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# Delaware Register of Regulations

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Issue Date: August 1, 2021

Volume 25 - Issue 2, Pages 111 - 211

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## IN THIS ISSUE:

Regulations:

Errata  
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 July 15, 2021.

*Bombay Hook  
National Wildlife Refuge,  
Smyrna, Delaware*

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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## 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.

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## 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.

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
September 1	August 16	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 17	4:30 p.m.

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**DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))  
14 **DE Admin. Code** 716

**ERRATA****716 Maintenance of Local School District and Charter School Personnel Records**

\* **Please Note:** The proposed regulation for 716 Maintenance of Local School District and Charter School Personnel Records was originally submitted for publication in the June 1, 2021 issue of the *Register of Regulations*.

The title of the proposed regulation was inadvertently published without an approved change to the title:  
**716 Maintenance of Local School District and Charter School Personnel Records**

The title should have been published as:

**716 Maintenance of ~~Local~~ School District and Charter School Personnel Records**

The final regulation is being published in this issue of the August 1, 2021 *Register of Regulations*. See 25 **DE Reg.** 170 (08/01/2021) (Final).



**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.

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005 (3 **Del.C.** §10005)  
3 **DE Admin. Code** 501

**PUBLIC NOTICE****501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del. C.** Section 10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments for clarity by adding a definition and correcting inconsistent capitalization of "Presiding Judge".

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on June 1, 2021, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On June 22, 2021, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to the initial 30-day comment period beginning on August 1, 2021 to August 31, 2021 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on September 14, 2021 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB August 31, 2021. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

**\*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/august2021/proposed/25 DE Reg 119RFA 08-01-21.pdf>

**501 Harness Racing Rules and Regulations**  
*(Break in Continuity of Sections)*

# PROPOSED REGULATIONS

## 3.0 Officials

*(Break in Continuity Within Section)*

### 3.2 Board of Judges

*(Break in Continuity Within Section)*

- 3.2.9 List of Nerved Horses. The judges shall maintain a list of nerved horses participating at the race meet and shall post this list in the Race Office. When the Commission is notified of a "nerved" horse (neurectomy) by a licensee or practicing veterinarian, the Presiding Judge shall note that on the horse's electronic eligibility papers.

*(Break in Continuity of Sections)*

## 8.0 Veterinary Practices, Equine Health Medication

*(Break in Continuity Within Section)*

### 8.10 Quarantine Procedure For Carbon Dioxide Positive Tests (Prerace Or Postrace)

- 8.10.1 Detention/Quarantine of Horses: The owner or trainer must request use of the quarantine procedure by sending written notice to the ~~presiding judge~~ Presiding Judge within forty-eight (48) hours of notification of the positive carbon dioxide test report. The owner or trainer will then be permitted, totally at his own expense, to make the necessary scheduling arrangements with the Judges and the Commission Veterinarian. The horse in question will be quarantined on the grounds for periodic blood gas testing by the DHRC (up to three days) at the trainer's expense. All caretaker activities for the horse in question will be the responsibility of the horse's trainer.

*(Break in Continuity of Sections)*

## 10.0 Due Process and Disciplinary Action

*(Break in Continuity Within Section)*

### 10.2.6 Evidence

- 10.2.6.1 Each witness at a disciplinary hearing conducted by the Board of Judges must be sworn by the ~~presiding judge~~ Presiding Judge.

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

**501 Harness Racing Rules and Regulations**

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b), 8901E, and 8906E(a) (14 **Del.C.** §§122(b), 8901E & 8906E(a))

### PUBLIC NOTICE

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

**239 Behavioral Health Professional of the Year**

#### A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

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

Pursuant to 14 **Del.C.** §§8901E and 8906E(a), the Secretary of Education intends to create 14 **DE Admin. Code** 239 Behavioral Health Professional of the Year. This new regulation responds to House Bill 35 of the 151st

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General Assembly which requires the Department of Education to establish guidance concerning how Behavioral Health Professional of the Year Award funds may be used by the award recipient.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 2, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOERegulations.comment@doe.k12.de.us](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, located at the address listed above.

### **C. IMPACT CRITERIA**

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

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

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

4. Will the regulation help to ensure that all students' legal rights are respected? The regulation does not impact students' legal rights.

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation does not place any unnecessary reporting or administrative requirements on decision makers. The authorizing law, 14 **Del.C.** Ch. 89E, will require a school district to study and determine its deserving Behavioral Health Professionals based on the Department's guidelines.

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

8. Will the 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 regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The Department of Education will set aside \$5,000 for the exclusive use of the Behavioral Health Professional of the Year. The Department of Education will also provide a \$3,000 personal award including Other Employment Costs to the statewide Behavioral Health Professional of the Year. School districts will fund the \$2,000 personal award including Other Employment Costs to the person chosen district Behavioral Health Professional of the Year. The chosen charter school will fund the \$2,000 award including Other Employment Costs to the person chosen as the one overall charter school Behavioral Health Professional of the Year.

**\*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/august2021/proposed/25 DE Reg 120RFA 08-01-21.pdf>

### **Exhibit B**

#### **239 Behavioral Health Professional of the Year**

##### **1.0 Purpose**

The purpose of this regulation is to establish policies and procedures by which the Behavioral Health Professional of the Year award funds may be used by the designated recipient pursuant to 14 **Del.C.** §8901E.

## 2.0 Definitions

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

**"Behavioral Health Professional of the Year Award Fund"** means a \$5000 fund set aside within the budget of the Department of Education for the award recipient to make withdrawals from as necessary to fund educational purposes and objectives as described in 14 **Del.C.** Ch. 89E.

**"Behavioral Health Professional of the Year Award Recipient"** or **"Recipient"** means a school employee whose position is health care practitioner or social or human services provider who offers services for the purpose of improving an individual's mental health, such as school counselors, social workers, licensed clinical social workers, school psychologists and school nurses as described in 14 **Del.C.** Ch. 89E. This designation is given at both the local school district and at the statewide level.

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

## 3.0 Funding

- 3.1 The Behavioral Health Professional of the Year Award Fund, in the amount of \$5,000 shall be set aside within the budget of the Department to be used by the statewide Behavioral Health Professional of the Year Award Recipient for educational purposes or objectives benefiting pupils.
- 3.1.1 The Behavioral Health Professional of the Year Award Recipient shall not directly receive the funds or use them for personal benefit, however, the Recipient may be an indirect or incidental beneficiary as the Behavioral Health Professional of the benefited pupils.
- 3.1.2 In order to withdraw funds, the Recipient shall present to the superintendent of the local school district a plan for utilization of the award in order to avoid wasteful duplication of materials or violation of school district policy.
- 3.1.3 Possible use of funds includes, but is not limited to:
- 3.1.3.1 Purchase of non-consumable materials and supplies (library books, audio visual equipment, crossing signs, computer equipment and programs, musical instruments, specialized furniture);
- 3.1.3.2 Purchase of otherwise consumable materials that are used by students (paper, notebooks, binders, pens, pencils, paints, instruments, wood and metal);
- 3.1.3.3 Employment of performers or consultants (touring companies of a dramatic nature or musical group, visiting artist, poet, author or other subject matter expert);
- 3.1.3.4 Student-centered professional development for building level Behavioral Health Professionals; or
- 3.1.3.5 Reimbursements to the recipient, not to exceed \$500, for personal expenses.
- 3.1.4 Materials, equipment or other durable items purchased with such funds shall be the property of the local school district or charter school in which the recipient is employed at the time of expenditure.
- 3.1.5 Invoices, purchase orders or personal reimbursement forms related to withdrawals from the Behavioral Health Professional of the Year Award Fund shall be retained by the local school district or charter school and shall be available for inspection as public records and subject to regular audit by the State Auditor of Accounts.
- 3.1.6 In the event that all funds set aside for an award recipient have not been completely expended by that recipient at the time when a subsequent award is granted, the remainder of the former recipient's award shall not revert, but shall remain set aside in the name of the former recipient until such time as it is totally expended or the recipient becomes deceased or leaves the State of Delaware.
- 3.1.7 The Behavioral Health Professional of the Year Award Fund shall be distinct from, and in addition to, the range of awards at the school district or charter school level.
- 3.2 School districts shall fund the \$2,000 personal award, including other employment costs, to the person chosen district Behavioral Health Professional of the Year. The specific charter school which employs the chosen overall charter school Behavioral Health Professional of the Year shall fund the \$2,000

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personal award, including other employment costs. Additionally, the Department of Education will set aside a \$3,000 personal award, including other employment costs, to the statewide Behavioral Health Professional of the Year.

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 Del.C. §122(b)(2))  
14 DE Admin. Code 815

### PUBLIC NOTICE

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

#### 815 Health Examinations and Screening

##### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

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

Pursuant to 14 Del. C. §122(b)(2), the Secretary of Education intends to amend 14 DE Admin. Code 815 Health Examinations and Screenings. This amendment is needed to: (1) clarify that children enrolling in first grade that have not provided documentation of lead screening when enrolled in kindergarten must provide such documentation within sixty calendar days of the date of enrollment, or they can be excluded from school until the documentation is presented, (2) update and expand definitions regarding the health examinations and screenings, and (3) add language referencing homeless, foster care, military family youth. Grammatical changes were also made to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 2, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOERegulations.comment@doe.k12.de.us](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, located at the address listed above.

##### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of 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 all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation directly impacts student's health and safety. It is more inclusive and informative regarding health examinations for homeless, foster care and military family youth. The amended regulation will enhance Delaware's standards.

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

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

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

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

<http://regulations.delaware.gov/register/august2021/proposed/25 DE Reg 123RFA 08-01-21.pdf>

## 815 Health Examinations and Screening

### 1.0 Definitions

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

**"Delaware School Health Examination Form"** means the ~~age-appropriate~~ age-appropriate form developed by the Delaware Department of Education or a substantially similar form for documenting information from the parent, guardian or Relative Caregiver and healthcare provider on the student's health status.

**"Delaware Interscholastic Athletic Association (DIAA) Pre-Participation Physical Evaluation"** means the form approved by the DIAA.

**"Health Examination"** means the medical examination done by a Healthcare Provider to determine health status and conditions.

**"Healthcare Provider"** means a currently licensed physician, advanced practice ~~nurse, nurse practitioner,~~ nurse or physician's assistant.

~~**"Health Examination or Health Evaluation"** means the medical or nursing examination or evaluation and assessment of the body by a healthcare provider to determine health status and conditions.~~

**"School Enterer"** means any child between birth and twenty (20) years inclusive enrolling and attending a Delaware public school district or public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states or territories, and children entering from non-public schools.

**"Screenings"** means the vision, hearing, postural gait, and lead screening performed by the school nurse or other qualified healthcare professional.

### 2.0 Health Examinations

- 2.1 All public school students shall have two health examinations, as provided in this section, that have been administered by a healthcare provider. ~~The first health examination shall have been done within the two years prior to entry into school. Beginning in school year 2012-2013, the second health examination shall be strongly recommended and not required for entering grade 9 students. Beginning in school year 2013-2014, the second health examination shall be required for entering grade 9 students. The required health examination shall be done within the two years prior to entry into grade 9. Within thirty calendar days after entry, new enterers and grade 9 students who have not complied with the second health examination requirement shall have received the health examination or shall have a documented appointment with a licensed health care provider for the health examination. For purposes of this regulation only, students entering grades 10, 11 or 12 in the 2013-2014 school year shall not be required to have the second health examination or evaluation.~~

2.1.1 The first health examination shall have been done within the two years prior to enrollment into a Delaware public school.

- 2.1.1.1 Within thirty (30) calendar days after enrollment, any public school student who has not complied with the health examination requirement shall have received the health examination or shall have a documented appointment with a healthcare provider for the health examination. If this documentation is not provided within this thirty (30) calendar days, the student shall be excluded from school until this documentation is received.
- 2.1.2 The second required health examination shall be done within the two years prior to entry into grade 9.
- 2.1.2.1 Within thirty (30) calendar days after entry, any grade 9 student who has not complied with the second health examination requirement shall have received the health examination or shall have a documented appointment with a healthcare provider for the health examination. If this documentation is not provided within these thirty (30) calendar days, the student shall be excluded from school until this documentation is received.
- 2.1.3 Notwithstanding subsections 2.1.1.1 and 2.1.2.1, all students must meet the requirements under 14 DE Admin. Code 804 Immunizations.
- 2.1.42.1.4 The requirement for the health examination may be waived for students whose parent, guardian or ~~Relative Caregiver~~ relative caregiver as defined in 14 Del.C. §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of health examinations.
- 2.1.42.1.5 Notwithstanding the above, a second health examination shall not be required if the first health examination is within two years of entering Grade 9.
- 2.1.32.1.6 The Delaware School Health Examination Form or the DIAA Pre-Participation Physical Evaluation form may be used as documentation of the health examination. In addition, a district or charter school may accept a health examination or evaluation documentation on a form which includes, at a minimum, health history, immunizations, results ~~on~~ of medical ~~testings~~ tests and screenings, medical diagnoses, prescribed medications and treatments, and healthcare plans.
- 2.1.42.1.7 The school nurse shall record all findings within the student's electronic ~~medical~~ health record (see 14 DE Admin. Code 811) and maintain the original copy in the child's medical file.

**Non regulatory note:** See 14 DE Admin. Code 1008.3 and 14 DE Admin. Code 1009.3 for physical or health examination requirements associated with participation in sports.

## 3.0 Screening

- 3.1 Vision and Hearing Screening
- 3.1.1 Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th of each school year.
- 3.1.1.1 In addition to the screening requirements in subsection 3.1.1, screening shall also be provided to ~~new school~~ enterers, students referred by a teacher or an administrator, and students considered for special education.
- 3.1.1.1.1 Driver education students shall have a vision screening within a year prior to their ~~ear~~ in-car driving hours.
- 3.1.2 The school nurse shall record the results within the student's electronic ~~medical~~ health record (see 14 DE Admin. Code 811) and shall notify the parent, guardian or ~~Relative Caregiver~~ relative caregiver as defined in 14 Del.C. §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if the student has a suspected problem.
- 3.2 Postural and Gait Screening
- 3.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by December 15th.
- 3.2.2 The school nurse shall record the findings within the student's electronic ~~medical~~ health record (see 14 DE Admin. Code 811) and shall notify the parents, guardian or ~~Relative Caregiver~~ relative

# PROPOSED REGULATIONS

caregiver as defined in 14 Del.C. §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if a suspected deviation has been detected.

- 3.2.2.1 If a suspected deviation is detected, the school nurse shall refer the student for further evaluation through an ~~on-site~~ onsite follow up evaluation or a referral to the student's ~~health care~~ healthcare provider.

## 3.3 Lead Screening

- 3.3.1 ~~Children who enter school~~ School enterers at kindergarten or at age 5 or prior, shall be required to provide documentation of lead screening as per 16 Del.C. Ch. 26.

3.3.1.1 For ~~children enrolling~~ school enterers in kindergarten, documentation of lead screening shall be provided within sixty (60) calendar days of the date of enrollment. Failure to provide the required documentation shall result in the child's exclusion from school until the documentation is provided.

3.3.1.2 Exemption from this requirement may be granted for religious exemptions, per 16 Del.C. §2603.

3.3.1.3 The Childhood Lead Poisoning Prevention Act, 16 Del.C., Ch. 26, requires all ~~health care~~ healthcare providers to order lead screening for children at or around the age of 12 months of age.

3.3.1.4 For school year 2021-2022, children entering first grade, who did not provide documentation of lead screening when enrolling in kindergarten for the 2020-2021 school year, shall provide such documentation within sixty (60) calendar days of the date of the beginning of the 2021-2022 school year. Failure to provide the required documentation shall result in the child's exclusion from school until documentation is provided.

- 3.3.2 The school nurse shall document the lead screening within the student's electronic medical record. See 14 DE Admin. Code 811.

## 4.0 Health Records

If the student is at risk of exclusion because of not meeting the health examinations or immunization documentation requirements, the school nurse may contact the previous Delaware public school nurse to obtain health examinations and immunization records.

## 5.0 Special Considerations

- 5.1 School districts and charter schools shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment and participation of identified special populations.

5.1.1 Homeless Children and Youth - The federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11301 et seq., requires immediate enrollment and entry to school, even if students are unable to produce immunization or other medical records. The Delaware public school nurse and the LEA Homeless Education Liaison at the enrolling school shall work together to obtain the necessary immunization records as soon as possible. If a student has not had immunizations, the school nurse and LEA Homeless Education Liaison shall assist homeless children and youth in meeting the immunization requirements.

5.1.2 Youth in Foster Care – The federal Elementary and Secondary Education Act of 1965. Section 1111(g)(1)(E) requires that when a determination is made that it is not in a youth in foster care's best interest to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment. The enrolling school shall immediately contact the school last attended by any such child to obtain relevant academic and other records. The school nurse and LEA foster care liaison at the enrolling school shall work together to obtain the necessary immunization records as soon as possible.

5.1.3 Military-Connected Youth - In accordance with the provisions of 14 Del.C. Ch. 1, Subchapter III-A Interstate Compact on Education For Children of Military Families (MIC3) and its enabling regulation, a school enterer or secondary school student who is subject to MIC3 shall be allowed



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thirty (30) calendar days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, to obtain or to initiate a series of immunizations required by this regulation. The Delaware public school nurse of the enrolling school shall work with the parent or guardian of the school enterer to obtain the necessary immunization records as soon as possible.

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1542

### PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 **Del.C.** §122(d)

### 1542 Secondary Mathematics Teacher

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

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

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher. The regulation concerns the requirements for a Secondary Mathematics Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms in Section 2.0; clarifying the requirements for issuing a Secondary Mathematics Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Secondary Mathematics Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Secondary Mathematics Teacher 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 certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 1, 2021 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 education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools 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 and is not designed to help ensure students' health and safety is protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' legal rights are respected.

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. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Secondary Mathematics Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

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. The application requirements in Section 5.0 apply to individual applicants.

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 amended 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/august2021/proposed/25 DE Reg 127RFA 08-01-21.pdf>

## 1542 Secondary Mathematics Teacher

### 1.0 Content

4-4 This regulation shall apply to the issuance of a Secondary Mathematics Teacher Standard Certificate, Certificate pursuant to 14 **Del.C.** §1220(a), for Secondary Mathematics Teacher. This certification Standard Certificate is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8 and may be used in lieu of the Middle Level Mathematics Teacher certification in grades 6 to 8 in Delaware public schools. The Secondary Mathematics Teacher Standard Certificate may be used for grades 6, 7, and 8 in a middle level school in lieu of the Middle Level Mathematics Teacher Standard Certificate.

4-2 ~~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 ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise:~~

**“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.

**"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.

~~**"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.~~

**"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.

**"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 and is in good standing in that 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 Secondary Mathematics Teacher Standard Certificate as a Secondary Mathematics Teacher to an educator applicant who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; License 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; and~~ Has met the requirements for an educator's license in Delaware and presents proof of a Valid and Current License or Certificate as a secondary mathematics teacher issued by another state or jurisdiction.

~~3.1.3 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 Secondary Mathematics Teacher 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 allegations include but are not limited to conduct such as 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 Prescribed Education, Knowledge, and Skill Requirements**

4.1 An educator shall have also met the following:

4.1.1 ~~achieved on the Praxis Subject Assessment — Mathematics: Content Knowledge (ETS Test # 5161) a Passing Score of 160.~~

4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.

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## 4.1.1 The applicant shall have:

- 4.1.1.1 Obtained and currently maintain a Mathematics certificate from the National Board for Professional Teaching Standards; or
- 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in secondary mathematics 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 secondary mathematics as provided in 14 Del.C. §§1260 – 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in secondary mathematics education.

## 4.1.2 The applicant shall have achieved a minimum score on one of the following examinations:

- 4.1.2.1 A minimum score of 160 on the Praxis Subject Assessment – Mathematics: Content Knowledge (ETS Test Code # 5161); or
- 4.1.2.2 A minimum score of 152 on the Praxis Subject Assessment – Mathematics (ETS Test Code # 5165).

- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a minimum score on the Praxis Subject Assessment as provided in subsection 4.1.2.

## **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 the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Secondary Mathematics Teacher Standard Certificate:
- 5.2.1 Evidence of obtaining and maintaining a Mathematics 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 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and
  - 5.2.4 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Secondary Mathematics Teacher Standard Certificate:
- 5.3.1 Official score on the Praxis Subject Assessment 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 as a secondary mathematics teacher, the following documentation is required in the application for a Secondary Mathematics Teacher Standard Certificate:
- 5.4.1 An official copy of the Valid and Current License or Certificate; and
  - 5.4.2 Additional documentation as required by the Department.

## **6.0 Validity of a Standard Certificate**

- 6.1 A Secondary Mathematics Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

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6.2 A Secondary Mathematics Teacher Standard Certificate is not subject to renewal.

## **7.0 Disciplinary Action**

- 7.1 An Educator's Secondary Mathematics Teacher 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.
- 7.2 An Educator's Secondary Mathematics Teacher 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**

- 8.1 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 Secondary Mathematics 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 Secondary Mathematics Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.
- 8.1.1 For school districts, requests shall be approved by the superintendent of the school district.
- 8.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

## **9.0 Past Certificate Recognized**

The Department shall recognize a Secondary Mathematics Teacher 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 teach secondary mathematics.

