
Delaware Register of Regulations

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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, 2022.

Cover Photo
Dover, Delaware

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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

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

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

419

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 16	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 15	4:30 p.m.

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Cumulative Tables..... 422

PROPOSED

DEPARTMENT OF EDUCATION

Office of the Secretary

245 Michael C. Ferguson Achievement Awards..... 426
292 Post Secondary Institutions and Degree Granting Institutions of Higher Education..... 429
506 Policies for Dual Enrollment and Awarding Dual Credit..... 430
601 Schools and Law Enforcement Agencies..... 434
922 Children with Disabilities Subpart A, Purposes and Definitions..... 437
923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies..... 439
924 Children with Disabilities Subpart C Local Educational Agency Eligibility..... 441
926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children. 442
1201 Christa McAuliffe Award Program..... 444
1202 Delaware Teacher Corps Program..... 446
1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program... 449
1207 Delaware Nursing Incentive Program..... 452

Professional Standards Board

1505 Standard Certificate..... 455
1512 Issuance and Renewal of Advanced License..... 459

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Guardianship Fees - Post-Eligibility Protection of Income: DSSM 20620.1..... 465
Title XXI Children’s Health Insurance Program (CHIP) State Plan -
Early, Periodic, Screening, Diagnosis, & Treatment (EPSDT) Coverage..... 467
Title XIX Medicaid State Plan - Temporary Extension to
COVID-19 Disaster Relief Co-pay & Premium Provisions..... 469

FINAL

DEPARTMENT OF EDUCATION

Office of the Secretary

610 Limitations on Use of Seclusion and Restraint..... 472
712 Employee Leave..... 478

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan - Qualifying Clinical Trials..... 480
Title XIX Medicaid State Plan - State Plan Telemedicine Services..... 482
Title XIX Medicaid State Plan - Transportation Services..... 484

DEPARTMENT OF LABOR

Division of Unemployment Insurance

1201 Unemployment Insurance Appeal Board Regulations..... 487

DEPARTMENT OF STATE

Division of Professional Regulation

1400 Board of Electrical Examiners..... 491

TABLE OF CONTENTS

421

DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (Formerly Reg. No. 17).....	492
--	-----

GENERAL NOTICES

DEPARTMENT OF FINANCE

Office of the Secretary

GENERAL NOTICE REGARDING IMPLEMENTATION OF THE PERSONAL INCOME TAX RELEASE OF THE INTEGRATED REVENUE ADMINISTRATION SYSTEM AND CONTRIBUTIONS TO DELAWARE COLLEGE INVESTMENT PLAN ACCOUNTS.....	494
GENERAL NOTICE REGARDING IMPLEMENTATION OF THE PERSONAL INCOME TAX RELEASE OF THE INTEGRATED REVENUE ADMINISTRATION SYSTEM AND ORGAN AND BONE MARROW TRANSPLANTATION PERSONAL TAX CREDIT.....	494

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Watershed Stewardship

5101 Sediment and Stormwater Regulations.....	495
---	-----

CALENDAR OF EVENTS/HEARING NOTICES

Delaware River Basin Commission, Notice of Quarterly Business Meeting.....	497
Department of Education; Notice of Monthly Public Meeting.....	497
Department of Health and Social Services, Division of Medicaid and Medical Assistance Notices of Public Comment Periods.....	497-498

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.....	26 DE Reg. 6 (Prop.) 26 DE Reg. 388(Final)
--	---

DEPARTMENT OF AGRICULTURE**Delaware Standardbred Breeders' Fund Program**

502 Delaware Standardbred Breeders's Fund Regulations.....	26 DE Reg. 81 (Prop.)
--	------------------------------

Harness Racing Commission

501 Harness Racing Rules and Regulations.....	26 DE Reg. 79 (Emer.) 26 DE Reg. 355(Prop.)
---	--

Nutrient Management Commission

1201 Nutrient Management Certification Regulations.....	26 DE Reg. 353(Emer.)
---	------------------------------

Office of the Secretary

102 Secretarial Powers.....	26 DE Reg. 351(Emer.) 26 DE Reg. 356 (Prop.)
-----------------------------	---

Plant Industries Section

806 Regulations for Invasive Plants.....	26 DE Reg. 7 (Prop.) 26 DE Reg. 171(Final)
--	---

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations.....	26 DE Reg. 45 (Final) 26 DE Reg. 46 (Final) 26 DE Reg. 150(Prop.)
---	--

DEPARTMENT OF EDUCATION**Office of the Secretary**

237 Educational Support Professional of the Year.....	26 DE Reg. 151(Prop.) 26 DE Reg. 389(Final)
255 Definitions of Types of Schools.....	26 DE Reg. 47 (Final)
286 Application Fee For Educator Licensure.....	26 DE Reg. 10 (Prop.) 26 DE Reg. 310(Final)
401 Major Capital Improvement Program.....	26 DE Reg. 13 (Prop.) 26 DE Reg. 175 (Final)
405 Minor Capital Improvement Program.....	26 DE Reg. 17 (Prop.) 26 DE Reg. 179 (Final)
601 Schools and Law Enforcement Agencies.....	26 DE Reg. 248(Prop.)
610 Limitations on Use of Seclusion and Restraint.....	26 DE Reg. 251(Prop.)
701 Unit Count.....	26 DE Reg. 82 (Prop.) 26 DE Reg. 313(Final)
702 Education Opportunity Fund.....	26 DE Reg. 87 (Prop.) 26 DE Reg. 317(Final)
712 Employee Leave.....	26 DE Reg. 252(Prop.)
736 Local School District and Charter School Citizen Budget Oversight Committees.....	26 DE Reg. 49 (Final)
885 Safe Management and Disposal of Chemicals in the Delaware Public School System.....	26 DE Reg. 51 (Final)
903 Best Interest Determination Process for School Placement - Students in Foster Care.....	26 DE Reg. 98 (Final)

