#### A. Type of Regulatory Action Required

Proposal of amendments to Regulation 903 - Prompt Payment of Settled Claims.

#### B. Synopsis of Subject Matter of the Regulation

Regulation 903 contains the requirements for prompt payment of settled insurance claims as required by 18 Del.C. §2304(16).

The Delaware Department of Insurance (the Department) is proposing to amend Regulation 903 to allow insurance carriers to pay settled insurance claims other than claims that are subject to the Workers Compensation Statute at 19 Del.C. §2344 by electronic means. The Department is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

The authority for the proposed amendments is 18 Del.C. §§311, 520, 2304(16), and 2312, in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.

#### C. Notice and Public Comment

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 903. The proposed amendments appear below and may 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 1<sup>st</sup> day, May, 2020. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Docket 4233-2019  
1351 West North St., Ste. 101  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

\*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/april2020/proposed/23 DE Reg 831RFA 04-01-20.pdf>

## 903 Prompt Payment of Settled Claims [Formerly Regulation 81]

### 1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§311, 520, 2304(16), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.

### 2.0 Scope

This regulation ~~will apply~~ applies to all ~~insurers~~ insurance carriers that settle claims either pursuant to a legal action or otherwise.

### 3.0 Purpose

The purpose of this regulation is to ~~ensure prompt payment of claims pursuant to the settlement of claims set forth requirements for prompt payment of settled insurance claims~~ by insurance carriers as required by 18 Del.C. §2304(16)(f).

### 4.0 Definitions

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

"Claimant" means a person covered under an insurance policy or a representative (other than a provider) designated by such person and entitled to make claims on that person's behalf.

"Commissioner" means the Commissioner of the Delaware Department of Insurance.

"Insurance carrier" means any entity that provides insurance in this State and includes any third-party administrator or other entity that adjusts, administers, or settles claims in connection with insurance provided in this State.

### ~~4.0~~ 5.0 Prompt Payment

5.1 ~~Under 18 Del.C. §2304(16)(f), insurance carriers are required in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. An insurance carrier shall make prompt payment of a claim that has settled. For the purpose purposes of this regulation regulation, prompt payment is defined as remittance of the check requires payment within 30 days from any one of the following dates:~~

~~5.1.1 the date of agreement, memorialized in writing~~ The date on which a settlement agreement is fully executed by both the claimant and the insurance carrier, including the settlement of a case prior to a hearing but pursuant to an action filed in court;

~~5.1.2 The date a final order is issued by the court; or~~

~~5.1.3 unappealed~~ The last day by which an arbitration award may be appealed as provided in applicable appellate court rules, when neither a claimant nor an insurance carrier has elected to file an appeal.

5.2 Payment shall be made in accordance with the following:

~~5.2.1 The insurance carrier shall allow a claimant to choose to receive the payment by check or by electronic payment; and~~

~~5.2.2 If the payee chooses to receive an electronic payment, the payment may be by any means except for a prepaid card or other electronic transaction method for which the payee incurs or may incur any transaction fees.~~

5.2.3 Notwithstanding anything in this regulation to the contrary, payments for settled workers compensation claims shall be made in the form required by 19 Del.C. §2344.

## 5.0 Settlement of Claims

5.1 ~~The language in 18 Del.C. §2304 (16)(f) requires good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. The aforementioned section also applies in those instances where a case is settled prior to a hearing but pursuant to an action filed in court. Once liability has been resolved and an amount agreed upon, or ordered by the court, or awarded by an arbitration panel, the carrier is required to make prompt payment.~~

## 6.0 Procedure and Penalties for Failure to Remit Prompt Payment Of A Settled Claim

6.1 ~~In the event that an insurance carrier does not remit prompt payment pursuant to this regulation and if the Department has determined determines that said an insurance carrier has ~~done so~~ failed to remit prompt payment of a settled claim as required by 18 Del.C. §2304(16)(f) and this regulation in bad faith and with such frequency as to indicate a general business practice, the Department shall may file an administrative action against the insurance carrier pursuant to in accordance with 18 Del.C. §323 and the Administrative Procedures Act. ~~The commissioner~~ If the Commissioner finds after a hearing that the insurance carrier has violated 18 Del.C. §2304(16)(f) and this regulation, the Commissioner may take all of the following actions:~~

6.1.1 ~~Award interest to the claimant in an amount equal to the prime rate of interest plus 3% on the amount of the claim, which shall be calculated from the applicable date the claim was settled or ordered, in an amount equal to the prime rate of interest plus 3%.~~ listed in subsection 5.1 of this regulation;

6.1.2 ~~Fine the insurer~~ insurance carrier according to the provisions outlined in 18 Del.C. §329, §329 and impose other such penalties as provided in 18 Del.C. §520.

6.1.3 ~~Fine any person(s)~~ person involved with the claim ~~and/or~~ or settlement according to the provisions outlined in 18 Del.C. §2308(a)(1).

## 7.0 General Business Practice

7.1 ~~Within a 36-month~~ 36-month period, three instances of a an insurance carrier's failure to make prompt payment, as defined in ~~section 4.0 above~~ Section 5.0 of this regulation, shall give rise to a rebuttable presumption that the ~~insurer~~ insurance carrier is in violation of 18 Del.C. §2304(16)(f).

7.2 ~~The 36-month~~ 36-month period established in ~~section 7.1 above~~ subsection 7.1 of this regulation shall be measured from the applicable date the amount was agreed upon, ordered by the court, or awarded by arbitration as set forth in subsection 5.1 of this regulation.

## 8.0 Separability

8.1 ~~If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected and shall remain valid.~~

## 9.0 Causes of Action and Defenses

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an ~~insurer~~ insurance carrier or its representative based upon a violation of 18 Del.C. §2304(16). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 Del.C. §2304(16).

## 10.0 Effective Date

---

# PROPOSED REGULATIONS

---

This regulation shall become effective 30 days after publication in the Delaware *Register of Regulations*. The amendments to this regulation shall become effective on the eleventh day after publication of a final order signed by the Commissioner adopting the amendments into this regulation.

---

## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 3359A(c) (18 Del.C. §§311 & 3359A(c))

### PUBLIC NOTICE

#### 1411 Registration of Pharmacy Benefits Managers

##### A. Type of Regulatory Action Required

Proposal of a new regulation.

##### B. Synopsis of Subject Matter of the Regulation

House Bill 194 as amended by House Amendment 1 (HB 194/HA1), see 82 Del. Laws, c. 115 (2019), added a new Subchapter V to Chapter 33A of the Insurance Code. Entitled "Registration of Pharmacy Benefits Managers," the legislation:

- (1) Requires pharmacy benefits managers ("PBMs") to register with the Insurance Commissioner;
- (2) Permits the Insurance Commissioner to issue cease and desist orders to PBMs who commit fraudulent acts or violations of Title 18, Chapter 33A;
- (3) Requires PBMs to maintain certain records;
- (4) Permits the Insurance Commissioner to examine the affairs of PBMs;
- (5) Grants the Insurance Commissioner the authority to enforce Chapter 33A of Title 18 by imposing fines, requiring PBMs to take affirmative actions, and suspending, denying, or revoking a PBM's registration; and
- (6) Updates existing law regarding maximum allowable cost lists and establishes a more transparent appeals process on which a pharmacy may rely if a PBM does not reimburse the pharmacy the amount owed under their contract or pursuant to the maximum allowable cost list.

The legislation was signed by the Governor on July 17, 2019 and it becomes effective on June 1, 2020. Section 4 of that legislation specifically provides the Department with the regulatory authority to implement all of Title 18, Chapter 33A, of which the PBM registration requirements are a part.

Pursuant to 18 Del.C. §§311 and 3359A(c), the Department is proposing new Regulation 1411 to implement the registration requirements of HB 194/HA 1. Pursuant to 18 Del.C. §3353A, all PBMs are required to register with the Insurance Commissioner before providing pharmacy benefits management services in Delaware to a "purchaser." A "purchaser" is defined as an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity that: (1) provides prescription drug coverage or benefits in Delaware, and (2) enters into agreement with a pharmacy benefits manager for the provision of pharmacy benefits management services.

Since 18 Del.C. §3353A allows PBMs to annually renew their registration on the May 1 after the initial date of registration and every May 1 thereafter, this registration requirement would apply annually, to the extent that the PBM elects to renew its registration for the upcoming year.

##### C. Notice and Public Comment

The Department does not plan to hold a public hearing on proposed new Regulation 1411. The proposed new regulation appears below and may 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 1<sup>st</sup> day, May 2020. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Docket 4255-2020  
1351 West North St., Ste. 101  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

**\*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/april2020/proposed/23 DE Reg 834RFA 04-01-20.pdf>

## **1411 Registration of Pharmacy Benefits Managers**

### **1.0 Scope and Authority**

- 1.1 This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §3359A(c) and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.
- 1.2 This regulation does not apply to plans of health insurance or health benefits designed for issuance to persons eligible for coverage under Titles XVIII, XIX, and XXI of the Social Security Act, 42 U.S.C. §§1395 et seq., 1396 et seq., and 1397aa et seq., known as Medicare, Medicaid, or any other similar coverage under a state or federal government plan.

### **2.0 Definitions**

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

"Affiliate" means an entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

"Commissioner" means the Insurance Commissioner of Delaware.

"Control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by 18 Del.C. Ch. 50 that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact, notwithstanding the absence of a presumption to that effect.

"Department" means the Delaware Department of Insurance.

"GAAP" means United States generally accepted accounting principles consistently applied.

"Insurer" means any entity that provides health insurance coverage in this State as defined in 18 Del.C. §903.

"Person" means an individual or a business entity.

"Pharmacy benefits management services" means all of the following:

- The procurement of prescription drugs at a negotiated rate for dispensation within this State to beneficiaries;

# PROPOSED REGULATIONS

- The administration or management of prescription drug coverage provided by a purchaser for beneficiaries; and
- Any of the following services provided with regard to the administration of prescription drug coverage:
  1. Mail service pharmacy;
  2. Claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;
  3. Clinical formulary development and management services;
  4. Rebate contracting and administration;
  5. Patient compliance, therapeutic intervention, and generic substitution programs; and
  6. Disease management programs.

**“Pharmacy benefits manager” or “PBM”** means an entity that contracts with pharmacists or pharmacies on behalf of an insurer or third-party administrator to:

- Process claims for prescription drugs or medical supplies or provide retail network management for pharmacies or pharmacists;
- Pay pharmacies or pharmacists for prescription drugs or medical supplies; or
- Negotiate rebates with manufacturers for drugs paid for or procured as described in this chapter.

**“Pharmacy services administrative organization”** means a cooperative network of independent pharmacies.

**“Purchaser”** means an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity that does all of the following:

1. Provides prescription drug coverage or benefits in this State; and
2. Enters into agreement with a pharmacy benefits manager for the provision of pharmacy benefits management services.

### **3.0 Requirement for Registration**

No insurer may enter into a written agreement or contract with a pharmacy benefits manager unless the pharmacy benefits manager is registered with the Department in accordance with Section 4.0 of this regulation.

### **4.0 Pharmacy Benefits Manager Registration Requirements**

- 4.1 A pharmacy benefits manager shall register with the Commissioner in accordance with this Section before providing pharmacy benefits management services in this State to a purchaser.
- 4.2 An applicant who wishes to apply to be a pharmacy benefits manager in Delaware shall submit a Pharmacy Benefits Manager Registration Application to the Department, on which the applicant includes all of the following:
  - 4.2.1 Applicant Information:
    - 4.2.1.1 Name, address, telephone number;
    - 4.2.1.2 Name and address of applicant’s agent for service of process in this State;
    - 4.2.1.3 Name and address of each person beneficially interested in the applicant’s business (e.g. ownership of 10% or more);
    - 4.2.1.4 Name and address of each officer and director; and
    - 4.2.1.5 The non-renewable registration fee set forth in Section 8.0 of this regulation;
  - 4.2.2 Organization and Background Information:
    - 4.2.2.1 All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all amendments to such documents;
    - 4.2.2.2 The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

- 4.2.2.3 A biographical affidavit of each individual who is responsible for the conduct of affairs of the applicant, including:
  - 4.2.2.3.1 All members of the board of directors, board of trustees, executive committee or other governing board or committee;
  - 4.2.2.3.2 The principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company;
  - 4.2.2.3.3 Any shareholders or members holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the applicant; and
  - 4.2.2.3.4 Any other person who exercises control or influence over the affairs of the applicant; and
- 4.2.3 A statement describing the applicant's business plan, that includes the following information:
  - 4.2.3.1 Staffing levels and activities proposed in Delaware and nationwide;
  - 4.2.3.2 Details concerning the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and record keeping; and
  - 4.2.3.3 A list of all insurers for whom applicant provides pharmacy benefits management services in this State; and
- 4.2.4 Information on claims handling expertise, including:
  - 4.2.4.1 A copy of the PBM's standard, generic contract template, provider manual or other appropriate items incorporated by reference that the PBM uses for contracts entered into by the PBM with pharmacists, pharmacies or pharmacy services administrative organizations in this State in administration of pharmacy benefits for insurers, for the purpose only of the Department's review that such contracts comply with 18 Del.C. Ch. 33A;
  - 4.2.4.2 A copy of the written policies and procedures which demonstrate that the applicant has compliant processes established to adhere to all of the following:
    - 4.2.4.2.1 The appeals and dispute resolution process as required by 18 Del.C. §3324A;
    - 4.2.4.2.2 The requirements for maximum allowable cost pricing set forth in 18 Del.C. §3323A; and
    - 4.2.4.2.3 The Audit Integrity Program set forth in 18 Del.C. §§3301A-3310A;
  - 4.2.4.3 The number of projected enrollees or beneficiaries in Delaware to be serviced by the applicant on an annual basis for all contracted insurers. If applicable, provide the number of enrollees or beneficiaries administered by the applicant for each insurer during the previous year;
  - 4.2.4.4 A copy of the applicant's network service areas by county in this State for an insurer and the applicant's pharmacy directory list. Please list mail order pharmacies separately, because they may not be included in determining the adequacy of a retail pharmacy network; and
- 4.2.5 Such other pertinent information as may be required by the Commissioner to verify the information in the application.
- 4.3 A registration certificate issued under this section shall remain valid, unless surrendered, suspended or revoked by the Commissioner, until May 1 following the effective date of the initial registration and the May 1 following the date of the registration renewal, as provided in subsection 4.4 of this regulation.
- 4.4 No pharmacy benefits manager may continue to do business in Delaware unless it has registered annually with the Commissioner on or before May 1 following the effective date of the initial registration and on or before the May 1 following the date of any subsequent registration renewal. A pharmacy benefits manager may renew a certificate of registration for an additional one-year term by timely submitting;



---

# PROPOSED REGULATIONS

---

4.4.1 All of the information required in subsection 4.2 of this regulation, updated as necessary to reflect the most current information concerning the pharmacy benefits manager's operations; and

4.4.2 The non-refundable renewal application fee set forth in Section 8.0 of this regulation.

4.5 A pharmacy benefits manager who is registered or who is applying for registration under Section 4.0 of this regulation shall, within 10 business days, notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a registration certificate in this state.

4.6 A pharmacy benefits manager who is applying for registration or who is registered under this Section shall make available for inspection by the Commissioner copies of all contracts with insurers, and copies of each permit issued to each nonresident pharmacy under 24 Del.C. §2535 that the pharmacy benefits manager uses to ship, mail, or deliver prescription drugs or devices in this state.

## **5.0 Standard of Review**

5.1 The Commissioner shall deny an initial application or renewal application made under this regulation if the pharmacy benefits manager:

5.1.1 Operates, or proposes to operate, in a financially hazardous condition relative to its financial condition and the services it administers, or proposes to administer for purchasers in Delaware;

5.1.2 Has been determined by the Commissioner to be in violation or non-compliance with the requirements of this regulation or 18 Del.C. Ch. 33A; or

5.1.3 Has failed to timely submit information to complete review of the application or has failed to submit a renewal application and information under Section 4.0 of this regulation.

5.2 In lieu of a denial for an initial registration or renewal application under subsection 5.1 of this regulation, the Commissioner may permit the pharmacy benefits manager to submit to the Commissioner a corrective action plan to cure or correct deficiencies identified under subsection 5.1 of this regulation.

5.3 The Commissioner may refuse to issue a certificate of registration if the Commissioner determines that the pharmacy benefits manager, or any individual responsible for the conduct of affairs of the pharmacy benefits manager:

5.3.1 Is not competent, trustworthy, financially responsible or of good personal and business reputation; or

5.3.2 Has had an insurance or a pharmacy benefits manager certificate or license denied or revoked for cause by any jurisdiction; or

5.3.3 If the Commissioner determines that any of the grounds set forth in Section 6.0 of this regulation exists with respect to the pharmacy benefits manager.