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### **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))  
14 DE Admin. Code 1583

#### **PUBLIC NOTICE**

**Educational Impact Analysis Pursuant to 14 Del.C. §122(d)**

#### **1583 School Psychologist**

#### **A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

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

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1583 School Psychologist. The regulation concerns the requirements for a School Psychologist Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms

to Section 2.0; clarifying the requirements for issuing a School Psychologist Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Psychologist Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a School Psychologist 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 certificates that were issued by the Department.

The proposed amendments were published in the *Register of Regulations* on February 1, 2021. The Board received written submittals from the State Council for Persons with Disabilities ("SCPD"), the Delaware Association of School Psychologists ("DASP"), and the Delaware State Education Association ("DSEA"). On March 4, 2021, the Board considered the written submittals. Both DASP and DSEA each commented that proposed language in subsection 4.1.1.1, i.e., "the equivalent of an Ed.S. degree," is vague and suggested that the Board add language from the 2020 National Association of School Psychologist Professional Standards. As a result of DASP's and DSEA's comment, the Board added the suggested language to the subsection to define the equivalent of an Ed.S. degree. The Board decided not to make any additional changes as a result of DASP's and DSEA's other comments or SCPD's comments.

On April 1, 2021, the changes that were originally published on February 1, 2021 and the additional change to define the equivalent of an Ed.S. in subsection 4.1.1.1 was published in the *Register of Regulations*. The Board received written submittals from DASP, the Delaware Association of School Personnel Administrators, and the Delaware Association of Special Education Professionals within the Delaware Association of School Administrators. On May 6, 2021, the Board considered the written submittals. The Board withdrew the proposed amendments that were published on April 1, 2021.

A review of the Praxis Subject Assessment - School Psychology was held on June 4, 2021. On July 8, 2021, the Board considered data concerning the Praxis Subject Assessment - School Psychology, including the results of the Praxis review, the requirements for a school psychology educator's license or certificate in the District of Columbia, Maryland, New Jersey, and Pennsylvania, and information on current school psychologists in Delaware. The Board added clarifying language to subsection 3.1.2, which concerns applicants who hold a valid and current license as a school psychologist that is issued by another jurisdiction. The Board voted to publish the changes that were published on April 1, 2021 as well as the additional clarifying language in subsection 3.1.2.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 1, 2021, 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 education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools 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 and is not designed to help ensure students' health and safety is protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' legal rights are respected.
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. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a School Psychologist Standard Certificate but whose effectiveness is documented by the district or school. Proposed

Section 8.0 is consistent with the statute.

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. The application requirements in Section 5.0 apply to individual applicants.

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 amended 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/august2021/proposed/25 DE Reg 131RFA 08-01-21.pdf>

### **1583 School Psychologist**

#### **1.0 Content**

- 1.1 This regulation shall apply to the ~~requirements for issuance of a School Psychologist Standard Certificate, pursuant pursuant to 14 Del.C. §1220(a), for School Psychologist. This certification~~ The School Psychologist Standard Certificate is required for all School Psychologists school psychologists providing services to children within the Delaware public school system in Delaware public schools.
- 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, shall have the following meaning ~~unless the context clearly indicates otherwise:~~

"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.

"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.

# PROPOSED REGULATIONS

~~“**Internship**” means a supervised, culminating, comprehensive field experience, completed at or near, the end of formal training, through which school psychology candidates have the opportunity to integrate and apply professional knowledge and skills acquired in prior courses and practica, as well as to acquire new competencies consistent with training program goals.~~

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

~~“**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.~~

~~“**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 and is in good standing in that 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 School Psychologist Standard Certificate as a School Psychologist to an educator applicant who has met the following:

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

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; and~~ Has met the requirements for an educator's license in Delaware and presents proof of a Valid and Current License or Certificate as a school psychologist issued by another state or jurisdiction.

3.1.3 ~~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 School Psychologist 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 allegations include but are not limited to conduct such as 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 Prescribed Education, Knowledge, and Skill Requirements**

4.1 ~~An educator shall also have satisfied at least one (1) of the following additional education and internship requirement Options:~~

4.1.1 ~~NASP or APA School Psychology Degree:~~

4.1.1.1 ~~Has successfully completed an organized graduate level program of study in “School Psychology” offered by a regionally accredited college or university and approved by the National Association of School Psychologists (NASP) or the American Psychological Association (APA), culminating in an Educational Specialist (Ed.S.) degree or its equivalent or a Doctoral degree in School Psychology; and~~

4.1.1.2 ~~Has successfully completed a supervised internship.~~

4.1.2 ~~NCSP Certificate:~~



~~4.1.2.1 Holds a valid Nationally Certified School Psychologist (NCSP) Certificate from the National Association of School Psychologists (NASP).~~

~~4.1.3 License or certificate from other state-~~

~~4.1.3.1 Holds a valid and current license or certificate from another state in school psychology.~~

4.1 An applicant for a School Psychologist Standard Certificate shall have satisfied the requirements in subsections 4.1.1 through 4.1.3.

4.1.1 The applicant shall have earned one of following:

4.1.1.1 An Educational Specialist (Ed.S.) degree, the equivalent of an Ed.S. degree, or a doctoral degree through a program approved by the National Association of School Psychologists (NASP) at a Regionally Accredited college or university. The equivalent of an Ed.S. degree means a degree earned by completing a specialist-level program of study in school psychology that includes a minimum of three years of full-time study at the graduate level or the equivalent, inclusive of structured field experiences, and at least 60 graduate semester hours or the equivalent, with at least 54 hours exclusive of credit for the supervised specialist-level internship; or

4.1.1.2 A doctoral degree in school psychology through a program approved by the American Psychological Association (APA) at a Regionally Accredited college or university.

4.1.2 The applicant shall have achieved a minimum score of 147 on the Praxis Subject Assessment - School Psychology (ETS Test Code # 5042).

4.1.3 The applicant shall have completed a supervised, culminating, comprehensive field experience of at least 1,200 hours, 600 hours of which must have been completed in an educational setting, in an institution or agency that is approved by the applicant's graduate program or the Department, completed at or near the end of formal training, through which the applicant had the opportunity to integrate and apply professional knowledge and skills acquired in prior courses and practica as well as to acquire new competencies consistent with training program goals.

4.2 Notwithstanding subsection 4.1, the Department may issue a School Psychologist Standard Certificate to an applicant who holds a Nationally Certified School Psychologist (NCSP) certificate from NASP that is in good standing.

## **5.0 Internship Application Requirements**

~~An internship must be in an institution or agency approved by the Department or the applicant's graduate program.~~

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

5.2 For applicants who are applying for the School Psychologist Standard Certificate under subsections 3.1.1 and 4.1, the following documentation is required:

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

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

5.2.1.2 Sealed paper transcripts may be submitted.

5.2.1.3 The Department will not accept copies of transcripts; and

5.2.2 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2;

5.2.3 The Department-approved form verifying the applicant's completion of the requirement in subsection 4.1.3; and

5.2.4 Additional documentation as required by the Department.

5.3 For applicants who are applying for the School Psychologist Standard Certificate under subsections 3.1.1 and 4.2, the following documentation is required:

5.3.1 Documentation that the applicant holds a NCSP certificate from NASP that is in good standing; and

5.3.2 Additional documentation as required by the Department.

5.4 For applicants who are applying for the School Psychologist Standard Certificate under subsection 3.1.2, the following documentation is required:

5.4.1 An official copy of the Valid and Current License or Certificate; and

5.4.2 Additional documentation as required by the Department.

### **6.0 Emergency Certificate Validity of a Standard Certificate**

An Emergency Certificate for a School Psychologist is not available.

6.1 A School Psychologist 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 School Psychologist Standard Certificate is not subject to renewal.

### **7.0 Disciplinary Action**

7.1 An Educator's School Psychologist 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.

7.2 An Educator's School Psychologist 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**

8.1 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 School Psychologist Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a School Psychologist Standard Certificate but whose effectiveness is documented by the local school district or charter school.

8.1.1 For school districts, requests shall be approved by the superintendent of the school district.

8.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

### **9.0 Past Certificate Recognized**

The Department shall recognize a School Psychologist 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 practice as a school psychologist.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 122(3)(o) (16 Del.C. §122(3)(o))  
16 DE Admin. Code 4406

### PUBLIC NOTICE

#### 4406 Home Health Agencies--Aide Only (Licensure)

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)(o), Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Home Health Agencies – Aide Only (Licensure).

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 September 1, 2021. Please identify in the subject line: Regulations Governing Home Health Agencies – Aide Only (Licensure).

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 Home Health Agencies – Aide Only (Licensure).

#### Statutory Authority

16 Del.C. §122(3)(o)

#### Background

As more services are being provided in the home and community setting, it is necessary to ensure home health services are provided in accordance with recognized standards of practice to ensure the delivery of safe and quality home care services.

#### Summary of Proposal

##### *Summary of Proposed Changes*

The Division of Health Care Quality plans to publish the “proposed” amendments to the regulations governing home health agencies – aide only 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 home health agency – aide only. In addition, the amendments provide a level of protection for the patients that seeks services from home health agencies – aide only by ensuring the delivery of safe and adequate care.

In addition, rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving home care services throughout the community. In an effort to prevent or significantly decrease transmission of COVID-19 and other infections, a requirement was added for the home health agency to have a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention and other nationally recognized sources.

#### *Public Notice*

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) gives public notice and provides an open comment period for 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 September 1, 2021.

**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/august2021/proposed/25 DE Reg 137RFA 08-01-21.pdf>

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

[4406 Home Health Agencies--Aide Only \(Licensure\)](#)

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**DIVISION OF HEALTH CARE QUALITY**

Statutory Authority: 16 Delaware Code, Section 122(3)(o) (16 Del.C. §122(3)(o))  
16 DE Admin. Code 4410

**PUBLIC NOTICE****4410 Skilled Home Health Agencies (Licensure)**

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)(o), Delaware Health and Social Services (DHSS)/ Division of Health Care Quality (DHCQ) is proposing regulations governing Skilled Home Health Agencies (Licensure).

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 September 1, 2021. Please identify in the subject line: Regulations Governing Skilled Home Health Agencies (Licensure).

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 Skilled Home Health Agencies (Licensure).

**Statutory Authority**

16 Del.C. §122(3)(o)

**Background**

As more services are being provided in the home and community setting, it is necessary to ensure skilled home health services are provided in accordance with recognized standards of practice.

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

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing skilled home health agencies (licensure) and hold them out for public comment per Delaware law. The purpose of this proposed amendment is to update the requirements to be consistent with nationally recognized standards of practice and clarify the regulatory requirements to ensure patients receive safe and quality care from a skilled home health agency.

Prior to this proposed change, a physician had to establish a written plan of care for each patient receiving skilled home health agency services. This requirement created an extreme hardship for home care providers and the vulnerable patients needing skilled home health services. The proposed amendment will permit allowable providers to order skilled home health services, allow individuals more access to skilled home health services.

Lastly, rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. In an effort to prevent or significantly decrease transmission of COVID-19 and other infections, a requirement was added for the skilled home health agency to have a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention and other nationally recognized sources.

### *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 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 September 1, 2021.

### **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/august2021/proposed/25 DE Reg 138RFA 08-01-21.pdf>

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

[4410 Skilled Home Health Agencies \(Licensure\)](#)

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## **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

### **PUBLIC NOTICE**

#### **Adult Dental**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 Del. C. § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Alternative Benefit Plan (ABP) regarding Dental Services, specifically, to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid.

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 August 31, 2021. Please identify in the subject line: Dental Services.

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 the Alternative Benefit Plan (ABP) regarding Dental Services, specifically, to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid.

**Statutory Authority**

- 42 CFR 440.100, Dental Services
- Section 1937 of the Social Security Act, State Flexibility in Benefit Packages

**Background**

Senate Substitute No. 1 for Senate Bill No. 92 was signed by the Governor of Delaware on August 6, 2019 and provided dental services for adult Medicaid Recipients. The effective date of the Act was April 1, 2020. The adult dental benefit offers basic dental services to eligible adults 21 and over. The Centers for Medicare and Medicaid Services approved Delaware State Plan Amendment (SPA) 20-0001 which amends Title XIX Medicaid State Plan to add adult dental services with an effective date of October 1, 2020.

Under section 1937 of the Social Security Act, states have the flexibility to design an ABP entirely based on commercial market benefits or the state's approved Medicaid state plan, or a combination of both. When a state designs its ABP benefit package to be the same benefits or richer benefits than the state's approved Medicaid state plan, the state has achieved alignment between the ABP benefit package and the state's approved underlying Medicaid state plan. To date, most states have chosen the path of aligning their ABP benefit package fully or in part with the state's approved Medicaid state plan. ABPs must be kept in full or partial alignment with the state's approved underlying state plan on an ongoing basis.

**Summary of Proposal***Purpose*

The purpose of this proposed regulation is to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid.

*Summary of Proposed Changes*

Effective for services provided on and after October 11, 2021 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Alternative Benefit Plan (ABP) regarding Dental Services, specifically, to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid.

Early and Periodic Screening, Diagnosis and Treatment Program (EPSOT) Assurance (42 CFR 440.345).

The State assures that there will be full access to EPSDT services (42 CFR 440.345) for individuals under 21 years of age through the adoption of a benchmark plan which will mirror the State's current Medicaid State Plan benefits, including the provision of the EPSDT benefit. EPSDT services include all medically necessary, federally allowed services for individuals under age 21 regardless of their avenue of Medicaid eligibility. As such, newly eligible adults under age 21 will automatically be covered for EPSDT services. These services are covered both as fee-for-service benefits and through the State's Managed Care delivery system. EPSDT services are described in the managed care organization (MCO) member handbooks. The State's Diamond State Health Plan 1115 Demonstration Waiver and MCO contracts require coverage of EPSDT medical services. Children's dental services are covered as FFS. The State will alert providers about the continuity of EPSDT services for qualifying newly eligible individuals through its periodic provider alerts and newsletters.

*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 440.386 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives public notice and provides an open comment period for 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 August 31, 2021.

## *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**

There is no anticipated fiscal impact.

**\*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/august2021/proposed/25 DE Reg 139RFA 08-01-21.pdf>

**\*Please Note: Due to the formatting requirements of ABP5 of the regulation, it is being attached here as a PDF document:**

<http://regulations.delaware.gov/register/august2021/proposed/ABP5 Dental MARKED UP.pdf>

**\*Please Note: Due to the size and formatting of the Alternative Benefit Plan, it is being attached here as a series of PDF documents:**

<http://regulations.delaware.gov/register/august2021/proposed/ABP1 Dental.pdf>  
<http://regulations.delaware.gov/register/august2021/proposed/ABP2a Dental.pdf>  
<http://regulations.delaware.gov/register/august2021/proposed/ABP3 Dental.pdf>  
<http://regulations.delaware.gov/register/august2021/proposed/ABP4 Dental.pdf>  
<http://regulations.delaware.gov/register/august2021/proposed/ABP5 Dental.pdf>  
<http://regulations.delaware.gov/register/august2021/proposed/ABP7 Dental.pdf>  
<http://regulations.delaware.gov/register/august2021/proposed/ABP8 Dental.pdf>  
<http://regulations.delaware.gov/register/august2021/proposed/ABP10 Dental.pdf>  
<http://regulations.delaware.gov/register/august2021/proposed/ABP11 Dental.pdf>

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## **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

### **PUBLIC NOTICE**

### **AMBULATORY SURGICAL CENTER SERVICES**

### **Title XIX Medicaid State Plan - Ambulatory Surgical Center Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 Del. C. § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services, specifically, to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services.

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 August 31, 2021. Please identify in the subject line: Ambulatory Surgical Center Services.

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 Ambulatory Surgical Center Services, specifically, to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services.

#### **Statutory Authority**

42 CFR 416

#### **Background**

Centers for Medicare and Medicaid Services (CMS) defines an Ambulatory Surgical Center (ASC) as "any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission. An ASC satisfies the criterion of being a 'distinct' entity when it is wholly separate and clearly distinguishable from any other health care facility or office-based physician practice.

#### **Summary of Proposal**

##### *Purpose*

The purpose of this proposed regulation is to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services.

##### *Summary of Proposed Changes*

Effective for services provided on and after October 11, 2021 DHSS/DMMA proposes to amend section Attachment 4.19-B Page 17 of Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services, specifically, *to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services.*

##### *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 440.386 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives public notice and provides an open comment period for 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 August 31, 2021.

##### *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

There is not anticipated fiscal impact.

**\*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/august2021/proposed/25 DE Reg 141RFA 08-01-21.pdf>

Attachment 4.19-B  
Page 17

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

REIMBURSEMENT FOR FREE STANDING SURGICAL CENTER /  
AMBULATORY SURGICAL CENTER SERVICES

Delaware Medicaid uses the reimbursement methodology and formulae of the Medicare program, as described in Section 5243 of the Medicare Carriers Manual, in determining per diem rates for payment of Free Standing Surgical Centers (FSSCs) | Ambulatory Surgical Centers (~~ACS~~ ASCs). Effective April 1, 2009, Delaware Medicaid reimburses 95 percent of the Medicare calculated ASC rates for Delaware.

Effective October 1, 2021 an ambulatory surgical center being used for patient dental services will be reimbursed by Medicaid for such services at 50 percent of the current Medicare Outpatient Prospective Payment System (OPPS) rate for procedure codes specified by the State for these dental services.

Except as otherwise noted in the plan, State developed rates are the same for both government and private providers. The fee schedule of ASC rates is available on the DMAP website at the following address: <http://www.dmap.state.de.us/downloads>.

This amendment adds the reimbursement methodology for an ambulatory surgical center being used to provide dental services.

TN No. SPA#	Approval Date
Supersedes	
TN No. SP# <u>09-002</u>	Effective Date

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# PROPOSED REGULATIONS

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 3000

### PUBLIC NOTICE

#### **DELAWARE'S TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) 3000 Temporary Assistance for Needy Families (TANF) - Definition 3000.1 Funding**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 Del. C. § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend Delaware's Temporary Assistance for Needy Families (TANF), specifically, to provide clear and accurate information on the TANF program.

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, Division of Social Services (DSS), 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 August 31, 2021. Please identify in the subject line: Defining and Funding Delaware's Temporary Assistance for Needy Families (TANF).

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 Social Services (DSS) is proposing to amend Delaware's Temporary Assistance for Needy Families (TANF), specifically, to provide clear and accurate information on the TANF program.

#### **Statutory Authority**

45 CFR §260.20;  
45 CFR §201, §261, §263, §264, §265, §270, §283

#### **Background**

DSSM 3000 Defining Delaware's Temporary Assistance for Needy Families (TANF) Program explains the federal purposes, state objectives, and the responsibilities of the state and recipients for the TANF program.

DSSM 3000.1 Funding the TANF Program explains funding provisions for the TANF Block Grant, including the funding amount, contingency funding, administrative spending, and penalties.

#### **Summary of Proposal**

##### *Purpose*

The purpose of DSSM 3000 Defining Delaware's Temporary Assistance for Needy Families (TANF) Program is to add the federal purposes of the program, revise the state's objectives, and update the formatting. And DSS amended DSSM 3000.1 Funding the TANF Program to remove or replace outdated text, add all TANF funding penalties, and update the formatting.

##### *Summary of Proposed Changes*

Effective for services provided on and after October 11, 2021 Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) proposes to amend Division of Social Service Manual (DSSM) regarding Delaware's Temporary Assistance for Needy Families (TANF), specifically, to provide clear and accurate information on the TANF program.

## Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DSS gives public notice and provides an open comment period for 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 August 31, 2021.

## Fiscal Impact

DSS amended these regulations to provide clear and accurate information on the TANF program. These regulations are currently in place and there are no new financial responsibilities associated with the amendments.

**\*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/august2021/proposed/25 DE Reg 144RFA 08-01-21.pdf>

## POLICY – AMENDMENT

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

### 3000 Defining Delaware's Temporary Assistance for Needy Families (TANF) –Definition Program

#### Statutory Authority

#### 45 CFR §260.20

~~TANF is a cash assistance program for minor children who are needy as determined by Division standards and who are:~~

~~Living in the home of a parent, guardian, custodian, or specified relative.~~

~~Purpose of Delaware's Welfare Reform Plan, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES~~

~~TEMPORARY ASSISTANCE FOR NEEDY FAMILIES is Delaware's plan to transform its welfare system. The State and the family have mutual responsibilities. The State will create positive incentives for the family to become self-sufficient. The family must accept responsibility to become self-sufficient and self-supporting. There are five key principles that form the plan's foundation. They are:~~

- ~~1. WORK SHOULD PAY MORE THAN WELFARE;~~
- ~~2. WELFARE RECIPIENTS MUST EXERCISE PERSONAL RESPONSIBILITY IN EXCHANGE FOR BENEFITS;~~
- ~~3. WELFARE SHOULD BE TRANSITIONAL, NOT A WAY OF LIFE;~~
- ~~4. BOTH PARENTS ARE RESPONSIBLE FOR SUPPORTING THEIR CHILDREN; and~~
- ~~5. THE FORMATION AND MAINTENANCE OF TWO PARENT FAMILIES SHOULD BE ENCOURAGED, AND TEENAGE PREGNANCY AND UNWED MOTHERHOOD SHOULD BE DISCOURAGED.~~

~~The purpose of the following policies is to outline the manner in which the Division of Social Services intends to carry out this vision of its welfare reform plan.~~

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) modified the Social Security Act and established the TANF program. TANF is a federally funded cash assistance program designed to assist low-income families with minor children in the home.