915 James H. Groves High School.....	26 DE Reg. 102 (Final)
934 Regulations for Family and Large Family Child Care Homes.....	26 DE Reg. 358(Prop.)
1006 Delaware Interscholastic Athletic Association (DIAA).....	26 DE Reg. 103 (Final)
1008 DIAA Junior High and Middle School Interscholastic Athletics.....	26 DE Reg. 182(Final)
1009 DIAA High School Interscholastic Athletics.....	26 DE Reg. 183(Final)
1020 DIAA Board Procedures.....	26 DE Reg. 185 (Final)
1021 DIAA Committees.....	26 DE Reg. 186 (Final)
1024 DIAA Member Schools.....	26 DE Reg. 195 (Final)
1034 DIAA Health and Safety Requirements.....	26 DE Reg. 199 (Final)
1035 In-Season Athletic Activities and Contact.....	26 DE Reg. 200 (Final)
1040 Out-of-Season and Summer Athletic Activities and Contact.....	26 DE Reg. 202(Final)
1042 Coaches.....	26 DE Reg. 203(Final)
1043 Officials.....	26 DE Reg. 206(Final)
Professional Standards Board	
1519 Multiple Measures for Demonstrating Current Knowledge.....	26 DE Reg. 254(Prop.)
1520 Early Childhood Teacher.....	26 DE Reg. 255(Prop.)
1521 Elementary Teacher.....	26 DE Reg. 257(Prop.)
1522 Elementary School Counselor.....	26 DE Reg. 361(Prop.)
1531 Middle Level English Language Arts Teacher.....	26 DE Reg. 258(Prop.)
1532 Middle Level Mathematics Teacher.....	26 DE Reg. 52 (Final)
1533 Middle Level Science Teacher.....	26 DE Reg. 260(Prop.)
1534 Middle Level Social Studies Teacher.....	26 DE Reg. 264(Prop.)
1539 Health Education Teacher.....	26 DE Reg. 265(Prop.)
1540 Secondary English Language Arts Teacher.....	26 DE Reg. 267(Prop.)
1542 Secondary Mathematics Teacher.....	26 DE Reg. 268(Prop.)
1543 Secondary Science Teacher.....	26 DE Reg. 270(Prop.)
1544 Secondary Social Studies Teacher.....	26 DE Reg. 20 (Prop.)
1545 Secondary School Counselor.....	26 DE Reg. 272(Prop.)
1550 Agriscience Teacher.....	26 DE Reg. 274(Prop.)
1551 Business Education Teacher.....	26 DE Reg. 363(Prop.)
1553 Driver Education and Traffic Safety Education Teacher.....	26 DE Reg. 275(Prop.)
1554 Family and Consumer Sciences Teacher.....	26 DE Reg. 277(Prop.)
1557 Technology Education Teacher.....	26 DE Reg. 105 (Final)
1557 Technology and Engineering Teacher.....	26 DE Reg. 25 (Prop.)
1558 Theatre Teacher.....	26 DE Reg. 279(Prop.)
1560 Visual Arts Teacher.....	26 DE Reg. 54 (Final)
1562 Teacher of English Learners.....	26 DE Reg. 281(Prop.)
1563 Music Teacher.....	26 DE Reg. 283(Prop.)
1564 Physical Education Teacher.....	26 DE Reg. 285(Prop.)
1565 World Language Teacher.....	26 DE Reg. 286(Prop.)
1575 Teacher of Students with Visual Impairments.....	26 DE Reg. 288(Prop.)
1581 School Reading Specialist.....	26 DE Reg. 289(Prop.)
1583 School Psychologist.....	26 DE Reg. 56 (Final)
	26 DE Reg. 292(Prop.)
	26 DE Reg. 364(Prop.)
	26 DE Reg. 320(Final)
	26 DE Reg. 370(Prop.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Developmental Disabilities Services

2100 Eligibility Criteria.....	26 DE Reg. 89(Prop.)
	26 DE Reg. 391(Final)

Division of Health Care Quality

3220 Training and Qualifications for Certified Nursing Assistants.....	26 DE Reg. 107 (Final)
--	-------------------------------

3355 Free Standing Surgical Centers.....	26 DE Reg. 31 (Prop.)
	26 DE Reg. 211(Final)

Division of Medicaid and Medical Assistance

Incarcerated Individuals Medicaid Program: DSSM 14120 and new 60000.....	26 DE Reg. 212(Final)
Reasonable Income Compatability Threshold: DSSM 14800.....	26 DE Reg.374(Prop.)
Third Party Liability.....	26 DE Reg. 218(Final)
Title XIX Medicaid State Plan - Ambulatory Surgical Center Services Rate.....	26 DE Reg.153(Prop.)
	26 DE Reg.396 (Final)
Title XIX Medicaid State Plan - Guardianship Fees - Post-Eligibility Protection of Income.....	26 DE Reg.108(Final)
Title XIX Medicaid State Plan - Medicaid Recovery Audit Contractors Program	26 DE Reg.155(Prop.)
	26 DE Reg.394(Final)
Title XIX Medicaid State Plan - Postpartum Continuous Eligibility.....	26 DE Reg. 92 (Prop.)
	26 DE Reg.323 (Final)
Title XIX Medicaid State Plan - Qualifying Clinical Trials.....	26 DE Reg.298(Prop.)
Title XIX Medicaid State Plan - State Plan Telemedicine Services.....	26 DE Reg.294(Prop.)
Title XIX Medicaid State Plan - Targeted Case Management Services.....	26 DE Reg. 32 (Prop.)
Title XIX Medicaid State Plan - Transportation Services.....	26 DE Reg.296(Prop.)
	26 DE Reg. 216(Final)

Division of Public Health

4455 Delaware Regulations Governing a Detailed Plumbing Code.....	26 DE Reg.110 (Final)
4459 Lead Based Paints Hazards.....	26 DE Reg.157(Prop.)
4459A Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months.....	26 DE Reg. 34 (Prop.)
4459B Residential Property Renovation, Repair and Painting.....	26 DE Reg.158(Prop.)
4462 Public Drinking Water System.....	26 DE Reg. 95 (Prop.)

Division of Social Services

Food Benefit Certification: DSSM 9000 Food Stamp Program.....	26 DE Reg.159(Prop.)
---	----------------------

DEPARTMENT OF INSURANCE

Office of the Commissioner

603 Delaware Motorists Protection Act.....	26 DE Reg. 398(Final)
902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26].....	26 DE Reg. 112 (Final)
1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance.....	26 DE Reg. 116 (Final)
1404 Long-Term Care Insurance.....	26 DE Reg. 300(Prop.)
1411 Registration of Pharmacy Benefits Managers.....	26 DE Reg. 303(Prop.)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1102 Permits.....	26 DE Reg. 118 (Final)
1103 Ambient Air Quality Standards.....	26 DE Reg. 120 (Final)
1126 Motor Vehicle Emissions Inspection Program.....	26 DE Reg.162 (Prop.)
1130 Title V State Operating Permit Program.....	26 DE Reg. 123 (Final)
1131 Low Enhanced Inspection and Maintenance Program.....	26 DE Reg.163(Prop.)
1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI).....	26 DE Reg.164(Prop.)

Division of Fish and Wildlife

3300 Non-Tidal Finfish: 3301 and 3304.....	26 DE Reg.377(Prop.)
3541 Atlantic Sharks.....	26 DE Reg.220 (Final)
3591 American Shad and Hickory Shad Creel Limits.....	26 DE Reg.325 (Final)
3592 Atlantic Ocean American Shad Season and Closure.....	26 DE Reg.325(Final)
3593 Minimum Thread, Twine, or Monofilament Diameter for Anchored Gill Nets	26 DE Reg.325 (Final)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Delaware Council on Police Training

801 Regulations of the Delaware Council on Police Training.....	26 DE Reg. 222(Final)
	26 DE Reg. 223(Final)

Office of Highway Safety

1203 Ignition Interlock Device Installation, Removal and Monthly Monitoring and Calibration Fees.....	26 DE Reg. 40 (Prop.)
	26 DE Reg. 402(Final)
1205 Electronic Red Light Safety Program (ERLSP).....	26 DE Reg. 63 (Final)

Office of the Alcoholic Beverage Control Commissioner

Rule 705 - Expansion of Outdoor Seating: Procedures, Standards and Fees..	26 DE Reg. 57 (Final)
Rule 910 (Formerly Rule Number 33) A Rule Defining And Regulating The Quantities Of Sales And Methods Of Deliveries Of Certain Off-premises Sales By Licensees.....	26 DE Reg. 59 (Final)
Rule 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached the Age of 18 Years in Package Stores.....	26 DE Reg. 62 (Final)

Office of the Secretary

103 Regulations Governing the Delaware Large Capacity Magazine Compensation Program.....	26 DE Reg. 165(Prop.)
	26 DE Reg. 400(Final)

State Police

Nonconsensual Towing.....	26 DE Reg. 42 (Prop.)
	26 DE Reg. 304(Prop.)

