
Delaware Register of Regulations

Issue Date: December 1, 2021

Volume 25 - Issue 6, Pages 548 - 644



IN THIS ISSUE:

Regulations:
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, 2021.

*Cover Photo
submitted by
Arun Reddy Katta*

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

549

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
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 15	4:30 p.m.
June 1	May 16	4:30 p.m.

DIVISION OF RESEARCH STAFF

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TABLE OF CONTENTS

551

Cumulative Tables	553
-------------------------	-----

PROPOSED

DELAWARE RIVER BASIN COMMISSION

Importations of Water Into and Exportations of Water From the Delaware River Basin; Discharges of Wastewater from High Volume Hydraulic Fracturing and Related Activities	559
---	-----

DELAWARE STATE FIRE PREVENTION COMMISSION

710 Ambulance Service Regulations	567
---	-----

DEPARTMENT OF EDUCATION

Office of the Secretary

815 Health Examinations and Screening	568
---	-----

Professional Standards Board

1558 Theater Teacher	572
1560 Art Teacher	577
1563 Music Teacher	582

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Health Care Quality

3201 Skilled and Intermediate Care Nursing Facilities	587
3210 Nursing Homes Admitting Pediatric Residents	588
3225 Assisted Living Facilities	590
3301 Group Home Facilities for Persons with AIDS	591
3305 Group Homes for Persons with Mental Illness	592
3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities	594
3315 Family Care Homes	595
3320 Intensive Behavioral Support and Educational Residence	596
3330 Regulations Governing Dialysis Centers	598
3335 Office-Based Surgery	599
3340 Free Standing Emergency Departments	600
3345 Personal Assistance Services Agencies	601
3350 Skilled Home Health Agencies (Licensure)	602
3351 Home Health Agencies--Aide Only (Licensure)	604
4402 Regulations for Adult Day Care Facilities	605
4403 Free Standing Birthing Centers	606
4407 Hospital Standards (Construction, Maintenance, and Operation)	608
4409 Prescribed Pediatric Extended Care Centers (PPECC)	611
4468 Delivery of Hospice Services	613

Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan - Guardianship Fees - Post-Eligibility Protection of Income ..	614
Title XIX Medicaid State Plan - Chiropractors' Services	616

Division of Public Health

4202 Control of Communicable and Other Disease Conditions	619
---	-----

DEPARTMENT OF LABOR

Division of Industrial Affairs

1331 Industrial Accident Board Regulations	620
--	-----

TABLE OF CONTENTS

DEPARTMENT OF STATE

Division of Professional Regulation

2500 Board of Pharmacy	621
3500 Board of Examiners of Psychologists	622

FINAL

DELAWARE HEALTH INFORMATION NETWORK

101 Delaware Health Information Network Regulations	623
102 Delaware Health Information Network Regulations on Participation	624
104 Delaware Health Care Claims Database Data Access Regulation.....	625

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Health Care Quality

4405 Free Standing Surgical Centers	627
---	-----

Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan - Ambulatory Surgical Center Services.....	628
--	-----

DEPARTMENT OF INSURANCE

Office of the Commissioner

1003 Credit for Reinsurance	630
-----------------------------------	-----

DEPARTMENT OF STATE

Division of Professional Regulation

2700 Board of Registration for Professional Land Surveyors.....	632
2930 Council on Real Estate Appraisers.....	633

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

Delaware's Proposed Visibility State Implementation Plan (SIP) Revision	635
---	-----

CALENDAR OF EVENTS/HEARING NOTICES

Delaware River Basin Commission, Notices of Public Hearings and Quarterly Business Meeting....	639
Delaware State Fire Prevention Commission, Notice of Public Hearing and Public Comment Period	640
Dept. of Education, Notice of Monthly Meeting.....	641
Dept. of Health and Social Services, Div. of Health Care Quality; Div. of Medicaid and Medical Assistance; Div. of Public Health; Notices of Public Comment Periods.....	641 - 643
Dept. of Labor, Div. of Industrial Affairs, Notice of Public Hearing and Public Comment Period.....	643
Dept. of State, Div. of Professional Regulation, Board of Pharmacy; Board of Examiners of Psychologists.	644

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

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

DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM

1301 Delaware Criminal Justice Information System Rules and Regulations..... 25 **DE Reg.** 270 (Final)

DELAWARE HEALTH INFORMATION NETWORK

101 Delaware Health Information Network Regulations..... 25 **DE Reg.** 252 (Prop.)

102 Delaware Health Information Network Regulations on Participation..... 25 **DE Reg.** 257 (Prop.)

104 Delaware Health Care Claims Database Data Access Regulation..... 25 **DE Reg.** 259 (Prop.)

DELAWARE PUBLIC EMPLOYEE’S RETIREMENT SYSTEM

Delaware Board of Pension Trustees

2002 State Employees’ Pension Plan..... 25 **DE Reg.** 272 (Final)

2003 State Judiciary Pension Plan..... 25 **DE Reg.** 272 (Final)

2004 State Police Pension Plan..... 25 **DE Reg.** 272 (Final)

2005 County and Municipal Employees’ Pension Plan..... 25 **DE Reg.** 272 (Final)

2006 County and Municipal Police/Firefighter Pension Plan..... 25 **DE Reg.** 272 (Final)

DELAWARE STATE FIRE PREVENTION COMMISSION

701 Administration and Enforcement..... 25 **DE Reg.** 71 (Final)

702 Fire Protection in Building Construction..... 25 **DE Reg.** 74 (Final)

703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems,
Fire Protection Systems and Fire Extinguishers 25 **DE Reg.** 77 (Final)

704 Hazardous Processes and Operations 25 **DE Reg.** 79 (Final)

705 General Fire Safety..... 25 **DE Reg.** 80 (Final)

DEPARTMENT OF AGRICULTURE

Food Products Inspection

302 Produce Safety Regulations..... 25 **DE Reg.** 166 (Final)

Harness Racing Commission

501 Harness Racing Rules and Regulations..... 25 **DE Reg.** 119 (Prop.)

Plant Industries Section

805 Rules and Regulations for Delaware Domestic Hemp Production Program 25 **DE Reg.** 169 (Final)

Standardbred Breeders’ Fund

502 Delaware Standardbred Breeders’ Fund Regulations..... 25 **DE Reg.** 169 (Final)

25 **DE Reg.** 220 (Errata)
25 **DE Reg.** 273 (Final)

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations..... 25 **DE Reg.** 221 Emer.)

25 **DE Reg.** 260 (Prop.)

25 **DE Reg.** 507 (Final)

DEPARTMENT OF EDUCATION

Office of the Secretary

105 Residential Child Care Facilities and Day Treatment Programs..... 25 **DE Reg.** 223 (Emer.)

25 **DE Reg.** 225 (Emer.)

239 Behavioral Health Professional of the Year..... 25 **DE Reg.** 120 (Prop.)

CUMULATIVE TABLES

239 Behavioral Health Professional of the Year.....	25 DE Reg. 402 (Final)
505 High School Graduation Requirements and Diplomas.....	25 DE Reg. 274 (Final)
525 Requirements for Career and Technical Education Programs	25 DE Reg. 40 (Prop.)
	25 DE Reg. 404 (Final)
613 Uniform Procedures for Processing Attorney General's Reports.....	25 DE Reg. 479 (Prop.)
615 School Attendance.....	25 DE Reg. 360 (Prop.)
701 Unit Count	25 DE Reg. 41 (Prop.)
	25 DE Reg. 275 (Final)
	25 DE Reg. 405 (Final)
716 Maintenance of Local School District and Charter School Personnel Records	25 DE Reg. 118 (Errata)
	25 DE Reg. 170 (Final)
815 Health Examinations and Screening.....	25 DE Reg. 123 (Prop.)
	25 DE Reg. 227 (Emer.)
	25 DE Reg. 363 (Prop.)
	25 DE Reg. 229 (Emer.)
	25 DE Reg. 410 (Final)
931 Purple Star Schools.....	25 DE Reg. 484 (Prop.)
932 Military-Connected Youth.....	25 DE Reg. 367 (Prop.)
933 DELACARE: Regulations for Early Care and Education and School-Age Centers.....	25 DE Reg. 233 (Emer.)
	25 DE Reg. 235 (Emer.)
	25 DE Reg. 369 (Prop.)
934 Regulations for Family and Large Family Child Care Homes.....	25 DE Reg. 237 (Emer.)
	25 DE Reg. 239 (Emer.)
	25 DE Reg. 370 (Prop.)
938 Regulations for Youth Camps.....	25 DE Reg. 172 (Final)
	25 DE Reg. 242 (Emer.)
	25 DE Reg. 244 (Emer.)
	25 DE Reg. 371 (Prop.)
1011 Interscholastic Athletics during the COVID-19 Pandemic.....	25 DE Reg. 173 (Final)
	25 DE Reg. 175 (Final)
1203 Scholarship Incentive Program (ScIP)	25 DE Reg. 508 (Final)
Professional Standards Board	
1503 Educator Mentoring	25 DE Reg. 82 (Final)
1532 Middle Level Mathematics Teacher.....	25 DE Reg. 373 (Prop.)
1534 Middle Level Social Studies Teacher.....	25 DE Reg. 46 (Prop.)
	25 DE Reg. 510 (Final)
1539 Health Education Teacher.....	25 DE Reg. 77 (Prop.)
1542 Secondary Mathematics Teacher.....	25 DE Reg. 127 (Prop.)
	25 DE Reg. 512 (Final)
1543 Secondary Science Teacher.....	25 DE Reg. 84 (Final)
1544 Secondary Social Studies Teacher	25 DE Reg. 51 (Prop.)
	25 DE Reg. 513 (Final)
1556 School To Work Transition Teacher	25 DE Reg. 55 (Prop.)
	25 DE Reg. 442 (Errata)
	25 DE Reg. 515 (Final)
1559 Skilled and Technical Sciences Teacher.....	25 DE Reg. 177 (Final)
1561 Bilingual Teacher	25 DE Reg. 90 (Final)
1562 Teacher of English Learners.....	25 DE Reg. 96 (Final)
1564 Physical Education Teacher.....	25 DE Reg. 486 (Prop.)
1574 Teacher of Students Who Are Deaf or Hard of Hearing.....	25 DE Reg. 178 (Final)
1583 School Psychologist.....	25 DE Reg. 131 (Prop.)
	25 DE Reg. 519 (Final)

DEPARTMENT OF ELECTIONS

Office of the State Election Commissioner

101 Procedures for Addressing Post-Election Voting Machine Audit Discrepancies	25 DE Reg. 101 (Final)
--	------------------------

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Health Care Quality

3201 Skilled and Intermediate Care Nursing Facilities	25 DE Reg. 6 (Emer.)
3210 Nursing Homes Admitting Pediatric Residents	25 DE Reg. 443 (Emer.) 25 DE Reg. 9 (Emer.)
3225 Assisted Living Facilities	25 DE Reg. 319 (Emer.) 25 DE Reg. 446 (Emer.) 25 DE Reg. 11 (Emer.)
3301 Group Home Facilities for Persons with AIDS	25 DE Reg. 448 (Emer.)
3305 Group Homes for Persons with Mental Illness	25 DE Reg. 321 (Emer.) 25 DE Reg. 13 (Emer.)
3305 Group Homes for Persons with Mental Illness	25 DE Reg. 324 (Emer.)
3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities	25 DE Reg. 449 (Emer.) 25 DE Reg. 15 (Emer.) 25 DE Reg. 326 (Emer.)
3315 Family Care Homes	25 DE Reg. 452 (Emer.) 25 DE Reg. 17 (Emer.)
3320 Intensive Behavioral Support and Educational Residence	25 DE Reg. 328 (Emer.) 25 DE Reg. 454 (Emer.) 25 DE Reg. 19 (Emer.)
3330 Regulations Governing Dialysis Centers	25 DE Reg. 330 (Emer.)
3335 Office-Based Surgery	25 DE Reg. 455 (Emer.)
3340 Free Standing Emergency Departments	25 DE Reg. 333 (Emer.)
3345 Personal Assistance Services Agencies	25 DE Reg. 335 (Emer.) 25 DE Reg. 337 (Emer.)
4402 Regulations for Adult Day Care Facilities	25 DE Reg. 21 (Emer.) 25 DE Reg. 339 (Emer.)
4403 Free Standing Birthing Centers	25 DE Reg. 457 (Emer.)
4405 Free Standing Surgical Centers	25 DE Reg. 341 (Emer.)
4406 Home Health Agencies--Aide Only (Licensure)	25 DE Reg. 343 (Emer.) 25 DE Reg. 460 (Emer.) 25 DE Reg. 346 (Emer.)
4407 Hospital Standards (Construction, Maintenance, and Operation)	25 DE Reg. 383 (Prop.) 25 DE Reg. 137 (Prop.)
4409 Prescribed Pediatric Extended Care Centers (PPECC)	25 DE Reg. 348 (Emer.) 25 DE Reg. 462 (Emer.)
4410 Skilled Home Health Agencies (Licensure)	25 DE Reg. 521 (Final) 25 DE Reg. 350 (Emer.) 25 DE Reg. 464 (Emer.)
4468 Delivery of Hospice Services	25 DE Reg. 352 (Emer.) 25 DE Reg. 465 (Emer.) 25 DE Reg. 137 (Prop.) 25 DE Reg. 354 (Emer.) 25 DE Reg. 467 (Emer.) 25 DE Reg. 527 (Final) 25 DE Reg. 357 (Emer.) 25 DE Reg. 469 (Emer.)

Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan - Adult Dental	25 DE Reg. 139 (Prop.)
Title XIX Medicaid State Plan - Ambulatory Surgical Center Services	25 DE Reg. 419 (Final)
Title XIX Medicaid State Plan - Assertive Community Integration Support Team (ACIST)	25 DE Reg. 141 (Prop.)
Title XIX Medicaid State Plan - Medication-Assisted Treatment (MAT)	25 DE Reg. 491 (Prop.)
Title XIX Medicaid State Plan: Drug Utilization Review (DUR) - Opioid Provisions	25 DE Reg. 184 (Final) 25 DE Reg. 190 (Final)

Title XIX Medicaid State Plan - Program of All-Inclusive Care for the Elderly (PACE) State Plan Amendment.....	25 DE Reg. 384 (Prop.)
Title XIX Medicaid State Plan - Streamline Application.....	25 DE Reg. 414 (Final)
Division of Public Health	
4202 Control of Communicable and Other Disease Conditions.....	25 DE Reg. 246 (Emer.)
.....	25 DE Reg. 248 (Emer.)
.....	25 DE Reg. 262 (Prop.)
.....	25 DE Reg. 471 (Emer.)
.....	25 DE Reg. 493 (Final)
4402 Regulations for Adult Day Care Facilities.....	25 DE Reg. 23 (Emer.)
4403 Free Standing Birthing Centers.....	25 DE Reg. 25 (Emer.)
4406 Home Health Agencies--Aide Only (Licensure).....	25 DE Reg. 27 (Emer.)
.....	25 DE Reg. 521 (Final)
4407 Hospital Standards (Construction, Maintenance, and Operation).....	25 DE Reg. 29 (Emer.)
4409 Prescribed Pediatric Extended Care Centers (PPECC).....	25 DE Reg. 33 (Emer.)
4410 Skilled Home Health Agencies (Licensure).....	25 DE Reg. 35 (Emer.)
.....	25 DE Reg. 527 (Final)
4462 Public Drinking Water Systems.....	25 DE Reg. 494 (Prop.)
4468 Delivery of Hospice Services.....	25 DE Reg. 37 (Emer.)
Division of Social Services	
Child Care for Families Receiving Temporary Assistance for Needy Families (TANF): DSSM 11003.....	25 DE Reg. 192 (Final)
Delaware's Temporary Assistance for Needy Families (TANF) - Definition: DSSM 3000.....	25 DE Reg. 144 (Prop.)
.....	25 DE Reg. 534 (Final)
Funding: DSSM 3000.1.....	25 DE Reg. 144 (Prop.)
.....	25 DE Reg. 534 (Final)
DSSM 11002.5 Responsibility For The Administration Of Delaware's Child Care Subsidy Program.....	25 DE Reg. 147 (Prop.)
.....	25 DE Reg. 537 (Final)
DSSM 11002.5.1 Responsibility for Direct Administration of Delaware's Child Care Subsidy Program.....	25 DE Reg. 147 (Prop.)
.....	25 DE Reg. 537 (Final)
DSSM 11002.10 Establishing Program Integrity in Child Care.....	25 DE Reg. 147 (Prop.)
.....	25 DE Reg. 537 (Final)
DSSM 11006.4.8 Completing Correct Transactions.....	25 DE Reg. 153 (Prop.)
.....	25 DE Reg. 536 (Final)
DSSM 11006.4.9 Completing Manual Adjustments.....	25 DE Reg. 153 (Prop.)
.....	25 DE Reg. 536 (Final)
Processing Applications for Child Care: DSSM 11004.....	25 DE Reg. 280 (Final)
Division of Substance Abuse and Mental Health	
1201 Driving Under the Influence Evaluation Program, Courses of Instruction, Programs of Rehabilitation and Related Fees.....	25 DE Reg. 496 (Prop.)
1204 Drinking Driver Programs Standard Operating Procedures.....	25 DE Reg. 499 (Prop.)
6001 Substance Abuse Facility Licensing Standards.....	25 DE Reg. 473 (Emer.)
6003 DUI Programs.....	25 DE Reg. 500 (Prop.)
DEPARTMENT OF INSURANCE	
Office of the Commissioner	
902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]....	25 DE Reg. 156 (Prop.)
1003 Credit for Reinsurance.....	25 DE Reg. 263 (Prop.)
1404 Long-Term Care Insurance.....	25 DE Reg. 60 (Prop.)
1409 Insurance Coverage for Telemedicine and Telehealth.....	25 DE Reg. 285 (Final)

DEPARTMENT OF JUSTICE

Fraud and Consumer Protection Division

105 Health Spa Act Regulation.....	25 DE Reg. 264 (Prop.)
	25 DE Reg. 539 (Final)

DEPARTMENT OF LABOR

Division of Industrial Affairs

1326 Workplace Fraud Act Regulations	25 DE Reg. 61 (Prop.)
	25 DE Reg. 287 (Final)
1329 Delaware Contractor Registration Act Regulations	25 DE Reg. 62 (Prop.)
	25 DE Reg. 288 (Final)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1102 Permits.....	25 DE Reg. 386 (Prop.)
1103 Ambient Air Quality Standards.....	25 DE Reg. 388 (Prop.)
1124 Control of Volatile Organic Compound Emissions: Section 33.0 Solvent Cleaning and Drying.....	25 DE Reg. 196 (Final)
1130 Title V State Operating Permit Program.....	25 DE Reg. 394 (Prop.)