1. States receive block grants to design and operate programs that accomplish the federal purposes of TANF.

A. The four federal purposes of TANF are to:

- i. Provide assistance to needy families so that children can be cared for in their own homes or in the homes of relatives;

# PROPOSED REGULATIONS

- ii. End the dependence of needy parents by promoting job preparation, work, and marriage;
  - iii. Prevent and reduce the incidence of out-of-wedlock pregnancies; and
  - iv. Encourage the formation and maintenance of two-parent families.
2. Delaware's TANF program is operated by the Division of Social Services (DSS) and provides cash assistance for minor children who are:
- Needy as determined by DSS standards; and
  - Living in the home of a parent, guardian, custodian, or specified relative.
- A. The key objectives of Delaware's TANF Program are to:
- i. Provide access to opportunities and services that support the capacity to earn a living wage.
  - ii. Reduce barriers to increase the possibility for long term self-sufficiency.
  - iii. Promote the stabilization of all families.
- B. The State and the family have mutual responsibilities.
- i. The State will provide cash assistance, case management, supportive services, and employment and training services to increase the family's opportunity for self-sufficiency.
  - ii. The family must comply with required TANF components and may participate in programs that focus on their individualized needs in order to accomplish their personal goals.
- C. DSS creates programs for TANF eligible families and non-custodial parents of TANF minors based on the four federal TANF purposes and the key objectives of Delaware's TANF program. These programs are outlined in Delaware's TANF State Plan.

## POLICY – AMENDMENT

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

### 3000.1 Funding the TANF Program

#### Statutory Authority

45 CFR §201, §261, §263, §264, §265, §270, §283

The Temporary Assistance ~~For~~ for Needy Families (TANF) program is a capped Federal Block Grant made available to the states to provide cash assistance to needy families with minor children.

1. The amount of TANF funds available to each state is determined by a formula which ~~takes into account~~ considers the amount each state expended for needy families in the years just prior to the enactment of ~~this legislation.~~ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).  
~~States may also receive additional funding as a bonus. States can receive the funding bonus: for a reduction in out-of-wedlock births; and for being a high performing state.~~

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2. ~~States may also qualify for contingency funding. Contingency funds are similar to crisis funds.~~ States may qualify for contingency funds if the state exhibits low economic conditions in one of two ways:
- ~~a~~ A state has an unemployment rate of at least 6.5% and the average rate is at least 10% higher than the same quarter in either of the two preceding ~~years.~~ years; or
  - ~~the~~ The number of ~~food-stamp~~ Food Supplement Program recipients from the three most recent months for which data is available is 10% greater than the monthly average number of individuals that participated in the ~~food-stamp program~~ Food Supplement Program in FY 1994 or 1995 (whichever is lower) in the same ~~three-month~~ three-month period.
- A. States may be required to return a portion of their contingency funds based on total state spending during the year.
3. States must limit the amount ~~it can spend~~ spent on administrative costs to no more than 15% of the total of ~~its~~ the state's grant.
4. States may also be penalized, ~~meaning their~~ and the state's grant may be reduced. ~~A state may suffer a penalty for any one of the following reasons for failing to:~~
- ~~using~~ Use TANF funds in violation of the law governing the use of funds as required by federal law;
  - ~~failing to submit~~ Submit required TANF data collection reports;
  - ~~failing to satisfy~~ Satisfy TANF work participation requirements;
  - ~~failing to comply~~ Comply with basic TANF maintenance of effort requirements;
  - ~~failing to comply~~ Comply with the ~~five-year~~ TANF five-year limit on assistance; ~~and~~
  - ~~failing to maintain~~ Maintain TANF assistance to an adult single custodial parent who cannot obtain child care for a child under the age of ~~6.~~ six;
  - Penalize TANF recipients for child support non-cooperation;
  - Penalize TANF recipients who refuse to engage in work;
  - Use the Income Eligibility and Verification System (IEVS); or
  - Replace a penalty reduction with state funds.

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Sections 103 and 512 (31 **Del.C.** §§103 & 512)  
16 **DE Admin. Code** 11002

### PUBLIC NOTICE

#### CHILD CARE ADMINISTRATION AND INTEGRITY

**DSSM 11002.5 Responsibility For The Administration Of Delaware's Child Care Subsidy Program**  
**DSSM 11002.5.1 Responsibility for Direct Administration of Delaware's Child Care Subsidy Program**  
**DSSM 11002.10 Establishing Program Integrity in Child Care**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

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, Division of Social Services (DSS), 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 August 31, 2021. Please identify in the subject line: Child Care Administration and Integrity.

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

#### **Statutory Authority**

45 CFR 98.68  
31 *Del C.* §103

#### **Background**

DSS is amending DSSM 11002.5 to provide a comprehensive list of the responsibilities for the Child Care Subsidy Program held by DHSS, DSS, and units within DSS. DSSM 11002.5.1 is being repealed as the policy is redundant, and the responsibilities of DSS are being added to DSSM 11002.5. DSSM 11002.5 now includes all units within DSS that manage components of the Child Care Subsidy Program.

DSS is adding DSSM 11002.10 to the Child Care administration policies to outline how DSS is ensuring integrity in the Child Care Subsidy Program. DSS supports program integrity by collaborating with other state agencies, verifying eligibility and payments, monitoring providers, maintaining quality assurance standards, training staff, and educating families on their rights and responsibilities as recipients of child care subsidies.

#### **Summary of Proposal**

##### *Purpose*

The purpose of this proposed regulation is to amend DSSM 11002.5 to explain the responsibilities of the Department of Health and Social Services (DHSS), the Division of Social Services (DSS), and units within DSS for the administration of Delaware's Child Care Subsidy Program. And to amend DSSM 11002.10 to institute guidelines to ensure integrity and accountability in Delaware's Child Care Subsidy Program.

##### *Summary of Proposed Changes*

Effective for services provided on and after October 11, 2021 Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) proposes to amend Division of Social Service Manual (DSSM) regarding the Child Care Subsidy Program.

##### *Public Notice*

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/ DSS gives public notice and provides an open comment period for 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 August 31, 2021.

#### **Fiscal Impact**

DSS is amending the regulations to provide information on the administration of the Child Care Subsidy Program. These policies outline the administrative practices of DHSS and DSS and do not have any new fiscal requirements.

**\*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/august2021/proposed/25 DE Reg 147RFA 08-01-21.pdf>

## POLICY AMENDMENT

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

### ~~11002.5 Responsibility For The Administration Of~~ **Administering** Delaware's Child Care Subsidy Program

~~The Department of Health and Social Services (DHSS) is the agency designated by the State as responsible for Delaware's Child Care Subsidy Program. These child care services are established under the auspices of Title IV-A and Title XX of the Social Security Act, Public Law 101-508 of the Omnibus Budget Reconciliation Act of 1990, and Title 31 of the Delaware Code. Within DHSS, DSS assumes day-to-day responsibility for the administration of child care. This responsibility includes, but is not limited to:~~

- ~~A. developing child care policies and procedures;~~
- ~~B. determining eligible families;~~
- ~~C. setting fiscal policies, including establishing reimbursement rates, creating a parent fee scale, and determining eligibility income limits;~~
- ~~D. collecting, analyzing, and maintaining statistical data on clients who receive services;~~
- ~~E. establishing contracts with child care providers and other interested agencies to carry out the purpose and goals of Delaware's Child Care Subsidy Program; and~~
- ~~F. coordinating with other public and private agencies to ensure and improve the availability and quality of child care.~~

#### Statutory Authority

31 Del.C. §103

This policy explains the direct responsibility within the Department of Health and Social Services for Delaware's Child Care Subsidy Program.

1. Delaware's Child Care Subsidy Program is established under:
  - Title IV-A and Title XX of the Social Security Act;
  - Public Law 101-508 of the Omnibus Budget Reconciliation Act of 1990;
  - Child Care and Development Block Grant (CCDBG) Act of 2014; and
  - Title 31 of the Delaware Code.
2. The Department of Health and Social Services (DHSS) is the agency designated by the State of Delaware as responsible for Delaware's Child Care Subsidy Program.
3. The Division of Social Services (DSS) is the agency within DHSS that assumes day-to-day responsibility for the administration of Delaware's Child Care Subsidy Program.
  - A. The DSS Policy and Program Development Unit assumes primary responsibility for:
    - i. Developing and implementing child care regulations found at 16 DE Admin. Code 11000.
    - ii. Managing the Child Care and Development Block Grant (CCDBG) and the Child

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## PROPOSED REGULATIONS

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- Care and Development Fund (CCDF).
- iii. Managing the Social Services Block Grant (SSBG).
  - iv. Collaborating with external stakeholders to develop and revise Delaware's CCDF State Plan.
  - v. Collaborating and receiving technical assistance from federal partners to ensure compliance with the requirements of the CCDBG Act.
- B. The DSS Purchase of Care Unit assumes primary responsibility for:
- i. Managing Delaware's Child Care Subsidy Program.
  - ii. Referring children to Head Start and other child care facilities for service.
  - iii. Coordinating services and supports for Head Start eligible children.
  - iv. Providing information to families and the public on the availability of subsidized funding for persons in need of child care.
  - v. Establishing contracts with child care providers and other interested agencies to carry out the purpose and goals of Delaware's Child Care Subsidy Program.
  - vi. Monitoring child care providers to ensure providers are adhering to the terms of their Purchase of Care contracts.
  - vii. Determining eligibility for the Relative Child Care Program.
  - viii. Establishing provider reimbursement rates, creating a parent fee scale, and determining income eligibility limits.
  - ix. Collecting, analyzing, and maintaining statistical data on clients who receive services.
  - x. Coordinating with public and private agencies to ensure and improve the availability and quality of child care.
- C. The DSS Operations Unit assumes primary responsibility for:
- i. Following federal and state policies and procedures for determining and processing technical and financial eligibility for the Child Care Subsidy Program.
  - ii. Explaining the Child Care Subsidy Program rights and responsibilities to parents and caretakers applying for assistance.
  - iii. Attending child care trainings provided by DSS.
- D. The DSS Information Systems Unit assumes primary responsibility for:
- i. Developing and maintaining the eligibility system design to support child care policy.
  - ii. Developing and maintaining the Purchase of Care system to support child care provider data.
  - iii. Developing and maintaining the Provider Self Service system to support child care providers in receiving and reporting attendance data.
  - iv. Maintaining client and provider data for administrative reports to meet federal reporting guidelines.
- E. The DSS Fiscal Unit assumes primary responsibility for:
- i. Managing federal and state child care funds.
  - ii. Ensuring funds are available for child care provider payments.
  - iii. Processing Purchase of Care contracts and paying vendor invoices.
  - iv. Transferring CCDF quality funds to the Delaware Department of Education and tracking the spending of CCDF quality funds.



- v. Managing the time and effort of all staff that perform CCDF work and are paid through CCDF, including staff at DSS, the Delaware Department of Education, and the Department of Services for Children, Youth and Their Families.
  - vi. Reporting SSBG funding usage.
  - vii. Completing federal and state child care reports.
- F. The DSS Staff Development Unit assumes primary responsibility for:
- i. Designing, developing, and updating trainings and training materials for the Child Care Subsidy Program.
  - ii. Administering training sessions to DSS staff that cover current child care policies, procedures, and program requirements.
- G. The DSS Fair Hearing Unit assumes primary responsibility for:
- i. Providing child care applicants and recipients with written information about their right to a fair hearing.
  - ii. Reviewing and processing fair hearing requests.
  - iii. Arranging the date, time, and location of fair hearings and sending written notification of the hearing to all parties.
  - iv. Providing a written decision by the Hearing Officer to the appellant within 90 days from the date the appeal was filed.

## POLICY AMENDMENT

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

### ~~41002.5.1 Responsibility for Direct Administration of Delaware's Child Care Subsidy Program~~

~~Within DSS, direct responsibility for Delaware's Child Care Subsidy Program rests with the Policy and Program Development Unit, DCIS, and the Employment and Training Unit.~~

~~The Policy and Program Development Unit assumes primary responsibility for integrating all child care grants into one uniform child care program. This integration includes the development of common policies and practices to ensure continuity of services for all families participating in Delaware's Child Care Subsidy Program.~~

~~DCIS through the CCMIS assumes primary responsibility for the development and maintenance of systems designed to support the information needs of both field and administrative personnel. DCIS does this through the recording of client and child care provider data. In addition, the CCMIS provides administration with needed case management and administrative reports for management decision making and to meet federal reporting requirements.~~

~~The Employment and Training Unit assumes responsibility for the day-to-day operation of Delaware's Child Care Subsidy Program. These responsibilities include:~~

- ~~A. referring children to Head Start and other profit/non-profit facilities for service;~~
- ~~B. coordinating wrap-around services for Head Start eligible children;~~
- ~~C. coordinating with Delaware Early Childhood Center and others to screen and evaluate disability services;~~
- ~~D. coordinating with local school districts for before and after school care for children eligible for services;~~

- ~~E. providing information to families and others on the availability of subsidized funding for persons in need of child care,~~
- ~~F. soliciting and contracting with child care providers,~~
- ~~G. monitoring child care providers,~~
- ~~H. developing strategies for improving the availability and quality of child care services, and~~
- ~~I. determining eligibility.~~

**POLICY AMENDMENT**

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

**11002.10      Establishing Program Integrity in Child Care**

Statutory Authority  
45 CFR 98.68

This policy establishes guidelines to ensure integrity and accountability in Delaware's Child Care Subsidy Program.

1. DSS will support child care program integrity by:
  - A. Collaborating and sharing data with other agencies;
  - B. Verifying eligibility for families;
  - C. Verifying attendance standards for children served;
  - D. Monitoring providers; and
  - E. Reviewing quality assurance.
2. DSS will provide training to eligibility staff in an effort to reduce and prevent administrative and improper payment errors.
3. DSS will cooperate with other agencies to share information when appropriate and allowable by federal and state laws to reduce, detect, and prevent improper payments and fraud.
4. DSS will educate families receiving child care subsidy on program rules including reporting requirements for household changes.

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Sections 103 and 512 (31 Del.C. §§103 & 512)  
16 DE Admin. Code 11006

### PUBLIC NOTICE

#### ADJUSTING CHILD CARE PAYMENTS AND AUTHORIZATIONS

**DSSM 11006.4.8 Completing Correct Transactions**

**DSSM 11006.4.9 Completing Manual Adjustments**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 Del. C. § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

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, Division of Social Services (DSS), 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 August 31, 2021. Please identify in the subject line: Adjusting Child Care Payments and Authorizations.

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

#### Statutory Authority

45 CFR 98.45 (l)(6)

#### Background

DSSM 11006.4.8 Completing Correct Transactions explains the process that DSS staff must complete to correct a child care provider payment when a processing error occurs or there is a change in care or family circumstances reported or discovered during an authorized month.

DSSM 11006.4.9 Completing Manual Adjustments explains the process that DSS staff must complete to correct a child care authorization when a processing error occurs.

#### Summary of Proposal

##### *Purpose*

The purpose of this proposed regulation is to provide instructions for DSS staff on completing adjustments to provider payments and child care authorizations.

##### *Summary of Proposed Changes*

Effective for services provided on and after October 11, 2021 Delaware Health and Social Services (DHSS)/ Division of Social Services (DSS) proposes to amend Division of Social Service Manual (DSSM) regarding the Child Care Subsidy Program.

##### *Public Notice*

In accordance with the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/ DSS gives public notice and provides an open comment period for 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 August 31, 2021.

**Fiscal Impact**

DSS is adding the regulations to provide clear and accurate directions on completing adjustments to provider payments and child care authorizations. These procedures are currently in place and there are no new financial responsibilities associated with the regulations.

**\*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/august2021/proposed/25 DE Reg 153RFA 08-01-21.pdf>

**POLICY AMENDMENT**

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

**11006.4.8 Completing Correct Transactions**

Statutory authority

45 CFR 98.45 (l)(6)

DSS staff will complete a correct transaction to adjust a child care provider payment.

1. A correct transaction is entered into the DSS eligibility system to correct provider payment errors that occurred because of:
  - A. A DSS processing error; or
  - B. A change in care or family circumstances reported or discovered during an authorized month, such as:
    - i. An increase in the level of care;
    - ii. An increase in the number of days needed for care;
    - iii. A change in paid absent days;
    - iv. A change in family size; or
    - v. A change in family income.
2. DSS staff will complete a correct transaction to adjust a provider payment when:
  - A. A child care provider reports an authorization or payment discrepancy within 60 days of the date of the applicable payment and DSS confirms the payment error; or
  - B. DSS determines that a payment discrepancy occurred due to a processing error or a change in care or family circumstances.
3. DSS staff may complete a correct transaction once the provider has been paid for the month in which the correct transaction is being requested.
4. The DSS eligibility system will automatically issue the difference in payment to the provider once the correct transaction has been entered.

## POLICY AMENDMENT

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

### **11006.4.9      Completing Manual Adjustments**

Statutory Authority  
45 CFR 98.45 (l)(6)

DSS staff will complete a manual adjustment to request a change to a child care authorization.

1. DSS staff will complete Form 634 "Child Care Manual Adjustment Form" to correct authorization errors that occurred because of:
  - Overlapping eligibility;
  - Prior confirmation;
  - An incorrect start date; or
  - An incorrect payment rate.
  - A. DSS staff will complete Form 634 when:
    - i. A child care provider reports an authorization or payment discrepancy within 60 days of the date of the applicable payment and DSS confirms the authorization error; or
    - ii. DSS determines that an authorization discrepancy occurred due to a processing error.
  - B. DSS staff who prepare Form 634 must:
    - i. Have their supervisor sign and approve the form;
    - ii. Enter a case comment in the eligibility system detailing the reason for the manual adjustment; and
    - iii. Submit the completed form to a DSS child care monitor.
2. Upon receiving Form 634, the child care monitor will:
  - Notify the provider of the adjustment;
  - Request a summary attendance report from the provider; and
  - Submit the required manual adjustment documents to the Purchase of Care (POC) administrator.
  - A. The child care monitor must submit the following documents to the POC administrator for manual adjustments:
    - i. Form 634 "Child Care Manual Adjustment Form";
    - ii. The DSS manual adjustment worksheet;
    - iii. A copy of the case comment from the eligibility system that details the reason for the manual adjustment;
    - iv. A copy of the child care authorization from the eligibility system;
    - v. The provider's summary attendance report or a copy of the attendance report from the eligibility system; and
    - vi. The self-arranged payment report (for self-arranged care authorizations only).

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# PROPOSED REGULATIONS

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3. A POC administrator will review the documents submitted by the child care monitor and enter approved manual adjustments into the DSS POC system.
  4. The DSS eligibility system will automatically issue the difference in payment to the provider once the manual adjustment has been entered.
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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 2312 (18 Del.C. §§311 & 2312)  
18 DE Admin. Code 902

### PUBLIC NOTICE

#### 902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]

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

Third re-proposal of amendments to Regulation 902 - Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26].

##### B. Synopsis of Subject Matter of the Regulation and Proposed Amendments

In the May 1, 2020 edition of the *Register of Regulations*, the Department published a proposal to update and clarify requirements concerning prohibited unfair claim settlement practices that are set forth in Regulation 902 (see 23 DE Reg. 920 (05/01/2020)). In that proposal, the Department proposed adding new subsection 3.1.14, which included a failure to promptly settle a claim as required under Regulation 903 as an unfair claim settlement practice. The Department also took the opportunity of the proposal to make grammatical and formatting edits throughout the regulation. Upon further review, the Department determined not to proceed with proposed new subsection 3.1.14 and withdrew that proposal, as violations of Regulation 903 are already a defined unfair claims settlement practice.

Instead, the Department proposed to add new subsection 3.2 to Regulation 902, which would have specifically provided that three instances of an insurer's commission of a prohibited claim settlement practice within a 36-month period, as listed in subsection 1.2.1 (to be recodified at subsection 3.1), shall give rise to a rebuttable presumption that the insurer is in violation of this regulation and 18 Del. C. §2304(16)f. This first re-proposal was published in the June 1, 2020 edition of the *Register of Regulations* (see 23 DE Reg. 997 (06/01/2020)). The Department again took the opportunity of the re-proposal to make grammatical and formatting edits throughout the regulation.

In response to comments from the regulated community that are summarized in the second re-proposal, the Department determined to revise proposed new subsection 3.2 by raising the frequency of instances of commission of a prohibited claim settlement practice from three instances within a 36-month period to four percent of claims sampled.

This second re-proposal was published in the October 1, 2020 edition of the *Register of Regulations* (see 24 DE Reg. 330 (10/01/20)). The Department again took the opportunity of the re-proposal to make grammatical and formatting edits throughout the regulation.

