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# Delaware Register of Regulations

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Issue Date: DECEMBER 1, 2016

Volume 20 - Issue 6, Pages 386 - 501

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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 November 15, 2016.

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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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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
January 1	December 15	4:30 p.m.
February 1	January 17	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 17	4:30 p.m.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DELAWARE HEALTH CARE COMMISSION****DELAWARE HEALTH RESOURCES BOARD**

Statutory Authority: 16 Delaware Code, Section 9303 (16 Del.C. §9303)

**Delaware Health Resources Management Plan**

**\*Please Note:** The Public Notice for the Delaware Health Care Commission proposed regulation for **Delaware Health Resources Management Plan**, published in the November 2016 issue of the *Delaware Register of Regulations* (20 DE Reg. 347), contained an error in the location of the public hearing. The Public Notice is reprinted below with the public hearing location information corrected.

**PUBLIC NOTICE****Delaware Health Resources Management Plan**

The Delaware Health Resources Board (DHRB) pursuant to Title 16 Chapter 93 of the Delaware Code proposes to revise its Health Resources Management Plan (HRMP) regulation 16 Del.C. §9303(d)(1). The purpose of the plan is to establish the core set of common review considerations for use in reviewing Certificate of Public Review (CPR) applications. The proposed amendment seeks to clarify detail and fully update the edition of the HRMP to promote alignment with Delaware's existing statewide policy aimed at improving health outcomes, health care quality and patient experience, lowering growth in per capital health care costs and enhancing provider satisfaction. As per recommendations of Joint Sunset Committee in 2012, this is the first full document revision of the HRMP.

The board will hold a public hearing on the proposed HRMP amendment on December 5, 2016 at 1:00 p.m. at **Edgehill Shopping Center, Large Training Room, 43 S. Dupont Highway, Dover DE**. Written comments should be sent to Latoya Wright, Staff to the DHRB at Delaware Health Care Commission, 410 Federal Street, Suite 7, Margaret O'Neill Building, Third Floor, Dover, DE 19901. Written comments will be accepted until January 5, 2017.

Please park in the large part of the lot in front of Concord Pets, do not park in the spots directly in front of the building, in front of the liquor store, or by the salons, as the retail stores must have front parking for their customers.

**\*Please Note: A PDF version of the proposed regulation is available at:**

Health Resources Management Plan (<http://regulations.delaware.gov/register/november2016/proposed/HRMP.pdf>)

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

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 260

**PUBLIC NOTICE****Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA****A. Type of Regulatory Action Required**

Repealing of Existing Regulation

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

The Secretary of Education intends to repeal 14 **DE Admin. Code** 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA. This regulation is being repealed as it is outdated and determined to be no longer needed. Districts and charter schools participating in these child nutrition programs are required to follow federal law governing these programs (known as Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et seq.). This federal law creates a high standard for program requirements that exceed the current regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. 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, Finance Office, located at the address listed above.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is being repealed as participating districts and charter schools currently abide by the requirements within the Healthy, Hunger Free Kids Act of 2010.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is being repealed as participating districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is being repealed as participating districts and charter schools currently abide by the requirements within the Healthy, Hunger Free Kids Act of 2010.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is being repealed as participating districts and charter schools currently abide by the requirements within the Healthy, Hunger Free Kids Act of 2010.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is being repealed as participating districts and charter schools currently abide by the requirements within the Healthy, Hunger Free Kids Act of 2010.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation is being repealed as participating districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is being repealed as participating districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

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? This regulation is being repealed as participating districts and charter schools currently abide by the Healthy Hunger, Free Kids Act of 2010.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is being repealed as participating districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

10. What is the cost to the State and to the local school boards of compliance with the regulation? This regulation is being repealed as participating districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

**\*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/december2016/proposed/20 DE Reg 396RFA 12-01-16.pdf](http://regulations.delaware.gov/register/december2016/proposed/20%20DE%20Reg%20396RFA%2012-01-16.pdf)

## **260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA**

### **1.0 ~~Institutions Participating in the Delaware CACFP May Request an Administrative Review of the Following Actions~~**

- ~~1.1 Denial of a new or renewing institution's application for participation;~~
- ~~1.2 Denial of an application submitted by a sponsoring organization on behalf of a facility;~~
- ~~1.3 Proposed termination of an institution's agreement;~~
- ~~1.4 Proposed disqualification of a responsible principal or responsible individual;~~
- ~~1.5 Suspension of an institution's participation;~~
- ~~1.6 Denial of an institution's application for start up or expansion payments;~~
- ~~1.7 Denial of all or a part of an institution's claim for reimbursement except for a denial based on a late submission under 7 CFR §226.10(e);~~
- ~~1.8 Demand for the remittance of an overpayment; and~~
- ~~1.9 Any other action of the State agency affecting an institution's participation or its claim for reimbursement.~~

### **2.0 ~~Notwithstanding the Provisions of Section 1.0 Above, Institutions Participating in the Delaware CACFP May Not Request an Administrative Review of the Following Actions~~**

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# PROPOSED REGULATIONS

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- 2.1 ~~A determination that an institution is seriously deficient;~~
- 2.2 ~~Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National disqualified list; or~~
- 2.3 ~~Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by any publicly funded program.~~

### **3.0 ~~Except Where the Abbreviated Administrative Review Procedures Apply as Set Forth Below, Administrative Reviews will be Conducted as Follows~~**

- 3.1 ~~The Department of Education ("Department") must give notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review of the action. Notice shall be given to the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals by U. S. Mail postage prepaid. As used herein, "Petitioner" means a participating institution or agency, or its responsible principals or responsible individuals, as appropriate under the circumstances.~~
- 3.2 ~~A request for administrative review must be submitted to the Department in writing not later than 15 days after the date the notice of action is received.~~
- 3.3 ~~The petitioner may retain legal counsel or may be represented by another person if permitted by law.~~
- 3.4 ~~Any information on which the Department's action was based will be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative review.~~
- 3.5 ~~The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department's review official. In order to be considered, written documentation must be submitted to and received by the review official not later than 30 days after the petitioner received the notice of action.~~
- 3.6 ~~A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative review. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner's testimony and to answer questions posed by the administrative review official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days notice of the time and place of the hearing.~~
- 3.7 ~~The administrative review official shall be independent and impartial. The administrative review official may be an employee of the Department, but must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative review official directly, but all such contacts must include the participation of a representative of the Department if the Department chooses to participate.~~
- 3.8 ~~The administrative review official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon federal and Delaware laws, regulations, policies and procedures governing the CACFP/USDA.~~
- 3.9 ~~The decision of the administrative review official shall be issued to the Department and petitioner within 60 days of the Department's receipt of the written request for an administrative review. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not, solely in itself, constitute grounds for reversing the Department's action. The decision of the administrative review official is the final administrative determination to be afforded to the petitioner.~~
- 3.10 ~~The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same.~~

- ~~3.11 The Department shall conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the discretion of the administrative review official, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.~~

#### **4.0 Administrative Review**

Notwithstanding any of the foregoing to the contrary, administrative review will be limited to a review of written submissions concerning the accuracy of the Department's determination if the application was denied or the Department proposes to terminate the institution's agreement because:

- 4.1 The information submitted on the application was false; or
- 4.2 The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is
- 4.2.1 On the National Disqualified List; or
  - 4.2.2 Ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program; or
  - 4.2.3 Has been convicted for any activity that indicates a lack of business integrity.

#### **5.0 ~~The Department's Administrative Responsibilities to a Participating Institution Shall Remain in Effect During the Administrative Review~~**

- 5.1 ~~Overpayment demand. During the period of the administrative review, the Department is prohibited from taking action to collect or offset the overpayment. However, the Department must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the Department's action.~~
- 5.2 ~~Program payments. The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution shall be treated in accordance with the provisions of 7 CFR §226.6 (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively.~~

~~(11/15/16) \*Note: Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et seq. governs these programs.~~

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 262

### PUBLIC NOTICE

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

**262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action**

- A. Type of Regulatory Action Required**  
Repealing of Existing Regulation

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

The Secretary of Education intends to repeal 14 DE Admin. Code 262 General Administrative Appeal Procedures for National School Lunch Program (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action. This regulation is being repealed as it is outdated and determined to be no longer needed. Districts and charter schools participating in these child nutrition programs are required to follow federal law governing these programs (known as Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et seq.). This federal law creates a high standard for program requirements that exceed the current regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. 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, Finance Office, located at the address listed above.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is being repealed as participating districts and charter schools are required to abide by the requirements within the Healthy, Hunger Free Kids Act of 2010.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is being repealed as participating districts and charter schools are required to abide by the Healthy, Hunger Free Kids Act of 2010.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is being repealed as participating districts and charter schools are required to abide by the Healthy, Hunger Free Kids Act of 2010.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is being repealed as participating districts and charter schools are required to abide by the Healthy, Hunger Free Kids Act of 2010.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is being repealed as participating districts and charter schools are required to abide by the Healthy, Hunger Free Kids Act of 2010.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation is being repealed as participating districts and charter schools are required to abide by the Healthy, Hunger Free Kids Act of 2010.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is being repealed as districts and charter schools are required to abide by the Healthy, Hunger Free Kids Act of 2010.

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? This regulation is being repealed as districts and charter schools are required to abide by the Healthy, Hunger Free Kids Act of 2010.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is being repealed as districts and charter schools are required to abide by the Healthy, Hunger Free Kids Act of 2010.

10. What is the cost to the State and to the local school boards of compliance with the regulation? This regulation is being repealed as districts and charter schools are required to abide by the Healthy, Hunger Free Kids Act of 2010.

**\*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/december2016/proposed/20 DE Reg 399RFA 12-01-16.pdf>

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## 262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action

### **1.0 ~~Institutions Participating in the Delaware NSLP, SBP and ASSP May Request an Administrative Appeal~~**

- 1.1 ~~Denial of all or a part of an institution's claim for reimbursement or withholding payment arising from a Coordinated Review Effort (CRE) or follow up review activity conducted by the Delaware State Agency under Volume 7 of the Code of Federal Regulations (7 CFR) 210.18; and,~~
- 1.2 ~~Withholding of program payments resulting from a CRE.~~

### **2.0 ~~Administrative Appeal Shall Apply as Set Forth Below, and Will be Conducted as Follows~~**

- 2.1 ~~The Department of Education ("Department") shall give written notice of the action being taken or proposed, the grounds upon which the action is based, and the procedures under which the school food authority (SFA) may request an appeal of the action. Notice shall be given to the SFA individuals by certified mail, return receipt requested. As used herein, "Petitioner" means an SFA or its responsible individuals, as appropriate under the circumstances.~~
- 2.2 ~~A request for administrative appeal shall be submitted to the Department in writing, postmarked within 10 calendar days after the date the notice of action is received. The Department shall acknowledge receipt of the request for appeal within 10 calendar days.~~
- 2.3 ~~Any information on which the Department's action was based will be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative appeal; if alterations or adjustments can be developed that are agreeable to both the petitioner and the Department, such procedure shall be followed.~~
- 2.4 ~~The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department's review official. In order to be considered, written documentation must be submitted to the review official not later than 30 days after the petitioner submitted the appeal, shall clearly identify the State agency (SA) action being appealed, and shall include a photocopy of the notice of action issued by the SA.~~
- 2.5 ~~A hearing must be held by the administrative appeal official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative appeal. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative appeal official, unless the administrative appeal official agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner's testimony and written information and to answer questions posed by the administrative appeal official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.~~
- 2.6 ~~The petitioner may retain legal counsel or may be represented by another person if permitted by law.~~
- 2.7 ~~The administrative appeal official shall be independent and impartial, other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section. The administrative appeal official may be an employee of the Department, but shall not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative appeal official directly, but all such contacts shall include the participation of a representative of the Department, if the Department chooses to participate.~~
- 2.8 ~~The administrative appeal official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon Program regulations, policies and procedures governing the NSBP and NSLP.~~
- 2.9 ~~The decision of the administrative appeal official shall be issued to the Department and petitioner within 60 days of the Department's receipt of the request for review, by written notice, sent by certified~~



# PROPOSED REGULATIONS

~~mail, return receipt requested. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not constitute grounds for reversing the Department's action. The decision of the administrative appeal official is the final administrative determination to be afforded to the petitioner, unless the CRE or review included USDA officials. When USDA officials participate in the CRE or review leading to the fiscal actions taken, then an appeal may be made to the USDA as specified under 4.0 below.~~

- ~~2.10 The Department's action shall remain in effect during the appeal process.~~
- ~~2.11 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same. The record shall document the Department's compliance with these regulations and shall include the basis for its decision.~~

~~**3.0 When the CRE or Follow up Activity is Conducted by the State Agency only, the Appeal Shall be Made to the: Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639.**~~

## ~~4.0 Filing an Appeal~~

- ~~4.1 When the CRE is performed as a State assisted CRE with participation of USDA officials, at the discretion of the petitioner, the appeal may also be made to the: Chief, Administrative Review Branch, USDA FNS, 3101 Park Center Drive, Alexandria, VA 22302.~~
- ~~4.1.1 Any appeal correspondence should be marked "Request for Review". The USDA Administrative Review Branch conducting an appeal will make a determination based on information provided by the Food and Nutrition Service, the appellant and the Program regulations.~~

~~(11/15/16) \*Note: Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et seq., governs these programs.~~

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 264

### PUBLIC NOTICE

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

#### **264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA**

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

Repealing of Existing Regulation

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

The Secretary of Education intends to repeal 14 DE Admin. Code 264 General Administrative Appeal Procedures for the Summer Food Service Program of the United States Department of Agriculture CACFP/USDA. This regulation is being repealed as it is outdated and determined to be no longer needed. Districts and charter schools participating in these child nutrition programs are required to follow federal law governing these programs (known as Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et seq.). This federal law creates a high standard for program requirements that exceed the current regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at

401 Federal Street, Suite 2, Dover, Delaware 19901. 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, Finance Office, located at the address listed above.

## C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is being repealed as districts and charter schools currently abide by the requirements within the Healthy, Hunger Free Kids Act of 2010.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

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? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

10. What is the cost to the State and to the local school boards of compliance with the regulation? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

**\*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/december2016/proposed/20 DE Reg 402RFA 12-01-16.pdf](http://regulations.delaware.gov/register/december2016/proposed/20%20DE%20Reg%20402RFA%2012-01-16.pdf)

## 264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA

### ~~1.0 Institutions Participating in the Delaware SFSP May Request an Administrative Appeal of the Following Actions~~

- ~~1.1 Denial of a new or renewing institution's application for participation;~~
- ~~1.2 Denial of a sponsor's request for an advance payment;~~
- ~~1.3 Denial of all or a part of a sponsor's claim for reimbursement (except for a denial based on a late submission under 7 CFR §225.9(d)(5));~~
- ~~1.4 Refusal to forward to FNS an exception request by the sponsor for payment of a late claim or request for an upward adjustment to a claim;~~
- ~~1.5 A claim against a sponsor for remittance of a payment;~~
- ~~1.6 Termination of the sponsor or site; and,~~
- ~~1.7 Denial of a sponsor's application for a site;~~

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# PROPOSED REGULATIONS

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~~2.0 Notwithstanding the Provisions of Section 1.0 Above, Institutions Participating in the Delaware SFSP May Not Request an Administrative Review of Decisions Made by FNS with Respect to Late Claims or Upward Adjustments Under § 225.9(d)(5).~~

~~3.0 Administrative Appeal Procedures Shall Apply as Set Forth Below~~

- ~~3.1 The Department of Education ("Department") shall give written notice of the action being taken or proposed, the grounds upon which the action is based, and the procedures under which the sponsor or food service management company may request an appeal of the action. Notice shall be given to the institution's executive director or other responsible individuals by certified mail, return receipt requested. As used herein, "Petitioner" means a participating institution or agency, or its responsible individuals, as appropriate under the circumstances.~~
- ~~3.2 A request for administrative appeal shall be submitted to the Department in writing not later than 15 days after the date the notice of action is received and the appeal shall meet the requirements specified in 3.5 below.~~
- ~~3.3 The petitioner shall make an appeal within ten (10) working days from the date on which the notice of action is received.~~
- ~~3.4 Any information on which the Department's action was based shall be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative appeal.~~
- ~~3.5 The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department's review official. In order to be considered, written documentation shall be submitted to the review official not later than seven (7) days after the petitioner submitted the appeal, must clearly identify the Department action being appealed, and must include a photocopy of the notice of action issued by the Department.~~
- ~~3.6 A hearing shall be held by the administrative appeal official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative appeal. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative appeal official, unless the administrative appeal official agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner's testimony and written information and to answer questions posed by the administrative appeal official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.~~
- ~~3.7 The petitioner may retain legal counsel or may be represented by another person if permitted by law.~~
- ~~3.8 The hearing shall be held within fourteen (14) days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs 3.4 to 3.7.~~
- ~~3.9 The administrative appeal official shall be independent and impartial. The administrative appeal official may be an employee of the Department, but shall not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative appeal official directly, but all such contacts shall include the participation of a representative of the Department, if the Department chooses to participate.~~
- ~~3.10 The administrative appeal official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon Program regulations, policies and procedures governing the SFSP.~~
- ~~3.11 The decision of the administrative appeal official shall be issued to the Department and petitioner within five (5) days of the petitioner's hearing, or within five (5) working days after receipt of the written documentation if no hearing is held, the appeal official shall make a determination based upon a full review of the administrative record and inform the petitioner of the determination of the review by certified mail, return receipt requested. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to~~

~~issue a timely decision shall not constitute grounds for reversing the Department's action. The decision of the administrative appeal official is the final administrative determination to be afforded to the petitioner.~~

- ~~3.12 The Department's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the Department's decision, reimbursement shall be paid for meals during the appeal process. However, such continued Program operation shall not be allowed if the Department's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the Department shall so specify in its notice of action.~~
- ~~3.13 The Department shall send written notification of the complete appeal procedures and of the actions which can be appealed, as specified in sections 1.1 to 1.7, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with 7 CFR 225.6(g).~~
- ~~3.14 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same. The record shall document the Department's compliance with these regulations and shall include the basis for its decision.~~

(11/15/16) \*Note: Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et. seq. governs these programs.

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 852

**PUBLIC NOTICE**

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

**852 Child Nutrition**

**A. Type of Regulatory Action Required**

Repealing of Existing Regulation

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

The Secretary of Education intends to repeal 14 DE Admin. Code 852 Child Nutrition. This regulation is being repealed as it is outdated and determined to be no longer needed. Districts and charter schools participating in these child nutrition programs are required to follow federal law governing these programs (Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et seq.). This federal law creates a high standard for program requirements that exceed the current regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. 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, Finance Office, located at the address listed above.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is being repealed as districts and charter schools currently abide by the requirements within the Healthy, Hunger Free Kids Act of 2010.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

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

This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

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? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

10. What is the cost to the State and to the local school boards of compliance with the regulation? This regulation is being repealed as districts and charter schools currently abide by the Healthy, Hunger Free Kids Act of 2010.

**\*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/december2016/proposed/20 DE Reg 405RFA 12-01-16.pdf>

## 852 Child Nutrition

### 4.0 Required Policy

Each school district shall have a Child Nutrition Policy which at a minimum shall provide that:

- 4.1 ~~Meals served to children are nutritious and well balanced as defined by USDA 7CFR Part 210.10 Nutrition Standards for Lunches and Menu Planning Methods and USDA 7CFR Part 220.8 Nutrition Standards for Breakfast and Menu Planning Alternatives.~~
- 4.2 ~~The foods sold in addition to meals be selected to promote healthful eating habits and exclude those foods of minimal nutritional value as defined by the Food and Nutrition Service, USDA 7 CFR Part 210, Appendix B.~~
- 4.3 ~~Purchasing practices ensure the use of quality products.~~
- 4.4 ~~Students have adequate time to eat breakfast and lunch.~~
- 4.5 ~~Nutrition education be an integral part of the curriculum from preschool to twelfth grade.~~
- 4.6 ~~Food service personnel use training and resource materials developed by the Department of Education and the United States Department of Agriculture to motivate children in selecting healthy diets.~~

(11/15/16) \*Note: Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751, et seq. governs these programs.

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

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

### PUBLIC NOTICE

#### Chiropractors' Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Medical and other types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for chiropractors' 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 [Kimberly.Xavier@state.de.us](mailto:Kimberly.Xavier@state.de.us), or by fax to 302-255-4425 by January 2, 2017. Please identify in the subject line: Chiropractors' 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 Title XIX Medicaid State Plan regarding Medical and other types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for chiropractors' services.*

#### Statutory Authority

- §1905(a)(6) of the Social Security Act, *Medical care furnished by licensed practitioners*
- §1905(g) of the Social Security Act, *State plan provision of chiropractors' services*
- 42 CFR §440.60, *Medical or remedial care provided by licensed practitioners*
- 42 CFR §440.225, *State plan optional services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- 42 CFR §440, *Subpart C, Benchmark benefit and benchmark equivalent coverage*

#### Background

As a result of the Affordable Care Act, states were required to expand Medicaid eligibility to low-income adults beginning January 1, 2014, under section 1937 of the Social Security Act (hereafter referred to as the Act). Enacted as part of the Deficit Reduction Act of 2005, section 1937 of the Act provides states with significant flexibility to design Medicaid benefit packages under the State plan. As a result, State Medicaid programs have the option to provide certain groups of Medicaid enrollees with "benchmark" or "benchmark-equivalent" coverage based on one of three commercial insurance products, or a fourth, "Secretary-approved" coverage option through an Alternative Benefit Plan. "Benchmark" means that the benefits are at least equal to one of the statutorily specified benchmark plans; "benchmark-equivalent" means that the benefits include certain specified services, and the overall benefits are at least actuarially equivalent to one of the statutorily specified benchmark coverage packages. These section 1937 benchmark options are minimum standards and states can augment coverage with additional benefits.

In May of 2014, the Center for Medicaid Services (CMS) approved Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) submitted Delaware's Alternative Benefit Plan (ABP) with an effective date of January 1, 2014. The ABP included benchmarks and benchmark equivalent services reflective of the current Medicaid State Plan. Additionally, DMMA added chiropractors' services to the ABP

for this newly eligible low-income, adult population. Previously, Delaware's Medicaid State Plan only covered chiropractors' services for children under the authority of 42 CFR §441 Subpart B, Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) of Individuals under Age 21. However, DMMA would like to extend coverage of chiropractors' services to all Delaware Medicaid beneficiaries in an effort to increase the quality of care, as well as reduce long-term costs of treating chronic pain.

Pain is a leading cause of disability and a major contributor to healthcare utilization. Musculoskeletal pain disorders include a wide range of acute and chronic injuries or inflammatory conditions that cause pain in the body's joints; ligaments; muscles; nerves; tendons; and structures that support the limbs, neck, and back. Conventional medical treatment for chronic musculoskeletal pain (e.g., nonsteroidal anti-inflammatory drugs and surgery) and use of opioids often lack long-term benefit or subject patients to other risks, such as medication side effects and opioid dependency. It is also costly to the United States, not just in terms of health care expenses and disability compensation, but with respect to lost productivity and employment, reduced incomes, lost school days, and decreased quality of life. According to the National Health Statistics Report, No. 98, issued on October 12, 2016, "Use of Complementary Health Approaches for Musculoskeletal Pain Disorders Among Adults: United States, 2012," there is increasing clinical trial evidence for the efficacy of some complementary health approaches in treating specific musculoskeletal pain disorders, such as chiropractic care and other functional medicine techniques.

### **Summary of Proposal**

#### *Purpose*

The purpose of this proposed regulation is to expand coverage and allow reimbursement for chiropractors' services for all Medicaid eligible individuals.

#### *Summary of Proposed Changes*

Effective for services provided on and after January 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1-A Page 3, Attachment 3.1-A Page 3 Addendum, and 4.19-B Page 26 of the Medicaid State Plan to expand coverage and allow reimbursement for chiropractors' services for all Medicaid eligible individuals.

#### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the establish coverage and reimbursement methodologies for chiropractors services. Comments must be received by 4:30 p.m. on January 2, 2017.

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

The provisions of this state plan amendment (SPA) relating to coverage and payment methodology for services 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 Update*

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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 manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

### **Fiscal Impact**

The expansion of chiropractic services is proposed as a cost effective alternative to traditional pain treatment

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and management services. There is no estimated 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/december2016/proposed/20 DE Reg 407RFA 12-01-16.pdf>

**DMMA PROPOSED REGULATION APA 16-025a  
REVISION**



Revision: HCFA-PM-91-4 (BPD)  
August 1991

Attachment 3.1-A  
Page 3  
OMB No. : 0938-

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

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

b. Optometrists' Services

- Provided:             No Limitations             With Limitations\*
- Not Provided

c. Chiropractors' Services

- ~~Provided:             No Limitations             With Limitations\*~~
- ~~Not Provided~~
- Provided:             No Limitations             With Limitations\*
- Not Provided

d. Other Practitioners' Services

- Provided:    Identified on attached sheet with description of limitations, if any.
- Not Provided

7. Home Health Services

a. Intermittent or part-time nursing services provided by a home health agency or by a registered nurse when no health agency exists in the area.

- Provided:             No Limitations             With Limitations\*

b. Home health aide services provided by a home health agency.

- Provided:             No Limitations             With Limitations\*

c. Medical supplies, equipment, and appliances suitable for use in the home.

- Provided:             No Limitations             With Limitations\*

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## DMMA PROPOSED REGULATION APA 16-025b REVISION

Attachment 3.1-A  
Page 3 Addendum

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

State: DELAWARE

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

#### 6.b. Optometrists' Services

These services are reimbursed:

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

#### 6.c. Chiropractors' Services

The following chiropractic services are reimbursed:

1. One (1) office visit per year;
2. One (1) set of X-rays per year, and
3. Twenty (20) manipulations per year.

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

#### 6.d. Other Practitioners' Services

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

## DMMA PROPOSED REGULATION APA 16-025c REVISION

Attachment 4.19-B  
Page 26

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE  
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES (Continued)

### 28. CHIROPRACTIC SERVICES

~~Chiropractic Services are defined per Attachment 3.1 I, New Adult Alternative Benefit Plan, page 5 of the ABP5, are available to the Medicaid low income new adult population under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act.~~

~~Chiropractic Providers are identified in the State Plan, Attachment 3.1 I, page 5 of the ABP5.~~

Chiropractic services and qualified providers are defined per Attachment 3.1-A, Page 3 Addendum.

The reimbursement methodology is a "fee schedule" methodology. Under the fee schedule methodology, reimbursement services for chiropractic services is made at the lower of the provider's billed charge for the services, the Resource Based Relative Value Scale (RBRVS) methodology used for physicians (which Delaware Medicaid currently pays at 98% of the Medicare rate), or the maximum allowable fee for chiropractic services under the Delaware Medicaid provider reimbursement fee schedule. The reimbursement rates are effective for dates of service on or after April 1, 2014.

Fee schedules for chiropractic services are available on the Delaware Medical Assistance Program (DMAP) website at <http://www.dmap.state.de.us/downloads/feeschedules.html>.

Except as otherwise noted in the Medicaid State Plan, State-developed fee schedule rates are the same for both governmental and private providers.

~~This payment methodology applies to services specified in the Delaware Alternative Benefit Plan.~~

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

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

#### **PUBLIC NOTICE**

#### **Purchase of Care (POC) - Licensed Exempt Providers**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) proposes to amend the Delaware Social Services Manual (DSSM) regarding child care licensing requirements, specifically, *to revise the definition of licensed exempt child care providers receiving Purchase of Care (POC) funding.*

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, Attention: Kimberly Xavier; by email to [Kimberly.Xavier@state.de.us](mailto:Kimberly.Xavier@state.de.us); or by fax to 302-255-4425 by 4:30pm on January 2, 2017. Please identify in the subject line: Purchase of Care (POC) - Licensed Exempt

Providers.

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 Delaware Social Services Manual (DSSM) regarding child care licensing requirements, specifically, *to revise the definition of licensed exempt child care providers receiving Purchase of Care (POC) funding.*

### Statutory Authority

- Pub. L. 113-186; *Child Care and Development Block Grant (CCDBG) Act of 2014*
- 42 USC §9858; *Child Care and Development Block Grant, authorization of appropriations,*
- §418 of the Social Securities Act (42 USC §618); *Funding for child care*
- 45 CFR 98; *Child Care and Development Fund*
- 81 FR 67438; *Federal Register Child Care Development Fund*

### Background

On November 19, 2014, President Barack Obama signed the (Pub. L. 113-186) into law. The Child Care and Development Block Grant (CCDBG) Act authorizes the Child Care and Development Fund (CCDF), which is the primary Federal funding source devoted to providing low-income families who are working or participating in education or training activities with help paying for child care and improving the quality of child care for all children. The CCDBG Act includes provisions to: (1) Protect the health and safety of children in child care; (2) help parents make informed consumer choices and access information to support child development; (3) provide equal access to stable, high quality child care for low-income children; and (4) enhance the quality of child care and the early childhood workforce. The law requires providers receiving CCDF funds (including those that are license-exempt) to be monitored, at least annually, to determine whether health and safety practices and standards are being followed in the child care setting, including a pre-licensure visit for licensed providers. Among other things, the law allows agencies to develop alternative monitoring requirements for CCDF-funded care provided in the child's home and to exempt relative caregivers from the monitoring requirement, if the agency chooses to do so.

The 2016 Child Care and Development Fund Final Rule updates regulations to incorporate, and in some cases clarify, changes made through the Child Care and Development Block Grant Act of 2014. The rule applies to states, territories and tribes administering CCDF and incorporates and clarifies changes made through the bipartisan CCDBG Act. It also is reflective of helpful comments received on the Notice of Proposed Rulemaking (NPRM) published in December 2015. Throughout the final rule, ACF responds to the more than 150 comments received during the public comment period and makes changes where appropriate. Where possible, it also aligns child care requirements with new Head Start regulations, including certain requirements for background checks and health and safety trainings for staff.

### Summary of Proposal

#### *Purpose*

To revise language in the Delaware Social Services Manual (DSSM) so as to be compliant with changes in the Child Care and Development Fund Final Rule. The final rule requires that all providers receiving Purchase of Care (POC) funding must now to be licensed, including those that were previously license exempt, in order to continue receiving POC funding.

#### *Summary of Proposed Changes*

If implemented as proposed, the amendment to the DSSM will accomplish the following, effective February 11, 2017:

Modify DSSM 11004.4.1, Explanation of Certificates, and DSSM 11004.9, Authorizing Child Care Services, to align with the 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 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the Delaware Social Services Manual provisions regarding Purchase of Care Licensing Requirements. Comments must be received by 4:30 p.m. on January 2, 2017.

## Fiscal Impact Statement

Reauthorization of the Child Care Development Block Grant is requiring that child care providers that receive purchase of care funding to become licensed. A revision of current policy in regards to licensed exempt providers will be required. This is a revision of our current policies and will not require additional funding.

**\*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/december2016/proposed/20 DE Reg 412RFA 12-01-16.pdf>

## DMMA PROPOSED REGULATION #16-027a REVISION

### 11004.4.1 Explanation of Certificates

Use the following as a guide to explain the child care certificate package.

A. Parents/caretakers can use this package to select a child care provider of their choice. However, they must select care that is legal. Legal care is care that is licensed or that is exempt from licensing requirements.