Division of Climate, Coastal and Energy

2103 Regulations for the Green Energy Program	25 DE Reg. 63 (Prop.)
---	-----------------------

Division of Fish and Wildlife

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.....	25 DE Reg. 103 (Final)
3541 Atlantic Sharks.....	25 DE Reg. 290 (Final)
3542 Tilefish.....	25 DE Reg. 64 (Prop.)
	25 DE Reg. 295 (Final)
3550 Cobia (<i>Rachycentron canadum</i>).....	25 DE Reg. 66 (Prop.)
	25 DE Reg. 297 (Final)

Division of Watershed Stewardship

7402 Shellfish Sanitation Regulations.....	25 DE Reg. 268 (Prop.)
--	------------------------

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Delaware Sex Offender Management Board

1100 Delaware Sex Offender Management Board.....	25 DE Reg. 301 (Final)
--	------------------------

Office of the Alcoholic Beverage Control Commissioner

Rule 1008 (Formerly 19.1) Bottle Clubs - Licensing and Operation.....	25 DE Reg. 301 (Final)
---	------------------------

DEPARTMENT OF STATE

Division of Professional Regulation

100 Board of Accountancy.....	25 DE Reg. 160 (Prop.)
1700 Board of Medical Licensure and Discipline.....	25 DE Reg. 161 (Prop.)
1900 Board of Nursing.....	25 DE Reg. 199 (Final)
	25 DE Reg. 318 (Errata)
	25 DE Reg. 395 (Prop.)
2700 Board of Registration for Professional Land Surveyors.....	25 DE Reg. 69 (Prop.)
2925 Real Estate Commission Education Committee.....	25 DE Reg. 505 (Prop.)
2930 Council on Real Estate Appraisers.....	25 DE Reg. 163 (Prop.)
3800 State Board of Dietetics/Nutrition.....	25 DE Reg. 201 (Final)
Uniform Controlled Substance Act Regulations.....	25 DE Reg. 506 (Prop.)

Public Service Commission

3001 Rules for Certification and Regulation of Electric Suppliers.....	25 DE Reg. 396 (Prop.)
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005).....	25 DE Reg. 541 (Final)

OFFICE OF THE STATE TREASURER

Cash Management Policy Board

1201 Statement of Objectives and Guidelines for the Investment of State of
Delaware Funds.....

25 **DE Reg.** 399 (Prop.)

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.

DELAWARE RIVER BASIN COMMISSION

Statutory Authority: 7 Delaware Code, Chapter 65 (7 **Del.C.** Ch. 65)

PUBLIC NOTICE**Notice of Proposed Rulemaking and Public Hearing****Importations of Water Into and Exportations of Water From the Delaware River Basin; Discharges of Wastewater from High Volume Hydraulic Fracturing and Related Activities**

SUMMARY: The Commission proposes to amend its Comprehensive Plan and Water Code concerning importations of water into and exportations of water from the Delaware River Basin; to amend its *Special Regulations - High Volume Hydraulic Fracturing* to prohibit the discharge of wastewater from high volume hydraulic fracturing and related activities to waters or land within the Delaware River Basin; and to incorporate key elements of the latter proposed amendments into the Commission's *Water Quality Regulations*.

DATES: *Written comments:* Written comments will be accepted through 5 p.m. on February 28, 2022.

Public hearings: Public hearings will be held remotely via Zoom on the following dates at the noted times. Details about accessing the hearings are available on the Commission's website, www.drbc.gov.

1. December 8, 2021, 2:30 p.m. to no later than 4:30 p.m.
2. December 8, 2021, 6:30 p.m. to no later than 8:30 p.m.
3. December 15, 2021, 1 p.m. to no later than 3 p.m.
4. December 15, 2021, 4 p.m. to no later than 6 p.m.

On October 28, 2021, a notice including these public hearing dates, times and locations was posted on the Commission's website and circulated directly to Commission notice subscribers interested in this subject matter. Members of the public may sign up through the Commission's website to receive direct notice via email of additions or changes to the information provided above.

ADDRESSES: *To submit written comments:* Written comments will be accepted until 5 p.m. on February 28, 2022 through the Commission's online public comment collection system at: <https://dockets.drbc.commentinput.com/>

[?id=x2K8A](#). To request an exception from use of the online system based on lack of access to the Internet, please contact: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

To register to speak at public hearings: Although attendance at the hearings is not limited and requires no registration, those who wish to provide oral comment at a hearing must register in advance to do so. Registration will be through EventBrite. Links to EventBrite for each of the public hearing dates and times are posted at www.drbc.gov. Online registration will remain open until 5 p.m. on the day prior to the hearing date or until all available speaking slots have been filled, whichever is earlier. Each person who wishes to provide oral comment may do so at only one public hearing. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added.

FOR FURTHER INFORMATION CONTACT: For information regarding the public hearings and submission of written comments, contact Kate Schmidt, Communications Specialist, at kate.schmidt@drbc.gov (preferred) or 609-883-9500, ext. 205. For information concerning the proposed amendments, contact Pamela Bush, Commission Secretary and Assistant General Counsel, at pam.bush@drbc.gov (preferred) or 609-477-7203.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission ("DRBC" or "Commission") is a regional interstate and federal agency formed by compact legislation of four states and the United States in 1961¹ to manage the water resources of the Delaware River Basin (the "Basin") without regard to political boundaries. Its members are, *ex officio*, the governors of the Basin states (Delaware, New Jersey, New York, and Pennsylvania) and the commander of the U.S. Army Corps of Engineers North Atlantic Division, who represents the United States.

Background

By Resolution No. 91-9 on June 19, 1991, the Commissioners amended the Commission's Comprehensive Plan by the addition of policies and regulations relating to transfers of water into and out of the Basin. These provisions were later codified in the Delaware River Basin Water Code.² The Commission on November 30, 2017 proposed regulations that, in part, concerned inter-Basin transfers of water and wastewater associated with high volume hydraulic fracturing ("HVHF") ("2017 draft rule") and that addressed the treatment and discharge of wastewater generated by HVHF. Concurrently with adoption of its final rule by Resolution No. 2021-01 on February 25, 2021, the Commission withdrew from consideration those provisions of the 2017 draft rule that concerned the exportation of water to support HVHF and the importation, treatment, and discharge of "produced water" and "CWT wastewater" as defined therein.³ By a Resolution for the Minutes on February 25, 2021, the Commissioners directed the Executive Director to prepare and publish for public comment a set of amendments to the Comprehensive Plan and implementing regulations to update the Commission's policies and provisions concerning importation and exportation of water and wastewater from and into the Basin and "to include such other proposed amendments ... as [the Executive Director, in consultation with the Commissioners] deem necessary or appropriate."

In accordance with the Commissioners' February 25, 2021 directive, the Commission is proposing amendments to its Comprehensive Plan and regulations to better provide for the planning, conservation, utilization, development, management and control of the Basin's water resources in connection with: the importation of water, including wastewater, into the Basin; the exportation of water, including wastewater, from the Basin; and the discharge of wastewater from HVHF and HVHF-related activities. The Commission proposes to amend the Water

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1. United States Public Law 87-328, Approved Sept. 27, 1961, 75 Statutes at Large 688; 53 Delaware Laws, Ch. 71, Approved May 26, 1961; New Jersey Laws of 1961, Ch. 13, Approved May 1, 1961; New York Laws of 1961, Ch. 148, Approved March 17, 1961; Pennsylvania Acts of 1961, Act. No. 268, Approved July 7, 1961.
 2. Delaware River Basin Water Code (hereinafter "Water Code") (incorporated by reference at 18 CFR part 410), section 2.30.
 3. 83 FR 1586, pp. 1589, 1591 (defining "produced water" as "any water or fluid returned to the surface through the production well as a waste product of hydraulic fracturing," and defining "CWT wastewater" as "wastewater or effluent resulting from the treatment of produced water by a centralized waste treatment facility ('CWT')").

Code by clarifying the circumstances in which exportations of water, including wastewater, from the Basin and importations of water, including wastewater, into the Basin are considered by the Commission and the factors to be used in evaluating whether such proposed imports and exports of water may be approved. The proposed amendments will not apply to importations and exportations that existed prior to the effective date of any final rules, but are proposed to apply to increases in the rate or volume of existing importations and exportations. The Commission also proposes to amend its Special Regulations regarding HVHF by the addition of a finding that the discharge of wastewater from HVHF and HVHF-related activities poses significant, immediate, and long-term risks to the development, conservation, utilization, management, and preservation of the Basin's water resources, and that controlling future pollution by prohibiting such discharge is required to effectuate the Comprehensive Plan, avoid injury to the waters of the Basin as contemplated by the Comprehensive Plan and protect the public health and preserve the waters of the Basin for uses in accordance with the Comprehensive Plan. The finding is accompanied by a provision prohibiting the discharge to waters of the Basin of wastewater from HVHF and HVHF-related activities.

Managing water quantity and quality through a basinwide Comprehensive Plan. The Delaware River Basin Compact directs the Commission to develop and adopt, and from time to time review and revise, a Comprehensive Plan "for the immediate and long range development and use of the water resources of the [B]asin" to which Federal, State and local agencies and private parties are bound.⁴ Through the adoption of a series of polices and regulations establishing and amending its Comprehensive Plan, the Commission over the past half-century has developed and implemented in-stream water quality standards throughout the Basin, prohibited degradation of groundwater, instituted reservoir drought operating plans, established protected areas to prevent the depletion of groundwater, and provided special protection to the non-tidal portion of the Delaware River to preserve its exceptionally high scenic, recreational, ecological and water supply values. As the agency through which the five signatory parties to the Compact—the States of Delaware, New Jersey and New York, the Commonwealth of Pennsylvania, and the United States—collectively manage the Basin's water resources on a regional basis, the Commission has taken these steps to, among other things, ensure an adequate supply of suitable quality water for domestic use, recreation, power generation, industrial activity and aquatic life, and to accommodate large out-of-Basin diversions by the City of New York and the State of New Jersey that are authorized by the 1954 decree of the U.S. Supreme Court in *New Jersey v. New York*, 347 U.S. 995 (the "Decree").

Water Exportation. Since June 19, 1991, the Commission's policy as articulated in the Comprehensive Plan and Water Code (incorporated by reference at 18 CFR part 410) has been to discourage the exportation of water from the Basin on grounds that the Basin's waters "are limited in quantity and the Basin is frequently subject to drought warnings and drought declarations due to limited water supply storage and streamflow during dry periods."⁵

In allocating the waters of the Basin under Section 3.3 of the Compact, the Commission is constrained by limited reservoir storage, particularly during periods of low flow.⁶ Droughts of varying intensity and length have impacted the Basin since the Commission was formed in October 1961.⁷ The Commission has implemented drought operations thirteen times over six decades, including during seven droughts so severe the Commission declared them to be drought emergencies.⁸

The Commission's current Comprehensive Plan includes three major types of exportations of water from the Basin, many of which have also been the subject of DRBC project approvals:

4. Compact, *supra* note 1, sections 3.2 and 13.1.

5. See Water Code section 2.30.2.

6. See e.g., Water Code section 2.30.2; U.S. Department of the Interior U.S. Geological Survey Office of the Delaware River Master, History of the Reservoir Releases Program in the Upper Delaware River Basin, available at: <https://webapps.usgs.gov/odrm/about/history>.

7. Delaware River Basin Commission, *An Overview of Drought in the Delaware River Basin* (Feb. 2019), Sec. "DRBC's Basinwide Drought Actions," par. 1, available at: https://www.state.nj.us/drbc/library/documents/drought/DRBdrought-overview_feb2019.pdf.

8. *Id.*, at Table 1: Basinwide Drought Actions (two of the emergency actions were conditional and did not go into effect).

- Pre-Compact out-of-Basin diversions by New York City and the State of New Jersey authorized by the Decree; and with the unanimous consent of the parties to the Decree in accordance with Section 3.3 of the Compact, modifications of such diversions;
- Out-of-Basin transfers approved on a long-term basis pursuant to Section 3.8 and Article 11 of the Compact to meet the needs of public water systems with service areas straddling or adjacent to a Basin boundary; and
- Out-of-Basin transfers approved on a temporary or emergency basis pursuant to Section 3.8 of the Compact to ensure the public health and safety of communities adjacent to or straddling a Basin boundary.

The draft amendments establish the circumstances under which proposed exportations that meet the existing threshold for review established by the Commission's Rules of Practice and Procedure may be considered for approval. Under the proposed rule, the Commission may approve an exportation of water from the Basin if the export is needed to serve a straddled or adjacent public water system; if it is required on a temporary, short-term, or emergency basis to meet public health and safety needs; or if it comprises an exportation of wastewater. The proposed amendments provide that in reviewing proposed exportations, an analysis of alternatives to the proposed exportation will be considered, along with factors that include the effects of the proposal on public health and safety and effectuation of the Comprehensive Plan. The amended rules will further the Commission's objectives of conserving, utilizing, managing, and controlling the Basin's water resources by ensuring that the uses included within the Comprehensive Plan are protected, and will preserve the diversions, compensating releases, rights, conditions, and obligations of the parties to the U.S. Supreme Court Decree of 1954 in *New Jersey v. New York*, 347 U.S. 995 (1954).

Water Importation. At the time the Commission was created in 1961, the tidal Delaware River suffered from water quality impairments that included severe hypoxia (lack of dissolved oxygen) annually from May through November, preventing the passage of fish species that migrate between marine and fresh waters to reproduce. A key step in the Estuary's restoration was the establishment of water quality uses and criteria by the Commission in 1967. Because even after treatment, wastewater typically contains oxygen-depleting substances, the Commission has for decades used wasteload allocations for carbonaceous oxygen demand to protect the uses it established, including by maintaining dissolved oxygen in the Estuary at levels sufficient to support aquatic life.⁹

The presence of persistent bioaccumulative toxic contaminants in sediment, the water column and fish tissue is a legacy of the Delaware River Estuary's nearly two centuries of industrial use. Although water quality improvements over the past fifty years have substantially increased the variety and abundance of Estuary fish, multiple species are contaminated with polychlorinated biphenyls ("PCBs"), dioxins and furans, mercury, and dieldrin at levels exceeding human health risk advisory limits for their consumption.¹⁰ By Resolution No. 2000-4 the Commission in 2000 determined that allocations of the waste assimilative capacity of the Estuary were necessary in Water Quality Zones 2 through 5 to maintain stream quality objectives for acute toxicity and chronic toxicity. The Commission and its members face new challenges in the emergence of previously unknown contaminants now understood to have adverse impacts on human health and aquatic life.