## **6.0 Grounds for Denial, Suspension or Revocation of Registration Certificate**

6.1 The Commissioner may deny, suspend or revoke the certificate of registration of a pharmacy benefits manager if the Commissioner finds that the pharmacy benefits manager has engaged in any of the following:

6.1.1 A material misstatement, misrepresentation, or omission in a registration or registration renewal application, including but not limited to:

6.1.1.1 Failure to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;

6.1.1.2 Failure to timely file an annual registration pursuant to Section 4.0 of this regulation and filing fee pursuant to Section 8.0 this regulation;

6.1.1.3 Failure to disclose that its license, registration or certification is under suspension or revocation in another state; or

6.1.1.4 Failure to disclose that individuals who are responsible for the conduct of the affairs of the pharmacy benefit manager have been convicted of, or has entered a plea of guilty or *nolo contendere* to, a felony without regard to whether adjudication was withheld;

- 6.1.2 Fraudulently or deceptively obtaining or attempting to obtain a registration or renewal of a registration;
- 6.1.3 In connection with the administration of pharmacy benefits manager services, fraud or illegal or dishonest activities, including but not limited to:
  - 6.1.3.1 Using such methods or practices in the conduct of its business that render its further transaction of business in Delaware hazardous or injurious to insured persons or the public;
  - 6.1.3.2 Violating any lawful rule or order of the Commissioner or any applicable law of this state;
  - 6.1.3.3 Failing to pay any judgment rendered against it in this state within sixty days after the judgment has become final; or
  - 6.1.3.4 Without just cause, refusing to pay clean claims or perform services arising under its contracts or, without just cause, causing covered individuals to accept less than the amount due them or causing covered individuals to employ attorneys or bring suit against the pharmacy benefits manager to secure full payment or settlement of such claims; or
- 6.1.4 A violation of any provision of 18 Del.C. Ch. 33A or this regulation, including but not limited to:
  - 6.1.4.1 Refusing to be examined or to produce accounts, records and files for examination, of any individual responsible for the conduct of affairs of the pharmacy benefits manager, including:
    - 6.1.4.1.1 Members of the board of directors, board of trustees, executive committee or other governing board or committee;
    - 6.1.4.1.2 The principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company;
    - 6.1.4.1.3 Any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the pharmacy benefits manager; and
    - 6.1.4.1.4 Any other person who exercises control or influence over the affairs of the pharmacy benefits manager; or
  - 6.1.4.2 Refusing to give information with respect to its affairs or refusing to perform any other legal obligation as to an examination, when required by the Commissioner.
- 6.2 In addition to any other remedies set forth in this regulation, the Commissioner may issue a cease and desist order to a pharmacy benefits manager that is registered or is seeking renewal of a registration if the pharmacy benefits manager, or an officer, director, or employee of the pharmacy benefits manager commits any of the acts set forth in subsection 6.1 of this regulation.
- 6.3 If a pharmacy benefits manager that is registered or seeking renewal of a registration does not comply with a cease and desist order issued by the Commissioner under subsection 6.2 of this regulation, the Commissioner may deny, refuse to renew, suspend, or revoke its registration.
- 6.4 Hearings
  - 6.4.1 If the action by the Commissioner is to deny or not renew a registration, the Commissioner shall notify the pharmacy benefits manager of the decision, in writing, including the reason for the denial or nonrenewal of the registration. The pharmacy benefits manager may, within 10 days after the Commissioner provides notice under this subsection, make written demand on the Commissioner for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action.
  - 6.4.2 If the Commissioner determines that a pharmacy benefits manager has violated any provision of 18 Del.C. Ch. 33A or this regulation, the Commissioner may, after notice and a hearing, issue an order in accordance with 18 Del.C. §3359A.
  - 6.4.3 All hearings under this regulation must be held under 18 Del.C. §§323 through 328 and this regulation.

# PROPOSED REGULATIONS

## **7.0 Maintenance of Information – Examination by Commissioner**

- 7.1 A pharmacy benefits manager shall maintain adequate books and records about each purchaser for which the pharmacy benefits manager provides pharmacy benefits management services.
- 7.2 The pharmacy benefits manager shall maintain all books and records in accordance with prudent standards of record keeping and shall retain all records referred to in subsection 7.1 of this regulation:
- 7.2.1 For the duration of the agreement between the pharmacy benefits manager and the purchaser:  
and
- 7.2.2 For three years after the pharmacy benefits manager ceases to provide pharmacy benefits management services for the purchaser.
- 7.3 The Commissioner shall have access to books and records maintained by a pharmacy benefits manager for the purposes of examining the affairs of the pharmacy benefits manager.
- 7.4 The conduct of an examination of any pharmacy benefits manager shall be in accordance with 18 Del.C. §§320 and 321, including the confidentiality provisions contained therein.
- 7.5 Nothing in this regulation shall prohibit the Commissioner from releasing final, adjudicated actions that are open to public inspection pursuant to 29 Del.C. Ch. 100 to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.
- 7.6 The insurer or purchaser, as applicable, shall own the records generated by the pharmacy benefits manager pertaining to the insurer or purchaser, as applicable; however, the pharmacy benefits manager shall retain the right to continuing access to books and records to permit the pharmacy benefits manager to fulfill all of its contractual obligations to insured parties, claimants, and the insurer or purchaser, as applicable.
- 7.7 In the event the insurer or purchaser, as applicable, and the pharmacy benefits manager cancel their agreement, notwithstanding the provisions of subsection 7.1 of this regulation, the pharmacy benefits manager may, by written agreement with the insurer or purchaser, as applicable, transfer all records to a new pharmacy benefits manager rather than retain them as is required under subsection 7.1 of this regulation. In such cases, the new pharmacy benefits manager shall acknowledge, in writing, that it is responsible for retaining the records of the prior pharmacy benefits manager as required in subsection 7.1 of this regulation.
- 7.8 A pharmacy benefits manager who is applying for registration or who is registered under this Section shall produce its accounts, records and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.
- 7.9 A pharmacy benefits manager shall be subject to assessment for all fees, costs, experts and related expenditures with respect to any examination or enforcement action undertaken by the Commissioner pursuant to 18 Del.C. Ch. 33A and this regulation.

## **8.0 Fees**

The following fees shall be applicable for filings and matters arising under this regulation:

|   |                 |
|---|-----------------|
| <u>Initial registration application</u>     | <u>\$150.00</u> |
| <u>Renewal registration application</u>     | <u>\$150.00</u> |
| <u>Amendment of certificate</u>             | <u>\$150.00</u> |
| <u>Duplicate or replacement certificate</u> | <u>\$150.00</u> |

## **9.0 Severability**

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of this regulation or the applicability of the provision to other persons or circumstances shall not be affected.

## **10.0 Effective Date**

This Regulation shall become effective June 11, 2020.

---

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6001(c) and 6010; (7 Del.C. §§6001(c) and 6010)

#### REGISTER NOTICE SAN # 2019-08

#### 1151 Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses

**1. TITLE OF THE REGULATIONS:**

7 DE Admin. Code 1151 Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

This proposed new regulation supports the Governor's directive to the Department of Natural Resources and Environmental Control to propose regulations for the use and manufacturing of Hydrofluorocarbons in Delaware.

This proposed new regulation establishes the prohibitions and requirements for the use and manufacture of hydrofluorocarbons in the State of Delaware according to their specific end usage (including air conditioning and refrigeration equipment, aerosol propellants, and foam end-uses) and adopts specific United States Environmental Protection Agency Significant New Alternatives Policy Program prohibitions. This proposed new regulation is designed to support greenhouse gas emission reductions in the State of Delaware.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del.C. Chapter 60 Environmental Control §§ 6001(c) & 6010.

**5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**

None

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed new regulation 7 DE Admin. Code 1151 will open April 1, 2020. Individuals may submit comments regarding the proposed new regulation to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901.

A public hearing on the proposed new regulation will be held on April 23, 2020 beginning at 6:00 PM in the Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE, 19901. Public comments will be received until close of business, Friday, May 8, 2020.

**7. PREPARED BY:**

Ajo Rabemiarisoa, [ajo.rabemiarisoa@delaware.gov](mailto:ajo.rabemiarisoa@delaware.gov), (302)324-2083

**\*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/april2020/proposed/23 DE Reg 841RFA 04-01-20.pdf>

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

**1151 Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses**

# PROPOSED REGULATIONS

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### DIVISION OF STATE POLICE

#### 2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 **Del.C.** Ch. 27)  
24 **DE Admin. Code** 2400

#### PUBLIC NOTICE

#### 2400 Board of Examiners of Constables

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27 proposes to amend the following adopted rules in 24 **DE Admin. Code** 2400 Board of Examiners of Constables: Rule 7.0 Conducted Electrical Weapon (CEW). If you wish to view the complete Rules, contact Ms. Ashley Bauguess at 302-672-5337. Any persons wishing to present views may submit them in writing, by May 1, 2020, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903.

**\*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/april2020/proposed/23 DE Reg 842RFA 04-01-20.pdf>

#### 2400 Board of Examiners of Constables

##### *(Break in Continuity of Sections)*

#### ~~7.0 Conducted Electrical Weapon (CEW)~~

- ~~7.1 In order for a constable to carry/use a conducted electrical weapon (CEW), he/she must complete a training program approved by the Board and all certifications or re-certifications must be on file with the Professional Licensing Section.~~
- ~~7.2 GEW Instructors~~
  - ~~7.2.1 All CEW instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.~~

#### 7.0 Conducted Electrical Weapon (CEW)

- 7.1 Anyone commissioned under 10 **Del.C.** Ch. 27 wishing to carry/use a conducted electrical weapon (CEW), while in the performance of their duties as a Constable under 10 **Del.C.** Ch. 27, must first complete a training program with an instructor certified by the manufacturer of the CEW. All certifications and re-certifications must be on file with the Constable's entity and available to the Professional Licensing Section for inspection.
  - 7.1.1 All individuals certified to carry/use a CEW, while in the performance of their duties as a Constable under 10 **Del.C.** Ch. 27, must be recertified in a timeframe consistent with the manufacturer and by an instructor and recertification program approved by the CEW's manufacturer.
  - 7.1.2 The board shall have the right to deny the carrying of any CEW that is found to not be within accepted industry standards or unsafe for the purposes of performing their duties as a Constable under 10 **Del.C.** Ch. 27.
- 7.2 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to not be within generally accepted practices for the manufacturer of the CEW. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

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

#### 2400 Board of Examiners of Constables

---

**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION  
100 BOARD OF ACCOUNTANCY**

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 Del.C. §105(a)(1))  
24 DE Admin. Code 100

**PUBLIC NOTICE****100 Board of Accountancy**

Pursuant to 24 Del.C. §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The rules are designed to implement the revised Accountancy statute.

A public hearing will be held on May 20, 2020 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until June 4, 2020 in accordance with 29 Del.C. §10118(a).

**\*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/april2020/proposed/23 DE Reg 843RFA 04-01-20.pdf>

**100 Board of Accountancy  
(Break in Continuity of Sections)****6.0 Requirements and Qualifications for a Permit to Practice as a Certified Public Accountant  
(Break in Continuity Within Section)**

6.2 Each applicant for a permit to practice certified public accountancy pursuant to 24 Del.C. §107 must provide the Board with the following:

**(Break in Continuity Within Section)**

6.2.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination as established by the AICPA and the National Association of State Boards of Accountancy (NASBA).

**(Break in Continuity Within Section)**

6.2.2.8 An applicant may take the required Test Sections individually and in any order. Credit for any Test Section(s) passed shall be valid for eighteen months from the actual date the applicant took that Test Section, without having to attain a minimum score on any failed Test Section(s) and without regard to whether the applicant has taken other Test Sections.

**(Break in Continuity Within Section)**

6.2.2.8.3 If the Board determines the examination changes necessary to eliminate the test window limitations have been implemented, subsection 6.2.2.8.2 will no longer be effective, and applicant can retake a test section once their grade for any previous attempt of that same test section has been released.

~~6.2.2.8.3~~ 6.2.2.8.4 In the event all four Test Sections of the Uniform CPA Examination are not passed within the rolling eighteen-month period, credit for any Test Section(s) passed outside the eighteen-month period will expire and that Test Section(s) must be retaken.

# PROPOSED REGULATIONS

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

**100 Board of Accountancy**

## DIVISION OF PROFESSIONAL REGULATION 1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 Del.C. §1106(a)(1))  
24 DE Admin. Code 1100

### PUBLIC NOTICE

#### 1100 Board of Dentistry and Dental Hygiene

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 Del.C. §1106(a)(1), proposes to revise its regulations. The proposed amendments to allow the Board to grant continuing education credits to dentists and dental hygienists who perform volunteer clinical work. The changes also add American Academy of Dental Hygiene to the list of approved CE providers.

The Board will hold a public hearing on the proposed rule change on May 14, 2020 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meredith Hurley, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 29, 2020.

\*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/april2020/proposed/23 DE Reg 844RFA 04-01-20.pdf>

#### 1100 Board of Dentistry and Dental Hygiene (Break in Continuity of Sections)

#### 6.0 Continuing Professional Education (CPE) and Renewal

##### (Break in Continuity Within Section)

#### 6.6 Special Provisions

##### (Break in Continuity Within Section)

6.6.7 A dentist providing volunteer pro bono dental services acceptable to the Board will be allowed one hour of credit for each hour of patient service up to a maximum of 10 hours.

6.6.7.1 Volunteer pro bono care is care provided in conjunction with a non-profit entity or event without receiving compensation.

~~6.6.7~~ 6.6.8 The Board reserves the right to approve any and all activities deemed appropriate for CPE credit. The Board also reserves the right and is the final word to disapprove any activities submitted for credit which it deems inappropriate.

~~6.6.8~~ 6.6.9 All dentists licensed to practice in Delaware shall be given written notice of these CPE requirements when receiving their initial license.

~~6.6.9~~ 6.6.10 For existing holders of an Unrestricted Permit for anesthesia, at least twelve (12) hours of the required CPE credits must be taken on an Anesthesia topic by the end of the six (6) year re-evaluation period (i.e. by the end of the third biennial licensure renewal period).

~~6.6.10~~ 6.6.11 For existing holders of a Restricted I Permit, at least six (6) hours of the required CPE credits must be taken on an Anesthesia topic by the end of the six (6) year re-evaluation period (i.e. by the end of the third biennial license renewal period).

***(Break in Continuity Within Section)***

- 6.9 Continuing Professional Education (CPE) - Dental Hygienists [24 Del.C. §1106(a)(1) and (7)]  
All persons licensed to practice dental hygiene in the State of Delaware shall be required to acquire twenty-four (24) hours of CPE credit every two (2) years. Two (2) of the 24 credit hours shall be obtained in courses covering infection control. In addition to the CPE, licensees must provide evidence that they have and successfully completed a current course in cardiopulmonary resuscitation (CPR) every two (2) years. The CPR course must encompass hands on clinical participation. On-line courses will not be accepted to satisfy the CPR requirement. Examples of acceptable courses include, but are not limited to, courses offered by the American Red Cross and the American Heart Association. All Dental hygienists, upon initial licensure and prior to registration renewal, shall be given written notice of these CPE requirements.
- 6.9.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of ~~Rule~~ subsection 6.9.
- 6.9.2 Attestation must be completed electronically at the time of renewal.
- 6.9.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to ~~Rule~~ subsection 6.12.
- 6.9.4 CPE credits may be granted upon proof of successful completion of programs including, but not limited to, the following categories:
- 6.9.4.1 Scientific CPE programs or courses, including live webinars, sponsored or approved by:

***(Break in Continuity Within Section)***

6.9.4.1.4 American Academy of Dental Hygiene

~~6.9.4.1.46.9.4.1.5~~ 6.9.4.1.5 Recognized national, regional, state, and local dental and dental hygiene specialty societies

~~6.9.4.1.56.9.4.1.6~~ 6.9.4.1.6 Recognized dental and dental hygiene study clubs

~~6.9.4.1.66.9.4.1.7~~ 6.9.4.1.7 Accredited dental and dental hygiene schools

~~6.9.4.1.76.9.4.1.8~~ 6.9.4.1.8 Approved hospital programs

~~6.9.4.1.86.9.4.1.9~~ 6.9.4.1.9 Such other organizations and associations as may be approved by the Board

***(Break in Continuity Within Section)***

6.10 Special Provisions

***(Break in Continuity Within Section)***

6.10.7 A dental hygienist providing volunteer pro bono dental hygiene services acceptable to the Board will be allowed one hour of credit for each hour of patient service up to a maximum of five hours.

6.10.7.1 Volunteer pro bono care is care provided in conjunction with a non-profit entity or event without receiving compensation.

~~6.10.76.10.8~~ 6.10.8 The Board reserves the right to approve any and all activities deemed appropriate for CPE credit. The Board also reserves the right and is the final word to disapprove any activities submitted for credit which it deems inappropriate.

~~6.10.86.10.9~~ 6.10.9 All dental hygienists licensed to practice in Delaware shall be given written notice of these CPE requirements when receiving their initial license.

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

**1100 Board of Dentistry and Dental Hygiene**



# PROPOSED REGULATIONS

## DIVISION OF PROFESSIONAL REGULATION 2930 COUNCIL ON REAL ESTATE APPRAISERS

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

### PUBLIC NOTICE

#### 2930 Council on Real Estate Appraisers

Pursuant to 24 Del.C. §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to continuing education are amended to eliminate the "live setting" requirement. The Council is also taking the opportunity of this proposal to update Delaware Code citations to sections that have been amended.

A public hearing will be held on April 21, 2020 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 Del.C. §10118(a). Written comments will be accepted until May 6, 2020.

**\*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/april2020/proposed/23 DE Reg 846RFA 04-01-20.pdf>

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

### 2.0 Appraiser Licensing and Certification

#### (Break in Continuity Within Section)

- 2.6 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:

#### (Break in Continuity Within Section)

- Income approach
  - Estimation of income and expenses
  - Operating statement ratios
  - Direct capitalization
  - Cash flow estimates
  - Measures of cash flow
  - Discounted cash flow analysis
  - Gross rent multiplier analysis
- Estimation of income and expenses
- Operating statement ratios
- Direct capitalization
- Cash flow estimates
- Measures of cash flow
- Discounted cash flow analysis
- Gross rent multiplier analysis

#### (Break in Continuity Within Section)

- 2.11 ~~Beginning November 1, 2009, and thereafter, at least 14 hours per licensure period must be taken in a traditional classroom setting, with an instructor.~~ If a licensee is licensed for at least 6

~~months but fewer than 12 months of licensure, at least 7 hours per licensure period must be taken in a traditional classroom setting with an instructor.~~

~~2-12~~ 2.11 Courses must be approved by the Council to qualify as continuing education. Either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.

~~2-13~~ 2.12 A written, proctored examination is required for all qualifying education distance course offerings. The term written refers to an examination that might be written on paper or administered electronically on a computer workstation or other device.

~~2-14~~ 2.13 Appraisers may not receive credit for completion of the same continuing education course offering within an appraiser's continuing education cycle.

~~2-15~~ 2.14 Random audits will be performed by the Council to ensure compliance with the CEU requirements. At least 25% of the licensees shall be audited at each renewal. The Council shall have the discretion to increase the percentage of licensees to be audited. Every licensee renewing during the permissible late period after the expiration of the license or certificate will be included in the audit.

~~2-15.1~~ 2.14.1 The Council will notify licensees within sixty (60) days after renewal that they have been selected for audit.

~~2-15.2~~ 2.14.2 Licensees selected for random audit shall be required to submit verification within thirty days of the date of notification of selection for audit.

~~2-15.3~~ 2.14.3 Verification shall include such information necessary for the Council to assess whether the course or other activity meets the CE requirements in Section 2.0, which may include, but is not limited to, the following information:

~~2-15.3.1~~ 2.14.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance;

~~2-15.3.2~~ 2.14.3.2 Date of CE course;

~~2-15.3.3~~ 2.14.3.3 Instructor of CE course;

~~2-15.3.4~~ 2.14.3.4 Sponsor of CE course;

~~2-15.3.5~~ 2.14.3.5 Title of CE course; and

~~2-15.3.6~~ 2.14.3.6 Number of hours of CE course.