B. Licensed Care: ~~In Delaware, a~~ All family child care homes and child care centers must have a license to operate in Delaware. Do not allow a parent to select an unlicensed family, or center child care provider.

C. License-exempt Care: The following provider types are exempt from licensing requirements in Delaware:

1. persons who come into the child's own home to care for the parent/caretaker's child,
2. relatives who provide care in their home for the parent/caretaker's child;
- ~~3. public or private school care,~~
- ~~4. preschools and kindergarten care, and~~
- ~~5. before and after school care programs.~~

6. Though the above provider types are exempt from licensing requirements, they are still required to meet certain health and safety standards. These standards are:

1. maintaining documentation of the child's immunization record,
2. safe and clean building premises,

3. providers and those 18 and older who live in the home where care is being provided must not have any record of child abuse or neglect (do not allow persons to provide care where there is a known record of abuse or neglect), and

4. relatives who provide care cannot be part of the welfare grant.

D. Once parents/caretakers know the appropriate provider to select, they also need to know how DSS will pay for the care provided. DSS has established rates above which it will not pay (see Appendix II for current reimbursement rates).

Parents/caretakers will need to know these rates and whether or not the provider is willing to accept them. If the provider is willing, the certificate will act just like a DSS contract and DSS will pay the provider directly less any child care fee. If the provider is not willing, the parent/caretaker will self-arrange care with the individual provider.

If the provider contracted purchase of care slots are full, the provider may offer the parent/caretaker the option of receiving service as a purchase of care plus client. The provider then receives the regular DSS subsidy from the Division, the DSS determined parent fee and any additional fee determined by the provider from the parent/caretaker.

If the provider is not willing to accept purchase of care plus, the parent/caretaker will self-arrange care with the individual provider. The parent/caretaker will pay the provider and submit an original receipt to DSS for reimbursement. The parent/caretaker, however, will only receive reimbursement up to the DSS statewide limit.

E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the Child Abuse/ Neglect History Clearance Form or forms for all members 18 and older living in the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member.

F. Service will not be delayed because of an incomplete child abuse clearance check, but remind parents/caretakers that DSS will not pay for care if, after authorization, the check should reveal a history of abuse or neglect.

G. Allow parents/caretakers one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the parents/caretakers will need to obtain a new certificate if they still wish to receive service.

H. The original copy of the child care certificate is completed and returned by the provider. The certificate package provides instructions for completion. The provider should keep a copy.

I. The client has 60 days from confirmation of eligibility to provide the DSS Case Manager with the name of his/her provider. If the client fails to provide this information his/her case will close.

#### **DMMA PROPOSED REGULATION #16-027b REVISION**

#### **11004.9 Authorizing Child Care Services**

45 CFR 98.11

All child care services must be authorized before parents/caretakers can receive subsidized child care. Parents/ caretakers can choose any provider who is: ~~either~~

A. licensed, licensed exempt, or self arranged, and.

B. approved to receive purchase of care.

No parent/caretaker can receive POC funds to provide child care services to their own children in a home or any other child care facility where the parent/caretaker provides direct care to that child. These parents may be able to get child care assistance if their children are placed in another child care setting.

Authorizations always start after service has been approved. The exact date is selected by the parent/caretaker. An authorization ends on the last day of the month of the authorization period. At no time can the authorization period exceed the review date. Child care may be authorized only for the days and hours that parents/caretakers need care. The types of care that can be authorized are part time (P), full day (X), and day and a half (T) ~~and double time (D) which is two days~~. All licensed and licensed exempt child care providers can receive up to five (5) absent days, depending on the number of days the child is authorized to attend. Children in self arranged care and children authorized for seven (7) days do not receive absent days.

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# PROPOSED REGULATIONS

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Title XXI Delaware Healthy Children Program State Plan - Premium Requirements

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) proposed to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*.

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, Attention: Kimberly Xavier; by email to [Kimberly.Xavier@state.de.us](mailto:Kimberly.Xavier@state.de.us), or by fax to 302-255-4425 by 4:30 pm on January 2, 2017. Please identify in the subject line: CHIP Premium Requirements.

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 Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*.

#### Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act
- Title XXI of the Social Security Act, *State Children's Health Insurance Program*
- 42 CFR Part 457, *State Children's Health Insurance Programs (SCHIPs)*
- 16 Delaware Code, Section 9909

#### Background

The Balanced Budget Act of 1997, enacted on August 5, 1997, established the "State Children's Health Insurance Program (SCHIP)" by adding Title XXI to the Social Security Act. The purpose of this program is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Delaware's SCHIP program called the Delaware Healthy Children Program (DHCP) is authorized under Title 19, Chapter 99, and Section 9905 of the Delaware Code.

#### *Modified Adjusted Gross Income (MAGI) Conversion Plan*

Under the Affordable Care Act, to complete the transition to the MAGI-based methodology, states developed MAGI-based income eligibility standards for the applicable eligibility groups that "are not less than the effective income levels" that were used to determine Medicaid and CHIP income eligibility as of the enactment of the Affordable Care Act. The conversion of current income eligibility standards to equivalent MAGI-based income eligibility standards account for any income disregards now used. Finally, under section 1902(e)(14)(E) of the Act, each state must submit to the Secretary for approval its proposed MAGI-equivalent income eligibility standards and the methodologies and procedures that support those proposed standards, for each applicable eligibility group. This submission is referred to as the state's "MAGI Conversion Plan". Delaware's conversion plan was approved on September 17, 2013.

The conversion to MAGI-based income eligibility standards impacts the percentages of the Federal Poverty Level (FPL) used to set the premium levels under CHIP. The Centers for Medicare and Medicaid Services (CMS) advised Delaware that the State needed to amend the Delaware's Children's Health Insurance Program (CHIP) State Plan to update the premium levels to account for the MAGI-based conversion standards. Therefore, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) drafted a proposed CHIP State Plan Amendment (SPA) to change the percentages of the Federal Poverty Level (FPL) applied to the premium levels and to describe the incentives for pre-payment of premiums. The proposed regulation was published in the September 2014 Delaware *Register of Regulations* for public comment. The final regulation was published in the November 2014 Delaware *Register of Regulations* and the SPA was submitted to CMS on December 17, 2014. DMMA worked with CMS over the course of two (2) years to re-work the language in Delaware's CHIP State Plan to reflect the new ACA requirements, and update the CHIP family premium cost sharing amounts to be consistent with the state's approved Modified Gross Income conversion plan. The SPA was approved on May 19, 2016.

### **Summary of Proposal**

Effective July 1, 2014, CHIP families have been required to pay monthly premiums according to federal poverty level (FPL) as detailed below:

1. The ten dollar (\$10.00) per family per month premium for families with incomes between 101% and 133% of the Federal Poverty Level (FPL) is obsolete. Children in these families transitioned to Medicaid effective January 1, 2014.
2. The conversion to MAGI-based standards results in a premium of fifteen dollars (\$15.00) per family per month for families with incomes ranging from 143% to 176% of the FPL, and \$25 PFPM for families with incomes ranging from 177% to 212% of the FPL (refer to CHIP MAGI State Plan Page CS21 for information on the effect of non-payment of premiums). This was a change from the originally a premium of fifteen dollars (\$15.00) per family per month for families with incomes between 134% and 166% of the FPL and a premium of twenty-five dollars (\$25.00) per family per month for families with incomes between 167% and 212% of the FPL that was proposed in September 2014.

Section 8 of the DHCP State Plan and Section 18700 of the Division of Social Services Manual (DSSM) have been amended to reflect the above-referenced change to the premium levels.

In addition, based on agency review, DHSS/DMMA amended the DHCP state plan at section 8.2.1 to update the language regarding incentives for pre-payment of premiums. The updated language reflects incentives for pre-payment of premiums that have been in practice since the inception of Delaware's CHIP program. These incentives are described at Section 18700 of the Division of Social Services Manual (DSSM).

The following regulations show the changes from the final version that was published in the December 2014 *Register* to those that CMS approved on May 19, 2016.

### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input regarding these required changes made at the direction of the Center for Medicare and Medicaid Services (CMS). Comments must be received by 4:30 p.m. on January 2, 2017.

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

The provisions of this state plan amendment (SPA) have been approved by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) have undergone further revisions since the initial publication as a result of CMS feedback and thus is being republished.

### *Provider Manuals Update*

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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 manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

## Fiscal Impact

These regulations are being published to share changes made as a result of CMS feedback and direction. Current practice is not changing. Therefore, there is no 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/december2016/proposed/20 DE Reg 416RFA 12-01-16.pdf>

## DMMA REGULATION #16-028a

### REVISION:

### MODEL APPLICATION TEMPLATE FOR STATE CHILD HEALTH PLAN UNDER TITLE XXI OF THE SOCIAL SECURITY ACT STATE CHILDREN'S HEALTH INSURANCE PROGRAM

### DELAWARE HEALTHY CHILDREN PROGRAM

#### Section 8. Cost Sharing and Payment (Section 2103(e))

- Check here if the state elects to use funds provided under Title XXI only to provide expanded eligibility under the state's Medicaid plan, and continue on to Section 9.

8.1. Is cost-sharing imposed on any of the children covered under the plan? (42 CFR 457.505)

8.1.1.  YES

8.1.2.  NO, skip to question 8.8.

Describe the amount of cost-sharing and any sliding scale based on income, the group or groups of enrollees that may be subject to the charge and the service for which the charge is imposed or time period for the charge, as appropriate. (Section 2103(e)(1)(A)) (42CFR 457.505(a), 457.510(b) & (c), 457.515(a)&(c))

- 8.2.1. Premiums: Fifteen dollars (\$15.00) per family per month for families with incomes ~~between 134% and 166%~~ ranging from 143% to 176% of the Federal Poverty Level (FPL) and twenty-five dollars (\$25.00) per family per month for families with incomes ~~between 167% and 212%~~ ranging from 177% to 212% of the FPL ~~See Section 4.3 and~~ (refer to CHIP MAGI State Plan Page CS21 for information on the effect of non-payment of premiums).

Incentives for pre-payment of premiums include the following: Pay three (3) months get one (1) premium free month; pay six (6) months get two (2) premium free months; pay nine (9) months get three (3) premium free months.

## DMMA REGULATION #16-028a

### REVISION:

- 8.5 Describe how the State will ensure that the annual aggregate cost-sharing for a family does not exceed 5 percent of such family's income for the length of the child's eligibility period in the State. Include a description of the procedures that do not primarily rely on a refund given by the State for overpayment by an enrollee: Section 2103(e)(3)(B)) (42CFR 457.560(b) and 457.505(e))

Since cost sharing is per family per month (PFPM), rather than per member per month, each family will pay the same amount no matter the number of children in the household. The premium rates are significantly less than those allowed by the Balance Budget Act of 1997 for premiums (see chart below). There is a minimal copayment of \$10 per inappropriate use of the emergency room that will be waived if a prudent layperson would deem the visit an emergency or if it results in an inpatient

admission. Delaware believes these levels of cost sharing are affordable but, at the same time, provide an incentive for clients to responsibly use health care services and avoid unnecessary emergency room visits.

An analysis of the State's fee schedule suggests that cumulative cost-sharing will rarely exceed 1% of the family's adjusted gross income. However, should families submit evidence that they have reached the aggregate limit on cost-sharing, the State will work with the MCOs on an individual basis to exempt the family from future cost-sharing.

### Premiums as a percentage of Income

% of FPL*	Family Size	101%	133%	134%	166%	167%	200%
\$120 Annual Premium	1	1.47%	1.12%				
	2	1.09%	0.83%				
	3	0.87%	0.66%				
\$180 Annual Premium	1			1.66%	1.35%		
	2			1.23%	1%		
	3			0.98%	0.79%		
\$300 Annual Premium	1					2.23%	1.86%
	2					1.65%	1.38%
	3					1.32%	1.1%

\*Based on the 1998 Poverty Limit of \$8050 for 1 person, \$10,850 for 2, and \$13,650 for 3.

% of FPL*	Family Size	143%	176%	177%	212%
\$180 Annual Premium	1	1.06%	.86%		
	2	.79%	.64%		
	3	.62%	.51%		
\$300 Annual Premium	1			1.43%	1.19%
	2			1.06%	.88%
	3			.84%	.70%

\*Based on the 2016 Poverty Limit of \$11,880 for 1 person, \$16,020 for 2, and \$20,160 for 3.

## DMMA REGULATION #16-028b REVISION:

### 18700 Premium Requirements

Families with eligible children are required to pay a premium in order to receive coverage. The premium is per family per month regardless of the number of eligible children in the family. The monthly premium will vary

# PROPOSED REGULATIONS

according to family income as follows:

Family Income	Premium
134% FPL – 176% FPL	\$15.00
177% FPL – 212% FPL	\$25.00

Family Income	Premium
$\geq 143\%$ $\leq 176\%$	\$15.00
$\geq 177\%$ $\leq 212\%$	\$25.00

Payments that are less than one (1) month's premium will not be accepted.

Coverage begins the first of the month following payment of the initial premium. Payments for the initial premium will be accepted through a monthly cut-off date known as the authorization date. The authorization date is set by the automated eligibility system. If payment of the initial premium is received by the authorization date, coverage under DHCP will be effective the following month. Premium payments for ongoing coverage will be accepted through the last day of the month.

Families will be able to pay in advance and purchase up to one year's coverage. The following incentive is offered for advance payments:

- Pay three (3) months – get one (1) premium free month
- Pay six (6) months – get two (2) premium free months
- Pay nine (9) months – get three (3) premium free months.

The advance premium payments for coverage may extend beyond the scheduled eligibility renewal. If the child is determined to be ineligible, the advance premium payments will be refunded to the family.

Coverage will be cancelled when the family is in arrears for two premium payments. The coverage will end the last day of the month when the second payment is due. If one premium payment is received by the last day of the cancellation month, coverage will be reinstated.

Families who lose coverage for nonpayment of premiums will have received two unpaid months of coverage. Families who are cancelled for nonpayment of premiums may reenroll at any time without penalty. Reenrollment will begin with the first month for which the premium paid.

Good cause for nonpayment of premiums will be determined on a case-by-case basis.

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 3370A, and 3571S (18 Del.C. §§3370A & 3571S)

### PUBLIC NOTICE

#### 1317 Network Disclosure and Transparency

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 1317 relating to Network Disclosure and Transparency. The docket number for this proposed regulation is 3252.

The proposed regulation establishes the standards for the form and content of network disclosures that are required to be made by out-of-network providers and the written consent that must be obtained by such a provider prior to balance billing an insured. The proposed regulation also requires health insurers to maintain and publish accurate, complete and up-to-date provider directories and to make those directories easily accessible to covered persons. The Delaware Code authority for this proposed regulation is 18 Del.C. §§3370A and 3571S; and 29 Del.C. Ch. 101.

Proposed Regulation 1317 was initially published in the Delaware *Register of Regulations* on September 1,

2016. Following the initial publication, the Department has changed the Delaware Code references for §3371 to §3370A; modified Section 1.0 and subsections 3.1, 3.4, 4.1, 4.3, and 6.3; inserted a new Section 5.0; renumbered original Sections 5.0, 6.0, 7.0, and 8.0; modified Appendix 1, paragraph 6; and added a new Appendix 2, in response to certain comments received, and is re-publishing the proposed Regulation 1317 on December 1, 2016, as modified.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Tuesday, January 3, 2017. Any such requests should be directed to:

Regulatory Specialist Rhonda West  
Delaware Department of Insurance  
841 Silver Lake Boulevard  
Dover, DE 19904  
Phone: (302) 674-7379  
Fax: (302) 739-5566  
Email: [rhonda.west@state.de.us](mailto:rhonda.west@state.de.us)

**\*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/december2016/proposed/20 DE Reg 420RFA 12-01-16.pdf](http://regulations.delaware.gov/register/december2016/proposed/20%20DE%20Reg%20420RFA%2012-01-16.pdf)

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

[1317 Network Disclosure and Transparency](#)

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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### DIVISION OF STATE POLICE

#### 5500 BAIL ENFORCEMENT AGENTS

Statutory Authority: 24 Delaware Code, Section 5504(e) (24 Del.C. §5504(e))

24 DE Admin. Code 5500

#### PUBLIC NOTICE

#### 5500 Bail Enforcement Agents

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 Del.C. Ch. 55 proposes to amend the following adopted rule in 24 DE Admin. Code 5500 Bail Enforcement Agents: Rule 9.0 - Electronic Control Device (ECD) - national standards have changed and this device is now called a "Conducted Electrical Weapon (CEW)". If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by January 2, 2017, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, February 23, 2017, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

# PROPOSED 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/december2016/proposed/20 DE Reg 421RFA 12-01-16.pdf>

## 5500 Bail Enforcement Agents (Break in Continuity of Sections)

### 9.0 ~~Electronic Control Device (ECD)~~ Conducted Electrical Weapon (CEW)

9.1 In order for a BEA to carry/use an ~~electronic control device (ECD)~~ conducted electrical weapon (CEW), he/she must complete a training program approved by the Board and all certifications or recertifications must be on file with the Professional Licensing Section.

#### 9.2 ~~ECD~~ CEW Instructors

9.2.1 All ~~ECD~~ CEW instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 24 Del.C. Ch. 55.

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

[5500 Bail Enforcement Agents](#)

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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 January 18, 2017 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 February 2, 2017 in accordance with 29 Del.C. §10118(a).

\*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/december2016/proposed/20 DE Reg 422RFA 12-01-16.pdf>

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

[100 Board of Accountancy](#)

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**DIVISION OF PROFESSIONAL REGULATION  
2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE**

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 **Del.C.** §2006(a)(1))  
24 **DE Admin. Code** 2000

**PUBLIC NOTICE****2000 Board of Occupational Therapy Practice**

Pursuant to 24 **Del.C.** §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to renewal of an expired license are amended and a new proposed regulation addressing telehealth has been developed in response to comments received after a previous proposal published June 1, 2016 and a July 20, 2016 public hearing thereon.

A public hearing will be held on January 4, 2017 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 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).

**\*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/december2016/proposed/20 DE Reg 423RFA 12-01-16.pdf](http://regulations.delaware.gov/register/december2016/proposed/20%20DE%20Reg%20423RFA%2012-01-16.pdf)

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

**2000 Board of Occupational Therapy Practice**

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**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Sections 121(b); (5 **Del.C.** §121(b))  
5 **DE Admin.Code** 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112 and 1114

**PUBLIC NOTICE****Notice of Proposed Amendment to Regulations:****1103 Instructions for Preparation of Franchise Tax****1104 Estimated Franchise Tax Report****1105 Final Franchise Tax Report****1106 Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in this State****1107 Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware****1108 Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware****1109 Instructions for Calculation of Employment Tax Credits****1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks****1111 Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks****1112 Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks****1114 Alternative Franchise Tax****of the State Bank Commissioner**

**Summary**

The State Bank Commissioner proposes to amend 11 bank franchise tax Regulations. The proposed amendments are technical: removing references to former regulation numbers; correcting a few spelling, word and punctuation errors; minor renumbering of instruction subsections and tax form lines; adding instruction subsections, and lines on tax forms, to cover other applicable tax credits; revising provisions for delayed filing of final tax reports to conform to call report late filing dates permitted by the Federal Financial Institutions Examination Council (FFIEC); clarifying instructions for direction of tax payments; conforming Regulation 1109 (Instructions for Calculation of Employment Tax Credits) and Form B to reflect the 10-year extension of the current credit through 2031; and deleting provisions in Regulations 1110, 1111 and 1112 about the previous resulting branch imputed capital addback, which was deleted from the Code. None of these proposed amendments are substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other Regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed amended Regulations in accordance with Title 5 of the Delaware Code. This Notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, Chapter 101, Subchapter II, and Chapter 104, Sections 10404A(b)(1) and 10404B(b)(1).

**Comments**

Copies of the proposed amended Regulations are being published in the December 1, 2016 edition of the Delaware *Register of Regulations*. Copies are also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and are available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended Regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amended Regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before January 4, 2017. Written materials submitted will be available for inspection at the above address.

**Adoption of Proposed Amended Regulations**

On or after January 4, 2017, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulations, or make additional changes because of the public comments received.

**\*Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for these regulations, as required by 29 **Del.C.** Ch. 104, are available at:

[http://regulations.delaware.gov/register/december2016/proposed/20 DE Reg 423aRFA 12-01-16.pdf](http://regulations.delaware.gov/register/december2016/proposed/20%20DE%20Reg%20423aRFA%2012-01-16.pdf)

(2) Due to the size of the proposed regulations, they are not being published here. A copy of the regulations are available at:

**Banking Regulations**

## PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))  
26 DE Admin. Code 3001

### PUBLIC NOTICE

#### 3001 Rules for Certification and Regulation of Electric Suppliers

IN THE MATTER OF THE ADOPTION OF RULES  
AND REGULATIONS TO IMPLEMENT THE  
PROVISIONS OF 26 DEL. C. CH. 10 RELATING  
TO THE CREATION OF A COMPETITIVE  
MARKET FOR RETAIL ELECTRIC SUPPLY  
SERVICE (OPENED APRIL 27, 1999; RE-  
OPENED JANUARY 7, 2003; RE-OPENED  
SEPTEMBER 22, 2009; RE-OPENED  
SEPTEMBER 7, 2010; RE-OPENED JULY 17,  
2012)

PSC REGULATION DOCKET NO. 49

**TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, RETAIL ELECTRIC CUSTOMERS AND OTHER INTERESTED PERSONS**

In 1999 the Delaware Public Service Commission ("PSC") has promulgated certain regulations pertaining to certification of electric suppliers in 26 *Del. Admin. C.* §3001, now entitled "Rules for Certification and Regulation of Electric Suppliers ("Supplier Rules"). The PSC has revised the Supplier Regulations several times since then. The PSC now proposes to revise the Supplier Regulations again. The purpose of the proposed revisions are to ensure electric choice for customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket No. 10-2; to provide additional protection for customers; to require electric suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to customers to provide electric supply services; to clarify sections of the Supplier Regulations; and to make the certification process for electric suppliers more uniform.

The PSC is soliciting comments, suggestions, and compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Regulations. If you wish to file any such materials, you should file them using the Commission's DelaFile docketing and file management system on or before **January 25, 2017**. You may also submit an original and ten copies of such written materials with the PSC on or before **January 25, 2017** at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware, 19904  
Attn: Regulation Docket No. 49

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-ROM or sent as an attachment to an e-mail addressed to [psc@state.de.us](mailto:psc@state.de.us); include "Reg. Doc. 49" as the subject of the email. The Commission encourages the public to submit written comments on or before **January 25, 2017**.

The PSC will conduct a public hearing on the proposed regulations on **January 10, 2017 at 1:00 P.M.** at the PSC's office at the address set forth above.

You may review PSC Order No. 8981 (November 15, 2016) (the "Order") and the proposed revised Supplier Regulations in the December 2016 issue of the *Delaware Register of Regulations*. You may also review the Order and the proposed revised Supplier Regulations by going to DelaFile (<http://delafile.delaware.gov>), the Commission's docketing and file management system, and by searching for REG. 49.

Any materials submitted in connection with the proposed revised Supplier Rules will be available for public



inspection and copying (to the extent they are “public records” under the Freedom of Information Act, 29 **Del.C.** §10002(g)) at the PSC’s Dover office identified above during normal business hours. The fee for copying is \$.10 per page, after the first 20 pages. If you wish to request copies of documents in this matter, please submit a Freedom of Information Act (“FOIA”) Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the FOIA Request Form on the PSC’s website, <http://depsec.delaware.gov/default.shtml>. The PSC will respond to your request in accordance with the Freedom of Information Act, 29 **Del.C.** ch. 100. The Regulations may also be reviewed by appointment at the office of the Public Advocate, 820 N. French Street, 4<sup>th</sup> Floor, Carvel State Office Building, Wilmington, DE 19801, or 29 South State Street, Dover, Delaware 19901. Please call either (302) 577-5077 or (302) 241-2555 to arrange for a time to review the documents at either of those locations. The Regulations will also be available on the PSC’s website: <http://depsec.delaware.gov/electric.shtml>.

Any individual with disabilities who wishes to review submissions or to participate in this docket should contact the PSC to discuss any auxiliary aids or services to facilitate such review or participation. Such contact may be in person, in writing, by telephone, e-mail, or by other means.

If you have questions about this matter, you may call the PSC at 1-800-282-8574 (toll-free in Delaware) or 302-736-7500 (voice and text telephone). You may also send questions regarding this matter by e-mail addressed to [psc@state.de.us](mailto:psc@state.de.us); please include “Reg. Doc. 49” as the subject of the email.

## OPINION AND ORDER NO. 8981

### **BEFORE COMMISSIONERS:**

J. Dallas Winslow, Chair  
 Joann T. Conaway, Commissioner  
 Harold Gray, Commissioner  
 Kim F. Drexler, Commissioner  
 Mike C. Karia, Commissioner

### **PROCEDURAL HISTORY**

1. In 1999, the General Assembly restructured the electric utility industry such that customers of regulated electric utilities would be free to purchase their electricity supply from entities other than their regulated electric utility. See 26 **Del. C.** ch 10, “Electric Utility Restructuring.”

2. In October 1999, pursuant to the authority provided to it in 26 **Del.C.** §1012(b), the Delaware Public Service Commission (the “Commission”) adopted Rules for Certification and Regulation of Electric Suppliers (the “Supplier Regulations”). Order No. 538 (October 1, 1999). See 26 *Del. Admin. C.* §3001.

3. The Supplier Regulations have been amended several times since then. See Order Nos. 7023 (Sept. 5, 2006), 7078 (Jan. 1, 2007), 7435 (Sept. 2, 2008) and 7984 (June 7, 2011).

4. In Order No. 8187 (July 17, 2012), the Commission reopened this docket to consider revising the Supplier Regulations in accordance with the settlement agreement in Docket No. 10-2, which called for the parties to “consider rule changes to ensure electric choice for Customers is more competitive and ... to provide additional protection for Customers,” among other considerations.<sup>1</sup> The Commission Staff conducted three workshops to discuss revisions to the Supplier Regulations.

5. In Order No. 8424 (July 30, 2013), the Commission authorized the publication of proposed modifications to the Supplier Regulations that reflected revisions from the workshop process. The proposed revised Supplier Regulations were published in the September 2013 *Register of Regulations* (17 DE. Reg. 310 (9/1/13)).

6. The Commission received comments on the proposed modified Supplier Regulations from several entities, including the Delaware Division of the Public Advocate (“DPA”), Delmarva Power & Light Company (“DPL”), and the Retail Energy Supplier Association (“RESA”). However, no Commission action was taken with respect to these modified Supplier Regulations.

7. In Order No. 8545 (April 15, 2014), the Commission authorized publication of another version of revisions to the Supplier Regulations. These proposed revisions were published in the May 2014 *Register of Regulations*. (17 DE. Reg. 1052 (5/1/14)).

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1. Order No. 8187, ¶2.

8. The Commission received several comments on this version of modified Supplier Regulations. In December 2014, Staff circulated another revised draft of Supplier Regulations based on the comments received and requested comments by early January 2015 (subsequently extended to mid-January 2015). Although these proposed revisions were not published in the *Register of Regulations*, the DPA, DPL and RESA filed comments and proposed modifications to this revised version of the Supplier Regulations.

9. This version of the proposed Supplier Regulations lay dormant until December 2015, when Staff once again published proposed modifications to the Supplier Regulations. In Order No. 8830 (12/15/15), the Commission authorized publication of these rules, and they were published in the January 2016 *Register of Regulations*.

10. The DPA, DPL and RESA submitted comments on and proposed revisions to this version of the Supplier Regulations.

11. On January 16, 2016 the Commission issued Order No. 8845 opening Docket No. 15-1693 in response to a petition filed by the Electric Affordability Committee ("EAC") identifying eight specific proposals to increase customer choice in Delaware. One of those proposals was to "[f]inalize Regulation Docket No. 49 ... by incorporating recommended changes and simplifying supplier requirements where possible."<sup>2</sup>

12. In February 2016, Staff, the DPA and RESA met to attempt to narrow the outstanding issues and review comments submitted by the parties in January. In early March 2016, Staff circulated a revised version of the Rules to the DPA and RESA which attempted to incorporate the comments received as of January 2016, as well as to further narrow the issues subsequent to the meeting between the parties in February 2016. During the months of March through early July 2016, the DPA and RESA worked together to modify the Supplier Regulations to encourage customer choice in Delaware. On July 7, 2016, RESA's counsel circulated the DPA/RESA draft Supplier Regulations to Staff and DPL.

13. On August 15, 2016, the DPA and RESA filed a motion with the Commission in this docket and in Docket No. 15-1693 requesting the Commission to hold the required public hearing on the revised Supplier Regulations on September 6, 2016, and if the Commission did not hold the public hearing on September 6, to postpone the proceedings in Docket No. 15-1693 until the Supplier Regulations were finalized.

14. The Commission met on September 6, 2016 to consider the DPA-RESA Motion. It heard oral argument from the DPA, RESA, Staff and DPL. Staff presented the Commission with an alternative version of modified Supplier Rules and took the position that republication of the Supplier Regulations was required. The DPA and RESA took the position that their revised Supplier Regulations were in the nature of comments on the previously-published Supplier Regulations and that no republication was necessary; however, if the Commission decided that republication was necessary, then the Commission should authorize publication of the DPA-RESA version of the modified Supplier Regulations. The Commission voted unanimously to authorize publication of the DPA-RESA version of the modified Supplier Regulations and to postpone further proceedings in Docket No. 15-1693 until final Supplier Rules were in place. See Order No. 8937 (Sept. 20, 2016) and Order No. 8948 (Oct. 6, 2016).

15. The DPA-RESA version of the Supplier Regulations was published in the October 2016 *Register of Regulations*. (20 DE. Reg. 272 (10/1/16)). The public notice stated that comments were due on October 31, 2016, and that the Commission would hold a public hearing on November 1, 2016 to consider the published Supplier Regulations.

16. As of November 1, 2016, no persons other than the DPA, DPL, RESA and Staff had submitted any comments to the Commission.

17. At our regularly-scheduled meeting on November 1, 2016, we conducted the public hearing and heard oral argument from the DPA, DPL, RESA and Staff, and deliberated in public on the proposed Supplier Regulations and the contested issues. This is our opinion and order memorializing those deliberations.

## **II. DISCUSSION, DELIBERATIONS AND DECISION**

18. While the comment period was pending, the DPA, DPL, RESA and Staff met to determine whether they could narrow or eliminate their areas of disagreement. They were able to reach agreement on all but the following: (1) the appropriate rescission period; (2) whether the current process be retained whereby once a customer opts out of being included on the customer list the opt out remains valid until the customer notifies DPL to the contrary; (3) how frequently the customer list must be updated; and (4) what information should be included in customer lists

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2. Order No. 8845, p. 3, ¶g.

provided by Delmarva to retail electric suppliers.