Although water quality management objectives in the Delaware River Estuary have of necessity prioritized restoration, the focus in the non-tidal Delaware River has been to prevent degradation of waters that are exceptionally clean. By resolutions in 1992, 2005 and 2008, the Commission designated the entire 197-mile reach of the non-tidal main stem Delaware River from Hancock, New York to Trenton, New Jersey as "Special Protection Waters," due to their exceptionally high scenic, recreational, ecological, and water supply values. The importance

9. See Delaware River Basin Water Code, sections 3.30.2 D.2, 3.30.3 D.2, 3.30.4 D.2, 3.30.5 D.2, 3.30.6 D.2.

10. See Delaware Department of Natural Resources and Environmental Control, *Delaware Fish Consumption Advisories* (Jan. 2018), available at: <https://documents.dnrec.delaware.gov/fw/Fisheries/Documents/2018-Delaware-Fish-Consumption-Advisory-Table.pdf>; New Jersey Department of Environmental Protection & New Jersey Department of Health, *Fish Smart, Eat Smart: A guide to Health Advisories for Eating Fish and Crabs Caught in New Jersey Waters* (Nov. 2020), available at: <https://www.nj.gov/dep/dsr/fish-advisories.pdf>; Pennsylvania Department of Environmental Protection, *Commonwealth of Pennsylvania Public Health Advisory 2021 Fish Consumption* (Feb. 2021), available at: <https://pfbc.pa.gov/fishpub/summaryad/sumconsumption.pdf>.

of these waters to the public is underscored by their national designation: the non-tidal main stem within and downstream of potential HVHF activity includes 147 river miles designated by Congress as parts of the National Wild and Scenic Rivers System, including 113 river miles that have also been designated as units of the National Park System.¹¹ New or expanded pollutant loadings to Special Protection Waters-whether from imported wastewater or wastewater generated within the Basin-are permitted only if they do not measurably change the defined, existing water quality.

For the foregoing reasons, since June 19, 1991, the Commission's policy as set forth in the Water Code and Comprehensive Plan is to discourage the importation of wastewater into the Basin on grounds that the Basin's waters "have limited assimilative capacity and limited capacity to accept conservative substances without significant impacts." ¹² The Commission will continue to use its authority to preclude the discharge of wastewater that would impede the restoration of water quality and aquatic life in the tidal Delaware River or that would degrade the Basin's Special Protection Waters.

The proposed rules regarding importation clarify the factors the Commission will use in evaluating proposed importations that meet the existing thresholds for review established by the Commission's Rules of Practice and Procedure. Although importations of wastewater are "discouraged," they may be permitted after careful consideration to ensure that available alternatives have been evaluated, treatment is employed to ensure applicable water quality criteria are achieved, restoration efforts are not impeded, and uses incorporated in the Commission's Comprehensive Plan are protected. The amended rules will further the Commission's objectives of conserving, utilizing, managing, and controlling the Basin's water resources by ensuring continued protection of the uses included within the Comprehensive Plan.

Notably, to date, the Commission has not approved transfers into the Basin of wastewater associated with HVHF, and no applications for such transfers are under consideration. Additionally, in many instances, the Commission has conditioned its approvals of wastewater discharge projects on a requirement that no importation, treatment or discharge of HVHF wastewater may be undertaken by a docket holder without the Commission's prior review and approval. As discussed below, amendments to the Commission's Special Regulations at 18 CFR Part 440-High Volume Hydraulic Fracturing are being proposed that would prohibit the discharge of HVHF wastewater to water or land within the Basin.

Prohibition on Discharge of Wastewater from HVHF and HVHF-Related Activities. The Commission's Comprehensive Plan and Water Code provide in part that "[t]he quality of Basin [surface] waters, except intermittent streams, shall be maintained in a safe and satisfactory condition" for uses that include, "agricultural, industrial, and public water supplies after reasonable treatment, except where natural salinity precludes such uses; ... wildlife, fish and other aquatic life; recreation; navigation; [and] controlled and regulated waste assimilation to the extent that such use is compatible with other uses."¹³ Similarly, the Comprehensive Plan and Water Code provide that the quality of ground waters of the Basin "shall be maintained in a safe and satisfactory condition, except where such uses are precluded by natural quality, for ... domestic, agricultural, industrial, and public water supplies; [and] ... a source of surface water suitable for recreation, wildlife, fish and other aquatic life."¹⁴

In its proposed and final rules prohibiting HVHF within the Basin in November 2017 and February 2021, respectively, the Commission recognized that the treatment and disposal of HVHF wastewater, among other activities associated with HVHF, posed risks, vulnerabilities and impacts to the Basin's water resources.¹⁵ The

11. See 16 U.S.C. 1274(a)(19)-(20) (Upper Delaware Scenic and Recreational River and Delaware Water Gap National Recreation Area), 16 U.S.C. 1274(a)(165) (Lower Delaware River and Associated Tributaries). Other Basin waters included in the Wild and Scenic Rivers System and protected by state antidegradation programs include: 190 miles of the White Clay Creek and its tributaries in Delaware and Pennsylvania, 35 miles of the Maurice River and its tributaries in New Jersey, and 25 miles of the Musconetcong River, also in New Jersey. See, 16 U.S.C. 1274(a)(163) (White Clay Creek and its tributaries); 16 U.S.C. 1274(a)(146)-(149) & 1274(a)(151)-(153) (Maurice River and its tributaries); 16 U.S.C. 1274(a)(169) (Musconetcong River).

12. See Water Code section 2.30.2 (or "limited capacity to assimilate pollutants" as reflected in the proposed amendments).

13. Water Code, section 3.10.2. B.

14. Id., section 3.40.3.

peer-reviewed science discussed in detail in the Comment and Response Document adopted concurrently with the Commission's final rule (hereinafter, the "CRD")¹⁶ demonstrates that for a variety of reasons, protecting public health and preserving the Basin's water resources for uses in accordance with the Comprehensive Plan require that discharges of HVHF wastewater to Basin waters or land be prohibited.

Hydraulic fracturing wastewater may contain a complex blend of constituents, including known carcinogens, neurotoxins, or endocrine disruptors, or are characterized by reproductive or developmental toxicity or adverse immune system effects.¹⁷ As discussed at length in the CRD, some of the chemicals used are not known because they are accorded protection as trade secrets.¹⁸ The U.S. Environmental Protection Agency (hereinafter, "EPA"), has reported that the majority of chemicals associated with hydraulic fracturing, both known and unknown, have not undergone significant toxicological assessment.¹⁹ The impacts from those chemicals to human health and aquatic life are thus undetermined.²⁰ In addition to the potential pollutants in fracturing fluid, the fluid returned from an oil or natural gas well after HVHF (typically called "produced water" and including "flowback water") is mixed with water from the target formation, which contains: salts, including chloride, bromide, sulfate sodium, magnesium, and calcium; metals, including barium, manganese, iron, and strontium; naturally-occurring organic compounds, including benzene, toluene, ethylbenzene, and xylenes; oil and grease; and radioactive materials, including radium, found in ancient sea water trapped within the oil- and gas-bearing shale formations.²¹

A report by the U.S. Geological Survey ("USGS") observed that the salts in shale waters (which are sometimes referred to as "total dissolved solids" or "TDS") reached extreme concentrations over millions of years, and their chemical interactions with surrounding rock can mobilize radionuclides.²² The USGS authors cite radioactivity as a key characteristic of the HVHF waste stream that potentially represents a substantial risk to water resources, aquatic ecosystems and biota, and public health, if released.²³

Wastes associated with oil and natural gas exploration, development and production, including oil and gas drilling fluids and produced waters, are exempt from federal regulations for the management of hazardous wastes.²⁴ But these wastes may cause harm to public health and the environment if they are not properly managed. The CRD references multiple studies documenting adverse impacts to water resources from HVHF wastewater after treatment, whether by municipal or industrial treatment facilities.²⁵ Because produced water contains high TDS and dissolved inorganic constituents that most publicly owned treatment works and other municipal wastewater treatment facilities are not designed to remove, EPA in 2016 issued a final rule banning the

15. See, e.g., DRBC Resolution No. 2021-01, p. 4, par. 4. Available at: https://www.state.nj.us/drbc/library/documents/Res2021-01_HVHF.pdf. See generally, Delaware River Basin Commission, *Comment and Response Document: Proposed Amendments to the Administrative Manual and Special Regulations Regarding High Volume Hydraulic Fracturing Activities; Additional Clarifying Amendments*, Feb. 25, 2021 (hereinafter, "CRD"), at, e.g., pp. E-1, 65-66 ("Synthesis" of response to comments concerning spills); pp. 158-59 (water quality impacts from discharges of treated hydraulic fracturing wastewater).

The CRD is available at: https://www.state.nj.us/drbc/library/documents/CRD_HVHFrulemaking.pdf

16. See CRD, *supra* note 15.

17. CRD, *supra* note 15, pp. 131, 161, and 255 (citing E.G. Elliott, *et al.*, *A systematic evaluation of chemicals in hydraulic-fracturing fluids and wastewater for reproductive and developmental toxicity*, J. Exposure Science & Environmental Epidemiology, 27: 90-99 (2017)). See also, United States Environmental Protection Agency ("U.S. EPA"), *Hydraulic fracturing for oil and gas: Impacts from the hydraulic fracturing water cycle on drinking water resources in the United States* (final report) (EPA/600/R-16/236F) (2016) (hereinafter "U.S. EPA 2016 Assessment"), p. ES-20; U.S. EPA, Technical development document for the effluent limitations guidelines and standards for the oil and gas extraction point source category (EPA-820-R-16-003), 2016, pp. 43-47 (Sec. 1.2).

18. See CRD, *supra* note 15, pp. 259-264.

19. *Id.*, p. 132 (citing U.S. EPA 2016 Assessment, *supra* note 17, p. ES-42-45, 9-1).

20. U.S. EPA, *Detailed study of the centralized waste treatment point source category for facilities managing oil and gas extraction wastes*. (EPA-821-R-18-004) (2018), p. 9-36. Available at: https://www.epa.gov/sites/default/files/2018-05/documents/cwt-study_may-2018.pdf.

21. CRD, *supra* note 15, pp. E-6, 71.

treatment and discharge of oil and gas extraction wastewater from publicly owned treatment works ("POTWs").²⁶ Privately owned treatment works that treat primarily domestic and commercial wastewater remain outside the scope of EPA's "zero discharge" rule.

The Commonwealth of Pennsylvania manages the risks associated with disposal of HVHF wastewater in part through a detailed statute and regulations focused on protecting water resources and public health while preserving commercial interests. Regulations adopted in 2010 pursuant to the Pennsylvania Clean Streams Law address risks associated with HVHF wastewater treatment and discharge by limiting new discharges of TDS, chlorides, barium and strontium in treated wastewater, regardless of the type of discharge - public, private, municipal or industrial.²⁷

Research has demonstrated that even with specialized treatment, however, the discharge of HVHF wastewater to surface waters can adversely impact downstream waters. The Commission's CRD contains an extensive discussion of the potential risks associated with the treatment and discharge of HVHF wastewater to Basin waters from CWTs.²⁸ The Commission concluded that treatment of HVHF wastewater at CWTs with subsequent discharge of effluent to the waters of the Basin would present significant risks to the receiving waters.²⁹

Growth in Marcellus shale gas production is anticipated,³⁰ and in the Marcellus production area immediately west of the Basin, recent data show increasing water use by the shale gas production industry, which may result in increasing volumes of wastewater.³¹ Although additional factors may affect demand for HVHF wastewater treatment and discharge options, these shale gas production and water use trends create the potential for increased demand for CWT services in the region.³² To protect the public health and preserve the waters of the Basin for uses in accordance with the Comprehensive Plan, the Commission thus proposes to prohibit the discharge of treated or untreated HVHF wastewater to waters or land within the Basin.

Water Quality Regulations. To facilitate the alignment of certain Basin state discharge permits with the Commission's proposed regulations regarding wastewater from high volume hydraulic fracturing, the Commission further proposes to amend its Water Quality Regulations, Article 4-Application of Standards. The proposed amendment would consist of a new section 4.50, captioned "Wastewater from High Volume Hydraulic Fracturing and Related Activities," expressly incorporating into the Water Quality Regulations the determination and prohibition comprising § 440.4 of title 18 of the CFR, and the purpose and definitions encompassing sections 440.1 and 440.2. Existing section 4.50 of the Water Quality Regulations and its sub-paragraphs 4.50.1 through 4.50.6 are proposed to be redesignated as section 4.60 and 4.60.1 through 4.60.6.

22. CRD, *supra* note 15, p. 84 (citing E.L. Rowan, *et al.*, *Radium content of oil- and gas-field produced waters in the Northern Appalachian Basin (USA): Summary and discussion of data*, U.S. Department of the Interior, U.S. Geological Survey: Scientific Investigations Report 2011-5135 (2011)).

23. CRD, *supra* note 15, p. 86 (citing E.L. Rowan, *et al.*, *supra* note 22) (also noting that chemically, radium behaves in a manner similar to calcium and is capable of bioaccumulation in plants and animals).

24. See, e.g., U.S. Environmental Protection Agency, Office of Solid Waste, *Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations*, EPA530-K-01-004 (2002).

25. See CRD, *supra* note 15, pp. 18-19, 128-143. See also U.S. EPA, *infra* note 26 (regarding impacts associated with discharges from municipal wastewater treatment plants); U.S. EPA, *supra* note 20 (regarding impacts associated with discharges from the industrial wastewater treatment facilities known as "CWTs").

26. U.S. EPA, *Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category*, 81 FR 41845 (Aug. 29, 2016) (preamble). See also 81 FR 88126 (Dec. 7, 2016) (extending deadline for compliance); CRD, *supra* note 15, pp. 18-19, 128.

27. 25 Pa. Code section 95.10. See also CRD, *supra* note 15, pp. 132, 178.

28. See CRD, *supra* note 15, pp. 130-143, 178. See generally U.S. EPA, *supra* note 20.

29. See CRD, *supra* note 15, p. 138.

30. U.S. EPA, *supra* note 20, p. 8-6.

Substance of comments: The Commission expressly seeks comment on the effects the proposed rules may have within the Basin on: water availability, the control and abatement of water pollution, economic development, the conservation and protection of drinking water supplies, the conservation and protection of aquatic life, the conservation and protection of water quality in Special Protection Waters, and the protection, maintenance and improvement of water quantity and quality Basinwide. The Commission welcomes and will consider any other comments that concern the potential effects of the draft rules on the conservation, utilization, development, management and control of the water and related resources of the Basin. Comments on matters not within the scope of the proposed rules may not be considered.

Non-digitized, voluminous materials such as books, journals or collected letters and petitions will not be accepted. Digital submissions of articles and websites must be accompanied by a statement containing citations to the specific findings or conclusions the commenter wishes to reference.

Submission of written comments. Written comments along with any attachments should be submitted through the Commission's web-based comment system (<https://dockets.drbc.commentinput.com/?id=x2K8A>) until 5 p.m. on February 28, 2022. All materials should be provided in searchable formats, preferably in .pdf searchable text. Notably, a picture scan of a document may not result in searchable text. Comments received through any method other than the designated on-line method, including *via* email, fax, postal/delivery services or hand delivery, will not be considered or included in the rulemaking record unless an express exception has been granted. Requests for exceptions from the web-based-submissions-only policy based on lack of access to the web-based comment system may be addressed to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

Public hearings. To provide for an orderly process and to support public and community health measures, the Commission is conducting its public hearings virtually. Attendance at the hearings is not limited and requires no registration. However, to eliminate uncertainty on the part of attendees about whether they will have an opportunity to provide oral comment, those who wish to speak at a hearing must register in advance to do so, using links on the Commission's website. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added. Key elements of the procedure are as follows:

- Online registration to speak at a public hearing will remain open until 5 p.m. the day prior to each hearing.
- Each person who wishes to provide oral comment may do so at only one public hearing.
- Speaking time will be limited to approximately three minutes per speaker.
- Elected government officials and their staff will have the opportunity to identify themselves when registering to attend a hearing.
- Attendance at the public hearings is not limited and requires no advance registration.
- Written and oral comment will receive equal consideration.

The Commission appreciates the public's participation and input on this important matter.

More Information. Detailed and up-to-date information about the public process, including all proposed rule text, related documents and links for online registration to speak at each of the scheduled public hearings, can be found on the DRBC website, www.drbc.gov.

31. See CRD, *supra* note 15, p. 16 (reporting increased length of natural gas well laterals and increased use of water per foot of well fractured in the Susquehanna River Basin, which adjoins the Basin) (citing Susquehanna River Basin Commission, *Water use associated with natural gas development in the Susquehanna River Basin: An update of activities through December 2018* (Publication No. 323) (2020)).

32. See U.S. EPA, *supra* note 20, pp. 8-4 - 8-6.

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

Importations of Water Into and Exportations of Water From the Delaware River Basin; Discharges of Wastewater from High Volume Hydraulic Fracturing and Related Activities

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 Del.C. §6604(1))
1 DE Admin. Code 710

PUBLIC NOTICE

710 Ambulance Service Regulations

The Delaware State Fire Prevention Commission, pursuant to 16 Del. C. § 6604(1), proposes to revise regulation 710, subsection 7.2.1.3., by requiring that newly purchased ambulances, as well as newly purchased, fabricated, or remounted ambulance compartments conform to the criteria set forth in National Fire Prevention Association 1917 Standard for Automotive Ambulances (2019). The proposed revision also clarifies that all components, not just the ambulance compartment, must conform to this criteria. Finally, the proposed revision eliminates the deadline in the existing regulation since that date has passed.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Specialist for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments may also be sent by email to the following email address: fire.commission@delaware.gov. Comments will be accepted through Monday, January 3, 2022.