##### C. Summary of Comments Received on the Department's Second Re-proposal

All of the comments received on the second re-proposal came from members of the regulated community and their representatives. Some commenters appreciated the Department's clarification that the presumption is rebuttable. However, all commenters remained concerned about the amount of the threshold, the size of the sample population, and whether the threshold is applied on a per practice or practices basis. One commenter opined that the proposed amendments are arbitrary and exceed the Department's regulatory authority, and many reiterated the concern that the 4 percent threshold deviates from the 7-10 percent incident tolerance recommended in the National Association of Insurance Commissioners Market Conduct Examiners Handbook (not more than 7%

when identifying a business practice for claims and 10% for other trade practices).

One commenter opined that the plural "unfair claims settlement practices" could be misinterpreted to "knit together" disparate acts to meet the threshold, suggesting that the Department limit the application of the threshold to a single behavior. Similarly, another commenter opined that if an exception rate is adopted, it should be tied to a specific prohibited practice rather than overall compliance so that a general business practice is not established cumulatively based on more than one prohibited practice from different sections of the Code.

Another commenter correctly pointed out that proposed new subsection 3.2 is not intended to create a separate violation in and of itself because such an expansion is expressly prohibited by 18 *Del. C.* § 2312, and requested that the Department add clarifying language to that effect.

Commenters also pointed out that since the proposed language would create a prima facie determination of a general business practice that insurers would be able to rebut, a clarification is necessary to limit the findings to enforcement by the Commissioner, as opposed to creating a cause of action for any person or entity other than the Commissioner. The requested limitation would mimic a similar limitation codified in Regulation 903.

One commenter pointed out that the presumption should apply to all of 18 **Del. C.** § 2304(16), not just to 18 **Del. C.** § 2304(16)(f).

A representative of health insurance carriers raised a conflict between Regulation 1310 - Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services, which was adopted by the Commissioner pursuant to 18 **Del. C.** § 2304(16) and the new thresholds proposed at Regulation 902-3.2. The commenter pointed out that Regulation 1310 deems three instances of non-compliance with prompt pay guidelines within a 36 month time period to give rise to a rebuttable presumption of an unfair practice in violation of 18 **Del. C.** § 2304, which applies only to health plans, and which conflicts with the 4 percent of claims sampled as proposed in Regulation 902 and applies to all carriers.

#### **D. Summary of Department's Third Re-proposal**

In response to the comments received, the Department has determined to revise proposed new subparagraph 3.2 to clarify that:

- The four percent of claims found to be a violative general business practice must fall within the same category of prohibited practices as listed in subsection 3.1 of the regulation;
- The violative general business practice must also fall within the same 12-month period;
- The presumption applies under all of 18 **Del. C.** §2304(16); and
- The presumption does not apply to health care claims to which Regulation 1310 applies.

The Department also proposes to add new subsection 3.3 to clarify that the presumption that a general business practice violation occurred does not, in and of itself, create an additional and separate general business practice violation.

The Department also proposes to add new subsection 3.4 to set forth a procedure that an insurer may follow to rebut the presumption that a violative general business practice has occurred. This proposed new subsection is modeled after a similar provision in the Code of Maryland Regulations at COMAR 31.15.07.09.

The Department proposes to add new subsection 3.5 that limits the cause of action afforded under the regulation to enforcement actions conducted by the Commissioner. Proposed new subsection 3.6 excepts from regulation under Section 3.0 those health care general business practice violations that are otherwise regulated by 18 **DE Admin. Code** 1310.

The Delaware Code authority for the regulation and the proposed amendments is 18 **Del.C.** §§311 and 2312.

#### **E. Notice and Public Comment for the Third Re-Proposal**

The Department will hold a virtual public hearing and a simultaneous in-person meeting on the proposed amendments to Regulation 902 on Monday, **August 23, 2021 at 9:00 a.m.** The hearing will be facilitated through WebEx at:

- <https://stateofdelaware.webex.com/stateofdelaware/j.php?MTID=ma230bbdd684b998a7ecfdaf84f2148f9>
- meeting number (access code): 1790 36 2461 and
- meeting password: zePHXmp9q79.

Holding a virtual public meeting was specifically permitted by Paragraph 5 of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat issued by Governor John Carney on March 12, 2020 and extended monthly thereafter (see <https://governor.delaware.gov/health-soe/> for the complete list of

modifications and extensions). With the anticipated expiration of the State of Emergency, the Legislature passed SB 94 w/ SA 1, which allows any public body to hold a virtual meeting if there is a physical anchor location where the public can attend the meeting in person and the virtual meeting conforms to all requirements under the Freedom of Information Act (FOIA).

The proposed amendments appear below and may also be viewed on 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 7th day of September 2021. Any such requests and any questions concerning connecting to the public hearing should be directed to:

Regulatory Specialist  
 Delaware Department of Insurance  
 ATTN: Docket 4259-2020  
 1351 West North Street, Suite 101  
 Dover, DE 19904  
 (302) 674-7379  
 Email: [DOI\\_Legal@delaware.gov](mailto:DOI_Legal@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/august2021/proposed/25 DE Reg 156RFA 08-01-21.pdf>

## 902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]

~~Claim Settlement Practices Which, When Committed Or Performed with Such Frequency as to Indicate a General Business Practice, Are Prohibited~~

### 1.0 Purpose

~~The purpose of this regulation is to set forth unfair claim settlement practices which, when committed or performed with such frequency as to indicate a general business practice, are prohibited.~~

### 2.0 Authority

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

### ~~4.0 Authority for Regulation; Basis for Regulation~~ 3.0 Prohibited Unfair Claims Settlement Practices

~~4.1 18 Del.C. §314 authorizes the Insurance Commissioner to "...make reasonable rules and regulations necessary for or as an aid to the administration or effectuation of any provision of this title."~~

~~4.2 18 Del.C. Ch. 23 entitled "Unfair Business Practices in the Insurance Business," 18 Del.C. §2304(16) Unfair Claim Settlement Practices; 18 Del.C. §2304(17) Failure to Maintain Complaint Handling Procedures; and 18 Del.C. §2304(18) Misrepresentation in Insurance Applications, provide the basis for this regulation.~~

~~4.2.13.1 The Following Claim Settlement Practices When Committed following unfair claim settlement practices when committed or Performed performed with such Frequency frequency as to Indicate indicate a General Practice general business practice are Prohibited prohibited:~~

~~4.2.13.1.1 Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue.~~



- 4.2.1.23.1.2 Failing to acknowledge and respond within 15 working days, upon receipt by the insurer, to communications with respect to claims by insureds arising under insurance policies.
- 4.2.1.33.1.3 Failing to implement prompt investigation of claims arising under insurance policies within 10 working days upon receipt of the notice of loss by the insurer.
- 4.2.1.43.1.4 Refusing to pay claims without conducting an investigation based upon all available information when the notice of loss received by the insurer indicates that such an investigation is necessary to properly determine such a denial of payment.
- 4.2.1.53.1.5 Failing to affirm or deny coverage or a claim or advise the person presenting the claim, in writing, or other proper legal manner, of the reason for the inability to do so, within 30 days after proof of loss statements have been received by the insurer.
- 4.2.1.63.1.6 Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims in which liability has become clear.
- 4.2.1.73.1.7 Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts which they might be entitled to under normal fair claims evaluations.
- 4.2.1.83.1.8 Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.
- 4.2.1.93.1.9 Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge of the insured.
- 4.2.1.103.1.10 Making claims payments to insured or beneficiaries not accompanied by a statement setting forth the coverage under which the payment has been made.
- 4.2.1.113.1.11 Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of a formal proof of loss form, both of which submissions contain substantially the same information, unless the formal proof of loss is required by law, prevailing rules, or the policy.
- 4.2.1.123.1.12 Failing to promptly settle claims, where liability has become clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.
- 4.2.1.133.1.13 Failing when requested to promptly provide an explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the offer of a compromise settlement. Such explanation may be made verbally but when given, must be documented in the claims file.

3.2 It shall be considered prima facie evidence of a general business practice of committing an unfair claim settlement practice if the Department finds that, within a given sample of claims sampled by the Department during an investigation or examination of the insurer, the total number of unfair claims settlement practices exceeds four percent or more of claims, and the general business practice violation occurred within:

3.2.1 A single category of practices prohibited under subsection 3.1 of this regulation; and

3.2.2 A single 12-month period.

3.3 The presumption that a general business practice violation occurred pursuant to subsection 3.2 of this regulation is not, in and of itself, an additional general business practice violation.

3.4 An insurer may overcome the presumption that a general business practice violation has occurred by presenting evidence to the Commissioner relating to the harm to claimants caused by the violation, the nature of the violation, the insurer's intent, and other relevant factors.

3.5 This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a person or the person's representative based upon a violation of 18 Del.C. §2304(16).

# PROPOSED REGULATIONS

3.6 Section 3.0 of this regulation does not apply to general business practice violations if the general business practice is otherwise regulated under 18 **DE Admin. Code** 1310.

## **2.04.0** Violations; Penalties

2.4 Failure to comply will subject the violators to the provisions of ~~18 Del.C. §1732 (c)(2) and 18 Del.C. §2307(a)~~ 18 **Del.C.** §§1712, 2307(a) and 2308, which ~~deals~~ deal with hearings, license revocation, suspension or fine for non-compliance of any regulation.

## **3.05.0** Severability

If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

## **4.06.0** Effective Date

This Regulation ~~shall become~~ became effective August 1, 1977. The amendments to this Regulation shall become effective ten (10) days after publication of the final order adopting the amendments.

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**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 September 22, 2021 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 October 7, 2021 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/august2021/proposed/25 DE Reg 160RFA 08-01-21.pdf>

**100 Board of Accountancy**  
*(Break in Continuity of Sections)*

## **7.0** Issuance and Renewal of CPA Permits to Practice and Maintenance of Competency *(Break in Continuity Within Section)*

7.2 Continuing professional education requirements for renewal of permits to practice  
*(Break in Continuity Within Section)*

7.2.5 Qualified Programs.

*(Break in Continuity Within Section)*

7.2.5.2 Formal Programs: Formal programs requiring class attendance will qualify only if:

*(Break in Continuity Within Section)*

7.2.5.2.2 The program is at least an hour (a fifty-minute period) in length. After the initial hour of a program increments of 30 minutes may be approved.

*(Break in Continuity of Sections)*

## 10.0 Firm Permits to Practice

*(Break in Continuity Within Section)*

10.5 Each applicant for issuance or renewal of a firm permit to practice public accountancy shall be required to show that: 1) each principal who performs services in this State, who performs services for a ~~client(s)~~ client located in this State, or who is responsible for the accounting work in this State, holds a valid Delaware individual permit to practice public accountancy or certified public accountancy; and 2) each employee who performs services in this State or who performs services for a ~~client(s)~~ client located in this State holds a valid individual permit to practice public accountancy or certified public accountancy. For purposes of 24 **Del.C.** §110 and this Section, employees of a firm with its principal offices outside of Delaware that work in excess of eighty (80) hours in this State or who work for a ~~client(s)~~ client in this State must have a valid Delaware individual permit to practice.

**\*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**

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### DIVISION OF PROFESSIONAL REGULATION

### 1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 **Del.C.** §1713(a)(12))  
24 **DE Admin. Code** 1700

### PUBLIC NOTICE

### 1700 Board of Medical Licensure and Discipline

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 *Del. C.* § 1713(a)(12), proposes to update language for Board Regulation 13.0 to reflect the changes made in recently passed legislation. See HB 33 from the 151th General Assembly (online at <https://legis.delaware.gov/BillDetail?legislationId=48215>). The Board will hold a public hearing on the proposed regulation change on September 7, 2021 at 3:00 p.m. Written comments should be sent to Devashree Singh, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 22, 2021 pursuant to 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/august2021/proposed/25 DE Reg 161RFA 08-01-21.pdf>**

### 1700 Board of Medical Licensure and Discipline

*(Break in Continuity of Sections)*

## 13.0 Physician Assistants

# PROPOSED REGULATIONS

## 13.1 Definitions:

13.1.1 Rules and Regulations governing Physician Assistant (PA) practice in the State of Delaware. For information relative to the following categories refer to 24 **Del.C.** Ch. 17:

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

### 13.1.1.7 ~~Supervision of~~ Collaboration with Physician Assistants

13.1.1.7.1 ~~The supervising~~ collaborating physician cannot be involved in patient care in name only ~~and must provide adequate supervision and must be involved in active patient care on a regular basis.~~ The supervising collaborating physician must be available for consultation, during the patient encounter, ~~when necessary as defined under supervision in the 24 Del.C. §1770A(3) to provide advice on the ongoing care of the patient.~~

13.1.1.7.2 ~~No supervising~~ A collaborating physician may ~~supervise~~ not collaborate with more than 4 physician assistants at any given time unless granted an exemption by the Board. ~~As provided in 24 Del.C. §1771(f) and (h) the Board may increase or decrease the number of physician assistants being supervised. This limit does not apply to physician assistants who practice in the same physical office or facility building as the physician.~~ The Board may issue an exemption to increase the number of physician assistants supervised by collaborating with a physician upon written application filed by the supervising physician demonstrating good cause for the request. Requests for exemption will be considered on a case-by-case basis. The requesting physician has the burden of demonstrating that the granting of an exemption will not endanger the public health, safety, or welfare.

13.1.1.7.3 Any physician desiring to ~~supervise an~~ collaborate with a physician assistant who is not licensed as an acupuncturist and who will perform acupuncture upon a patient shall make a medical evaluation of the patient and determine that acupuncture treatment is medically appropriate prior to the commencing of any acupuncture treatment by a physician assistant. Such evaluation will be made on the patient's initial contact with the physician without referral. A physician assistant employed by a physician for the purpose of administering an acupuncture treatment to patients shall not administer such treatment unless an initial evaluation by the physician has been made. In addition, no subsequent acupuncture treatments of a patient shall occur unless the physician has requested such treatment. No physician shall ~~supervise~~ collaborate with a physician assistant who administers acupuncture treatment to patients unless the physician is proficient in the field of acupuncture and has assured himself that the physician assistant is also proficient in the administration of acupuncture treatment. A physician assistant who administers acupuncture treatment to patients at the direction of a physician shall administer such treatment only within the physical confines of the physician's office at such times when the physician is physically present on the premises and immediately available for consultation.

13.1.2 Legend - For the purpose of these rules and regulations the term "legend" is defined as any drug containing the statement "Caution: Federal law prohibits dispensing without prescription" required by section 503(b)(4) of the Federal Food, Drug, and Cosmetic Act as part of the labeling of all prescription drugs (and only such drugs). A "legend" drug is thus a prescription drug, III.B.3 and 24 **Del.C.** §2502(22) §2502(26).

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

## 13.3 Prescriptive Authority

13.3.1 Prescriptive authority for the therapeutic drugs and treatments will include the following:

13.3.1.1 ~~Prescriptive authority is a delegated medical service by the supervising physician.~~

13.3.1.2 ~~Prescriptive authority will be practice specific of the supervising physician.~~

13.3.1.3 PAs may prescribe legend medication including Schedule II-V controlled substances, ~~(as as defined in the Controlled Substance Act).~~ Act, parenteral medications, medical therapeutics, devices and diagnostics. PAs may give verbal orders.

- 13.3.1.2 PAs may order and prescribe non-pharmacological interventions including: medical devices and durable medical equipment, nutrition, blood, and blood products; diagnostic and supportive services including home health care, hospice, and physical and occupational therapy. A PA may seek consultation regarding patient care.
- ~~13.3.1.4~~ 13.3.1.3 PAs will be assigned a provider identifier number as outlined by the Division of Professional Regulation.
- ~~13.3.1.5~~ 13.3.1.4 Controlled Substances registration will be as follows:
- ~~13.3.1.5.1~~ 13.3.1.4.1 PAs must register with the Drug Enforcement Agency (DEA) and use such DEA number for controlled substance prescriptions.
- ~~13.3.1.5.2~~ 13.3.1.4.2 PAs must register biennially with the Secretary of the Department of Health and Social Services in accordance with 16 **Del.C.** §4732(a).
- ~~13.3.1.6~~ 13.3.1.5 Prescriptions must include the printed or legibly handwritten name of the PA. Prescriptions shall be written in accordance with 47 24 **Del.C.** §1764A and shall contain the following information clearly typed or written:
- ~~13.3.1.6.1~~ 13.3.1.5.1 The name and phone number of the prescriber;
- ~~13.3.1.6.2~~ 13.3.1.5.2 The name and strength of the drug prescribed;
- ~~13.3.1.6.3~~ 13.3.1.5.3 The quantity of the drug prescribed;
- ~~13.3.1.6.4~~ 13.3.1.5.4 The directions for the use of the drug;
- ~~13.3.1.6.5~~ 13.3.1.5.5 Date of issue.
- ~~13.3.1.7~~ 13.3.1.6 PA prescriptions must include the Division of Professional Regulation provider identifier number.
- ~~13.3.1.8~~ 13.3.1.7 PA prescriptions for a controlled substance must include the PAs DEA number, as well as the Division of Professional Regulation provider identifier number.
- ~~13.3.1.9~~ 13.3.1.8 As a ~~delegated authority by the supervising physician~~ PAs may request and issue professional samples of legend and over-the-counter medications. Professional samples must be labeled in compliance with 24 **Del.C.** §2522(c).

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

**1700 Board of Medical Licensure and Discipline**

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**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 supervision of trainees are being amended to allow the supervisor more discretion in letting the trainee practice. 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 September 21, 2021 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, or virtually 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 October 7, 2021.

**\*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/august2021/proposed/25 DE Reg 163RFA 08-01-21.pdf>

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

### 2.0 Appraiser Licensing and Certification

#### 2.1 Qualifications for Appraiser Licensure and Certification

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

- 2.1.3 Trainee real property appraiser: The qualifications for licensure of trainee real property appraiser shall conform to the criteria established by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation as follows:

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

#### 2.1.3.3 Responsibilities of Supervisors of State Licensed Trainees

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

- 2.1.3.3.2 A state certified real property appraiser may employ a ~~person(s)~~ person as a state licensed appraiser ~~trainee(s)~~ trainee to assist in the performance of real estate appraisals, provided that the state certified real property appraiser:

- 2.1.3.3.2.1 Provides direct supervision of the state licensed appraiser trainee as defined in the Uniform Standards of Professional Appraisal Practice (USPAP); "Direct Supervision" means to:

2.1.3.3.2.1.1 ~~personally~~ Personally inspect with the trainee the interior and exterior of each property appraised, until such time as the Supervisory Appraiser determines the Trainee Appraiser is competent to inspect the property in accordance with the COMPETENCY RULE of USPAP for the property type;

2.1.3.3.2.1.2 ~~personally~~ Personally review each appraisal report prepared by the trainee;

2.1.3.3.2.1.3 ~~accept~~ Accept full responsibility for the report;

2.1.3.3.2.1.4 ~~assign~~ Assign work to the trainee only if the trainee is competent to perform such work; and

2.1.3.3.2.1.5 ~~approve~~ Approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements;

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

- 2.1.3.3.2.5 ~~Supervises no more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to subsection 2.1.3.3.3. Beginning January 1, 2008, a supervising appraiser shall not supervise more than three trainees at one time regardless of their status concerning exemption; time.~~

- 2.1.3.3.2.6 Signs an affidavit affirming that ~~he/she~~ the Supervisory Appraiser is a ~~State state certified Real Property Appraiser~~ real property appraiser and that ~~he/she~~ the Supervisory Appraiser shall comply with all rules and policies regarding supervisory appraisers; and

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

- 2.1.3.3.3 ~~After the trainee has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for~~

~~an exemption that would allow the supervisor to sign the report without inspecting the property as provided by subsection 4.2.2.1.1, provided the trainee is competent to perform the inspection.~~

~~2.1.3.3.4~~ Effective July 1, 2009, any certified appraiser who has been sanctioned by the Council within the preceding three years shall not be eligible to supervise trainees for three years after the date of completion of the sanction. Where the sanction is a letter of reprimand, the date of completion is the date that the letter is signed and mailed. Where the sanction is a fine, the date of completion is the date that the fine is paid. Where the sanction is probation or suspension, the date of completion is the date when the license is reinstated in full with no restrictions or limitations. State certified appraisers who were sanctioned by the Council prior to July 1, 2009 are exempt from this provision.

~~2.1.3.3.5~~ 2.1.3.3.4 Effective January 1, 2014, a State-certified Supervisory Appraiser shall have been state certified for a minimum of three (3) years prior to being eligible to become a Supervisory Appraiser. A State-certified Supervisory Appraiser shall be in good standing and not have been subject to any disciplinary action within the last three (3) years that affects the Supervisory Appraiser's legal ability to engage in appraisal practice.

~~2.1.3.3.6~~ 2.1.3.3.5 Effective January 1, 2015, the Supervisory Appraiser shall be required to complete a course that, at a minimum, complies with the specifications for course content established by the AQB prior to supervising a trainee appraiser. The course shall be oriented toward the requirements and responsibilities of supervisory appraisers and expectations for trainees. The course must be completed by the trainee appraiser prior to obtaining a trainee appraiser credential, and completed by the supervisory appraiser prior to supervising a trainee appraiser.