**A. The Appropriate Rescission Period**

**1. The Parties' Positions**

19. The DPA and RESA propose a 3-business-day rescission period; Staff proposes a 7-business day rescission period. All parties agree as to the appropriate starting point for the rescission period, which is set forth in Section 6.2.2.7.2 in the published Supplier Regulations. The rescission period in the current Supplier Regulations is 10 calendar days from the day the EDC sends a confirmation letter to the customer.<sup>3</sup>

20. Staff notes that Delaware's telemarketing law<sup>4</sup> requires that telemarketers' sales transactions only be considered final 7 business days after the customer has received written notice. In Staff's view, the rescission period should also be 7 business days so that the Supplier Regulations are consistent with the telemarketing law. Additionally, Staff noted that the Commission previously rejected this same argument, and opted for a more conservative approach.<sup>5</sup>

21. RESA<sup>6</sup> observes that Delaware's Home Solicitations Act<sup>7</sup> governing door-to-door sales, as well as the federal Cooling-Off Rule,<sup>8</sup> provide for a 3-day rescission period.<sup>9</sup> It contends that the Delaware Telemarketing Registration and Fraud Prevention Act does not apply to sellers or telemarketers "operating within the jurisdiction of the Public Service Commission," and electric suppliers are within the Commission's jurisdiction.<sup>10</sup> It points out that a 3-business-day rescission period is consistent with the rescission periods in effect in Maryland, Pennsylvania, and the District of Columbia.<sup>11</sup> RESA advises that Maryland's rules do not contain a rescission period, but rather rely on the 3-business-day rescission periods in the Maryland Door to Door Solicitation Act and the federal cooling-off period.<sup>12</sup> Pennsylvania and the District of Columbia both have 3-business-day rescission periods.<sup>13</sup>

22. Furthermore, RESA contends that a three-business-day rescission period is consistent with the goal of allowing customers to take advantage of products quickly. RESA argues that "[c]ustomers are growing increasingly accustomed to making real-time shopping decisions and immediately reaping the benefits of those decisions – they expect to get what they buy in 'Amazon time.'"<sup>14</sup> However, under the current Supplier Regulations, customers currently wait between 15-44 days to effect a change in electric suppliers, and under Staff's 7-business-day rescission period a customer could potentially wait more than two weeks to effect a desired change in electric suppliers.<sup>15</sup> RESA claims that the longer wait time that Staff advocates confuses and frustrates customers, thereby diminishing their shopping experience and denying them the benefits they have chosen.<sup>16</sup> It argues that Staff has not identified any circumstances that justify a longer rescission period than those in the Federal Cooling-Off Rule, the Delaware Home Solicitations Act, or surrounding states, and concludes that there is no reason for treating customers' decisions regarding electricity differently than their decisions regarding other products.<sup>17</sup>

**2. Commission Decision**

3. See 26 *Del. Admin. C.* §3001 at subsection 3.4.

4. 6 *Del. C.* ch. 25A.

5. Staff 10/21/16 Comments at 6).

6. The DPA supports RESA's comments and positions on the unresolved issues. See DPA 10/31/16 Comments at 1-2.

7. 6 *Del. C.* §§4401 *et seq.*

8. 16 C.F.R. §429.1.

9. RESA 10/28/16 Comments at 4-5.

10. *Id.* at 5.

11. *Id.*

12. *Id.*, citing Md. Commercial Law Code. Ann. §14-302; Code of Md. Regulation 20.53.07.11; Code of Md. Regulation 20.53.06.07.

13. *Id.*, citing District of Columbia Consumer Bill of Rights, §327.44 and 52 Pa. Code §54.5(d).

14. RESA 10/28/16 Comments at 6.

15. *Id.*

16. *Id.* at 7.

17. *Id.* at 6-7.

23. Upon review of the parties' comments and after hearing their oral arguments, the Commission finds that a 3-business day rescission period is appropriate. We understand that this is a shorter period than the rescission period that we approved in 2006, but we note that the Delaware Home Solicitations Act and the Federal Cooling-Off Rule both include a 3-business-day rescission period. We believe our regulations should be consistent with other legal requirements with which customers may already be familiar. We also believe that a 3-business-day rescission period will better effect the General Assembly's intent that barriers to competition be reduced. (Unanimous).

**B. Opt-In or Opt-Out/Frequency of Updates to the Customer List**

**1. The Parties' Positions**

24. The current Supplier Regulations provide that a customer may elect to opt out of receiving solicitations from retail electricity suppliers. DPL's practice in implementing this provision is that once the customer exercises that option, the decision stands as long as they remain a DPL customer or until they advise DPL to the contrary. The DPA-RESA proposed Supplier Rules continue that opt-out feature, and would require the customer to affirmatively indicate their preference annually.

25. DPL and Staff argue that the current opt-out practice currently in place should continue in effect.<sup>18</sup> DPL contends that an annual opt-out is too onerous for customers, and that it would also violate the trust that customers have placed in DPL to maintain the confidentiality of their information once they opt out.<sup>19</sup> DPL observes that pursuant to the current Commission-approved opt-out process, when a customer first signs up for electric service, DPL asks the customer if they want to opt out of being placed on the customer list that is made available to third-party suppliers, and that once the customer makes that election, DPL honors it until the customer instructs otherwise.<sup>20</sup> DPL claims that the best time for a customer to make this choice is when they first sign up for service, because "they are fully attentive to all aspects of the enrollment process."<sup>21</sup> DPL claims that requiring customers to re-confirm their decision to opt out, on an annual basis, is burdensome and confusing.<sup>22</sup> Additionally, DPL argues that if a requirement is implemented for a customer to opt-out annually and the customer does not pay attention to the annual opt-out and so fails to opt out, the trust relationship between the customer and DPL may be violated because the customer may incorrectly believe that DPL has failed to honor its obligation.<sup>23</sup>

26. Staff pointed out that its position protected the status quo of the customers' original decision not to participate in third party suppliers' offerings. Staff also noted the similarities with the National DO Not Call Registry that established a permanent registry, which telemarketers cannot call.<sup>24</sup>

27. RESA urges the Commission to maintain the opt-out process that it adopted in 2006, and to require DPL to refresh the list annually.<sup>25</sup> First, it argues that the opt-out process is a reasonable way to implement customer lists: not only did this Commission already so decide in Order No. 7023,<sup>26</sup> but so had Pennsylvania, Maryland, Massachusetts and Virginia regulators.<sup>27</sup> Second, it contends that DPL's and Staff's opposition was based on what it called the "faulty premise that an opt-out process somehow endangers customers and puts their information at risk," observing that neither DPL's nor Staff's speculation was supported by examples of actual breaches of confidentiality in Delaware or anywhere else, or by studies, or by actual facts. Rather, RESA argues, the Pennsylvania experience showed that opt-out lists have not been problematic.<sup>28</sup> Third, RESA notes that the

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18. DPL 10/28/16 Comments at 3; Staff 10/27/16 Memorandum at 3. Staff did not identify this as an issue that concerned it in its 10/21/16 comments, but stated its agreement with DPL in the 10/27/16 Memorandum and during oral argument on November 1, 2016.

19. DPL Comments at 2-3.

20. *Id.* at 3.

21. *Id.*

22. *Id.*

23. *Id.*

24. See Do-Not-Call Implementation Act of 2003, 15 U.S.C. §§6101 *et seq.*, as amended by H.R. 3541, [Pub.L.110-187](#) (2008).

25. RESA 10/28/16 Comments at 10.

26. *Id.*

27. *Id.* at 10-11.

revisions to proposed subsection 3.3.3 addressed DPL's and Staff's concerns regarding safeguarding the list and who could have access to it.<sup>29</sup> Fourth, RESA opposes the "forever" nature of the current opt-out provision, arguing that the lists become stale when customers are not reminded of their opportunity to be included on the list, and that the Pennsylvania Commission has found that reminding customers of their ability to be included on the list is a benefit to them and to competition.<sup>30</sup> RESA claims that since 2006, approximately 112,000 of DPL's customers (representing about 36% of DPL's customer base) have opted out of being included on the customer list.

## **2. Commission Decision**

28. Upon review of the parties' comments and after hearing oral argument, we conclude that we should maintain the current opt-out process (by which a customer must affirmatively elect not to receive communications and solicitations from retail electric suppliers), and that the opt-out period should not be forever (as it currently is), but that a customer must reaffirm his/her election to opt out every three years. We believe this decision strikes the appropriate balance between encouraging customers to shop and respecting a customer's decision that it does not want its information to be included on the customer list provided to retail electric suppliers. We are concerned by the representation that approximately 36% of DPL's current residential customers have opted out; although we do not know when those elections occurred, it is possible that customers that previously opted out might be interested in learning of the many new options available to them. If they are not interested, they can choose again not to be included on the list. (Unanimous).

29. We reject the DPA-RESA proposal that DPL update the customer list monthly. DPL represents that it updates the list twice annually, in April and October, and we think that is frequent enough that information will not be stale. (Unanimous).

## **C. Information to be Included in the Customer List**

### **1. The Parties' Positions**

30. The DPA-RESA proposed Supplier Regulations would require DPL to provide the following information as part of the customer list:

- Customer account number and any other number that DPL designates as necessary to process an enrollment;
- Customer name;
- Customer service address(es);
- Customer billing address(es);
- Billing country code (if applicable);
- Tariff rate class and schedules;
- Rate subclass/rate subcode (if available);
- Meter read cycle;
- Load profile group per tariff;
- Transmission/capacity obligation (PJM) (current/future);
- Whether the customer is an SOS customer;
- Historical usage for prior 12 months (consumption/demand);
- On-peak/off-peak consumption (each of 12 months) (KWH) (if available)
- Monthly peak demand (each of 12 months) (KW) (if available);
- Dynamic pricing election, if any;
- Net metering (Y or N); and
- Sales tax status (Y or N).

31. DPL and Staff object to the provision of all of this information.<sup>31</sup> First, DPL states that it already provides the following information to all retail electric suppliers:

- Customer name;
- Customer mailing address;
- Whether the customer is an SOS customer or has a third-party supplier;

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28. *Id.* at 11-12.

29. *Id.* at 12.

30. *Id.* at 12-13.

31. Staff did not oppose this provision in its 10/21/16 comments, but did oppose it in the 10/27/16 Staff Memorandum and during oral argument on November 1, 2016.

- Customer's rate class;
- Customer's billing cycle;
- Whether the customer is both an electric and gas customer; and
- Whether the customer is a net metering customer.<sup>32</sup>

32. DPL contends that the DPA-RESA changes would include "a significant amount of detailed new personal information" about its customers that should not be disclosed to electric suppliers or marketers.<sup>33</sup> It claims that this information that it currently provides to electric suppliers, which is updated twice annually, is adequate for them to market to customers.<sup>34</sup> According to DPL, it would set a "bad precedent" were the Commission to approve the disclosure of such personally identifiable information,<sup>35</sup> and DPL's customers have a reasonable expectation that DPL will not share the detailed personal information it has about its customers with marketers. DPL says that Delaware is the only jurisdiction within the five territories in which PHI utilities operate that requires it to make a customer list in any form available to suppliers. Finally, DPL argues that the Pennsylvania commission "appears to have made a very conscious choice to promote customer choice to the greatest extent possible and has devoted a significant amount of its own resources, to that effort;" Delaware, however, is different not only in the constitution of the utility territories but also in terms of the resources that this Commission can devote to promoting customer choice.<sup>36</sup>

33. RESA acknowledges that the DPA-RESA proposed Supplier Regulations include significantly more information than the current Supplier Regulations require. It encourages the Commission to adopt the DPA-RESA requirements, claiming that this additional information is required because "Delaware is at a critical juncture" with respect to developing retail electric competition. RESA notes that despite choice being available for more than 10 years, only 10% of Delmarva's residential customers have shopped as of July 29, 2016.<sup>37</sup>

34. RESA argues that the information above and beyond what DPL already provides (such as historical usage for last 12 months, on-peak/off-peak consumption, monthly peak demand, dynamic pricing election) will allow it to design products that satisfy customers' individual desires and budgets and that are tailored to customers' needs and wants.<sup>38</sup> Historical usage information also allows suppliers to project what their wholesale costs of serving a customer will be, which eliminates unnecessary risk premiums that increase costs. According to RESA, the expanded customer list benefits customers by enabling suppliers to offer lower price products that are not available in the current market.<sup>39</sup> Furthermore, RESA contends that the inclusion of customers' account numbers and 22-digit service numbers in the expanded list assists in the enrollment process when customers do not know or have the information needed to enroll.<sup>40</sup> Next, RESA points out that there is no evidence that the release of this information has caused problems in states that permit the information to be disclosed. It cites to Pennsylvania, where customer information similar to what is being requested here has been disclosed for years, and which the Pennsylvania Commission recently expanded to include natural gas customers.<sup>41</sup>

35. Finally, RESA argues that customer lists with sufficient customer information will enable suppliers to use marketing channels that consumer advocates prefer.<sup>42</sup> RESA contends that consumer advocates generally prefer marketing channels other than door-to-door solicitations and telemarketing, such as kiosks in malls or storefronts. Without access to the additional customer information such as the account number or DPL's 22-digit service number, suppliers are effectively limited to marketing at places where customers have easy access to their utility bills – their homes.<sup>43</sup>

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32. DPL 10/28/16 Comments at 3-4.

33. *Id.* at 4.

34. *Id.* at 5.

35. *Id.*

36. *Id.* at 5-6.

37. RESA 10/28/16 Comments at 7.

38. *Id.* at 8.

39. *Id.*

40. *Id.*

41. *Id.* at 8-9.

42. *Id.* at 13.

## 2. Commission Decision

36. We decline to approve the DPA-RESA proposed regulations with respect to all of the categories of customer information included therein. DPL has represented that it currently provides retail electric suppliers with customers' names, their mailing addresses, their status as an SOS customer or a customer of another supplier, their rate classes, their billing cycles, whether they are electric-only, gas-only or dual customers, and whether they are net metering customers. We believe this is sufficient information for suppliers to tailor their products to particular customers while at the same time protecting the privacy of those customers' information.

37. We are sympathetic to the argument that Pennsylvania does permit disclosure of the information that DPA and RESA included, and that Pennsylvania (and other states that permit the disclosure of more customer information than we approve here) has not experienced any problems with the unintended disclosure of confidential customer information. We acknowledge that Pennsylvania is the "gold standard" in this regard, but believe that this is too great a step to take at this time. (Unanimous).

### D. UNCONTESTED REVISIONS

38. The DPA-RESA proposed Supplier Regulations published on October 1, 2016, as amended by the agreement of the DPA, DPL, Staff and RESA, contain significantly more regulatory requirements with which current and potential retail electric suppliers in Delaware will have to comply. Initially, an applicant for certification as a retail electric supplier or broker will be required to provide significantly more information than is currently required. See §2.0. Additionally, the initial security amount that applicants must post has been increased to \$100,000, and thereafter, the required security amount shall be the greater of \$100,000 or 5% of the supplier's annual revenues from supply sales to Delaware residential and small commercial customers. *Id.* at subsections 2.3.3.1, 2.3.3.2. That security amount will be available for the Commission to distribute in accordance with state law if a supplier is found to have violated a statute or regulation governing its provision of service to residential or small commercial customers. *Id.* at subsection 2.3.4.

39. The proposed Supplier Regulations also introduce new requirements for the regulated utility to provide pre-enrollment information about a customer to a supplier when the customer has given his consent. *Id.* at subsections 3.1, 3.2. They also include provisions for safeguarding the customer information provided to a supplier. *Id.* at subsection 3.3.3.

40. The proposed Supplier Regulations will require a regulated utility to process electronic enrollments or drops from an electric supplier within 3 business days after receipt of the electronic transaction. *Id.* at subsection 4.3. The regulated utility will also be required to notify the customer that is enrolling with or dropping from an electric supplier of the enrollment or drop by the end of the next business day following the enrollment or drop. *Id.* at subsection 4.2.

41. The proposed Supplier Regulations make significant changes to the current Supplier Regulations with respect to the information that retail electric suppliers must provide to potential and existing customers. See Section 6.0. For example, a retail electric supply contract must include a list and description of the contract services; the contract duration (in months or years, or the disclosure that the contract is month-to-month); a description of the price of each service, including the duration of an introductory price (if any), a description of and the amount of any other fees or charges (including early termination fees, late fees, minimum monthly charges, enrollment fees and interest charges) and the circumstances under which each such additional fee can be imposed; a description of any non-commodity products or services being provided as part of the contract; a description of any inducement on which a supplier relies to claim that a customer will save money by switching as opposed to remaining on standard offer service; a statement of the customer's rescission rights; when the rescission period begins; a statement of the supplier's termination rights and the circumstances under which the supplier may terminate the contract; a description of the contract renewal procedures (if any), a description of the dispute resolution procedure; and all disclosures required by other applicable laws governing marketing, consumer protection, and door-to-door sales. See subsection 6.2.

42. The proposed Supplier Regulations also provide that a supplier must provide a "Contract Summary" to residential and small commercial customers at the time of the contracting process. The Contract Summary must include several of the disclosures required in subsection 6.2, as well as disclosures on how a variable-price customer can access the variable price applicable to his contract. See subsection 6.3.

43. The proposed Supplier Regulations specifically provide the type and content of notice that must be given

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43. *Id.* at 14.

to customers regarding changes in the variable price that they will be charged. See section 7.0.

44. The proposed Supplier Regulations provide significant new protections for customers with respect to renewal of a contract, including the notice that must be provided to customers, the information that notice must contain, and when that notice must be provided. See section 8.0. Similarly, they provide for mandatory written notice of changes in the fixed price or certain other material contract terms. See Section 9.0.

45. The proposed Supplier Regulations expand upon certain customer protections (such as anti-cramming and anti-slamming provisions) that are contained in the current Supplier Regulations. For example, the proposed Supplier Regulations prohibit a supplier and its agents from suggesting that a customer is required to choose an electric supplier; from suggesting that the customer's service will suffer if he does not choose an electric supplier; and from suggesting that the supplier has a relationship with the regulated utility, a government agency or another electric supplier that does not exist. See subsection 10.2. The proposed Supplier Regulations also require electric suppliers to train their agents regarding (among other things) state and federal laws and regulations governing marketing, telemarketing, consumer protection and door-to-door sales; the electric supplier's products and services; the electric supplier's prices, price structures and payment options; the customer's right to rescind and cancel contracts; and the proper completion of transaction documents. Suppliers must document their agents' training, maintain those records for three years, and provide them to the Commission and/or the DPA upon request. *Id.* at subsection 10.4.

46. The proposed Supplier Regulations contain significant new customer protections with respect to suppliers' enrollment, telephone and door-to-door marketing, and advertising practices. Importantly, the proposed Supplier Regulations include a requirement that suppliers disclose in their marketing materials a table that shows the price per kWh for an average residential or small commercial customer using 500 kWh, 1000 kWh, and 2000 kWh of electricity. Additionally, the proposed Supplier Regulations require suppliers to obtain a customer's authorization to switch in one of three ways – recorded verbal consent over the telephone, electronic contract or written contract – and to maintain the verification of the customer's consent for the duration of the customer's contract. When a customer enrolls with a supplier during a telemarketing call, the supplier must record the entire sales call and verification. The proposed Supplier Regulations contain specific instructions for what suppliers marketing by telephone and door-to-door must inform a potential customer before making their sales pitch. When a supplier engages in door-to-door sales, it must notify Staff and the DPA, no later than the morning of the day the activity begins, with respect to general information about the activity and the general geographic location of the activity. Finally, the proposed regulations require the supplier (or the independent contractor or vendor it uses) to conduct background checks on agents that will be making door-to-door solicitations. See Section 11.0.

#### **1. Commission Decision**

47. We approve the uncontested revisions to the Supplier Regulations. We are satisfied that they strike an appropriate balance between encouraging customers to shop and protecting those customers from unscrupulous marketing and solicitation activities. We also believe that the revisions adequately protect customers from experiencing price shocks such as those that occurred in other states as a result of the polar vortex in 2014. (Unanimous).

48. Pursuant to the provisions of 29 **Del.C.** §10118 (c), substantive changes in the regulations as a result of the public comments, evidence and information, and Commission deliberations requires notice of the changes made to the regulations.

### **IV. ORDER**

**AND NOW, this 15<sup>th</sup> day of November, 2016, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

49. That the Commission proposes to revise the Supplier Regulations as set forth herein in Exhibit "A."

50. That, pursuant to 29 *Del. C.* §§1134 and 10115(a), the Secretary shall transmit to the *Register of Regulations* for publication in the December 2016 *Delaware Register of Regulations* a copy of this Order; a copy of the existing Supplier Regulations, showing the proposed changes (Exhibit "A"); and a copy of the Notice of Proposed Rulemaking attached hereto as Exhibit "B."

51. That the Secretary shall cause the Notice of Proposed Rulemaking attached as Exhibit "B" to be published in The News Journal and the Delaware State News newspapers on or before November 27, 2016. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or electronic e-mail) a copy of such Notice on: (a) the DPA; (b) the



Department of Natural Resources and Environmental Control; (c) Delmarva; (d) all certificated electric supplier; (e) RESA; and (f) each person or entity who has made a timely request for advance notice of rulemaking proceedings.

52. That pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to the Supplier Regulation on Tuesday, January 10, 2017, beginning at 1:00 p.m. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

53. That, pursuant to 29 **Del.C.** §§10115(a), 10116, and 10118, persons or entities may file written comments, suggestions, compilation of data, briefs, or other written materials, on or before January 10, 2017.

54. That, pursuant to 26 **Del.C.** §1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they will be charged the costs incurred in connection with this proceeding under the provision of 26 **Del.C.** §114(b)(1).

55. The Commission reserves the jurisdiction and authority to enter such further Orders in this docket as may be necessary or appropriate.

**BY ORDER OF THE COMMISSION:**

Dallas Winslow, Chair

Joann T. Conaway, Commissioner

K. F. Drexler, Commissioner

Mike Karia, Commissioner

ATTEST:

Donna Nickerson, Secretary

**\*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/december2016/proposed/20 DE Reg 425RFA 12-01-16.pdf>

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

[3001 Rules for Certification and Regulation of Electric Suppliers](#)

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## 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.

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 286

### REGULATORY IMPLEMENTING ORDER

### 286 Application Fee For Educator Licensure

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 286 Application Fee For Educator Licensure. This regulation is being amended to align with changes to 14 **Del.C.** §122(b)(27) related to educator licensure. It clarifies that the application fee for an educator's first license shall be reimbursed for any applicant who becomes employed as a teacher in a Delaware public school and that \$90,000 will be set aside in a special fund for the sole purpose of reimbursing such educators.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2016, 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** 286 Application Fee For Educator Licensure to align with changes to 14 **Del.C.** §122(b)(27) related to educator licensure. It clarifies that the application fee for an educator's first license shall be reimbursed for any applicant who becomes employed as a teacher in a Delaware public school and that \$90,000 will be set aside in a special fund for the sole purpose of reimbursing such educators.

# FINAL REGULATIONS

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 286 Application Fee For Educator Licensure. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 286 Application Fee For Educator Licensure attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 286 Application Fee For Educator Licensure 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** 286 Application Fee For Educator Licensure amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 286 Application Fee For Educator Licensure 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 November 17, 2016. 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 17<sup>th</sup> day of November 2016.  
Steven H. Godowsky, Secretary of Education

Approved this 17<sup>th</sup> day of November 2016

### State Board of Education

Teri Quinn Gray, Ph.D., President

Nina Lou Bunting, Vice President

Gregory B. Coverdale, Jr. (absent)

G. Patrick Heffernan

Barbara B. Rutt

Terry M. Whittaker, Ed.D. (absent)

\*Please note that no changes were made to the regulation as originally proposed and published in the October 2016 issue of the *Register* at page 220 (20 DE Reg. 220). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**286 Application Fee For Educator Licensure**

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 612

## REGULATORY IMPLEMENTING ORDER

**612 Possession, Use or Distribution of Drugs and Alcohol**

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol. This regulation is being amended to update drug and alcohol policy posting requirements.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2016, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities regarding: (1) minimum vs. uniform requirements for student conduct. The specific requirements of 14 **Del.C.** §122(b)(26) are addressed in 14 **DE**

**Admin. Code** 614 and 616. No change was made to this portion of the regulation; (2) the suggested deletion of Section 4.1.7 referring to "the following penalties" as the language referred to was removed. The Department thanks the Councils for noting this unnecessary language, and notes such language was removed and the section was renumbered accordingly. Additionally, the definitions of "Suspension" and "Expulsion" were removed as they are not specifically referenced in the regulation; (3) the suggested deletion of reference to a release of liability. The Department believes the concern is addressed in 4.2.1 and 4.2.2 and therefore no change was made to the regulation regarding release of liability; (4) suggesting there is some "tension" between Senate Bill 181 and disability-related laws. The Department is abiding by the requirements of the statute. No change was made to the regulation in this regard.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol to update drug and alcohol policy posting requirements.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol 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** 612 Possession, Use or Distribution of Drugs and Alcohol amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol 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 November 17, 2016. 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 17<sup>th</sup> day of November 2016.  
Steven H. Godowsky, Secretary of Education

Approved this 17<sup>th</sup> day of November 2016

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Nina Lou Bunting, Vice President

Gregory B. Coverdale, Jr. (absent)

G. Patrick Heffernan

Barbara B. Rutt

Terry M. Whittaker, Ed.D. (absent)

### **612 Possession, Use or Distribution of Drugs and Alcohol**

#### **1.0 ~~The Following Policy on the Possession, Use, or Distribution of Drugs and Alcohol Shall Apply to All Public School Districts and Charter Schools Purpose~~**

The purpose of this regulation is to outline the minimum requirements to be included in all public school district and charter school policies on the Possession, Use, or Distribution of Drugs and Alcohol.

**2.0 General Provisions**

2.1 The following provisions shall apply to all public school district and charter schools:

- 4.1 2.1.1 The possession, use and/or distribution of a Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance and Drug Paraphernalia are ~~wrong and harmful to students and are prohibited within the School Environment, unless medically necessary.~~
- 4.2 2.1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.
- 4.3 2.1.3 Student motor vehicle use to and in the School Environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of a Alcohol, a Drug, a Drug Like Substance, a Look Alike substance or Drug Paraphernalia in the School Environment, may result in the student being asked to open an automobile in the School Environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.
- 4.4 2.1.4 All Alcohol, Drugs, Drug Like Substances, Look Alike Substances and Drug Paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 **Del.C.** Ch. 47, turned over to police as potential evidence.

**23.0 The Following Definitions Shall Apply to This Policy and Will be Used in All District and Charter School Policies**

The following definitions shall apply to this regulation, unless a specific regulation, statute or the context in which they are used clearly indicates otherwise, and shall apply to all public school districts and charter schools.

"**Alcohol**" shall mean alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 **Del.C.** §101 including alcohol, spirits, wine and beer.

"**Designated Caregiver**" means, pursuant to 16 **Del.C.** §4902A(5), a person who: is at least 21 years of age unless the person is the parent or legal guardian of a minor who is a qualifying patient; has agreed to assist with a patient's medical use of marijuana; has not been convicted of an excluded felony offense; and assists no more than 5 qualifying patients with their medical use of marijuana.

"**Distribute**", "**Distributing**" or "**Distribution**" shall mean the transfer or attempted transfer of a Alcohol, a Drug, a Drug Like Substance, or Drug Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"**Drug**" shall mean any controlled substance or counterfeit substance as defined in 16 **Del.C.** §4701 including, for example, narcotic Drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

"**Drug Like Substance**" shall mean any noncontrolled and nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of Drug Like Substance does not include tobacco or tobacco products which are governed by 14 **DE Admin. Code** 877 Tobacco Policy.

"**Drug Paraphernalia**" shall mean all equipment, products and materials as defined in 16 **Del.C.** §4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging Drugs.

~~["**Expulsion**" shall mean exclusion from school for a period determined by the local district or charter school not to exceed the total number of student days. The process for readmission shall be determined by the local district or charter school. disciplinary action approved by the Board of Education resulting in a student being removed from the regular school program for a~~

~~duration not to exceed the total number of student days in a school year. A student expelled without appropriate educational services shall be unenrolled from the district/charter during the term of the expulsion. Regardless of whether without or with services, including alternative placement, the expelled student is not eligible to enroll in any other Delaware public school during the period of the expulsion and until any reasonable terms of the expulsion are fulfilled.]~~

"**Look Alike Substance**" shall mean any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a ~~d~~Drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See 16 **Del.C.** §4752A.

"**Medical Marijuana Oil**" means as defined in 16 **Del.C.** §4902A(10).

"**Nonprescription Medication**" shall mean any over the counter medication; some of these medications may be a "~~d~~Drug ~~l~~ike ~~s~~ubstance."

"**Possess**" "**Possessing**" or "**Possession**" shall mean that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, a ~~a~~lcohol, a ~~d~~Drug, a ~~d~~Drug ~~l~~ike ~~s~~ubstance, a ~~l~~ook ~~a~~like ~~s~~ubstance, or ~~d~~Drug ~~p~~araphernalia.

"**Prescription Drugs Medication(s)**" shall mean any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 **Del.C.** §4701(24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

"**Relative Caregiver**" means an individual who meets the criteria and requirements of 14 **Del.C.** §202 (f)(1).

"**School Environment**" shall mean within or on school property, and at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

~~["Suspension" means, for the purposes of this regulation, disciplinary action approved by the principal or school discipline committee resulting in the student being removed from his regular school program for at least one (1) school day and not more than ten (10) consecutive school days. Student maintains enrollment in district/charter, but is excluded from all school activities including, but not limited to extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on school property when suspension is out-of-school. A suspension requires initial due process procedures as outlined in Regulation 616.]~~

"**Use**" shall mean that a student is reasonably known to have ingested, smoked or otherwise assimilated a ~~a~~lcohol, a ~~d~~Drug or a ~~d~~Drug ~~l~~ike ~~s~~ubstance, or is reasonably found to be under the influence of such a substance.

### **34.0 Requirement of Each School District and Charter School to have a Policy.**

~~4.1~~ 4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, ~~as at~~ a minimum, the following:

~~3-4~~ 4.1.1 A system of notification of each student and ~~of his/her~~ their parent, guardian or Relative Caregiver at the beginning of the school year, of the state and district policies and regulations. In addition a system for the notification of each student and his/her their parent, guardian or Relative Caregiver whenever a student enrolls or re enrolls during the school year of the state and district policies and regulations.

~~3-2~~ 4.1.2 A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.

~~3-3~~ 4.1.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or Relative Caregivers and to the Department of Education, while maintaining confidentiality.