~~2-15.4~~ 2.14.4 The Council shall review all documentation submitted by licensees pursuant to the continuing education audit. If the Council determines that the licensee has met the continuing education requirements, his or her license shall remain in effect. If the Council determines that the licensee has not met the continuing education requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. Unjustified noncompliance with the continuing education requirements set forth in these rules and regulations shall constitute a violation of 24 **Del.C.** §4014(a)(5) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §4016.

~~2-16~~ 2.15 Duplicate License or Certificate Fee

~~2-16.1~~ 2.15.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. A certified copy of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.

~~2-17~~ 2.16 Federal Appraiser Registry

~~2-17.1~~ 2.16.1 Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid biennially by the license or certificate holder to the State of Delaware.

~~2-18~~ 2.17 Experience for Initial or Upgrade Applications

~~2-18.1~~ 2.17.1 States must ensure that appraiser experience logs conform to AQB Criteria. States may not accept an affidavit for experience credit claimed by applicants for certification. Effective July 1, 2013,

# PROPOSED REGULATIONS

States may not accept an affidavit for experience credit claimed by applicants for any federally recognized credential. The requirements of USPAP shall not apply to the Board, its agents, and employees while conducting an appraisal review for the purposes of confirming an applicant's experience.

## ~~2.18.2~~ 2.17.2 Validation Required

~~2.18.2.1~~ 2.17.2.1 States must implement a reliable validation procedure to verify that each applicant's:

~~2.18.2.1.1~~ 2.17.2.1.1 experience meets AQB Criteria;

~~2.18.2.1.2~~ 2.17.2.1.2 experience is USPAP compliant; and

~~2.18.2.1.3~~ 2.17.2.1.3 experience hours have been successfully completed consistent with AQB Criteria.

## ~~2.18.3~~ 2.17.3 Validation Procedures, Objectives and Requirements

### ~~2.18.3.1~~ 2.17.3.1 Selection of Work Product

~~2.18.3.1.1~~ 2.17.3.1.1 Program staff or State board members must select the work product to be analyzed for USPAP compliance; applicants may not have any role in selection of work product. States must analyze a representative sample of the applicant's work product.

### ~~2.18.3.2~~ 2.17.3.2 USPAP Compliance

~~2.18.3.2.1~~ 2.17.3.2.1 For appraisal experience to be acceptable under AQB Criteria, it must be USPAP compliant. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP. Persons analyzing work product for USPAP compliance must have sufficient knowledge to make that determination.

### ~~2.18.3.3~~ 2.17.3.3 Determination of Experience Time Periods

~~2.18.3.3.1~~ 2.17.3.3.1 When measuring the experience time period required by AQB Criteria, States must review each appraiser's experience log and note the dates of the first and last acceptable appraisal activity performed by the applicant. At a minimum, the time period spanned between those appraisal activities must comply with the AQB Criteria.

### ~~2.18.3.4~~ 2.17.3.4 Supporting Documentation

~~2.18.3.4.1~~ 2.17.3.4.1 States must maintain adequate documentation to support validation methods. The applicant's file, either electronic or paper, must include the information necessary to identify each appraisal assignment selected and analyzed by the State, notes, letters and/or reports prepared by the official(s) evaluating the report for USPAP compliance, and any correspondence exchanged with the applicant regarding the appraisals submitted. This supporting documentation may be discarded upon the completion of the first ASC Compliance Review performed after the credential issuance or denial for that applicant.

***(Break in Continuity of Sections)***

## 8.0 Complaints and Hearing Procedures

8.1 Complaints. The Council incorporates by reference the procedures for investigation of complaints by the Division of Professional Regulation as set forth in 29 **Del.C.** ~~§8807~~ §8735.

***(Break in Continuity of Sections)***

## 11.0 Crimes Substantially Related to the Practice of Real Estate Appraisal.

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of real estate appraisal in the State of Delaware without regard to the place of conviction:

***(Break in Continuity Within Section)***

11.1.6 Unlawful sexual contact in the second degree; ~~class G~~ class F felony. 11 **Del.C.** §768

11.1.7 Unlawful sexual contact in the first degree; ~~class F~~ class D felony. 11 **Del.C.** §769

***(Break in Continuity Within Section)***

- 44.1.24 ~~Carjacking in the first degree; class C felony; class B felony. 11 Del.C. §836~~
- 44.1.25 11.1.24 Extortion; class E felony. 11 Del.C. §846
- 44.1.26 11.1.25 Misapplication of property; class G felony. 11 Del.C. §848
- 44.1.27 11.1.26 Theft of rented property; class G felony. 11 Del.C. §849
- 44.1.28 11.1.27 Theft; class G felony; class A misdemeanor. 11 Del.C. §841
- 44.1.29 11.1.28 Theft; lost or mislaid property; mistaken delivery. 11 Del.C. §842
- 44.1.30 11.1.29 Theft; false pretense. 11 Del.C. §843
- 44.1.31 11.1.30 Theft; false promise. 11 Del.C. §844
- 44.1.32 11.1.31 Theft of services. 11 Del.C. §845
- 44.1.33 11.1.32 Identity theft; ~~class E felony~~; class D felony. 11 Del.C. §854
- 44.1.34 11.1.33 Forgery; class F felony; class G felony. 11 Del.C. §861
- 44.1.35 11.1.34 Possession of forgery devices; class G felony. 11 Del.C. §862
- 44.1.36 11.1.35 Tampering with public records in the first degree; class E felony. 11 Del.C. §876
- 44.1.37 11.1.36 Issuing a false certificate; class G felony. 11 Del.C. §878
- 44.1.38 11.1.37 Fraudulent conveyance of public lands; class G felony. 11 Del.C. §911
- 44.1.39 11.1.38 Fraudulent receipt of public lands; class G felony. 11 Del.C. §912
- 44.1.40 11.1.39 Insurance fraud; class G felony. 11 Del.C. §913
- 44.1.41 11.1.40 Home improvement fraud; class G felony. 11 Del.C. §916
- 44.1.42 11.1.41 New home construction fraud; ~~class G~~ class B felony, ~~class F~~ class D felony, class G felony. 11 Del.C. §917
- 44.1.43 11.1.42 Dealing in children; class E felony. 11 Del.C. §1100A
- 44.1.44 11.1.43 Endangering the welfare of a child; class E or G felony. 11 Del.C. §1102
- 44.1.45 11.1.44 Sexual exploitation of a child; class B felony. 11 Del.C. §1108
- 44.1.46 11.1.45 Unlawfully dealing in child pornography; class B felony. 11 Del.C. §1109
- 44.1.47 11.1.46 Possession of child pornography; class F felony. 11 Del.C. §1111
- 44.1.48 11.1.47 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112
- 44.1.49 11.1.48 Sexual solicitation of a child; class C felony. 11 Del.C. §1112A
- 44.1.50 11.1.49 Bribery; class E felony. 11 Del.C. §1201
- 44.1.51 11.1.50 Receiving a bribe; class E felony. 11 Del.C. §1203
- 44.1.52 11.1.51 Perjury in the second degree; class F felony. 11 Del.C. §1222
- 44.1.53 11.1.52 Perjury in the first degree; class D felony. 11 Del.C. §1223
- 44.1.54 11.1.53 Making a false written statement; class A misdemeanor. 11 Del.C. §1233
- 44.1.55 11.1.54 Tampering with physical evidence; class G felony. 11 Del.C. §1269
- 44.1.56 11.1.55 Hate crimes; class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony. 11 Del.C. §1304
- 44.1.57 11.1.56 Possession of a deadly weapon during commission of a felony; class B felony. 11 Del.C. §1447
- 44.1.58 11.1.57 Possession of a firearm during commission of a felony; class B felony. 11 Del.C. §1447A
- 44.1.59 11.1.58 Removing a firearm from the possession of a law enforcement officer; class C felony. 11 Del.C. §1458
- 44.1.60 11.1.59 Organized crime and racketeering, class B felony. 11 Del.C. §1504
- 44.1.61 11.1.60 Abuse of patient or resident in ~~nursing home~~; class D a long-term care facility; class C felony; class G felony, class A felony. 16 Del.C. §1136(a)
- 44.1.62 11.1.61 Knowing or reckless abuse of an ~~infirm~~ adult who is impaired; class D felony; class E felony; class G felony; class A felony. 31 Del.C. §3913

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

**2930 Council on Real Estate Appraisers**

---

---

## 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

### DELAWARE NUTRIENT MANAGEMENT COMMISSION

Statutory Authority: 3 Delaware Code, Section 2220(a) (3 Del.C. §2220(a))  
3 DE Admin. Code 1201

## ORDER

### 1201 Nutrient Management Certification Regulations

The Delaware Nutrient Management Commission pursuant to 3 Del.C. §2220(a), proposed to regulation 1201-9.3 to allow the Commission to waive the fee required to obtain a nutrient consultant or commercial nutrient handler certificate for good cause shown.

#### Summary of the evidence and information submitted

Following publication in the *Delaware Register of Regulations* on February 1, 2020 a written public comment period was held open for thirty days. No comments were received during that time. At its meeting on March 3, 2020, the Commission voted to adopt the proposed regulatory changes.

## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Commission with comments in writing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Commission during the second written public comment period.
3. Pursuant to 3 Del.C. §2220(a), the Commission has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes seek to regulation 1201-9.3 to allow the Commission to waive the fee required to obtain a nutrient consultant or commercial nutrient handler certificate for good cause shown.

5. The public was given notice and an opportunity to provide the Commission with comments in writing on the proposed changes to the Commission's rules and regulations.

6. Having received no public comments, the Commission finds no reason to amend the regulations as proposed.

### DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Commission finds that the regulation shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, is attached to this order as Exhibit A. This change will become effective ten days following publication of this order in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** this 3<sup>rd</sup> day of March, 2020 by the Delaware Nutrient Management Commission.

|                                    |                     |
|------------------------------------|---------------------|
| F. Kenneth Blessing, Jr., Chairman | William Vanderwende |
| Mark Adkins                        | Marcia Fox          |
| Ken Horeis                         | Laura Hill          |
| Jon Nichols, Jr.                   | Larry Jester        |
| Bud O'Neill                        | Jim Elliott         |
| Garry Killmon                      | Tak Keen            |
| Brenna Ness                        | N. Wayne Hudson     |
| Scott Webb                         |                     |

### 1201 Nutrient Management Certification Regulations

#### PREAMBLE

These regulations have been developed pursuant to 3 **Del.C.** Ch. 22. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing the certification of persons who conduct certain activities that involve the generation or application of nutrients to lands or water, or who are involved in providing advice or consultation regarding such application of nutrients. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

#### 1.0 Authority

These regulations are promulgated pursuant to the authority provided by 3 **Del.C.** Ch. 22, §2221.

#### 2.0 Purpose

The purpose of these regulations is to establish certification requirements for certain generators or handlers of nutrients, or who engage in advising or consulting with others regarding the formulation, application, or scheduling of nutrients within the State of Delaware.

#### 3.0 Definitions

For purposes of these regulations, the following words or terms shall have the meanings as indicated:

**"Animal Feeding Operation" or "AFO"** means any area or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period.

**"Animal Unit"** shall be ~~means~~ means **"Animal Unit"** as defined by the United States Department of Agriculture Natural Resources Conservation Service, and is approximately 1,000 lbs. "average" live body weight.

**"Applicant"** means any person seeking a certificate from the Commission.

**"Application Area"** means land under the control of a person, whether it is owned, licensed, or leased, which manure, litter or fertilizer may be applied.

**"Apply, Applying", "Applying"**, or any derivation of the word **"apply"**, as it relates to the application of nutrients, means the human controlled mechanical conveyance of nutrients to land for the purpose of applying organic and/or inorganic nutrients.

**"Certification"** means the recognition by the Commission that a person has met the qualification standards established by the Commission and has been issued a written certificate authorizing such person to perform certain functions specified in these regulations.

**"Commercial Nutrient Handler"** means a person who applies organic or inorganic nutrients to lands or waters in the State as a component of a commercial or agricultural business in exchange for a fee or service charge.

**"Commercial Processor"** means any individual, partnership, corporation, association or other business unit that controls, through contracts, vertical integration or other means, several stages of production and marketing of any agricultural commodity.

**"Commission" or "DNMC"** means the Delaware Nutrient Management Commission.

**"Credit"** ~~represents~~ means a unit of measuring education for certification as defined by the Commission and is dependent upon such factors as curricula intensity and class time.

**"Direct Supervision"** ~~refers to~~ means actions by a person who is certified with the State Nutrient Management Program and directs individuals within the same organization/company in applying nutrients. Direct supervisors hold responsibility for nutrient application actions for those under his/her supervision.

**"Fertilizer"** means any synthetic or carbon based substance that is added to the soil to supply one or more plant nutrients.

**"Frozen"** ~~relates to~~ means frozen ground and is the top 2-inches of surface area receiving nutrients where the moisture has changed to ice for a period of 72 consecutive hours or a condition where any ice formation below the 2-inch zone restricts the natural flow of moisture through the soil profile.

**"Manure"** means fecal and urinary defecations of livestock and poultry; may include but is not limited to spilled feed, bedding, soil, and compost if commingled with manure.

**"Nutrient Consultant"** means a person who is engaged in the activities of advising or consulting with another person who is required to have a certificate under these regulations, regarding the formulation, application, or scheduling of organic or inorganic nutrients within the State. Provided, however, any employee of any federal, State or local government agency or the University of Delaware, or other organization duly recognized by the Commission for such purpose, who provides advice or consultation in his/her capacity as such an employee, without compensation, shall not be deemed to be a nutrient consultant unless such advice and consultation constitutes a direct and substantial part of a nutrient management plan developed pursuant to these regulations.

**"Nutrient Generator"** means a person who owns or operates a facility within the State that produces organic or inorganic nutrients.

**"Nutrient Management Plan" or "plan"** means a plan by a certified nutrient consultant to manage the amount, placement, timing, and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turfgrass.

**"Nutrients"** means nitrogen, nitrate, phosphorus, organic matter, and any other elements necessary for or helpful to plant growth.

**"Person"** means any individual, partnership, association, fiduciary, or corporation or any organized group of persons, whether incorporated or not.

**"Private Nutrient Handler"** means a person in the State who applies organic or inorganic nutrients to lands or waters he/she owns, leases, or otherwise controls.

**"Production Area"** means that part of an AFO that includes the "animal confinement area", the "manure storage area", the raw materials storage area and the "waste containment areas", egg washing or processing facility and any area used in the storage, handling, treatment or disposal of mortalities. The Production Area should be defined in the operation's Nutrient Management Plan.



**"Program Administrator"** or **"Nutrient Management Program Administrator"** means the exempt employee of the Delaware Department of Agriculture who is responsible for the operation of the State Nutrient Management Program.

**"Secretary"** means the Secretary of the Delaware Department of Agriculture or ~~his/her~~ the Secretary's designee.

**"State Nutrient Management Program"** or **"SNMP"** means all the nutrient management program elements developed by the Commission, whether or not reduced to rules or regulations.

**"State Technical Standards"** ~~are~~ means the practices and conduct required of individuals or entities overseen by the Nutrient Management Commission that were developed by a group of environmental scientists, agronomists, engineers, planners, agricultural operators, and policy makers from the Nutrient Management Commission, Department of Agriculture, the Department of Natural Resources and Environmental Control, the University of Delaware, USDA NRCS and the private sector. The Commission hereby adopts the State Technical Standards in their entirety by reference.

**"Stockpiling"** means the temporary location of manure piles in the production area for no more than 14 days unless the manure/litter is located under cover in an approved Manure Storage Structure. Stockpiling must be conducted and positioned in accordance with State Technical Standards.

**"Temporary Field Staging"** means the location of manure for 90 days or less prior to its application within the application area and is considered a part of the application process. Temporary Field Staging criteria and performance standards are further described in State Technical Standards. In addition, staging must be performed in accordance with site specific Nutrient Management Plans.

#### 4.0 Certification Categories And Activities Requiring Certification

- 4.1 No later than January 1, 2004, any person who engages in any of the following activities must have the applicable certificate or certificates required by and issued pursuant to these regulations, as follows:
- 4.1.1 Nutrient generator certification - A nutrient generator who owns or operates any animal feeding operation in excess of eight animal units must have a nutrient generator certificate.
  - 4.1.2 Private nutrient handler certification - A private nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters owned, leased, or otherwise controlled by such handler must have a private nutrient handler certificate.
  - 4.1.3 Commercial nutrient handler certification - A commercial nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters of the state must have a commercial nutrient handler certificate.
  - 4.1.4 Nutrient consultant certification - A nutrient consultant who is engaged in the provision of nutrient management advice or the formulation of a nutrient management plan or in nutrient management planning as it relates to the application or disposal of nutrients at or from a specific site in the State of Delaware must have a nutrient consultant certificate.
- 4.2 These certification requirements shall not apply to individuals who perform services under the direct supervision of a certified person, provided that the certified person assures that such individuals act in accordance with the standards or practices which the certified person would follow if such person performed the service. Nor shall the certification requirements of this section apply to persons who utilize a person certified under these regulations to conduct the activities identified in this section, provided that such persons do not engage in any of the activities themselves and the certified person is certified at the time the activities are undertaken.
- 4.3 Conditional certifications may be issued for any reason specified by the Commission and shall be issued for periods not to exceed one year.

#### 5.0 Certification Requirements

- 5.1 Any person who seeks a certification shall file with the Commission an application on a form provided by the Commission, along with the application fee. The minimum requirements for the certifications follow.

- 5.2 Nutrient generator certificates - To obtain a nutrient generator certificate, the applicant must take and successfully complete at least 6 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
- 5.3 Private nutrient handler - To obtain a private nutrient handler certificate, the applicant must take and successfully complete at least 9 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
- 5.4 Commercial nutrient handler - To obtain a commercial nutrient handler certificate the following criteria must be satisfied:
  - 5.4.1 The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
  - 5.4.2 The applicant must pass a written test approved by the Commission.
- 5.5 Nutrient consultant - To obtain a nutrient consultant certificate the following criteria must be satisfied:
  - 5.5.1 The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
  - 5.5.2 The applicant must pass a written test approved by the Commission.