The proposed additions to the rule are reflected in underline. Deletions are reflected in strike through.

***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/december2021/proposed/25 DE Reg 567RFA 12-01-21.pdf>

710 Ambulance Service Regulations

(Break in Continuity of Sections)

7.0 BLS Ambulance Service Provider License and Permit Requirements

(Break in Continuity Within Section)

7.2 BLS Operational Requirements

7.2.1 Roadway Vehicle Standards

(Break in Continuity Within Section)

- 7.2.1.3 Existing vehicle patient compartment shall conform with the criteria within the most current United States General Services Administration federal specifications for the Star of Life Ambulances. ~~By January 1, 2021 all~~ All newly purchased ambulances and newly purchased, fabricated fabricated, and remounted ambulance components, including ambulance compartments compartments, shall conform to the criteria set forth in NFPA 1917 Standard for Automotive Ambulances 2019.

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

710 Ambulance Service Regulations

PROPOSED REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A (14 Del.C. §3003A)
14 DE Admin. Code 815

PUBLIC NOTICE

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

815 Health Examinations and Screening

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. § 3003A, the Secretary of Education intends to amend 14 DE Admin. Code 815 Health Examinations and Screening. This regulation is being amended to change the vision and hearing screening dates, and postural and gait screening dates for the 2021-2022 school year only. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*. The proposed amendments to this regulation as published in the October 2021 issue of the *Register of Regulations* (25 DE Reg. 363 (10/01/21)) are no longer being considered.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 3, 2022 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education by providing healthcare baselines.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or man-dates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? As discussed above, the amended regulation does not address achievement in the core academic subjects. The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the health care screenings required by the amended regulation.

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

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 568RFA 12-01-21.pdf>

815 Health Examinations and Screening

1.0 Definitions

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

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

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

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

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

"Lead Screening" means a capillary blood lead test, including where a drop of blood is taken from a finger or heel of the foot (16 Del.C. Ch. 26).

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

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

2.0 Health Examinations

2.1 All public school students shall have two (2) health examinations, as provided in this section, that have been administered by a healthcare provider.

2.1.1 The first health examination shall have been done within the two (2) years prior to enrollment into a Delaware public school.

2.1.1.1 Within thirty (30) calendar days after enrollment, any public school student who has not complied with the health examination requirement shall have received the health examination or shall have a documented appointment with a healthcare provider for the health examination. If this documentation is not provided within this thirty (30) calendar days, the student shall be excluded from school until this documentation is received.

2.1.2 The second required health examination shall be done within the two (2) years prior to entry into grade 9.

2.1.2.1 Within thirty (30) calendar days after entry, any grade 9 student who has not complied with the second health examination requirement shall have received the health examination or shall have a documented appointment with a healthcare provider for the health examination. If this documentation is not provided within these thirty (30) calendar days, the student shall be excluded from school until this documentation is received.

2.1.3 Notwithstanding subsections 2.1.1.1 and 2.1.2.1, all students must meet the requirements under 14 DE Admin. Code 804 Immunizations.

PROPOSED REGULATIONS

- 2.1.4 The requirement for the health examination may be waived for students whose parent, guardian or relative caregiver as defined in 14 **Del.C.** §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by ~~42 USC 11434a~~ 42 USC §11434a) presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of health examinations.
- 2.1.5 Notwithstanding the above, a second health examination shall not be required if the first health examination is within two (2) years of entering Grade 9.
- 2.1.6 The Delaware School Health Examination Form or the DIAA Pre-Participation Physical Evaluation ~~form~~ Form may be used as documentation of the health examination. In addition, a district or charter school may accept a health examination or evaluation documentation on a form which includes, at a minimum, health history, immunizations, results of medical tests and screenings, medical diagnoses, prescribed medications and treatments, and healthcare plans.
- 2.1.7 The school nurse shall record all findings within the student's electronic health record (see 14 **DE Admin. Code** 811) and maintain the original copy in the child's medical file.

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

3.0 Screening

3.1 Vision and Hearing Screening

- 3.1.1 Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th of each school year. For the 2021-2022 school year only, the required screenings shall be completed by April 15, 2022 and not required to be completed by January 15, 2022.
- 3.1.1.1 In addition to the screening requirements in subsection 3.1.1, screening shall also be provided to school enterers, students referred by a teacher or an administrator, and students considered for special education.
- 3.1.1.1.1 Driver education students shall have a vision screening within a one (1) year ~~prior to~~ of their in-car driving hours.
- 3.1.2 The school nurse shall record the results within the student's electronic health record (see 14 **DE Admin. Code** 811) and shall notify the parent, guardian or relative caregiver as defined in 14 **Del.C.** §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by ~~42 USC 11434a~~ 42 USC §11434a) if the student has a suspected problem.

3.2 Postural and Gait Screening

- 3.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by ~~December 15th.~~ 15th of each school year. For the 2021-2022 school year only, the required screening shall be completed by February 15, 2022 and not required to be completed by December 15, 2021.
- 3.2.2 The school nurse shall record the findings within the student's electronic health record (see 14 **DE Admin. Code** 811) and shall notify the parents, guardian or relative caregiver as defined in 14 **Del.C.** §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by ~~42 USC 11434a~~ 42 USC §11434a) if a suspected deviation has been detected.
- 3.2.2.1 If a suspected deviation is detected, the school nurse shall refer the student for further evaluation through an ~~onsite~~ on-site follow up evaluation or a referral to the student's healthcare provider.

3.3 Lead Screening

- 3.3.1 School enterers at kindergarten or at age 5 or prior, shall be required to provide documentation of ~~the results of~~ lead screening as per 16 **Del.C.** Ch. 26.
- 3.3.1.1 For school enterers in kindergarten, documentation of lead screening shall be provided within sixty (60) calendar days of the date of enrollment. Failure to provide the required

- documentation shall result in the child's exclusion from school until the documentation is provided.
- 3.3.1.2 Exemption from this requirement may be granted for religious exemptions, per 16 **Del.C.** §2603.
- 3.3.1.3 The Childhood Lead Poisoning Prevention Act, 16 **Del.C.** Ch. 26, requires all healthcare providers to order lead screening for children at or around the age of 12 months ~~of age~~.
- 3.3.1.4 For school year 2021-2022, children entering first grade, who did not provide documentation of the results of lead screening when enrolling in kindergarten for the 2020-2021 school year, shall provide such documentation within sixty (60) calendar days of the date of the beginning of the 2021-2022 school year. Failure to provide the required documentation shall result in the child's exclusion from school until documentation is provided.
- 3.3.2 The school nurse shall document the lead screening within the student's electronic ~~medical~~ health record. See 14 **DE Admin. Code** 811.

4.0 Health Records

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

5.0 Special Considerations

- 5.1 School districts and charter schools shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment and participation of identified special populations.
- 5.1.1 Homeless Children and Youth - The federal McKinney-Vento Homeless Assistance Act, ~~42 U.S.C. 44304~~ 42 USC §11301 et seq., requires immediate enrollment and entry to school, even if students are unable to produce immunization or other medical records. The Delaware public school nurse and the LEA Homeless Education Liaison at the enrolling school shall work together to obtain the necessary immunization records as soon as possible. If a student has not had immunizations, the school nurse and LEA Homeless Education Liaison shall assist homeless children and youth in meeting the immunization requirements.
- 5.1.2 Youth in Foster Care – The federal Elementary and Secondary Education Act of ~~1965~~, 1965, Section 1111(g)(1)(E) requires that when a determination is made that it is not in ~~a youth in foster care's~~ the best interest of a youth in foster care to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment. The enrolling school shall immediately contact the school last attended by any such child to obtain relevant academic and other records. The school nurse and LEA foster care liaison at the enrolling school shall work together to obtain the necessary immunization records as soon as possible.
- 5.1.3 Military-Connected Youth - In accordance with the provisions of 14 **Del.C.** Ch. 1, Subchapter III-A Interstate Compact on Education For Children of Military Families (MIC3) and its enabling regulation, a school enterer or secondary school student who is subject to MIC3 shall be allowed thirty (30) calendar days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, to obtain or to initiate a series of immunizations required by this regulation. The Delaware public school nurse of the enrolling school shall work with the parent or guardian of the school enterer to obtain the necessary immunization records as soon as possible.
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PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1558

PUBLIC NOTICE

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

1558 Theater Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1558 Theater Teacher. The regulation concerns the requirements for a Theatre Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include amending the title of the regulation; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Theatre Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Theatre Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Theatre Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business (4:30 p.m.) on or before January 4, 2022 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 Del.C. § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Theatre Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates

upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

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

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

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

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 572RFA 12-01-21.pdf>

1558 ~~Theater~~ Theatre Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Theatre Teacher Standard Certificate, pursuant to 14 **Del.C.** §1220(a), ~~for Theater Teacher~~. This ~~certification~~ Standard Certificate is required for grades 9 K to 12, and is valid in grades 5 to 8 in a Middle Level school in Delaware public schools.
- 1.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2.1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise:~~

~~“Approved Accrediting Agency” means a National, Regional, or Specialized Accrediting agency or association that appears on the list of recognized accrediting agencies published by the United States Secretary of Education or any other accrediting agency the Delaware Secretary of Education, deems within his or her discretion, to be reliable or be equivalent to those on the published list.~~

~~“Accredited institution” means an institution that has received accreditation from an approved accrediting agency.~~

~~“Department” means the Delaware Department of Education.~~

~~“Educator” means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term ‘educator’ does not include substitute teachers.~~

~~“Employing Authority” means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.~~

PROPOSED REGULATIONS

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

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

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

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

“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1201.

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

3.0 **Issuance of a Standard Certificate**

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Theatre Teacher Standard Certificate as a Theater Teacher to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; License or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and, 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
 - 3.1.3 Has satisfied the additional requirements in this regulation.
 - 3.1.2 Has met the requirements for an educator’s license in Delaware and presents proof of a Valid and Current License or Certificate as a theater education teacher issued by another state or jurisdiction.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Theatre Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation’s resolution.

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

- 4.1 If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:
- 4.2 If the educator is applying for their second Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5;
 - 4.2.1 Has satisfactorily completed fifteen (15) credits or their equivalent in professional development related to Theater, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; or
 - 4.2.2 Has obtained certification in Theater from an accredited institution.

- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have satisfied one of the following education requirements:
- 4.1.1.1 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in theater education from an educator preparation program approved or recognized by the Council for the Accreditation of Educator Preparation (CAEP) or a state where the state approval body employed the appropriate standards; or
- 4.1.1.2 Satisfactorily completed an alternative routes for licensure or certification program to teach theater as provided in 14 Del.C. §§1260 – 1266; or
- 4.1.1.3 Satisfactorily completed a Department-approved educator preparation program in theater education; or
- 4.1.1.4 If the applicant is applying for an Initial License after the applicant completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school as provided in subsection 4.1.3.1 of 14 DE Admin. Code 1510, earned a bachelor's degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 college credits related to theater education of which at least six credits focus on pedagogy or an equivalent number of hours in professional development with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department.
- 4.1.1.4.1 The applicant, in consultation with the applicant's Employing Authority, shall select the 15 credits or the equivalent number of hours in professional development subject to the Department's approval.
- 4.1.1.4.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the 15 credits or the equivalent number of hours in professional development in consultation with the Department and subject to the Department's approval.
- 4.1.1.4.3 For the purpose of subsection 4.1.1.4, professional development means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants' attitudes, insights, and perspectives and ultimately results in improved professional practice.
- 4.1.1.4.4 Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:
- 4.1.1.4.4.1 Relevant courses from a Regionally Accredited college or university in theater education are not available to the applicant online or in the applicant's county of residence; and
- 4.1.1.4.4.2 The activity is grounded in research and current best practices as judged by the Department's content specialist in theater education; and
- 4.1.1.4.4.3 The activity is documented by the provider to provide knowledge and skills that are required for the theater education certification; and
- 4.1.1.4.4.4 The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.
- 4.1.2 The applicant shall have achieved a minimum score of 153 on the Praxis Subject Assessment – Theatre (ETS Test Code # 5641).
- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a minimum score of 153 on the Praxis Subject Assessment – Theatre (ETS Test Code # 5641).

PROPOSED REGULATIONS

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Theatre Teacher Standard Certificate:
 - 5.2.1 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.2.1.2 Sealed paper transcripts may be submitted.
 - 5.2.1.3 The Department will not accept copies of transcripts; and
 - 5.2.2 Documents verifying successful completion of Department-approved professional development, if applicable; and
 - 5.2.3 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and
 - 5.2.4 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Theatre Teacher Standard Certificate:
 - 5.3.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and
 - 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure as an educator in Delaware and hold a Valid and Current License or Certificate as a theater education teacher from another state or jurisdiction, the following documentation is required in the application for a Theatre Teacher Standard Certificate:
 - 5.4.1 An official copy of the Valid and Current License or Certificate; and
 - 5.4.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

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

7.0 Disciplinary Action

- 7.1 An Educator's Theatre Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's Theatre Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

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

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

9.0 Past Certificate Recognized

The Department shall recognize a Theatre Teacher Standard Certificate issued by the Department prior to effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach theater education.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1560

PUBLIC NOTICE

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

1560 Art Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1560 Art Teacher. The regulation concerns the requirements for a Visual Arts Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include amending the title of the regulation; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Visual Arts Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Visual Arts Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Visual Arts Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business (4:30 p.m.) on or before January 4, 2022 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The

amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Visual Arts Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

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

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

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

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 577RFA 12-01-21.pdf>

1560 ~~Art~~ Visual Arts Teacher

~~Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 **Del.C.** §1220 and 14 **DE Admin. Code** 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.~~

1.0 Content

- 4.1 This regulation shall apply to the ~~requirements for issuance of a Visual Arts Teacher Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Art Teacher.~~ This ~~certification~~ Standard Certificate is required for grades K to 12 ~~in Delaware public schools.~~
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

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

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

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

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

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

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

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

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

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

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate ~~as an Art Teacher~~ to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; License or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; ~~and 2003~~ and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto.~~
 - 3.1.2 Has met the requirements for an educator's license in Delaware and presents proof of a Valid and Current License or Certificate as a visual arts teacher issued by another state or jurisdiction.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Visual Arts Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have satisfied one of the following education requirements:
 - 4.1.1.1 Obtained and currently maintain an Art certificate from the National Board for Professional Teaching Standards; or

PROPOSED REGULATIONS

- 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in art education from an educator preparation program approved or recognized by the Council for the Accreditation of Educator Preparation (CAEP) or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach art as provided in 14 Del.C. §§1260 – 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in art education; or
- 4.1.1.5 If the applicant is applying for an Initial License after the applicant completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school as provided in subsection 4.1.3.1 of 14 DE Admin. Code 1510, earned a bachelor's degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 college credits related to art education of which at least six credits focus on pedagogy or an equivalent number of hours in professional development with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department.
 - 4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the 15 credits or the equivalent number of hours in professional development subject to the Department's approval.
 - 4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the 15 credits or the equivalent number of hours in professional development in consultation with the Department and subject to the Department's approval.
 - 4.1.1.5.3 For the purpose of subsection 4.1.1.5, professional development means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants' attitudes, insights, and perspectives and ultimately results in improved professional practice.
 - 4.1.1.5.4 Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:
 - 4.1.1.5.4.1 Relevant courses from a Regionally Accredited college or university in art education are not available to the applicant online or in the applicant's county of residence; and
 - 4.1.1.5.4.2 The activity is grounded in research and current best practices as judged by the Department's content specialist in art education; and
 - 4.1.1.5.4.3 The activity is documented by the provider to provide knowledge and skills that are required for the art education certification; and
 - 4.1.1.5.4.4 The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.
- 4.1.2 The applicant shall have achieved a minimum score of 158 on the Praxis Subject Assessment – Art: Content Knowledge (ETS Test Code # 5134).
- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a minimum score of 158 on the Praxis Subject Assessment – Art: Content Knowledge (ETS Test Code # 5134).

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Visual Arts Teacher Standard Certificate:
 - 5.2.1 Evidence of obtaining and maintaining an Art certificate from the National Board for Professional Teaching Standards, if applicable; and
 - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.2.2.2 Sealed paper transcripts may be submitted.
 - 5.2.2.3 The Department will not accept copies of transcripts; and
 - 5.2.3 Documents verifying successful completion of Department-approved professional development, if applicable; and
 - 5.2.4 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and
 - 5.2.5 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Visual Arts Teacher Standard Certificate:
 - 5.3.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and
 - 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure as an educator in Delaware and hold a Valid and Current License or Certificate as a visual arts teacher from another state or jurisdiction, the following documentation is required in the application for a Visual Arts Teacher Standard Certificate:
 - 5.4.1 An official copy of the Valid and Current License or Certificate; and
 - 5.4.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

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

7.0 Disciplinary Action

- 7.1 An Educator's Visual Arts Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's Visual Arts Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

- 8.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Visual Arts Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the

PROPOSED REGULATIONS

requirements for a Visual Arts Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

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

9.0 Past Certification Recognized

The Department shall recognize a Visual Arts Teacher Standard Certificate issued by the Department prior to effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach visual arts.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1563

PUBLIC NOTICE

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

1563 Music Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1563 Music Teacher. The regulation concerns the requirements for a Music Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Music Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Music Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Music Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business (4:30 p.m.) on or before January 4, 2022 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Music Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

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

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

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

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 582RFA 12-01-21.pdf>

1563 Music Teacher

~~Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 **Del.C.** §1220 and 14 **DE Admin. Code** 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.~~

1.0 Content

- 4-1 This regulation shall apply to the issuance of a Music Teacher Standard Certificate, pursuant to 14 **Del.C.** §1220(a), ~~for Music Teacher. This certification Standard Certificate is required for grades K to 12 in Delaware public schools.~~
- 4-2 ~~Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

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

PROPOSED REGULATIONS

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

“Department” means the Delaware Department of Education.