- 3-4 4.1.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.
- 3-5 4.1.5 A written policy on search and seizure.
- 3-6 4.1.6 A program of assistance for students with counseling and referral to services as needed.
- ~~3-7 4.1.7 A discipline policy which contains, at a minimum, the following penalties for infractions of state, district, and charter school drug policies.]~~
- ~~3-7.1 Use/Impairment: For a first offense, if a student is found to be only impaired and not in violation of any other policies, he/she shall be suspended for up to 10 days, or placed in an alternative setting for up to 10 days, depending upon the degree of impairment, the nature of the substance used, and other aggravating or mitigating factors. For a second or subsequent offense, a student may be expelled or placed in an alternative setting for the rest of the school year.~~
- ~~3-7.2 Possession of alcohol, a drug, a drug like substance, and/or a look alike substance, in an amount typical for personal use, and drug paraphernalia: For a first offense, the student shall be suspended for 5 to 10 days. For a second or subsequent offense, a student may be expelled for the rest of the school year or placed in an alternative setting for the rest of the school year.~~
- ~~3-7.3 Possession of a quantity of alcohol, a drug, a drug like substance, a look alike substance and drug paraphernalia in an amount which exceeds an amount typical for personal use, or distribution of the above named substances or paraphernalia: the student shall be suspended for 10 days, or placed in an alternative setting for 10 days. Depending on the nature of the substance, the quantity of the substance and/or other aggravating or mitigating factors, the student also may be expelled.~~
- 3-8 4.1.[87] A policy in cases involving a Drug Like Substance or a Look Alike Substance for establishing that the student intended to use, possess or distribute the substance as a Drug.
- 3-9 4.1.[98] A policy which establishes how Prescription Medications and Nonprescription drugs Medications shall be handled in the School Environment and when they will be considered unauthorized and subject to these state and local policies.
- 3-10 4.1.[109] A policy which sets out the conditions for return after Expulsion expulsion for Alcohol or Drug infractions.
- 3-11 4.2 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts or charter schools relating to the possession or use of Drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler ("Inhaler") with an individual prescription label, or an autoinjectable epinephrine with individual prescription label, or an insulin pump for continuous subcutaneous insulin infusion ("insulin pump"); provided, nevertheless, that the student uses the inhaler, or autoinjectable epinephrine, or an insulin pump pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district or charter school; and further provided that the parent(s) or legal custodian(s) of such student provide the school district or charter school with written authorization for the student to possess and use the inhaler, or autoinjectable epinephrine, or an insulin pump at such student's discretion or under the school nurse's supervision, together with a form of release satisfactory to the school district or charter school releasing the school district or charter school and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler, or autoinjectable epinephrine, or an insulin pump, and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler, or autoinjectable epinephrine, or an insulin pump based upon the student's age, level of maturity, behavior, or other relevant considerations.
- 3-11.4 4.2.1 Parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler, or autoinjectable epinephrine, or insulin pump is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement.
- 3-11.2 4.2.2 Except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler, or autoinjectable epinephrine, or an insulin pump if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.

(For students who use prescribed asthmatic quick relief inhalers, or autoinjectable epinephrine, or an insulin pump for continuous subcutaneous insulin therapy, see 14 DE Admin. Code 817, Administration of Medications and Treatments)

- 4.3 A Designated Caregiver may possess for the purpose of administering and may administer to a minor qualifying patient Medical Marijuana Oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The Designated Caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent or legal guardian possesses no more than the number of dose(s) prescribed per day of Medical Marijuana Oil which is kept at all times on their person.

## 45.0 Reporting Requirements and Timelines

- 4.4 5.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of ~~d~~Drugs and ~~a~~Alcohol policy on file with the Department of Education.
- 4.2 5.2 When a local school district or charter school revises its possession, use, and distribution of ~~d~~Drugs and ~~a~~Alcohol policy, it shall ~~provide an electronic copy~~ notify the Department of Education of the revised policy ~~to the Department~~ within thirty (30) days of the revision, even if the revision was made because of changes in ~~F~~federal, state or local law, regulations, guidance or policies.

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 804

### REGULATORY IMPLEMENTING ORDER

#### 804 Immunizations

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

The Secretary of Education intends to amend 14 DE Admin. Code 804 Immunizations. This regulation is being amended to align with 14 Del.C. §131 which provides explicit language related to the responsibilities of Delaware public schools and parents for exemptions from immunizations.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2016, in the form hereto attached as Exhibit "A". Comments were received from the State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) regarding the need for clarification of the administrator's title for districts and charters (i.e., "superintendent" or "chief school officer"). The Department thanks the Councils for this suggestion and agrees that updating the regulation so that the appropriate administrative title for the respective type of school leader is needed. The regulation was updated accordingly.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 804 Immunizations in order to align it with 14 Del.C. §131 which provides explicit language related to the responsibilities of the school and parents for exemptions from immunizations.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 804 Immunizations. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 804 Immunizations attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 804



Immunizations 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** 804 Immunizations amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 804 Immunizations 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 November 17, 2016. 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 17<sup>th</sup> day of November 2016.  
Steven H. Godowsky, Secretary of Education

#### 804 Immunizations

##### 1.0 Purpose

This regulation is promulgated pursuant to Title 14 **Del.C.** Ch. 1, §131 which states that, "the Department (of Education) shall from time to time, with advice from Division of Public Health (DPH), adopt and promulgate rules and regulations to establish an immunization program to protect pupils enrolled in public schools from certain diseases."

##### 2.0 Definitions

**"Affidavit of Religious Belief"** means, pursuant to 14 **Del.C.** Ch. 1, §131(a)(6), the statement to request exemption from immunizations based on individual religious beliefs.

**"Approved Vaccine"** means a vaccine, vaccine combination, formulation, or schedule which has been reviewed and accepted by the Division of Public Health (DPH) based upon Centers for Disease Control and Prevention (CDC) Recommended Immunization Schedule.

**"School Enterer"** means any child between birth and twenty (20) years inclusive entering or being admitted to 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 and territories and children entering from nonpublic schools.

**"Secondary School"** means, for the purposes of this regulation, means a school with a grade or age configuration including any of the following: grade 9, grade 10, grade 11, or grade 12.

##### 3.0 Minimum Immunizations Required for All School Enterers

3.1 All School Enterers shall have immunizations given up to four days prior to the minimum interval or age and shall include:

3.1.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other Approved Vaccine). Notwithstanding this requirement:

3.1.1.1 A child who received a fourth dose prior to his or her fourth birthday shall have a fifth dose;

3.1.1.2 A child who received the first dose of diphtheria and tetanus containing vaccine as adult Td vaccine at or after age seven may meet this requirement with only three doses of Td or Approved Vaccine.

3.1.1.3 A booster dose of Tdap (adult) is strongly recommended by DPH for all students at age 11-12 years (preferred) or through 18 years and required as per subsections 4.1 and 4.1.1 below.

- 3.1.2 Three or more doses of inactivated polio virus vaccine (IPV), oral polio vaccine (OPV), or an Approved Vaccine. Notwithstanding this requirement:
  - 3.1.2.1 A child who received a third dose prior to his or her fourth birthday shall have a fourth dose.
- 3.1.3 Two doses of measles, mumps and rubella (MMR) Approved Vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday.
  - 3.1.3.1 Disease histories for measles, rubella and mumps shall not be accepted unless serologically confirmed.
- 3.1.4 Three doses of Hepatitis B vaccine.
  - 3.1.4.1 For children 11 to 15 years old age, two doses of an Approved Vaccine may be used.
  - 3.1.4.2 Titers are not acceptable in lieu of completing the vaccine series and a disease history for Hepatitis B shall not be accepted unless serologically confirmed.
- 3.1.5 Two doses of Varicella Approved Vaccine. Students who entered during or prior to the 2008-2009 school year are required to have one dose. By the 2020-2021 school year all students must have two doses. DPH strongly recommends two doses for all students regardless of date of school entry.
  - 3.1.5.1 The first dose should be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school.
  - 3.1.5.2 A written disease history, provided by the health care provider, will be accepted in lieu of the Varicella vaccination.
- 3.1.6 Two doses of meningococcal vaccine are strongly recommended by DPH, with an initial dose at ages 11-12 and a booster at ages 16-18, and required as per subsections 4.1 and 4.1.2 below.
- 3.2 Children who enter school prior to age four (4) shall follow current Delaware Division of Public Health recommendations.

#### **4.0 Minimum Immunizations for Secondary School Students**

- 4.1 Beginning in school year 2016-2017 entering grade 9 students shall show proof of immunizations. One Secondary School grade shall be added each year thereafter.
  - 4.1.1 An adolescent booster dose of Tdap or other Approved Vaccine administered at age 11-12 (preferred) or prior to entry to Grade 9.
  - 4.1.2 One dose of meningococcal Approved Vaccine.
- 4.2 Schools will coordinate with the Division of Public Health to assure services to non-compliant Secondary School students.

(Non-regulatory guidance: Please refer to 14 **DE Admin. Code** 815 Health Examinations and Screenings for health examinations required for entering grade 9 students.)

#### **5.0 ~~Certification~~ Documentation of Immunization**

- 5.1 The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18) shall present a ~~certificate~~ documentation specifying the month, day, and year that the immunizations were administered by a licensed health care practitioner.
- 5.2 According to 14 **Del.C.** §131, a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent, legal guardian, Relative Caregiver, or a School Enterer who has reached the statutory age of majority (18) shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.
- 5.3 A School Enterer may be conditionally admitted to a Delaware school district by presenting a statement from a licensed health care practitioner who specifies that the School Enterer has received at least:
  - 5.3.1 One dose of DTaP, or DTP, or DT, or Approved Vaccine; and

- 5.3.2 One dose of IPV or OPV, or Approved Vaccine; and
  - 5.3.3 One dose of measles, mumps and rubella (MMR) Approved Vaccine; and
  - 5.3.4 The first dose of the Hepatitis B series; and
  - 5.3.5 One dose of Varicella vaccine.
  - 5.3.6 One dose of meningococcal vaccine, if entering a Secondary School according to subsections 4.1 and 4.1.2.
- 5.4 School districts and charter schools shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth. To that end, school districts shall assist homeless children and youth in meeting the immunization requirements.
- 5.5 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 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.
- 5.6 If the School Enterer or Secondary School student fails to complete the series of required immunizations, the parent, legal guardian, Relative Caregiver, or student who has reached the statutory age of majority (18) shall be notified that the School Enterer or Secondary School student will be excluded according to 14 **Del.C.** §131.

#### 6.0 Lost or Destroyed Immunization Record

When a student's immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent, legal guardian, Relative Caregiver, ~~or a~~ School Enterer who has reached the statutory age of majority (18), or the school nurse shall sign a written statement to this effect and must obtain at least one dose of each of the immunizations as identified in subsection 5.3. Evidence that the vaccines were administered shall be presented to the **[district]** superintendent **[or charter school chief administrative officer]** or his or her designee.

#### 7.0 Exemption from Immunization

- 7.1 Exemption from this requirement may be granted in accordance with 14 **Del.C.** §131 and this regulation which permits approved medical and notarized religious exemptions.
- 7.1.1 ~~Medical exemptions are reviewed and approved by the Delaware Division of Public Health~~ Medical exemptions shall be considered based on a written statement from a physician, i.e., medical doctor or doctor of osteopathy, stating that immunization is medically contraindicated.
- 7.1.1.1 The Delaware Division of Public Health shall review and determine approval.
- 7.1.2 Religious exemptions shall be approved upon receipt of a notarized Affidavit of Religious Belief, and the school shall offer information regarding the benefits of immunization and the risks of not being fully immunized.
- 7.1.3 Upon approval of a medical or religious exemption, the school shall inform the parent, legal guardian, Relative Caregiver, or a School Enterer who has reached the statutory age of majority (18), that the student shall be temporarily excluded from school in the event the Division of Public Health declares an outbreak of a vaccine preventable disease or determines the student has had or is at risk of having an exposure to a vaccine preventable disease. The Division of Public Health shall determine when the student may return to school.
- 7.1.3.1 During a temporary exclusion, the school and parent, legal guardian or Relative Caregiver shall assist the student with keeping up with school work. No academic penalty shall be assessed provided the student completes assignments.
- 7.2 Alternative dosages or immunization schedules may be accepted with the written approval of the Delaware Division of Public Health.

## 8.0 Verification of School Records

The Delaware Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

## 9.0 Documentation

- 9.1 School nurses shall record and maintain documentation of each student's immunization status.
- 9.2 Each student's immunization record shall be included in the Delaware Immunization Registry.

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 817

### REGULATORY IMPLEMENTING ORDER

### 817 Medications and Treatments

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 817 Medications and Treatments. This regulation is being amended to align with Senate Bill 181 with Senate Amendment 1 of the 148th General Assembly, which permits the use, with specific conditions, of medical marijuana oil in schools. A non-regulatory note has been edited and added to the end of the regulation to reference the change in state law and emphasize that the school nurse will not be administering medical marijuana oil.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2016, in the form hereto attached as Exhibit "A". Comments were received from the State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) suggesting there is some "tension" between Senate Bill 181 and disability-related laws. The Department is abiding by the requirements of the statute. No change was made to the proposed amended regulation.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments in order to be in alignment with Senate Bill 181 with Senate Amendment 1 of the 148th General Assembly, which permits the use, with specific conditions, of medical marijuana oil in schools. A non-regulatory note has been edited and added to the end of the regulation to reference the change in state law and emphasize that the school nurse will not be administering medical marijuana oil.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 817 Medications and Treatments attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 817 Medications and Treatments 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** 817 Medications and Treatments amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 817 Medications and Treatments 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 November 17, 2016. 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 17<sup>th</sup> day of November 2016.  
Steven H. Godowsky, Secretary of Education

\*Please note that no changes were made to the regulation as originally proposed and published in the October 2016 issue of the *Register* at page 231 (20 DE Reg. 231). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**817 Medications and Treatments**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))

**REGULATORY IMPLEMENTING ORDER**

**1201 Christa McAuliffe Award Program**

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

The Secretary of Education intends to create 14 **DE Admin. Code** 1201 Christa McAuliffe Award Program. This regulation is being created to formally put into policy the purpose, eligibility and other criteria for the award of this scholarship loan program. This is the first in a series of regulations the Department of Education will be promulgating related to higher education/scholarships.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2016, in the form hereto attached as Exhibit "A". No comments were received.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 1201 Christa McAuliffe Award Program in order to formally put into policy the purpose, eligibility and other criteria for the award of this scholarship loan program.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 1201 Christa McAuliffe Award Program. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1201 Christa McAuliffe Award Program attached hereto as Exhibit "B" is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1201 Christa McAuliffe Award Program hereby created shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. TEXT AND CITATION**

The text of 14 **DE Admin. Code** 1201 Christa McAuliffe Award Program created hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1201 Christa McAuliffe Award Program 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 November 17,

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2016. 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 17<sup>th</sup> day of November 2016.  
Steven H. Godowsky, Secretary of Education

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2016 issue of the *Register* at page 237 (20 DE Reg. 237). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1201 Christa McAuliffe Award Program**

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1561

### REGULATORY IMPLEMENTING ORDER

#### 1561 Bilingual Teacher

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1561 Bilingual Teacher. The proposed regulation clarifies that it is a category certification under subsection 1.1; adds a definition of “target language” for the purpose of this regulation under subsection 2.2; clarifies the additional requirements to obtain the certificate under subsection 4.1.1.1; clarifies how applicants satisfy demonstrating oral and written proficiency in the target language of the bilingual classroom or program under subsection 4.1.2; adds an additional option for completing the requirement under subsection 4.1.3; and adds section 6.0, which recognizes a Standard Certificate Bilingual Teacher issued before January 1, 2017.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2016 in the form attached hereto as Exhibit “A.” Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by October 31, 2016. The Professional Standards Board did not receive written comments. The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware’s children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

#### II. Findings of Fact

The Professional Standards Board finds that it is appropriate to amend 14 **DE Admin. Code** 1561 Bilingual Teacher to clarify that it is a category certification; add a definition of “target language” for the purpose of the regulation under subsection 2.2; clarify the additional requirements to obtain the certificate under section 4.0; add an additional option for demonstrating oral and written proficiency in English under subsection 4.1.1.1; clarify how applicants satisfy oral and written proficiency in the target language of the bilingual classroom or program under subsection 4.1.2; add an additional option for completing the requirement under subsection 4.1.3; and add section 6.0, which recognizes a Standard Certificate Bilingual Teacher issued before January 1, 2017.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board concludes that it is appropriate to amend 14 **DE Admin. Code** 1561 Bilingual Teacher.

Therefore, pursuant to 14 **Del.C.** §1203, the regulation attached hereto as Exhibit “A” is hereby proposed subject to the approval of the State Board of Education. If approved by the State Board of Education, the proposed regulation will have the force and effect of law.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 1561 Bilingual Teacher amended hereby shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1561 Bilingual Teacher in the *Administrative Code*.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board pursuant to 14 **Del.C.** §1203 on November 3, 2016 and by the State Board of Education on November 17, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 3<sup>rd</sup> day of November, 2016 by the Professional Standards Board.

Byron Murphy, Chairman	Dr. Darren T. Guido
Diane Albanese (absent)	David Kohan, Vice Chairman
Amber Augustus	Rosaria Macera
Gerald Allen	Darlene O'Neill
Jennifer Burton	Mary Pinkston
Stephanie DeWitt	Dr. Stephanie Smith (absent)
Nelia Dolan	Sue Smith
Dr. Laura Glass	

**IT IS SO ORDERED** the 17<sup>th</sup> day of November, 2016.

### Department of Education

Steven H. Godowsky, Secretary of Education

**Approved this 17<sup>th</sup> day of November, 2016**

### State Board of Education

Teri Quinn Gray, Ph.D., President	G. Patrick Heffernan
Nina Lou Bunting, Vice President	Barbara B. Rutt
Gregory B. Coverdale, Jr. (absent)	Terry M. Whittaker, Ed.D. (absent)

\*Please note that no changes were made to the regulation as originally proposed and published in the October 2016 issue of the *Register* at page 240 (20 DE Reg. 240). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1561 Bilingual Teacher**

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))  
14 **DE Admin. Code** 1565

## REGULATORY IMPLEMENTING ORDER

**1565 World Language Teacher**

### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1565 World Language Teacher.

The proposed regulation adds a clarifying sentence under subsection 1.1.1; adds definitions of “passing score” and “target language” for the purpose of the regulation under subsection 2.2; amends the additional requirements under section 4.0; and adds section 6.0, which recognizes a Standard Certificate World Language Teacher issued before January 1, 2017.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2016 in the form attached hereto as Exhibit “A.” Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by October 31, 2016. The Professional Standards Board did not receive written comments. The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware’s children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

## II. Findings of Fact

The Professional Standards Board finds that it is appropriate to amend 14 **DE Admin. Code** 1565 World Language Teacher to add a clarifying sentence under subsection 1.1.1; add definitions of “passing score” and “target language” for the purpose of the regulation under subsection 2.2; amend the additional requirements under section 4.0; and add section 6.0, which recognizes a Standard Certificate World Language Teacher issued before January 1, 2017.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board concludes that it is appropriate to amend 14 **DE Admin. Code** 1565 World Language Teacher.

Therefore, pursuant to 14 **Del.C.** §1203, the regulation attached hereto as Exhibit “A” is hereby proposed subject to the approval of the State Board of Education. If approved by the State Board of Education, the proposed regulation will have the force and effect of law.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 1565 World Language Teacher amended hereby shall be in the form attached hereto as Exhibit “A” and said regulation shall be cited as 14 **DE Admin. Code** 1565 World Language Teacher in the *Administrative Code*.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board pursuant to 14 **Del.C.** §1203 on November 3, 2016 and by the State Board of Education on November 17, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 3<sup>rd</sup> day of November, 2016 by the Professional Standards Board.

Byron Murphy, Chairman

Diane Albanese (absent)

Amber Augustus

Gerald Allen

Jennifer Burton

Stephanie DeWitt

Nelia Dolan

Dr. Laura Glass

Dr. Darren T. Guido

David Kohan, Vice Chairman

Rosaria Macera

Darlene O’Neill

Mary Pinkston

Dr. Stephanie Smith (absent)

Sue Smith

**IT IS SO ORDERED** the 17<sup>th</sup> day of November, 2016.

**Department of Education**

Steven H. Godowsky, Secretary of Education



Approved this 17<sup>th</sup> day of November, 2016

**State Board of Education**

Teri Quinn Gray, Ph.D., President  
 Nina Lou Bunting, Vice President  
 Gregory B. Coverdale, Jr. (absent)

G. Patrick Heffernan  
 Barbara B. Rutt  
 Terry M. Whittaker, Ed.D. (absent)

**1565 World Language Teacher**

**1.0 Content**

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for World Language Teacher. This certification is required for grades K to 12.

1.1.1 This certification is limited to the world language in which the Standard Certificate is requested.

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:

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

"Target language" means, for the purpose of this regulation, the specific world language, as defined in Section 1.0 of 14 **DE Admin. Code** 505, in which the Standard Certificate is requested.

**3.0 Standard Certificate**

3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a World Language Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

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

3.1.3 Has satisfied the additional requirements in this regulation.

**4.0 Additional Requirements**

~~4.1 If an examination of content knowledge such as Praxis II is not applicable and available for the World Language Standard Certificate requested, an educator must also meet the following:~~

~~4.1.1 Available ACTFL Tests~~

~~4.1.1.1 When the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview and the ACTFL Writing Proficiency Test is available in the World Language requested, the applicant shall achieve a passing score on the examination.~~

~~4.1.1.2 For purposes of this regulation the following shall be considered a passing score:~~

~~4.1.1.2.1 For tests of languages using a Roman alphabet, candidates are required to achieve as a minimum score an Advanced Low Level on the oral skills and an Advanced Low Level on the writing skills based on the ACTFL Proficiency Guidelines.~~

~~4.1.1.2.2 For tests of languages using a non Roman alphabet, candidates are required to achieve as a minimum score an Advanced Low Level on the oral skills and an~~

~~Intermediate High level on the writing skills based on the ACTFL Proficiency Guidelines.~~

4.1.2 ~~If ACTFL tests are not available, the educator must meet one of the following:~~

~~4.1.2.1 Specialized Education~~

~~4.1.2.1.1 The applicant shall have completed fifteen (15) credits or their equivalent in professional development in the area of the World Language requested.~~

~~4.1.2.1.1.1 The fifteen (15) credits or their equivalent in professional development in the area of the World Language requested for certification must be selected by the applicant with the assent of the employing school district or charter school and subsequently submitted to the Department for final approval.~~

~~4.1.2.1.1.2 In the case where the educator is seeking certification independently or there is no employing school district or charter school, the Department shall review the proposed fifteen (15) credits or their equivalent in professional development selected by the applicant in the area of the World Language, for final determination of acceptance.~~

~~4.1.2.1.1.3 If approved by the Department, the educator may use past coursework or professional development; or~~

~~4.1.2.2 Approved Certification of Content Knowledge~~

~~4.1.2.2.1 The applicant has earned an approved certificate in the World Language requested.~~

~~4.1.2.2.2 The Standards Board may recognize certificate programs that establish the minimum content knowledge in a World Language. Certificates are approved by the Standards Board in consultation with the Department and with the concurrence of the State Board in the same manner as examinations of content knowledge.~~

~~4.1.2.2.3 The Department shall make publicly available a list of approved World Language certificates.~~

4.1 An educator shall also have satisfied each of the following requirements:

4.1.1 Completion of a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent in the target language from an educator preparation program approved or recognized by 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; and

4.1.2 Demonstrated oral and written proficiency in the target language by either:

4.1.2.1 Achieving a passing score on a Praxis Subject Assessment in the target language; or

4.1.2.2 Based on the American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines:

4.1.2.2.1 Achieving a minimum level of Advanced Low on the ACTFL Oral Proficiency Interview (OPI) in the target language, and

4.1.2.2.2 Achieving a passing score on the ACTFL Writing Proficiency Test (WPT) in the target language.

4.1.2.2.2.1 For tests using the Roman alphabet, a passing score means achieving a minimum level of Advanced Low.

4.1.2.2.2.2 For tests using a non-Roman alphabet, a passing score means achieving a minimum level of Intermediate High.

## **5.0 Past Certification Recognized**

The Department shall recognize a Standard Certificate World Language Teacher issued before January 1, 2017. A teacher holding such a Standard Certificate issued by the Department before January 1, 2017 shall be considered certified as a World Language Teacher.

**6.0 Effective Date**

This regulation shall be effective on January 1, 2017.

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

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

**ORDER**
**Target Case Management Services for Individuals with Intellectual and Developmental Disabilities**

IN THE MATTER OF:

 REVISION OF THE REGULATION  
 OF DELAWARE'S  
 TITLE XIX MEDICAID STATE PLAN  
 SUPPLEMENT 3 TO ATTACHMENT 3.1-A,  
 PAGES 1 - 8;  
 SUPPLEMENT 4 TO ATTACHMENT 3.1-A,  
 PAGES 1 - 8;  
 ATTACHMENT 4.19-B PAGE 27  
 ATTACHMENT 4.19-B PAGE 28

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Delaware's Title XIX Medicaid State Plan regarding Targeted Case Management, specifically, *to establish coverage and reimbursement methodologies for targeted case management services for individuals with intellectual disabilities*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2016 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Delaware's Title XIX Medicaid State Plan regarding Targeted Case Management, specifically, *to establish coverage and reimbursement methodologies for targeted case management services for individuals with intellectual disabilities*.

**Statutory Authority**

- 42 CFR §440.169, *Case management services, general provisions*
- 42 CFR §441.18, *Case management services, specific requirements*
- 42 CFR §441.301(c)(1)(2)(3), *Contents of a waiver request, Person-Centered Services*
- 42 CFR §441.301(c)(4), *Contents of a waiver request, Home and Community-Based Settings*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- §1902(a)(23) of the Social Security Act, *Freedom of choice of qualified providers*
- §1902(a)(25) of the Social Security Act, *Third party liability*
- §1903(c) of the Social Security Act, *FFP for case management included in an individualized education program or individualized family service plan*
- §1915(c) of the Social Security Act, *Home and community-based services*

- §1915(g)(1) of the Social Security Act, *location and comparability of case management services*
- 16 DE Admin. Code 2100 Division of Developmental Disabilities Services (DDDS) *Eligibility Criteria*

## Background

On July 25, 2000, the Center for Medicare and Medicaid Services (CMS) issued a State Medicaid Director Letter (SMDL) providing policy changes and clarification giving states more flexibility to serve people with disabilities in different settings. This SMDL provided clarification regarding the use of Case Management to assist states to overcome barriers to community transition. Case management services are defined under section 1915(g)(2) of the Social Security Act (the Act) as "services which will assist individuals, eligible under the plan, in gaining access to needed medical, social, educational, and other services." Case management services are often used to foster the transitioning of a person from institutional care to a more integrated setting or to help maintain a person in the community. There are several ways that case management services may be furnished under the Medicaid program. Home and Community-Based Services (HCBS) Case Management may be furnished as a service under the authority of section 1915(c) when this service is included in an approved HCBS waiver. Persons served under the waiver may receive case management services while they are still institutionalized, for up to 180 consecutive days prior to discharge. This case management service may be provided under the optional Targeted Case Management (TCM) authority of section 1915(g)(2) of the Social Security Act. TCM, defined in section 1915(g) of the Act, may be furnished as a service to institutionalized persons who are about to leave the institution, to facilitate the process of transition to community services and to enable the person to gain access to needed medical, social, educational and other services in the community. TCM may be furnished during the last 180 consecutive days of a Medicaid eligible person's institutional stay if provided for the purpose of community transition. States may specify a shorter time period or other conditions under which TCM may be provided.

In the Epilogue of Delaware's FY17 Budget Act, the Division of Developmental Disability Services (DDDS) was directed to add Medicaid (HCBS) for individuals with intellectual developmental disabilities living with their family. DDDS intends to fulfill this requirement by amending the current DDDS HCBS 1915(c) waiver by adding additional waiver capacity and additional services targeted to meet the needs of families. Individuals receiving a DDDS day service will be targeted for new enrollment in the amended waiver which will be called the Lifespan Waiver. There will be no interruption in service to these individuals. DDDS intends to meet the CMS requirement for the delivery of case management and person-centered planning to waiver recipients by using the optional Targeted Case Management (TCM) authority of Section 1915(g)(2) of the Social Security Act. The proposed State Plan Amendments establish two TCM target groups: one for individuals with Intellectual Developmental Disabilities (IDD) who are receiving residential habilitation under the 1915(c) HCBS waiver and the other for individuals with IDD who are eligible for DDDS services and living at home.

## Summary of Proposal

### *Purpose*

The purpose of this proposed regulation is to add Targeted Case Management (TCM) to the Delaware Medicaid State Plan under the authority of 1915(g)(2) of the Social Security Act. Delaware does not currently offer Targeted Case Management under the State Plan.

### *Summary of Proposed Changes*

If implemented as proposed, this state plan amendment will accomplish the following, effective January 1, 2017:

The SPAs will establish two TCM target groups: one for individuals with Intellectual Developmental Disabilities (IDD) receiving residential habilitation under the Division of Developmental Disability Services (DDDS) 1915(c) HCBS waiver and the other for individuals with IDD who are eligible for DDDS services and living at home. Individuals living at home are not currently covered under the DDDS HCBS Waiver. It is DDDS's intention, however, to submit an amendment to the DDDS waiver to CMS in FY17. This amendment will add certain individuals living at home to the DDDS waiver which will be called the Lifespan Waiver. Adding TCM to the State Plan will enable DDDS to meet the CMS requirement for the provision of case management and person-centered planning to the new waiver recipients living in their family home. Case management for individuals currently enrolled in the DDDS waiver is provided by DDDS employees as a Medicaid administrative activity, for which the state is reimbursed 50% of the cost of Medicaid allowable activities. If this SPA is approved, DDDS will convert administrative case management to TCM for individuals currently enrolled in the DDDS waiver.

*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input. Comments must be received by 4:30 p.m. on October 31, 2016.

*Centers for Medicare and Medicaid Services Review and Approval*

The provisions of this state plan amendment (SPA) relating to coverage and payment methodology for services 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 Update*

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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 manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

**Fiscal Impact**

No fiscal impact is projected. The Division of Developmental Disability Services (DDDS) has been contracting with individuals it calls "Family Support Specialists (FSS)" to help connect persons with intellectual and developmental disabilities and their families to community resources. This will be discontinued and replaced by Targeted Case Management, at which time the funds that were in use to contract with the FSS will be redirected to TCM.

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

The Governor's Advisory Council for Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

First, the minimum credentials of both the "Community Navigators" (serving non-residential clients) and Qualified Support Coordinators" (serving residential clients) are weak. It is patent that more robust credentials will be necessary to perform the above functions in a meaningful way.

**Agency Response:** The set of minimum credentials of both the Community Navigators and the Support Coordinators is the same as the current State of Delaware Merit System requirements for the classification of Senior Social Worker/Case Manager which is also the classification of the current Division of Developmental Disability Services (DDDS) case managers. State agencies do not have the authority to change the minimum qualifications for state Merit classifications. Because this is the standard currently used to establish the minimum credentials for individuals performing the work that is contemplated under the TCM State Plan Amendment (SPA), DDDS believes it appropriate to use this standard for both types of case managers. Nothing in the SPA or the RFP for the TCM service for individuals living in the family home will prohibit the provider from establishing higher standards. DDDS will closely monitor the performance of the TCM provider(s) against established quality metrics. The minimum required credentials for the contracted TCM will be reevaluated in the future after the state has the ability to assess the provider's performance. There was no change as a result of this comment.

Second and third, the level of involvement with the DDDS clients is minimal. Also, there is no "caseload" benchmark in the Medicaid State Plan Amendment (SPA). It would be preferable to include a benchmark such as an upper cap on case manager caseload.

**Agency Response:** This response will address both the second and third comments together. The expected level of involvement of the Community Navigators is based on a required caseload ratio of 1:60 staff to consumer. The caseload ratio of 1:60 will be specified in the RFP for the TCM provider. This ratio is roughly double the current

desired caseload ratio of 1:35 for individuals living in a waiver residential setting but is less than the current caseload ratio of approximately 1:100 for individuals supported in the family home by the Family Support Specialists. In establishing a caseload ratio and minimum contact schedule, DDDS was mindful of the need to maintain costs within existing budget allocations. The TCM provider will be responsible for supervising and monitoring the performance of individual Community Navigators and assuring that they provide high quality case management. DDDS has designated two positions within the Division to be the liaison between the TCM provider and the state. These positions will also have responsibility for monitoring the performance of the TCM provider and reporting back to the contract manager. There was no change as a result of these comments.