## **6.0 Nutrient Handling Requirements**

- 6.1 As required by 3 **Del.C.** §2201 et.al, Nitrogen and Phosphorus fertilizers shall be applied according to an approved Nutrient Management plan.
- 6.2 For land areas not required to have a Nutrient Management plan, applications of Nitrogen and Phosphorus fertilizers by anyone holding a commercial nutrient handler or nutrient consultant certification, or anyone required to be certified at said level pursuant to 3 **Del.C.** §2242 and ~~section~~ Section 4.0 herein, are prohibited when one of the following conditions exist:
  - 6.2.1 The surface area of application is impervious such as sidewalks, roads and other paved areas and the misdirected fertilizer is not removed on the same day of application;
  - 6.2.2 The surface area is covered by snow or frozen; or
  - 6.2.3 The date of application is between December 7 and February 15.
- 6.3 Nutrient Storage and Staging Requirements
  - 6.3.1 For any person required to develop and implement a nutrient management plan and who stores, handles, or stages any manure in any area that may be exposed to rainfall, the following requirements must be met.
  - 6.3.2 Any outdoor storage of manure within the production areas, or staging within the application areas must be the result of exhausting manure storage structure space available by the nutrient generator or nutrient applicator of such manure. Stockpiling must be performed in accordance with State Technical Standards.
  - 6.3.3 Any outdoor stockpiling of poultry manure within the production area or any area other than the application area will be limited to 14 days without a cover.
  - 6.3.4 Any outdoor temporary field staging of poultry manure within the application area will be limited to 90 days.
    - 6.3.4.1 Authorization for exceeding the 90 day time period may be granted on a case by case situation if approved by the nutrient consultant and reported to the nutrient management program administrator. Please refer to State Technical Standards.
  - 6.3.5 In order to prevent discharges of pollutants to surface waters, any outdoor staging of poultry manure within the application area shall be handled according to the following:
    - 6.3.5.1 The manure must be at least 6 feet high and in a conical cross section shape; and
    - 6.3.5.2 Poultry litter manure shall not consist of more than 5% crust out material; and

- 6.3.5.3 The selection of the staging site must consider the highest, most practical site possible and shall not use the same site more than once every two years (unless allowable under conditions as described in the State Technical Standards). Refer to State Technical Standards; and
- 6.3.5.4 The staging site must be located at least 100 feet from a public road, 100 feet from any surface water and 200 feet from any residence not located on the property; and
- 6.3.5.5 The staging site must be at least 200 feet from a domestic well and 300 feet from a public water supply well; and
- 6.3.5.6 Post litter removal treatment must include the removal of all litter and the top 1-2 inches of topsoil if the topsoil is co-mingled with the litter to prevent nutrient loads; and
- 6.3.5.7 A production crop or vegetative cover crop must be established and maintained at the staging site as soon as practical following post removal treatment.

## 7.0 Reciprocity

- 7.1 Notwithstanding the requirements of Section ~~5.0, supra~~, 5.0 of this regulation any person may obtain a certificate under these regulations if all the following requirements are satisfied.
- 7.2 The applicant must submit an application for the applicable certificate on a form provided by the Commission, along with the application fee.
- 7.3 The applicant must have a valid certificate or equivalent authorization, such as a license for the certificated activity, from another state or organization that requires qualifications at least as rigorous as those required under these regulations and approved by the Commission.
- 7.4 The applicant must pass a test approved by the Commission related to specific Delaware Nutrient Management requirements. The Commission may in its sole discretion waive this test requirement.

## 8.0 Continuing Education

- 8.1 After a certificate is issued, the certificate holder must take and successfully complete continuing education courses approved by the Commission or Program Administrator in accordance with the following:
  - 8.1.1 Nutrient generator - 6 credits of continuing education in each three-year period following the issuance of the certification.
  - 8.1.2 Private nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.
  - 8.1.3 Commercial nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.
  - 8.1.4 Nutrient consultants - 5 credits of continuing education each year following the issuance of the certification.
- 8.2 Failure to satisfy the continuing education requirements may result in the revocation of a certificate or non-renewal of the certificate.
- 8.3 Any dispute regarding continuing education credits may be directed to the Commission which will determine whether a hearing is necessary to resolve the dispute.

## 9.0 Duration Of Certificates And Certification Fees

- 9.1 Certificates normally will be issued and renewed for periods of three years for nutrient generators, private nutrient handlers, and commercial nutrient handlers. Certified nutrient consultants will be issued and renewed certifications annually.
- 9.2 Certificate fees are due with the application. The fee for a one-year certificate issued to nutrient consultants shall be \$100.00. The certificate fee for commercial nutrient handlers for a three-year certificate shall be \$150.00. The Commission reserves the right to waive these fees for good cause shown.
- 9.3 No fee will be charged for certification of a nutrient generator or a private nutrient handler.

## 10.0 Suspensions, Modifications, And Revocations

- 40-4 The Commission may, after notice and opportunity for hearing, suspend, modify, or revoke any certificate where the Commission has reasonable grounds to believe that the certificate holder is responsible for violations of the nutrient management statute (Title 3, Chapter 22, of the **Delaware Code**) or Commission regulations. The Commission shall furnish the person accused of a violation with notice of the time and place of the hearing, which notice shall be served personally or by registered mail directly to such person's place of business or last known address with postage fully paid no sooner than 10 days but within 21 days of the time fixed for the hearing.

## 11.0 Certification Renewals

- 11.1 At least 45 days before the expiration of a certificate, the certificate holder shall file an application with the Commission for renewal of the certificate, along with the certification fee.
- 11.2 Nutrient consultants must file with the application and fee evidence that the consultant prepared at least one nutrient management plan during the preceding three-year period. If no such plan was prepared, the certificate shall not be renewed.
- 11.3 The certificate holders must also supply with the application and renewal fee evidence that they have complied with the continuing education and record keeping and reporting requirements contained in these regulations.
- 11.4 Absent good cause for failure to timely file an application for renewal in compliance with these requirements, the certificate holder must reapply for the certificate in the same manner required for the issuance of the original certificate.
- 11.5 Decisions to refuse renewal of a certificate shall be final and conclusive unless appealed to the Commission pursuant to Section ~~2262, Chapter 22, 2262~~ of Title 3 of the **Delaware Code**.

## 12.0 Appeals To The Secretary

All decisions of the Commission under this regulation shall be final and conclusive unless appealed to the Secretary pursuant to Section ~~2263, Chapter 22, 2263~~ of Title 3 of the **Delaware Code**. Provided, however, that the denial of a certificate pursuant to Sections 2243 or ~~2245, Chapter 22, 2245~~ of Title 3 of the **Delaware Code** shall first be appealed to the Commission which shall hold a hearing.

## 13.0 Record Keeping- ~~Keeping~~

- 13.1 Nutrient generators shall record and keep the following available for inspection by the Secretary or the Commission:
- 13.1.1 A contemporaneously recorded log that contains the dates, approximate quantities, locations, and disposition (stored, shipped, etc.) of nutrients that are applied to land or transported from land owned, leased or otherwise controlled by the Nutrient Generator.
- 13.1.2 A copy of any applicable nutrient management plan.
- 13.2 Private nutrient handlers shall record and keep the following available for inspection by the Secretary or the Commission:
- 13.2.1 A contemporaneously recorded log showing the dates, locations, approximate quantities, acreage and methods of nutrient application.
- 13.2.2 A copy of any applicable nutrient management plan.
- 13.3 Commercial nutrient handlers shall prepare and keep available for inspection by the Secretary or the Commission, a contemporaneously recorded log showing the dates, locations, approximate quantities, acreage, and methods of nutrient application.
- 13.4 Nutrient consultants shall prepare and/or keep available for inspection by the Secretary or the Commission, copies of any written materials prepared by the nutrient consultants or at their direction that establish how nutrients are to be managed at specific sites within Delaware, such as nutrient management plans.
- 13.5 The information required in this section shall be kept and maintained for a period of 6 years.

**14.0 Effective Date- Date**

These regulations shall become effective on January 11, 2011

**DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 121(a)(16) and 122(b)(8) and 8 Delaware Code, Section 125 (14 **Del.C.** §§121(a)(16) & 122(b)(8) & 8 **Del.C.** §125)  
14 **DE Admin. Code** 292

**REGULATORY IMPLEMENTING ORDER**

**292 Post Secondary Institutions and Degree Granting Institutions of Higher Education**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §§121(a)(16) and 122(b)(8), and 8 **Del.C.** §125, the Department of Education ("Department") proposes amendments to 14 **DE Admin. Code** 292 Post-Secondary Institutions and Degree Granting Institutions of Higher Education subject to the State Board of Education's approval. This regulation concerns the requirements for post-secondary institutions incorporated in Delaware to obtain and maintain the Department's approval to confer degrees. In addition, this regulation concerns the requirements for post-secondary institutions that are not incorporated in Delaware or established under Delaware law to obtain and maintain the Department's approval to offer courses, programs, and degrees in Delaware or to Delaware residents. On April 1, 2019, amendments that clarified the requirements for post-secondary institutions to obtain and maintain the Department's approval were published. Thereafter, the Department decided to remove references to application and site visit fees. Such change is substantive under 29 **Del.C.** §10118(c). Therefore, the Department repropose amendments to 14 **DE Admin. Code** 292 subject to the State Board of Education's approval. The amendments in this regulation include the amendments that were initially published on April 1, 2019 without references to application and site visit fees. Additional amendments being proposed in this version of the regulation include removing language regarding incorporation that the Department does not oversee and making various changes in order to clarify the regulation.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on January 1, 2020, in the form hereto attached as Exhibit "A".

The Department received one written submittal from Jim D. Wilson, Ed.D., Vice President for Academic Affairs, Wilmington University.

Wilmington University requested clarification regarding the time required for the Department to conduct a review. The regulation does not propose a timeframe for review; however, the Department strives to review applications in a timely manner. The timeframe for a review is dependent on the responsiveness of an institution and submission of all required materials.

Wilmington University also requested clarification regarding the process and criteria used to review and approve new programs. The same process and criteria are used to approve institutions as for new programs. The process and criteria for approving new programs are addressed in Section 4.0 and subsection 5.6.4 of the proposed regulation.

In addition, Wilmington University commented that it was "very concerned about the level of detailed information being sought including a needs assessment, full curriculum, course syllabi, faculty data, and a detailed five-year budget" and the proposed regulation reduces the flexibility of decision making at the post-secondary institution level. In order for institutions to have the power to confer degrees, the institution is required, by statute, to be approved by the Department. The level of detail and information required by the Department is important to ensure that an institution is a bona fide institution of higher learning and that it has the resources, including personnel, requisite for the conduct of an institution of higher learning per 8 **Del.C.** §125.

Wilmington University commented that many of its programs hold specialized accreditations and designations and "have been reviewed by colleagues from across the nation in the appropriate academic discipline. The language in the proposed regulations is not clear regarding whether those programs will be subject to the same

review as those without specialized accreditation." The requirement in subsection 5.6.1 of the proposed regulation that an IHE request approval for new programs and degrees after initial approval has been granted and before renewal is required is existing language in Section 11.0 of the current regulation. Because an accrediting body's criteria for accreditation may be different than the Department's criteria for approval, the Department conducts its own review of all new programs and degrees, including taking into consideration whether a program or degree has received accreditation. Wilmington University further commented that the Department could accept Middle State Commission on Higher Education accreditation "as a basis for an exemption from a potentially burdensome program review process." Even if an institution is accredited by Middle States Commission on Higher Education, it must still meet the Department's criteria for approving an institution to confer degrees because the criteria for accreditation is different. The requirement in subsection 4.1.9 of the proposed regulation that an institution earn accreditation is only one criterion for the Department's approval to confer degrees. It is not a change from existing language in subsection 5.4 of the current regulation.

Wilmington University commented that it appears that University of Delaware, Delaware State University, and Delaware Technical Community College "will not be subject to the process and criteria for new program review and approval described in the [proposed regulation.]" With the exception of educator preparation programs (14 **Del.C.** §1280(a)), the Department does not have statutory authority over institutions of higher education that are established by law. University of Delaware (14 **Del.C.** Part II), Delaware State University (14 **Del.C.** Part III), and Delaware Technical Community College (14 **Del.C.** Part VI) are created by statute.

## **II. FINDINGS OF FACTS**

The Department finds further changes in response to Wilmington University's written submittal are not necessary. The Department finds that it is appropriate to amend 14 **DE Admin. Code** 292 Post-Secondary Institutions and Degree Granting Institutions of Higher Education.

## **III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 292 Post-Secondary Institutions and Degree Granting Institutions of Higher Education subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§121(a)(16) and 122(b)(8), and 8 **Del.C.** §125, 14 **DE Admin. Code** 292 Post-Secondary Institutions and Degree Granting Institutions of Higher Education attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 292 Post-Secondary Institutions and Degree Granting Institutions of Higher Education hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## **IV. TEXT AND CITATION**

The text of 14 **DE Admin. Code** 292 Post-Secondary Institutions and Degree Granting Institutions of Higher Education amended hereby shall be in the form attached hereto as Exhibit "B" and said regulation shall be cited as 14 **DE Admin. Code** 292 Post-Secondary Institutions and Degree Granting Institutions of Higher Education in the *Administrative Code of Regulations* for the Department of Education.

## **V. EFFECTIVE DATE OF ORDER**

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 20<sup>th</sup> day of February 2020.

### **Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 20<sup>th</sup> day of February 2020

**State Board of Education**

|   |                     |
|---|---------------------|
| Whitney Townsend Sweeney, President             | Nina Lou Bunting    |
| Audrey J. Noble, Ph.D., Vice President (absent) | Wali W. Rushdan, II |
| Candace Fifer                                   | Provey Powell, Jr.  |
| Vincent Lofink (not voting, due to conflict)    |                     |

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2020 issue of the *Register* at page 506 (23 DE Reg. 506). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**292 Post Secondary Institutions and Degree Granting Institutions of Higher Education**

---

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 183 & 3402(c) (14 **Del.C.** §§183 & 3402(c))

**REGULATORY IMPLEMENTING ORDER**
**1206 Speech Language Pathologist Incentive Loan Program**
**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §§183 and 3402(c), the Delaware Department of Education (“Department”), acting in cooperation with the Delaware Higher Education Office (“DHEO”), seeks the consent of the State Board of Education to create 14 **DE Admin. Code** 1206 Speech Language Pathologist Incentive Loan Program. In accordance with 14 **Del.C.** §181(15), the DHEO administers the Speech Language Pathologist Incentive Loan Program set forth in 14 **Del.C.** §3422. The regulation is being created to provide eligibility criteria and to delineate the process for applying for the Speech Language Pathologist Incentive Loan Program.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on January 1, 2020, in the form hereto attached as *Exhibit “A”*.

The Department received one written submittal from Chris Manning, Director, Delaware Valley Government Relations, Nemours Children’s Health System (Nemours”). Nemours sought clarification as to whether an applicant for the student loan incentive program must directly provide services to Part C recipients or may be employed by an organization which holds an active contract to provide services to Part C recipients. In addition, Nemours “encourage[d] the state to continue supporting the development of [the] profession” by including “recognition for the variety of settings that employ Speech Language Pathologists, including community and/or health systems in addition to schools.” Nemours “encourage[d] partnership with the Department of Health and Social Services (DHSS) to analyze areas in particular need of Speech Language Pathology services – including underserved populations or specific geographic areas of the state” so the areas could receive priority or a future loan forgiveness program.

**II. FINDINGS OF FACTS**

The Department finds further changes in response to Nemours’ written submittal are not necessary. Eligibility for a loan under the Speech Language Pathologist Program is addressed in subsection 4.0 of the proposed regulation. To be eligible for a loan, an applicant must be a Part-Time or a Full-Time Student enrolled in a graduate program in Delaware that will satisfy the educational requirements to become licensed by the Delaware Board of Speech Pathologists, Audiologists, and Hearing Aid Dispensers as a speech/language pathologist; and demonstrate strong academic merit. Forgiveness of a loan is set forth in 14 **Del.C.** §3422(c). A recipient of a loan may be eligible for forgiveness if the recipient is employed as a licensed speech pathologist in a Delaware public school or by a provider for programs serving infants and toddlers under Part C, Birth to Three Early Intervention Systems, or by a contractor for such programs. Because the criteria for which a loan may be forgiven is in a statute, it is for the General Assembly to determine if there are other employment settings that qualify for forgiveness or to establish a loan forgiveness program for individuals who provide speech language pathology services to underserved populations or geographic areas of the State as analyzed by DHSS. Accordingly, the Department

finds that it is appropriate to create 14 **DE Admin. Code** 1206 Speech Language Pathologist Incentive Loan Program, in the form that was published, in order to provide eligibility criteria and to delineate the process for applying for the Speech Language Pathologist Incentive Loan Program.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to create 14 **DE Admin. Code** 1206 Speech Language Pathologist Incentive Loan Program subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§183 and 3402(c), 14 **DE Admin. Code** 1206 Speech Language Pathologist Incentive Loan Program, attached hereto as *Exhibit "B,"* is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1206 Speech Language Pathologist Incentive Loan Program hereby created shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1206 Speech Language Pathologist Incentive Loan Program created hereby shall be in the form attached hereto as *Exhibit "B"* and said regulation shall be cited as 14 **DE Admin. Code** 1206 Speech Language Pathologist Incentive Loan Program in the *Administrative Code of Regulations* for the Department of Education.

### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

**IT IS SO ORDERED** the 20<sup>th</sup> day of February 2020.

#### **Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 20<sup>th</sup> day of February 2020

#### **State Board of Education**

Whitney Townsend Sweeney, President

Audrey J. Noble, Ph.D., Vice President (absent)

Candace Fifer

Vincent Lofink

Nina Lou Bunting

Wali W. Rushdan, II

Provey Powell, Jr.

## **1206 Speech Language Pathologist Incentive Loan Program**

### **1.0 Purpose**

The purpose of this regulation is to provide eligibility criteria and application procedures for the Speech Language Pathologist Incentive Loan Program pursuant to 14 **Del.C.** §3422.

### **2.0 Definitions**

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

"**Academic Record**" means the applicant's unofficial transcript from college or graduate school for the most recent academic year.