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH & THEIR FAMILIES

Division of Prevention and Behavioral Health Services

701 Qualifications for Juvenile Mental Health Screeners.....	26 DE Reg. 305(Prop.)
--	------------------------------

DEPARTMENT OF STATE

Division of Professional Regulation

1400 Board of Electrical Examiners.....	26 DE Reg. 43 (Prop.)
1700 Board of Medical Licensure and Discipline.....	26 DE Reg. 382(Prop.)
	26 DE Reg. 404(Final)
1900 Board of Nursing.....	26 DE Reg. 96 (Prop.)
	26 DE Reg. 325 (Final)
	26 DE Reg. 407 (Final)
2500 Board of Pharmacy.....	26 DE Reg. 64 (Final)
	26 DE Reg. 306(Prop.)
4100 Board of Home Inspectors.....	26 DE Reg. 329 (Final)
	26 DE Reg. 383(Prop.)
5300 Board of Massage and Bodywork.....	26 DE Reg. 330 (Final)

Public Service Commission

1001 Rules of Practice and Procedures of the Delaware Public Service Commission.....	26 DE Reg. 307(Prop.)
3001 Rules for Certification and Regulation of Electric Suppliers, Net Metering, and Community Energy Facilities.....	26 DE Reg. 384(Prop.)

DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (Formerly Reg. No. 17).....	26 DE Reg. 167 (Prop.)
---	-------------------------------

Division of Transportation Solutions

2401 Utilities Manual Regulations.....	26 DE Reg. 387(Prop.)
2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	26 DE Reg. 170 (Prop.)
	26 DE Reg. 408(Final)

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 153(c), 181(15), 183, and 3402(c) (14 **Del.C.** §§153(c), 181(15), 183, & 3402(c))
14 **DE Admin. Code** 245

PUBLIC NOTICE**245 Michael C. Ferguson Achievement Awards****A. TYPE OF REGULATORY ACTION REQUIRED**

Repeal of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §§153(c), 181(15), 183, and 3402(c), the Delaware Department of Education ("Department"), through the Delaware Higher Education Office, proposes to repeal 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards. House Bill 480 of the 151st General Assembly repealed the Michael C. Ferguson Achievement Awards because they were no longer funded. The bill was signed into law on August 25, 2022.

In accordance with 14 **Del.C.** §122(d), the Department is required to perform and issue a written educational impact analysis of any new proposed regulation and of any regulation that is proposed to be continued. Because this regulation is proposed to be repealed, the Department is not required to perform and issue a written educational impact analysis.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before January 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

*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/december2022/proposed/26 DE Reg 426RFA 12-01-22.pdf>

245 Michael C. Ferguson Achievement Awards

1.0 Purpose

The Michael C. Ferguson Achievement Awards recognizes students who demonstrate superior performance on state assessments pursuant to 14 ~~Del.C.~~ §153 (c).

2.0 Definitions

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

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

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

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

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

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

3.0 Basis for Granting Awards

~~3.1 Subject to available funding, the Michael C. Ferguson Achievement Awards shall be made based on the student’s score on the annual state summative assessments in English language arts and mathematics. The student’s score that is used to determine proficiency in the state accountability system shall be used to determine this award. The awards may be awarded to a maximum of 300 eighth grade students in the content areas of reading and mathematics and to a maximum of 300 eleventh grade students in the content areas of reading and mathematics. The high school award year is subject to change based on the year the state high school summative assessment is offered to students.~~

~~3.2 The awards shall be provided to the highest scoring eighth and eleventh grade students in the state in reading and mathematics as well as the highest scoring eighth and eleventh grades students in the state in reading and mathematics who participate in the free and reduced lunch program pursuant to the provisions below:~~

~~3.2.1 The highest scoring eighth and eleventh grade students in the state in reading and in mathematics shall receive the awards.~~

~~3.2.1.1 The eighth grade awards may be given to a maximum of 150 students in the combined areas of reading and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be awarded in the priority order of highest reading score then highest mathematics score.~~

~~3.2.1.2 The eleventh grade awards may be given to a maximum of 150 students in the combined areas of reading and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be allocated in the priority order of highest reading score then highest mathematics score.~~

~~3.2.2 The highest scoring eighth and eleventh grade students in the state in reading and in mathematics, who participate in the free and reduced lunch program and who are not already identified as one of the students in subsection 3.2 shall receive the awards.~~

- 3.2.2.1 The eighth grade awards may be given to a maximum of 150 students in the combined areas of reading and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be allocated in the priority order of highest reading score then highest mathematics score.
- 3.2.2.2 The eleventh grade awards may be given to a maximum of 150 students in the combined areas of reading, writing and mathematics. The number of awards shall be as close to fifty percent (50%) in each area as possible. The unassigned awards shall be allocated in the priority order of highest reading score then highest mathematics score.
- 3.3 A Foreign Exchange student who is on a temporary visa is not eligible to receive the Michael C. Ferguson Achievement Award.

4.0 Eligibility for More Than One Award

Students who receive an award in eighth grade will also be eligible for the award in eleventh grade.

5.0 Use of Award Funds

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

6.0 Higher Education (Commission) Office Account and Notification Procedures

- 6.1 All awards shall be deposited in an account at the Delaware Higher Education Office in an interest bearing account. Interest earned or forfeited scholarships shall be utilized by the Department of Education and DHEO to offset administrative expenses associated with the program.
- 6.2 Funds deposited for awards through the Michael C. Ferguson Achievement Awards shall cease to be available to the recipient if the recipient does not attend an Institution of Higher Education within five calendar years after graduating from high school. Provided further that a recipient may have one additional year of availability of the funds for each year the recipient serves as an active duty member of the military.
- 6.3 It is the responsibility of the DHEO to publish, on its website, instructions for receiving the award funds and notify high schools of the award winners. Students who move out of state during the Award eligibility period are responsible for monitoring instructions posted online by the DHEO.
- 6.4 When funding permits the awards to be given, the Department shall announce the winners of Michael C. Ferguson Awards.
- 6.5 Students have up to five years after high school graduation to request the award fund, unless they meet the active duty exemption listed in subsection 6.2 above.
- 6.5.1 Awarded students will contact the DHEO when they are ready to request the award funds be sent to their Institution of Higher Education. The DHEO shall request enrollment verification from the Institution of Higher Education identified by recipients. When completed verification forms are received by the DHEO, disbursement of award funds will be made to the Institution of Higher Education.
- 6.5.2 Awarded funds will be distributed directly to the Institution of Higher Education and can be used for any Direct Educational Expenses.