Fourth, it would be preferable to have case management provided by State employees rather contracting with private firms with a profit incentive.

**Agency Response:** The current Administration has enforced a policy of not expanding the state workforce. Therefore, using state employees to provide TCM for individuals living at home was not an option. To maintain a caseload ratio of 1:60, given current DDDS caseloads, we anticipate that the vendor will need to hire 54 Community Navigators and 5 supervisors. The budget proposals included as part of the vendor bids will be carefully scrutinized as part of the evaluation process to assure that proposed costs are reasonable. There was no change as a result of this comment.

Fifth, DMMA should consider amending the following reference: "(i)nforms and assists an individual or his or her family to obtain guardianship or other surrogate decision making capability" to promote alternatives to guardianship such as supported decision-making. Consider the following substitute for the above reference: "(i)nforms and assists an individual or his or her family with surrogate decision making and assistance options, including supported decision-making agreements, powers of attorney, and guardianship."

**Agency Response:** DDDS acknowledges this comment and has adopted the alternative language as follows:

*"Informs and assists an individual or his or her family with surrogate decision making and assistance options, including supported decision-making agreements, powers of attorney, and guardianship."*

Sixth, DMMA should reconsider the following reference: "(f)acilitates referral to a nursing facility when appropriate" as placement of DDDS clients in nursing homes is highly disfavored.

**Agency Response:** DDDS acknowledges this comment. However, as long as the nursing facility benefit is available under the State Plan, the state must allow Medicaid eligible individuals who meet the nursing facility criteria to receive this benefit. As council points out, individuals must go through the Preadmission Screening and Resident Review (PASRR) process, prior to actual admission to a nursing facility. This process is designed to ensure that alternatives are considered before nursing facility admission is approved. DDDS has revised the language to indicate that alternatives to nursing facility placement must be considered and exhausted prior to consideration of a nursing facility. The revised language is as follows:

*"Facilitates referral to a nursing facility when appropriate and when other available options have been fully considered and exhausted."*

Additionally, some clarification was provided in a few sections of the SPA to make the intention more clear and definitions complete.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the December 2016 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Delaware's Title XIX Medicaid State Plan regarding Targeted Case Management, specifically, *to establish coverage and reimbursement methodologies for targeted case management services for individuals with intellectual disabilities*, is adopted and shall be final effective December 11, 2016.

Rita M. Landgraf, Secretary, DHSS  
11/15/2016

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

**Target Case Management Services for Individuals with Intellectual and Developmental Disabilities**

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**DEPARTMENT OF INSURANCE****OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Section 311 and 2503 (18 **Del.C.** §§311 & 2503)  
18 **DE Admin. Code** 1214

**ORDER****1214 Senior Protection in Annuity Transactions**

Department of Insurance proposed amended Regulation 1214 relating to Senior Protection in Annuity Transactions was published in the Delaware *Register of Regulations* on September 1, 2016. The comment period remained open until October 3, 2016. There was no public hearing on proposed amended Regulation 1214. Public notice of the proposed amended Regulation 1214 in the *Register of Regulations* was in conformity with Delaware law.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Comments were received on the proposed amended Regulation 1214 from:

- Insured Retirement Institute – Chelsea Crucitti, Vice President, State Affairs

The collective comments were reviewed and considered. No change was made to the proposed amended Regulation 1214.

**FINDINGS OF FACT**

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 **Del.C.** §§311, 2304, and 2312 require a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed amended Regulation 1214 best serve the interests of the public and of insurers and comply with Delaware law.

**DECISION AND EFFECTIVE DATE**

Based on the provisions of 18 **Del.C.** §§311, 2304, and 2312; and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 1214 as may more fully and at large appear in the version attached hereto to be effective six (6) months after the date the regulation is published as final.

**TEXT AND CITATION**

The text of proposed amended Regulation 1214 last appeared in the *Register of Regulations* Vol. 20, Issue 3, pages 149-150.

IT IS SO ORDERED this 1<sup>st</sup> day of December, 2016  
Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

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\*Please note that no changes were made to the regulation as originally proposed and published in the September 2016 issue of the *Register* at page 149 (20 DE Reg. 149). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1214 Senior Protection in Annuity Transactions**

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## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 333, 3370A, and 3571S (18 Del.C. §§311, 333, 3370A & 3571S)  
18 DE Admin. Code 1313

### ORDER

#### **1313 Arbitration of Health Insurance Disputes Between Carriers and Providers**

Proposed amended Regulation 1313 relating to Arbitration of Health Insurance Disputes Between Carriers and Providers was initially published in the Delaware *Register of Regulations* on September 1, 2016, and then final published on November 1, 2016. The comment period remained open until October 3, 2016. There was no public hearing on proposed amended Regulation 1313. Public notice of the proposed amended Regulation 1313 in the *Register of Regulations* was in conformity with Delaware law.

After the final publishing of proposed amended Regulation 1313 on November 1, 2016, a typographical error was noticed in a statute citing after a new law was codified and published in the Delaware Laws; and the Exempt Final Order is being published on December 1, 2016, to fix that error. All references to 18 Del.C. §3371 are being changed to §3370A.

### FINDINGS OF FACT

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 Del.C. §§311, 333, 3370A and 3571S require a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed amended Regulation 1313 best serve the interests of the public and of insurers and comply with Delaware law.

### DECISION AND EFFECTIVE DATE

Based on the provisions of 18 Del.C. §§311, 333, 3370A and 3571S; and 29 Del.C. Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 1313 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

### TEXT AND CITATION

The text of proposed amended Regulation 1313 last appeared in the *Register of Regulations* Vol. 20, Issue 5, pages 372-373.

IT IS SO ORDERED this 1<sup>st</sup> day of December, 2016.

Karen Weldin Stewart, CIR-ML  
Insurance Commissioner



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**1313 Arbitration of Health Insurance Disputes Between Carriers and Providers**
**1.0 Purpose and Statutory Authority**

The purpose of this Regulation is to implement 18 **Del.C.** §§333, ~~3374~~ 3370A and 3571S, which requires health insurance carriers to submit to arbitration any dispute with a health care provider regarding reimbursement for an individual claim, procedure or service upon a request for arbitration by the health care provider. This Regulation is promulgated pursuant to 18 **Del.C.** §§311, 333, ~~3374~~ 3370A and 3571S and 29 **Del.C.** Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

*(Break in Continuity of Sections)*

**4.0 Procedure**

*(Break in Continuity Within Section)*

**4.7 Arbitration Costs**

4.7.1 In arbitrations commenced pursuant to 18 **Del.C.** §§333, ~~3374~~ 3370A and 3571S, the Arbitrator shall allocate to each party a percentage of the costs of arbitration. The arbitrator may award to the health care provider the filing fee, if the health care provider should prevail.

*(Break in Continuity of Sections)*

**9.0 Additional Provisions for Arbitrations Conducted Pursuant to 18 Del.C. §§~~3374~~ 3370A and 3571S**

9.1 Arbitrations conducted pursuant to 18 **Del.C.** §§~~3374~~ 3370A and 3571S shall reflect the objectives of those statutory provisions of protecting consumers from surprise bills and not creating incentives for providers to be out-of-network.

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

**1313 Arbitration of Health Insurance Disputes Between Carriers and Providers**

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**
**DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)  
7 **DE Admin. Code** 1101

**Secretary's Order No.: 2016-A-0037**

**Date of Issuance: October 12, 2016**

**Effective Date of the Amendment: November 11, 2016**

**1101 Definitions and Administrative Principles**

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, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

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

This Order relates to proposed regulation Amendments to 7 **DE Admin. Code** §1101, Definitions and Principles, Section 2.0: Definitions. The Department's Division of Air Quality ("DAQ") commenced the regulatory development process with Start Action Notice 2015-11 dated November 22, 2015. The Department published its

initial proposed regulation Amendments in the June 1, 2016 Delaware *Register of Regulations*. The Department then held a public hearing on June 22, 2016. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through July 7, 2016.

The purpose of this regulatory promulgation is to adopt as final the aforementioned proposed Amendments to 7 **DE Admin. Code** §1101, Definitions and Principles, Section 2.0: Definitions ("Amendments"), in order for Delaware to update its definition of volatile organic compounds ("VOC") as found in 7 **DE Admin. Code** §1101 to mirror the federal definition of the same, as found at 40 CFR 51.100(s). Specifically, this regulatory action will add the following eight (8) compounds to a list of compounds excluded from Delaware's existing regulatory definition of VOC, on the basis that the Environmental Protection Agency ("EPA") has determined that these compounds make a negligible contribution to ground-level ozone formation: HFO-1234ze; HFE-134; HFE-236ca2; HFE-338pcc13; H-Galden1040x; trans1-chloro-3,3,3-trifluoroprop-1-ene; HFO-1234yf; and 2-amino-2-methyl-1-propanol (hereinafter referred to as "the aforementioned eight (8) compounds"). This action will also eliminate recordkeeping, reporting, and modeling requirements associated with the already exempt compound t-butyl acetate ("TBAC"). It should be noted that this regulatory action will reduce the regulatory requirements which apply to existing and new businesses that currently use, or that could switch to using, the aforementioned eight (8) compounds, and will assist Delaware in achieving healthy air quality for its citizens.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on June 22, 2016. Members of the public attended that public hearing, however, no comment was received by the Department at that time. It should be noted that written comment was received by the Department prior to this public hearing from Honeywell, Angus Chemical, and the American Coatings Association, and all such comment voiced support of this promulgation. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the hearing record closing on July 7, 2016, The Department's presiding hearing officer, Lisa A. Vest, then prepared a Hearing Officer's Report dated September 29, 2016 ("Report"). The Report documents the proper completion of the required regulatory development process, establishes the record, and recommends the adoption of the proposed regulatory Amendments as attached to the Report as Appendix "A".

### ***Reasons and Conclusions***

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** §1101, Definitions and Administrative Principles, Section 2.0: Definitions, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) update its definition of volatile organic compounds ("VOC") as found in 7 **DE Admin. Code** §1101 to mirror the federal definition of the same, as found at 40 CFR 51.100(s), by adding eight (8) additional VOCs that are presently excluded from Delaware's existing definition; (2) eliminate recordkeeping, reporting, and modeling requirements associated with the already exempt compound t-butyl acetate ("TBAC"); (3) reduce the regulatory requirements that apply to existing and new businesses that currently use, or that could switch to using, the aforementioned eight (8) compounds; and (4) assist Delaware in achieving healthy air quality for its citizens.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** §1101, Definitions and Administrative Principles, Section 2.0: Definitions, pursuant to 7 **Del.C.**, Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on June 22, 2016, and held the record open through close of business on July 7, 2016,

consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed regulatory amendments to 7 **DE Admin. Code** §1101, Definitions and Administrative Principles, Section 2.0: Definitions, will enable the Department to (1) update its definition of volatile organic compounds ("VOC") as found in 7 **DE Admin. Code** §1101 to mirror the federal definition of the same, as found at 40 CFR 51.100(s), by adding eight (8) additional VOCs that are presently excluded from Delaware's existing definition; (2) eliminate recordkeeping, reporting, and modeling requirements associated with the already exempt compound t-butyl acetate ("TBAC"); (3) reduce the regulatory requirements that apply to existing and new businesses that currently use, or that could switch to using, the aforementioned eight (8) compounds; and (4) assist Delaware in achieving healthy air quality for its citizens;
6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "B1" regarding same, as the same are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Moreover, the Department believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
7. The Department's proposed regulatory Amendments, as initially published in the June 1, 2016 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, 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*; and
8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** §1101, Definitions and Administrative Principles, Section 2.0: Definitions, 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 as the Department determines is appropriate.

David S. Small, Secretary

**1101 Definitions and Administrative Principles**  
(*Break in Continuity of Sections*)

09/11/2009 ~~xx~~12/11/2016

**2.0 Definitions**

\*Please note that no additional changes were made to the regulation as originally proposed and published in the June 2016 issue of the *Register* at page 1062 (19 DE Reg. 1062). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1101 Definitions and Administrative Principles**

## DIVISION OF AIR QUALITY

Statutory Authority: 7 **Delaware Code**, Chapter 60; (7 **Del.C.**, Ch. 60)  
7 **DE Admin. Code** 1125

Secretary's Order No.: 2016-A-0045

Date of Issuance: November 15, 2016

Effective Date of the Amendment: December 11, 2016

### 1125 Requirements for Preconstruction Review

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, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

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

This Order relates to proposed *revised* regulation Amendments to 7 **DE Admin. Code** §1125, *Requirements for Preconstruction Review, specifically, to revise Table 1-1, "Global Warming Potentials"*. The Department's Division of Air Quality ("DAQ") commenced the regulatory development process with Start Action Notice 2016-12 dated July 25, 2016. The Department published its initial proposed regulation Amendments in the October 1, 2016 *Delaware Register of Regulations*. The Department then held a public hearing on October 25, 2016. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through November 9, 2016.

The United States Environmental Protection Agency ("U.S. EPA", "EPA") has published two final rules to amend the greenhouse gas ("GHG") reporting program. These federal rules revised the global warming potential of numerous compounds that currently appear in Table 1-1. The Department proposes to adopt the aforementioned Amendments in order for Delaware to mirror these federal requirements.

GHG is a regulated pollutant under the federal Clean Air Act, and is specifically regulated under the Prevention of Significant Deterioration of Air Quality ("PSD") provisions of 7 **DE Admin. Code** §1125. The EPA has published two final rules to amend the GHG reporting program, which impact Table 1-1 of 7 **DE Admin. Code** §1125. The first rule, published on November 29, 2013, revised the global warming potential ("GWP") values of 23 of the 32 compounds that appear in Table 1-1. The second rule, published on December 11, 2014, added 30 new compounds to the EPA list of GHG. In this present action, the Department proposes to revise Table 1-1 to update the GWP values, and to include the new GHG compounds as provided for in the two EPA rules referenced above.

It should be noted that the Department identified a typographical error in the initial proposed Amendments published by the *Delaware Register of Regulations* on October 1, 2016. In Table 1-1 of the October 1, 2016 version of these proposed Amendments, the chemical formula for PFC-1114, also known as tetrafluoroethylene, should have been listed as C<sub>2</sub>F<sub>4</sub>. This error was corrected prior to the public hearing of October 25, 2016, and the proposed *revised* regulatory Amendments presented at the public hearing provided the correct chemical formula. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The aforementioned proposed *revised* Amendments were presented and thoroughly vetted by the Department at the public hearing on October 25, 2016. Members of the public attended that public hearing, however, no additional comment was received by the Department at that time, nor at any time prior to the hearing record closing on November 9, 2016. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the hearing record closing on November 9, 2016, The Department's presiding hearing officer, Lisa A. Vest, then prepared a Hearing Officer's Report dated November 10, 2016 ("Report"). The Report documents the proper completion of the required regulatory development process, establishes the record, and recommends the adoption of the proposed regulatory Amendments as attached to the Report as Appendix "A".

## Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** §1125, *Requirements for Preconstruction Review*, specifically, to revise Table 1-1, "Global Warming Potentials", are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these *revised* regulatory Amendments. The adoption of these *revised* regulatory Amendments will allow Delaware to revise Table 1-1 as contained in the existing regulation, in order to update the GWP values, and to include the new GHG compounds as provided for in the two EPA rules referenced above.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* amendments to 7 **DE Admin. Code** §1125, *Requirements for Preconstruction Review*, specifically, to revise Table 1-1, "Global Warming Potentials", pursuant to 7 **Del.C.**, Ch. 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.**, Ch. 60, to issue an Order adopting these proposed *revised* regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed *revised* regulatory amendments, including at the time of the public hearing held on October 25, 2016, and held the record open through close of business on November 9, 2016, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed *revised* regulatory amendments before making any final decision;

4. While the Department has made revisions to the initial proposed regulatory amendments to 7 **DE Admin. Code** §1125 to correct a typographical error as referenced above, such changes are non-substantive, as they neither alter the meaning or intent of the proposed regulatory amendments, and therefore no additional republication or noticing of this proposed regulation is necessitated at this time;

5. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;

6. Promulgation of the proposed *revised* regulatory amendments to 7 **DE Admin. Code** §1125, *Requirements for Preconstruction Review*, specifically, to revise Table 1-1, "Global Warming Potentials", will enable the Department to mirror federal requirements by revising Table 1-1 to update the GWP values, and to include the new GHG compounds as provided for in the two EPA rules published on November 29, 2013 and December 11, 2014, as referenced above;

7. The Department has reviewed these proposed *revised* regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "B5" regarding same, as the proposed *revised* regulation Amendments are required by federal law (EPA has revised its table of global warming values, which changes the calculation of GHG emissions). Moreover, the Department believes these proposed *revised* regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

8. The Department's proposed *revised* regulatory amendments, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

9. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** §1125, *Requirements for Preconstruction Review*, specifically, to revise Table 1-1, "Global Warming Potentials", to the *Delaware Register of Regulations* publication in its next available issue, and provide such other notice as the law and regulation require and as the Department determines is appropriate.

David S. Small, Secretary

## 1125 Requirements for Preconstruction Review

04/11/14 ~~12~~/11/2016

### 1.0 General Provisions

*(Break in Continuity Within Section)*

**Table 1-1  
GLOBAL WARMING POTENTIALS**

Name	CAS No.	Chemical formula	Global warming potential (100 yr.)
Carbon dioxide	124-38-9	CO <sub>2</sub>	1
Methane	74-82-8	CH <sub>4</sub>	<del>24</del> <u>25</u>
Nitrous oxide	10024-97-2	N <sub>2</sub> O	<del>340</del> <u>298</u>
HFC-23	75-46-7	CHF <sub>3</sub>	<del>11,700</del> <u>14,800</u>
HFC-32	75-10-5	CH <sub>2</sub> F <sub>2</sub>	<del>650</del> <u>675</u>
HFC-41	593-53-3	CH <sub>3</sub> F	<del>150</del> <u>92</u>
HFC-125	354-33-6	C <sub>2</sub> H <sub>5</sub> F	<del>2,800</del> <u>3,500</u>
HFC-134	359-35-3	C <sub>2</sub> H <sub>2</sub> F <sub>4</sub>	<del>1,000</del> <u>1,100</u>
HFC-134a	811-97-2	CH <sub>2</sub> FCF <sub>3</sub>	<del>1,300</del> <u>1,430</u>
HFC-143	430-66-0	C <sub>2</sub> H <sub>3</sub> F <sub>3</sub>	<del>300</del> <u>353</u>
HFC-143a	420-46-2	C <sub>2</sub> H <sub>3</sub> F <sub>3</sub>	<del>3,800</del> <u>4,470</u>
HFC-152	624-72-6	CH <sub>2</sub> FCH <sub>2</sub> F	53
HFC-152a	75-37-6	CH <sub>3</sub> CHF <sub>2</sub>	<del>140</del> <u>124</u>
HFC-161	353-36-6	CH <sub>3</sub> CH <sub>2</sub> F	12
<u>HFC-227ca</u>	<u>2252-84-8</u>	<u>CF<sub>3</sub>CF<sub>2</sub>CHF<sub>2</sub></u>	<u>2,640</u>
HFC-227ea	431-89-0	C <sub>3</sub> HF <sub>7</sub>	<del>2,900</del> <u>3,220</u>
HFC-236cb	677-56-5	CH <sub>2</sub> FCF <sub>2</sub> CF <sub>3</sub>	1,340
HFC-236ea	431-63-0	CHF <sub>2</sub> CHFCF <sub>3</sub>	1,370
HFC-236fa	690-39-1	C <sub>3</sub> H <sub>2</sub> F <sub>6</sub>	<del>6,300</del> <u>9,810</u>
HFC-245ca	679-86-7	C <sub>3</sub> H <sub>3</sub> F <sub>5</sub>	<del>560</del> <u>693</u>
<u>HFC-245cb</u>	<u>1814-88-6</u>	<u>CF<sub>3</sub>CF<sub>2</sub>CH<sub>3</sub></u>	<u>4,620</u>
<u>HFC-245ea</u>	<u>24270-66-4</u>	<u>CHF<sub>2</sub>CHFCHF<sub>2</sub></u>	<u>235</u>
<u>HFC-245eb</u>	<u>431-31-2</u>	<u>CH<sub>2</sub>FCHFCF<sub>3</sub></u>	<u>290</u>
HFC-245fa	460-73-1	CHF <sub>2</sub> CH <sub>2</sub> CF <sub>3</sub>	1,030
<u>HFC-263fb</u>	<u>421-07-8</u>	<u>CH<sub>3</sub>CH<sub>2</sub>CF<sub>3</sub></u>	<u>76</u>
<u>HFC-272ca</u>	<u>420-45-1</u>	<u>CH<sub>3</sub>CF<sub>2</sub>CH<sub>3</sub></u>	<u>144</u>
<u>HFC-329p</u>	<u>375-17-7</u>	<u>CHF<sub>2</sub>CF<sub>2</sub>CF<sub>2</sub>CF<sub>3</sub></u>	<u>2,360</u>
HFC-365mfc	406-58-6	CH <sub>3</sub> CF <sub>2</sub> CH <sub>2</sub> CF <sub>3</sub>	794
HFC-43-10mee	138495-42-8	CF <sub>3</sub> CFHCFHCF <sub>2</sub> C F <sub>3</sub>	<del>1,300</del> <u>1,640</u>
<u>HFC-1132a</u>	<u>75-38-7</u>	<u>CF<sub>2</sub>=CH<sub>2</sub></u>	<u>0.04</u>
<u>HFC-1141</u>	<u>75-02-5</u>	<u>CH<sub>2</sub>=CHF</u>	<u>0.02</u>
<u>(E)-HFC-1225ye</u>	<u>5595-10-8</u>	<u>CF<sub>3</sub>CF=CHF(E)</u>	<u>0.06</u>

## FINAL REGULATIONS

<u>(Z)-HFC-1225ye</u>	<u>5528-43-8</u>	<u>CF<sub>3</sub>CF=CHF(Z)</u>	<u>0.22</u>
<u>HFC-1234yf; HFO-1234yf</u>	<u>745-12-1</u>	<u>CF<sub>3</sub>CF=CH<sub>2</sub></u>	<u>0.31</u>
<u>HFC-1234ze(E)</u>	<u>1645-83-6</u>	<u>(trans)- CF<sub>3</sub>CH=CHF</u>	<u>0.97</u>
<u>HFC-1234ze(Z)</u>	<u>29118-25-0</u>	<u>(cis)-CF<sub>3</sub>CH=CHF</u>	<u>0.29</u>
<u>HFC-1243zf</u>	<u>677-21-4</u>	<u>CF<sub>3</sub>CH=CH<sub>2</sub></u>	<u>0.12</u>
<u>(Z)-HFC-1336</u>	<u>692-49-9</u>	<u>CF<sub>3</sub>CH=CHCF<sub>3</sub>(Z)</u>	<u>1.58</u>
<u>HFC-1345zfc</u>	<u>374-27-6</u>	<u>C<sub>2</sub>F<sub>5</sub>CH=CH<sub>2</sub></u>	<u>0.09</u>
<u>Capstone 42-U</u>	<u>19430-93-4</u>	<u>CF<sub>3</sub>(CF<sub>2</sub>)<sub>3</sub>CH=CH<sub>2</sub></u>	<u>0.16</u>
<u>Capstone 62-U</u>	<u>25291-17-2</u>	<u>CF<sub>3</sub>(CF<sub>2</sub>)<sub>5</sub>CH=CH<sub>2</sub></u>	<u>0.11</u>
<u>Capstone 82-U</u>	<u>21652-58-4</u>	<u>CF<sub>3</sub>(CF<sub>2</sub>)<sub>7</sub>CH=CH<sub>2</sub></u>	<u>0.09</u>
<u>Sulfur hexafluoride</u>	<u>2551-62-4</u>	<u>SF<sub>6</sub></u>	<u>23,900 22,800</u>
<u>PFC-14 (Perfluoromethane)</u>	<u>75-73-0</u>	<u>CF<sub>4</sub></u>	<u>6,500 7,390</u>
<u>PFC-116 (Perfluoroethane)</u>	<u>76-16-4</u>	<u>C<sub>2</sub>F<sub>6</sub></u>	<u>9,200 12,200</u>
<u>PFC-218 (Perfluoropropane)</u>	<u>76-19-7</u>	<u>C<sub>3</sub>F<sub>8</sub></u>	<u>7,000 8,830</u>
<u>Perfluorocyclopropane</u>	<u>931-91-9</u>	<u>C<sub>3</sub>F<sub>6</sub></u>	<u>17,340</u>
<u>PFC-3-1-10 (Perfluorobutane)</u>	<u>355-25-9</u>	<u>C<sub>4</sub>F<sub>10</sub></u>	<u>7,000 8,860</u>
<u>PFC-318 (Perfluorocyclobutane)</u>	<u>115-25-3</u>	<u>C<sub>4</sub>F<sub>8</sub></u>	<u>8,700 10,300</u>
<u>PFC-4-1-12 (Perfluoropentane)</u>	<u>678-26-2</u>	<u>C<sub>5</sub>F<sub>12</sub></u>	<u>7,500 9,160</u>
<u>PFC-5-1-14 (Perfluorohexane)</u>	<u>355-42-0</u>	<u>C<sub>6</sub>F<sub>14</sub></u>	<u>7,400 9,300</u>
<u>PFC-6-1-12 (Perfluoroheptane)</u>	<u>335-57-9</u>	<u>CF<sub>3</sub>(CF<sub>2</sub>)<sub>5</sub>CF<sub>3</sub></u>	<u>7.820</u>
<u>PFC-7-1-18 Perfluorooctane</u>	<u>307-341-6</u>	<u>CF<sub>3</sub>(CF<sub>2</sub>)<sub>6</sub>CF<sub>3</sub></u>	<u>7.620</u>
<u>PFC-9-1-18 (perfluorodecalin)</u>	<u>306-94-5</u>	<u>C<sub>10</sub>F<sub>18</sub></u>	<u>7,500</u>
<u>Perfluorodecalin (cis)</u>	<u>60433-11-6</u>	<u>Z-C<sub>10</sub>F<sub>18</sub></u>	<u>7,236</u>
<u>Perfluorodecalin (trans)</u>	<u>60433-12-7</u>	<u>E-C<sub>10</sub>F<sub>18</sub></u>	<u>6,288</u>
<u>PFC-1114 Tetrafluoroethylene (TFE)</u>	<u>116-14-3</u>	<u>[<del>C<sub>2</sub>F<sub>2</sub></del> C<sub>2</sub>F<sub>4</sub>]</u>	<u>0.004</u>
<u>PFC-1216 Perfluoropropene</u>	<u>116-15-4</u>	<u>CF<sub>3</sub>CF=CF<sub>2</sub></u>	<u>0.05</u>
<u>PFC C-1418 Perfluorocyclopentene</u>	<u>559-40-0</u>	<u>c-C<sub>5</sub>F<sub>8</sub></u>	<u>1.97</u>
<u>Perfluorobut-2-ene</u>	<u>360-89-4</u>	<u>CF<sub>3</sub>CF=CFCF<sub>3</sub></u>	<u>1.82</u>
<u>Perfluorobut-1-ene</u>	<u>357-26-6</u>	<u>CF<sub>3</sub>CF<sub>2</sub>CF=CF<sub>2</sub></u>	<u>0.10</u>
<u>Perfluorobuta-1,3-diene</u>	<u>685-63-2</u>	<u>CF<sub>2</sub>=CFCF=CF<sub>2</sub></u>	<u>0.003</u>

*(Break in Continuity Within Section)*

09/11/2013 [xx12]/11/2016

## 2.0 Emission Offset Provisions (EOP)

*(Break in Continuity Within Section)*

08/11/2005 [xx12]/11/2016

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**4.0 Minor New Source Review (MNSR)**

\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2016 issue of the *Register* at page 257 (20 DE Reg. 257). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1125 Requirements for Preconstruction Review**

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**DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)  
7 DE Admin. Code 1141

Secretary's Order No.: 2016-A-0044

Date of Issuance: November 14, 2016

Effective Date of the Amendment: December 11, 2016

**1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**

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, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

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

This Order relates to proposed regulation Amendments to 7 DE Admin. Code §1141, *Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products*, Section 1.0: *Architectural and Industrial Maintenance Coatings*. The Department's Division of Air Quality ("DAQ") commenced the regulatory development process with Start Action Notice 2016-08 dated June 1, 2016. The Department published its initial proposed regulation Amendments in the July 1, 2016 Delaware *Register of Regulations*. The Department then held a public hearing on July 26, 2016. Consistent with 29 Del.C. §10118(a), the public hearing record remained open for public comment through August 10, 2016.

The purpose of this regulatory promulgation is to adopt as final the aforementioned proposed Amendments to 7 DE Admin. Code §1141, *Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products*, Section 1.0: *Architectural and Industrial Maintenance Coatings* ("Amendments"), in order for Delaware to (1) reduce volatile organic compounds ("VOCs"), a contributor to the formation of ground-level ozone; and (2) to bring Delaware's rule up-to-date with the most current Ozone Transport Commission ("OTC") model rule for regulation of the VOC content of architectural and industrial maintenance ("AIM") coatings, to aid in meeting ground-level ozone national ambient air quality standards ("NAAQS").

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on July 26, 2016. Members of the public attended that public hearing, however, no new comment was received by the Department at that time. It should be noted that written comment was received by the Department prior to the Department submitting its initial proposed regulatory amendments to the Delaware Registrar in June of 2016 from Mr. David Darling of the American Coatings Association ("ACA"). The Department's Division of Air Quality ("DAQ") considered the comments from the ACA when drafting said initial proposed regulatory amendments, and ACA subsequently confirmed in its August 8, 2016 email to DAQ that it had no additional comments to submit regarding this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the hearing record closing on August 10, 2016, The Department's presiding hearing officer, Lisa A. Vest, then prepared a Hearing Officer's Report dated November 4, 2016 ("Report"). The Report documents the proper completion of the required regulatory development process, establishes the record, and recommends the adoption of the proposed regulatory Amendments as attached to the Report as Appendix "A".



## Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** §1141, *Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products*, Section 1.0: *Architectural and Industrial Maintenance Coatings*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) reduce volatile organic compounds ("VOCs"), a contributor to the formation of ground-level ozone; and (2) to bring Delaware's rule up-to-date with the most current Ozone Transport Commission ("OTC") model rule for regulation of the VOC content of architectural and industrial maintenance ("AIM") coatings, to aid in meeting ground-level ozone national ambient air quality standards ("NAAQS").