**\*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  
FOOD PRODUCTS INSPECTION**

Statutory Authority: 3 Delaware Code, Section 101(1), (3) and (6) (3 **Del.C.** §101(1), (3) & (6))  
3 **DE Admin. Code** 302

## FINAL ORDER

**302 Produce Safety Regulations**

Date: July 15, 2021

Adoption of Rules and Regulations for Produce Safety by the Department of Agriculture

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

1. Pursuant to its statutory authority (3 *Del.C.* §§ 101(1), (3) & (6), the Department proposed for adoption Rules and Regulations for Produce Safety at 3 **DE Admin. Code** 302. The purpose of the amended regulations is to revise the existing Produce Safety Regulations at 3 **DE Admin. Code** 302. The purpose of the amended regulations is to revise sections 3.1 and 3.4 to better address compliance of regulated farms with the federal regulations promulgated under the Food Safety Modernization Act (Title 21, Part 112 of the Code of Federal Regulations). Other regulations issued by the Department of Agriculture are not affected by this Order.
2. A copy of the proposed regulations was published in the May 1, 2021 edition of the Delaware *Register of Regulations* and has been available for inspection in the office of the Department at 2320 South DuPont Highway, Dover, Delaware 19901 during regular office hours.
3. The Department did not receive any written comments on the proposed regulations during the 30 day period



following publication of the proposed regulations on May 1, 2021. A nonsubstantive change was made to the final regulation.

4. THEREFORE, IT IS ORDERED, that the proposed regulations are adopted and shall become effective August 11, 2021, after publication of the final regulation in the August 1, 2021 edition of the Delaware *Register of Regulations*.

Department of Agriculture  
Andrea Jackson  
Food Products Inspection Administrator

## 302 Produce Safety Regulations

### 1.0 Authority

These regulations related to the federal Food Safety Modernization Act's Produce Safety Rule are promulgated pursuant to the authority provided in 3 **Del.C.** § 101 (1), (3), and (6).

### 2.0 Purpose

The Department of Agriculture has enforcement responsibility for the Produce Safety Rule of the Food Safety Modernization Act (FSMA), Title 21, Part 112 of the Code of Federal Regulations. The purpose of these proposed regulations is to establish the procedures for farm registration, produce inspection, on-farm produce and environmental sampling, and addressing non-compliance of regulated farms as currently appear in the FSMA and as the FSMA may be amended from time to time.

### 3.0 Registration

- 3.1 In order to determine the farms subject to the Food Safety Modernization Act Produce Safety Rule, the Department of Agriculture will require that all farms within Delaware that grow, harvest, pack, or hold produce intended for human consumption and for sale, register with the Department of Agriculture.
- 3.2 The registration form, available from the Department of Agriculture, shall include at a minimum the following required fields:
  - 3.2.1 Name
  - 3.2.2 Address
  - 3.2.3 Farm Location(s)
  - 3.2.4 Telephone number and email address of owner/producer
  - 3.2.5 Approximate average annual income from produce sales
  - 3.2.6 Description of all produce grown
  - 3.2.7 Seasonal Growing Period
- 3.3 The registration form may include additional fields as determined by the Department of Agriculture.
- 3.4 Forms will be provided by the Department of Agriculture and must be returned to the Department of Agriculture, annually by April 30th ~~[upon completion]~~. The Department of Agriculture may provide the registration forms in electronic format. Other timely information may also be sent to the registrants.

### 4.0 Inspections

- 4.1 Department of Agriculture personnel are authorized, at any time, to enter any farm or facility that grows, harvests, packs or holds produce for human consumption to:
  - 4.1.1 Inspect the farm or facility to determine whether the rules promulgated under these regulations are being violated.
  - 4.1.2 Request to review and copy the farm or facility's records pursuant to the federal regulations on recordkeeping.
  - 4.1.3 Secure and test samples as needed to verify compliance.

4.2 Inspection Results will be given in an Inspectional Report form.

### 5.0 Product Retention and Condemnation

- 5.1 In the event that the Department of Agriculture discovers produce that is contaminated, unfit for consumption, or otherwise in violation of these regulations, the Department of Agriculture is authorized at all times to seize, take possession of, condemn, destroy, or require the destruction of any covered produce that the Department of Agriculture believes to be in violation of 21 C.F.R Part 112. Enforcement actions may continue to be imposed until corrective actions are taken by the owner/producer in violation.
- 5.2 If objectionable conditions are found, the Inspector (working under federal authority) is obligated to report the findings to the Food and Drug Administration (FDA) and work in collaboration with FDA to control/rectify the situation.

### 6.0 Program Termination

These regulations shall remain in effect for the duration of the federal Food Safety Modernization Act's Produce Safety Rule. If the federal Produce Safety Rule is abolished, then the Department of Agriculture may also abolish these regulations.

### 7.0 Violations and Hearing Procedures

- 7.1 Failure to comply with this chapter shall result in the assessment of a civil penalty.
- 7.2 No civil penalty shall be imposed until an administrative hearing is held before the Secretary of Agriculture or the Secretary's designee. No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in accordance with Chapter 101 of Title 29 of the Delaware Code. The Secretary or the Secretary's designee shall mail a written decision to the alleged violator within 30 days after the conclusion of the administrative hearing. Failure to comply with the 30-day period shall have no effect on the Secretary's or designee's decision.
- 7.3 The person(s) charged with a violation of these regulations will be notified in writing of the date and time of the aforementioned administrative hearing. The aforementioned person(s) shall have the right to appear in person, to be represented by counsel and to provide witnesses in his or her behalf.
- 7.4 The Secretary or the Secretary's designee, for the purposes of investigation of a possible violation of these regulations and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Department of Agriculture may compel compliance with the subpoena by filing a motion to compel in Superior Court which shall have jurisdiction over this matter.
- ~~7.4.1~~ The Department of Agriculture shall preserve a record of the proceedings and a transcript may be purchased by any interested person.

### 8.0 Appeal

A person who feels aggrieved by the Department of Agriculture as a result of the administrative hearing held under the authority of this chapter may file an appeal, within 30 days, with the Superior Court. Written notice of such appeal, together with the grounds therefor, shall be served upon the Secretary of the Department of Agriculture.

### 9.0 Civil Penalties

- 9.1 Any person who interferes with the Department of Agriculture in the enforcement of this chapter, as determined in an administrative hearing, shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.
- 9.2 Any person who is not a Department of Agriculture employee or its authorized representative who removes markings placed by the Department of Agriculture for the purpose of identification is interfering with the Department of Agriculture's enforcement of these regulations, as determined in an

administrative hearing, and shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.

- 9.3 Any person(s) who willfully or knowingly ships contaminated produce, as determined in an administrative hearing, shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.
  - 9.4 Any person(s) who refuses to comply with these regulations shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 for each violation.
  - 9.5 The payment of penalties assessed under this chapter may be made on a payment schedule approved by the Secretary or the Secretary's designee.
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## DELAWARE STANDARDBRED BREEDERS' FUND

Statutory Authority: 29 Delaware Code, Section 4815(b)(3)b.2.D (29 **Del.C.** §4815(b)(3)b.2.D)  
3 **DE Admin. Code** 502

### FINAL ORDER

### 502 Delaware Standardbred Breeders' Fund Regulations

#### I. NATURE OF PROCEEDINGS

Pursuant to its authority under 29 *Del. C.* §4815(b)(3)D.2 the State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") proposed to amend its regulations to eliminate the restriction on private treaty breeding and allow for later payment of registration fees for the Funds' program pertaining to the registration of stallions. All of these changes were proposed to address the fiduciary responsibility of the Fund to sustain the program into the future while maintaining the current status.

Notice of a public comment period of thirty (30) days on the Fund's proposed amended regulations was published in the Delaware Register of Regulations for June 1, 2021 in accordance with 29 *Del. C.* §4815(b)(4)b.2.D. This is the Fund's Decision and Order adopting the proposed amended regulations.

#### II. FINDINGS AND CONCLUSIONS

1. The public was given the required notice of the Fund's intention to adopt the proposed amended regulation and was given ample opportunity to provide the Fund with comments opposing the Fund's plan.
2. There were no public comments provided to the Fund during the written public Comment period.
3. Pursuant to 29 *Del.C.* §4815(b)(3)b.2.D and 3 **DE Admin. Code** 502, the Fund has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes seek to eliminate the restriction on private treaty breeding and allow for later payment of registration fees for the Funds' program pertaining to the registration of stallions.
5. Thus, the Fund concludes that its consideration of the proposed amended regulation was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt the proposed amended regulation.

#### III. DECISION AND ORDER CONCERNING THE REGULATIONS

**AND NOW on this 14th day of July, 2021**, it is hereby ordered that:

1. The proposed amendments to the Fund's regulations are adopted;
2. The text of the final regulations shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations in accordance with 29 *Del. C.* §10118(e); and
4. The Fund reserves to itself the authority to issue such other and further orders concerning its Regulations as it deems appropriate.

**IT IS SO ORDERED.**

Matthew Sparacino  
John E. Hensley Jr.  
George Teague Jr.  
Carlo J. Polisenio  
Garrett Bell

Richard Geisenberger  
Wayne Givens  
Linda MacDonald  
Michael T. Scuse

\*Please note that no changes were made to the regulation as originally proposed and published in the June 2021 issue of the *Register* at page 1034 (24 DE Reg. 1034). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**502 Delaware Standardbred Breeders' Fund Regulations**

**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))  
14 **DE Admin. Code** 716

**REGULATORY IMPLEMENTING ORDER****716 Maintenance of Local School District and Charter School Personnel Records****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del. C.** §122 (a), the Secretary of Education intends to amend 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. The proposed amendments are being made to correct grammar, to clarify that the regulation applies to both district and charter schools, to remove "Local" as it is no longer needed when referring to a school district, and to ensure compliance with the *Delaware Administrative Code and Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on June 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on June 1, 2021, in the form hereto attached as Exhibit "A". No comments were received.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. The proposed amendments are being made to correct grammar, to clarify that the regulation applies to both district and charter schools, to remove "Local" as it is no longer needed when referring to a school district, and to ensure compliance with the *Delaware Administrative Code and Drafting and Style Manual*.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records 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** 716 Maintenance of Local School District and Charter School Personnel Records amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as

14 **DE Admin. Code** 716 Maintenance of Local School District and Charter School Personnel Records in the *Administrative Code of Regulations* for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 12, 2021. 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 12th day of July 2021.

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

Approved this 12th day of July 2021

## 716 Maintenance of ~~Local~~ School District and Charter School Personnel Records

### 1.0 Definitions

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

~~"Delaware Public Archives (DPA)"~~ **"Delaware Public Archives"** or **"DPA"** means the division within the Department of State that is charged with administering, implementing and enforcing all provisions of the Delaware Public Records Law.

**"Employee"** means any person whose terms of employment are adequate to qualify the employee for the earning of credit toward pension.

**"Termination"** means, not only retirement, but any reason the employee leaves the ~~district~~ district or charter school.

### 2.0 Records Retention

- 2.1 Records for all school district and charter school employees shall be kept up to date including:
- 2.1.1 Salary data records for each year of employment in the school district or charter school. (Total salary paid identified as fiscal or calendar year); and
  - 2.1.2 Records that show sick leave days earned and used and the number of days available at any time; and
  - 2.1.3 The record of vacation time for those employees whose terms of employment provide for earned vacation.
  - 2.1.4 All forms and documents that become part of the Delaware Performance Appraisal System II (DPAS II) shall be retained in the individual's personnel file until there are at least five (5) complete ~~summative~~ summative evaluations. The oldest complete set of evaluation forms and documents may be purged from the personnel file once the sixth set is complete.

### 3.0 Records Retention

- 3.1 Each school district and charter school shall keep the records referred to in Section 2.0 above for all employees' inactive personnel files for at least fifty (50) years following termination of employment.
- 3.2 For the security of records and the protection of the personnel for whom the information is recorded, it is recommended that original records are to be maintained at the school district or charter school for three (3) years after termination of an employee and a successful audit of such records. Records shall be purged in accordance with the *Delaware Public Archives School Districts General Records Retention Schedule* and prepared for storage according to the *Delaware Public Archives Records Management Handbook Preparation of Records for Short-Term Storage*. Records shall remain in their original format and shall then be transferred to DPA and retained in storage for the balance of the fifty

- (50) required years. ~~Local~~ District and charter school records officers and authorized agents may request files from storage in accordance with DPA's procedures for requesting files. At the end of the retention period, the documents will be destroyed in accordance with DPA's destruction procedures.
- 3.3 The style and form of the records shall be at the discretion of the ~~local~~ school districts or charter schools, except that records transferred to the ~~Delaware Public Archives~~ DPA for storage shall be in a format acceptable to DPA. Individual ~~local~~ school districts and charter schools may elect to have their records recorded onto a different type of media at district expense, in accordance with DPA guidelines.
- 3.3.1 The information referred to above shall be maintained and available for any employee or former employee seeking information concerning their own employment records for a period of fifty (50) years after termination of employment. It is recommended that for the convenience of employees and former employees that school districts and charter schools develop an alphabetically arranged file showing the name of each employee and the disposition of his or her records.

### OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 9003(a)(7) and 14 Delaware Code, Sections 3001A-3005A (29 **Del.C.** §9003(a)(7) & 14 **Del.C.** §§3001A-3005A)

### REGULATORY IMPLEMENTING ORDER

#### 938 Regulations for Youth Camps

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

Pursuant to 29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A, the Secretary of Education wishes to add 14 **DE Admin. Code** 938 Regulations for Youth Camps. This regulation was created to comply with the Child Care and Development Block Grant Act (CCDBG) by requiring camps who accept Purchase of Care to become licensed. Currently, the Division of Public Health issues permits for camps after they receive an exemption letter from the Office of Child Care Licensing. This permitting process alone does not meet the requirements of CCDBG because it does not include health and safety training and comprehensive background checks for staff members, an unannounced monitoring visit, complaint investigations, and full inspection reports posted publically online. These new regulations include the permitting process as well as the additional requirements of CCDBG. The creation of this regulation will allow youth camps to apply for and receive Purchase of Care funding from the Department of Health and Social Services (DHSS) for eligible children.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on June 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on June 1, 2021, in the form hereto attached as Exhibit "A". No comments were received. However, upon further review, the Department did make several minor grammatical edits as required per the *Delaware Administrative Code Drafting and Style Manual*.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 938 Regulations for Youth Camps in order to comply with the Child Care and Development Block Grant Act (CCDBG) by requiring camps who accept Purchase of Care to become licensed. Currently, the Division of Public Health issues permits for camps after they receive an exemption letter from the Office of Child Care Licensing. This permitting process alone does not meet the requirements of CCDBG because it does not include health and safety training and comprehensive background checks for staff members, an unannounced monitoring visit, complaint investigations, and full inspection reports posted publically online. These new regulations include the permitting process as well as the additional requirements of CCDBG. The creation of this regulation will allow youth camps to apply for and receive Purchase of Care funding from the Department of Health and Social Services (DHSS) for eligible children.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 938 Regulations for Youth Camps. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 938 Regulations for Youth Camps attached hereto as *Exhibit "B"* is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 938 Regulations for Youth Camps 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** 938 Regulations for Youth Camps created hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 938 Regulations for Youth Camps in the Administrative Code of Regulations for the Department of Education.

### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 12, 2021. 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 12th day of July 2021.

**Department of Education**

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

Approved this 12th day of July 2021

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

**938 Regulations for Youth Camps**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303(a)-(c) (14 **Del.C.** §§122(b)(15) & 303(a)-(c))  
14 **DE Admin. Code** 1011

**REGULATORY IMPLEMENTING ORDER**

**1011 Interscholastic Athletics during the COVID-19 Pandemic**

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

Pursuant to 14 **Del.C.** Sections 122(b)(15) and 303(a)-(c), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1011. The proposed amendments include adding informal instruction to defined terms in Section 2.0 and in the Return to Play Stages in Section 3.0; repealing the pre-participation physical examination requirements that applied to the 2020-2021 school year; revising the four Return to Play Stages to eliminate sports categorized as low, medium, and high risk for COVID-19 spread based on guidance from the American Medical Society for Sports Medicine and the National Federation of State High School Associations; repealing Section 5.0, which provided the dates for the fall, winter, and spring sport seasons during the 2020-2021 school year and set forth sport-specific requirements;

revising the face covering requirements in subsection 3.5.3.3; and adding the previous requirements that the Board may mandate sport-specific requirements that are designed to protect the physical well-being of student athletes and that Member Schools follow any sport-specific plans approved by the Board to Section 3.0.

Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2021. In addition, notice of the proposed regulation was published in *The News Journal* and *Delaware State News* on May 1, 2021. The DIAA Board of Directors received one written submittal regarding the proposed amendments. The State Council for Persons with Disabilities ("SCPD"), through Terri Hancharick, SCPD's Chairperson, commented that the Department "makes relatively few changes to restrictions and requirements regarding athletic activities and 'vulnerable individuals.'" SCPD further commented that in its previous comment from October 2020, it "noted that while the more restrictive limitations proposed by [the Department] for 'vulnerable individuals' are likely proposed to ensure safety and health for all, they may raise concerns about compliance with the Americans with Disabilities Act ('ADA') and Section 504 of the Rehabilitation Act ('Section 504'), which require equal access to all students with disabilities to the programs, activities, and facilities of a school and school district." As a result, SCPD recommended an individualized assessment to determine whether it is appropriate for a student to participate. In its most recent comment, SCPD recommended that the Department "(1) completely remove the restriction for 'vulnerable individual' or (2) change the language to remove the complete restriction (the words 'shall not') [from subsection 3.5.4.1, which provides that if the DIAA Board of Directors determines Stage 1 applies, a vulnerable individual shall not attend workouts, and subsection 3.5.5.1, which provides that if the DIAA Board of Directors determines Stage 2 applies, a vulnerable individual shall not attend workouts, practices, conditioning programs, informal instruction, or open gym programs] and instead include a more individualized assessment."

## II. FINDINGS OF FACTS

On June 10, 2021, the DIAA Board of Directors considered SCPD's written submittal. The DIAA Board of Directors found that SCPD's written submittal regarding the proposed amendments is similar to its written submittal when the Department proposed to adopt 14 **DE Admin. Code** 1011 in 2020. The DIAA Board of Directors further found that its findings regarding SCPD's previous written submittal also applied to SCPD's current written submittal. Specifically, the DIAA Board of Directors found that the definition of "vulnerable individual" is based on the Delaware Division of Public Health's guidelines for persons who are higher risk for serious illness from COVID-19. The DIAA Board of Directors further found that all student athletes are required to be cleared by a physician or other healthcare professional for participation in interscholastic athletics. The DIAA Board of Directors found that a student athlete who is cleared to participate in interscholastic athletics but who meets the definition of "vulnerable individual" can apply for a waiver of subsections 3.5.4.1 and 3.5.5.1 under 14 **Del.C.** § 304(5) and follow the procedures set forth in Section 9.0 of 14 **DE Admin. Code** 1006. Requests for waivers of athletic rules and regulations are reviewed by the DIAA Board of Directors on an individual basis and allow for an individualized assessment as SCPD suggested.

The Board determined that further changes as a result of the written submittal was not necessary and voted to propose 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 3 during the public health emergency due to the COVID-19 pandemic. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303(a)-(c), 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic attached hereto as Exhibit A is hereby amended.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic amended hereby shall be in the form attached hereto as Exhibit A, and said regulation shall be cited as 14 **DE Admin. Code**



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1011 Interscholastic Athletics during the COVID-19 Pandemic in the Administrative Code of Regulations for the Department.

## 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 17th day of June, 2021.

### Department of Education

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

Approved this 17th day of June, 2021.

### State Board of Education

/s/ Whitney Sweeney, President

/s/ Vincent Lofink

/s/ Wali W. Rushdan, II, Vice President

/s/ Audrey J. Noble, Ph.D.

/s/ Shawn Brittingham

/s/ Provey Powell, Jr.

/s/ Candace Fifer

**\*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2021 issue of the *Register* at page 971 (24 DE Reg. 971). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1011 Interscholastic Athletics during the COVID-19 Pandemic**

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303(a)-(c) (14 Del.C. §§122(b)(15) & 303(a)-(c))  
14 DE Admin. Code 1011

## REGULATORY IMPLEMENTING ORDER

**1011 Interscholastic Athletics during the COVID-19 Pandemic**

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

Pursuant to 14 Del.C. §§ 122(b)(15) and 303(a)-(c), the Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1011 Interscholastic Athletics during the COVID-19 Pandemic. The regulation applies to interscholastic athletics at DIAA member schools during the public health emergency due to the COVID-19 pandemic. Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2021. In addition, notice was published in *The News Journal* and *Delaware State News* on May 1, 2021. The DIAA Board of Directors received one written submittal concerning the proposed amendments.

On June 10, 2021, the DIAA Board of Directors determined that further changes as a result of the written submittal were not necessary and voted to propose 14 DE Admin. Code 1011 Interscholastic Athletics during the COVID-19 Pandemic for adoption by the Department subject to the State Board of Education's approval. On June 17, 2021, the State Board of Education approved the proposed regulation.

Thereafter, on July 12, 2021, the Governor issued an order terminating the declaration of a State of Emergency due to the public health threat of COVID-19 and all related orders, effective July 13, 2021 at 12:01 a.m. E.D.T. The

order provides that "Delaware now has the tools to prevent, control and treat COVID-19 infection, serious illness, and hospitalization, and it is no longer necessary to continue the Governor's emergency orders, first signed on March 12, 2020, to the extent that the conditions necessitating the continuance of the COVID-19 State of Emergency no longer exist."