"**Award**" means a loan under the Speech Language Pathologist Incentive Loan Program, the repayment of which is forgiven when the borrower is employed as a licensed speech language pathologist in a Delaware public school or by a provider or its contractors for Delaware programs serving infants and toddlers under Part C of the Individuals with Disabilities Education Act (Birth to Three Early Intervention) for the period of time specified in 14 **Del.C.** §3422(c)(2).



“Delaware Higher Education Office” or “DHEO” means the Department of Education’s Office which administers specific programs related to higher education, including, but not limited to, scholarship and loan programs.

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

“Full-Time Student” means a graduate student enrolled in nine (9) or more credit hours.

“Institution” means a post-secondary institution or institution of higher education in Delaware that is accredited, or a candidate for accreditation, by the Council on Academic Accreditation in Audiology and Speech-Language Pathology of the American Speech-Language-Hearing Association.

“Part-Time Student” means a student enrolled in a graduate program that is at least five (5) and less than nine (9) credit hours per term.

“Student Account Access Site” means the webpage on the DHEO’s website where students can access scholarship and loan forgiveness opportunities.

### **3.0 Application Acceptance and Submission Period**

3.1 The application acceptance and submission period for the Speech Language Pathologist Incentive Loan Program shall be posted on the DHEO’s website by April 1 each calendar year.

3.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.

3.1.2 Incomplete applications shall not be accepted or processed.

3.2 In order for an application to be considered complete, an applicant must:

3.2.1 Submit the applicant’s Academic Record to DHEO by mail, fax, or email by the last date of the application acceptance period.

3.2.2 Complete an application through the Student Account Access Site by the last date of the application acceptance period. The application shall include:

3.2.2.1 The applicant’s major, name of the applicant’s Institution, and the school year in which the applicant was most recently enrolled.

3.2.2.2 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.

3.2.2.3 A first time applicant must establish an account and provide his or her valid email address and permanent mailing address before being permitted to submit the information required in subsection 3.2.2 of this regulation.

### **4.0 Eligibility for Awards**

4.1 Applicants shall meet the following requirements to be considered for the Speech Language Pathologist Incentive Loan Program:

4.1.1 Be either a Part-Time or a Full-Time Student enrolled in a graduate program in Delaware that will satisfy the educational requirements to become licensed by the Delaware Board of Speech Pathologists, Audiologists, and Hearing Aid Dispensers as a speech/language pathologist; and

4.1.2 Demonstrate strong academic merit.

### **5.0 Awards**

5.1 DHEO determines the number and amount of Awards to be given annually. The number and amount of Awards each year will vary and is based on and subject to the General Assembly appropriating funds for the Speech Language Pathologist Incentive Loan Program.

5.2 An Award shall be used for, and not in excess of, Direct Educational Expenses.

5.3 An Award may be renewed annually for up to two (2) years.

5.3.1 To be eligible to renew an Award, students are required to submit an Academic Record and updated enrollment information by the date required by the DHEO.

5.3.2 An Award may be renewed annually as long as students maintain satisfactory academic progress as defined by the Institution.

5.4 An Award may be pro-rated for Part-Time Students.

## **6.0 Award Payment**

6.1 A signed promissory note, which includes the terms of repayment and loan forgiveness, shall be executed before disbursement of funds.

6.2 All payments shall be disbursed directly to the eligible recipient's college or university only.

---

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 183 and 3402(c) (14 **Del.C.** §§183 & 3402(c))

### REGULATORY IMPLEMENTING ORDER

### 1207 Delaware Nursing Incentive Program

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§183 and 3402(c), the Delaware Department of Education (“Department”), acting in cooperation with the Delaware Higher Education Office (“DHEO”), seeks the consent of the State Board of Education to create 14 **DE Admin. Code** 1207 Delaware Nursing Incentive Program. The regulation is being created to provide eligibility criteria and application procedures for the Delaware Nursing Incentive Program as set forth in 14 **Del.C.** §3421.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on January 1, 2020, in the form hereto attached as *Exhibit “A”*. The Department did not receive any written submittals concerning the proposed regulation.

#### II. FINDINGS OF FACTS

The Department finds that it is appropriate to create 14 **DE Admin. Code** 1207 Delaware Nursing Incentive Program in order to provide eligibility criteria and application procedures for the Delaware Nursing Incentive Program as set forth in 14 **Del.C.** §3421.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to create 14 **DE Admin. Code** 1207 Delaware Nursing Incentive Program subject to the State Board of Education’s approval. Therefore, pursuant to 14 **Del.C.** §§183 and 3402(c), 14 **DE Admin. Code** 1207 Delaware Nursing Incentive Program attached hereto as *Exhibit “B”* is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1207 Delaware Nursing Incentive Program hereby created shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1207 Delaware Nursing Incentive Program created hereby shall be in the form attached hereto as *Exhibit “B”* and said regulation shall be cited as 14 **DE Admin. Code** 1207 Delaware Nursing Incentive Program in the *Administrative Code of Regulations* for the Department of Education.

#### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 20<sup>th</sup> day of February 2020.

**Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 20<sup>th</sup> day of February 2020**State Board of Education**

|   |                     |
|---|---------------------|
| Whitney Townsend Sweeney, President             | Nina Lou Bunting    |
| Audrey J. Noble, Ph.D., Vice President (absent) | Wali W. Rushdan, II |
| Candace Fifer                                   | Provey Powell, Jr.  |
| Vincent Lofink                                  |                     |

**1207 Delaware Nursing Incentive Program****1.0 Purpose**

The purpose of this regulation is to provide eligibility criteria and application procedures for the Delaware Nursing Incentive Program pursuant to 14 Del.C. §3421.

**2.0 Definitions**

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

“Academic Record” means the applicant’s unofficial transcript from high school, college, or graduate school for the most recent academic year.

“Award” means a loan under the Delaware Nursing Award Program, the repayment of which is forgiven when the borrower is employed as a licensed practical nurse or registered nurse at a State-owned hospital or clinic or a nonprofit hospital located in Delaware for the period of time specified in 14 Del.C. §3421(c)(2).

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

“Full-Time Student” means an Undergraduate Student enrolled in twelve (12) or more college credit hours or a graduate student enrolled in nine (9) or more credit hours.

“Grade Point Average” or “GPA” means the number representing the average value of the accumulated final grades earned in courses over time.

“Institution” means a post-secondary college, university, or institution of higher education that is accredited by a nationally recognized regional accrediting agency.

“Part-Time Student” means a student enrolled in an Undergraduate program that is more than six (6) and less than eleven (11) college credit hours per term or a student enrolled in a graduate program that is at least five (5) and less than nine (9) credit hours per term.

“Resident of the State” means an applicant who meets the definition of residency as defined in 14 Del.C. §3402(f).

“Semester” means a half-year term in a school or college, typically lasting fifteen (15) to eighteen (18) weeks.

“Student Account Access Site” means the webpage on the DHEO’s website where students can access scholarship and loan forgiveness opportunities.

“Undergraduate Student” means a Full-Time or Part-Time Student at a regionally accredited college or university or accredited hospital school of nursing who has not yet earned a bachelor’s or equivalent degree.

**3.0 Application Acceptance and Submission Period**

- 3.1 The application acceptance and submission period for the Delaware Nursing Incentive Program shall be posted on the DHEO's website by April 1 each calendar year.
- 3.2 In order for an application to be considered complete, an applicant must:
  - 3.2.1 Submit the applicant's Academic Record to DHEO by mail, fax, or email by the last date of the application acceptance period.
  - 3.2.2 Complete an application through the Student Account Access Site by the last date of the application acceptance period.
    - 3.2.2.1 An application must include:
      - 3.2.2.1.1 The applicant's major, name of the applicant's Institution, and the school year in which the applicant was most recently enrolled.
      - 3.2.2.1.2 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.
      - 3.2.2.1.3 A first time applicant must establish an account and provide his or her valid email address and permanent mailing address before being permitted to submit the information as required in subsection 3.2.2.1 of this regulation.
- 3.3 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
- 3.4 Incomplete applications shall not be accepted or processed.

## **4.0** **Eligibility for Awards**

- 4.1 Applicants must meet the following requirements to be eligible for the Delaware Nursing Incentive Program:
  - 4.1.1 Be a Resident of the State; and
  - 4.1.2 Be enrolled as a Full-Time Undergraduate Student at a regionally accredited Institution or an accredited hospital school of nursing in a course of study leading to either:
    - 4.1.2.1 A Bachelor of Science in Nursing degree if the applicant is a registered nurse with an aggregate of five (5) years or more employment with the State or with a non-profit hospital in Delaware regardless of residency; or
    - 4.1.2.2 Certification as a registered nurse or practical nurse; and
  - 4.1.3 Have at least a 2.5 unweighted cumulative GPA.
- 4.2 Notwithstanding subsection 4.1.1, an applicant who is a current State employee with five (5) or more years of State service and who is enrolled as a Part-Time Student may submit an application regardless of whether the applicant is a Delaware resident.

## **5.0** **Awards**

- 5.1 DHEO determines the number and amount of Awards to be given annually.
- 5.2 The number and amount of Awards each year will vary and is based on and subject to the General Assembly appropriating funds for the Delaware Nursing Incentive Program.
- 5.3 An Award shall be used for, and not in excess of, Direct Educational Expenses.
- 5.4 An Award may be renewed annually for up to three (3) years.
  - 5.4.1 To be eligible to renew an Award, students are required to submit an Academic Record and updated enrollment information by the date required by the DHEO.
  - 5.4.2 An Award may be renewed annually as long as students maintain a cumulative GPA of 2.5 as defined by the Institution.

## **6.0** **Award Payment**

- 6.1 DHEO shall contact the Institution where the recipient is enrolled to verify the recipient's enrollment each Semester, fall and spring, before dispersing funds.

- 6.2 A signed promissory note, which includes the terms of repayment and loan forgiveness, must be executed before disbursement of funds.
- 6.3 All payments shall be disbursed directly to the eligible recipient's Institution only.
- 6.4 An Award may be pro-rated for Part-Time Students.

**7.0 Repayment and Forgiveness**

- 7.1 For purposes of this program, qualifying employment shall be employment as a nurse in a state-operated hospital or clinic or non-profit hospital located in Delaware.
- 7.2 Loans will be forgiven at the rate of one year of employment for one year of loan.

**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 and 1205(b))  
**14 DE Admin. Code 1521**

**REGULATORY IMPLEMENTING ORDER**

**1521 Elementary Teacher**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1521 Elementary Teacher. The regulation concerns the requirements for a Standard Certificate for Elementary Teacher pursuant to 14 **Del.C.** §1220. The proposed amendments to the regulation include adding the Praxis Elementary Education: Content Knowledge for Teaching assessment and the required minimum passing score; adding Section 9.0, which concerns recognizing standard certificates that were previously issued; and clarification changes throughout the regulation.

Notice of the proposed regulation was published in the *Register of Regulations* on December 1, 2019. The Professional Standards Board did not receive any written submittals concerning the proposed amendments to the regulation.

On February 6, 2020, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1521 Elementary Teacher, in the form that was published, for adoption by the Department subject to the State Board of Education's approval.

**II. FINDINGS OF FACTS**

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1582 School Nurse.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1582 School Nurse subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1582 School Nurse attached hereto as Exhibit "A" is hereby amended.

**IV. TEXT AND CITATION**

The text of 14 **DE Admin. Code** 1582 School Nurse adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1582 School Nurse in the Administrative

---

Code of Regulations for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 20<sup>th</sup> day of February, 2020.

### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 20<sup>th</sup> day of February, 2020.

### State Board of Education

|   |                     |
|---|---------------------|
| Whitney Townsend Sweeney, President             | Vincent Lofink      |
| Audrey J. Noble, Ph.D., Vice President (absent) | Provey Powell, Jr.  |
| Nina Lou Bunting                                | Wali W. Rushdan, II |
| Candace Fifer                                   |                     |

## 1521 Elementary Teacher

### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Elementary Teacher. This ~~certification~~ Certification is required for grades K to 6.
  - 1.1.1 Notwithstanding subsection 1.1, the Early Childhood Teacher Certification may be used for K to grade 2 in lieu of this Certification.

### 2.0 Definitions

- ~~2.1~~ The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
  - "**Certification**" means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.
  - "**Department**" means the Delaware Department of Education.
  - "**Educator**" means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.
  - "**Employing Authority**" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.
  - "**Fifteen (15) Credits or the Equivalent in Professional Development**" means college credits or an equivalent number of hours with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to a degree program from a regionally accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a regionally accredited college or university or other Department-approved provider.
  - "**Immorality**" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Major or Its Equivalent"** means a minimum of thirty (30) semester hours of course work in a particular content area.

**"Passing Score"** means a minimum score as established by the Professional Standards Board, in consultation with the Department, and with the approval of the State Board of Education.

**"Professional Development"** means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and/or perspectives; and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

**"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.

**"Standards Board"** means the Professional Standards Board established pursuant to 14 Del.C. §1201.

**"Valid and Current License or Certificate from Another State"** means a current full or permanent certificate or license issued by another state. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state.

### 3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue ~~a Standard Certificate for Elementary Teacher~~ an Elementary Teacher Standard Certificate to an Educator who:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License, or a ~~Standard or~~ Professional Status Certificate issued by the Department prior to August 31, 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
  - 3.1.2 Has met the requirements for licensure and holds a Valid and Current License or Certificate from Another State in elementary education; or
  - 3.1.3 Has met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for Certification if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

### 4.0 ~~Prescribed Knowledge, Skill, and Education~~ Education, Knowledge, and Skill Requirements

- 4.1 For an applicant who is applying for his or her first Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have:
    - 4.1.1.1 Obtained an Early Childhood/Generalist certificate from the National Board for Professional Teaching Standards; or
    - 4.1.1.2 Completed a bachelor's degree from a regionally accredited college or university with a Major or Its Equivalent in elementary education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or

- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach grades K to 6 as provided in 14 **DE Admin. Code** 1507; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in elementary education; or
- 4.1.1.5 Completed a bachelor's degree from a regionally accredited college or university in any content area and satisfactory completion of fifteen (15) credits or the equivalent in Department-approved Professional Development related to elementary education of which at least six (6) credits must focus on pedagogy.
  - 4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the Fifteen (15) Credits or the Equivalent in Professional Development subject to the Department's approval.
  - 4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the Fifteen (15) Credits or the Equivalent in Professional Development in consultation with the Department and subject to the Department's approval.
- 4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:
  - 4.1.2.1 On the Praxis Subject Assessment - Elementary Education: Multiple Subjects (ETS Test Code # 5001), the applicant shall have achieved a Passing Score on each of the following subtests:
    - 4.1.2.1.1 Reading and Language Arts Subtest (ETS Test Code # 5002) a Passing Score of 157; and
    - 4.1.2.1.2 Mathematics Subtest (ETS Test Code # 5003) a Passing Score of 157; and
    - 4.1.2.1.3 Social Studies Subtest (ETS Test Code # 5004) a Passing Score of 155; and
    - 4.1.2.1.4 Science Subtest (ETS Test Code # 5005) a Passing Score of 159; or
  - 4.1.2.2 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7801), the applicant shall have achieved a Passing Score on each of the following subtests:
    - 4.1.2.2.1 Reading and Language Arts CKT Subtest (ETS Test Code # 7802) a Passing Score of 156; and
    - 4.1.2.2.2 Mathematics CKT Subtest (ETS Test Code # 7803) a Passing Score of 143; and
    - 4.1.2.2.3 Science CKT Subtest (ETS Test Code # 7804) a Passing Score of 144; and
    - 4.1.2.2.4 Social Studies Subtest (ETS Test Code # 7805) a Passing Score of 155; or
  - 4.1.2.3 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7811), the applicant shall have achieved a Passing Score on each of the following subtests:
    - 4.1.2.3.1 Reading and Language Arts CKT Subtest (ETS Test Code # 7812) a Passing Score of 156; and
    - 4.1.2.3.2 Mathematics CKT Subtest (ETS Test Code # 7813) a Passing Score of 143; and
    - 4.1.2.3.3 Science CKT Subtest (ETS Test Code # 7814) a Passing Score of 144; and
    - 4.1.2.3.4 Social Studies CKT Subtest (ETS Test Code # 7815) a Passing Score of 153; or
  - ~~4.1.2.3.4~~ 4.1.2.4 The applicant shall have achieved a Passing Score on each of the following subtests:
    - ~~4.1.2.3.4.1~~ 4.1.2.4.1 Praxis Subject Assessment - Elementary Education: Reading Language Arts Subtest (ETS Test Code # 5002) a Passing Score of 157 or Praxis Elementary Education: Content Knowledge for Teaching Reading and Language Arts CKT Subtest (ETS Test Code # 7802 or 7812) a Passing Score of 156; and
    - ~~4.1.2.3.4.2~~ 4.1.2.4.2 Praxis Subject Assessment - Elementary Education: Mathematics Subtest (ETS Test Code # 5003) a Passing Score of 157 or Praxis Elementary Education: Content Knowledge for Teaching Mathematics CKT Subtest (ETS Test Code # 7803 or 7813) a Passing Score of 143; and



~~4.1.2.3.34.1.2.4.3~~ 4.1.2.4.3 Praxis Subject Assessment - Elementary Education: Social Studies Subtest (ETS Test Code # 5004) a Passing Score of 155 or Praxis Elementary Education: Content Knowledge for Teaching Social Studies Subtest (ETS Test Code #7805 or 7815) a Passing Score of 155 or Social Studies CKT Subtest (ETS Test Code # 7815) a Passing Score of 153; and

~~4.1.2.3.44.1.2.4.4~~ 4.1.2.4.4 Praxis Subject Assessment - Elementary Education: Science Subtest (ETS Test Code # 5005) a Passing Score of 159 or Praxis Elementary Education: Content Knowledge for Teaching Science CKT Subtest (ETS Test Code # 7804 or 7814) a Passing Score of 144.

- 4.2 For an applicant who is applying for his or her second or subsequent Standard Certificate, the applicant shall have achieved a Passing Score on one of the following examinations:
- 4.2.1 On the Praxis Subject Assessment - Elementary Education: Multiple Subjects (ETS Test Code # 5001), the applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.1; or
- 4.2.2 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7801), the applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.2; or
- 4.2.3 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7811), the applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.3; or
- ~~4.2.34.2.4~~ 4.2.4 The applicant shall have achieved a Passing Score on each of the subtests as provided in subsection ~~4.1.2.34.1.2.4~~.