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** §1141, *Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products*, Section 1.0: *Architectural and Industrial Maintenance Coatings*, pursuant to 7 **Del.C.**, Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on July 26, 2016, and held the record open through close of business on August 10, 2016, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed regulatory amendments to 7 **DE Admin. Code** §1141, *Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products*, Section 1.0: *Architectural and Industrial Maintenance Coatings*, will enable the Department to (1) reduce VOCs, which contribute to the formation of ground-level ozone; and (2) bring Delaware's rule up-to-date with the most current OTC model rule for regulation of the VOC content of AIM coatings, to aid in meeting ground-level ozone NAAQS;
6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "B1" regarding same, as the same are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Moreover, the Department believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
7. The Department's proposed regulatory Amendments, as initially published in the July 1, 2016 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, 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*; and
8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** §1141, *Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products*, Section 1.0: *Architectural and Industrial Maintenance Coatings*, 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 as the Department determines is appropriate.

David S. Small, 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:**

**[1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products](#)**

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(c & d), 903(e)(2)a and 903(e)(3)  
(7 Del.C. §901(c & d), 903(e)(2)a and 903(e)(3))  
7 DE Admin. Code 3500

Secretary's Order No.: 2016-F-0046

### 3500 Tidal Finfish

Date of Issuance: November 15, 2016

Effective Date of the Amendment: December 11, 2016

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, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

### Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 DE Admin. Code §§3503-05, as follows, to wit: 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit*; 7 DE Admin. Code 3504: *Striped Bass Possession Size Limit; Exceptions*; and 7 DE Admin. Code 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements*. (hereinafter referred to as "*Striped Bass regulations*"). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2016-13 dated September 2, 2016. The Department published its initial proposed regulation Amendments in the October 1, 2016 Delaware *Register of Regulations*. The Department then held a public hearing on October 24, 2016. Consistent with 29 Del.C. §10118(a), the public hearing record remained open for public comment through November 8, 2016.

This promulgation seeks to amend Delaware's tidal finfish regulations pertaining to the recreational and commercial Striped Bass fisheries. The Department previously removed an unnecessary harvest constraint (i.e., slot size limit) on the commercial fishery (which had resulted in the needless waste of Striped Bass) through the Secretary's Emergency Order No. 2016-F-0027 (published in the July 1, 2016 edition of the Delaware *Register of Regulations*), pursuant to 29 Del.C. §10119 and 7 Del.C. §903(h) (20 DE Reg. 6 [07/01/16]). That emergency action was then extended for an additional ninety (90) days by subsequent Secretary's Emergency Order No. 2016-F-0039 (published in the October 1, 2016 Delaware *Register of Regulations*).

The purpose of this regulatory promulgation is to (1) adopt as final the aforementioned proposed Amendments to these *Striped Bass regulations* ("Amendments") consistent with the aforementioned prior Secretary's Emergency Orders 2016-F-0027 and 2016-F-0039, (2) modify Striped Bass tagging requirements for consistency with the recently adopted 7 Del.C. §943 (previously known as HB 79), and (3) incorporate several additional measures to address tracking, reporting, and quota management in the commercial fishery, as noted in Addendum III to Amendments 6 to the Atlantic Striped Bass Interstate Fishery Management Plan. The proposed Amendments to Delaware's existing *Striped Bass Regulations* were presented and thoroughly vetted by the Department at the public hearing on October 24, 2016. Members of the public attended said public hearing, and substantive comment was offered at that time with regard to this proposed regulatory promulgation. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

The hearing record formally closed with regard to public comment at close of business on November 8, 2016. At that time, all comments received from the public (both at the time of the hearing and during the post-hearing process) were thoroughly reviewed by responsible Department staff, and a formal Technical Response Memorandum ("TRM"), as incorporated into the Hearing Officer's Report as Appendix "A", was prepared by Stewart Michels in response to the same. This TRM, dated November 10, 2016, set forth the Department's position with respect to the comment received concerning this proposed promulgation, and also took into consideration discussions held with the Tidal Finfisheries Advisory Council at its October 19, 2016 meeting. It is the position of

the Department's Division of Fish and Wildlife that the proposed amendments to 7 **DE Admin. Code** §§3503, 3504, as well as Sections 2.0, 3.0, 4.0, 6.0, 7.0, 11.0, and 13.0 of 7 **DE Admin. Code** §3505, are necessary, prudent and reasonable. The hearing record generated in this matter reflects that public comment supported implementation of measures consistent with 7 **Del.C.** §943 (formally HB 79), as well as measures to remove the unnecessary harvest constraints on the Striped Bass commercial fishery. While it is true that some commenters indicated they would prefer no amendments to 7 **DE Admin. Code** §3505, support was expressed for changes pertaining to harvester tagging consistent with 7 **Del.C.** §943, which is reflected in the proposed amendment to Section 6.0 of that existing regulation.

The Division of Fish and Wildlife notes in its TRM that it appreciates several salient points that emerged with respect to some comments regarding various sections of 7 **DE Admin. Code** §3505 as part of the public hearing process, and believes that the same are worthy of further consideration by the agency prior to moving forward with final promulgation of the same.

Mr. Michel's TRM details the concerns voiced by commenters with regard to the proposed amendments to the following portions of 7 **DE Admin. Code** §3505: Sections 1.0, 12.0, and 14.0. The TRM further notes that, in response to the concerns voiced by the public over the proposed amendments to these three sections, the Division of Fish and Wildlife does not object to further deliberations with industry regarding the application of the following matters prior to making any decisions regarding amending the regulation:

1. How best to administer registration and tag distribution (Section 1.0);
2. The application of weigh station tags (Section 12.0); and
3. Proposed measures for improved tag accountability, the duration of fishery participation penalties, and overall strengthening of quota monitoring and accountability, consistent with the recommendations of Addendum III to Amendment 6 to the Striped Bass Fishery Management Plan (Section 14.0).

In deference to the concerns and comments received on the above Sections of 3505, the Department's Division of Fish and Wildlife proposes to formally *withdraw the proposed amendments to Sections 1.0, 12.0, and 14.0 of 7 DE Admin. Code* §3505, in order to give additional time and consideration to the same, and will reserve any proposed regulatory action with respect to these specific regulations for a future promulgation, following the normal APA process. The remaining proposed amendments to 7 **DE Admin. Code** §§3503-05, however, will continue to move forward at this time as part of this present ongoing proposed regulatory promulgation.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 14, 2016 ("Report"). 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 "B".

### Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** §§3503-05: *Striped Bass Regulations* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed *revised* regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these *revised* regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) adopt provisions consistent with the aforementioned prior Secretary's Emergency Orders 2016-F-0027 and 2016-F-0039, (2) modify Striped Bass tagging requirements for consistency with the recently adopted 7 **Del.C.** §943 (previously known as HB 79), and (3) incorporate several additional measures to address tracking, reporting, and quota management in the commercial fishery, as noted in Addendum III to Amendments 6 to the Atlantic Striped Bass Interstate Fishery Management Plan.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* amendments to 7 **DE Admin. Code** §§3503-05, pursuant to 7 **Delaware Code**, Sections 901 (c) & (d), 903(e)(2)a, and 903(h);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed *revised* regulatory amendments as final, as shown in Appendix "B";
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to

comment on the proposed regulatory amendments, including at the time of the public hearing held on October 24, 2016, and held the record open through close of business on November 8, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;

5. The adoption of the proposed *revised* regulatory amendments to 7 **DE Admin. Code** §§3503-05: *Striped Bass Regulations*, will allow Delaware to (1) adopt provisions consistent with the aforementioned prior Secretary's Emergency Orders 2016-F-0027 and 2016-F-0039, (2) modify Striped Bass tagging requirements for consistency with the recently adopted 7 **Del.C.** §943 (previously known as HB 79), and (3) incorporate several additional measures with Sections 2.0, 3.0, 4.0, 6.0 7.0, 11.0 and 13.0 of 7 **DE Admin. Code** §3505, to address tracking, reporting, and quota management in the commercial fishery, as noted in Addendum III to Amendments 6 to the Atlantic Striped Bass Interstate Fishery Management Plan;

6. In deference to the concerns and comments received on Sections 1.0, 12.0, and 14.0 of 7 **DE Admin. Code** §3505, the Department's Division of Fish and Wildlife will formally *withdraw the proposed amendments to those Sections*, in order to give additional time and consideration to the same, and will reserve any proposed regulatory action with respect to these specific sections of this regulation for a future promulgation;

7. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

8. The Department's proposed regulatory Amendments, as published in the October 1, 2016 Delaware *Register of Regulations*, and as *revised and* set forth in Appendix "B" of the aforementioned Report, 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*; and

9. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** §§3503-05: *Striped Bass* regulations to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

**3500 Tidal Finfish  
Bass (Striped Bass; Black Sea Bass)  
(Break in Continuity of Sections)**

**3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.**

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It is unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on February 15 and ending at 4:00 P.M. on May 31 next ensuing. It is unlawful to use any gill net having a stretched-mesh size greater than four (4) inches to take striped bass during the period ~~[beginning at 12:01 A.M. on]~~ February 15 until and including the last day in February unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on November 15 and ending at 4:00 P.M. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed ~~[taken and reduced to possession landed]~~ in the February - May gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with

# FINAL REGULATIONS

the Department to participate in said fishery by February 1 for the February 15 - May 31 gill net fishery and by November ~~[October November]~~ 1 for the ~~[November 15-]~~ December ~~[31]~~ gill net fishery.

*(Break in Continuity of Sections)*

12.0 ~~[It is unlawful for a commercial food fisherman to retain or provide to another a landed striped bass unless the striped bass has been tagged in accordance with subsection 6.0 and weighed and lawfully tagged at a weigh station operating under contract with the Department within 12 hours of landing.]~~

~~[13.0]~~ The Department may appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations, if requested, shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.

13~~[43].0~~ Each commercial food fisherman participating in a striped bass fishery shall file a complete and accurate report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. ~~[Lost tags must be immediately reported to the Department.]~~ Failure to file a complete and accurate report or failure to return all unused tags may ~~[shall limit or may]~~ disqualify the commercial food fishermen from ~~[participation in]~~ future striped bass fisheries ~~[, in addition to any other lawful enforcement action taken by the Department].~~

\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2016 issue of the *Register* at page 265 (20 DE Reg. 265). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**3500 Tidal Finfish**

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### DIVISION OF STATE POLICE

#### 1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304)

24 DE Admin. Code 1300

#### ORDER

#### **1300 Board of Examiners of Private Investigators & Private Security Agencies**

Pursuant to the Guidelines in 29 Del.C. §10118(b)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to Rule 1.0 - Firearms Policy and Rule 4.0 - Training Requirements, the Board makes the following Findings and Conclusions:

#### Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to clarify the initial course of instruction, the qualifications, and the qualifications for instructors, and the amendment to remove Delaware Technical Community College as the sole training entity and put discipline procedures in place for violation of academic integrity.

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## Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.

4. The Board finds that the adoption of this rule will clarify the initial course of instruction, the re-qualifications, and the qualifications for instructors, and will remove Delaware Technical Community College as the sole training entity and put discipline procedures in place for violation of academic integrity.

5. The Board finds that the adoption will have no adverse impact on the public.

6. The Board finds that the amendment is well written and describes its intent to adopt the rule to clarify the initial course of instruction, the re-qualifications, and the qualifications for instructors, and to remove Delaware Technical Community College as the sole training entity and put discipline procedures in place for violation of academic integrity.

## Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §1304 et seq. and, in particular, 24 **Del.C.** §1304(b)(3).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §1304 et. seq.

9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §1304(b)(3) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be December 11, 2016.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 31st day of October, 2016.

## BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

Major Galen M. Purcell, Chairman

Mr. Wayne A. Keller

Director Robert J. Irwin

Ms. Kelly R. Jansen

William G. Bush, IV, Esquire (absent)

Mr. Harvey A. Woods, III

Mrs. Sandra C. Taylor

Vacant

Mr. Mark W. Rainford

October 31, 2016

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2016 issue of the Register at page 159 (20 DE Reg. 159). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1300 Board of Examiners of Private Investigators & Private Security Agencies**

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# FINAL REGULATIONS

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## DIVISION OF STATE POLICE

### 2400 BOARD OF EXAMINERS OF CONSTABLES

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

#### ORDER

#### 2400 Board of Examiners of Constables

Pursuant to the Guidelines in 29 Del.C. §10118(b)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule 1.0 - Licensing, rule 5.0 – Firearms Policy, and rule 9.0 – Minimum Training Standards and In-Service Training, the Board makes the following Findings and Conclusions:

#### Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to clarify who is exempt from the Academy and MMPI or PAI and who is not, to clarify the waiver of the 40 hour course, changing of weapons and make firearms licenses valid for only one year, and to remove DTCC as the sole entity to teach the courses.

#### Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will clarify who is exempt from the Academy and MMPI or PAI and who is not, will clarify the waiver of the 40 hour course, changing of weapons and make firearms licenses valid for only one year, and will remove DTCC as the sole entity to teach the courses.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to clarify who is exempt from the Academy and MMPI or PAI and who is not, to clarify the waiver of the 40 hour course, changing of weapons and make firearms licenses valid for only one year, and to remove DTCC as the sole entity to teach the courses.

#### Conclusion

7. The proposed rule was published by the Board in accord with the statutory duties and authority as set forth in 10 Del.C. §2701 et seq. and, in particular, 10 Del.C. §2702(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 Del.C. §2701 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts this amendment pursuant to 10 Del.C. §2702(b) and guidelines of 29 Del.C. §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be December 11, 2016.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 4th day of October 2016.

**BOARD OF EXAMINERS OF CONSTABLES:**

Lt. Colonel Monroe B. Hudson, Jr.

Ralph K. Durstein, III, Esquire (absent)

Captain Laura O'Sullivan

Chief William E. Bryson

Mr. John F. Tharan (absent)

October 4, 2016

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2016 issue of the *Register* at page 162 (20 DE Reg. 162). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2400 Board of Examiners of Constables**

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## DIVISION OF STATE POLICE

### 5500 BAIL ENFORCEMENT AGENTS

Statutory Authority: 24 Delaware Code, Section 5504(e) (24 **Del.C.** §5504(e))

24 **DE Admin. Code** 5500

### ORDER

#### 5500 Bail Enforcement Agents

Pursuant to the Guidelines in 29 **Del.C.** §10118(b)(1)-(7), the Board of Examiners of Bail Enforcement Agents ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to Rule 4.0 - Firearms Policy, the Board makes the following Findings and Conclusions:

#### Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to clarify the initial course of instruction, the re-qualifications and clarifying the qualifications for instructors.

#### Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will clarify the initial course of instruction, the re-qualifications and clarifying the qualifications for instructors.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to clarify the initial course of instruction, the re-qualifications and clarifying the qualifications for instructors.

#### Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §5503 et seq. and, in particular, 24 **Del.C.** §5503(d)(2).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §5503 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §5503(d)(2) and guidelines of 29 **Del.C.**



§10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be December 11, 2016.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 15<sup>th</sup> day of November, 2016.

Major Melissa A. Zebley, Chairman  
John Yeomans, Director  
Ms. Robin David  
Mr. Michael J. Dellose  
Rebecca L. Byrd, Esquire (absent)

Mr. Jack McGhee, II  
Mr. Brandon Habron  
Mr. R. Dale Hamilton  
Mr. Harry O. Jennings

November 15, 2016

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2016 issue of the *Register* at page 166 (20 DE Reg. 166). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**5500 Bail Enforcement Agents**

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

### DIVISION OF FAMILY SERVICES

#### OFFICE OF CHILD CARE LICENSING

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

#### ORDER

#### 103 Family Child Care Homes

#### NATURE OF PROCEEDINGS

The Department of Children, Youth and Their Families ("DSCYF") initiated proceedings to adopt State of Delaware Regulations for Family and Large Family Child Care Homes. The proceedings were initiated pursuant to 31 **Del.C.** §§341-345, 29 **Del.C.** §9003(7), and 9 **DE Admin. Code** 103.

On October 1, 2016, DSCYF published its notice of proposed regulations pursuant to 29 **Del.C.** §10115 in the Delaware *Register of Regulations*. Written comments were accepted until October 31, 2016. Comments were received and DSCYF evaluated these comments and factual evidence to revise some regulations. The results of the evaluation of the comments received regarding the October 1, 2016 posting are summarized in the accompanying "Summary of Evidence."

#### SUMMARY OF EVIDENCE

In accordance with Delaware law, the Office of Child Care Licensing (OCCL) published DELACARE: Regulations for Family and Large Family Child Care Homes in the October 2016 Delaware *Register of Regulations*. The comments were reviewed, evaluated, and some regulations were revised. The following provided comments:

- Karen Bell, Family Child Care Provider

- Mary Kate Mouser, Operational Vice President, Nemours
- Jamie Wolfe, Chairperson, State Council for Persons with Disabilities
- Dafne Carnright, Chairperson, Governor's Council for Exceptional Citizens
- Connie Merlet, Provider Advisory Board
- Janet Nagengast, Family Child Care Provider

**Karen Bell, Family Child Care Provider**

For 14.7-the reg should say less than five days in a row not more than five days.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 14.7 to read, "Five or fewer days."

For rule 22.6 - is licensing going to provide a form for the monthly fire prevention inspection for us to use? Otherwise, we won't know what to inspect.

**Agency Response:** The agency appreciates and acknowledges these comments. This form is located on OCCL's website and will be distributed by licensing specialists.

21.5 - I think this is worded incorrectly. Shouldn't it say "below" 60 or "above" 90?

**Agency Response:** The agency appreciates and acknowledges these comments. For clarification the agency will revise 21.5 to read, "A licensee shall keep temperatures in rooms used by the children at a minimum temperature of 68°F and a maximum of 82°F or close unless overridden by federal and State energy laws. 21.5.1 OCCL allows an exception if a room temperature is between 60°F-67°F or 83°F-90°F and a licensee can return that room to the proper temperature within the next four hours. If the room temperature cannot be restored within four hours or the temperature is below 60°F or above 90°F, the home shall close. The home shall remain closed until the heating or cooling problem is solved. 21.5.2 OCCL must be informed when closing is necessary."

22.8 Why does the fire extinguisher have to be mounted no more than 40" from the floor? This seems unsafe to me... kids can mess with it, pulling out the pin and possibly discharging it, and the metal wire the inspection places uses to attach the inspection tag has sharp points and can be dangerous. Even if we bend them, the kids could possibly unbend them or hurt themselves with the wire. The kids will tear the inspection tag up. And, depending on how it's mounted the kids could knock it off the wall and they could run into it hurting themselves. I would think that as long as the fire extinguisher is accessible to adults, that is what is important, mine is up on my cabinet, out of kid's reach. I think this is an unsafe rule and should be changed. Fire extinguishers should not be accessible to children!

**Agency Response:** The agency appreciates and acknowledges these comments. Having a mounted fire extinguisher is a State Fire Marshal requirement. All family and large family homes that were licensed after 2009 have a mounted fire extinguisher. Mounting a fire extinguisher makes it easier to access in an emergency situation. The regulation will remain as written.

29.1.2 - why isn't the temperature limit also 100 degrees for this age, just like it is for infants? In my 23 years, I've ALWAYS found a temperature of 100 to indicate illness and it usually rises anyway.

**Agency Response:** The agency appreciates and acknowledges these comments. Caring for Our Children-National Health and Safety Standards lists the temperatures included in 29.1.2. These standards are based on research and best practice. Child care providers may exceed these baseline regulations by requiring a higher temperature for exclusion. The regulation will remain as written.

34.4.4 - it's almost impossible to wash a young infants hands in the sink safely. Their body is not strong enough (too floppy) and I don't think it's safe for their neck to wash their hands in the sink. Why isn't it o.k. to just wipe their hands with a wipe?

**Agency Response:** The agency appreciates and acknowledges these comments. Handwashing is used to prevent the transmission of infectious diseases. Wipes do not effectively clean hands. Running water over hands removes visible soil. The regulation will remain as written.

34.4.5 - it says to clean with soap and water.... why not just use a baby wipe?

**Agency Response:** The agency appreciates and acknowledges these comments. For the same reason listed above. The regulation will remain as written.

How does licensing suggest the best way to clean with soap and water? I can only imagine using a bucket with soapy water all day, seems unsanitary to me.... why can't we just spray surfaces with the disinfecting spray (like Lysol All Purpose Cleaner), it kills germs... I don't see the point in using soapy water first and don't see how we can keep the soapy water "clean" all the time.

**Agency Response:** The agency appreciates and acknowledges these comments. You can get a spray bottle mixed with soap and water. Spray the surface, and then wipe it off. Then spray the surface with a disinfectant and

let it air dry. This is not a new regulation. The regulation will remain as written.

37.11 - it says food provided by parents does not have to meet meal pattern requirements. This is a TERRIBLE rule. Kids will be eating Cheetos and other junk and that is not what we have been taught is best practice. This rule seems to allow us to go backward and not provide what is in the child's best interest. If parents bring food, it should ALWAYS follow the requirements of the meal pattern or the provider needs to supplement what is missing. It's extremely important to make sure children have the right kinds of food while they are with us. We have them for most of their waking hours. Provider need to insure kids have nutritious meals and help prevent obesity. which is a huge problem in Delaware. With all the work Nemours has done and the emphasis on nutrition and preventing obesity, I can't imagine why in the world this rule is allowing parent's food to not meet meal pattern requirements. This is going backwards in my opinion.

**Agency Response:** The agency appreciates and acknowledges these comments. When parents provide their own food for their children, OCCL supports the rights of parents to decide what their children will eat and drink. Your child care can always have higher standards than these base line requirements. The regulation will remain as written.

38.1.9 - Why can't we use electric bottle warmers? They heat the bottle perfectly.

**Agency Response:** The agency appreciates and acknowledges these comments. You can use a bottle warmer as long as it does not make steam or heat the water above 120°F. Bottles warmer may cause burn injuries to infants. The regulation will remain as written.

38.1.13 - Can it be changed to say "unless provide only has 1 bottle fed child". It makes no sense to have to label bottles when you only have 1 infant and that is usually the case for family providers.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 38.1.13 to read, "Each infant's bottle shall be labeled with the infant's name, when caring for more than one bottle-fed child, and refrigerated immediately after preparation at the home or on arrival if prepared by a parent/guardian,"

39.8 - I think it should specify a time period... "a day" or for "each awake period". It's unclear.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 39.8, to read, "A licensee shall ensure children are not in cribs, pack-n-plays, swings, high chairs, seats, or stationary activity centers for more than 30 minutes at a time while awake."

42.6 - talks about allowing kids to sleep in other areas. It seems this rule doesn't take into account we are family providers and are in a home where we do sleep infants and young children often in separate bedrooms to allow them to sleep well and also not bother the sleep of older children. We have mixed ages and need to do this. It says to check every 15 minutes, this doesn't make sense, why not 30 minutes since that is what is done for the youngest... infants. Since we are in a home, if it's 15 minutes, we will be going back and forth all the time and not be able to do what we need to do with the kids who are awake. 30 minutes is more reasonable and still allows for safety.

**Agency Response:** The agency appreciates and acknowledges these comments. Our current regulations require children to be supervised at all times under direct supervision in the same room (sleeping infants included). OCCL agrees to allow children under age two to sleep in a separate room as long as there is more oversight, hence the 15-minute checks. The regulation will remain as written.

42.6 - says door must be open. Again, it seems this rule is not taking into account we are family homes. Many of us have pets. Keeping the door open would allow a cat or dog in the room with a sleeping child. Imagine a cat jumping in the pack n play with a young infant, laying on their face and smothering them all within the time in between the 30 minute checks. It could happen! The door should be kept closed!!! If this rule stays, I personally will not follow it because I do not think it is safe at all.

**Agency Response:** The agency appreciates and acknowledges these comments. OCCL's current regulations do not allow children to sleep in other rooms at all because children cannot be supervised when they are in a different room. OCCL agreed to lessen this requirement as long as the door stays open. The regulation will remain as written.

There used to be a rule that the temperature of water in a home could be not greater than 120 degrees. I don't see this anymore. I do think it should still be there. Some people have VERY hot water and it could scald a child. People (rule makers) say you have to supervise them, this is true but it's impossible to be everywhere all the time. Having water no greater than 120 will prevent a burn. Please put this rule back in there.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will add 21.25, "A licensee shall ensure the water temperature does not exceed 120° F from faucets and other sources accessible to children in care."

Me again. I don't have the new regs in front of me but I remember a new one was that the diaper trash can will have to be within arm's reach. Right now, I have it in my bathroom where I take the kids to wash hands. It's perfect, I think, because we are going there anyway and it is out of reach for the kids for the most part. I don't understand why it has to now be "within arm's reach". It seems to me that as long as it is in the vicinity of where you change diapers, it should be o.k., but "within arm's reach" seems too restrictive. For me to make that happen, I have to move a huge cabinet to make room next to my changing table, and the cabinet will then partly conceal the white board I use for teaching. There is no where else to put the white board so I've got a problem because I don't want to lose my white board, use it all the time. My "system" works well, I hope "within arms reach" can be changed somehow?

**Agency Response:** The agency appreciates and acknowledges these comments. Having a diaper pail within arm's reach provides additional safety for the child. This decreases the likelihood of a child being unattended on the diaper changing station while the provider throws the diaper away. It also reduces the risk of feces and urine from being transferred to the child and other surfaces. The regulation will remain as written.

### **Mary Kate Mouser, Operational Vice President, Nemours**

Nemours Health & Prevention Services commends the Department of Services for Children, Youth and their Families and the Office of Child Care Licensing for leadership on regulatory developments that advance health for all children in Delaware in revisions of Delaware Rules for Family and Large Family Child Care Homes. We strongly support the inclusion of:

- The provision of daily, outdoor play opportunities and daily, moderate to vigorous physical activity;
- The practice of paced bottle feedings and observations of cues for infant satiety;
- The provision that formula may not be fed to any infant without direct and prior parental permission;
- Support for improved caregiver communication including that a provider share a written record of an infant's daily food intake and potential feeding difficulties, as well as receive parental permission for the introduction of new foods and beverages for infants;
- Support for protections around the use of screen time and digital media through time limits for use, appropriate adult supervision and review for age-appropriate, educational material; and
- The provision that a non-emergency substitute follow and be aware of policies and procedures of the home, including special health care concerns of the children in care such as allergies.

**Agency Response:** The agency appreciates and acknowledges these comments.

As a voice for child health in Delaware, we support safety, optimal health and development, and equitable access to quality early learning environments for all infants and children, regardless of center or family home based care. We encourage the consideration of amended regulatory language for the following areas:

- **Support for chronic health conditions such as asthma and the prevention of SIDS**

Recommended language for 21.24: *"A licensee shall prohibit smoking and burning candles and incense in the home and in the presence of children."*

The dangers of secondhand tobacco smoke are well documented and especially harmful to infants and children, causing multiple health risks including more frequent and severe asthma attacks, sudden infant death syndrome (SIDS), and respiratory and ear infections. Opening a window or door, smoking in a separate area, or using ventilation does not eliminate exposure to secondhand smoke. There is no safe level of exposure to tobacco smoke and The American Academy of Pediatrics recommends that all infants and children be protected.

Thirdhand smoke (the pollution leftover after a cigarette is put out) is a danger as harmful as secondhand smoke to infants and children, contains over 250 chemicals, and remains on surfaces days to weeks after a cigarette is smoked. Research indicates that the home remains a place of intense and consistent exposure of thirdhand smoke as residue clings to carpets, furniture, walls, hair, and clothes. Infants and children are at an increased risk of coming into contact with thirdhand smoke as they are held by caregivers, and crawl on carpets and floors often placing objects into their mouths. Additionally, heavily scented products such as candles or incense exacerbate breathing conditions such as asthma, and can even trigger an asthma attack.

**Agency Response:** The agency appreciates and acknowledges these comments. Considering family and large family child care is conducted in a home setting, OCCL can only prohibit smoking and burning candles and incense during child care hours. The agency will revise 21.21 to read, "A licensee shall prohibit smoking, vaping, and burning candles and incense in the home during child care hours and in the presence of children."

- **Safety gates -**

Recommended language to be added to the current language of 21.15: *"Securely installed, gates should be*

*provided at the top and bottom of each open stairway where infants and toddlers are in care. Gates at the top of stairways should be hardware mounted to the wall for stability."*

The Centers for Disease Control and Prevention (CDC) reports that falls are the leading cause of non-fatal injuries for all children. In Delaware, for 2006-2010, falls were the leading cause of injury for infants age one or younger (comprising 37% of all injuries), and accounted for 30% of all injuries for ages 1-14. Delaware's strategic plan for injury prevention includes awareness of home safety standards and the use of stair gates.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 21.15 to read, "A licensee shall use securely installed safety gates such as those approved by the American Society for Testing and Materials or "ASTM" at the top, bottom, or both locations of stairways where infants and toddlers are in care to prevent falls and access to the stairs.

- **Breastfeeding support -**

Recommended language: *"A licensee shall have and follow a policy to address the needs of a child who is breastfed, including allowing a mother to breastfeed her child at a designated place at that family child care home that is clean, removed from public view, and not located in a bathroom."*

This language is adapted from the Delaware Regulations for Early Care and Education and School-Age Centers, finalized in July 2015, and supports equitable access for all mothers to breastfeed regardless of center or family home based care for their infant or child. The American Academy of Pediatrics recommends that infants be exclusively breastfed for the first six months of life and continue to be breastfed for one year or for as long as is mutually desired by the mother and baby. Environments, policies and systems that support breastfeeding directly align with science-based, national objectives for improving the health of all Americans.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will add 38.1.20 that reads, "A licensee shall have and follow a policy to address the needs of a child who is breastfed. This policy shall include allowing a mother to breastfeed her child at a designated place at the home that is clean, removed from public view, and not located in a bathroom."

- **Availability of drinking water -**

Recommended language for 37.1: *"A licensee shall ensure that drinking water is always available to children indoors and outdoors and supplied to them on their request or available for self-service as appropriate."*

This language is adapted from the Delaware Regulations for Early Care and Education and School-Age Centers, finalized in July 2015 and supports equitable access

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 37.1 as suggested.

### **Jamie Wolfe, Chairperson, State Council for Persons with Disabilities and Dafne Carrnight, Chairperson, Governor's Council for Exceptional Citizens**

First, Section 3.1 includes preschool children living in the home in the calculation of the upper capacity limit. However, this section indicates that grandchildren, nieces, nephews, and stepchildren are not counted in calculating the limit. This makes no sense. A grandparent licensee could have several co-habiting preschool grandchildren or a parent licensee could have several co-habiting preschool stepchildren. They should count towards a capacity limit on the same basis as a biological child. Relative caregivers are common. See 14 **Del.C.** §202.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 3.1 to read, "Child care provided only to a person's own children, grandchildren, nieces, nephews, and stepchildren does not require a family child care license." The agency will also revise 3.2 to read, "Child care provided only to a person's own children, grandchildren, nieces, nephews, and stepchildren does not require a large family child care license."

Second, Section 12.5 is "overbroad". Literally, a licensee could not hire an accountant or bookkeeper who works off-site and has no contact with children if such an employee ever had a child removed from his/her custody for even dependency. There is no time limitation, i.e., the removal could have occurred 50 years ago. Moreover, removals based on "dependency" do not implicate "fault", e.g., the caregiver may simply have lost a job or become so ill that care could not be provided. See, e.g., Title 10 **Del.C.** §901(8). The second sentence in §12.5 is "cryptic". If DFS intends to authorize an exception to the first sentence, it should be made clear.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 12.5 to read, "The licensee shall not employ or keep in any capacity any person with direct access to children whose child or children have been removed from his or her custody because of abuse, neglect, or dependency. A person

who has given up or otherwise lost custody of his or her children for reasons other than abuse, neglect, or dependency shall present documentation to the department regarding the circumstances of this event. The department will determine whether this individual may work at the home."