OFFICE OF THE SECRETARY

Statutory Authority: 8 Delaware Code, Section 125 and 14 Delaware Code, Sections 121(a)(16), 122(b)(8), & 194 (8 **Del.C.** §125 and 14 **Del.C.** §§ 121(a)(16), 122(b)(8), & 194)
14 **DE Admin. Code** 292

PUBLIC NOTICE

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

292 Post Secondary Institutions and Degree Granting Institutions of Higher Education

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 8 **Del.C.** §125 and 14 **Del.C.** §§121(a)(16), 122(b)(8), and 194, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office, developed amendments to 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education. The regulation concerns the requirements for the issuance, renewal, and revocation of a Certificate of Approval to operate a Postsecondary Institution in Delaware in addition to the requirements for obtaining the Department's approval to confer degrees. The proposed amendments include revising the title of the regulation, clarifying Section 1.0, adding and striking defined terms in Section 2.0; specifying the requirements for a Certificate of Approval in Section 3.0; specifying the procedure for denying an application for the Department's approval to confer degrees in subsection 5.6; adding the application requirements to obtain a Certificate of Approval in Section 6.0; adding Section 7.0, which concerns denying applications for a Certificate of Approval; adding Section 8.0, which concerns revoking a Certificate of Approval; clarifying Section 98.0, which concerns termination of the Department's approval to confer degrees; and adding Section 12.0, which concerns consumer fair practices and complaints. The proposed amendments are consistent with HB 481 of the 151st General Assembly, which was signed into law on August 4, 2022.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before January 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns postsecondary institutions and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The criteria for issuance and renewal of a Certificate of Approval in Section 4.0 are designed to help ensure that students receive an equitable education at postsecondary institutions that operate under a Certificate of Approval issued by the Department.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The criteria for issuance and renewal of a Certificate of Approval in Section 4.0 are designed to help ensure that students' health and safety are adequately protected at postsecondary institutions that operate under a Certificate of Approval issued by the Department.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The criteria for issuance and renewal of a Certificate of Approval in Section 4.0 are designed to help ensure that students' legal rights are respected at postsecondary institutions that operate under a Certificate of Approval issued by the Department.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation concerns postsecondary institutions and does not change authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department, through the Delaware Higher Education Office, implements the regulations promulgated and adopted relating to postsecondary institutions.

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state of complying with this amended regulation. The regulation does not apply to local school boards.

***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/december2022/proposed/26 DE Reg 429RFA 12-01-22.pdf>

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

<http://regulations.delaware.gov/register/december2022/proposed/26 DE Reg 429 12-01-22.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(3), 122(b)(8), 181, and 183 (14 Del.C. §122(b)(3), 122(b)(8), 181, & 183)
14 DE Admin. Code 506

PUBLIC NOTICE

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

506 Policies for Dual Enrollment and Awarding Dual Credit

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §§122(b)(3), 122(b)(8), 181, and 183, the Delaware Department of Education ("Department"), including the Delaware Higher Education Office, developed amendments to 14 DE Admin. Code 506 Dual Enrollment and Awarding Dual Credit. The regulation requires public schools to develop policies concerning dual enrollment in a high school and postsecondary institution and awarding dual credit. This regulation was reviewed pursuant to 29 Del.C. §10407, which requires regulations to be reviewed on a recurring basis every four years. The proposed amendments include changes that align with existing practice, updating definitions and

terminology, and removing references to Tech Prep courses which no longer exist. Other proposed changes are grammatical in nature and are made to ensure compliance with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before January 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

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

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

<http://regulations.delaware.gov/register/december2022/proposed/26 DE Reg 430RFA 12-01-22.pdf>

506 Policies for Dual Enrollment and Awarding Dual Credit

1.0 Purpose

~~The Pursuant to 14 Del.C. §§122(b)(3), 122(b)(8), 181, and 183, the purpose of this regulation is to ensure all reorganized local school districts, including vocational technical school districts and charter schools~~ have policies regarding dual enrollment and the awarding of dual credit to promote consistency and equity across the state.

2.0 Definitions:

For purposes of this regulation the definitions in 14 ~~DE Admin. Code~~ 505 apply. Additional definitions for purposes of this regulation include the following: The following words and terms, when used in this regulation, shall have the following meaning:

“Accredited Postsecondary Institution” means ~~a regionally~~ an accredited higher education institution, including any in-state and out-of-state college or university, alternative routes for teacher licensure and certification programs approved by the Delaware Secretary of Education and authorized to operate in Delaware, and adult education career training/registered apprenticeship programs.

“Articulation Agreement” means the agreement between the ~~Accredited Postsecondary Institution~~ accredited postsecondary institution and school district, school or charter school that specifies, at a minimum, student eligibility and participation requirements, the course syllabus, the expected course competencies, grading policy, attendance policy, and conditions for awarding ~~Dual Credit~~ dual credit. Further provided, student eligibility and participation requirements shall be based on multiple indicators of readiness ~~such as, but not limited, to~~ that may include a combination of tests, course grades, teacher recommendations or portfolios.

“Dual Credit” means the credit awarded at both the high school and postsecondary levels.

“Dual Credit Course” means a course for which a student may receive both high school credit towards graduation and postsecondary credit. The course may be taken in a variety of settings such as in a high school, on a postsecondary institution campus, or electronically. Examples of a dual credit course include Advanced Placement (~~AP~~) or "AP", International Baccalaureate (~~IB~~) and Tech Prep courses or "IB".

“Dual Enrollment” means simultaneous enrollment in both a high school and an ~~Accredited Postsecondary Institution~~ accredited postsecondary institution.

“Dual Enrollment Course” means a course for which a student may receive both high school credit towards graduation and postsecondary credit while simultaneously registered at both the high school and the ~~Accredited Postsecondary Institution~~ accredited postsecondary institution.

~~“Dual Enrollment Instructor” or “Instructor”~~ means ~~an individual teaching a Dual Enrollment Course who meets the requirements of a faculty member or adjunct faculty member at the credit granting Accredited Postsecondary Institution.~~

~~“Principal or principal’s designee” or “Principal’s Designee”~~ means the person at the high school ~~the local school district board of education or superintendent, or charter school board, if applicable,~~ assigns who is assigned to approve the courses that may result in credit for that high school.

“Student Success Plan” means a written plan which sets postsecondary goals based on a student's career interest.

3.0 District Policy Requirement

3.1 ~~Local school~~ School districts and secondary charter schools shall develop policies for ~~Dual Enrollment~~ dual enrollment and the awarding of ~~Dual Credit~~ dual credit that at a minimum meet the following criteria:

- 3.1.1 All courses for which dual credit is awarded shall incorporate any applicable state content standards;
- 3.1.2 All courses for which dual credit is awarded shall be taken at or through an ~~Articulation Agreement~~ articulation agreement with an ~~Accredited Postsecondary Institution~~ accredited postsecondary institution except for AP or IB courses;
- 3.1.3 All students shall be provided information regarding dual enrollment and the awarding of dual credit opportunities;
- 3.1.4 ~~Those students~~ All eligible students, as determined in the ~~Articulation Agreement~~ articulation agreement, shall have access to dual credit and dual enrollment courses;
- 3.1.5 Funding sources such as ~~Tech Prep~~, College Board waivers or other grants shall be identified as well as the procedures for applying and the procedures for the awarding of such funds or waivers.