## 5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For applicants who are applying for their first Standard Certificate, the following documentation is required with the application for ~~a Standard Certificate for Elementary Teacher~~ an Elementary Teacher Standard Certificate:
- 5.2.1 Evidence of obtaining an Early Childhood/Generalist certificate from the National Board for Professional Teaching Standards, if applicable; and
- 5.2.2 Official transcript from the applicant's regionally accredited college or university.
- 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's regionally accredited college or university; or
- 5.2.2.2 Sealed paper transcripts may be submitted.
- 5.2.2.3 The Department will not accept copies of transcripts; and
- 5.2.3 If applicable, documents verifying successful completion of Professional Development; and
- 5.2.4 Official scores on the Praxis Subject Assessment or Praxis Elementary Education: Content Knowledge for Teaching as provided in subsection 4.1.2; and
- 5.2.5 If applicable, an experience form must be completed in full and signed by the applicant; and
- 5.2.6 Additional documentation as required by the Department.
- 5.3 For applicants who are applying for their second or subsequent Standard Certificate, the following documentation is required in the application for a Standard Certificate for Elementary Teacher:
- 5.3.1 Official scores on the Praxis Subject Assessment or Praxis Elementary Education: Content Knowledge for Teaching as provided in subsection 4.2; and
- 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate from Another State in elementary education, the following documentation is required in the application for a Standard Certificate for Elementary Teacher:

- 5.4.1 An official copy of the valid and current educator license or certificate from another state or professional license.

**6.0 Validity of a Standard Certificate**

- 6.1 A Standard Certificate for Elementary Teacher is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A Standard Certificate for Elementary Teacher is not subject to renewal.

**7.0 Revocation of a Standard Certificate**

- 7.1 An Educator's ~~Standard Certificate for Elementary Teacher~~ Elementary Teacher Standard Certificate shall be revoked in the event the Educator's Initial, Continuing, or Advanced License or ~~Standard or Professional Status Certificate~~ is revoked or the Educator made a materially false or misleading statement in the Educator's Standard Certificate application in accordance with 14 **Del.C.** §1222.
- 7.2 An Educator whose Standard Certificate is noticed for revocation is entitled to a full and fair hearing before the Standards Board.
- 7.2.1 Hearings shall be conducted in accordance with the ~~Standards Board's Hearing Procedures and Rules~~ 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

**8.0 Secretary of Education Review**

The Secretary of Education may, upon the written request of ~~the superintendent of a local school district or charter school,~~ review credentials submitted in an application for a ~~Standard Certificate for Elementary Teacher an Elementary Teacher Standard Certificate~~ on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a ~~Standard Certificate for Elementary Teacher an Elementary Teacher Standard Certificate~~ but whose effectiveness is documented by the local school district or charter school.

**9.0 Past Certificate Recognized**

The Department shall recognize an Elementary Teacher Standard Certificate that was issued prior to the effective date of this regulation. An educator holding such a Standard Certificate issued by the Department before the effective date of this regulation shall be considered certified as an elementary teacher.

---

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 20910

**ORDER**

**Medicaid Long Term Care Program – Community Spouse**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend Division of Social Services Manual (DSSM) regarding the Medicaid Long Term Care Program, specifically, to determine eligibility for medical assistance. 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 2020 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2020 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, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 20910.2 of Division of Social Services Manual (DSSM) regarding the Medicaid Long Term Care Program, specifically, *to determine eligibility for medical assistance.*

**Background**

DMMA currently applies Spousal Impoverishment regulations to a Community Spouse receiving Home and Community Based Services. The agency implemented this change as published in the Delaware *Register of Regulations* 10 DE Reg. 1619 (April 2007). Section 20910.2 Community Spouse, was not amended, in error.

**Statutory Authority**

- Social Security Act §1924
- The State Medicaid Manual §3710, Special Post-Eligibility Process for Institutionalized Persons with Community Spouses

**Purpose**

This proposal is to align policy to reflect current practice.

*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, 2020.

*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**

The policy amendment will have no fiscal impact.

**Summary of Comments Received with Agency Response and Explanation of Changes**

The following summarized comments were received:

**Comment:** Two commenters support the proposed changes to the Medicaid State Plan.

**Agency Response:** DMMA appreciates the support.

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

- Governor's Advisory Council for Exceptional Citizens; and
- State Council for Persons with Disabilities

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the January 2020 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding the Medicaid Long Term Care Program, specifically, to determine eligibility for medical assistance, is adopted and shall be final effective April 11, 2020.

3/10/2020

Date of Signature

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

## 20910.2 Community Spouse

An individual who is married to an institutionalized spouse ~~and does not receive HCBS.~~

---

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 10001

### ORDER

### Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), specifically, to clarify policy and define terms. 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 February 2020 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2020 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, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend Division of Social Service Manual to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), specifically, to clarify policy and define terms.

#### Statutory Authority

- 7 CFR § 273.7
- 7 CFR § 271.2

#### Background

DSS is proposing to change the name of policy section DSSM 10000 from “Food Stamp Employment and Training (FS E&T)” to “Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)”. This change will align with federal terminology and remove the outdated term “food stamp”.

DSS is proposing to amend policies DSSM 10001 and 10001.1 to reflect the current operations of the SNAP E&T program and to improve the formatting of the policies. DSS modified DSSM 10001.1 by adding new program terms and removing program terms that are no longer relevant.

#### Purpose

The proposed rules explain the purpose of Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) services provided to food benefit recipients and define SNAP E&T program terms.

#### 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 Social Services (DSS) 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 March 2, 2020.

### Fiscal Impact Statement

There is no fiscal impact associated with this policy change.

### Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

**Comment:** One commenter suggested the term ‘custodial parent’ does not define what it means by ‘custody.’

**Agency Response:** DSSM 10001.1 “Defining SNAP E&T Program Terms” contains condensed explanations of the program terms to be used as a simple reference for DSS staff and the public. The definitions are not a comprehensive explanation of DSS policy. Since different custody situations may arise, DSS has elected to use a general definition for “custodial parent”. The meaning and use of “custody” are further explained in DSSM 9013.1 “Household Definition”.

**Comment:** One commenter requested clarity on the term ‘suitable employment’.

**Agency Response:** DSSM 10001.1 “Defining SNAP E&T Program Terms” contains condensed explanations of the program terms to be used as a simple reference for DSS staff and the public. The definitions are not a comprehensive explanation of DSS policy. DSS staff are advised to review other sections of policy to make accurate eligibility determinations.

**Comment:** Several commenters requested clarity on the term “good cause”.

**Agency Response:** DSSM 10001.1 “Defining SNAP E&T Program Terms” contains condensed explanations of the program terms to be used as a simple reference for DSS staff and the public. The definitions are not a comprehensive explanation of DSS policy. Good cause can relate to many different situations that a client might experience. Good cause is further defined in DSSM 10004.2 “Good Cause”. The good cause policy lists examples of client circumstances (based on federal guidance) that constitute a determination of good cause. The good cause policy is under revision.

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

- Community Legal Aid Society, Inc. (CLASI)
- Governor’s Advisory Council for Exceptional Citizens (GACEC)
- State Council for Persons with Disabilities (SCPD)

### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the February 2020 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual regarding Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), specifically, to clarify policy and define terms, is adopted and shall be final effective April 11, 2020.

3/11/2020

Date of Signature

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

### POLICY – AMENDMENT

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

**10000 Food Stamp Supplemental Nutrition Assistance Program Employment and Training (FSE&T) (SNAP E&T)**

**POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

**10001 ~~Purpose and Definitions~~ Defining the SNAP E&T Program**7 CFR 273.7

~~The Delaware Division of Social Services (DSS) administers a statewide employment and training program for Food Stamp only recipients under the umbrella of the Food Stamp Employment and Training Program. The purpose of the FSE&T Program is to assist capable mandatory and voluntary Food Stamp only recipients gain skills and receive training or experience that will lead to regular, paid employment. By so assisting Food Stamp households, we hope to help increase the purchasing power of low income families and thereby, contribute to raising the overall levels of nutrition among the population of Delaware.~~

~~The Food Stamp Employment and Training Program for Delaware began on April 1, 1987. From the beginning, this program combined the activities of both the Division and local service providers in giving Food Stamp recipients needed encouragement, counseling and academic/life skills training to enhance employability. In addition, the Program has been run in concert with our Temporary Assistance to Needy Families (TANF) Program. Together, these two programs have increased the opportunities for the economically disadvantaged population of Delaware and enabled portions of this population to become self-sufficient.~~

The statewide SNAP E&T program supports SNAP recipients by providing skill development, training, and work experience opportunities that can lead to self-sustaining employment.

**1. The SNAP E&T program promotes the self-sufficiency of SNAP recipients by:**

- Offering education and training to increase knowledge and skills;
- Assisting with job search methods;
- Removing barriers to employment; and
- Increasing the employability of SNAP recipients.

**POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

**10001.1 ~~Programmatic Terms and Definitions~~ Defining SNAP E&T Program Terms**

~~The Food Stamp Employment and Training Program has a list of commonly used terms and definitions. Below is a list of these commonly used terms. Please note that the definition of some terms provides important policy information.~~

- A. ~~ABE – Adult Basic Education.~~
- B. ~~Component – An allowable activity under Food Stamp Employment and Training.~~
- C. ~~Custodial Parent – A parent who lives with a child.~~

- D. ~~DCIS—Delaware Client Information System.~~
- E. ~~Dependent Care—Same as child care.~~
- F. ~~DHHS—Department of Health and Human Services (federal).~~
- G. ~~DHSS—Delaware Health and Social Services.~~
- H. ~~DOE—Department of Education.~~
- I. ~~DOL—Department of Labor.~~
- J. ~~DPIC—Delaware Private Industry Council: Representatives of the public and private (PIC) sector appointed to plan job training and employment service programs at the Service Delivery Area (SDA).~~
- K. ~~DSS—Division of Social Services.~~
- L. ~~E & T—Employment and Training.~~
- M. ~~E & T MIS—Employment and Training Management Information System.~~
- N. ~~ESL—English as a Second Language.~~
- O. ~~Exempt—Not required to participate in Food Stamp Employment and Training as a condition of continuing eligibility.~~
- P. ~~FNS—Food and Nutrition Services—The federal agency responsible for administration of the Food Stamp Program.~~
- Q. ~~FY—Fiscal Year: The Delaware State Fiscal Year is July 1 through June 30; the Federal Fiscal Year (FFY) is October 1 through September 30.~~
- R. ~~GED—General Equivalency Diploma.~~
- S. ~~Mandatory/Nonexempt—A Food Stamp recipient who, as a condition of **continuing** eligibility for assistance, is required to participate in Food Stamp Employment and Training.~~
- T. ~~MCI—Master Client Index.~~
- U. ~~NOAA—Notice of Adverse Action, the notice used to inform registrants who will be sanctioned.~~
- V. ~~Sanction—Excluding a non-exempt or mandatory participation from the Food Stamps Program for failure to participate in Food Stamp Employment and Training without good cause.~~
- W. ~~TANF—Temporary Assistance To Needy Families—A state/federal funded financial assistance program for families and their dependent children.~~
- X. ~~VR—Vocational Rehabilitation.~~
- Y. ~~WIA—Workforce Investment Act.~~
- Z. ~~Work Registrant—a Food Stamp applicant or recipient who is registered for the Food Stamp Employment and Training Program.~~
- 7 CFR 271.2, 7 CFR 273.7

This policy contains terms and definitions for the SNAP E&T program.

“**ABAWD**” means an able-bodied adult without dependents. An ABAWD is a SNAP applicant or recipient who is:

- Age 18 to 49;
- Physically and mentally capable of employment; and
- Not responsible for or living in a household with a minor child.

“**ABAWD Work Requirement**” means a mandatory condition that an ABAWD client must comply with to maintain eligibility for food benefits that includes completing 20 or more hours per week in one or a combination of the following activities:

- Working;
- Participating in and complying with the requirements of the SNAP E&T program; or
- Participating in and complying with the requirements of a work program approved by DSS.

“Adult Basic Education” or “ABE” means academic instruction in basic skills to improve an individual’s employability.

“Adverse Action” means a negative action to a client’s benefit case.

“Application for Social Services and Internet Screening Tool” or “ASSIST” means an online self-service portal that allows individuals to apply for health and social service benefits in Delaware.

“Assessment” means an in-depth evaluation of an individual’s skills and employment interests.

“ASSIST Worker Web” or “AWW” means the system that DSS uses to screen and determine benefit eligibility.

“At-risk ABAWD” means an ABAWD client who is in the third month of the three-month time limit for receiving food benefits while not complying with the ABAWD work requirement.

“Case Management” means a process that includes assessment, planning, monitoring, and service coordination to assist an individual in achieving employment goals.

“Component” means an approved element or activity for SNAP E&T participants.

“Custodial Parent” means a parent who has custody of a child and is primarily responsible for the daily care of the child.

“Delaware JobLink” means a web-based employment and labor market information system maintained by the Delaware Department of Labor. Delaware JobLink provides job postings, employment resources, and training opportunities.

“Department of Education” or “DOE” means the Delaware agency that the SNAP E&T program collaborates with to provide basic education programs to SNAP E&T participants.

“Department of Health and Social Services” or “DHSS” means the Delaware agency that administers services that promote health and well-being, foster self-sufficiency, and protect vulnerable populations.

“Department of Labor” or “DOL” means the Delaware agency that the SNAP E&T program collaborates with to provide employment and training resources to SNAP E&T participants.

“Dependent Care” means child care or adult care.

“Division of Social Services” or “DSS” means a division within DHSS that is responsible for administering certain public assistance programs, including SNAP food benefits and the SNAP E&T program.

“Education” means educational programs intended to enhance an individual’s employability and includes:

- Basic and foundational skills instruction;
- Work readiness trainings;
- Vocational trainings; and
- Career and technical education programs.

“English as a Second Language” or “ESL” means the study of the English language by individuals who have a limited ability in speaking, reading, writing, or understanding the English language.

“Exempt” means a SNAP applicant or recipient is not required to comply with SNAP work requirements or with the SNAP E&T program.

“Federal Fiscal Year” or “FFY” means the period of October 1 through September 30.

“Food and Nutrition Service” or “FNS” means the federal agency within the United States Department of Agriculture (USDA) that is responsible for the administration of SNAP.

“Food Supplement Program” or “FSP” means Delaware’s nutrition assistance program that provides SNAP food benefits to eligible individuals.

“General Educational Development” or “GED” means a credential that certifies that an individual has academic knowledge and skills equivalent to a high school graduate.

“Good Cause” means an adequate or substantial reason why an individual has not taken an action. DSS will determine good cause on a case-by-case basis.

“Job Retention” means services intended to help an individual maintain employment.

“Job Search” means job-seeking activities intended to enhance an individual’s employability.

“Sanction” means a penalty for failing to comply with SNAP work requirements without good cause.

“SNAP Employment and Training” or “SNAP E&T” means the DSS program that supports food benefit recipients by providing skill development, training, and work experience opportunities that can lead to



self-sustaining employment. This program is also known as Food Benefit Employment and Training (FB E&T).

**“SNAP Work Requirements”** mean mandatory conditions that a work registrant must comply with to maintain eligibility for food benefits that include:

- Registering for work;
- Providing DSS with information regarding employment status and work availability;
- Accepting a referral or an offer of suitable employment;
- Agreeing to not voluntarily and without good cause quit a job of 30 or more hours per week or reduce the amount of work hours to less than 30 hours per week; and
- Participating in the SNAP E&T program if it is deemed mandatory by DSS.

**“Suitable Employment”** means employment that has an adequate wage and acceptable working conditions. DSS will determine the suitability of employment on a case-by-case basis.

**“Supplemental Nutrition Assistance Program”** or **“SNAP”** means the federal program that provides nutrition assistance to low-income individuals and families so they can purchase healthy food and move toward self-sufficiency.

**“Supportive Service”** means a service provided to an individual that is necessary for participation in the SNAP E&T program or for employment.

**“Temporary Assistance for Needy Families”** or **“TANF”** means a state and federally funded program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to low-income families with dependent children.

**“Vocational Rehabilitation”** or **“VR”** means a program that helps individuals with physical or mental disabilities to obtain and retain employment.

**“Work Experience”** means activities such as on-the-job training, pre-apprenticeship, apprenticeship placements, and internships that allow an individual to learn vocational skills.

**“Work Registrant”** means a non-exempt SNAP applicant or recipient mandated to comply with SNAP work requirements.

**“Workfare”** means supervised work performed at a public or private non-profit organization in which an individual receives compensation in the form of a monthly food benefit allotment instead of wages. Workfare is for ABAWD clients only.

**“Workforce Innovation and Opportunity Act”** or **“WIOA”** means federal legislation that coordinates workforce development programs and funding streams.

## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 11006

### ORDER

#### Child Care Subsidy Program

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Child Care Subsidy Program, specifically, to clarify policy related to subsidized child care provider reimbursement. 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 February 2020 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 2020 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, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend Division of Social Service Manual regarding the Child Care Subsidy Program, specifically, to clarify policy related to subsidized child care provider reimbursement.

### Statutory Authority

- 45 CFR §98.45 (l)(2)(iii)
- 45 CFR §98.40
- 11 Del. C. c. 85
- 31 Del. C. c. 3

### Background

DSS is proposing to amend DSSM 11006.4.1 Paying for Absent Days and Holidays in Child Care to update the formatting of the policy and to add information about how the new child care copayment factors into payments to providers for absent days for authorized children.

DSS is proposing to amend DSSM 11006.5.1 Terminating Providers and Self-Arranged Clients to update the formatting and clarify the text of the policy. DSS changed the health and safety training hours and timeframe for relative care providers to reflect the current requirements. DSS also added a separate section explaining the reasons DSS will terminate services to parents and caretakers who have self-arranged child care.

### Purpose

#### *Purpose*

The proposed rules explain the guidelines for when DSS will pay Purchase of Care (POC) providers for absent days and holidays for authorized child care services. The proposed rules also explain when DSS will terminate, from the Child Care Subsidy Program, a provider, a relative child care provider, or a parent or caretaker who has self-arranged child care.

#### *Summary of Proposed Changes*

Effective for services provided on and after April 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend Division of Social Service Manual regarding the Child Care Subsidy Program, specifically, to clarify policy related to subsidized child care provider reimbursement.

#### *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 Social Services (DSS) 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 March 2, 2020.

### Fiscal Impact Statement

There is no fiscal impact associated with this policy change.

### Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

**Comment:** Two commenters suggested that DSS include specific language in the regulation for the payment of more than five absences in one month in certain circumstances when the absences are directly related to a child or parent's disability or other serious health condition.

**Agency Response:** DSS will amend DSSM 11006.4.1 "Paying for Absent Days and Holidays in Child Care" to address the recommendation for specific language addressing absences in excess of five days due to a child's, a parent's, or a caretaker's disability or serious medical condition.

**Comment:** One commenter suggested the rules placing a limit of six major holidays per year that the provider has chosen. We do not understand why this is limited to six major holidays, rather than all of the major holidays.

**Agency Response:** Delaware elected to use the standard major holidays with the opportunity for providers to choose the holidays to accommodate their needs.

**Comment:** One commenter questioned why DSS will only pay for absent days “after” the family’s copayment has been paid, rather than simply being authorized.

**Agency Response:** A family is responsible to make payment for child care services until the family has exhausted their assigned maximum copayment amount; this may include paying for absent days. If a family reaches their maximum copayment obligation and the child is absent after that, DSS will pay for absent days if the child’s absent days have not exceeded five days in the month.

**Comment:** One commenter expressed concern that relative care providers will have difficulty completing the 28 hours of mandatory health and safety training within 12 months. We believe that a “good cause” provision should be added that will allow payments to continue for such relative providers if they have “good cause” for failing to complete the training within the required time.

**Agency Response:** The training hours have decreased from 47 hours to 28 mandatory health and safety training hours with the reauthorization of the Child Care and Development Block Grant. DSS fully understands that a hardship may occur and is in the process of creating an online training for relative care providers. The online training will allow relative care providers more flexibility in completing the required training hours.

**Comment:** One commenter expressed concerned about the breadth of the criminal history exclusion. Such exclusions should only apply to the extent that state law requires such an exclusion.

**Agency Response:** The requirement on unsuitable criminal history is within the scope of State and Federal statutes. As stated in DSSM 11006.5.1 (2)(B), DSS uses the Office of Child Care Licensing’s guidelines and Title 11, Chapter 85 of the Delaware Code to determine unsuitable criminal history.

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

- Community Legal Aid Society, Inc. (CLASI)
- Governor’s Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities

#### FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the February 2020 *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 Division of Social Services Manual (DSSM) regarding Child Care Subsidy Program, specifically, to clarify policy related to subsidized child care provider reimbursement, is adopted and shall be final effective April 11, 2020.

3/10/2020

Date of Signature

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

### POLICY – AMENDMENT

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

#### 11006.4.1 Paying for Absent Day Policy Days and Holidays in Child Care

45 CFR 98.45(l)(2)(iii)

DSS pays for up to five absent days per month. The number of paid absent days per month is the same as the number of days authorized for care in one week (up to a maximum of five days per month). The specific number of paid absent days is indicated on each child’s Authorization Form.

Payment may be made for the major holidays listed in the contract for any child who attended at least one day during the month.

No payment is made to a provider for a holiday that occurs before the start date of the authorization at that provider's site.

This policy explains provider payments for absent days and holidays during authorized child care.

1. The number of paid absent days per month for a child is the same as the number of days authorized for care in one week, up to a maximum of five days per month.
2. DSS will pay for absent days for an authorized child after the family's copayment has been paid and there is a remaining balance due to the provider.
3. DSS will pay for up to five absent days per month for an authorized child who does not have an assigned copayment.
4. DSS may pay for more than five absent days per month for a child who is authorized for Special Needs Child Care and is absent due to the eligible child's or the eligible parent's or caretaker's verified disability or serious health condition.

4.5.]DSS will pay for the six major holidays per year that the provider has chosen. The authorized child must be attending the provider's site prior to the date of the holiday for the provider to receive payment for the holiday.

## **POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

### **11006.5.1 Terminating Providers and Self-Arranged Clients**

45 CFR 98.40, 11 ~~Del.C.~~ Ch. 85, 31 ~~Del.C.~~ Ch. 3

This policy applies to all Purchase of Care (POC) providers, including and clients who have self-arranged clients child care.

#### **DSS May Terminate Providers with Just Cause**

1. ~~The Division of Social Services may terminate any provider or self-arranged client from the Child Care Subsidy Program (Purchase of Care) if she or he:~~

**1. DSS may terminate a provider from the POC program if the provider:**

A. Has a suspended, ~~closed~~ closed, or terminated Office of Child Care Licensing (OCCL) ~~license.~~ license;

B. Commits fraud against ~~DHSS.~~ DHSS;

C. Charges fees not allowed by ~~the Child Care Contract, Division policy, or a Division approved waiver;~~ DSS, has failed to reimburse ~~these fees and/or~~ unallowable child care fees, or has repeated offenses in this ~~area.~~ area;

D. Charges ~~Purchase of Care POC Plus fees when she or he~~ the provider is not a DSS authorized POC Plus ~~provider.~~ provider;

# FINAL REGULATIONS

E. Does not keep accurate records per the ~~DSS Child Care Contact~~; ~~has had repeated offenses, POC contract~~, has been counseled and has failed to meet the requirements of a corrective action plan agreed upon with the ~~Child Care Monitor~~; ~~POC program~~, or ~~has repeated offenses in this area~~; or

F. Does not keep an open bank account to receive direct deposit payments from the ~~Child Care Subsidy Program~~ POC program. Direct deposit is mandatory for all DSS child care subsidy providers effective May 4, 2008.

2. ~~In addition to the items mentioned above, the Division of Social Services may terminate any relative care provider from the Child Care Subsidy Program (Purchase of Care) if she or he:~~

**2. In addition to the conditions listed in section 1, DSS may terminate a relative care provider from the POC program if the relative care provider:**

A. Does not complete ~~the 47~~ 28 hours of mandatory health and safety training hours within ~~48~~ 12 months of becoming a relative or ~~non-relative~~ care provider, or the training requirements as outlined in the initial ~~POC orientation session~~; session; or

B. Has an unsuitable criminal ~~history~~ history, or a member of the provider's household has an unsuitable criminal history. DSS uses ~~Office of Child Care Licensing (OCCL)~~ the OCCL's guidelines and Title 11, Chapter 85 of the Delaware Code to determine unsuitable criminal history.

**3. DSS may terminate a parent or caretaker who has self-arranged child care from the POC program if the parent or caretaker:**

A. Submits fraudulent attendance records to DSS;

B. Does not keep an open bank account to receive direct deposit payments from the POC program as required to participate in self-arranged child care; or

C. Does not attend the mandatory orientation to become a self-arranged client.

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 103(a) & (b) (7 **Del.C.** §103(a) & (b))  
7 **DE Admin. Code** 3301

Secretary's Order No: 2020-F-0004

**RE: Proposed Regulation Amendments to 7 DE Admin. Code 3300: Non-Tidal Finfish,  
Section 3301- Definitions**

**Date of Issuance: February 26, 2020**

**Effective Date: April 11, 2020**

**3300 Non-Tidal Finfish**

**3301 Definitions**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006 and 6010, and all 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 7 **DE Admin. Code** 3300: Non-Tidal Finfish, Section 3301- Definitions ("Amendments"). The Department proposes revisions to the regulatory definition of "Pike Creek," specifically to change the lower

boundary of the Designated Trout Stream for Pike Creek from "Pike Creek Road" to "Route 2 (Kirkwood Highway)," thereby extending these designated waters downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway) in New Castle County, Delaware.

This action is being taken by the Department to extend the defined Designated Trout Waters on Pike Creek downstream, as referenced above. The extension of the designated waters will accommodate freshwater trout stocking and improvement for angler access to the put-and-take freshwater trout fishery on Pike Creek. The acquisition of property along Pike Creek by Delaware State Parks (White Clay Creek State Park - Judge Morris Estate) provides an opportunity to expand Delaware's trout stocking sites and increase public access. To that, the Division of Parks and Recreation approved the extended section of these designated waters.

In accordance with 7 **DE Admin. Code** 3304, Section 3.6, the extension of the waters defined within the Designated Trout Stream, will be closed for stream trout fishing 14 days before the season's opening day. This shall provide time for stocking, fish acclimation and dispersion, as well as allowing fair access through an established starting time and date. Unless lawfully exempt, a trout stamp is required to fish a Designated Trout Stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30 (\$2.10 resident youth / \$4.20 resident adult/ \$6.20 non-resident). These trout stamp revenues support the purchase of trout in subsequent years.

The Department presented the Amendments at the Delaware Advisory Council on Wildlife & Freshwater Fish meeting on June 25, 2019. During said meeting, the Delaware Advisory Council on Wildlife & Freshwater Fish motioned to endorse the proposed regulatory action. The Department then proceeded with the proposed regulatory changes.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 **Del.C.** §103(a)(b).

The Department published its initial proposed regulation Amendments in the January 1, 2020 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on January 29, 2020. There were no members of the public in attendance at the public hearing. Pursuant to 29 **Del.C.** §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on February 13, 2020, with no comment having been received by the Department during any phase of this formal promulgation.

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

Hearing Officer Theresa Newman prepared her Report dated February 1, 2020 ("Report"), which expressly incorporated the Department's proposed Amendments into the hearing record generated in this matter. 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 in the Division of Fish and Wildlife, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish*, Section 3301- *Definitions*, are well-supported. I further find that the Department's experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 **Del.C.** §103(a)(b);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Chapter 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial 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 29, 2020, and during the 15 days subsequent to the hearing (through February 13, 2020), before making any final decision;
4. Promulgation of the proposed Amendments to 7 **DE Admin. Code** 3300: *Non-Tidal Finfish*, Section 3301- *Definitions*, will enable the Department to extend the Designated Trout Waters on Pike Creek downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway) in New Castle County, Delaware. The

expansion of these designated waters will: (1) provide for the stocking of freshwater trout therein, thus creating additional recreational opportunities in New Castle County; (2) continue the utilization of trout stamp revenues to support the purchase of trout in subsequent years; and (3) improve angler access to the put-and-take freshwater trout fishery on Pike Creek;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department's proposed regulatory Amendments, as initially published in the January 1, 2020 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

7. The Department shall submit the proposed Amendments as final regulatory amendments 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

### 3300 Non-Tidal Finfish

#### 3301 Definitions

1.0 For purposes of Regulations 3301 through 3311, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

**"Administered by the Division"** means owned, leased or licensed by the Division.

**"Bait"** means any nontoxic food material, compound or mixture of ingredients which wildlife is able to consume.

**"Baited Field"** means include any farm field, woodland, marsh, water body or other tract of land where minerals, grain, fruit, crop or other nontoxic compounds have been placed to attract wildlife to be hunted.

**"Designated Trout Pond"** means:

Newton Pond in Sussex county (near Greenwood);

Tidbury Pond in Kent County.

**"Designated Trout Stream"** means:

**"Beaver Run"**, from the boundary line between this State and the Commonwealth of Pennsylvania to the Brandywine River;

**"Christina Creek"**, from the boundary line between this State and the State of Maryland through Rittenhouse Park;

**"Mill Creek"**, from Brackenville Road to Route 7;

**"Pike Creek"**, from Route 72 to the bridge at ~~Pike Creek Road~~ Route 2 (Kirkwood Highway);

**"Red Clay Creek"**, from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania to the bridge at Yorklyn Road;

**"White Clay Creek"**, from the boundary line between this State and the Commonwealth of Pennsylvania to the downstream side of Paper Mill Road; and

**"Wilson Run"**, from Route 92 through Brandywine Creek State Park; ~~and~~

**"Director"** means the Director or Acting Director of the Division.

**"Division"** means the Division of Fish and Wildlife of the Department.

**"Established road"** means a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.

“**Fishing**” or “**to fish**” means to take, catch, kill or reduce to possession or attempt to take, catch, kill or reduce to possession any fish by any means whatsoever.

“**Game fish**” means smallmouth bass, largemouth bass, black or white crappie, rock bass, white bass, walleye, northern pike, chain pickerel, muskellunge (or hybrids), salmon, trout, sunfishes and white bass/striped bass hybrids.

“**Possession**” means either actual or constructive possession of or any control over the object referred to.

“**Refuge**” means an area of land, whether in public or private ownership, designated by the Department as a refuge. Land shall only be designated with the permission of the landowner and if such designation is thought to be in the best interest of the conservation of wildlife. Refuges shall normally be closed at all times to all forms of hunting, except as permitted by the Director in writing for wildlife management purposes.

“**Restricted Trout Stream**” means the White Clay Creek from a point 25 yards above Thompson Bridge at Chambers Rock Road to the boundary line between this State and the Commonwealth of Pennsylvania.

“**Roadway**” means any road, lane or street, including associated right-of-ways, maintained by this State or any political subdivision of this State.

“**Season**” means that period of time during which a designated species of wildlife may be lawfully hunted or a designated species of fish may be lawfully fished.

“**Vehicle**” means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

---

## DEPARTMENT OF STATE

### OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b) and 2318 (5 Del.C. §§121(b) & 2318)  
5 DE Admin. Code 2301

#### ORDER

#### 2301 Operating Regulation

IT IS HEREBY ORDERED, this 4<sup>th</sup> day of March, 2020, that amended Regulation 2301 (Sale of Checks and Transmission of Money - Operating Regulation) is adopted as a Regulation of the State Bank Commissioner. This amended Regulation was published in the February 1, 2020 edition of the *Delaware Register of Regulations* and is incorporated herein by reference. The effective date of this Regulation is April 13, 2020. This Regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amended Regulation and its text were published in the February 1, 2020 issue of the *Delaware Register of Regulations*. The Notice included, among other things, a summary of the proposed amended Regulation and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before March 3, 2020. The Notice further stated that the proposed amended Regulation was available for inspection during regular business hours at the Office of the State Bank Commissioner, 1110 Forrest Avenue, Dover, Delaware 19904, and that copies were available upon request.

2. The Money Services Round Table sent a letter supporting the proposed amendment to Regulation 2301, and also suggesting other legislative amendments to Chapter 23 of Title 5 that are beyond the scope of this Regulation. No other written comments concerning the proposed amended Regulation were received on or before March 3, 2020.

3. After review and consideration, the State Bank Commissioner hereby adopts amended Regulation 2301 as proposed.



Robert A. Glen  
State Bank Commissioner

**2301 Operating Regulation**  
5 Del.C. Ch. 23

5 Del.C. §2318

Effective Date: ~~June 11, 2013~~ ~~XX/XX/XXXX~~ **April 13, 2020**

**1.0 Compliance with Applicable Laws**

- 1.1 All licensees shall comply with 5 Del.C. Ch. 23, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 1.2 The manager and appropriate staff of each licensee shall familiarize themselves with all such statutes and regulations.
- 1.3 Each licensee shall maintain either by paper copy or through electronic access, 5 Del.C. Ch. 23 and the following regulations:
  - 1.3.1 Regulation 101, Retention of Financial Institution Records;
  - 1.3.2 Regulation 2301, Operating Regulation;
  - 1.3.3 Regulation 2302, Exemptions; and
  - 1.3.4 Regulation 2303, Report of Delaware Volume.

**2.0 Minimum Required Records**

- 2.1 Each licensee shall maintain any records necessary to verify the licensee's compliance with 5 Del.C. Ch. 23, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 2.2 All such records shall be made available to the Commissioner's staff when requested.
- 2.3 Records may be maintained at any suitable location but must be available within a reasonable period of time upon request.
- 2.4 All such records may be maintained by paper copy or in an electronic format.
- 2.5 All records shall be maintained in accordance with the time periods specified in Regulation 101, Retention of Financial Institution Records.
- 2.6 The Commissioner may grant written approval for variations from this section to accommodate specific record keeping systems. Requests for such approvals must be in writing and provide sufficient information concerning the system to ensure that the requirements of this section are satisfied and that the records will be readily available when requested.

**3.0 Expired Identification**

Licensees shall not accept from a customer any form of identification that has expired.

**4.0 Advertising**

A licensee shall not advertise in any way that is false, misleading, or deceptive.

**5.0 Examination Fees and Supervisory Assessments**

- 5.1 The Commissioner may examine licensees and their agents pursuant to 5 Del.C. §122. The costs of such examinations are assessed in accordance with 5 Del.C. §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 5.2 The Commissioner shall assess each licensee a supervisory assessment that is due and payable on August 1 each year, in accordance with 5 Del.C. §127(b).

- 5.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 **Del.C.** §§127(a) and 127(b).

## 6.0 Examination Responses

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

## 7.0 License Applications/ Nationwide Multistate Licensing System and Registry

- 7.1 The Nationwide Multistate Licensing System and Registry, as the multi-state automated licensing system in which the Commissioner is participating pursuant to 5 **Del.C.** §2319, is authorized to act on behalf of the Commissioner to facilitate the application and licensing processes of 5 **Del.C.** Ch. 23, and in that capacity, the System may, with respect to that chapter:
- 7.1.1 Process licensing applications;
  - 7.1.2 Collect licensing payments;
  - 7.1.3 Submit fingerprints and any other information required for a criminal history background check to the Federal Bureau of Investigation or other law-enforcement agency;
  - 7.1.4 Receive information and maintain records regarding applicants and licensees; and
  - 7.1.5 Share information it maintains regarding applicants and licensees subject to the System with any other state participating in the System, if that state could have obtained that same information directly from the applicant or licensee under its own law for the purpose of licensing, regulating, or supervising that same applicant or licensee under a statute similar to 5 **Del.C.** Ch. 23.
- 7.2 Any person seeking an initial or renewal license to engage in a business that requires a license under 5 **Del.C.** Ch. 23 shall submit the appropriate application and fees to the Commissioner through the Nationwide Multistate Licensing System and Registry.
- 7.3 All applications shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. The Commissioner may change and update application forms as the Commissioner deems appropriate. The Commissioner may also require additional information in connection with any particular application.
- 7.4 All applications, whether for a main company location or a branch location, must be submitted with the investigation fee of \$172.50, the annual licensing fee of \$230.00, plus \$4.60 for each additional location, and the Nationwide Multistate Licensing System and Registry processing fee of \$100 (main company location) or \$20 (branch location) (or such other amount as the System may charge). The Nationwide Multistate Licensing System and Registry processing fee and the investigation fee are non-refundable.
- 7.5 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 7.6 If the Commissioner determines that an application is incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review process. If the Commissioner does not receive a complete response fully addressing all such items within 30 days after sending that notice, the Commissioner may consider the application withdrawn.
- 7.7 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.