“Educator” means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term ‘educator’ does not include substitute teachers.

“Employing Authority” means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

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

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

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

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

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

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

3.0 **Issuance of a Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Music Teacher Standard Certificate as a Music Teacher to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; License, or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; ~~and 2003~~ and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 Has met the requirements as set forth in ~~14 DE Admin. Code~~ 1505 Standard Certificate, including any subsequent amendment or revision there.
 - 3.1.2 Has met the requirements for an educator’s license in Delaware and presents proof of a Valid and Current License or Certificate as a music teacher issued by another state or jurisdiction.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Music Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation’s resolution.

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

- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have satisfied one of the following education requirements:

- 4.1.1.1 Obtained and currently maintain a Music certificate from the National Board for Professional Teaching Standards; or
- 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in music from an educator preparation program approved or recognized by the Council for the Accreditation of Educator Preparation (CAEP) or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach music as provided in 14 **Del.C.** §§1260 - 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in music education; or
- 4.1.1.5 If the applicant is applying for an Initial License after the applicant completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school as provided in subsection 4.1.3.1 of 14 **DE Admin. Code** 1510, earned a bachelor's degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 college credits related to music education of which at least six credits focus on pedagogy or an equivalent number of hours in professional development with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department.
 - 4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the 15 credits or the equivalent number of hours in professional development subject to the Department's approval.
 - 4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the 15 credits or the equivalent number of hours in professional development in consultation with the Department and subject to the Department's approval.
 - 4.1.1.5.3 For the purpose of subsection 4.1.1.5, professional development means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants' attitudes, insights, and perspectives and ultimately results in improved professional practice.
 - 4.1.1.5.4 Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:
 - 4.1.1.5.4.1 Relevant courses from a Regionally Accredited college or university in music education are not available to the applicant online or in the applicant's county of residence; and
 - 4.1.1.5.4.2 The activity is grounded in research and current best practices as judged by the Department's content specialist in music education; and
 - 4.1.1.5.4.3 The activity is documented by the provider to provide knowledge and skills that are required for the music education certification; and
 - 4.1.1.5.4.4 The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.
- 4.1.2 The applicant shall have achieved a minimum score of 155 on the Praxis Subject Assessment - Music: Content Knowledge (ETS Test Code # 5113).
- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a minimum score of 155 on the Praxis Subject Assessment - Music: Content Knowledge (ETS Test Code # 5113).

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Music Teacher Standard Certificate:
- 5.2.1 Evidence of obtaining and currently maintaining a Music certificate from the National Board for Professional Teaching Standards, if applicable; and
- 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
- 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
- 5.2.2.2 Sealed paper transcripts may be submitted.
- 5.2.2.3 The Department will not accept copies of transcripts; and
- 5.2.3 Documents verifying successful completion of Department-approved professional development, if applicable; and
- 5.2.4 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and
- 5.2.5 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Music Teacher Standard Certificate:
- 5.3.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and
- 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure as an educator in Delaware and hold a Valid and Current License or Certificate as a music teacher from another state or jurisdiction, the following documentation is required in the application for a Music Teacher Standard Certificate:
- 5.4.1 An official copy of the Valid and Current License or Certificate; and
- 5.4.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

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

7.0 Disciplinary Action

- 7.1 An Educator's Music Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's Music Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

- 8.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Music Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the

requirements for a Music Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

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

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

9.0 Past Certificate Recognized

The Department shall recognize a Music Teacher Standard Certificate issued by the Department prior to effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach music.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3201

PUBLIC NOTICE

3201 Skilled and Intermediate Care Nursing Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Skilled and Intermediate Care Nursing Facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Skilled and intermediate Care Nursing Facilities.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Skilled and Intermediate Care Nursing Facilities.

Statutory Authority
16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 DE Reg. 6 (07/01/21) and extended in the November 2021 *Register* at 25 DE Reg. 443 (11/01/21).

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing skilled and intermediate care nursing facilities and hold them out for public comment per Delaware law. Rapid and

widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, skilled and intermediate care nursing facilities must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 587RFA 12-01-21.pdf>

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

3201 Skilled and Intermediate Care Nursing Facilities

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3210

PUBLIC NOTICE**3210 Nursing Homes Admitting Pediatric Residents**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Nursing Homes Admitting Pediatric Residents.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Nursing Homes Admitting Pediatric Residents.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Nursing Homes Admitting Pediatric Residents.

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 9 (07/01/21) and extended in the November 2021 *Register* at 25 **DE Reg.** 446 (11/01/21). The extended emergency regulations also added the requirement that staff at nursing homes admitting pediatric residents must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Summary of Proposal*Summary of Proposed Changes*

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Nursing Homes Admitting Pediatric Residents and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Nursing Homes Admitting Pediatric Residents must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at nursing homes that admit pediatric residents must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 588RFA 12-01-21.pdf>

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

[3210 Nursing Homes Admitting Pediatric Residents](#)

PROPOSED REGULATIONS

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3225

PUBLIC NOTICE

3225 Assisted Living Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Assisted Living Facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Assisted Living Facilities.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 DE Reg. 11 (07/01/21) and extended in the November 2021 *Register* at 25 DE Reg. 448 (11/01/21).

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Assisted Living Facilities and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Assisted Living Facilities must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 590RFA 12-01-21.pdf>

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

3225 Assisted Living Facilities

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3301

PUBLIC NOTICE

3301 Group Home Facilities for Persons with AIDS

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Group Home Facilities for Persons with AIDS.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Group Home Facilities for Persons with AIDS.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Group Home Facilities for Persons with AIDS.

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. The purpose of this amendment is to add the requirement that staff at Group Home Facilities for Persons with AIDS must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Summary of Proposal*Summary of Proposed Changes*

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Group Home Facilities for Persons with AIDS and hold them out for public comment per Delaware law. Rapid and

widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Group Home Facilities for Persons with AIDS must expand the infection prevention and control program by requiring staff at Group Home Facilities for Persons with AIDS must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 591RFA 12-01-21.pdf>

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

[3301 Group Home Facilities for Persons with AIDS](#)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3305

PUBLIC NOTICE

[3305 Group Homes for Persons with Mental Illness](#)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Group Homes for Persons with Mental Illness.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Group Homes for Persons with Mental Illness.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Group Homes for Persons with Mental Illness.

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 13 (07/01/21) and extended in the November 2021 *Register* at 25 **DE Reg.** 449 (11/01/21). The extended emergency regulations also added the requirement that staff at Group Homes for Persons with Mental Illness must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Summary of Proposal*Summary of Proposed Changes*

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Group Homes for Persons with Mental Illness and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Group Homes for Persons with Mental Illness must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at Group Homes for Persons with Mental Illness must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 592RFA 12-01-21.pdf>

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

[3305 Group Homes for Persons with Mental Illness](#)

PROPOSED REGULATIONS

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3310

PUBLIC NOTICE

3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities.

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 15 (07/01/21) and extended in the November 2021 *Register* at 25 **DE Reg.** 452 (11/01/21).

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

*Please Note:

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 594RFA 12-01-21.pdf>

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

[3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities](#)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3315

PUBLIC NOTICE

3315 Family Care Homes

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Family Care Homes.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Family Care Homes.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 DE Reg. 17 (07/01/21) and extended in the November 2021 *Register* at 25 DE Reg. 454 (11/01/21).

Summary of Proposal*Summary of Proposed Changes*

The Division of Health Care Quality plans to publish the “proposed” amendments to the regulations governing Family Care Homes and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Family Care Homes must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at Family Care Homes must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state’s requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 595RFA 12-01-21.pdf>

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

3315 Family Care Homes

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3320

PUBLIC NOTICE**3320 Intensive Behavioral Support and Educational Residence**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Intensive Behavioral Support and Educational Residence.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Intensive Behavioral Support and Educational Residence.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Intensive Behavioral Support and Educational Residence.

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 19 (07/01/21) and extended in the November 2021 *Register* at 25 **DE Reg.** 455 (11/01/21).

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Intensive Behavioral Support and Educational Residence and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Intensive Behavioral Support and Educational Residence must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at Intensive Behavioral Support and Educational Residence must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

*Please Note:

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 596RFA 12-01-21.pdf>

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

[3320 Intensive Behavioral Support and Educational Residence](#)

PROPOSED REGULATIONS

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3330

PUBLIC NOTICE

3330 Regulations Governing Dialysis Centers

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing Regulations Governing Dialysis Centers.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Dialysis Centers.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing Regulations Governing Dialysis Centers.

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the Regulations Governing Dialysis Centers and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, staff at dialysis centers must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 598RFA 12-01-21.pdf>

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

[3330 Regulations Governing Dialysis Centers](#)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)

16 DE Admin. Code 3335

PUBLIC NOTICE

3335 Office-Based Surgery

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Office-Based Surgery.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Office-Based Surgery.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Office-Based Surgery.

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Office-Based Surgery and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, staff at Office-Based Surgery must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 599RFA 12-01-21.pdf>

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

3335 Office-Based Surgery

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3340

PUBLIC NOTICE**3340 Free Standing Emergency Departments**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Free Standing Emergency Departments.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Free Standing Emergency Departments.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Free Standing Emergency Departments and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, staff at Free Standing Emergency Departments must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 600RFA 12-01-21.pdf>

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

[3340 Free Standing Emergency Departments](#)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 3345

PUBLIC NOTICE

[3345 Personal Assistance Services Agencies](#)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Personal Assistance Services Agencies.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Personal Assistance Services Agencies.

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

SUMMARY OF PROPOSAL

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

Statutory Authority
16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 21 (07/01/21) and extended in the November 2021 *Register* at 25 **DE Reg.** 457 (11/01/21).

Summary of Proposal*Summary of Proposed Changes*

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Personal Assistance Services Agencies and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Personal Assistance Services Agencies must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at Personal Assistance Services Agencies must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 601RFA 12-01-21.pdf>

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

[3345 Personal Assistance Services Agencies](#)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 **Del.C.** §1119C)
16 **DE Admin. Code** 3350

PUBLIC NOTICE

[3350 Skilled Home Health Agencies \(Licensure\)](#)

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

Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Skilled Home Health Agencies (Licensure).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Skilled Home Health Agencies (Licensure).

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Skilled Home Health Agencies (Licensure).

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 35 (07/01/21) and extended in the November 2021 *Register* at 25 **DE Reg.** 467 (11/01/21).

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Skilled Home Health Agencies (Licensure) and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Skilled Home Health Agencies (Licensure) must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at Skilled Home Health Agencies (Licensure) must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

*Please Note:

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 602RFA 12-01-21.pdf>

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

3350 Skilled Home Health Agencies (Licensure)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 **Del.C.** §1119C)
16 **DE Admin. Code** 3351

PUBLIC NOTICE

3351 Home Health Agencies--Aide Only (Licensure)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Home Health Agencies--Aide Only (Licensure).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Home Health Agencies--Aide Only (Licensure).

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Home Health Agencies--Aide Only (Licensure).

Statutory Authority

16 **Del.C.** §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 27 (07/01/21) and extended in the November 2021 *Register* at 25 **DE Reg.** 462 (11/01/21).

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Home Health Agencies--Aide Only (Licensure) and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Home Health Agencies--Aide Only (Licensure) must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at Home Health Agencies--Aide Only (Licensure) must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits

employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 604RFA 12-01-21.pdf>

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

[3351 Home Health Agencies--Aide Only \(Licensure\)](#)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 4402

PUBLIC NOTICE

4402 Regulations for Adult Day Care Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Adult Day Care Facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Adult Day Care Facilities.

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

SUMMARY OF PROPOSAL

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

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 DE Reg. 23 (07/01/21) and extended in the

November 2021 *Register* at 25 DE Reg. 459 (11/01/21).

Summary of Proposal*Summary of Proposed Changes*

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Adult Day Care Facilities and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Adult Day Care Facilities must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at Adult Day Care Facilities must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 605RFA 12-01-21.pdf>

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

[4402 Regulations for Adult Day Care Facilities](#)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 4403

PUBLIC NOTICE**4403 Free Standing Birthing Centers**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Free Standing Birthing Centers.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Free Standing Birthing Centers.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the

results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

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

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 DE Reg. 25 (07/01/21) and extended in the November 2021 *Register* at 25 DE Reg. 460 (11/01/21).

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Free Standing Birthing Centers and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Free Standing Birthing Centers must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at Free Standing Birthing Centers must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

*Please Note:

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 606RFA 12-01-21.pdf>

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

4403 Free Standing Birthing Centers

PROPOSED REGULATIONS

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 4407

PUBLIC NOTICE

4407 Hospital Standards (Construction, Maintenance, and Operation)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Hospital Standards (Construction, Maintenance, and Operation).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Hospital Standards (Construction, Maintenance, and Operation).

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Health Care Quality is proposing regulations governing Hospital Standards (Construction, Maintenance, and Operation).

Statutory Authority
16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 DE Reg. 29 (07/01/21) and extended in the November 2021 *Register* at 25 DE Reg. 464 (11/01/21).

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Hospital Standards (Construction, Maintenance, and Operation) and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, hospitals must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at hospitals must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed

regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***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/december2021/proposed/25 DE Reg 608RFA 12-01-21.pdf>

~~4407~~ 3370 Hospital Standards (Construction, Maintenance, and Operation)

1.0 General Licensing Requirements and Procedures

- 1.1 Definitions: The definitions as contained in 16 **Del.C.** 1001 of the Hospital Licensure Law shall apply to these rules and regulations.
- 1.2 Purpose: The purpose of these regulations is to establish reasonable standards of equipment, capacity, sanitation, and any conditions which might influence the health care received by patients or promote the purposes of the Hospital Licensure Law.
- 1.3 Application: These rules and regulations apply to all health facilities that meet the criteria for a hospital as defined under 16 **Del.C.** 1001 of the Hospital Licensure Law. The Department of Health and Social Services in these regulations officially adopts certain National Standards for hospital licensure inspections and procedures. Nothing stated in these rules and regulations shall relieve a hospital from complying with local, city, county ordinances, codes, laws, regulations or relieve the hospital from compliance with other State or Federal requirements.
- 1.4 Issuance and Renewal of License. Upon receipt and approval of a complete application the Department of Health and Social Services shall issue or renew a license in accordance with one of the following categories:
 - 1.4.1 Annual License: An annual license shall be issued or renewed on a calendar year basis if the applying hospital is in substantial compliance with the provisions of these rules and regulations:
 - 1.4.2 Provisional License: A provisional license for a term not to exceed six (6) calendar months may be granted only to an applying hospital which, although not in substantial compliance, is demonstrating satisfactory evidence to meet the provisions of these rules and regulations.

2.0 New Construction, Additions and Alterations

- 2.1 Definition: "**New construction, additions, and alterations**" means new buildings to be used as hospitals, additions to existing buildings to be used as hospitals, conversion of existing buildings or portions thereof for use as hospitals, alterations other than minor alterations to existing hospitals.
- 2.2 A person desiring to establish a new hospital or a new addition or alteration to a licensed hospital must apply to the Department of Health and Social Services prior to establishing or beginning construction. The person must demonstrate that the new facility will meet the standards of these rules and regulations. A letter of approval to proceed with the development of plans and specifications will be issued by the Department of Health and Social Services to any person or hospital which demonstrates that the new facility will be in accordance with these rules and regulations. Plans and specifications for new construction, additions, or alterations, other than minor alterations must be prepared by or under the direction of an architect or engineer duly registered in the State of Delaware. A narrative description must be submitted with or prior to the submission of preliminary drawings. Final working drawings and specifications must be submitted to and approved by the Department of Health and Social Services prior to the beginning of actual construction.
- 2.3 Under the authority of 16 **Del.C.** Ch. 10 as amended, the Department of Health and Social Services adopts as the official standards for new construction, additions and alterations of hospitals, where applicable, the "Guidelines for Construction and Equipment of Hospital and Medical Facilities". U.S. Department of Health and Human Services, Public Health Service Publication Number (HRS-M-HF), 84-1 and all codes or standards referred under these adopted parts. When a hospital that is required to

be licensed under these rules and regulations does not normally provide a particular service or department the parts of the following which relate to such service or department shall not be applicable. This Section of rules and regulations shall apply to new construction, additions, or alterations of hospitals only and not to existing facilities.