Third, Section 12.11 ostensibly requires the licensee to require all employees, even those working off site with no contact with children, to execute a blanket release of all medical and mental health records. This is overbroad and creates a conflict with federal laws exposing the licensee employer to liability. See attached summary of EEOC decision. Reliance on a state regulation is not a defense: The ADA does not override State or local laws designed to protect public health and safety, except where such laws conflict with the ADA requirements. If there is a State or local law that would exclude an individual with a disability from a particular job or profession because of a health or safety risk, the employer still must assess whether a particular individual would pose a "direct threat" to health or safety under the ADA standard. If such a "direct threat" exists, the employer must consider whether it could be eliminated or reduced below the level of a "direct threat" by reasonable accommodation. An employer cannot rely on a State or local law that conflicts with ADA requirements as a defense to a charge of discrimination. See EEOC and USDOJ ADA Q&A Guidance (2009), published at <https://www.ada.gov/q&aeng02.htm>.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 12.11 to read, "When a concern arises, a licensee shall ensure a staff or household member provides or allows the release of information to OCCL to determine that the person does not pose a direct threat to the health, safety, or welfare of a child. OCCL may request medical, psychological, counseling, school, probation, and/or division records."

Fourth, Section 12.13 may violate the ADA: "A licensee shall ensure a staff member diagnosed or treated for mental illness that might create a significant risk of harm to children is not hired." The employer cannot simply decide to not hire an individual with a disability based on a perception that the applicant "might create a significant risk of harm". The employer would have to determine if the risk could be eliminated or reduced by reasonable accommodation. See above quotation. Moreover, the applicable standard is "direct threat to health or safety", not "risk of harm". Parenthetically, adoption of regulatory and policy standards based on stereotypical, pejorative views of mental illness are contrary to State public policy. See 19 **Del.C.** §§741 and 744.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 12.13 as follows, "A licensee shall ensure a staff member or household member with known health problems that might pose a direct threat to the health and safety of children provides documentation to OCCL from a health care provider. This documentation shall state that the person may have direct access to or work with children and any reasonable accommodations that may be required. The agency will also revise 12.4 as follows, "A licensee shall ensure a staff member or household member diagnosed or treated for mental illness that might pose a direct threat to the health and safety of children provides documentation to OCCL from a health care provider. This documentation shall state that the person may have direct access to or work with children and any reasonable accommodations that may be required."

Fifth, Section 12.17 is unduly restrictive and ill-conceived: 12.17. A licensee shall not provide care for a person recovering from a long-term illness or surgery requiring nursing care at home during the hours children are in care. The categorical ban would apply even if the family child care home had 2 staff members "caring" for a single 14 year old child. The categorical ban would apply even if a private duty nurse were present to provide the nursing care. From a public policy perspective, the ban will create hardships for families with recovering family members who would like to recuperate at home. The ban will prompt the "recovering person" to unnecessarily enter institutional, nursing facility care. Finally, the ban is inconsistent with federal public policy discouraging discrimination against persons based on their "association" with someone with a disability. See 42 U.S.C. 12112(b)(4).

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 12.17 to read, "A licensee shall not provide direct care for a person recovering from a long-term illness or surgery requiring nursing care at the home during the hours children are in care."

Sixth, Section 15.0 omits notification to OCCL if a child is "missing" or there is an attempted or actual abduction. Compare proposed Child Placement Agency regulation, §§13.0 and 46.4.3.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will add 15.2.8, to read, "A child is abducted or missing," to the required notifications list.

Seventh, Section 15.3.5 requires a licensee to notify OCCL if any household member or staff member "develops a serious health condition or is diagnosed with a mental illness" and submit documentation/medical clearance to the OCCL. The requirement would apply to even employees who are off-site and have no contact with

children. It is indicative of a pervasive, hysterical and pejorative view of mental illness and health conditions throughout the regulation. This standard presumes that anyone with a serious health condition or any mental health diagnosis poses a significant risk to children unless "cleared" by medical personnel. Employers are barred from asking employees about mental illness unless the employer has a reasonable belief, based on objective evidence, that the employee poses a direct threat. It is impermissible to adopt a legal presumption that everyone with a mental health diagnosis is dangerous until medically cleared.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 15.3.5 to read, "Licensee, household member, or staff member develops a serious health condition or is diagnosed with a mental illness that poses a direct threat to the health and safety of children. Documentation from a health care provider is required. This documentation shall state that the person may have direct access to or work with children and any reasonable accommodations that may be required."

Eighth, Section 18.3 authorizes exemption from immunization based on religion. DFS may wish to review 14 **Del.C.** §131 and 20 DE Reg. 227 (10/1/16) and/or consult DPH to determine if more prescriptive standards should apply than a simple recital "documentation is required". For example, the statutory form of affidavit for students disallows an exemption if based on "political, sociological or philosophical view of a merely personal code". Section 18.3 does not require an affidavit and suggests that the objection could be relatively informal.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 18.3 to read, "An affidavit or notarized statement is required to allow this exemption. A licensee must place this documentation in the child's file."

Ninth, Section 21.18 requires only a single toilet irrespective of the size of the household and number of children in care. This should be reconsidered. For example, if a household member is taking a shower in the bathroom, children may have no access to a toilet. Compare 16 **DE Admin Code** 3230.5.9 (1 toilet per 4 residents).

**Agency Response:** The agency appreciates and acknowledges these comments. Increasing the number of toilets required in a home would result in increased costs to family and large family providers and many providers would have their capacities reduced. The regulation will remain as written.

Tenth, Section 21.24 should be amended to include "vaping" or "smoking (as defined in 16 **Del.C.** §2901)". See 16 **Del.C.** §2903.

**Agency Response:** The agency appreciates and acknowledges these comments. As shown above the agency will revise 21.24 to read, "A licensee shall prohibit smoking, vaping, and burning candles and incense in the home during child care hours and in the presence of children."

Eleventh, Sections 241.0 and 25.0, disallowing trampolines and requiring children to wear helmets when riding bikes merit a strong endorsement since correlated with TBI prevention.

**Agency Response:** The agency really appreciates and acknowledges these comments.

Twelfth, in Section 32.3, DFS may wish to further define "notify OCCL". For example, the analogous proposed Child Placement Agencies regulation includes a definition of "direct voice contact" (§4.0) and otherwise refers to "call OCCL and speak to someone" (§13.0) as juxtaposed to leaving a message.

**Agency Response:** The agency appreciates and acknowledges these comments. To provide clarification, the agency will revise 15.1 and 15.2 to include the statement, "Leaving a message is not acceptable." 32.3 refers the reader to section 15 which will provide the necessary guidance on notification requirements.

Thirteenth, historically, DHSS reported that some child care providers refused to cooperate with IDEA-C service providers (e.g. speech therapists; occupational therapists) by disallowing or discouraging on-site services. See 16 **Del.C.** §§210-218. Under federal law, IDEA-C services are to be provided in "natural environments", including day care settings. See attachments. It would be preferable to include a requirement of licensee cooperation with IDEA-C service providers in §39.0.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will add "A licensee shall allow for services to be provided at the home for a child with an IEP or IFSP" to 39.3.

Fourteenth, Section 41.6.7 contains appropriate restrictions on use of some forms of restraint. It could be embellished by a general ban on "mechanical restraint". By analogy, there is a statutory ban on use of mechanical restraints in schools. See 14 **Del.C.** §4112F(b) which reflects a State public policy of disallowing their use.

**Agency Response:** The agency appreciates and acknowledges these comments. This document was created using plain language with easy to understand concepts. The prohibition of all restraints other than holding suffices. The regulation will remain as written.

Fifteenth, Section 41.6 could be improved by disallowing chemical restraint. There is a statutory ban on use of

chemical restraints in schools. See 14 **Del.C.** §4112F(b). DHSS bans use of chemical restraint in facilities such as AdvoServ. See 16 **DE Admin Code** 3320.20.11.11.

**Agency Response:** The agency appreciates and acknowledges these comments. Child care providers cannot administer prescription or non-prescription medications without parent permission. Prescription medication is not used unless the parent provides the medication. The regulation will remain as written.

Sixteenth, Section 41.0 could be improved by disallowing "seclusion". Seclusion is distinct from "time-out" and a licensee could argue that there are no limits on seclusion, including locking a child in a room. Compare 14 **Del.C.** §4112F(a)(5)(6). There is a statutory ban on seclusion in schools. See 14 **Del.C.** §4112F(b). DHSS bans use of seclusion in facilities such as AdvoServ. See 16 **DE Admin Code** 3320.20.11.13 and 14. Moreover, definitions of "time-out" and "seclusion" should be added to §4.0.

**Agency Response:** The agency appreciates and acknowledges these comments. In order to supervise a child, a child care provider or staff member has to be in the same room or area as a child. Providers cannot seclude anyone based on the definition of supervision. The regulation will remain as written.

Seventeenth, Section 58.1.11 includes the following ban: "possession of a controlled substance is prohibited while working". Thus, an individual with ADHD could not have prescribed Ritalin or Adderal on his person. An individual with depression could not have a remedial medication on his person. In many cases this would amount to discrimination based on disability. Indeed, literally, a licensee could not employ a nurse to administer medications that would qualify as a controlled substance.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 58.1.11 to read, "or possession while working of a controlled substance other than by the person for whom it was prescribed is prohibited in the large family child care home;" The agency will also revise 12.14 to read, "Any person present in the home shall not drink alcohol when children are in care. Illegal drugs or substances, or controlled substances other than by the person for whom it was prescribed are prohibited from being in the home."

## **Connie Merlet, Provider Advisory Board**

2. Purpose- this includes the statement ... a licensee may choose to exceed regulations "by joining Delaware Stars for early Success." PAB - and providers at the task force were against this language. It immediately poses a bias against nonStars providers. All providers in the state are made aware of the Stars program. This is not necessary language in regulations.

**Agency Response:** The agency appreciates and acknowledges these comments. Delaware Stars is Delaware's approved quality rating and improvement system for early care and education. Mentioning Delaware Stars as a way to exceed licensing regulations does not bias non-stars participants, it simply provides an option for those wishing to voluntarily participate. The regulation will remain as written.

4. Definitions- there were several definitions not included which the PAB requests to be added as they are not general knowledge terms but specific. These are mentioned below with the regulations under which they are mentioned but include "standard precautions", "good cause", "compliance review", "monitoring visit".

**Agency Response:** The agency appreciates and acknowledges these comments. Compliance review is defined in the definitions. The agency will remove the word monitoring from 5.3 and the definition of conference. The other terms are used according to their dictionary definition and do not require definitions. These definitions will remain as written.

Under Volunteer, youth- PAB requests that the use of the term "approve" be changed to something more specific. "made aware of and accepted" might be better.

**Agency Response:** The agency appreciates and acknowledges these comments. The word approve is used so that providers understand that OCCL must agree to allow them to use a youth volunteer. This may be necessary to limit the number of youth volunteers a provider has at one time and to discourage providers from exceeding their capacities by simply naming school-age children as youth volunteers. The regulation will remain as written.

5. Authority to Inspect- A, B, C- This is an important regulation and can impose the most severe sanctions (both within and with-out the daycare realm.) It should be written in the most careful language according to Delaware Code. It includes access to unlicensed space. This translates to entry without a warrant, and while PAB accepts that OCCL might need to know what is happening in another part of the house, unfettered access is beyond their jurisdiction. DFS has claimed "authority to investigate." We cannot find this implied power in code and ask OCCL or DFS to verify this authority. Paperwork including which particular regulatory compliance (or non-compliance)OCCL or agents are investigating must be presented before expecting compliance and the wording of this regulation should reflect this.



**Agency Response:** The agency appreciates and acknowledges these comments. Law enforcement need warrants as they relate to a crime being committed. Access to unlicensed space ensures the health and safety of children because children could be impacted negatively by something or someone in a home. OCCL does not inspect spaces that were not approved for care unless there is a question of regulation compliance. For example, a crying child is heard in another location or in response to an unreported household member.

B- The same question as above applies to OCCL's claim that licensees not prevent the interviewing of a child in care without first getting permission from the child's parents. Few licensees feel they can overrule a parent's wishes, and we cannot presume parents want their children interrogated.

**Agency Response:** The agency appreciates and acknowledges these comments. When a complaint rises to the level of abuse or neglect, children are interviewed with parent permission at the Child Advocacy Center. Licensing routinely interviews children when receiving complaints about improper discipline. Children are not interrogated and often times are talked to in a quiet area and asked general questions. Without free access to children, providers could continue to use improper discipline techniques to manage children's behavior. This is unacceptable especially considering the large volume of improper discipline complaints received by OCCL. The regulation will remain as written.

C- "compliance review" and "monitoring visit" are used, but no one could define these terms for us. If they are to be used they must be defined in Definitions.

**Agency Response:** The agency appreciates and acknowledges these comments. This has been addressed above.

9. License Suspension- PAB is disturbed by a "suspension order may be written or verbal" and "written follow-up for a verbal order within three business days." No suspension should ever be verbal. And suspension should be in person and in writing. Also, "the hearing officer may allow delays only for good cause." Good cause is usually a legal term and should be defined. B and C- use the term "in a timely manner". This term should be changed to 10 days, as stated in 10A.

**Agency Response:** The agency appreciates and acknowledges these comments. Suspensions are issued when children are in imminent danger. OCCL uses verbal suspensions so that the provider is notified immediately rather than waiting for the mail to arrive. As stated above, OCCL uses the dictionary definition of these terms. The regulations will remain as written.

12. General requirements- B- "The license and staff members should be able to read, understand and follow these regulations." The word "read" was voted down by the task force, and for the very simple reason that it is impossible for OCCL to comply with unless they either are able to translate the written regulations into every language any staff member can speak and read, or they are willing to bias non English speakers against owning and working in early childhood in this state.

**Agency Response:** The agency appreciates and acknowledges these comments. The current licensing regulations require a provider to be able to read these regulations. In order to follow and understand the regulations, the agency as well as stakeholders at the task force meetings, believe the word read must remain in regulation. The regulation will remain as written.

K and L- both request information to OCCL that may be considered invasion of privacy, either for staff member or household non-daycare person.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 12.11, 12.12, and 12.13 as stated above.

T - uses the word "experience" when determining number of children allowed in care. The terms of this "experience are however unclear.

**Agency Response:** The agency appreciates and acknowledges these comments. 12.20 is a general regulation and the specific requirements for qualification and experience are found in 47.4, 59.3, 59.4, and 59.6. The regulation will remain as written.

15. Notification to OCCL- Licensees are required to notify OCCL within 5 business days if "licensee, household member, or staff member develops a serious health condition or is diagnosed with a mental illness" and documentation from a health care provider is required. This again borders on invasion of privacy, and PAB questions whether non Public Health illnesses should be included. Furthermore, PAB fears that a provider may not seek medical attention for themselves or family member if the risk is to their only income in doing so.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 15.3.5 as stated above.

22. Fire Safety- D- change wording from "at least" to "at a minimum".

**Agency Response:** The agency appreciates and acknowledges these comments. The wording comes from the State Fire Marshal. The regulation will remain as written.

30. Standard precautions- this is not a term anyone in the task force could define without using examples listed. It needs to be in Definitions section.

**Agency Response:** The agency appreciates and acknowledges these comments. OCCL is using the dictionary definition of Standard Precautions as stated above.

32. Child Accident and Injury- A.-In first paragraph, change wording as follows to change passive tense to active- "When a child in care has an accident or injury, a licensee or staff member shall give assistance to protect the child from further harm. An ambulance shall be called if needed. The child's parents shall be called."

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 32.1 to read, "A licensee shall ensure when a child in care has an accident or injury, a licensee or staff member shall give assistance to protect the child from further harm. An ambulance shall be called, if needed. The child's parent/guardian shall be informed.

C.- change wording as follows- "When known, a licensee shall notify OCCL as described in Section 15 when an accident or injury results in death or medical/dental treatment other than first aid provided at the home."

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 32.3 as suggested.

43. Field trips and Outings- E- requires that parents/guardians volunteering for field trips shall never be alone with children other than their own. This is an onerous regulation. It is very difficult to go on off site field trips as it is. Ensuring that volunteers are NEVER alone with children is hardly doable. One couldn't put them in a car not driven by their parents! A form parents sign so they are aware of the possibility should be adequate and reasonable.

**Agency Response:** The agency appreciates and acknowledges these comments. In order to protect the health and safety of children, volunteers who are alone with children must be deemed eligible. According to 31 **Delaware Code**, Section 309 individuals cannot have direct access without being fingerprinted. The agency will revise the regulations to read, "Parents/guardians volunteering for field trips shall never be alone with children other than their own, unless their background check determines them eligible to be alone with children."

49. Capacity- PAB prefers the capacity requirements in the present regulations rather than new changes.

**Agency Response:** The agency appreciates and acknowledges these comments. The capacity requirements as previously written were difficult for some providers to understand. Concerns were voiced repeatedly to OCCL. The decision was made to simplify the regulations so that they may be better understood. The regulation will remain as written.

## Janet Nagengast, Family Child Care Provider

For 12.2 When Ann asked for the "read" vote to be tabled, I walked out of there knowing there was going to be trouble. I have heard that she has a lot of influence and has been around for a long time. I am strongly opposed to add the word "read."

**Agency Response:** The agency appreciates and acknowledges these comments. As stated above, the current licensing regulations require a provider to be able to read these regulations. In order to follow and understand the regulations, the agency as well as stakeholders at the task force meetings, believe the word read must remain in regulation. The regulation will remain as written.

For 2.0 STARS has nothing to do with OCCL. It is an independent, voluntary organization and therefore should not be mentioned at all in anything to do with OCCL. You are definitely looking down on programs that are not STARS while we do provide quality care and parents are very happy with us.

**Agency Response:** The agency appreciates and acknowledges these comments. As stated above, Delaware Stars is Delaware's approved quality rating and improvement system for early care and education. Mentioning Delaware Stars as a way to exceed licensing regulations does not bias non-stars participants, it simply provides an option for those wishing to voluntarily participate. The regulation will remain as written.

## NOTICE OF RESCISSION AND PROMULGATION

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

regulations shall take effect on January 1, 2017.

Carla Benson-Green, Secretary, Department of Services for Children, Youth and Their Families; 11-9-16  
Shirley Roberts, Director, Division of Family Services; 11-9-16

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

**103 Family Child Care Homes**

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## DIVISION OF FAMILY SERVICES

### OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345 (29 **Del.C.** §9003(7); 31 **Del.C.** §§341-345)  
9 **DE Admin. Code** 104

### ORDER

**104 Large Family Child Care Homes**

### NATURE OF PROCEEDINGS

The Department of Children, Youth and Their Families ("DSCYF") initiated proceedings to rescind Delaware Regulations for Large Family Child Care Homes by combining them with Regulation 103. The proceedings were initiated pursuant to 31 **Del.C.** §§341-345, 29 **Del.C.** §9003(7), and 9 **DE Admin. Code** 104.

On October 1, 2016, DSCYF published its notice of proposed regulations pursuant to 29 **Del.C.** §10115 in the Delaware *Register of Regulations*. Written comments were accepted until October 31, 2016. Two comments were received regarding the October 1, 2016, posting and are summarized in the accompanying "Summary of Evidence."

### Summary of Evidence

In accordance with Delaware law, OCCL published a notice in the October 2016 Delaware *Register of Regulations* that DELACARE: Rules for Large Family Child Care Homes were being stricken in their entirety and being combined with Regulation 103 for family child care homes. Comments were provided by Jamie Wolfe, Chairperson, State Council for Persons with Disabilities and Dafne Carnright, Chairperson, Governor's Council for Exceptional Citizens.

#### Jamie Wolfe, Chairperson, State Council for Persons with Disabilities

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Services for Children, Youth and Their Families/Division of Family Services (DFS)/Office of Child Care Licensing's proposed regulation to repeal its "Large Family Child Care Homes" regulation in its entirety. Revised standards are being incorporated into the "Family Care Homes" regulation resulting in a single set of regulations. The proposed regulation was published as 20 **DE Reg.** 271 in the October 1, 2016 issue of the *Register of Regulations*. SCPD endorses this approach since it is easier to administer a single set of standards and the two sets of regulations overlapped considerably. See 20 **DE Reg.** 270 and 327 (10/1/16)

**Agency Response:** The agency appreciates and acknowledges these comments.

#### Dafne Carnright, Chairperson, Governor's Council for Exceptional Citizens

The Governor's Council for Exceptional Citizens (GACEC) has reviewed the Office of Child Care Licensing (OCCL) proposal to repeal its "Large Family Child Care Homes" regulation in its entirety. Revised standards are being incorporated into 20 DE Reg. 270 Proposed Rules for Family Care Homes regulation resulting in a single set of regulations since the two sets overlapped quite a bit. The GACEC endorses the repeal of this regulation since it

is considerably easier to administer a single set of standards.

**Agency Response:** The agency appreciates and acknowledges these comments.

## NOTICE OF RESCISSION

The Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families rescinds regulation 104 Rules for Large Family Child Care Homes in its entirety as authorized in the Delaware Code, Title 31, Chapter 3, Subchapter III, Subsections 341-345, also known as "The Delaware Child Care Act." All previous requirements and regulations pertaining to such facilities are void as of January 1, 2017.

Carla Benson-Green, Secretary, Department of Services for Children, Youth and Their Families, 11/7/16  
Shirley Roberts, Director, Division of Family Services, 11/3/16

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2016 issue of the *Register* at page 271 (20 DE Reg. 271). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**104 Large Family Child Care Homes**

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## DIVISION OF FAMILY SERVICES

### OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345 (29 **Del.C.** §9003(7); 31 **Del.C.** §§341-345)  
9 **DE Admin. Code** 201

## ORDER

**201 Child Placing Agencies**

## NATURE OF PROCEEDINGS

The Department of Children, Youth and Their Families ("DSCYF") initiated proceedings to adopt State of Delaware Regulations for Child Placing Agencies. The proceedings were initiated pursuant to 31 **Del.C.** §§341-345, 29 **Del.C.** §9003(7), and 9 **DE Admin. Code** 201.

On October 1, 2016, DSCYF published its notice of proposed regulations pursuant to 29 **Del.C.** §10115 in the Delaware *Register of Regulations*. Written comments were accepted until October 31, 2016. Comments were received and DSCYF evaluated these comments and factual evidence to revise some regulations. The results of the evaluation of the comments received regarding the October 1, 2016 posting are summarized in the accompanying "Summary of Evidence."

## SUMMARY OF EVIDENCE

In accordance with Delaware law, OCCL published DELACARE: Regulations for Child Placing Agencies in the October 2016 Delaware *Register of Regulations*. The comments were reviewed. Comments were provided by the following:

- Jamie Wolfe, Chairperson, State Council for Persons with Disabilities (SCPD)
- Dafne Carnright, Chairperson, Governor's Advisory Council for Exceptional Citizens (GACEC)
- Cindy Knapp, M.A. State Director, Children's Choice
- Danielle Goodman, Regional and District Supervisor, Adoptions from the Heart

**Jamie Wolfe, Chairperson, State Council for Persons with Disabilities (SCPD) and Dafne Carnright, Chairperson, Governor's Advisory Council for Exceptional Citizens (GACEC)**

First, in Section 4.0, definition of "administrative hearing", the reference to "decision to place the facility on an enforcement action" is odd and counterintuitive. For example, a hearing is available to contest denial of a license application which is not conceptually "an enforcement action". See §10.1. DFS may wish to consider adopting a

more apt term (e.g. adverse OCCL decision" or "adverse OCCL action") and substituting a conforming definition for the counterintuitive definition of "enforcement action".

**Agency Response:** The agency appreciates and acknowledges these comments. OCCL defines an enforcement action as meaning any action taken by OCCL to encourage compliance, such as warning of probation or probation, and license suspension, revocation, or denial. Changing the hearing term is unnecessary to distinguish hearings that stem from the same cause of a licensee showing a pattern of failing to follow regulations. The regulation will remain as written.

Second, in Section 7.2.6, SCPD and GACEC recommends deletion of the reference to "society's best interests". The concept is amorphous and one could posit that "society" is better off letting "high need" children with complex disabilities or short expected life spans expire.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise regulation 7.2.6 by removing "and society's best interest" and replacing it with the word "needs."

Third, in Section 12.1, consider substituting "state" for "State" since out-of-state adoption officials should have the same status as "international officials". The capital version of "state" could be interpreted to only apply to Delaware.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will replace "State" with state.

Fourth, regarding, Section 13.0, DFS may wish to align the content of this section with analogous or overlapping sections, including §§26.11 and 46.0. For example, §13.0 requires notice to OCCL if a child is "absent without permission, runs away" or "is abducted". In contrast, §46.4.3 requires a foster parent to alert a licensee to "unknown location of the child" for any reason and §46.4.4 requires such notice for even "an attempt to remove the child from the foster home", not simply an actual "abduction". Note also that the foster parent must notify the licensee of "involvement of the child with law enforcement authorities" (§46.4.5) but the licensee is not required to notify DFS (§13.0). Likewise, note that §26.11 has a different injury threshold for notice to DFS - "serious bodily injury" versus any injury correlated with "medical/dental treatment" (§13.3). It would be preferable to have a single, identical standard. Finally, time periods for reporting are also inconsistent. For example, §26.11 requires "immediate" reporting of injuries while §13.3 allows such reporting within 1 business day.

**Agency Response:** The agency appreciates and acknowledges these comments. Based on these comments the agency will revise 13.3, 46.4.2, 46.4.3, and 26.11 to align timeframes, events that require notification, and who the events need to be reported to.

Fifth, Section 16.1.5 requires that "permanent records" be kept "indefinitely". There is no definition of "permanent record" which could result in a lack of retention of records DFS would characterize as "permanent". The term "indefinitely" suggests that records must be maintained forever. This may be an unrealistic standard.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 16.1.5 by removing the word, " indefinitely" and adding "according to the agency's policies."

Sixth, Section 19.1 is "overbroad". Literally, a licensee could not hire an accountant or bookkeeper who works off-site and has no contact with children if such an employee ever had a child removed from his or her custody for even dependency. There is no time limitation, i.e., the removal could have occurred 50 years ago. Moreover, removals based on "dependency" do not implicate "fault", e.g., the caregiver may simply have lost a job or become so ill that care could not be provided. See, e.g., Title 10 **Del.C.** §901(8). The second sentence in §19.1 is "cryptic". If DFS intends to authorize an exception to the first sentence, it should be made clear.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 19.1 to read, "The licensee shall not employ or keep in any capacity any person with direct access to children whose child or children have been removed from his or her custody because of abuse, neglect, or dependency." The agency will revise the second sentence to read, "A person who has given up or otherwise lost custody of his or her children for reasons other than abuse, neglect, or dependency shall present documentation to the department regarding the circumstances of this event, so the department can determine whether this individual can work at the agency."

Seventh, Section 19.4 is "overbroad". It requires a licensee to "ensure a staff member provides documentation from a health care provider for the follow-up of known health conditions." There is no definition of "known health condition". That documentation is then shared with DFS. Employers cannot require an employee to disclose all "health conditions". See attached EEOC guidance.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 19.4 to read, "The licensee shall ensure a staff member provides documentation from a health care provider for the

follow-up of known health conditions that pose a direct threat to the health and safety of children. A person who has given up or otherwise lost custody of his or her children for reasons other than abuse, neglect, or dependency shall present documentation to the department regarding the circumstances of this event, so the department can determine whether this individual can work at the agency."

Eighth, Section 19.6.1 could be improved by clarifying that the statute has time limitations on most offenses. Mere conviction of a "prohibited offense" is insufficient to disqualify a person from serving as an employee or volunteer in a child care context. Consider the following amendment: 19.6.1. Convicted of a prohibited offense [during a relevant time period] as defined in 31 Del.C. §309.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 19.6.1 to read "Convicted of a prohibited offense for the amount of time indicated in 31 Delaware Code, Section 309.

Ninth, Section 19.6 would effectively require an employer to immediately terminate the employment of an employee whose child has been currently removed under even an ex-parte order with marginal due process. The respondent may not be accorded a hearing for weeks (10 Del.C. §1043) but will have been fired. Moreover, the termination would apply to off-site employees (e.g. accountants; bookkeepers) who have no contact with children. This is overbroad.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency seeks to protect the health, safety, and well-being of children. To address the Councils' comments about off-site staff, the agency will revise 19.6 to read "A licensee shall not employ or retain in any capacity any person with direct access to children receiving care or provide services directly to a child or children if:"

Tenth, Section 20.1.6 requires all licensee staff to "be physically and emotionally able to work with a child". This is overbroad and discriminatory, especially when applied to staff who are not caring for children, e.g. janitor, receptionist, accountant, development director, or bookkeeper. Moreover, it is a violation of federal and State law to not provide reasonable accommodations to an employee with a disability, including reassignment of some duties to other employees. See 19 Del.C. §§722 and 724(a)(5). Finally, DFS adoption of such overbroad standards is inconsistent with 19 Del.C. §§741 and 744.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will strike "be physically and emotionally able to work with a child" and add, "The appraisal shall confirm the individual's health and document medical or physical conditions that may limit the person's ability to perform child care or have direct access to children and any reasonable accommodations that may be required."

Eleventh, Section 20.1.11 contains the following ban: "possession of a controlled substance is prohibited while working". Thus, an individual with ADHD could not have prescribed Ritalin or Adderall on his person. An individual with depression could not have a remedial medication on his person. In many cases this would amount to discrimination based on disability. Indeed, literally, a licensee could not employ a nurse to administer medications that would qualify as a controlled substance.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 20.1.11 to read, "or possession while working of a prescribed controlled substance other than by the person for whom it was prescribed is prohibited."

Twelfth, Section 26.13 literally states that a child is allowed to have any "restriction" that is typical for a child of the same age. It is "odd" to say someone has a right to a restriction

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 26.13 to read, "A licensee shall have a written policy to ensure a child is allowed to have any right, freedom, and responsibility that is typical for a child of the same age."

Thirteenth, Section 26.15 requires a licensee to have a policy to ensure that a foster parent does not subject a child to "exploitation". Since "exploitation" is a form of "child abuse" as defined in §4.0, it may be preferable to amend §26.15 to more broadly cover child abuse and neglect.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 26.15 to read, "A licensee shall have a policy to ensure that a foster parent does not subject a child to child abuse or neglect."

Fourteenth, Section 26.17.4 authorizes imposition of "physical, chemical, or mechanical restraint" with child placing agency approval. This is extremely problematic. Compare proposed Family Child Care Home regulation, §41.6.7 (categorically disallowing mechanical restraints or "restraining a child by a means other than holding"). There is a statutory ban on use of chemical and mechanical restraints in schools. See 14 Del.C. §4112F(b) which reflects a State public policy of disallowing their use. DHSS bans use of chemical restraint in facilities such as

AdvoServ. See 16 **DE Admin. Code** 3320.20.11.11. DFS will not even be aware that mechanical and chemical restraints have been approved by a child placing agency or the frequency of use.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will strike chemical or mechanical restraints, however due to the needs of some foster children, the agency will revise 26.17.4 to read, "Physical restraint of a child, without training and prior written approval of the child's health care provider and the agency."