## 8.0 Reports

Each licensee shall submit to the Nationwide Multistate Licensing System and Registry such reports of condition at such times, in such form and containing such information as that System or the Commissioner shall require.

# FINAL REGULATIONS

## PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))  
26 DE Admin. Code 3007

### ORDER

#### 3007 Electric Service Reliability and Quality Standards

IN THE MATTER OF THE PETITION OF THE PUBLIC  
SERVICE COMMISSION STAFF AND DELAWARE  
DIVISION OF THE PUBLIC ADVOCATE TO  
ESTABLISH A REGULATION FOR DISTRIBUTION  
SYSTEM INVESTMENT PLANS FOR DELAWARE  
ELECTRIC AND NATURAL GAS UTILITIES (Filed July  
2, 2018)

PSC DOCKET NO. 18-0935

### ORDER NO. 9541

**AND NOW**, this 19<sup>th</sup> day of February 2020, the Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, on June 14, 2018, Governor John Carney signed into law Senate Substitute No. 1 for Senate Bill 80, which established a Distribution System Improvement Charge ("DSIC") for electric and natural gas companies in Delaware; and

**WHEREAS**, on April 14, 2018, the Commission Staff ("Staff"), the Delaware Division of the Public Advocate ("DPA"), and Delmarva Power & Light Company ("Delmarva") executed a Memorandum of Understanding ("MOU") providing that:

Delmarva Power, the Public Advocate and Commission Staff agree to work together to develop a proposal to submit to the Commission concerning enhanced distribution system planning. Delmarva, DPA and Staff will work in good faith to provide recommendations and to submit any proposals for review and approval to the Commission by September 1, 2019. The first meeting will take place by July 31, 2018. In addition, by no later than March 31, 2019, Delmarva, DPA and Staff will provide the Commission with an update on their progress.

and;

**WHEREAS**, on May 1, 2018, Chesapeake Utilities Corporation ("Chesapeake") agreed to participate in the meetings among Delmarva, the DPA, and Staff in a good faith effort to recommend to the Commission some form of distribution planning for Chesapeake that will be tied to its DSIC applications; and

**WHEREAS**, on July 2, 2019, Staff and the DPA jointly filed a petition requesting the Commission to open a docket to examine electric and natural gas utilities' distribution infrastructure spending and establish regulations for distribution system planning to apply to all electric, natural gas, and Class A water utilities; and

**WHEREAS**, in Order No. 9242 (July 10, 2018), the Commission directed Staff to commence duly-noticed working group meetings for interested stakeholders (including Delmarva and Chesapeake) and to provide recommendations and proposed regulations for the Commission's review and approval; and

**WHEREAS**, on September 15, 2019, the DPA and Staff presented proposed regulations to the Commission; and

**WHEREAS**, in Order No. 9485 (Oct. 22, 2019), the Commission authorized publication of the proposed regulations in the December 1, 2019 *Register of Regulations*; and

**WHEREAS**, the proposed regulations were published in the December 1, 2019 *Register of Regulations*; and

**WHEREAS**, the Commission received no comments on the proposed regulations; and

**WHEREAS**, the DPA and Staff request approval of the proposed regulations for final publication with the *Register of Regulations*;

---

**NOW, THEREFORE, BY THE AFFIRMATIVE VOTE OF NO FEWER  
THAN THREE COMMISSIONERS, IT IS HEREBY ORDERED:**

1. The Commission finds and determines that Final Proposed Regulation 3007 attached hereto as "Exhibit A" contains no substantive changes to the Proposed Regulations approved for publication in the Delaware *Register of Regulations* under Commission Order No. 9485 dated October 22, 2019.

2. There is no requirement to re-propose Final Proposed Regulation 3007 because there were no substantive changes; accordingly, the public comment period shall not be extended by 15 days under 29 **Del.C.** § 10118(a) and Final Proposed Regulation 3007 is not subject to the notice requirements of 29 **Del. C.** §10115.

3. Final Proposed Regulation 3007 is hereby approved as final, and the Commission Secretary is directed to publish the Final Proposed Regulation 3007 in the Delaware *Register of Regulations*, with an effective date of not less than 10 days from the date this Order has been published in the *Register of Regulations*.

4. That the Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

Dallas Winslow, Chairman

Joann T. Conaway, Commissioner

Harold B. Gray, Commissioner

Manubhai C. Karia, Commissioner

K. F. Drexler, Commissioner

ATTEST: Donna Nickerson, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2019 issue of the *Register* at page 444 (23 DE Reg. 444). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3007 Electric Service Reliability and Quality Standards**

---

# GENERAL NOTICES

---

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 42 C.F.R. §447.203

#### NOTICE

#### **Proposed Amendment to Access to Care Monitoring Review Plan (AMRP)**

In accordance with the public notice requirements of 42 CFR 447.203(b) and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives notice related to the state's plan to comply with federal regulations requiring states to conduct analysis of their Access to Care Monitoring Review Plan (AMRP) every 3 years.

#### **Background**

The Centers for Medicare and Medicaid Services (CMS) published regulations in the Federal Register (42 CFR 447.203 & 42 CFR 447.204) on November 2, 2015, effective January 4, 2016, that required states to review data and trends to evaluate access to care for covered services. It also required states to obtain public input on the adequacy of access to covered services in the Medicaid program to the extent that such care and services was available to the general population in the geographic area as required by section 1902(a)(30)(A) of the Social Security Act (the Act). The final rule required states to develop an Access to Care Monitoring Review Plan (AMRP) in which states would design appropriate approaches to demonstrate and monitor access to care, would reflect unique and evolving state service delivery models and service rate structures. The regulation also requires states to conduct this analysis every 3 years.

#### **Purpose**

The purpose of this posting is to provide public notice and receive public input for consideration regarding DMMA's Access to Care Monitoring Review Plan (AMRP).

#### **Public Comment Submission Process**

As required by 42 CFR 447.203(b), DHSS/DMMA must provide, at a minimum, a thirty-day public notice and comment period. The public is invited to review and comment on the State's proposed AMRP. Comments must be received by 4:30 p.m. on May 1, 2020. Comments and input regarding the proposed plan may be submitted in the following ways:

Please identify in the subject line: Access to Care Monitoring Review Plan (AMRP)

By fax: 302-255-4413 to the attention of Nicole Cunningham

By email: [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov)

By written comment:

Division of Medicaid and Medical Assistance

Attn: Nicole Cunningham

Planning, Policy & Quality Unit

1901 North DuPont Highway

P.O. Box 906

New Castle, Delaware 19720-0906

Stephen M. Groff

Director

Division of Medicaid and Medical Assistance

03/04/2020

Date

\*Please Note: Due to the size of the Plan, it is not being published here. A PDF version is available at the following location:

[Access to Care Monitoring Review Plan.pdf](#)

[Access to Care Monitoring Review Plan.pdf](#)

---

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF WATERSHED STEWARDSHIP SEDIMENT AND STORMWATER PROGRAM

Statutory Authority: 7 Delaware Code, Section 4006(h) and (i) (7 **Del.C.** §4006(h) & (i))

#### REGISTER NOTICE

#### **Regulatory Guidance Memorandum RGM-2 Supporting Regulation 5101 Sediment and Stormwater Regulations**

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship Sediment and Stormwater Program has released a regulatory guidance document titled "[Regulatory Guidance Memorandum RGM-2](#)" for public review. This document supports **Regulation No. 5101 Sediment and Stormwater Regulations**, as set forth at 7 **Del.C.** §4006(h) and (i).

A synopsis of RGM-2 is as follows: The 2019 Delaware Sediment & Stormwater Regulations (DSSR) include provisions for complying with the "no adverse impact" requirements for the Cv (10-YR storm) and/or Fv (100-YR storm) by performing a downstream analysis. The Sediment & Stormwater Program has prepared a tutorial to outline the steps necessary to complete this analysis in accordance with the Department's guidelines.

The DNREC Sediment and Stormwater Program hereby provides notice of this regulatory guidance document, pursuant to 7 **Del.C.** §4006(i), which incorporates the provisions of 7 **Del.C.** §6004. A public hearing will NOT be held unless the Secretary receives a meritorious request for a hearing within 15 days of date of this notice, ending April 15, 2020. A request for a public hearing shall be in writing and show familiarity with the regulatory guidance document and provide a reasoned statement of the regulatory guidance document's probable impact.

This document may be reviewed at the following link:

<http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

For appointments to review the regulatory guidance document, please contact Elaine Webb, DNREC Sediment and Stormwater Program, 285 Beiser Boulevard, Suite 102, Dover, DE 19904, (302) 739-9921, or email [elaine.webb@delaware.gov](mailto:elaine.webb@delaware.gov).

PREPARED BY:

Elaine Z. Webb

(302) 739-9921

[elaine.webb@delaware.gov](mailto:elaine.webb@delaware.gov)

---

---

## CALENDAR OF EVENTS/HEARING NOTICES

---

### DEPARTMENT OF AGRICULTURE

#### THOROUGHBRED RACING COMMISSION

##### PUBLIC NOTICE

#### 1001 Thoroughbred Racing Rules and Regulations

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend Rule 13 by amending Rule 13.20 to change the minimum days since last race from 180 to 120, amend Rule 15 by adding new Rule 15.1.3.1.3 relating to Foreign Substances to allow electrolytes to be administered to a horse within twenty four hours prior to the scheduled post time for the first race subject to certain provisions, new Rule 15.28 relating to Bisphosphonates, new Rule 15.29 relating to Non-Steroidal Anti-Inflammatory Drugs, new Rule 15.30 relating to Intra-articular Joint Injections, and new Rule 15.31 relating to Stacking of Corticosteroids. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the April 1, 2020 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the Register of Regulations website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before May 1, 2020. Written materials submitted will be available for inspection at the above address.

On or after May 1, 2020, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

---

### DEPARTMENT OF EDUCATION

##### PUBLIC NOTICE

The State Board of Education will hold its monthly meeting April 23, 2020 at 5pm in the Laurel School District (Laurel Middle High School, 1133 S. Central Avenue, Laurel, DE 19956). Please check the [public meeting calendar](#) for the latest updates.

*Please note that due to a conflict the April meeting has been moved to the 4th Thursday of the month.*

---

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### DIVISION OF HEALTH CARE QUALITY

##### PUBLIC NOTICE

#### 3325 Financial Capability Reporting

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the Delaware Code, Section 7903(9), Delaware Health and Social Services (DHSS) / Division of Health Care Quality is proposing to amend Regulation 3325, Financial Capability Reporting, the Division's assessment of the financial capability of licensed providers revise the process for establishing capital availability for newly established facilities or facilities with a parent organization as well as to make some minor technical changes to other regulations.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Gabriela Kejner, Chief of Staff, Office of

the Secretary, Main Admin Building, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4429 by Thursday, May 1, 2020, Yrene E. Waldron, of the Division of Health Care Quality, 3 Mill Road, Wilmington, DE 19806, (302) 421-7410 is the Division contact person.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

---

**DIVISION OF HEALTH CARE QUALITY**  
**PUBLIC NOTICE**  
**4404 Free Standing Emergency Centers**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 1, Section 122(3)(p), Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Free Standing Emergency Departments.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Office of Health Facilities Licensing and Certification, Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov) or by fax to 302-292-3931 by 4:30 p.m. on May 1, 2020. Please identify in the subject line: Regulations Governing Free Standing Emergency Departments

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

---

**DIVISION OF HEALTH CARE QUALITY**  
**PUBLIC NOTICE**  
**4469 Personal Assistance Services Agencies**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 1, Section 122(3)(x), Delaware Health and Social Services (DHSS)/ Division of Health Care Quality (DHCQ) is proposing regulations governing Personal Assistance Services Agencies.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Office of Health Facilities Licensing and Certification, Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov) or by fax to 302-292-3931 by 4:30 p.m. on May 1, 2020. Please identify in the subject line: Regulations Governing Personal Assistance Services Agencies

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

---

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**  
**Licensed Chemical Dependency Professionals & Art Therapist**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding behavioral health practitioners, specifically, to add Licensed Chemical Dependency Professionals (LCDPs) and Licensed Professional Art Therapist to the list of licensed

---



behavioral health practitioners.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on May 1, 2020. Please identify in the subject line: Licensed Chemical Dependency Professionals and Art Therapist

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

---

**DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****Case Processing Procedures - Burial Assistance & Fraudulent Receipt Of Benefits In Multiple States**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Case Processing Procedures, specifically, to explain the procedures for providing burial assistance and disqualifying individuals from cash assistance and food benefit programs when an individual has been found guilty of fraudulently receiving these benefits in multiple states.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on May 1, 2020. Please identify in the subject line: Case Processing Procedures.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

---

**DEPARTMENT OF INSURANCE****OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****903 Prompt Payment of Settled Claims**

Regulation 903 contains the requirements for prompt payment of settled insurance claims as required by 18 **Del.C.** §2304(16).

The Delaware Department of Insurance (the Department) is proposing to amend Regulation 903 to allow insurance carriers to pay settled insurance claims other than claims that are subject to the Workers Compensation Statute at 19 **Del.C.** §2344 by electronic means. The Department is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

The authority for the proposed amendments is 18 **Del.C.** §§311, 520, 2304(16), and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 903. The proposed amendments appear below and may 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 1<sup>st</sup> day, May, 2020. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance

ATTN: Docket 4233-2019  
1351 West North St., Ste. 101  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

---

**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE**

**1411 Registration of Pharmacy Benefits Managers**

House Bill 194 as amended by House Amendment 1 (HB 194/HA1), see 82 Del. Laws, c. 115 (2019), added a new Subchapter V to Chapter 33A of the Insurance Code. Entitled "Registration of Pharmacy Benefits Managers," the legislation:

- (1) Requires pharmacy benefits managers ("PBMs") to register with the Insurance Commissioner;
- (2) Permits the Insurance Commissioner to issue cease and desist orders to PBMs who commit fraudulent acts or violations of Title 18, Chapter 33A;
- (3) Requires PBMs to maintain certain records;
- (4) Permits the Insurance Commissioner to examine the affairs of PBMs;
- (5) Grants the Insurance Commissioner the authority to enforce Chapter 33A of Title 18 by imposing fines, requiring PBMs to take affirmative actions, and suspending, denying, or revoking a PBM's registration; and
- (6) Updates existing law regarding maximum allowable cost lists and establishes a more transparent appeals process on which a pharmacy may rely if a PBM does not reimburse the pharmacy the amount owed under their contract or pursuant to the maximum allowable cost list.

The legislation was signed by the Governor on July 17, 2019 and it becomes effective on June 1, 2020. Section 4 of that legislation specifically provides the Department with the regulatory authority to implement all of Title 18, Chapter 33A, of which the PBM registration requirements are a part.

Pursuant to 18 **Del.C.** §§311 and 3359A(c), the Department is proposing new Regulation 1411 to implement the registration requirements of HB 194/HA 1. Pursuant to 18 **Del.C.** §3353A, all PBMs are required to register with the Insurance Commissioner before providing pharmacy benefits management services in Delaware to a "purchaser." A "purchaser" is defined as an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity that: (1) provides prescription drug coverage or benefits in Delaware, and (2) enters into agreement with a pharmacy benefits manager for the provision of pharmacy benefits management services.

Since 18 **Del.C.** §3353A allows PBMs to annually renew their registration on the May 1 after the initial date of registration and every May 1 thereafter, this registration requirement would apply annually, to the extent that the PBM elects to renew its registration for the upcoming year.

The Department does not plan to hold a public hearing on proposed new Regulation 1411. The proposed new regulation appears below and may 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 1<sup>st</sup> day, May 2020. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Docket 4255-2020  
1351 West North St., Ste. 101  
Dover, DE 19904

(302) 674-7379

Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

---

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL**

**DIVISION OF AIR QUALITY**

**PUBLIC NOTICE**

**1151 Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses**

This proposed new regulation supports the Governor's directive to the Department of Natural Resources and Environmental Control to propose regulations for the use and manufacturing of Hydrofluorocarbons in Delaware.

This proposed new regulation establishes the prohibitions and requirements for the use and manufacture of hydrofluorocarbons in the State of Delaware according to their specific end usage (including air conditioning and refrigeration equipment, aerosol propellants, and foam end-uses) and adopts specific United States Environmental Protection Agency Significant New Alternatives Policy Program prohibitions. This proposed new regulation is designed to support greenhouse gas emission reductions in the State of Delaware.

The hearing record on the proposed new regulation 7 **DE Admin. Code** 1151 will open April 1, 2020. Individuals may submit comments regarding the proposed new regulation to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901.

A public hearing on the proposed new regulation will be held on April 23, 2020 beginning at 6:00 PM in the Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE, 19901. Public comments will be received until close of business, Friday, May 8, 2020.

---

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

**DIVISION OF STATE POLICE**

**2400 BOARD OF EXAMINERS OF CONSTABLES**

**PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27 proposes to amend the following adopted rules in 24 **DE Admin. Code** 2400 Board of Examiners of Constables: Rule 7.0 Conducted Electrical Weapon (CEW). If you wish to view the complete Rules, contact Ms. Ashley Bauguess at 302-672-5337. Any persons wishing to present views may submit them in writing, by May 1, 2020, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903.

---

**DEPARTMENT OF STATE**

**DIVISION OF PROFESSIONAL REGULATION**

**100 BOARD OF ACCOUNTANCY**

**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The rules are designed to implement the revised Accountancy statute.

A public hearing will be held on May 20, 2020 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until June 4, 2020 in accordance with 29 **Del.C.** §10118(a).

---

**DIVISION OF PROFESSIONAL REGULATION**  
**1100 BOARD OF DENTISTRY AND DENTAL HYGIENE**  
**PUBLIC NOTICE**

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to revise its regulations. The proposed amendments to allow the Board to grant continuing education credits to dentists and dental hygienists who perform volunteer clinical work. The changes also add American Academy of Dental Hygiene to the list of approved CE providers.

The Board will hold a public hearing on the proposed rule change on May 14, 2020 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meredith Hurley, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 29, 2020.

---

**DIVISION OF PROFESSIONAL REGULATION**  
**2930 COUNCIL ON REAL ESTATE APPRAISERS**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to continuing education are amended to eliminate the "live setting" requirement. The Council is also taking the opportunity of this proposal to update Delaware Code citations to sections that have been amended.

A public hearing will be held on April 21, 2020 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a). Written comments will be accepted until May 6, 2020.