3.0 Physical Environment

- 3.1 Under the authority of 16 **Del.C.** Ch. 10, as amended, the Department of Health and Social Services adopts as the official standards for the physical environment in hospitals the following parts of the regulations, Medicare Program Regulations, 42 CFR Part 405, Subpart J, U.S. Department of Health and Human Services, Social Security Administration, dated October, 1977, Sections 405.1020 - 405.1034 inclusive, and all codes and standards referred to under these adopted parts. If any part of this section is in conflict with Section 50.1, "New Construction, Additions, and Alterations" this part shall be void and the preceding section shall apply. When a hospital that is required to be licensed under these rules and regulations does not normally provide a particular service or department, the parts of the following which relate to such service or department shall not be applicable.
- 3.2 Physical Environment. Section 405.1022 and subsection b of Section 405.1025 shall apply. The Department of Health and Social Services' regulation governing the sanitation of eating places shall also apply to the dietary department. The radiation control regulations adopted by the Authority on Radiation Protection shall govern the hospital's radiological department.

4.0 Governing Body, Organization and Staff

- 4.1 Under the authority of 16 **Del.C.** Ch. 10, as amended, the Department of Health and Social Services adopts as the official standards for the governing body, organization, and staff of hospitals the following parts of "Standards for Accreditation of Hospitals Plus Provisional Interpretations", published by the Joint Commission on Accreditation of Hospitals, dated 1981 Edition, and the "Requirements and Interpretative Guide for Accredited Hospitals", by the American Osteopathic Hospital Association, and all codes or standards referred to under these adopted parts. If any part of this section is in conflict with Section 2.0 "New Construction. Additions, and Alterations" or Section 3.0 "Physical Environment", this part shall be void and the preceding Sections shall apply. When a hospital that is required to be licensed under these rules and regulations does not normally provide a particular service or department the parts of the following which relate to such service or department shall not be applicable.
- 4.2 Allopathic Hospitals. Pages 1 through 107 inclusive of the Standards for Accreditation of Hospitals Plus Provisional Interpretations by the Joint Commission on Accreditation of Hospitals, shall apply to the governing body, organization and staff of all allopathic hospitals.
- 4.3 Osteopathic Hospitals. Pages 7 through 93 inclusive of the Requirements and Interpretative Guide for Accredited Hospitals by the American Osteopathic Association shall apply to the governing body, organization and staff of all osteopathic hospitals.
- 4.4 Hospitals must develop and implement policies and procedures for hospital staff to have ready access to a locked hospital bathroom in the event of an emergency.

5.0 Fire Safety

Fire safety in hospitals shall comply with the adopted rules and regulations of the State Fire Prevention Commission. Enforcement of the fire requirements is the responsibility of the State Fire Prevention Commission. All applications for license must include, with the application, a letter certifying compliance by the Fire Marshall having jurisdiction. Notification of non-compliance with the rules and regulations of the State Fire Prevention Commission may be grounds for revocation of license.

6.0 Infection Prevention and Control Program

- 6.1 The hospital shall establish and implement an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.
- 6.1.1 The infection prevention and control program must cover all services and all areas of the hospital, including provision of the appropriate personal protective equipment for all patients, staff, and visitors.
- 6.2 The individual designated to lead the hospital's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the hospital's infection control outcomes.
- 6.3 All hospital staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.
- 6.4 Specific Requirements for COVID-19
 - 6.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Division of Public Health guidance.
 - 6.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.
 - 6.4.3 The hospital must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 6.5 The hospital shall amend their policies and procedures to include:
 - 6.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19;
 - 6.5.2 Staff refusals to participate in COVID-19 testing;
 - 6.5.3 Staff refusals to authorize release of testing results or vaccination status to the hospital;
 - 6.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the hospital to inform infection control and prevention strategies; and
 - 6.5.5 Plans to address staffing shortages and hospital demands should a COVID-19 outbreak occur.

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 4409

PUBLIC NOTICE

4409 Prescribed Pediatric Extended Care Centers (PPECC)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Prescribed Pediatric Extended Care Centers (PPECC).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Prescribed Pediatric Extended Care Centers (PPECC).

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services /Division of Health Care Quality is proposing regulations governing Prescribed Pediatric Extended Care Centers (PPECC).

Statutory Authority
16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 33 (07/01/21) and extended in the November 2021 *Register* at 25 **DE Reg.** 465 (11/01/21).

Summary of Proposal*Summary of Proposed Changes*

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Prescribed Pediatric Extended Care Centers (PPECC) and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Prescribed Pediatric Extended Care Centers (PPECC) must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at Prescribed Pediatric Extended Care Centers (PPECC) must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 611RFA 12-01-21.pdf>

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

[4409 Prescribed Pediatric Extended Care Centers \(PPECC\)](#)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)
16 DE Admin. Code 4468

PUBLIC NOTICE

4468 Delivery of Hospice Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) is proposing regulations governing Delivery of Hospice Services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022. Please identify in the subject line: Regulations Governing Delivery of Hospice Services

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

SUMMARY OF PROPOSAL

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

Statutory Authority

16 Del.C. §1119C

Background

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. Emergency regulations to require an infection prevention and control program were published in the July 2021 *Register* at 25 DE Reg. 37 (07/01/21) and extended in the November 2021 *Register* at 25 DE Reg. 469 (11/01/21).

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Delivery of Hospice Services agencies and hold them out for public comment per Delaware law. Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, Delivery of Hospice Services agencies must expand infection prevention and control program requirements. A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities. In addition, staff at Delivery of Hospice Services agencies must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Health Care Quality gives public notice and provides an open

comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 3, 2022.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 613RFA 12-01-21.pdf>

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

4468 Delivery of Hospice Services

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE**Guardianship Fees - Post-Eligibility Protection of Income**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 Del. C. § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

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 and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2021. Please identify in the subject line: Guardianship Fees - Post-Eligibility Protection of Income.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

Statutory Authority

§1902(a)(50)(q) of the Social Security Act

§1902(a)(14)(l) of the Social Security Act

Background

Medicaid recipients, institutionalized in long-term care facilities, are required to apply their income toward the cost of institutional care. The individual must contribute income to pay for institutional services, deducting only certain allowable amounts, such as a personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution.

Some institutionalized recipients may be appointed a guardian by the Court to make medical or financial decisions. There can be cost associated with services provided by the guardian. The services may include, but not be limited to, receiving and depositing income, paying bills, or maintaining accounts.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

Summary of Proposed Changes

Effective for services provided on and after January 1, 2022, DHSS/DMMA proposes to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Post-Eligibility Treatment of Institutionalized Individuals, specifically, allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 31, 2021.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

	Federal Fiscal Year 2022	Federal Fiscal Year 2023
Federal funds	\$0	\$273,600
General (State) funds	\$0	\$206,400

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

<https://regulations.delaware.gov/register/december2021/proposed/25 DE Reg 614RFA 12-01-21.pdf>

PROPOSED REGULATIONS

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY
ACT STATE: DELAWARE
ELIGIBILITY CONDITIONS AND REQUIREMENTS

42 CFR 435.725; 43 CFR 435.733; 42 CFR 435.832

B. Post-Eligibility Treatment of Institutionalized Individuals (continued)

For the following individuals with a greater need (continued)

- d. \$50/month for NF and ICF/IID residents engaging in frequent and regular rehabilitation out-of-facility activities.
- e. For nursing facility residents who are participating in gainful employment, the following amounts, not to exceed the adult foster care rate (SSI benefit amount + \$140), will be deducted from gross earned income:
 - i. Mandatory payroll deductions that are a condition of employment including, but not limited to:
 1. Federal, State, and Local taxes
 2. FICA
 3. Union Dues
 4. Insurance Premiums
 5. Pension Contributions.
 - ii. Transportation costs as paid to and from employment.
 - iii. Clothing and personal needs allowance of \$75/month.
- f. For nursing facility residents requiring a court appointed guardian, the following amounts will be deducted from the gross earned income:
 - i. Monthly guardianship fees not to exceed \$100.

The maximum amount of income to be protected will not exceed the amount required to maintain an individual in adult foster/residential care. This amount is currently the SSI benefit plus \$140.

TN No. SPA	Approval Date
Supersedes	
TN No. SPA <u>#16-008</u>	Effective Date

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) and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services ("Department") / Division

of Social Services (DHSS/DSS) is proposing to amend Title XIX Medicaid State Plan regarding chiropractors' services, specifically, to allow coverage guidelines for treatment more consistent with the licensure scope of practice for chiropractors.

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 and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2021. 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 Title XIX Medicaid State Plan regarding chiropractors' services, specifically, to allow coverage guidelines for treatment more consistent with the licensure scope of practice for chiropractors.

Statutory Authority

- §1905(g) of the Social Security Act, State plan provision of chiropractors' services
- H.R. 6, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act)

Background

In May of 2014, the Center for Medicaid Services (CMS) approved the Delaware Health and Social Services (DHSS) /Division of Medicaid and Medical Assistance (DMMA) 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. In May of 2017, CMS approved DMMA's extended coverage of chiropractors' services to all Delaware Medicaid beneficiaries to increase the quality of care and reduce long-term costs of treating chronic pain.

Effective October 24, 2018, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) became public law. This healthcare act outlines national strategies to help address the nation's opioid crisis. As part of the SUPPORT Act, CMS has promoted appropriate opioid prescribing and person-centered pain management. States began strategizing with providers and beneficiaries to increase non-opioid treatments and technologies to help treat acute and chronic pain. To that end, DMMA would like to expand the coverage of chiropractors' services to allow coverage guidelines for treatment more consistent with the licensure scope of practice for chiropractors.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to allow coverage guidelines for treatment more consistent with the licensure scope of practice for chiropractors.

Summary of Proposed Changes

Effective for services provided on and after January 1, 2022, DHSS/DMMA proposes to amend Title XIX Medicaid State Plan regarding chiropractors' services, specifically, to allow coverage guidelines for treatment more consistent with the licensure scope of practice for chiropractors.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social

Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 31, 2021.

Centers for Medicare and Medicaid Services Review and Approval

This state plan amendment (SPA) provisions 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 or CMS feedback. The final version may be subject to significant change.

Provider Manuals and Communications Update

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

Fiscal Impact

The anticipated fiscal impact is below.

	Federal Fiscal Year 2022	Federal Fiscal Year 2023
Federal funds	\$148,273	\$151,238
General (State) funds	\$108,522	\$108,892

***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/december2021/proposed/25 DE Reg 616RFA 12-01-21.pdf>

Attachment 3.1-A
Page 3 Addendum

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

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

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

6.b. Optometrists' Services

These services are reimbursed:

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

6.c. Chiropractors' Services

Chiropractic services are furnished in accordance with 42 CFR 440.60(b) and include ~~only~~ services that are provided by a chiropractor who is licensed by the State, and consists of medically necessary treatment by means of manual manipulation of the spine and allowable adjunctive therapy associated with the treatment of neck, back, pelvic/sacral, and extraspinal pain and/or dysfunction, that the chiropractor is legally authorized by the State to perform. Services may be subject to prior authorization and/or medical review, and include:

1. Evaluation and management services;
2. Diagnostic x-rays; ~~and~~
3. Chiropractic manipulative ~~treatment~~; treatment; and
4. Allowable adjunctive therapy service.

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

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

TN No. SPA	Approval Date
Supersedes	
TN No. SPA <u>#19-001</u>	Effective Date <u>October 1, 2021</u>

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3)(a) and 504 (16 **Del.C.** §§122(3)(a) and 504)

16 **DE Admin. Code** 4202

PUBLIC NOTICE

4202 Control of Communicable and Other Disease Conditions

Pursuant to 16 **Del. C.** §122(3)(a) and §504, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On December 1, 2021, the Division of Public Health plans to publish as "proposed" revisions to the Control of Communicable and Other Disease Conditions regulations. These revisions include previously proposed requirements for school staff to provide evidence of COVID-19 vaccination or undergo regular COVID-19 testing, as well as a severability clause. The proposed regulation published in the November 2021 *Register of Regulations* (25 **DE Reg.** 471 (11/01/21)) is no longer being considered in favor of the amendments presented here.

Copies of the proposed regulations are available for review in the December 1, 2021 edition of the *Delaware*

PROPOSED REGULATIONS

Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Monday, January 3, 2022, at:

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

***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/december2021/proposed/25 DE Reg 619RFA 12-01-21.pdf](http://regulations.delaware.gov/register/december2021/proposed/25%20DE%20Reg%20619RFA%2012-01-21.pdf)

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

4202 Control of Communicable and Other Disease Conditions

**DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
INDUSTRIAL ACCIDENT BOARD**

Statutory Authority: 19 Delaware Code, Sections 105(a)(8) and 2301A(i)
(19 Del.C. §§105(a)(8) & 2301A(i))
19 DE Admin. Code 1331

PUBLIC NOTICE

1331 Industrial Accident Board Regulations

The Industrial Accident Board ("IAB") hereby gives notice of its intention to adopt amended regulations pursuant to 19 Del.C. §2301A(i). This proposal changes two sections of the IAB Rules, which have not been updated since 2011.

HOW TO COMMENT ON THE PROPOSED REGULATION

A virtual public meeting will be held on Wednesday December 22, 2021 at 3:00 p.m. for members of the public to offer comments. The virtual hearing will occur over the Zoom platform. Members of the public can use the following credentials to log in: Meeting ID: 810 9757 9769, Passcode: 458064, or with the following link: <https://us06web.zoom.us/j/81097579769?pwd=ejBleWU0aTA5OWptMEIBQU5YS2tLUT09.A> A copy of the proposed regulation can be provided at no charge, by United States Mail, by writing or calling Allison Stein (Department of Labor, Administrator of the Office of Workers' Compensation, Delaware Department of Labor, 4425 North Market Street, Wilmington Delaware 19802, telephone number 302-761-8215). In addition to the public meeting, the IAB will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. Members of the public may present written comments on the proposed regulation by submitting such written comments to Allison Stein at the address of the Delaware Department of Labor as set forth above or comments can be sent via email to DOL_DIA_WorkComp@delaware.gov. Written comments must be received on or before January 6, 2022.

NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION

In accordance with procedures set forth in 19 Del. C. § 106(a) and 19 Del. C. § 2301A(i), the Department of Labor is proposing to amend its regulations for the Industrial Accident Board as described in 19 Del. C. §§ 2301 *et seq.* The proposed amendments will ensure that respondents represented by counsel will receive a copy of a Petition when it is filed with the IAB. The amendments also require a party challenging a Utilization Review Determination to attach a copy of the determination in dispute when filing the petition.

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

19 Delaware Code, § 105(a)(8); 19 Delaware Code, § 2301A(i).

OTHER REGULATIONS AFFECTED

None.

***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/december2021/proposed/25 DE Reg 620RFA 12-01-21.pdf>

1331 Industrial Accident Board Regulations (Break in Continuity of Sections)

3.0 Filing of Papers

(Break in Continuity Within Section)

- 3.7 When a Petition is filed and the petitioner is aware that the respondent is represented by counsel, the petitioner shall provide the respondent's counsel with a copy of the Petition and all attachments thereto at the time it is filed with the Board.
- 3.8 Any party challenging a Utilization Review Determination shall attach a copy of the determination in dispute when filing the petition. If such Utilization Review Determination is not so attached, it shall be produced by the petitioner within 15 days of a request by a party or the Board.

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

1331 Industrial Accident Board Regulations

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION BOARD OF PHARMACY

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 Del.C. §2506(a)(1))
24 DE Admin. Code 2500

PUBLIC NOTICE

2500 Board of Pharmacy

Pursuant to 24 Del.C. §2506(a)(1), the Delaware Board of Pharmacy ("Board") has proposed revisions to its Rules and Regulations. The proposed amendments authorize certified pharmacy technicians to administer adult immunizations but only where the training, administration and documentation requirements set forth in subsection 19.2.3 have been met.

A public hearing will be held on January 19, 2022 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed

PROPOSED REGULATIONS

rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at sarah.siook@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be **February 3, 2022**. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

***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/december2021/proposed/25 DE Reg 621RFA 12-01-21.pdf>

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

2500 Board of Pharmacy

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.C.** §3506(a)(1))
24 DE Admin. Code 3500

PUBLIC NOTICE

3500 Board of Examiners of Psychologists

The Delaware Board of Examiners of Psychologists, pursuant to 24 Del. C. § 3506(a)(1), proposes to add a requirement that all licensees complete three continuing education credits in cultural inclusion, equity, and diversity. Psychologists will still be required to complete 40 CEs per renewal period, and psychological assistants will still be required to complete 20 CEs per renewal period, but of those totals, three must be in cultural inclusion, equity, and diversity.

The original amendments were published on page 1051 of the June 1, 2021 issue of the *Delaware Register of Regulations* (24 **DE Reg.** 1051 (06/01/21)). The Board planned to hold a virtual public hearing on July 26, 2021 at 9:00 a.m., but that meeting was cancelled. As a result, the Board will now hold a virtual hearing on the re-proposed rule change on January 3, 2022. Written comments should be sent to Nikki Pecora, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904. Written comments will be accepted until January 18, 2022.