On July 13, 2021, the DIAA Board of Directors voted to repeal 14 **DE Admin. Code** 1011 to be consistent with a change in basic law, i.e., the July 12, 2021 order terminating the State of Emergency and all related orders.

The repeal of this regulation is exempt from the requirement of public notice and comment and is adopted informally in accordance with 29 **Del.C.** §10113(b)(5).

## II. FINDINGS OF FACTS

The Department finds that 14 **DE Admin. Code** 1011 applied to interscholastic athletics at DIAA member schools during the public health emergency due to the COVID-19 pandemic. The Department further finds that 14 **DE Admin. Code** 1011 is being repealed to be consistent with the Governor's order that terminated the declaration of a State of Emergency due to the public health threat of COVID-19 and all related orders. Accordingly, the Department finds that it is appropriate to repeal 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic.

## III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to repeal 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303(a)-(c) and 29 **Del.C.** §10113(b)(5), 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic attached hereto as Exhibit A is hereby repealed.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic repealed hereby shall be in the form attached hereto as Exhibit A, and said regulation shall be cited as 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic in the Administrative Code of Regulations for the Department.

## 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 15th day of July, 2021.

**Department of Education**

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

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

**1011 Interscholastic Athletics during the COVID-19 Pandemic**

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), & 1210(f) (14 **Del.C.** §§1203, 1205(b), & 1210(f))  
14 **DE Admin. Code** 1559

### REGULATORY IMPLEMENTING ORDER

#### 1559 Skilled and Technical Sciences Teacher

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

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1210(f), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1559 Skilled and Technical Sciences Teacher. The regulation concerns the requirements for a Skilled and Technical Sciences Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include clarifying Section 1.0; in Section 2.0, adding defined terms, clarifying existing terms, and striking terms that are proposed to be removed from the body of the regulation; clarifying the requirements for issuing a Skilled and Technical Sciences Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Skilled and Technical Sciences Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Skilled and Technical Sciences Teacher Standard Certificate; adding Section 7.0, which concerns the requirements related to retaining a Skilled and Technical Sciences Teacher Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 10.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2021. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

#### II. FINDINGS OF FACTS

On June 3, 2021, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1559 Skilled and Technical Sciences Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are 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** 1559 Skilled and Technical Sciences Teacher.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1559 Skilled and Technical Sciences Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1210(f), 14 **DE Admin. Code** 1559 Skilled and Technical Sciences Teacher, attached hereto as Exhibit A, is hereby amended.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1559 Skilled and Technical Sciences Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1559 Skilled and Technical Sciences Teacher in the *Administrative Code of Regulations* for the Department.

## V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 17th day of June, 2021.

**Department of Education**

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

Approved this 17th day of June, 2021.

**State Board of Education**

/s/ Whitney Sweeney, President

/s/ Vincent Lofink

/s/ Wali W. Rushdan, II, Vice President

/s/ Audrey J. Noble, Ph.D.

/s/ Shawn Brittingham

/s/ Provey Powell, Jr.

/s/ Candace Fifer

**\*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2021 issue of the *Register* at page 973 (24 DE Reg. 973). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1559 Skilled and Technical Sciences Teacher**

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**PROFESSIONAL STANDARDS BOARD**

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

14 DE Admin. Code 1574

**REGULATORY IMPLEMENTING ORDER**

**1574 Teacher of Students Who Are Deaf or Hard of Hearing**

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

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1574 Teacher of Students Who Are Deaf or Hard of Hearing. The regulation concerns the requirements for a Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include clarifying Section 1.0; adding defined terms to Section 2.0; clarifying the requirements for issuing a Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Teacher of Students Who Are Deaf or Hard of Hearing 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 certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on April 1, 2021. The Professional Standards Board received written submittals from Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), Terri Hancharick, Chairperson of the State Council for Persons with Disabilities ("SCPD"), and Joseph Barrett.

GACEC commented that it "supports the proposed regulation as it is written so long as the proposed changes

align with the Bill of Rights for Children Who Are Deaf or Hard of Hearing as well as other applicable laws and regulations." Regarding the first impact criterion (i.e., will the amended regulation help improve student achievement as measured against state achievement standards), GACEC asked for an explanation as to how the proposed changes will help improve student achievement. GACEC "querie[d] whether individuals who obtain their certificates [by obtaining and maintaining an Exceptional Needs Specialist certificate in the specialty area of Deaf/Hard of Hearing from the National Board of Professional Teaching Standards; satisfactorily completing an alternative routes for licensure or certification program to teach students who are deaf or hard of hearing; and satisfactorily completing a Department-approved educator preparation program in deaf education] will have the training and proficiency necessary to provide optimal instruction to this student population."

SCPD commented that it previously submitted comments to several proposed regulations and that only one of its recommendations has been adopted. SCPD further commented that the proposed amendments are "nearly identical to the previous" except for Section 4.0, which would expand the options for satisfying the prescribed education requirements from two to five. In addition, SCPD commented that Delaware law requires that when developing an IEP for children who are deaf or hard of hearing, a "local education agency must consider '[t]he provision of optimal, direct and ongoing language access to teachers of the Deaf or Hard of Hearing . . . who are knowledgeable due to specific training and who are proficient in the child's primary communication mode or language[.],' as well as '[t]he provision of communication-accessible academic instruction, school services, and direct access to all components of the educational process[.]'"

Mr. Barrett commented that he is employed at the Delaware School for the Deaf as a paraprofessional, he has been in the field of deaf education for 30 years, and he was a certified health and physical education teacher and a classroom teacher at Pennsylvania School for the Deaf for 25 years. Mr. Barrett further commented that he "strongly feel[s] there should be a 'grandfather clause' for people in [his] situation who have already been teaching in Deaf Education for many years and are highly educated and qualified." In addition, Mr. Barrett suggested that a competency test could be developed.

## II. FINDINGS OF FACTS

On May 6, 2021, the Professional Standards Board considered the written submittals from GACEC and SCPD. The Professional Standards Board noted that the published response to the first impact criterion states that "[t]he education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help improve student achievement." The Professional Standards Board found that the proposed amendments to the regulation are designed to ensure individuals will have the training and proficiency necessary to provide optimal instruction to students who are deaf or hard of hearing. In addition, the Professional Standards Board found that it has adopted clarifying language regarding the Department not acting on applications if the applicant is under investigation by any national, state, or local authority with the power to issue educator licenses as suggested by SCPD. The Professional Standards Board found that it has not included SCPD's suggestion for renewal of a standard certificate in standard certificate regulations because 14 **Del.C.** Ch. 12 does not authorize the Department to renew a standard certificate once it has been issued. The Professional Standards Board further found that it has not removed the section regarding Secretary of Education review because it is an important tool that is available for all certifications by statute (14 **Del.C.** §1224). The Professional Standards Board found that SCPD's other comments were editorial in nature and not a question or request.

At the May 6, 2021 meeting, the Professional Standards Board determined that further changes as a result of GACEC's and SCPD's written comments were not necessary and it voted to propose the regulation that was published for adoption by the Department subject to the State Board of Education's approval. Subsequent to the May 6, 2021 meeting, the Professional Standards Board was provided with Mr. Barrett's written submittal, which he timely submitted.

On June 3, 2021, the Professional Standards Board reviewed GACEC's and SCPD's written submittals and the Board's findings thereto as well as considered Mr. Barrett's written submittal. The Professional Standards Board found that proposed Section 8.0, Secretary of Education Review, is an option for applicants who do not meet the requirements for a Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate but whose effectiveness is documented by the applicant's school district or charter school and that such review would serve the same purpose as Mr. Barrett's suggestion for a grandfather clause. The Professional Standards Board determined that further changes as a result of the written submittals were not necessary and it voted to propose 14 **DE Admin. Code** 1574 Teacher of Students Who Are Deaf or Hard of Hearing, in the form attached hereto as

Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are 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** 1574 Teacher of Students Who Are Deaf or Hard of Hearing.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1574 Teacher of Students Who Are Deaf or Hard of Hearing subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1574 Teacher of Students Who Are Deaf or Hard of Hearing, attached hereto as Exhibit A, is hereby amended.

### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1574 Teacher of Students Who Are Deaf or Hard of Hearing adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1574 Teacher of Students Who Are Deaf or Hard of Hearing in the Administrative Code of Regulations for the Department.

### V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 17th day of June, 2021.

#### Department of Education

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

Approved this 17th day of June, 2021.

#### State Board of Education

/s/ Whitney Sweeney, President

/s/ Vincent Lofink

/s/ Wali W. Rushdan, II, Vice President

/s/ Audrey J. Noble, Ph.D.

/s/ Shawn Brittingham

/s/ Provey Powell, Jr.

/s/ Candace Fifer

**\*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

### Exhibit A

#### 1574 Teacher of Students Who Are Deaf or Hard of Hearing

#### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate, Certificate (Category) pursuant to 14 **Del.C.** §1220(a), ~~for a Teacher of Students Who Are Deaf or Hard of Hearing. Eighteen (18) months from the effective date of this regulation, this certification shall be required for all educators within the Delaware public school system whose primary assignment is teaching children who are deaf or hard of hearing.~~

- 1.1.1 This Standard Certificate is required for an Educator whose primary assignment is teaching Deaf or Hard of Hearing Students in Delaware public schools.

1.1.2 The Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate is a category Standard Certificate and does not certify an Educator to practice in a particular area or teach a particular subject. A category Standard Certificate only establishes that an Educator has met the prescribed education, knowledge, or skill requirements to instruct a particular category of students. The Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate is limited to the category of Deaf or Hard of Hearing Students.

1.1.3 An Educator shall hold at least one content area Standard Certificate.

4.2 ~~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

~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

The following words and terms, when used in this regulation, shall have the following meaning:

"CED" means the Council on Education for the Deaf.

"Deaf or Hard of Hearing Student" means a student with "deafness" or a "hearing impairment" as defined in Section 3.0 of 14 DE Admin. Code 922 Children with Disabilities Subpart A, Purposes and Definitions.

"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.

"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.

"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.

"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 and is in good standing in that 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 Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate ~~as a Teacher of Students Who Are Deaf or Hard of Hearing to an educator applicant who has met the following:~~
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced ~~License~~; License or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; ~~and, 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; and, Has met the requirements for licensure and holds a Valid and Current License or Certificate in deaf education or teaching students who are deaf or hard of hearing.~~
  - 3.1.3 ~~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 Teacher of Students Who Are Deaf or Hard of Hearing 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 allegations include but are not limited to conduct such as 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 Prescribed Education, Knowledge, and Skill Requirements**

- 4.1 ~~An educator shall also have satisfied at least one (1) of the following additional education requirements:~~
- 4.1.1 ~~Holding a master's degree from a regionally accredited college or university in Deaf Education from a program approved by the Council for Education of the Deaf; or~~
  - 4.1.2 ~~The successful completion of twenty one (21) credits from a regionally accredited college or university or their equivalent in professional development as approved by the Department in the following areas:~~
    - 4.1.2.1 ~~Human Growth and Development Characteristics of the Deaf and Hard of Hearing (3 credits);~~
    - 4.1.2.2 ~~Assessment, Diagnosis and Prescriptive Techniques for the Deaf or Hard of Hearing (3 credits);~~
    - 4.1.2.3 ~~Curriculum and Instructional Methods for the Deaf or Hard of Hearing (3 credits);~~
    - 4.1.2.4 ~~Auditory Language Development (3 credits);~~
    - 4.1.2.5 ~~Audiology (3 credits);~~
    - 4.1.2.6 ~~Deaf and Hard of Hearing Practicum (3 credits); and either~~
    - 4.1.2.7 ~~Visual Language Development (3 credits); or~~
    - 4.1.2.8 ~~American Sign Language (3 credits).~~
- 4.1 An applicant for the Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate shall have satisfied one of the following education requirements:
- 4.1.1 Obtained and currently maintain an Exceptional Needs Specialist certificate in the specialty area of Deaf/Hard of Hearing from the National Board for Professional Teaching Standards;
  - 4.1.2 Earned a master's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in deaf education from an educator preparation program approved or recognized by the CED; or
  - 4.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach students who are deaf or hard of hearing as provided in 14 Del.C. §§1260 - 1266; or
  - 4.1.4 Satisfactorily completed a Department-approved educator preparation program in deaf education; or
  - 4.1.5 Earned a bachelor's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 21 college credits or the equivalent number of hours with one credit equating to 15 hours taken as part of or in addition to a degree program from a Regionally



Accredited college or university or a professional development provider approved by the Department with a focus in deaf education that are guided by and include the following CED Initial Preparation Standards:

- 4.1.5.1 Learner Development and Individual Learning Differences for Students Who Are Deaf or Hard of Hearing;
- 4.1.5.2 Learning Environments for Students Who Are Deaf or Hard of Hearing;
- 4.1.5.3 Curricular Content Knowledge for Students Who Are Deaf or Hard of Hearing;
- 4.1.5.4 Assessment for Students Who Are Deaf or Hard of Hearing;
- 4.1.5.5 Instructional Planning and Strategies for Students Who Are Deaf or Hard of Hearing;
- 4.1.5.6 Professional Learning and Ethical Practice for Students Who Are Deaf or Hard of Hearing; and
- 4.1.5.7 Collaboration for Students Who Are Deaf or Hard of Hearing.

## **5.0 Application Requirements**

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For an applicant who is applying for a Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate under subsection 3.1.1 of this regulation, the following documentation is required with the application:
  - 5.2.1 Evidence of obtaining and maintaining an Exceptional Needs Specialist certificate in the specialty area of Deaf/Hard of Hearing 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 applicant's Employing Authority or Regionally Accredited college or university.
    - 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 Additional documentation as required by the Department.
- 5.3 For an applicant who is applying for a Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate under subsection 3.1.2 of this regulation, the following documentation is required with the application:
  - 5.3.1 An official copy of the Valid and Current License or Certificate; and
  - 5.3.2 Additional documentation as required by the Department.

## **6.0 Validity of a Standard Certificate**

- 6.1 A Teacher of Students Who Are Deaf or Hard of Hearing 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 Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate is not subject to renewal.

## **7.0 Disciplinary Action**

- 7.1 An Educator's Teacher of Students Who Are Deaf or Hard of Hearing 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.
- 7.2 An Educator's Teacher of Students Who Are Deaf or Hard of Hearing 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**

- 8.1 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 Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate but whose effectiveness is documented by the local school district or charter school.
- 8.1.1 For school districts, requests shall be approved by the superintendent of the school district.
- 8.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

### **5.0 9.0 Past Certification Certificate Recognized**

The Department shall recognize a ~~Standard Certificate~~ Teacher of Students Who Are Deaf or Hard of Hearing ~~Standard Certificate~~ that was issued by the Department ~~between January 11, 2007 and prior to~~ the effective date of this regulation. ~~A teacher~~ An Educator holding such a Standard Certificate ~~Teacher of Students Who Are Deaf or Hard of Hearing~~ issued ~~between January 11, 2007 and the effective date of this regulation~~ shall be considered certified to ~~teach students who are deaf or hard of hearing~~ instruct Deaf or Hard of Hearing Students.

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

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

### **ORDER**

#### **Medication-Assisted Treatment (MAT)**

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES  
IN THE MATTER OF )

REVISION OF THE REGULATION )  
OF DELAWARE'S )  
TITLE XIX MEDICAID STATE PLAN )  
Attachment 3.I-A Page 2A, 4-19-B Page 18 )

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Medication-Assisted Treatment (MAT) *to move coverage of MAT benefit from the optional services sections of the Medicaid State Plan to the mandatory services section of the Medicaid State Plan for categorically needy populations, per federal requirements.* The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the March 2021 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2021 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

## **SUMMARY OF PROPOSAL**

### Summary of Proposed Changes

Effective for services provided on and after October 1, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.I-A Page 2A and Attachment 4-19-B Page 18 of Title XIX Medicaid State Plan regarding Medication-Assisted Treatment (MAT) to move coverage of MAT benefit from the optional services sections of the Medicaid State Plan to the mandatory services section of the Medicaid State Plan for categorically needy populations, per federal requirements.

## **Background**

Section 1006(b) of the SUPPORT Act, signed into law on October 24, 2018, amends section 1902(a)(10)(A) of the Social Security Act (the Act) to require state Medicaid plans to include coverage of MAT for all eligible to enroll in the state plan or waiver of state plan. States are also required to cover counseling services and behavioral therapies associated with provision of the required drug and biological coverage.

States that already use existing Medicaid authorities to cover items and services that will now be covered under the new mandatory MAT benefit, including FDA-approved or licensed drugs and biologicals used for MAT to treat OUD, and associated counseling services and behavioral therapies, are expected to submit a SPA to move their coverage of these items and services to a new page in their Medicaid state plans for the new mandatory benefit at section 1905(a)(29) of the Act. Delaware currently covers Medication-Assisted Treatment (MAT) as an optional benefit and is publishing this regulation so as to move this coverage from an optional benefit to a mandatory benefit.

Upon receipt of the State Health Official dated December 30, 2020, issuing guidance about the requirements of section 1006(b), Delaware submitted a modification request of SPA submission requirements at 42 C.F.R. 430.20 in order to submit a SPA implementing section 1905(a)(29) of the Act by March 31, 2021 that would take effect on October 1, 2020. Pursuant to section 1135(b) of the Act, Delaware requested modification of the public notice time frames set forth at 42 C.F.R. 447.205 in order to obtain an effective date of October 1, 2020.

## **Statutory Authority**

- Section 1905(a)(29) of the Social Security Act
- Section 1006(b) of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) Act
- Section 1135(b) of the Social Security Act

### *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 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives public notice and provides an open comment period for 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 31, 2021.

### *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 Statement**

There is no anticipated fiscal impact as Delaware currently covers Medication-Assisted Treatment (MAT).

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

The following summarized comments were received:

**Comment:** There was one endorsement of the regulation.

**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

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the March 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Medication-Assisted Treatment (MAT) to move coverage of MAT benefit from the optional services sections of the Medicaid State Plan to the mandatory services section of the Medicaid State Plan for categorically needy populations, per federal requirements, is adopted and shall be final effective August 11, 2021.

7/14/2021

\_\_\_\_\_  
Date of Signature

Molly K. Magarik, MS  
DHSS Cabinet Secretary

Attachment 3.1-A  
Page 2A

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

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

**1905(a)(29) Medication-Assisted Treatment (MAT)****i. General Assurance**

MAT is covered under the Delaware Medicaid state plan for all Medicaid beneficiaries who meet the medical necessity criteria for receipt of the service for the period beginning October 1, 2020, and ending September 30, 2025.

**ii. Assurances**

a. The state assures coverage of Naltrexone, Buprenorphine, and Methadone and all of the forms of these drugs for MAT that are approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and all biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262).

b. The state assures that Methadone for MAT is provided by Opioid Treatment Programs that meet the requirements in 42 C.F.R. Part 8.

**iii. Service Package**

The state covers the following counseling services and behavioral health therapies as part of MAT.

## **Outpatient Addiction Services**

MAT may be provided as part of outpatient addiction services which are community-based addiction services not provided in an outpatient hospital setting and include individual-centered activities consistent with the beneficiary's assessed treatment needs with a rehabilitation and recovery focus designed to promote skills for coping with and managing symptoms and behaviors associated with substance use disorders (SUD). These activities are designed to help beneficiaries achieve and maintain recovery from SUDs. Outpatient SUD services include medically necessary care according to assessed needs including the four (4) component activities: (1) Assessment and clinical treatment plan development - The purpose of the assessment is to provide sufficient information for problem identification, SUD treatment or referral for the beneficiary to gain access to other needed Medicaid SUD or mental health services. The treatment plan for Medicaid SUD or mental health services must be patient centered and developed in collaboration with the patient; (2) Skill development for coping with and managing symptoms and behaviors associated with substance use disorders (SUD) such as the participant's perspective and lack of impulse control or signs and symptoms of withdrawal; (3) Counseling to address a beneficiary's major lifestyle, attitudinal, and behavioral problems. Counseling includes highly structured psychosocial therapy to address issues that have the potential to undermine the goals of treatment; (4) Medication Assisted Therapies (MAT), when clinically appropriate and desired by the patient, including the direct administration of medication.

TN No. SPA	Approval Date
Supersedes	
TN No. SPA <u>NEW</u>	Effective Date [ <b>October 1, 2020</b> ]

Attachment 3.1-A  
Page 2B

Outpatient activities are delivered on an individual or group basis in a wide variety of settings including site-based facility, in the community or in the beneficiary's place of residence. These services may be provided on site or on a mobile basis as defined by Delaware Health and Social Services (DHSS) or its designee. The setting will be determined by the goal which is identified to be achieved in the beneficiary's written treatment plan. Outpatient services may be indicated as an initial modality of care for a beneficiary whose severity of illness warrants this level of treatment, or when a beneficiary's progress warrants a less intensive modality of service than they are currently receiving. The intensity of the services will be driven by medical necessity. Medication Assisted Therapies (MAT) should only be utilized when a beneficiary has an established SUD (e.g., opiate or alcohol dependence condition) that is clinically appropriate for MAT.