No student shall be denied access to dual credit or dual enrollment courses because of the student's or family's inability to pay;

~~3.1.6~~ All students shall be notified of any resources to help pay for dual enrollment courses;

~~3.1.6~~ 3.1.7 ~~Students shall have multiple points of access for dual credit and dual enrollment ~~course(s)~~ courses including, but not limited to, ~~course(s)~~ courses offered on the high school campus, ~~course(s)~~ courses offered on the postsecondary institution campus, ~~course(s)~~ courses offered online, or a combination of any of the above;~~

3.1.8 ~~Any school district seeking to contract with an out-of-state institution to offer dual credit courses shall seek an institutional review by the Delaware Higher Education Office prior to executing the contract;~~

~~3.1.7~~ 3.1.9 ~~All courses for which Dual-Credit dual credit is awarded through an Accredited Postsecondary Institution accredited postsecondary institution shall be taught by an approved Dual-Credit Instructor dual credit instructor;~~

~~3.1.8~~ 3.1.10 ~~Any course that offers Dual-Credit dual credit shall have the prior approval for the awarding of Dual-Credit dual credit by the principal or the principal's designee of the high school in which the credit is to be awarded; and~~

~~3.1.9~~ 3.1.11 ~~Dual enrollment and dual credit shall be included in the Student Success Plan (SSP), as required in 14 DE Admin. Code 505, for students electing to participate.~~

4.0 Quality Assurance and Granting of Postsecondary Credit

~~4.1~~ All Advanced Placement (AP) AP and International Baccalaureate (IB) IB courses used for purposes of Dual-Credit dual credit shall meet the requirements of their respective program authorizers.

~~4.1.1~~ Postsecondary credit for Advanced Placement AP or IB courses shall be at the discretion of the credit granting Accredited Postsecondary Institution accredited postsecondary institution.

~~4.2~~ For Tech Prep courses, the Accredited Postsecondary Institution shall ensure the student's attainment of competencies as outlined in the Articulation Agreement between the high school and Accredited Postsecondary Institution.

~~4.3~~ 4.2 ~~All courses for which Dual-Credit dual credit is granted shall meet the requirements of the sponsoring Accredited Postsecondary Institution accredited postsecondary institution as outlined in the Articulation Agreement articulation agreement.~~

5.0 Reporting of Dual Enrollment and awarding of Dual Credit

~~5.1~~ The Each school district and secondary charter school shall indicate on a student's high school transcript any Dual-Enrollment Courses dual enrollment courses taken and any courses for which Dual-Credit dual credit has been granted.

6.0 Policy Reporting Requirements

~~6.1~~ Each public school district and secondary charter school shall have an electronic copy of its current policy for dual enrollment and awarding dual credit on file with the Department of Education.

~~6.2~~ Each public school district and secondary charter school shall provide an electronic copy of any dual enrollment and dual credit policy within ninety (90) 90 days of such revision(s) revision including revisions any revisions made as a result of changes to Federal, state or local law, regulations, guidance or policies.

7.0 Secondary Charter School Policy

~~7.1~~ A secondary charter school that chooses to offer Dual-Enrollment or Dual-Credit opportunities shall be subject to the provisions of this regulation.

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 601

PUBLIC NOTICE

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

601 Schools and Law Enforcement Agencies

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §122(b), the Secretary of Education intends to amend 14 DE Admin. Code 601 School and Law Enforcement Agencies. This regulation was previously proposed on October 1, 2022, but since that time the Department determined that additional clarification was needed related to the titles of individuals responsible for reporting crimes. Therefore, this regulation is being amended pursuant to 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years, to ensure alignment with existing practice, and to clarify the titles of head of charter schools and the individual required to report crimes. Additionally, it is being amended to correct typographical and grammatical errors to comply with *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before January 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation 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 mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with

and not an impediment to the implementation of other state educational policies.

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

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

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

<http://regulations.delaware.gov/register/december2022/proposed/26 DE Reg 434RFA 12-01-22.pdf>

601 Schools and Law Enforcement Agencies

1.0 Purpose

The purpose of this regulation is to ensure that effective communication and working relationships exist between public schools and law enforcement agencies.

2.0 Definitions

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

"**Alternative Program**" mean a program established pursuant to 14 **Del.C.**, Chapter 16.

"**School Employee**" ~~for purposes of this regulation shall mean~~ means all persons 18 years of age or older hired by a school district, attendance zone, or charter school; subcontractors such as bus drivers or security guards; employees of an Alternative Program provider; substitute employees; and persons hired by or subcontracted by other state agencies to work on school property. This definition shall be consistent with 14 **Del.C.** §4112.

3.0 Written Policy and Memorandum of Agreement (MOA)

- 3.1 All local school districts, charter schools, and Alternative Programs shall establish a written policy on effectively communicating and working with law enforcement agencies. Each school district, charter school and Alternative Program shall develop a ~~Memorandum of Agreement (MOA)~~ MOA with each law enforcement agency which provides services to it. Each MOA shall be in a form substantially similar to a Model MOA as developed, approved and ~~from time to time~~ revised as needed by the Department of Education.
- 3.2 The Department of Education shall review the Model ~~MOA~~ MOA, and each school district, charter school, or Alternative Program shall review its current MOA at least once every three years.

4.0 Training Component

- 4.1 Any school administrator responsible for reporting school crimes or reporting school conduct incidents to law enforcement and to the Department of Education; or any school administrator responsible for reporting suspension and expulsion data to the Department of Education; or any school administrator responsible for any disciplinary process involving staff or students shall complete Department of Education approved training and any such additional training the Department of Education may prescribe ~~from time to time~~.
- 4.2 The approved training shall be primarily provided by staff at the Department of Education. The training may be provided by a school administrator at the district, charter school, or Alternative Program who is qualified to provide such training by having completed the Department of Education approved training within the last ~~twenty-four (24)~~ 24 months. The district, charter school, or Alternative Program shall provide the ~~name(s) of the trainer(s)~~ names of trainers conducting the training and the ~~name(s) of those school administrator(s)~~ names of school administrators attending the training if such training was provided by the district, charter school, or Alternative Program.

- 4.3 Each school district, charter school, and Alternative Program shall, at the time of hiring and at the beginning of each school year thereafter, advise each School Employee of ~~his/her the~~ duty to report school crimes and the penalty for failure to so report as prescribed in 14 **Del.C.** §4112 (e).

5.0 Reporting of Crimes to the Delaware Department of Education

- 5-4 The ~~superintendent~~ principal or head administrator of each school ~~district~~, charter school, and Alternative Program ~~Program~~, or ~~his/her the~~ principal's or head administrator's designee, shall ensure each school within ~~his/her the~~ the principal's or head administrator's jurisdiction reports to the Department of Education all school crimes required to be reported pursuant to 14 **Del.C.** §4112, and any subsequent amendment thereto. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education within the time prescribed by Delaware statutes.

6.0 Reporting Specific Incidents of Misconduct

- 6.1 In addition to those school crimes required to be reported to law enforcement pursuant to 14 **Del.C.** §4112, the ~~superintendent~~ principal or head administrator of each school ~~district~~, charter school, and Alternative Program, or ~~his/her the~~ the principal's or head administrator's designee, shall report to the Department of Education when any incidents of misconduct as defined in subsections 6.1.1 through 6.1.14 occur on school property or at a school function except subsection 6.1.6.1 which must be reported to the Department of Education regardless of origin of the speech. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident.