***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/december2021/proposed/25 DE Reg 622RFA 12-01-21.pdf>

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

3500 Board of Examiners of Psychologists

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.

DELAWARE HEALTH INFORMATION NETWORK

Statutory Authority: 16 Delaware Code, Section 10306 (16 Del.C. §10306)
1 DE Admin. Code 101

ORDER

101 Delaware Health Information Network Regulations

The Delaware Health Information Network ("DHIN") published a notice of proposed regulation changes in the September 2021 Delaware *Register of Regulations* pursuant to 16 Del. C. § 10306 and Senate Bill 88 of the 151st General Assembly (2021), requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 29, 2021 at which time DHIN would receive information, factual evidence and public comment to the proposed changes to the regulations.

Summary of Proposed Changes

The proposed changes to DHIN's regulations update DHIN's regulatory language to clearly define the permissible access to and use of data by DHIN and its Participants, and to align DHIN participation requirements with current and best practices. The statutory authority for the changes is 16 Del. C. § 10306 and Senate Bill 88 of the 151st General Assembly (2021).

The proposed changes to DHIN's regulations were published in the *Register of Regulations*, Volume 25, Issue 3 on September 1, 2021. Comments were to have been received by 4:30 p.m. on October 29, 2021.

Summary of Comments Received and DHIN Response

Two comments were received by DHIN, by the Governor's Advisory Council for Exceptional Citizens and by the State Council for Persons with Disabilities. Both comments endorsed the regulatory changes. DHIN appreciates the thoughtful input given by both organizations and appreciates the support.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide DHIN with comments in writing on the proposed amendments to DHIN's regulations. There were two public comments provided to DHIN in writing during the comment period, both of which were supportive of the proposed regulatory changes.

Pursuant to 16 *Del. C.* § 10306, DHIN has the statutory authority to promulgate rules and regulations.

Having considered the public comments received, DHIN finds no reason to amend the regulations as proposed.

Decision and Effective Date

DHIN hereby adopts the changes to its regulations as proposed, to be effective 10 days following publication of this Order in the *Register of Regulations*. The new regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 12th day of November, 2021.

DELAWARE HEALTH INFORMATION NETWORK

Janice Lee, MD

Chief Executive Officer

*Please note that no changes were made to the regulation as originally proposed and published in the September 2021 issue of the *Register* at page 252 (25 DE Reg. 252). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

101 Delaware Health Information Network Regulations

DELAWARE HEALTH INFORMATION NETWORK

Statutory Authority: 16 Delaware Code, Section 10306 (16 **Del.C.** § 10306)
1 DE Admin. Code 102

ORDER**102 Delaware Health Information Network Regulations on Participation**

The Delaware Health Information Network ("DHIN") published a notice of proposed regulation changes in the September 2021 Delaware *Register of Regulations* pursuant to 16 *Del. C.* § 10306 and Senate Bill 88 of the 151st General Assembly (2021), requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 29, 2021 at which time DHIN would receive information, factual evidence and public comment to the proposed changes to the regulations.

Summary of Proposed Changes

Senate Bill 88 of the 151st General Assembly provides a framework through which approved researchers, health care organizations, and other third parties can access clinical data held by DHIN for approved analytic purposes. DHIN's proposed regulations set up the regulatory framework through which applications for data will be processed, reviewed, and acted upon. The regulations also contain protections for members of the public to ensure that patient identifiable data is not used without the explicit permission of the patient. The statutory authority for the changes is 16 *Del. C.* § 10306 and Senate Bill 88 of the 151st General Assembly (2021).

The proposed changes to DHIN's regulations were published in the *Register of Regulations*, Volume 25, Issue 3 on September 1, 2021. Comments were to have been received by 4:30 p.m. on October 29, 2021.

Summary of Comments Received and DHIN Response

Two comments were received by DHIN, by the Governor's Advisory Council for Exceptional Citizens and by the State Council for Persons with Disabilities. Both comments endorsed the regulatory changes. DHIN appreciates the thoughtful input given by both organizations and appreciates the support.

Both organizations mentioned a distinction between 1 *DE Admin. Code* 104 (governing access to and use of claims data from the Delaware Health Care Claims Database) and this proposed regulation (governing access to and use of clinical data held by DHIN) in their treatment of state agencies that seek data reported by DHIN. The reason for this distinction is found in the enabling legislation governing that access. The legislation that created the Delaware Health Care Claims Database contained specific requirements concerning state agency access to and use of data reported by DHIN. The legislation governing use of clinical data held by DHIN contains no such requirements.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide DHIN with comments in writing on the proposed amendments to DHIN's regulations. There were two public comments provided to DHIN in writing during the comment period, both of which were supportive of the proposed regulatory changes.

Pursuant to 16 *Del. C.* § 10306, DHIN has the statutory authority to promulgate rules and regulations.

Having considered the public comments received, DHIN finds no reason to amend the regulations as proposed.

Decision and Effective Date

DHIN hereby adopts the changes to its regulations as proposed, to be effective 10 days following publication of this Order in the *Register of Regulations*. The new regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 12th day of November, 2021.

DELAWARE HEALTH INFORMATION NETWORK

Janice Lee, MD
Chief Executive Officer

***Please note that no changes were made to the regulation as originally proposed and published in the September 2021 issue of the *Register* at page 257 (25 DE Reg. 257). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[102 Delaware Health Information Network Regulations on Participation](#)

DELAWARE HEALTH INFORMATION NETWORK

Statutory Authority: 16 Delaware Code, Sections 10306 and 10314(d) (16 **Del.C.** §§10306 & 10314(d))
1 DE Admin. Code 104

ORDER

[104 Delaware Health Care Claims Database Data Access Regulation](#)

The Delaware Health Information Network ("DHIN") published a notice of proposed regulation changes in the September 2021 *Delaware Register of Regulations* pursuant to 16 *Del. C.* §§ 10306 and 10314(d), requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 29, 2021, at which time DHIN would receive information, factual evidence and public comment to the proposed changes to the regulations.

Summary of Proposed Changes

The Delaware Healthcare Claims Database (HCCD) was established within DHIN in 2016. The HCCD was intended to support the State's ongoing healthcare innovation efforts by supporting researchers, healthcare organizations, and other third parties engaged in activities designed to improve health, health care quality and experience, and affordability for all Delawareans. DHIN promulgated regulations to support these goals and to set

up the regulatory framework through which reporting entities would provide data to DHIN and DHIN would review and act upon applications to receive data. The amendments to the regulations are intended to codify certain best practices identified during the first few years of HCCD operations, to reflect changes to the HCCD enabling legislation that have occurred since the regulations were first issued, and to provide additional clarity and confirmation regarding DHIN's treatment and handling of applications that, by statute, do not require review by DHIN's HCCD Access Committee. The statutory authority for the changes is 16 *Del. C.* §§ 10306 and 10314(d).

The proposed changes to DHIN's regulations were published in the *Register of Regulations*, Volume 25, Issue 3 on September 1, 2021. Comments were to have been received by 4:30 p.m. on October 29, 2021.

Summary of Comments Received and DHIN Response

Two comments were received by DHIN, by the Governor's Advisory Council for Exceptional Citizens and by the State Council for Persons with Disabilities. Both comments endorsed the regulatory changes. DHIN appreciates the thoughtful input given by both organizations and appreciates the support.

Both organizations mentioned the potential burden on DHIN staff in implementing the changes to the regulations that require DHIN staff to handle requests for data access that do not require Committee review. DHIN appreciates the concern, but notes that the changes implement DHIN's current practices as approved by the HCCD Committee. DHIN continuously monitors burden on staff and will not hesitate to propose additional changes should the burden on staff create such a need.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide DHIN with comments in writing on the proposed amendments to DHIN's regulations. There were two public comments provided to DHIN in writing during the comment period, both of which were supportive of the proposed regulatory changes.

Pursuant to 16 *Del. C.* §§ 10306 and 10314(d), DHIN has the statutory authority to promulgate rules and regulations.

Having considered the public comments received, DHIN finds no reason to amend the regulations as proposed.

Decision and Effective Date

DHIN hereby adopts the changes to its regulations as proposed, to be effective 10 days following publication of this Order in the *Register of Regulations*. The new regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 12th day of November, 2021.

DELAWARE HEALTH INFORMATION NETWORK

Janice Lee, MD

Chief Executive Officer

***Please note that no changes were made to the regulation as originally proposed and published in the September 2021 issue of the *Register* at page 259 (25 DE Reg. 259). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[104 Delaware Health Care Claims Database Data Access Regulation](#)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 122(3)p (16 Del.C. §122(3)p)
16 DE Admin. Code 4405

ORDER

4405 Free Standing Surgical Centers

BEFORE THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

IN THE MATTER OF: |

ADOPTION OF THE STATE OF DELAWARE |

REGULATIONS GOVERNING FREE |

STANDING SURGICAL CENTERS |

Nature of The Proceedings

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt revised Regulations Governing Free Standing Surgical Centers. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122 (3)(p).

On October 1, 2021 (Volume 25, Issue 4), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 Del.C. § 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by November 1, 2021, after which time the DHSS would review information, factual evidence and public comment to the proposed regulations.

No written comments were received during the public comment period.

Summary of Proposal

On December 1, 2021, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Free Standing Surgical Centers.

Background

As more services are being provided in the community setting, it is necessary to ensure outpatient surgical services are provided in accordance with recognized standards of practice.

Statutory Authority

16 Del.C. §122(3)(p)

Purpose

The purpose of the amendment is to update the requirements to be consistent with federal requirements and nationally recognized standards of practice to ensure patients receive safe and quality care from a free standing surgical center. In addition, technical changes were made to update the licensure language.

Lastly, rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, free standing surgical centers staff must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

Fiscal Impact

N/A

Findings of Fact:

The Department finds that the proposed regulation, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulation Governing Free Standing Surgical Centers are adopted and shall become effective December 13, 2021, after publication of the final regulations in the *Delaware Register of Regulations*.

11/15/2021

Date

Molly K. Magarik, Secretary, DHSS

4405 ~~3360~~ 3355] Free Standing Surgical Centers

***Please note that no additional changes were made to the regulation as originally proposed and published in the October 2021 issue of the *Register* at page 383 (25 DE Reg. 383). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

4405 Free Standing Surgical Centers

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

AMBULATORY SURGICAL CENTER SERVICES

Title XIX Medicaid State Plan - Ambulatory Surgical Center Services

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES
IN THE MATTER OF

REVISION OF THE REGULATION
OF DELAWARE'S
TITLE XIX MEDICAID STATE PLAN
SECTION ATTACHMENT 4.19-B PAGE 17

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services, specifically, to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services. The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

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

SUMMARY OF PROPOSAL

Effective for services provided on and after October 1, 2021 DHSS/DMMA proposes to amend Attachment 4.19-B Page 17 of Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services, specifically, to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services.

Background

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

DMMA currently covers medical surgical procedures in an ASC and is expanding coverage by adding a reimbursement methodology for dental services provided in an ASC. Allowing dental procedures to be provided in an ASC will increase access to needed services and allow individuals to receive these services in a setting that is less costly and less restrictive than a hospital setting.

Statutory Authority

42 CFR 416

Purpose

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

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on August 31, 2021.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received in response to the proposed change.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services, specifically, to add a reimbursement methodology for an ambulatory surgical center being used to provide dental services, is adopted and shall be final effective December 11, 2021.

11/15/2021

Date of Signature

Molly K. Magarik, Secretary, DHSS

Attachment 4.19-B

Page 17

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

REIMBURSEMENT FOR FREE STANDING SURGICAL CENTER /
AMBULATORY SURGICAL CENTER SERVICES

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

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

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

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

TN No. SPA#	Approval Date
Supersedes	
TN No. SP# 09-002	Effective Date

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 915, and 29 Delaware Code, Chapter 101 (18 **Del.C.** §§311 & 915; 29 **Del.C.** Ch. 101)
18 **DE Admin. Code** 1003

FINAL REGULATORY IMPLEMENTING ORDER

1003 Credit for Reinsurance

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the September 1, 2021 edition of the *Register of Regulations* at 25 **DE Reg.** 263, the Commissioner of the Delaware Department of Insurance (Commissioner), published a notice of intent to update Regulation 1003 Credit for Reinsurance, which sets forth the requirements for insurance coverage under Delaware's Reinsurance Act, 18

Del. C. §§ 910-916. Both the Reinsurance Act and Insurance Regulation 1003 are codifications of the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law #785 (the Model Law) and NAIC Credit for Reinsurance Model Regulation #786 (the Model Regulation), and both are designated by the NAIC as accreditation standards.

As discussed in detail in the Department's September 1 proposal, the NAIC updated the Model Law and Model Regulation in 2019 in response to the U.S.-EU Covered Agreement and the U.S.-UK Covered Agreement (the Covered Agreements). The Federal Insurance Office (FIO) has confirmed that the 2019 revisions to the Model Law satisfy the requirements of the Covered Agreements. See FIO Preemption Analysis at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/covered-agreements/preemption-analysis>. States are required to promulgate the Model Law and codify the Model Regulation in their entirety to avoid FIO preemption of the States' regulatory jurisdiction. FIO's internal deadline is set at September 1, 2022.

The Department received written comments from one commentor, who was in full support of the Department's proposed amendments. The Department did not hold a public meeting on the proposed amendments.

II. FINDINGS OF FACTS

1. The amendments to Regulation 1003 Credit for Reinsurance fully update the regulation to comport with the 2019 amendments to the NAIC Model Regulation.

2. With this order adopting the proposed amendments, Delaware will codify the Model Regulation in its entirety, well in advance of FIO's September 1, 2022 internal deadline, thereby avoiding FIO preemption of the States' regulatory jurisdiction.

3. The public comments received were in full support of the proposed amendments.

4. The Department met the public notice requirements of the Administrative Procedures Act.

5. With this order, the Department is updating Regulation 1003 to incorporate the amendments to the Model Regulation, based on the authority granted to the Department under HB 44 (83 Del. Laws. c. 104), updating formatting and internal cross-references, and updating the regulation with the effective date of these proposed amendments. The Department met the public notice requirements of the Administrative Procedures Act.

III. DECISION TO ADOPT PROPOSED AMENDMENTS TO REGULATION 1003

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt proposed updates to 18 **DE Admin. Code** 1003 as herein described.

IV. EFFECTIVE DATE OF ORDER

The actions referred to hereinabove were taken by the Commissioner pursuant to 18 **Del.C.** §§ 311 and 915 on the date indicated below. The effective date of this Order and of the regulation shall be ten (10) days after publication in the *Register of Regulations*.

IT IS SO ORDERED,

This 5 day of November, 2021.

Trinidad Navarro

Commissioner, Delaware Department of Insurance

***Please note that no changes were made to the regulation as originally proposed and published in the September 2021 issue of the *Register* at page 263 (25 DE Reg. 263). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1003 Credit for Reinsurance

FINAL REGULATIONS

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS
Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 Del.C. §2706(a)(1))
24 DE Admin. Code 2700

ORDER

2700 Board of Registration for Professional Land Surveyors

On July 1, 2021, the Delaware Board of Professional Land Surveyors published proposed changes to its regulations in the Delaware Register of Regulations, Volume 25, Issue 1. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the Register of Regulations and two Delaware newspapers, a public hearing was held on September 16, 2021 at a regularly scheduled meeting of the Board of Professional Land Surveyors to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony presented at the public hearing on September 16, 2021. No written comments were received by the Board.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the written public comment periods, or at the public hearing.
3. Pursuant to 24 Del. C. § 2706 (a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 Del. C. § 2706 (a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware Register of Regulations on July 1, 2021. The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations, pursuant to 29 Del. C. § 10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 21st day of October, 2021.

DELAWARE BOARD OF PROFESSIONAL LAND SURVEYORS

Charles Adams, Jr., Chair

Kelly Katz, Vice Chair

Deborah Cottrell, Secretary

Robert Wijkowski (Abstained from voting)

Daniel Simmons

*Please note that no changes were made to the regulation as originally proposed and published in the July 2021 issue of the *Register* at page 69 (25 DE Reg. 69). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2700 Board of Registration for Professional Land Surveyors

**DIVISION OF PROFESSIONAL REGULATION
COUNCIL ON REAL ESTATE APPRAISERS**

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

ORDER

2930 Council on Real Estate Appraisers

On August 1, 2021, the Delaware Council on Real Estate Appraisers published proposed changes to its regulations in the Delaware Register of Regulations, Volume 25, Issue 2. The notice indicated that written comments would be accepted by the Council, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the Register of Regulations and two Delaware newspapers, a public hearing was held on September 21, 2021 at a regularly scheduled meeting of the Council on Real Estate Appraisers to receive verbal comments regarding the Council's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony presented at the public hearing. No written comments were received by the Council.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Council with comments on the proposed amendments to the Council's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Council during the written public comment periods.
3. Pursuant to 24 Del. C. §4006(a)(1) the Council has the statutory authority to promulgate rules and regulations to implement or clarify specific statutory sections of its statute.
4. Having reviewed no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 Del.C. § 4006 (a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware Register of Regulations on August 1, 2021. The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations, pursuant to 29 Del. C. § 10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 19th day of October, 2021.