Provider qualifications: Outpatient addiction services are provided by licensed and unlicensed professional staff, who are at least eighteen (18) years of age with a high school or equivalent diploma, according to their areas of competence as determined by degree, required levels of experience as defined by state law and regulations and approved program guidelines and certifications approved by DHSS or its designee. All outpatient substance use disorder (SUD) programs are licensed or certified under state law. Licensed practitioners under Delaware state regulation are licensed by Delaware and include Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), nurse practitioners (NPs), advanced practice nurses (APNs), medical doctors (MD and DO), Licensed Chemical Dependency Professionals (LCDPs), and psychologists.

## **Residential Addiction Services**

MAT may be provided as part of residential services which include individual-centered residential services consistent with the beneficiary's assessed treatment needs, with a rehabilitation and recovery focus designed to promote skills for coping with and managing substance use disorder symptoms and behaviors. These services are designed to help beneficiaries achieve changes in their substance use disorder behaviors. Services should address the beneficiary's major lifestyle, attitudinal, and behavioral problems that have the potential to undermine the goals of treatment. Residential SUD services include medically necessary care according to assessed needs including the four (4) component activities: (1) Assessment and clinical treatment plan development – The purpose of the assessment is to provide sufficient information for problem identification, SUD treatment or referral for the beneficiary to gain access to other needed Medicaid SUD or mental health services. The treatment plan for Medicaid SUD or mental health services must be patient-centered and developed in collaboration with the patient; (2) Skill development for coping with and managing symptoms and behaviors associated with substance use disorders (SUD) such as the participant's perspective and lack of impulse control or signs and symptoms of withdrawal; (3) Counseling to address a beneficiary's major lifestyle, attitudinal, and behavioral problems. Counseling includes highly structured psychosocial therapy to address issues that have the potential to undermine the goals of treatment; (4) Medication Assisted Therapies (MAT) when clinically appropriate and desired by the patient, including the direct administration of medication. Residential services are delivered on an individual or group basis in a wide variety of settings including treatment in residential settings of sixteen (16) beds or less designed to help beneficiaries achieve changes in their substance use disorder behaviors.

Provider qualifications: Services are provided by licensed and unlicensed professional staff, who are at least eighteen (18) years of age with a high school or equivalent diploma, according to their areas of competence as determined by degree, required levels of experience as defined by state law and regulations and departmentally approved program guidelines and certifications. All residential programs are licensed or certified under state law per Delaware Administrative Code Title 16.6001. The licensure applies to all programs providing services to beneficiaries in need of programs and

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services for diagnosed substance use and/or mental disorders. The licensure at a minimum requires documentation of all insurance coverage required in regulation; the maximum client capacity requested; and a copy of the agency's Delaware business license and home state license, when applicable. The licensure or certification also requires a description of the services to be provided by the program, including a statement of the program philosophy, goals and objectives, and a description of the methodology for each service element; and organization charts of showing incumbent names, positions, degrees and credentials (e.g., license, certification); all vacant positions; and illustrating direct and indirect reporting and supervisory relationships. Licensed practitioners under Delaware State regulation are licensed by Delaware and include Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), nurse practitioners (NPs), advanced practice nurses (APNs), medical doctors (MD and DO), Licensed Chemical Dependency Professionals (LCDPs), and psychologists. Any staff who is unlicensed and providing addiction services must be credentialed by DHSS or its designee and/or the credentialing board or, if a Recovery Coach or Credentialed Behavioral Health Technician, be under the supervision of a qualified

health professional (QHP) or Clinical Supervisor.

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## **1905(a)(29) Medication-Assisted Treatment (MAT)**

Amount, Duration, and Scope of Medical and Remedial Care Services Provided to the Categorically Needy (continued)

### iv. Utilization Controls

The state has drug utilization controls in place. (Check each of the following that apply)

- Generic first policy
- Preferred drug lists
- Clinical criteria
- Quantity limits

The state does not have drug utilization controls in place.

### v. Limitations

Describe the state's limitations on amount, duration, and scope of MAT drugs, biologicals, and counseling and behavioral therapies related to MAT.

- BUPRENORPHINE-NALOXONE limited to 2 (tabs or films) per day unless a prior authorization is approved.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**  
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
OTHER TYPES OF CARE

### **Payments for Medication Assisted Treatment**

Effective October 1, 2020, the Medicaid agency will continue to pay qualified providers for evaluation and management (E/M) or HCPCS Code as applicable when Medication Assisted Treatment (MAT) is part of a visit.

The reimbursement for the MAT drugs that meet the definition of a covered outpatient drug in section 1927(k) of the

Social Security Act will continue to follow the same reimbursement provided in the table on page Attachment 4.19-B Page 14a related to generic and brand drugs.

TN No. SPA	Approval Date
Supersedes	
TN No. SPA <u>13-018</u>	Effective Date <b>[October 1, 2020]</b>

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**ORDER**

**Drug Utilization Review (DUR) - Opioid Provisions**

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES  
IN THE MATTER OF

REVISION OF THE REGULATION )  
OF DELAWARE'S )  
TITLE XIX MEDICAID STATE PLAN )  
SECTION 4.26 )

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend Title XIX Medicaid State Plan regarding the DUR, specifically, to update policy to comply with the published Final Rule. The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the May 2021 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 1, 2021 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 August 11, 2021, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 4.26 of Title XIX Medicaid State Plan regarding the DUR, specifically, to update policy to comply with the published Final Rule.

**Background**

On December 21, 2020, Centers for Medicare & Medicaid Services (CMS) published the final rule Establishing Minimum Standards in Medicaid Drug Utilization Review (DUR) and Supporting Value-Based Purchasing for Drugs Covered in Medicaid, Revising Medicaid Drug Rebate And Third Party Liability Requirements (Rule). This Rule contains opioid-related DUR provisions with which a state must comply and a state must include its compliance plan in the State Plan.

**Statutory Authority**

42 CFR. § 456.703  
42 U.S. Code § 1396a(a)(85)

**Purpose**

The purpose of this proposed regulation is to update policy to comply with the published Final Rule.



## *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 440.386 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives public notice and provides an open comment period for 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 June 1, 2021.

## *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 Statement**

There is no anticipated fiscal impact.

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

No comments were received during the public comment period.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the DUR, specifically, to update policy to comply with the published Final Rule, is adopted and shall be final effective August 11, 2021.

7/14/2021

\_\_\_\_\_  
Date of Signature

Molly K. Magarik, MS  
DHSS Cabinet Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2021 issue of the *Register* at page 989 (24 DE Reg. 989). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Drug Utilization Review (DUR) - Opioid Provisions**

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Sections 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 11003

**ORDER**

**Child Care for Families Receiving Temporary Assistance for Needy Families (TANF)**

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES  
IN THE MATTER OF

REVISION OF THE REGULATION )  
OF DELAWARE’S )  
DELAWARE SOCIAL SERVICES MANUAL (DSSM) )  
DSSM 11003.2, 11003.2.1 and 11003.9.4.1 )

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Child Care for Families Receiving TANF, specifically, to explain the child care eligibility requirements for parents, caretakers, and minor parents participating in the Temporary Assistance for Needy Families (TANF) program. The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the May 2021 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 1, 2021 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 August 11, 2021 the Delaware Health and Social Services (DHSS)/ Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) sections 11003.2, 11003.2.1, 11003.9.4.1 regarding Child Care for Families Receiving TANF, specifically, to explain the child care eligibility requirements for parents, caretakers, and minor parents participating in the Temporary Assistance for Needy Families (TANF) program.

**Statutory Authority**

- 45 CFR 98.20 (a)(3)(i);
- 45 CFR 98.21 (a)(2);
- 45 CFR 98.21 (d)

**Background**

DSS amended DSSM 11003.2 Processing Child Care for Parents and Caretakers Participating in TANF to update the formatting and text so that the policy is easier for DSS staff, stakeholders, and the public to understand. DSSM 11003.2.1 Sanctioning TANF and Transitional Work Program Recipients will be struck out and the sanction rules are being added to DSSM 11003.2.

DSS amended DSSM 11003.9.4.1 Determining Child Care for Minor Parents Participating in TANF E&T to update the formatting and text so that the policy is easier for DSS staff, stakeholders, and the public to understand.

**Purpose**

The purpose of this proposed regulation is to explain the child care eligibility requirements for parents, caretakers, and minor parents participating in the Temporary Assistance for Needy Families (TANF) program. Parents and caretakers must either participate in TANF Employment and Training, TANF Transitional Work Program, be employed, or have an offer of employment to receive TANF child care.

## *Public Notice*

In accordance with the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DSS gives public notice and provides an open comment period for 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 June 1, 2021.

## **Fiscal Impact Statement**

DSS amended these regulations to provide clear and accurate directions on child care for families receiving TANF. These regulations are currently in place and there are no new financial responsibilities associated with the amendments.

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

No comments were received during the public comment period.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding Child Care for Families Receiving TANF, specifically, to explain the child care eligibility requirements for parents, caretakers, and minor parents participating in the Temporary Assistance for Needy Families (TANF) program, is adopted and shall be final effective August 11, 2021.

7/14/2021

Date of Signature

Molly K. Magarik, MS  
DHSS Cabinet Secretary

### **POLICY AMENDMENT**

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

## **11003.2 Parent/Caretaker in Processing Child Care for Parents and Caretakers Participating in TANF**

45 CFR 98.20 (a)(3)(i); 45 CFR 98.21 (a)(2); 45 CFR 98.21 (d)

~~DSS guarantees child care for a dependent child, or a child who would be dependent except for the receipt of benefits under SSI, when the parent/caretaker receives TANF benefits and it is necessary for the parent/caretaker to:~~

- ~~A. accept employment or remain employed (Category 12);~~
- ~~B. participate in TANF (Category 11), or~~

~~Child care is available to a caretaker in the above instance only if the caretaker is part of the TANF assistance unit. The child also needs to be a dependent child.~~

~~EXAMPLE 1: A child receiving TANF lives with her grandmother. The grandmother works and needs child care during her hours of employment. Grandmother is not on the TANF grant and is considered a payee only. In this case, Grandmother cannot get TANF Child Care. Because Grandmother has a need, however, she could be eligible for another category of care.~~

EXAMPLE 2: Grandmother is needy also, and is included on the TANF grant. Grandmother can get TANF Child Care as long as she is working or participating in TANF.

EXAMPLE 3: An TANF recipient with a dependent child is also a foster parent. In order for this recipient to participate in TANF, she needs child care. She can receive care for her dependent child, but because the foster child is not considered a dependent, she is not entitled to TANF Child Care (or other forms of IV-A child care) for her foster child. DSS could provide another category of child care under a Block Grant.

This policy applies to parents and caretakers who need child care assistance while participating in the Temporary Assistance for Needy Families (TANF) program.

1. DSS guarantees child care for an eligible child when the child's parent or caretaker:
  - Participates in the TANF Employment and Training (E&T) program;
  - Participates in the TANF Transitional Work Program (TWP); or
  - Is employed or accepts an offer of employment.
  
2. DSS case workers must open child care for an eligible child and authorize care for twelve months when the parent or caretaker applies for TANF.
  
3. A parent or caretaker who loses eligibility for child care due to a TANF E&T or TWP sanction or loss of employment will receive three months of continued child care before their child care case is closed.
  - A. DSS case workers must authorize three months of child care beginning the month after the TANF sanction request or job loss in accordance with DSSM 11004.12.1 to:
    - Provide continuity of care for the child; and
    - Give the parent or caretaker the opportunity to re-engage with the TANF E&T or TWP program or obtain employment.
  
  - B. If the parent or caretaker cures the TANF E&T or TWP sanction or obtains employment during the three months of continued child care, DSS will authorize care until the family's next eligibility review date.

#### **POLICY AMENDMENT**

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

#### **~~41003.2.1 Sanctioning TANF and Transitional Work Program Recipients~~**

~~Recipients who fail without good cause to meet requirements for the TANF Employment and Training or Transitional Work Program are sanctioned.~~

~~When TANF recipients receive a full family sanction or fail without good cause to comply with the Transitional Work Program (TWP), they lose their TANF Child Care. This means their child care case will close. In order to regain TANF Child Care, recipients must work to cure the sanction by cooperating with their TANF or TWP requirements.~~

~~Clients curing their TANF sanction may be eligible for child care under Presumptive Child Care Services (DSSM 11004.8).~~

**POLICY AMENDMENT**

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

**11003.9.4.1 Determining Child Care for Minor Parents and Participating in TANF E&T**

45 CFR 98.20 (a)(3)(i); 45 CFR 98.21 (a)(2); 45 CFR 98.21 (d)

~~In the case of a minor parent who is a mandatory TANF participant, the minor parent will have to comply with TANF requirements for DSS to maintain child care services. Requirements for TANF are satisfactory participation in the assigned activity and making good progress toward the completion of the activity.~~

~~Satisfactory participation is defined in each participant's Employability Plan. Making good progress is defined as meeting certain qualitative and quantitative measures of performance, such as reviewing test results to determine if students are able to do passing work.~~

~~The Food Stamp Employment & Training TANF requirements are to be part of the minor parent's Employability Development Plan.~~

~~If minor parents receive a sanction because they fail to comply with their Food Stamp Employment & Training TANF requirements, they cannot get child care as long as their TANF case is open and they need to cure their sanction.~~

~~NOTE: A TANF minor parent is either emancipated, or their parent must sign the TANF application. In this case, do not require the minor parent's parents to sign the child care application.~~

This policy applies to minor parents (ages 16 through 17) who need child care assistance while participating in the Temporary Assistance for Needy Families (TANF) Employment and Training (E&T) program.

1. DSS guarantees child care for an eligible child when the child's minor parent:
  - Participates in the TANF E&T program;
  - Participates in the TANF Transitional Work Program (TWP); or
  - Is employed or accepts an offer of employment.
  
2. DSS case workers must open child care for an eligible child and authorize care for twelve months when the minor parent applies for TANF.
  
3. A minor parent who loses eligibility for child care due to a TANF E&T or TWP sanction or loss of employment will receive three months of continued child care before their child care case is closed.
  - A. DSS case workers must authorize three months of child care beginning the month after the TANF sanction request or job loss in accordance with DSSM 11004.12.1 to:
    - Provide continuity of care for the child; and
    - Give the minor parent the opportunity to re-engage with the TANF E&T or TWP program, obtain employment, or attend an educational setting.
  
  - B. If the minor parent cures the TANF E&T or TWP sanction, obtains employment, or attends an

educational setting during the three months of continued child care. DSS will authorize care until the family's next eligibility review date.

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 **Del.C.** §6010(a) & (c))  
7 **DE Admin. Code** 1124

Secretary's Order No.: 2021-A-0017

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions, Section 33- Solvent Cleaning and Drying*

Date of Issuance: July 15, 2021

Effective Date of the Amendment: August 11, 2021

### 1124 Control of Volatile Organic Compound Emissions

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 promulgation.

#### Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions, Section 33- Solvent Cleaning and Drying* ("Regulation"). Specifically, the Department proposes to amend the Regulation to update solvent cleaning control requirements based upon the 2012 Ozone Transport Commission ("OTC") Model Rule and to reduce emissions of Volatile Organic Compound ("VOC") from solvent cleaning operations, thus reducing the formation of ground-level ozone in Delaware. It should be noted that the Department will also submit the Amendments to U.S. Environmental Protection Agency ("EPA") as a State Implementation Plan revision.

The EPA designated certain areas of Delaware as non-attainment of the federal standard for ground-level ozone. Ground-level ozone is formed through the reaction of VOC and other compounds in the air in the presence of sunlight. High levels of ground-level ozone can cause or worsen difficulty in breathing, asthma and other serious respiratory problems. As Delaware is a member of the OTC, a multi-state organization authorized by the 1990 *Clean Air Act*, the Department is proposing to implement the regional solutions developed by the OTC to further reduce VOC's in the solvent cleaning process.

Solvent cleaning is the process of using solvents to remove contaminants from various plastic, metal, or other surfaces. Cold solvent cleaning includes machines such as batch-loaded and immersion cold cleaning machines, remote reservoir cold cleaning machines (also known as sink-on-a-drum) and various types of spray booths, flush booths, or wash stations. Batch cold cleaning is the most common type of the solvent cleaning process used in Delaware. The solvent cleaning and drying process can be conducted either in the liquid phase (cold cleaning) or the vapor phase.

The liquid phase of solvent cleaning and drying consists of soiled parts being scrubbed in a sink-like device or submerging in a batch cold cleaning machine and then drip dried. Solvent cleaning and drying conducted in the vapor phase heats the solvent to a boiling point in a batch vapor cleaning machine, the vapors are contained in a zone above the boiling liquid, and parts are then lowered into the vapor zone where the vapors condense on the cooler parts and drip back into the boiling liquid. Conveyorized in-line cleaning machines may also be used, typically for mass production of solvent cleaning. It should be noted that the Department is unaware of any conveyorized in-line cleaning machines in Delaware, however the proposed Regulation include provisions for such

machines, with the understanding that this type of machine could exist.

In 2001 the OTC released the 2001 Model Rule for Solvent Cleaning, referred hereto as the "2001 Model Rule", as part of a regional effort to attain and maintain the one-hour ozone standard, address emission reduction shortfalls that were identified by EPA in specific state's plans to attain the one-hour ozone standard, and reduce eight-hour ozone levels. The 2001 Model Rule has a low vapor pressure VOC limit of less than 1.0 millimeters of mercury ("mm Hg") vapor pressure for solvent in cold cleaning machines, to control the level of VOC emissions while still allowing for the use of 100% VOC solvent in cold cleaning machines.

Subsequent to the release of the 2001 Model Rule, Delaware adopted the current Regulation in November 2001. The current Regulation applies to any person who owns or operates a solvent cleaning machine that contains more than one liter of solvent and uses any solvent containing volatile organic compounds in a total concentration greater than 5 % by weight, as a cleaning or drying agent. Likewise, the current Regulation exempts users of cold cleaning machines containing one liter or less of solvent and with a VOC concentration of 5% by weight or less.

After a release of the *Control Techniques Guideline (CTG): Industrial Cleaning Solvents* by the EPA in 2006, proposing new VOC limits for solvent cleaning, the OTC convened a group of experts that suggested a more stringent model rule than what is provided in the CTG and the 2001 Model Rule. The OTC then developed the 2012 Model Rule for Solvent Degreasing using the Santa Barbara County Air Pollution Control District Rule 321 (Remote Reservoir Cleaner only,) as amended September 18, 1997 and California's South Coast Air Quality Management District Rule 1122, as amended May 1, 2009. In addition, new VOC content limit requirements were applied only to cold cleaners. It should be noted that the requirements for vapor degreasing remains the same as in the 2001 Model Rule, with the exception that all types of parts are regulated, not just metal parts.

As established by EPA's *Clean Air Act*, 42 U.S. Code 7511c(b)(1)(B), entities, such as Delaware, in non-attainment areas, are required to adopt ground-level ozone CTGs or make similar VOC reductions. In compliance with the aforementioned EPA requirement, the Department developed the amended Regulations to update solvent cleaning control requirements to further reduce emissions of VOC by: (1) eliminating the exemptions for cold cleaning machines containing one liter or less of solvent and with a VOC concentration of 5% by weight or less; (2) allowing cold cleaning machines to be heated to below boiling; (3) reducing the solvent VOC concentration from 800 grams per liter to 25 grams per liter for most applications; and (4) allowing higher VOC concentrations to be used in conjunction with a VOC capture and control device. In addition, the Amendments provide non-substantive administrative wording edits and corrections.

The Department estimates that by adopting the Amendments, Delaware VOC emissions will be reduced by 27.42 percent, which will result in a reduction of 40.87 tons per year or 0.11 tons per day, thus the reduction of VOC emissions from solvent cleaning operations will further reduce the formation of ground-ozone. It should be noted that existing users/sources have 1 year from the effective date to comply, and new users/sources will be required to comply upon start up, contingent upon the effective date of Amendments.

The Department published its initial proposed Amendments in the November 1, 2020 *Delaware Register of Regulations*. Thereafter the public hearing notice was issued, and the Department held a virtual public hearing on December 2, 2020. There were six (6) members of the public in attendance at the virtual public hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on December 17, 2020, with (2) verbal comments and (1) written comment received by the Department.

Subsequent to the close of the record, the Department's Division of Air Quality staff prepared a Technical Response Memorandum to address the comments received by the public. Based on comments received, the Department revised the proposed Amendments to include non-substantive changes. Referenced in subsections 33.8.9 and 33.11.1, the non-substantive changes provide clarification to the initial proposed amendments. In section 33.8.9, the revision clarifies that annual testing of temperature control is not required if a second thermal cut off sensor is used in addition to the primary thermostat. In section 33.11.1, the revision clarifies that the use of Method 313 for testing is not in addition to Method 24 and SCAQMD Method 304, rather all three methods are separate options available for testing. It should be noted that none of the revisions as proposed are substantive in nature, nor do they constitute any new requirements of the regulated community that were not previously vetted at the time of the public hearing. Thus, no additional noticing or hearings are necessary to be held by the Department in this matter.

Hearing Officer Theresa Newman prepared her report dated June 16, 2021 ("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 *revised* Amendments as attached to the Report as Appendix "A."

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed *revised* Amendments, pursuant to 7 *Del.C.* §6010(a) and (c). 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.