6.1.1 Pornography, possession and production

6.1.2 Criminal mischief (vandalism)

6.1.3 Tampering with public records

6.1.4 Alcohol, possession and use

6.1.5 Felony theft

6.1.6 Bullying (allegations and substantiated incidents)

6.1.6.1 Cyberbullying (allegations and substantiated incidents) as defined in 14 **DE Admin. Code** 624, subsection 2.1.

6.1.7 Offensive Touching (student or employee victim)

6.1.8 Terroristic Threatening (student or employee victim)

6.1.9 Sexual Harassment

6.1.10 Fighting

6.1.11 Inhalants

6.1.12 Drug Paraphernalia

6.1.13 Teen Dating Violence

6.1.14 Unlawful Drug ~~Use/Influence~~ Use or Influence

7.0 Compliance Component

A school that fails to comply with the reporting mandates as set forth herein shall be subject to identification as a "Persistently Dangerous School" as this term is defined in 14 **DE Admin. Code** 608. A school identified as a Persistently Dangerous School will retain that designation for the entire fiscal year.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapters 17 and 31 (14 Del.C. Chs. 17 & 31)
14 DE Admin. Code 922

PUBLIC NOTICE

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

922 Children with Disabilities Subpart A, Purposes and Definitions

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del. C. Chapters 17 and 31, the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 922 Children with Disabilities Subpart A, Purposes and Definitions. This regulation is being amended to comply with House Bill 454 of the 151st General Assembly, which requires a free and public education be provided to students until they receive a regular high school diploma or until August 31st of the school year in which they turn 22 years old, whichever occurs first. This regulation is to be in effect for the 2022-23 school year for those students who turned 21 during the 2021-22 school year. Additional grammar and style changes were also made to this regulation to ensure compliance with the *Delaware Administrative Code Style Manual*.

The Department will hold public hearings on the proposed regulation changes as follows:

- Tuesday, January 10, 2023 at 12:00 p.m. in the Delaware Department of Education Cabinet Room, located at 401 Federal Street, Second Floor, Dover, DE 19901; or you may attend this meeting virtually via this link:
<https://de-doe.webex.com/de-doe/j.php?MTID=m4738018d2e6ece45181f7d85528b5f4b>
Phone: 1-415-655-0001
Meeting number (access code): 2624 831 6650
Meeting password: TmM4U4MX9g2
- Wednesday, January 11, 2023 at 6:00 p.m. in the Delaware Department of Education Cabinet Room, located at 401 Federal Street, Second Floor, Dover, DE 19901; or you may attend this meeting virtually via this link:
<https://de-doe.webex.com/de-doe/j.php?MTID=m6349271681999e43984d6b1a683bb0ef>
Phone: 1-415-655-0001
Meeting number (access code): 2622 354 0257
Meeting password: PBpU26xswa3

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before February 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware. **NOTE: IDEA Regulations are posted for a 60-day comment period.**

C. IMPACT CRITERIA

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

regulation will help ensure all students receive an equitable education.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all 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 man-dates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost to comply with this amended regulation is additional funding for special education support and services dependent on individual student needs. However, there is no need to secure additional funding because any actual increased cost would be absorbed within unit count growth and private placement funding.

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

<http://regulations.delaware.gov/register/december2022/proposed/26 DE Reg 437RFA 12-01-22.pdf>

922 Children with Disabilities Subpart A, Purposes and Definitions (Break in Continuity of Sections)

3.0 Definitions Applicable to Regulations 922 to 929:

(Break in Continuity Within Section)

“**Child**” or “**Student**” means a person between birth and August 31st of the school year ~~after~~ in which the person turns ~~24~~ 22.

(Break in Continuity Within Section)

“**Limited English Proficient**” or “**English Learner**” means an individual who meets the following four requirements: (1) aged 3 through ~~24~~ 22 years old; (2) who is enrolled or preparing to enroll in an elementary school or secondary school; (3) who was not born in the United States or whose native language is a language other than English, who is a Native American or Alaska Native, or a native resident of the outlying areas, and who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency, or who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and (4) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the State's proficient level of achievement on State assessments; the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society.

(Break in Continuity Within Section)

Definitions of Special Education Terms: The specific terms used in the definition of special education are defined as follows:

(Break in Continuity Within Section)

~~“Student” or “Child” means a person between birth and August 31st of the school year after the person turns 21.~~

~~(Authority: 20 U.S.C. § 1412(a)(1))~~

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

<http://regulations.delaware.gov/register/december2022/proposed/26 DE Reg 437 12-01-22.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapters 17 and 31 (14 **Del.C.** Chs. 17 & 31)
14 **DE Admin. Code** 923

PUBLIC NOTICE

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

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del. C.** Chapters 17 and 31, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. This regulation is being amended to comply with House Bill 454 of the 151st General Assembly, which requires a free and public education be provided to students until they receive a regular high school diploma or until August 31st of the school year in which they turn 22 years old, whichever occurs first. This regulation is to be in effect for the 2022-23 school year for those students who turned 21 during the 2021-22 school year. Additional grammar and style changes were also made to this regulation to ensure compliance with the *Delaware Administrative Code Style Manual*.

The Department will hold public hearings on the proposed regulation changes as follows:

- Tuesday, January 10, 2023 at 12:00 p.m. in the Delaware Department of Education Cabinet Room, located at 401 Federal Street, Second Floor, Dover, DE 19901; or you may attend this meeting virtually via this link:
<https://de-doe.webex.com/de-doe/j.php?MTID=m4738018d2e6ece45181f7d85528b5f4b>
Phone: 1-415-655-0001
Meeting number (access code): 2624 831 6650
Meeting password: TmM4U4MX9g2
- Wednesday, January 11, 2023 at 6:00 p.m. in the Delaware Department of Education Cabinet Room, located at 401 Federal Street, Second Floor, Dover, DE 19901; or you may attend this meeting virtually via this link:
<https://de-doe.webex.com/de-doe/j.php?MTID=m6349271681999e43984d6b1a683bb0ef>
Phone: 1-415-655-0001
Meeting number (access code): 2622 354 0257
Meeting password: PBpU26xswa3

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the

Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before February 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware. **NOTE: IDEA Regulations are posted for a 60-day comment period.**

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation does not impact students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost to comply with this amended regulation is additional funding for special education support and services dependent on individual student needs. However, there is no need to secure additional funding because any actual increased cost would be absorbed within unit count growth and private placement funding.

***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/december2022/proposed/26 DE Reg 439RFA 12-01-22.pdf>

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

<http://regulations.delaware.gov/register/december2022/proposed/26 DE Reg 439 12-01-22.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapters 17 and 31 (14 Del.C. Chs. 17 & 31)
14 DE Admin. Code 924

PUBLIC NOTICE

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

924 Children with Disabilities Subpart C Local Educational Agency Eligibility

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. Chapters 17 and 31, the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 924 Children with Disabilities Subpart C Local Educational Agency Eligibility. This regulation is being amended to comply with House Bill 454 of the 151st General Assembly, which requires a free and public education be provided to students until they receive a regular high school diploma or until August 31st of the school year in which they turn 22 years old, whichever occurs first. This regulation is to be in effect for the 2022-23 school year for those students who turned 22 during the 2021-22 school year. Additional grammar and style changes were also made to this regulation to ensure compliance with the *Delaware Administrative Code Style Manual*.