DELAWARE COUNCIL ON REAL ESTATE APPRAISERS

Earl Timmons	/s/ Patricia Ennis
Christopher Schneider	/s/ James Barczewski
Kevin Gillis	/s/ Marilyn Berman

FINAL REGULATIONS

*Please note that no changes were made to the regulation as originally proposed and published in the August 2021 issue of the *Register* at page 163 (25 DE Reg. 163). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2930 Council on Real Estate Appraisers

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

REGISTER NOTICE

SAN # NA

Delaware's Proposed Visibility State Implementation Plan (SIP) Revision

1. TITLE OF THE REGULATIONS:

Delaware's Proposed Visibility State Implementation Plan (SIP) Revision.

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

The federal Clean Air Act mandates protection of visibility in Class I federal areas, such as national parks, forests and wilderness areas. Under the 1999 Regional Haze Rule, states are required to develop a series of State Implementation Plans (SIPs) to reduce visibility impairment; with the express intent that, by 2064 the visibility in the Class I areas will be returned to natural conditions. States are required to develop a series of SIPs to address visibility impairment in Class I areas and make reasonable progress toward achieving natural visibility conditions. This proposed SIP covers the 2nd implementation period of 2018 - 2028.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Ch. 60, Section 6010 (a) and (c).

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

None.

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket # 2021-R-A-0019) will be held on Wednesday, December 29, 2021 beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use: RegHazeSIP. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 2349 508 0655. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The proposed SIP may be inspected online starting December 1, 2021 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Renae Held by phone at 302-739-9402 or by email at Renae.Held@delaware.gov.

The Department will accept public comment through the close of business on Thursday, January 13, 2022. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

Lisa Vest, Hearing Officer
DNREC – Office of the Secretary
89 Kings Highway, Dover, DE 19901

PREPARED BY:

Renaë Held

Division of Air Quality-DNREC

100 W. Water Street, Suite 6A, Dover, DE 19904

Phone: (302)739-9402; email: Renaë.Held@delaware.gov

***Please Note: Due to the size and formatting requirements of the notice documents, they are being attached here as a series of PDF documents:**

<http://regulations.delaware.gov/register/december2021/general/DE DRAFT 2018 Regional Haze SIP 11-15-21.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 1-1 Selection of States for MANE-VU RH Consultation.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 3-1 Final Interim Principles for Regional Planning.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 4-1 Federal Land Manager Comments and Delaware Response.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 7-1 MARAMA Inventory TSD 2011 Gamma Emissions Inventory.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 7-2 OTC MANE-VU 2011 Based Modeling Platform Support Document.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-1 Nature of Fine Particle and RH Air Quality Problems.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-2 Contributions to RH in the NE and Mid-Atlantic.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-3 MANE-VU Updated QC over d Contribution Assessment - Final.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-4 2016 Updates to the Assessment of Reasonable Progress.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-5 2016 MANE-VU CALPUFF Modeling Report.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-6 RH Metrics Trends and HYSPLIT Trajectory Analyses.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-7 McKee Run Permit Cancellation Letter.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-7 Recommendation on Approaches to Selecting 20 Percent.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-8 Analysis of Speciation Trends Network Data for Delaware.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-8 Recommendation on Approaches to Selecting 20 Percent Most Impaired Days.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-9 Analysis of Speciation Trends Network Data for Delaware.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-9 Inter-RPO StateTribal and FLM Consultation Framework.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-10 Inter-RPO StateTribal and FLM Consultation Framework.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-10 MANE-VU RH Consultation Plan.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-11 MANE-VU Regional Haze Consultation Report.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-11 MANE-VU RH Consultation Plan.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-12 MANE-VU Regional Haze Consultation Report.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-12 National Park Service Letters.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 8-13 National Park Service Letters.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 9-1 MANE-VU Intra-Regional Ask.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 9-2 Inter-RPO Consultation Briefing Book.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 9-3 Intra-Regional Ask.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 9-4 MANE-VU FLM Ask.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 10-1 Facility Responses to Ask Information Requests.pdf>

<http://regulations.delaware.gov/register/december2021/general/Appendix 10-2 Calpine Title V Operating Permits.pdf>

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission held its quarterly public hearing on Wednesday, November 10, 2021. The hearing was held remotely. Please check the Commission's website, www.drbc.gov, for details regarding the draft docket decisions that were the subjects of the public hearing.

The Commission's quarterly business meeting will be held remotely on Wednesday, December 08, 2021, beginning at 10:30 a.m. Please check the Commission's website, www.drbc.gov, for details about the meeting format and how to attend.

For additional information, please visit the DRBC website at www.drbc.gov or contact Patricia Hausler at patricia.hausler@drbc.gov.

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE**Importations of Water Into and Exportations of Water From the Delaware River Basin; Discharges of Wastewater from High Volume Hydraulic Fracturing and Related Activities**

SUMMARY: The Commission proposes to amend its Comprehensive Plan and Water Code concerning importations of water into and exportations of water from the Delaware River Basin; to amend its *Special Regulations - High Volume Hydraulic Fracturing* to prohibit the discharge of wastewater from high volume hydraulic fracturing and related activities to waters or land within the Delaware River Basin; and to incorporate key elements of the latter proposed amendments into the Commission's *Water Quality Regulations*.

DATES: *Written comments:* Written comments will be accepted through 5 p.m. on February 28, 2022.

Public hearings: Public hearings will be held remotely via Zoom on the following dates at the noted times. Details about accessing the hearings are available on the Commission's website, www.drbc.gov.

1. December 8, 2021, 2:30 p.m. to no later than 4:30 p.m.
2. December 8, 2021, 6:30 p.m. to no later than 8:30 p.m.
3. December 15, 2021, 1 p.m. to no later than 3 p.m.
4. December 15, 2021, 4 p.m. to no later than 6 p.m.

On October 28, 2021, a notice including these public hearing dates, times and locations was posted on the Commission's website and circulated directly to Commission notice subscribers interested in this subject matter. Members of the public may sign up through the Commission's website to receive direct notice via email of additions or changes to the information provided above.

ADDRESSES: *To submit written comments:* Written comments will be accepted until 5 p.m. on February 28, 2022 through the Commission's online public comment collection system at: <https://dockets.drbc.commentinput.com/?id=x2K8A>. To request an exception from use of the online system based on lack of access to the Internet, please contact: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

To register to speak at public hearings: Although attendance at the hearings is not limited and requires no registration, those who wish to provide oral comment at a hearing must register in advance to do so. Registration will be through EventBrite. Links to EventBrite for each of the public hearing dates and times are posted at www.drbc.gov. Online registration will remain open until 5 p.m. on the day prior to the hearing date or until all available speaking slots have been filled, whichever is earlier. Each person who wishes to provide oral comment may do so at only one public hearing. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added.

FOR FURTHER INFORMATION CONTACT: For information regarding the public hearings and submission of written comments, contact Kate Schmidt, Communications Specialist, at kate.schmidt@drbc.gov (preferred) or 609-883-9500, ext. 205. For information concerning the proposed amendments, contact Pamela Bush, Commission Secretary and Assistant General Counsel, at pam.bush@drbc.gov (preferred) or 609-477-7203.

Public Process

Substance of comments: The Commission expressly seeks comment on the effects the proposed rules may have within the Basin on: water availability, the control and abatement of water pollution, economic development, the conservation and protection of drinking water supplies, the conservation and protection of aquatic life, the conservation and protection of water quality in Special Protection Waters, and the protection, maintenance and improvement of water quantity and quality Basinwide. The Commission welcomes and will consider any other comments that concern the potential effects of the draft rules on the conservation, utilization, development, management and control of the water and related resources of the Basin. Comments on matters not within the scope of the proposed rules may not be considered.

Non-digitized, voluminous materials such as books, journals or collected letters and petitions will not be accepted. Digital submissions of articles and websites must be accompanied by a statement containing citations to the specific findings or conclusions the commenter wishes to reference.

Submission of written comments. Written comments along with any attachments should be submitted through the Commission's web-based comment system (<https://dockets.drbc.commentinput.com/?id=x2K8A>) until 5 p.m. on February 28, 2022. All materials should be provided in searchable formats, preferably in .pdf searchable text. Notably, a picture scan of a document may not result in searchable text. Comments received through any method other than the designated on-line method, including *via* email, fax, postal/delivery services or hand delivery, will not be considered or included in the rulemaking record unless an express exception has been granted. Requests for exceptions from the web-based-submissions-only policy based on lack of access to the web-based comment system may be addressed to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

Public hearings. To provide for an orderly process and to support public and community health measures, the Commission is conducting its public hearings virtually. Attendance at the hearings is not limited and requires no registration. However, to eliminate uncertainty on the part of attendees about whether they will have an opportunity to provide oral comment, those who wish to speak at a hearing must register in advance to do so, using links on the Commission's website. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added. Key elements of the procedure are as follows:

- Online registration to speak at a public hearing will remain open until 5 p.m. the day prior to each hearing.
- Each person who wishes to provide oral comment may do so at only one public hearing.
- Speaking time will be limited to approximately three minutes per speaker.
- Elected government officials and their staff will have the opportunity to identify themselves when registering to attend a hearing.
- Attendance at the public hearings is not limited and requires no advance registration.
- Written and oral comment will receive equal consideration.

The Commission appreciates the public's participation and input on this important matter.

More Information. Detailed and up-to-date information about the public process, including all proposed rule text, related documents and links for online registration to speak at each of the scheduled public hearings, can be found on the DRBC website, www.drbc.gov.

DELAWARE STATE FIRE PREVENTION COMMISSION**PUBLIC NOTICE****710 Ambulance Service Regulations**

The Delaware State Fire Prevention Commission, pursuant to 16 *Del. C.* § 6604(1), proposes to revise regulation 710, subsection 7.2.1.3., by requiring that newly purchased ambulances, as well as newly purchased, fabricated, or remounted ambulance compartments conform to the criteria set forth in National Fire Prevention Association 1917 Standard for Automotive Ambulances (2019). The proposed revision also clarifies that all components, not just the ambulance compartment, must conform to this criteria. Finally, the proposed revision eliminates the deadline in the existing regulation since that date has passed.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Specialist for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments may also be sent by email to the following email address:

fire.commission@delaware.gov. Comments will be accepted through Monday, January 3, 2022.
The proposed additions to the rule are reflected in underline. Deletions are reflected in strike through.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education meets monthly. These meetings are open to the public. The Board rotates locations of regular meetings among the three counties.

Meeting information can be accessed via the public meeting calendar.

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

The next meeting is scheduled for December 16, 2021.

Information regarding special meetings or Committee meetings of the State Board will be posted on the public meeting calendar.

Minutes from recent State Board of Education meetings can be found on the public meeting calendar.

Audio recordings are available after every Board meeting (<https://www.doe.k12.de.us/domain/225>).

Public meeting calendar: <https://publicmeetings.delaware.gov/#/search?anyall=any&agencyid=22&startdateinclusive=2019-01-01>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF HEALTH CARE QUALITY

PUBLIC NOTICE

- 3201 Skilled and Intermediate Care Nursing Facilities**
- 3210 Nursing Homes Admitting Pediatric Residents**
- 3225 Assisted Living Facilities**
- 3301 Group Home Facilities for Persons with AIDS**
- 3305 Group Homes for Persons with Mental Illness**
- 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities**
- 3315 Family Care Homes**
- 3320 Intensive Behavioral Support and Educational Residence**
- 3330 Regulations Governing Dialysis Centers**
- 3335 Office-Based Surgery**
- 3340 Free Standing Emergency Departments**
- 3345 Personal Assistance Services Agencies**
- 3350 Skilled Home Health Agencies (Licensure)**
- 3351 Home Health Agencies--Aide Only (Licensure)**
- 4402 Regulations for Adult Day Care Facilities**
- 4403 Free Standing Birthing Centers**
- 4407 Hospital Standards (Construction, Maintenance, and Operation)**
- 4409 Prescribed Pediatric Extended Care Centers (PPECC)**
- 4468 Delivery of Hospice Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations as noted below.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on January 3, 2022.

Please identify the relevant regulation in the subject line:

- Regulations Governing Skilled and intermediate Care Nursing Facilities.

- Regulations Governing Nursing Homes Admitting Pediatric Residents.
- Regulations Governing Assisted Living Facilities.
- Regulations Governing Group Home Facilities for Persons with AIDS.
- Regulations Governing Group Homes for Persons with Mental Illness.
- Regulations Governing Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities.
- Regulations Governing Family Care Homes.
- Regulations Governing Intensive Behavioral Support and Educational Residence.
- Regulations Governing Dialysis Centers.
- Regulations Governing Office-Based Surgery.
- Regulations Governing Free Standing Emergency Departments.Regulations Governing Personal Assistance Services Agencies.
- Regulations Governing Skilled Home Health Agencies (Licensure).
- Regulations Governing Home Health Agencies--Aide Only (Licensure).
- Regulations Governing Adult Day Care Facilities.
- Regulations Governing Free Standing Birthing Centers.
- Regulations Governing Hospital Standards (Construction, Maintenance, and Operation).
- Regulations Governing Prescribed Pediatric Extended Care Centers (PPECC).
- Regulations Governing Delivery of Hospice Services.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Guardianship Fees - Post-Eligibility Protection of Income

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

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 and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2021. Please identify in the subject line: Guardianship Fees - Post-Eligibility Protection of Income.

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

DIVISION OF 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) and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend Title XIX Medicaid State Plan regarding chiropractors' services, specifically, to allow coverage guidelines for treatment more consistent with the licensure scope of practice for chiropractors.

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 and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2021. 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.

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE

4202 Control of Communicable and Other Disease Conditions

Pursuant to 16 **Del. C.** §122(3)(a) and §504, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On December 1, 2021, the Division of Public Health plans to publish as "proposed" revisions to the Control of Communicable and Other Disease Conditions regulations. These revisions include previously proposed requirements for school staff to provide evidence of COVID-19 vaccination or undergo regular COVID-19 testing, as well as a severability clause. The proposed regulation published in the November 2021 *Register of Regulations* (25 DE Reg. 471 (11/01/21)) is no longer being considered in favor of the amendments presented here.

Copies of the proposed regulations are available for review in the December 1, 2021 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Monday, January 3, 2022, at:

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

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
INDUSTRIAL ACCIDENT BOARD
PUBLIC NOTICE

1331 Industrial Accident Board Regulations

The Industrial Accident Board ("IAB") hereby gives notice of its intention to adopt amended regulations pursuant to 19 **Del.C.** §2301A(i). This proposal changes two sections of the IAB Rules, which have not been updated since 2011.

A virtual public meeting will be held on Wednesday December 22, 2021 at 3:00 p.m for members of the public to offer comments. The virtual hearing will occur over the Zoom platform. Members of the public can use the following credentials to log in: Meeting ID: 810 9757 9769, Passcode: 458064, or with the following link: <https://us06web.zoom.us/j/81097579769?pwd=ejBleWU0aTA5OWptMEIBQU5YS2tLUT09.A> A copy of the proposed regulation can be provided at no charge, by United States Mail, by writing or calling Allison Stein (Department of Labor, Administrator of the Office of Workers' Compensation, Delaware Department of Labor, 4425 North Market Street, Wilmington Delaware 19802, telephone number 302-761-8215). In addition to the public meeting, the IAB will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. Members of the public may present written comments on the proposed regulation by submitting such written comments to Allison Stein at the address of the Delaware Department of Labor as set forth above or comments can be sent via email to DOL_DIA_WorkComp@delaware.gov. Written comments must be received on or before January 6, 2022.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
BOARD OF PHARMACY
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy (“Board”) has proposed revisions to its Rules and Regulations. The proposed amendments authorize certified pharmacy technicians to administer adult immunizations but only where the training, administration and documentation requirements set forth in subsection 19.2.3 have been met.

A public hearing will be held on January 19, 2022 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at sarah.siok@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be **February 3, 2022**. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF PSYCHOLOGISTS
PUBLIC NOTICE

The Delaware Board of Examiners of Psychologists, pursuant to 24 Del. C. § 3506(a)(1), proposes to add a requirement that all licensees complete three continuing education credits in cultural inclusion, equity, and diversity. Psychologists will still be required to complete 40 CEs per renewal period, and psychological assistants will still be required to complete 20 CEs per renewal period, but of those totals, three must be in cultural inclusion, equity, and diversity.

The original amendments were published on page 1051 of the June 1, 2021 issue of the *Delaware Register of Regulations* (24 **DE Reg.** 1051 (06/01/21)). The Board planned to hold a virtual public hearing on July 26, 2021 at 9:00 a.m., but that meeting was cancelled. As a result, the Board will now hold a virtual hearing on the re-proposed rule change on January 3, 2022. Written comments should be sent to Nikki Pecora, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904. Written comments will be accepted until January 18, 2022.