### Reasons and Conclusions

Based on the record developed by the Department's staff in the Division of Air Quality, and established by the Hearing Officer's Report, I find that the proposed *revised* regulatory Amendments are well-supported and will enable the Department to update solvent cleaning control requirements based upon a 2012 Ozone Transport Commission Model Rule and reduce emissions of VOC from solvent cleaning operations, thus reducing the formation of ground-level ozone. I further find that the Department's Air Quality 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 hereby 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.* §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed *revised* 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 virtual public hearing held on December 2, 2020 and during the 15 days subsequent to the hearing (through December 17, 2021), before making any final decision;
4. Promulgation of the proposed *revised* Amendments to 7 DE Admin. Code 1124: Section 33.0, *Solvent Cleaning and Drying*, will enable the Department to update solvent cleaning control requirements based upon a 2012 Ozone Transport Commission Model Rule and reduce emissions of VOC from solvent cleaning operations, thus reducing the formation of ground-level ozone;
5. The Department has reviewed the proposed *revised* Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* §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 Hearing Officer's Report, including its established record and the recommended proposed *revised* Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as initially published in the November 1, 2020, *Delaware Register of Regulations*, and then subsequently *revised*, 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 are 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*;
8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
9. The Department shall submit this Order approving the proposed *revised* Amendments as final to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

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

**1124 Control of Volatile Organic Compound Emissions**



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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 1900 BOARD OF NURSING

Statutory Authority: 24 Delaware Code, Section 1906(a)(1) (24 Del.C. §1906(a)(1))  
24 DE Admin. Code 1900

### FINAL ORDER ADOPTING REGULATION CHANGES

#### 1900 Board of Nursing

The Delaware Board of Nursing pursuant to 24 Del. C. § 1906(a)(1), proposed to revise its regulations. The proposed amendments seek to add a requirement that nurses provided workforce data upon renewal and reinstatement. In addition, the proposed changes clarify all renewal and reinstatement requirements. Finally, the proposed changes add "gender identity and expression" to the list of bases upon which a nurse shall not discriminate against a patient.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the *Delaware Register of Regulations* on April 1, 2021 a public hearing was held on May 12, 2021. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*.

At the time of the deliberations, the Board considered the following documents:

**Board Exhibit 1** - Affidavit of publication of the public hearing notice in the *News Journal*;

**Board Exhibit 2** - Affidavit of publication of the public hearing notice in the *Delaware State News*;

There was no verbal testimony given at the public hearing on May 12, 2021, and no written comments were received by the Board during the initial thirty-day or subsequent 15-day public comment periods.

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the initial 30 day written public comment period, the public hearing, or subsequent 15 day written public comment period.
3. Pursuant to 24 Del. C. § 1906(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed amendments seek to add a requirement that nurses provided workforce data upon renewal and reinstatement. In addition, the proposed changes clarify all renewal and reinstatement requirements. Finally, the proposed changes add "gender identity and expression" to the list of bases upon which a nurse shall not discriminate against a patient.
5. The proposed changes also correct two spelling errors in the existing regulations pursuant to 29 Del. C. § 10113(b)(4), which allows for "[n]onsubstantive changes in existing regulations to alter style or form or to correct technical errors."
6. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
7. Having received no public comment, the Board adopts the regulations as proposed with two non-substantive changes to correct spelling errors.

#### DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed with two non-substantive changes to correct spelling errors. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These

changes will become effective ten days following publication of this order in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** this 9th day of June 2021 by the Delaware Board of Nursing.

Ronald R. Castaldo, PhD, CRNA, APRN, President  
 Megan Williams, DNP, FNP-C, RN  
 /s/ Pamela James, RN  
 /s/ Kenyette Walters, LPN  
 /s/ Gayle Melvin, Public Member  
 /s/ Sandra Glenn-Vernon, RN  
 /s/ Michael Brothers, Public Member

Kimberly Hopkins, RN, Vice President (Absent)  
 /s/ Tiarra Davis, Public Member  
 /s/ Carol Abdill, RN  
 /s/ William Hare, Public Member  
 /s/ Marlo Silverio, RN  
 Prameela Kaza, Public Member (Absent)

**\*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

**1900 Board of Nursing  
 (Break in Continuity of Sections)**

**7.0 Standards of Nursing Practice**

**(Break in Continuity Within Section)**

~~7.6~~7.7 Dispensing

**(Break in Continuity Within Section)**

~~7.6.2~~7.7.2 Authority to Dispense

**(Break in Continuity Within Section)**

~~7.6.2.2~~7.7.2.2 Licensed **[Practice Practical]** Nurses may assume the responsibility of dispensing as authorized by the Nurse Practice Act and defined in these Regulations, **[Section subsection]** 7.6.2.2.1., 7.6.2.2.2, and ~~[7.6.2.2.3]~~ **7.6.2.2.3.**

**8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Registered Nurse in the State of Delaware**

**(Break in Continuity Within Section)**

8.14 Prescriptive Authority

**(Break in Continuity Within Section)**

8.14.6 APRNs may: diagnose, prescribe and institute therapy or referrals of patients **[with within]** the APRN's role and population foci to health care agencies, health care providers, and community resources; pronounce death and sign death certificates; seek consultation regarding treatment and care of patients; and be designated as the primary care provider by an insurer or health services corporation.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2021 issue of the *Register* at page 941 (24 DE Reg. 941). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**1900 Board of Nursing**

## DIVISION OF PROFESSIONAL REGULATION 3800 BOARD OF DIETETICS/NUTRITION

Statutory Authority: 24 Delaware Code, Section 3805(1) (24 Del.C. §3805(1))  
24 DE Admin. Code 3800

### FINAL ORDER ADOPTING REGULATION CHANGES

#### 3800 State Board of Dietetics/Nutrition

The Delaware Board of Dietetics/Nutrition pursuant to 24 Del. C. § 3805(1), proposed to revise its regulations. The proposed amendments to the regulations seek to wholly amend the continuing education requirements for renewal to more closely align with the requirements of Commission on Dietetic Registration thus expanding the ways in which a licensee can obtain continuing professional education. In addition, the changes clarify the time a licensee may remain on inactive status and the procedures required to reactivate a license.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the *Delaware Register of Regulations* on February 1, 2021 a public hearing was held on February 26, 2021. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. The Board further marked the following public comments as Board Exhibits:

At the time of the deliberations, the Board considered the following documents:

**Board Exhibit 1** - Affidavit of publication of the public hearing notice in the *News Journal*;

**Board Exhibit 2** - Affidavit of publication of the public hearing notice in the *Delaware State News*; and

There was no verbal testimony given at the public hearing on February 26, 2021. No written comments were received by the Board during the initial thirty-day public comment period; one written comment in support of the regulations was received after the public hearing during the fifteen day 29 Del. C. § 10118(a) second public comment period.

### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There was no public comment provided to the Board during the two written public comment periods or during the public hearing.
3. Pursuant to 24 Del. C. § 3805(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes amend the Board's Regulations seek to wholly amend the continuing education requirements for renewal to more closely align with the requirements of Commission on Dietetic Registration thus expanding the ways in which a licensee can obtain continuing professional education. In addition, the changes clarify the time a licensee may remain on inactive status and the procedures required to reactivate a license.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. For the reasons stated above, the Board 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 Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** this 14th day of May 2021 by the Delaware Board of Dietetics/Nutrition.

# FINAL REGULATIONS

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/s/ Jennifer Linton, L.D.N., Chairman  
/s/ Gwendolyn Fulwood, Public Member

/s/ Natalie McKenney, L.D.N., Secretary

**\*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2021 issue of the *Register* at page 764 (24 DE Reg. 764). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3800 State Board of Dietetics/Nutrition**

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

Statutory Authority: 42 U.S.C. §1396a (a)(13) and 42 CFR §447.205

### GENERAL NOTICE

#### PROPOSED AMENDMENT FOR PATHWAYS TO EMPLOYMENT 1915 (I) HOME AND COMMUNITY-BASED SERVICES STATE PLAN AMENDMENT (SPA)

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

#### Background

In 2015, the Centers of Medicare & Medicaid Services (CMS) approved Delaware's application for Pathways to Employment, a 1915(i) Medicaid Home and Community Based State Plan Option. CMS recently approved the Pathways SPA for another five years. The Pathways HCBS SPA serves individuals aged 14 to 25 who have intellectual disabilities/autism spectrum disorders, physical disabilities or visual impairment who require support to attain and sustain competitive employment. Pathways to Employment is currently limited to transition-aged youth and young adults to address the needs, identified by this age group, that were not being met through existing programs and services.

At the time of program development, it was determined that supports available through the other Medicaid authorities and the Division of Vocational Rehabilitation were sufficient to meet the needs of adults over the age of 25. Delaware has since discovered there is a small subset of the disability population who in fact have a gap in employment-related services. This subset includes young adults aging out of Pathways to Employment who are enrolled in the Diamond State Health Plan Plus and who need continued employment support.

#### Purpose

The purpose of this posting is to provide public notice and elicit public input regarding Delaware's proposed amendment to its current Pathways to Employment program.

#### Overview and Summary of the Pathways to Employment Amendment

Delaware proposes to amend the Pathways to Employment 1915 (j) State Plan Amendment (SPA) to modify the targeting criteria which limits participation to only those who are between the ages of fourteen (14) and twenty-five (25). The proposed amendment would maintain the minimum age as fourteen (14) but would remove the maximum age of twenty-five (25).

Removing the maximum age requirements will address the service gap experienced by a small subset of Medicaid eligible individuals who require certain supports that they cannot receive from other programs to enable them to obtain or maintain competitive employment. These are individuals who have chosen to enroll in the Diamond State Health Plan Plus program to receive long term services and supports.

Currently, individuals must choose between the DDDS Lifespan waiver or the Diamond State Health Plan Plus program to receive long term services and supports based on which program better meets their needs. Individuals

are not permitted to concurrently enroll in the Diamond State Health Plan Plus and the DDDS Lifespan Waiver. The DSHP Plus program does not contain any employment supports.

Because Pathways to Employment is a Medicaid State Plan HCBS Option, individuals may be concurrently enrolled in Pathways and either the DSHP Plus Program or the DDDS Lifespan HCBS Waiver. Removing the upper age limit from the Pathways to Employment program will enable individuals who have chosen to enroll in the DSHP Plus program but who want to work to be able to access needed employment supports.

In addition to the change outlined above, Delaware desires to make other changes to the Pathways SPA, most of which are technical in nature:

- Amend the reimbursement methodology for personal care and respite services provided by either a Home Health Agency (HHA) or Personal Attendant Service Agency (PASA) to be consistent with rates for the same service under the DDDS Lifespan Waiver. The current Pathways methodology is based on the DMMA fee schedule for Home Health Agency rates that was in place at the time CMS initially approved Pathways. CMS then later directed DMMA to change the reimbursement methodology for the Home Health Agency services. However, when DMMA made changes to the rate methodology, the Pathways methodology was not updated to reflect those changes. The DDDS Lifespan rate methodology for personal care and respite from Home Health and PASA agencies was updated during the July 2019 renewal. This change to Pathways aligns the reimbursement methodology for respite and personal care delivered by Home Health and PASA Agencies across the Lifespan 1915 (c) Home and Community Based waiver, and the Pathways to Employment 1915 (i) State Plan Amendment.
- Amend the "needs based" criteria and institutional "level of care" criteria for the target group of individuals with visual impairment (change requested by CMS).
- Amend the chart of "Projected Number of Unduplicated Individuals To Be Served Annually" to change from a state fiscal year basis to a calendar year basis (change requested by CMS) to be consistent with the SPA renewal approval period.
- Remove the provider qualification for Supported Employment: Individual and Group that requires providers to be contracted with the Division of Vocational Rehabilitation to contract with the Pathways program. The intent of this requirement was to facilitate continuity of providers for individuals transitioning from DVR services under the Rehab Act to Pathways services but DDDS is concerned that this requirement may have the unintended consequence of limiting the pool of providers enrolled to deliver these Pathways services.

### **Fiscal Impact**

Delaware anticipates no additional cost to the general fund for this amendment if it is approved by CMS because funds are already budgeted under the assumption that these individuals would be able to access Supported Employment under the DDDS Lifespan HCBS Waiver.

### **Public Comment Submission Process**

As required by 42 CFR Part 441.304, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the waiver. Per Del. Code, Title 29 §10118 (a), the opportunity for public comment shall be held open for a minimum of 30 days. The public is invited to review and comment on the proposed Pathways to Employment renewal. Comments must be received by 4:30 p.m. on August 31, 2021. Comments may be submitted in the following ways:

By Mail: 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: [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov)

By Fax: 302-255-4413

(Please identify in the subject line: *Pathways to Employment Amendment #1*)

The hardcopy renewal will be available at the following locations from August 1, 2021 through August 31, 2021.

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

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

Stephen M. Groff  
Director  
Division of Medicaid and Medical Assistance

7/12/2021 12:39 PM EDT  
Date

**DELAWARE RIVER BASIN COMMISSION**  
**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing on **Wednesday, August 11, 2021** beginning at **1:30 p.m.** The public hearing will be conducted on a remote platform. Please check the Commission's website, [www.drbc.gov](http://www.drbc.gov), on or after July 28, 2021 for details regarding the draft docket decisions that will be subjects of the public hearing and for information on how to attend and participate in this remote public hearing.

The Commission's quarterly business meeting will be held the following month, on **Wednesday, September 09, 2021**, beginning at **10:30 a.m.** The business meeting will also be conducted remotely. Details about the meeting format and how to attend will be posted on the Commission's website, [www.drbc.gov](http://www.drbc.gov), no later than July 28, 2021.

For additional information, please visit the DRBC website at [www.drbc.gov](http://www.drbc.gov) or contact Patricia Hausler at [patricia.hausler@drbc.gov](mailto:patricia.hausler@drbc.gov).

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**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION****PUBLIC NOTICE****501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del. C.** Section 10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments for clarity by adding a definition.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on June 1, 2021, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On June 22, 2021, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to the initial 30-day comment period beginning on August 1, 2021 to August 31, 2021 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on September 14, 2021 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB August 31, 2021. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

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**DEPARTMENT OF EDUCATION****PUBLIC NOTICE**

On March 12, 2020, Governor Carney issued a declaration of a state of emergency for the state of Delaware due to a public health threat. The State of Emergency allows all public meetings of executive branch public bodies, including the SBE, to be conducted electronically, either by means of telephone conference call or video-conference call.

In accordance with the State of Emergency, the State Board of Education is currently holding meetings electronically. The meeting information can be accessed via the public meeting calendar (<https://publicmeetings.delaware.gov/Search?q=&AnyAll=Any&AgencyID=22&StartDateInclusive=2020-08-01>). Members of the public can join the meeting via the web or telephone.

Meeting materials are available on the State Board of Education's eBoard site (<https://simbli.eboardsolutions.com/index.aspx?s=190001>). (If you are having technical difficulties accessing the site, please try a different browser.)

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF HEALTH CARE QUALITY****PUBLIC NOTICE****4406 Home Health Agencies--Aide Only (Licensure)**

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)(o), Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Home Health Agencies – Aide Only (Licensure).

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 September 1, 2021. Please identify in the subject line: Regulations Governing Home Health Agencies – Aide Only (Licensure).

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.

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**DIVISION OF HEALTH CARE QUALITY****PUBLIC NOTICE****4410 Skilled Home Health Agencies (Licensure)**

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)(o), Delaware Health and Social Services (DHSS)/ Division of Health Care Quality (DHCQ) is proposing regulations governing Skilled Home Health Agencies (Licensure).

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 September 1, 2021. Please identify in the subject line: Regulations Governing Skilled Home Health Agencies (Licensure).

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.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Adult Dental**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 Del. C. § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Alternative Benefit Plan (ABP) regarding Dental Services, specifically, to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid.

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 August 31, 2021. Please identify in the subject line: Dental Services.

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

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by other interested persons.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**

**AMBULATORY SURGICAL CENTER SERVICES**  
**Title XIX Medicaid State Plan - Ambulatory Surgical Center Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services, specifically, to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services.

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 August 31, 2021. Please identify in the subject line: Ambulatory Surgical Center Services.

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.

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

**DELAWARE'S TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)**  
**3000 Temporary Assistance for Needy Families (TANF) - Definition**  
**3000.1 Funding**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend Delaware's Temporary Assistance for Needy Families (TANF), specifically, to provide clear and accurate information on the TANF program.

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, Division of Social Services (DSS), 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 August 31, 2021. Please identify in the subject line: Defining and Funding Delaware's Temporary Assistance for Needy Families (TANF).

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.

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

**CHILD CARE ADMINISTRATION AND INTEGRITY**

**DSSM 11002.5 Responsibility For The Administration Of Delaware's Child Care Subsidy Program**  
**DSSM 11002.5.1 Responsibility for Direct Administration of Delaware's Child Care Subsidy Program**  
**DSSM 11002.10 Establishing Program Integrity in Child Care**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware

Code) and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

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, Division of Social Services (DSS), 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 August 31, 2021. Please identify in the subject line: Child Care Administration and Integrity.

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.

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**DIVISION OF SOCIAL SERVICES**

**PUBLIC NOTICE**

**ADJUSTING CHILD CARE PAYMENTS AND AUTHORIZATIONS**

**DSSM 11006.4.8 Completing Correct Transactions**

**DSSM 11006.4.9 Completing Manual Adjustments**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

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, Division of Social Services (DSS), 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 August 31, 2021. Please identify in the subject line: Adjusting Child Care Payments and Authorizations.

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.

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**DEPARTMENT OF INSURANCE**

**OFFICE OF THE COMMISSIONER**

**PUBLIC NOTICE**

**902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]**

In the May 1, 2020 edition of the *Register of Regulations*, the Department published a proposal to update and clarify requirements concerning prohibited unfair claim settlement practices that are set forth in Regulation 902 (see 23 **DE Reg.** 920 (05/01/2020)). In that proposal, the Department proposed adding new subsection 3.1.14, which included a failure to promptly settle a claim as required under Regulation 903 as an unfair claim settlement practice. The Department also took the opportunity of the proposal to make grammatical and formatting edits throughout the regulation. Upon further review, the Department determined not to proceed with proposed new subsection 3.1.14 and withdrew that proposal, as violations of Regulation 903 are already a defined unfair claims settlement practice.

Instead, the Department proposed to add new subsection 3.2 to Regulation 902, which would have specifically provided that three instances of an insurer's commission of a prohibited claim settlement practice within a 36-month period, as listed in subsection 1.2.1 (to be recodified at subsection 3.1), shall give rise to a rebuttable presumption that the insurer is in violation of this regulation and 18 **Del. C.** §2304(16)f. This first re-proposal was published in the June 1, 2020 edition of the *Register of Regulations* (see 23 **DE Reg.** 997 (06/01/2020)). The Department again took the opportunity of the re-proposal to make grammatical and formatting edits throughout the regulation.

In response to comments from the regulated community that are summarized in the second re-proposal, the Department determined to revise proposed new subsection 3.2 by raising the frequency of instances of commission of a prohibited claim settlement practice from three instances within a 36-month period to four percent of claims sampled.

This second re-proposal was published in the October 1, 2020 edition of the *Register of Regulations* (see 24 DE Reg. 330 (10/01/20)). The Department again took the opportunity of the re-proposal to make grammatical and formatting edits throughout the regulation.

The Department will hold a virtual public hearing and a simultaneous in-person meeting on the proposed amendments to Regulation 902 on Monday, **August 23, 2021 at 9:00 a.m.** The hearing will be facilitated through WebEx at:

- <https://stateofdelaware.webex.com/stateofdelaware/j.php?MTID=ma230bbdd684b998a7ecfdaf84f2148f9>
- meeting number (access code): 1790 36 2461 and
- meeting password: zePHXmp9q79.

Holding a virtual public meeting was specifically permitted by Paragraph 5 of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat issued by Governor John Carney on March 12, 2020 and extended monthly thereafter (see <https://governor.delaware.gov/health-soe/> for the complete list of modifications and extensions). With the anticipated expiration of the State of Emergency, the Legislature passed SB 94 w/ SA 1, which allows any public body to hold a virtual meeting if there is a physical anchor location where the public can attend the meeting in person and the virtual meeting conforms to all requirements under the Freedom of Information Act (FOIA).

The proposed amendments appear below and may also be viewed on 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 7th day of September 2021. Any such requests and any questions concerning connecting to the public hearing should be directed to:

Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Docket 4259-2020  
1351 West North Street, Suite 101  
Dover, DE 19904  
(302) 674-7379  
Email: [DOI\\_Legal@delaware.gov](mailto:DOI_Legal@delaware.gov)

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**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 September 22, 2021 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 October 7, 2021 in accordance with 29 Del.C. §10118(a).

**DIVISION OF PROFESSIONAL REGULATION**  
**1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE**  
**PUBLIC NOTICE**

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 *Del. C.* § 1713(a)(12), proposes to update language for Board Regulation 13.0 to reflect the changes made in recently passed legislation. See HB 33 from the 151th General Assembly (online at <https://legis.delaware.gov/BillDetail?legislationId=48215>). The Board will hold a public hearing on the proposed regulation change on September 7, 2021 at 3:00 p.m. Written comments should be sent to Devashree Singh, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 22, 2021 pursuant to 29 *Del. C.* § 10118(a).

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**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 supervision of trainees are being amended to allow the supervisor more discretion in letting the trainee practice. 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 September 21, 2021 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, or virtually 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 October 7, 2021.

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