The Department will hold public hearings on the proposed regulation changes as follows:

- Tuesday, January 10, 2023 at 12:00 p.m. in the Delaware Department of Education Cabinet Room, located at 401 Federal Street, Second Floor, Dover, DE 19901; or you may attend this meeting virtually via this link:
<https://de-doe.webex.com/de-doe/j.php?MTID=m4738018d2e6ece45181f7d85528b5f4b>
Phone: 1-415-655-0001
Meeting number (access code): 2624 831 6650
Meeting password: TmM4U4MX9g2
- Wednesday, January 11, 2023 at 6:00 p.m. in the Delaware Department of Education Cabinet Room, located at 401 Federal Street, Second Floor, Dover, DE 19901; or you may attend this meeting virtually via this link:
<https://de-doe.webex.com/de-doe/j.php?MTID=m6349271681999e43984d6b1a683bb0ef>
Phone: 1-415-655-0001
Meeting number (access code): 2622 354 0257
Meeting password: PBpU26xswa3

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before February 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware. **NOTE: IDEA Regulations are posted for a 60-day comment period.**

C. IMPACT CRITERIA

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation does not impact students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost to comply with this amended regulation is additional funding for special education support and services dependent on individual student needs. However, there is no need to secure additional funding because any actual increased cost would be absorbed within unit count growth and private placement funding.

***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/december2022/proposed/26 DE Reg 441RFA 12-01-22.pdf>

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

<http://regulations.delaware.gov/register/december2022/proposed/26 DE Reg 441 12-01-22.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapters 17 and 31 (14 **Del.C.** Chs. 17 & 31)
14 **DE Admin. Code** 926

PUBLIC NOTICE

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

926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** Chapters 17 and 31, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children. This regulation is being amended to comply with House Bill 454 of the 151st General

Assembly, which requires a free and public education be provided to students until they receive a regular high school diploma or until August 31st of the school year in which they turn 22 years old, whichever occurs first. This regulation is to be in effect for the 2022-23 school year for those students who turned 22 during the 2021-22 school year. Additional grammar and style changes were also made to this regulation to ensure compliance with the *Delaware Administrative Code Style Manual*.

The Department will hold public hearings on the proposed regulation changes as follows:

- Tuesday, January 10, 2023 at 12:00 p.m. in the Delaware Department of Education Cabinet Room, located at 401 Federal Street, Second Floor, Dover, DE 19901; or you may attend this meeting virtually via this link:
<https://de-doe.webex.com/de-doe/j.php?MTID=m4738018d2e6ece45181f7d85528b5f4b>
Phone: 1-415-655-0001
Meeting number (access code): 2624 831 6650
Meeting password: TmM4U4MX9g2
- Wednesday, January 11, 2023 at 6:00 p.m. in the Delaware Department of Education Cabinet Room, located at 401 Federal Street, Second Floor, Dover, DE 19901; or you may attend this meeting virtually via this link:
<https://de-doe.webex.com/de-doe/j.php?MTID=m6349271681999e43984d6b1a683bb0ef>
Phone: 1-415-655-0001
Meeting number (access code): 2622 354 0257
Meeting password: PBpU26xswa3

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before February 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware. **NOTE: IDEA Regulations are posted for a 60-day comment period.**

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.
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4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with

and not an impediment to the implementation of other state educational policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost to comply with this amended regulation is additional funding for special education support and services dependent on individual student needs. However, there is no need to secure additional funding because any actual increased cost would be absorbed within unit count growth and private placement funding.

***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/december2022/proposed/26 DE Reg 442RFA 12-01-22.pdf>

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

<http://regulations.delaware.gov/register/december2022/proposed/26 DE Reg 442 12-01-22.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 181(15), 183, 3402(c), and 3419 (14 **Del.C.** §§181(15), 183, 3402(c), & 3419)
14 **DE Admin. Code** 1201

PUBLIC NOTICE

1201 Christa McAuliffe Award Program

A. TYPE OF REGULATORY ACTION REQUIRED

Repeal of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §§ 181(15), 183, 3402(c), and 3419, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office, proposes to repeal 14 **DE Admin. Code** 1201 Christa McAuliffe Award Program. In accordance with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022, Christa McAuliffe scholarship loans are no longer awarded. Repayment and forgiveness of Christa McAuliffe scholarship loans that were awarded prior to July 1, 2022 are addressed in statute (14 **Del.C.** §3419(c)).

In accordance with 14 **Del.C.** §122(d), the Department is required to perform and issue a written educational impact analysis of any new proposed regulation and of any regulation that is proposed to be continued. Because this regulation is proposed to be repealed, the Department is not required to perform and issue a written educational impact analysis.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before January 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

***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/december2022/proposed/26 DE Reg 444RFA 12-01-22.pdf>

1201 Christa McAuliffe Award Program

1.0 Purpose

The purpose of this regulation is to provide criteria for the Christa McAuliffe Award, a professional incentive program, pursuant to 14 ~~Del.C.~~ §3419 and to encourage academically talented Delawareans to pursue teaching careers in Delaware public schools.

2.0 Definitions

~~“Award” means a loan under the Christa McAuliffe Award program, the repayment of which is forgiven when the borrower is employed in the teaching profession for the period of time specified in 14 Del.C. §3418(c)(2).~~

~~“Critical Need Area” means, for the purposes of this regulation, classifications where there is a shortage of teachers available for employment. These classifications are posted annually on the Delaware Higher Education Office (DHEO) website and are based on federal and state reporting.~~

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

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

~~“Full Time Student” means a student enrolled in twelve or more college credit hours.~~

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

~~“Part Time Student” means a student enrolled in six to eleven college credit hours.~~

~~“Qualifying Employment” means, for the purposes of this regulation, employment as a teacher in a Delaware public school, whether as an employee of the State, the Department of Education, a school district or an individual school, or as an employee of a private organization providing educational services to Delaware school children under a contract with the State, the Department of Education, a school district or an individual school.~~

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

~~“Semester” means a half year term in a school or college, typically lasting fifteen to eighteen weeks.~~

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

~~“Undergraduate” means a student at a college or university who has not yet earned a bachelor’s or equivalent degree; typically the first four years of college attendance.~~

3.0 Application Acceptance and Submission Period

3.1 Applications must be submitted online via the Student Account Access Site accessed via the DHEO’s website.

3.1.1 First time users shall establish an account and provide a valid email and mailing address before being permitted to submit an application online.

3.2 The application acceptance period for this scholarship loan will be posted on the DHEO’s website by December 1 of each calendar year.

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

3.2.2 Applicants are required to submit:

3.2.2.1 A completed application form, including activities; and

3.2.2.2 An unofficial transcript.

3.2.2.2.1 An applicant is responsible for ensuring that he or she electronically submits his or her unofficial transcript through the Student Account Access Site by the end of the posted application acceptance period.