Fifteenth, Section 29.2.2 should be expanded to include an IFSP. Compare §30.1.11.5. It could also be expanded to include a Section 504 plan.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 29.2.2 by adding "individualized family service plan or "IFSP", or Section 504 plan;" The agency will add Section 504 plan to 30.1.11.5.

Sixteenth, Section 34.1 only contemplates enrollment of "school-age" children in an educational program. That term is defined in §5.0 to only include children of kindergarten age upwards. This ignores children with disabilities entitled to special education at birth or age 3. See 14 **Del.C.** §§3101(1) and 1703(l)(m). It also ignores infants and toddlers eligible for IDEA-C services pursuant to 16 **Del.C.** §§210-218

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 34.1 by removing the word "school-age."

Seventeenth, Section 39.2 requires a licensee to ensure that an applicant and adult household members are free of an "indictment". An indictment is not a conviction. Federal guidance limits use of arrest records and non-convictions in the employment context. See EEOC Enforcement Guidance, "Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, published at [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

**Agency Response:** The agency appreciates and acknowledges these comments. The EEOC guidelines are for employment purposes; they do not apply to applicants and household members in foster care and adoptive homes. The agency's position is that an indictment is a serious enough action to prevent children from being placed in the home until the matter is resolved. The regulation will remain as written.

Eighteenth, Section 40.1.6 could be amended to include "power strips". Compare proposed Child Care Home regulation, §21.10.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will add the words "including power strips" to 40.1.6.

Nineteenth, Section 40.1.13 should be amended to include "vaping" or "smoking (as defined in 16 **Del.C.** §2901)". See 16 **Del.C.** §2903.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 40.1.13 to include the word "vaping."

Twentieth, Sections 40.1.24 (foster care) and 51.3.25 (adoptive home) include a few pet references. However, while household member profiles/background checks are addressed in detail, there is no standard addressing dangerous animals (e.g. snakes; alligators; pit bulls). An applicant may not even have to affirmatively disclose the presence of such animals. A child could also be allergic to certain animals. A regulation addressing poisonous or aggressive animals is being deleted. See proposed superseded §111.2. A variation of the superseded standard should be retained.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise the foster care home study to include "if applicable, household pets." The agency will revise 40.1.24 to read "Poisonous or aggressive animals, such as snakes and alligators, or animals that are known carriers of illnesses or are sick with a disease that can be spread to humans may not be kept or brought into the foster home."

Twenty-first, in §50.5, the reference to "under Delaware Code" is vague. DFS may wish to adopt more specific references.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 50.5 and 39.4 to read, "A licensee shall ensure that a person who is active on the Delaware child protection registry at a Level III or Level IV is prohibited from being an adoptive parent while on the child protection registry."

#### **Cindy Knapp, M.A. State Director, Children's Choice**

In regard to 18.5.3, per DFS, agencies send a letter to the foster parents stating whether the complaint was founded or unfounded. We do not send out the responses from everyone interviewed.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 18.5.3 to read, "Notification stating the findings of founded or unfounded is mailed to the foster or pre-adoptive

parent;"

**Danielle Goodman, Regional and District Supervisor, Adoptions from the Heart**

On 6.1.6 - can we add that private agencies must be non-profit 501 (c)(3)?

**Agency Response:** The agency appreciates and acknowledges these comments. A private child placing agency has the right to be a for profit agency. The regulation will remain as written.

Can we change to 14.1.2 When a governing body consists of more than three people, a meeting shall be held at least quarterly?

**Agency Response:** The agency appreciates and acknowledges these comments. The agency recognizes that a governing body should meet more than once a year and will revise 14.1.2 to read, "When a governing body consists of more than three people, a meeting shall be held at least twice a year."

14.1.3 A licensee shall keep minutes of each meeting for 5-10 years (instead of 1 year).

**Agency Response:** The agency appreciates and acknowledges these comments. The agency recognizes that meeting minutes should be kept for more than one year to provide information about past decisions that were made and topics that were discussed. The agency will revise 14.1.3 to read, "A licensee shall keep minutes of each meeting for at least three years."

Annual training- 23.1 Delaware has a high number of training hours required, versus other states. Can we drop down to 25 hours per year.

**Agency Response:** The agency appreciates and acknowledges these comments. After reviewing the annual training requirements from multiple states, the agency will revise 23.1 to 24 hours and 23.1.1 to 12 hours.

48.2 Why did an amount of hours 20, get added to the training of Adoptive parents? Can we keep it as it was before that we have to provide documentation on the topics required, but not give a specific time frame?

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 37.2 to read, "A licensee shall hold foster parent training to provide basic information to foster parent applicants. The agency shall document that the applicant attended and received training on the following topics:" The agency will also revise 48.2 to read, "The agency shall document that the applicant attended a session and received training and information on the following topics:"

50.2 Can we change the wording to say, "A licensee shall assess an applicant (instead of ensure)?"

**Agency Response:** The agency appreciates and acknowledges these comments. The regulation uses the word ensure to prompt the agency to seek information to make sure applicants are of good character. The regulation will remain as written.

52 Can we state that the agency provides an approval certificate and/or letter to an applicant?

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 52 to read, "Once an agency approves an applicant, a licensee shall ensure an agency provides an approval letter or certificate to an applicant."

56.2.2 - This has been discussed at previous meetings. For private agencies handling infant adoptions, monthly in person meetings are too much. It should stay at a minimum of three visits shall be required; or monthly phone contact and three in person visits.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 56.2.2 to read, "After the first contact, a minimum of three in-person visits shall be required;"

## NOTICE OF RESCISSION AND PROMULGATION

The Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates the following regulations for child placing agencies as authorized in the Delaware Code, Title 31, Chapter 3, Subchapter III, Subsections 341-345, also known as "The Delaware Child Care Act." All previous requirements and regulations pertaining to such facilities are void. These regulations shall take effect on January 1, 2017.

Carla Benson-Green, Secretary, Department of Services for Children, Youth and Their Families; 11/7/2016  
Shirley Roberts, Director, Division of Family Services; 11/3/2016

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

**201 Child Placing Agencies**



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# FINAL REGULATIONS

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 3900 BOARD OF CLINICAL SOCIAL WORK EXAMINERS

Statutory Authority: 24 Delaware Code, Section 3906(a)(1), (24 **Del.C.** §3906(a)(1))  
24 **DE Admin. Code** 3900

### ORDER

#### 3900 Board of Clinical Social Work Examiners

Pursuant to 24 **Del.C.** §3906(a)(1), the Board of Clinical Social Work Examiners ("Board") proposes revisions to its rules and regulations.

On May 1, 2016, proposed revisions were published in the Delaware *Register of Regulations*, Vol. 19, Issue 11. Specifically, Subsection 9.3.9, pertaining to computer and internet technology, was stricken, and a new Section 10.0 was added to implement standards for the practice of clinical social work through telehealth. New Subsections 7.3.4 and 7.3.5 were added to clarify the continuing education audit process, including hearings and disciplinary sanctions. Finally, certain technical revisions addressed inconsistencies in the regulations.

A public hearing was held on June 20, 2016 and the public comment period for written comment was held open for another 15 days. The Board deliberated on the evidence submitted at its meeting on July 18, 2016. Based on those deliberations, the Board made substantive revisions to the proposed rules and regulations. Specifically, the Board found that certain provisions in the proposed regulations were overly restrictive and would unnecessarily limit the public's access to social work services. The Board further found that the decision to provide services through telehealth must be left to the professional's expertise and judgment on a case-by-case basis. Therefore, the Board struck the sentence "Telehealth is not intended to be the primary means of providing services to a client" in Section 10.1 and Sections 10.6 and 10.12 in their entirety.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 20, Issue 3, on September 1, 2016. Notice of the October 17, 2016 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was November 1, 2016, 15 days following the public hearing. The Board deliberated on the proposed revisions at its scheduled meeting on November 14, 2016.

#### Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

Board Exhibit 3: October 17, 2016 Comments in support of the proposed regulations from Nemours Alfred I. duPont Hospital for Children

There was no verbal testimony given at the public hearing on October 17, 2016. No written comments were received by the Board during the initial thirty day public comment period. Board Exhibit 3, comments from Nemours Alfred I. duPont Hospital for Children, was received after the public hearing during the fifteen day second public comment period. In Board Exhibit 3, Nemours "strongly recommend[ed]" adoption of the proposed regulations pertaining to telehealth.

#### Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §3906(a)(1), the Board has the statutory authority to promulgate rules and regulations.

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations. There was no verbal testimony at the hearing and the one written comment, Board Exhibit 3, was strongly supportive of the proposed regulations pertaining to telehealth.

Therefore, the Board adopts the rules and regulations as proposed.

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## Decision and Effective Date

The Board finds that the rules and regulations shall be adopted as final in the form proposed. These changes will become effective ten days following publication of this Final Order in the Delaware *Register of Regulations*.

## Text and Citation

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

**IT IS SO ORDERED** this 14<sup>th</sup> day of November, 2016 by the Delaware Board of Clinical Social Work Examiners.

Rochelle Mason, LCSW, Professional Member, President  
John Mucha, LCSW, Professional Member, Vice President  
Kyla Gleockler, Public Member, Secretary  
Florienda Scott-Cobb, LCSW, Professional Member  
Sandra Bisgood, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2016 issue of the *Register* at page 169 (20 DE Reg. 169). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3900 Board of Clinical Social Work Examiners**

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## OFFICE OF THE STATE TREASURER

### INVESTMENTS AND CASH MANAGEMENT

Statutory Authority: 29 Delaware Code, Section 2716 (29 Del.C. §2716)  
1 DE Admin. Code 1201

## ORDER

### 1201 Objectives and Guidelines for the Investment of State of Delaware Funds

In accordance with 29 Del.C. §10003(d) and 29 Del.C. §2716, for the reasons stated below, this ORDER is adopted repealing the prior guidelines and promulgating new guidelines setting forth the rules governing practices for investments of State funds.

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In accordance with the procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C. Ch. 101, the Cash Management Policy Board of the State of Delaware (hereinafter the "Board") is proposing to adopt an amended regulation on objectives and guidelines for the investment of State funds as described in 29 Del. C. §2716. The proposed regulation sets forth the rules governing practices for those investments.

Notice of the proposed regulation was published in the Delaware *Register of Regulations* Vol. 20, Issue 4, from October 1, 2016 through October 31, 2016. One comment was received from John Krimmel, who suggested that 5.2.2 of the regulation define nationally statistical rating organization, or "NRSRO" as Fitch, Moody's, Morningstar and S&P. The Board considered the written comment and decided to make this change at this time. The Board believes that the suggested change to 5.2.2 of the regulation is appropriate and would better define an NRSRO. In addition, the Board believes the term "nationally statistical rating organization" should bear initial capitalization.

## II. FINDINGS OF FACT

The Board finds that it is appropriate to adopt the regulation with this non-substantive change to 5.2.2 defining

a nationally statistical rating organization, or "NRSRO" as Fitch, Moody's, Morningstar and S&P, and to replace the term "nationally statistical rating organization" with initial capitalization. The Board reviewed this recommendation at its meeting on November 16, 2016.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Board concludes that it is appropriate to amend 1 **DE Admin. Code** 1201 Objectives and Guidelines for the Investment of State of Delaware Funds, with the suggested changes to 5.2.2. Therefore, pursuant to 29 **Del.C.** §2716, 1 **DE Admin. Code** 1201 attached hereto as Exhibit "A" is hereby created.

### IV. TEXT AND CITATION

The text of 1 **DE Admin. Code** 1201 created hereby shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 1 **DE Admin. Code** 1201 Objectives and Guidelines for the Investment of State of Delaware Funds, in the Administrative Code of Regulations for the Office of the State Treasurer.

### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Board on November 16, 2016. 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 16<sup>th</sup> day of November, 2016.

John Flynn, Chair	The Hon. Jeffrey Bullock
The Hon. Thomas Cook (absent)	The Hon. Kenneth Simpler
Mike Karia	David Marvin
Lynda Messick	Warren Engle (absent)
Michael Morton (absent)	

#### 1201 [Statement of] Objectives and Guidelines for the Investment of State of Delaware Funds (Break in Continuity of Sections)

#### 5.0 Collection and Disbursement Accounts

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

**5.2** **Permissible Investments.** Cash Management Banks shall maintain State Funds in either collateralized demand deposit accounts or open-end money market mutual funds, in each case, subject to the provisions of subsections 5.2.1 and 5.2.2, respectively, in order to mitigate the risk of State Funds being exposed to the credit risk of such financial institution.

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

**5.2.2** **Money Market Mutual Funds.** State Funds held by Cash Management Banks in money market mutual funds shall be invested solely in government securities that meet the definitions set out in subsections 6.3.1 and 6.3.2 and which are rated in the highest rating category by at least one [nationally recognized statistical rating organization] Nationally Recognized Statistical Rating Organization] ("NRSRO" [- defined as Fitch, Moody's, Morningstar and S&P]).

\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2016 issue of the *Register* at page 275 (20 DE Reg. 275). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1201 Objectives and Guidelines for the Investment of State of Delaware Funds**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF ENERGY AND CLIMATE

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)

#### Director's Determination under 26 Del.C. §354(i)&(j) and Regulation 104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

November 10, 2016

#### Summary

The Director of the DNREC Division of Energy & Climate is required under 26 Del.C. §354(i) & (j) and Regulation 104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions to review the calculations of the costs and benefits of Delaware's Renewable Portfolio Standards (RPS), consult with the Public Service Commission, and determine whether to freeze the RPS and the solar PV carve-out of the RPS.

For Compliance Year 2015/16 (June 1, 2015 to May 31, 2016) the benefits were slightly higher than the cost of compliance for the RPS and clearly exceeded the cost of compliance of the solar PV carve-out.

The externality benefits and the economic benefits of solar PV used to satisfy DPL's solar carve-out totaled 2.24 percent, far greater than the 1.28 percent cost of solar PV compliance. Based on this analysis, and exercising my statutory discretion, I have determined to not freeze the solar PV carve-out of the RPS.

The externality benefits and the economic benefits of renewable energy used to satisfy DPL's RPS requirement totaled 4.71 percent, slightly higher than the 4.69 percent cost of RPS compliance. Based on this analysis, and exercising my statutory discretion, I have determined to not freeze the RPS.

#### Background

The Division of Energy & Climate has reported on the cost of RPS compliance as required under Section 4.0 of Regulation 104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions (Regulation) promulgated under 26 Del.C. §354(i) & (j). The Director of the Division may, in consultation with the PSC, decide to freeze the RPS as provided in Section 5.0 of the Regulation. Thomas Noyes, the responsible staff member in this matter, has reported on the costs and benefits of RPS compliance.

I and Mr. Noyes briefed the Public Service Commission on the calculations on the costs and benefits of RPS compliance on November 1, 2016. His memorandum with the calculations of the costs and benefits, and with supporting appendices, is available online at <http://www.dnrec.delaware.gov/energy/information/otherinfo/Pages/Renewable.aspx>.

#### Calculation of the Costs and Benefits of Solar PV Carve-out

The solar PV cost of compliance has been calculated as follows:

##### *Section 4.3 Solar Renewable Energy Cost of Compliance*

The Solar Energy Cost of Compliance in Compliance Year 2015/16 was \$8,738,344, or 1.28 percent of the total retail cost of electricity of \$682,403,734. The benefits have been calculated as follows:

##### *Section 5.4.1 Overall energy market conditions*

Overall market energy conditions have not changed sufficiently enough to significantly affect this analysis.

##### *Section 5.4.2 Avoided cost benefits from solar PV carve-out*

Avoided cost benefits are those market benefits known as price suppression effects attributable to reduced demand because of distributed renewable energy generation in PJM, which leads to lower capacity and energy prices particularly at times of peak demand. The methods for calculating these benefits are still being developed and no calculation has been performed.

##### *Section 5.4.3 Externality benefits due to solar PV carve-out*

The Solar Energy Cost of Compliance in Compliance Year 2015/16 was \$8,738,344, or 1.28 percent of the total retail cost of electricity of \$682,403,734. Of the total externality benefits, 16.01 percent are attributed to solar PV based on the ratio of MWh generated of solar PV to all renewable energy generated during the compliance year. The solar PV portion of the externality benefits totaled \$3,215,949, or 0.47 percent of the total retail cost of electricity.

*Section 5.4.4 Economic impacts of the deployment of renewable energy in Delaware.*

The Division, working with the Delaware Solar Energy Coalition, surveyed the solar energy industry to determine the jobs impact of the industry in Delaware. The survey reports 326 solar industry jobs in Delaware with total salaries of \$17,410,375. Of those, the survey reports that 254 jobs serve the Delaware market. The survey found that 143 jobs would be lost if the RPS were frozen, with lost salaries of \$7,637,066. Mr. Noyes used this narrower figure in his calculations.

The IMPLAN analysis performed earlier this year resulted in a total multiplier effect (total direct, indirect and induced economic benefits) of 1.58 times salaries. When the same multiplier is applied to the total amount of salary lost if the RPS were frozen, the direct, indirect and induced effects total \$12,040,396.

The results summarized below show that the benefits of the solar PV carve-out exceed the cost of compliance:

<b>Solar PV</b>	<b>Cost in \$</b>	<b>% of Retail</b>
<b>Total Retail Costs of Electricity</b>	\$ 682,403,734	
<b>GEF used to support PV</b>	\$ 1,950,730	
<b>DPL SREC procurement</b>	\$ 6,787,614	
<b>Solar Cost of Compliance</b>	\$ 8,738,344	1.28%
<b>Offsets</b>		
<b>Market conditions</b>	n/a	n/a
<b>Avoided costs capacity in MW</b>	n/a	n/a
<b>Avoided costs energy in MWh</b>	n/a	n/a
<b>Externalities NOx and SO2</b>	\$ 2,349,134	0.34%
<b>Externalities CO2</b>	\$ 866,815	0.13%
<b>Economic impacts</b>	\$ 12,040,396	1.76%
<b>Total offsets</b>	\$ 15,256,344	2.24%
<b>Net Cost (Benefit) of PV Compliance</b>	\$ (6,518,000)	-0.96%

#### **Calculation of the Costs and Benefits of RPS Compliance**

The RPS cost of compliance is calculated as follows:

*Section 4.2 Renewable Energy Cost of Compliance*

The Cost of RPS Compliance in Compliance Year 2014/15 was \$32,035,895, or 4.69 percent of the total retail cost of electricity. The benefits to have been calculated as follows:

*Section 5.4.1 Overall energy market conditions*

Overall market energy conditions have not changed sufficiently enough to significantly affect this analysis.

*Section 5.4.2 Avoided cost benefits from the RPS*

Avoided cost benefits are described in more detail above. Since that calculation has not been performed for CY 2015/16, no result is presented for your consideration in this report.

*Section 5.4.3 Externality benefits due to the RPS*

Delmarva Power calculated the externality benefits of renewable energy in its 2014 Integrated Resource Plan (IRP). This externality benefit calculation incorporates the avoided mortality costs for NOx and SO2 and the social cost of CO2 emissions. DPL calculated the externality benefits of reduced emissions of NOx and SO2 due to renewable energy in Delaware to be \$14,670,119 based on the assumption that renewable energy displaced 50 percent of the PJM generation mix (which can be considered a conservative estimate due to the efficiency of the grid).

The cost of CO2 is calculated to be \$5,413,175. DPL, in its 2014 IRP, set the cost of CO2 to be \$1 per metric ton, the low end of the EPA/OMB range of the social cost of carbon (SCC) at the time. These figures were updated in July, 2015. Mr. Noyes used the figure of \$38.00 per metric ton for 2015, which assumes a 3.0 percent discount rate of future costs in 2007 dollars. The figure in 2007 dollars has been adjusted using the CPI, resulting in a SCC of \$32.75 in 2016 dollars. As with DPL's externality calculations, it is assumed that renewable energy displaced 50 percent of the PJM generation mix.

The Regulation includes "improvements to habitat" as part of the definition of externality benefits. We have not developed methods for calculating habitat benefits of renewable energy.

Externality benefits of the RPS in Delaware in CY 2015/16 totaled \$20,083,294, or 2.94 percent of the total retail costs of electricity.

*Section 5.4.4 Economic impacts of the deployment of renewable energy in Delaware.*

The economic impacts of solar PV in Delaware are described above, and the results are incorporated into the overall RPS calculations.

The results summarized below clearly show that the benefits exceeded the cost of compliance:

All Renewable Resources	Cost in \$	% of Retail
<b>Total Retail Costs of Electricity</b>	\$ 682,403,734	
<b>GEF to support renewable resources</b>	\$ 1,950,730	
<b>DPL REC and SREC procurement</b>	\$ 30,085,165	
<b>Renewable Energy Cost of Compliance</b>	\$ 32,035,895	4.69%
<b>Offsets</b>		
<b>Market conditions</b>	n/a	n/a
<b>Avoided costs capacity in MW</b>	n/a	n/a
<b>Avoided costs energy in MWh</b>	n/a	n/a
<b>Externalities NOx and SO2</b>	\$ 14,670,119	2.15%
<b>Externalities CO2</b>	\$ 5,413,175	0.79%
<b>Economic impacts</b>	\$ 12,040,396	1.76%
<b>Total offsets</b>	\$ 32,123,690	4.71%
 <b>Net Cost (Benefit) of RPS Compliance</b>	 \$ (87,795)	 -0.01%

**Conclusions**

The calculations of the externality benefits and the economic benefits of the solar PV used to satisfy DPL's solar carve-out totaled 2.24 percent, which is greater than the 1.28 percent cost of solar PV compliance. Based on this analysis, and exercising my statutory discretion, I have determined to not freeze the solar PV carve-out of the RPS.

The externality benefits and economic benefits of renewable energy used to satisfy DPL's RPS requirement total 4.71 percent, compared to the cost of compliance of 4.69 percent. Based on this analysis, and exercising my statutory discretion, I have determined to not freeze the RPS.

**Opportunity for Public Comment**

Members of the public may submit comments up until 4:30 p.m. on December 22, 2016 to:

Thomas Noyes  
Principal Planner for Utility Policy  
Department of Natural Resources and Environmental Control

Division of Energy & Climate  
100 W. Water Street, Suite 5A  
Dover, DE 19904  
[thomas.noyes@state.de.us](mailto:thomas.noyes@state.de.us)  
Fax: (302)739-1840

Approved:  
Philip T. Cherry, Director  
November 10, 2016

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

The State Board of Education will hold its monthly meeting on Thursday, December 15, 2016 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**  
**Chiropractors' Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Medical and other types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for chiropractors' 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 [Kimberly.Xavier@state.de.us](mailto:Kimberly.Xavier@state.de.us), or by fax to 302-255-4425 by January 2, 2017. Please identify in the subject line: Chiropractors' 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 MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**  
**Purchase of Care (POC) - Licensed Exempt Providers**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) proposes to amend the Delaware Social Services Manual (DSSM) regarding child care licensing requirements, specifically, *to revise the definition of licensed exempt child care providers receiving Purchase of Care (POC) funding.*

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, Attention: Kimberly Xavier; by email to [Kimberly.Xavier@state.de.us](mailto:Kimberly.Xavier@state.de.us); or by fax to 302-255-4425 by 4:30pm on January 2, 2017. Please identify in the subject line: Purchase of Care (POC) - Licensed Exempt Providers

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 MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**  
**Title XXI Delaware Healthy Children Program State Plan - Premium Requirements**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512,

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Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) proposed to amend the Title XXI Delaware Healthy Children Program State Plan and the Division of Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *Premium Requirements*.

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, Attention: Kimberly Xavier; by email to [Kimberly.Xavier@state.de.us](mailto:Kimberly.Xavier@state.de.us), or by fax to 302-255-4425 by 4:30 pm on January 2, 2017. Please identify in the subject line: CHIP Premium Requirements.

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**  
**1317 Network Disclosure and Transparency**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 1317 relating to Network Disclosure and Transparency. The docket number for this proposed regulation is 3252.

The proposed regulation establishes the standards for the form and content of network disclosures that are required to be made by out-of-network providers and the written consent that must be obtained by such a provider prior to balance billing an insured. The proposed regulation also requires health insurers to maintain and publish accurate, complete and up-to-date provider directories and to make those directories easily accessible to covered persons. The Delaware Code authority for this proposed regulation is 18 **Del.C.** §§3370A and 3571S; and 29 **Del.C.** Ch. 101.

Proposed Regulation 1317 was initially published in the Delaware *Register of Regulations* on September 1, 2016. Following the initial publication, the Department has changed the Delaware Code references for §3371 to §3370A; modified Section 1.0 and subsections 3.1, 3.4, 4.1, 4.3, and 6.3; inserted a new Section 5.0; renumbered original Sections 5.0, 6.0, 7.0, and 8.0; modified Appendix 1, paragraph 6; and added a new Appendix 2, in response to certain comments received, and is re-publishing the proposed Regulation 1317 on December 1, 2016, as modified.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/>.

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Tuesday, January 3, 2017. Any such requests should be directed to:

Regulatory Specialist Rhonda West  
Delaware Department of Insurance  
841 Silver Lake Boulevard  
Dover, DE 19904  
Phone: (302) 674-7379  
Fax: (302) 739-5566  
Email: [rhonda.west@state.de.us](mailto:rhonda.west@state.de.us)

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DIVISION OF STATE POLICE**  
**5500 BAIL ENFORCEMENT AGENTS**  
**PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to amend the following adopted rule in 24 **DE Admin. Code** 5500 Bail Enforcement Agents: Rule 9.0 - Electronic Control Device (ECD) - national standards have changed and this device is now called a "Conducted Electrical Weapon (CEW)". If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by January 2, 2017, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, February 23, 2017, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

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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 January 18, 2017 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 February 2, 2017 in accordance with 29 **Del.C.** §10118(a).

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**DIVISION OF PROFESSIONAL REGULATION**  
**2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to renewal of an expired license are amended and a new proposed regulation addressing telehealth has been developed in response to comments received after a previous proposal published June, 1, 2016 and a July 20, 2016 public hearing thereon.

A public hearing will be held on January 4, 2017 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 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).

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**CALENDAR OF EVENTS/HEARING NOTICES**


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**OFFICE OF THE STATE BANK COMMISSIONER**
**PUBLIC NOTICE**
**Notice of Proposed Amendment to Regulations:**
**1103 Instructions for Preparation of Franchise Tax**
**1104 Estimated Franchise Tax Report**
**1105 Final Franchise Tax Report**
**1106 Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in this State**
**1107 Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware**
**1108 Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware**
**1109 Instructions for Calculation of Employment Tax Credits**
**1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks**
**1111 Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks**
**1112 Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks**
**1114 Alternative Franchise Tax**
**of the State Bank Commissioner**

The State Bank Commissioner proposes to amend 11 bank franchise tax Regulations. The proposed amendments are technical: removing references to former regulation numbers; correcting a few spelling, word and punctuation errors; minor renumbering of instruction subsections and tax form lines; adding instruction subsections, and lines on tax forms, to cover other applicable tax credits; revising provisions for delayed filing of final tax reports to conform to call report late filing dates permitted by the Federal Financial Institutions Examination Council (FFIEC); clarifying instructions for direction of tax payments; conforming Regulation 1109 (Instructions for Calculation of Employment Tax Credits) and Form B to reflect the 10-year extension of the current credit through 2031; and deleting provisions in Regulations 1110, 1111 and 1112 about the previous resulting branch imputed capital addback, which was deleted from the Code. None of these proposed amendments are substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other Regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed amended Regulations in accordance with Title 5 of the Delaware Code. This Notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, Chapter 101, Subchapter II, and Chapter 104, Sections 10404A(b)(1) and 10404B(b)(1).

Copies of the proposed amended Regulations are being published in the December 1, 2016 edition of the Delaware *Register of Regulations*. Copies are also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and are available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended Regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amended Regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before January 4, 2017. Written materials submitted will be available for inspection at the above address.

On or after January 4, 2017, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulations, or make additional changes because of the public comments received.

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**PUBLIC SERVICE COMMISSION**
**PUBLIC NOTICE**
**3001 Rules for Certification and Regulation of Electric Suppliers**
**TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, RETAIL ELECTRIC CUSTOMERS AND OTHER INTERESTED PERSONS**

In 1999 the Delaware Public Service Commission ("PSC") has promulgated certain regulations pertaining to

certification of electric suppliers in 26 *Del. Admin. C.* §3001, now entitled “Rules for Certification and Regulation of Electric Suppliers (“Supplier Rules”). The PSC has revised the Supplier Regulations several times since then. The PSC now proposes to revise the Supplier Regulations again. The purpose of the proposed revisions are to ensure electric choice for customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket No. 10-2; to provide additional protection for customers; to require electric suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to customers to provide electric supply services; to clarify sections of the Supplier Regulations; and to make the certification process for electric suppliers more uniform.

The PSC is soliciting comments, suggestions, and compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Regulations. If you wish to file any such materials, you should file them using the Commission’s DelaFile docketing and file management system on or before **January 25, 2017**. You may also submit an original and ten copies of such written materials with the PSC on or before **January 25, 2017** at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware, 19904  
Attn: Regulation Docket No. 49

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-ROM or sent as an attachment to an e-mail addressed to [psc@state.de.us](mailto:psc@state.de.us); include “Reg. Doc. 49” as the subject of the email. The Commission encourages the public to submit written comments on or before **January 25, 2017**.

The PSC will conduct a public hearing on the proposed regulations on **January 10, 2017 at 1:00 P.M.** at the PSC’s office at the address set forth above.

You may review PSC Order No. 8981 (November 15, 2016) (the “Order”) and the proposed revised Supplier Regulations in the December 2016 issue of the *Delaware Register of Regulations*. You may also review the Order and the proposed revised Supplier Regulations by going to DelaFile (<http://delafile.delaware.gov>), the Commission’s docketing and file management system, and by searching for REG. 49.

Any materials submitted in connection with the proposed revised Supplier Rules will be available for public inspection and copying (to the extent they are “public records” under the Freedom of Information Act, 29 **Del.C.** §10002(g)) at the PSC’s Dover office identified above during normal business hours. The fee for copying is \$.10 per page, after the first 20 pages. If you wish to request copies of documents in this matter, please submit a Freedom of Information Act (“FOIA”) Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the FOIA Request Form on the PSC’s website, <http://depssc.delaware.gov/default.shtml>. The PSC will respond to your request in accordance with the Freedom of Information Act, 29 **Del.C.** ch. 100. The Regulations may also be reviewed by appointment at the office of the Public Advocate, 820 N. French Street, 4<sup>th</sup> Floor, Carvel State Office Building, Wilmington, DE 19801, or 29 South State Street, Dover, Delaware 19901. Please call either (302) 577-5077 or (302) 241-2555 to arrange for a time to review the documents at either of those locations. The Regulations will also be available on the PSC’s website: <http://depssc.delaware.gov/electric.shtml>.

Any individual with disabilities who wishes to review submissions or to participate in this docket should contact the PSC to discuss any auxiliary aids or services to facilitate such review or participation. Such contact may be in person, in writing, by telephone, e-mail, or by other means.

If you have questions about this matter, you may call the PSC at 1-800-282-8574 (toll-free in Delaware) or 302-736-7500 (voice and text telephone). You may also send questions regarding this matter by e-mail addressed to [psc@state.de.us](mailto:psc@state.de.us); please include “Reg. Doc. 49” as the subject of the email.