PROPOSED REGULATIONS

~~3.2.2.2.2 An applicant who is a current high school senior enrolled in a public or charter school in Delaware is not required to submit an unofficial transcript.~~

~~3.3 Incomplete applications shall not be accepted or processed.~~

4.0 Eligibility

~~4.1 Applicants shall meet the following eligibility requirements to be considered for the Christa McAuliffe Award Program:~~

~~4.1.1 Be a Resident of the State; and~~

~~4.1.2 Be a high school senior who ranks in the upper half of his or her class and has a minimum combined reading and math score of 1000 on the SAT; or~~

~~4.1.3 Be either a Part Time or a Full Time Student enrolled at a Delaware college or university in an Undergraduate program leading to teacher licensure and certification and have at least a 3.0 cumulative GPA; or~~

~~4.1.4 Be a Part Time or a Full Time Student enrolled at a college or university in a program of study not offered in Delaware leading to teacher licensure and certification and have at least a 3.0 cumulative GPA.~~

5.0 Awards

~~5.1 Preference for the award shall be given to applicants planning to teach in a Critical Need Area as annually defined on the DHEO's website.~~

~~5.2 An Award may be pro-rated for Part Time Students.~~

~~5.3 An Award is to be used for, and not in excess of, Direct Educational Expenses.~~

~~5.4 For Full Time Students and Part Time Students, an Award may be renewed annually for the equivalent of four academic years.~~

~~5.4.1 An Award is renewable upon the condition that the student maintains a 3.0 cumulative GPA within an eligible program of study leading to teacher certification.~~

6.0 Award Payment

~~6.1 Students awarded under this program shall sign a promissory note, which includes the terms of repayment and loan forgiveness, annually in order to receive the Award.~~

~~6.2 DHEO will contact the student's college or university to verify the student's enrollment and eligibility at the start of the fall and spring Semesters prior to an Award payment being disbursed.~~

~~6.3 All payments will be disbursed directly to the eligible student's college or university.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 181(15), 183, and 3402(c) (14 Del.C.
 §§181(15), 183, & 3402(c))
 14 DE Admin. Code 1202

PUBLIC NOTICE

1202 Delaware Teacher Corps Program

A. TYPE OF REGULATORY ACTION REQUIRED

Repeal of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §§181(15), 183, and 3402(c), the Delaware Department of Education ("Department"), through the Delaware Higher Education Office, proposes to repeal 14 DE Admin. Code 1202 Delaware Teacher

Corps Program. The regulation is being repealed as a result of House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022.

In accordance with 14 Del.C. §122(d), the Department is required to perform and issue a written educational impact analysis of any new proposed regulation and of any regulation that is proposed to be continued. Because this regulation is proposed to be repealed, the Department is not required to perform and issue a written educational impact analysis.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before January 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

***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/december2022/proposed/26 DE Reg 446RFA 12-01-22.pdf>

1202 Delaware Teacher Corps Program

4-0 Purpose

~~The purpose of this teacher incentive program is to encourage academically talented Delawareans to pursue teaching careers in Delaware public schools.~~

2-0 Definitions

~~The following words and terms, for the purposes of this regulation, shall have the following meaning unless the context clearly indicates otherwise:~~

~~"Award" means a loan under the Delaware Teacher Corps Program, the repayment of which is forgiven when the borrower is employed in the teaching profession for the specified period of time.~~

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

~~"Full-Time Student" means a student enrolled in a minimum of college credit hours as required by the student's college or university for full-time status. Generally, for an undergraduate program this is a minimum of 12 credit hours per term or for a graduate program a minimum of 9 credit hours.~~

~~"High Priority Program" means classifications with the highest shortage of teachers and persistent need for teachers available for employment. These classifications of a subset of the identified Critical Need Areas. They will be posted annually on the Delaware Higher Education Office (DHEO) website and are based on federal and state reporting.~~

~~"Qualifying Employment" means employment as a teacher in a Delaware public school, whether as an employee of the State, the Department of Education, a school district or an individual school, as an educator in the Department of Services for Children, Youth and Their Families or as an employee of a private organization providing educational services to Delaware school children under a contract with the State, the Department of Education, a school district or an individual school.~~

~~"Resident of the State" means the student meets the definition of residency as defined in 14 Del.C. §3402(f).~~

~~"Semester" means a half year term in a school or college, typically lasting fifteen to eighteen weeks.~~

~~"Student Account Access Site" means the webpage on the DHEO's website where students can access scholarship opportunities.~~

~~"Tuition" means the cost of attendance excluding room, board, mandatory fees, books and supplies.~~

"Undergraduate" means a student at a college or university who has not yet earned a bachelor's or equivalent degree; typically the first four years of college attendance.

3.0 Application Acceptance and Submission Period

- 3.1 Applications must be submitted online via the Student Account Access Site accessed via the DHEO's website.
 - 3.1.1 First time users shall establish an account and provide a valid email and mailing address before being permitted to submit an application online.
- 3.2 The application acceptance period for this scholarship loan will be posted on the DHEO's website by December 1 of each calendar year.
 - 3.2.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
 - 3.2.2 Applicants are required to submit:
 - 3.2.2.1 A completed application form, including activities; and
 - 3.2.2.2 An unofficial transcript.
 - 3.2.2.2.1 An applicant is responsible for ensuring that he or she electronically submits his or her unofficial transcript to the DHEO.
 - 3.2.2.2.2 An applicant who is a current high school senior enrolled in a public or charter school in Delaware is not required to submit an unofficial transcript.
- 3.3 Incomplete applications shall not be accepted or processed.

4.0 Eligibility

- 4.1 Applicants shall meet the following eligibility requirements to be considered for the Delaware Teacher Corps Program:
 - 4.1.1 Be a Resident of the State; and
 - 4.1.2 Be a Full-Time Student; and
 - 4.1.3 Be enrolled at a Delaware college or university; and
 - 4.1.4 Be admitted into a Department of Education approved teacher prep program leading to certification; and
 - 4.1.5 Be in a High Priority Program leading to teacher licensure and certification and have at least a 2.75 cumulative GPA.

5.0 Awards

- 5.1 The number and amount of Awards each year will vary and is subject to General Assembly appropriations for the Delaware Teacher Corps Program.
- 5.2 Awards shall first be provided to applicants planning to teach in one of the High Priority Program areas as listed on the DHEO website.
- 5.3 An Award is to be used for, and not in excess of, Tuition.
- 5.4 For Full-Time Students an Award may be renewed annually for up to three additional academic years depending on the degree program.
 - 5.4.1 An Award is renewable upon the condition that the student maintains enrollment in an eligible program of study leading to teacher certification in a High Priority Program.

6.0 Award Payment

- 6.1 Students awarded under this program shall sign a promissory note, which includes the terms of repayment and loan forgiveness, annually in order to receive and disburse the Award.
- 6.2 DHEO will contact the student's college or university to verify the student's enrollment and eligibility at the start of the fall and spring Semesters prior to an Award payment being disbursed.

~~6.3 All payments will be disbursed directly to the eligible student's college or university only.~~

7.0 Repayment

~~7.1 An individual shall meet the definition of Qualifying Employment, as defined within this regulation, in order to be eligible for loan forgiveness.~~

~~7.2 For each year of Qualifying Employment, one year of the Award payment will be forgiven.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 181(15), 183, 3402(c), 3423, and 3462 (14 Del.C. §§181(15), 183, 3402(c), 3423, & 3462)
14 DE Admin. Code 1205

PUBLIC NOTICE

1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program

A. TYPE OF REGULATORY ACTION REQUIRED

Repeal of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §§ 181(15), 183, 3402(c), 3423, and 3462, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office, proposes to repeal 14 DE Admin. Code 1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program. In accordance with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022, Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program loans are no longer awarded. Repayment and forgiveness of loans that were awarded prior to July 1, 2022 are addressed in statute (14 Del.C. §3423(c)). The Ada Leigh Soles Memorial Professional Librarian and Archivist Scholarship is administered by the Delaware Division of Libraries (14 Del.C. §3462(b)(1)).

In accordance with 14 Del.C. §122(d), the Department is required to perform and issue a written educational impact analysis of any new proposed regulation and of any regulation that is proposed to be continued. Because this regulation is proposed to be repealed, the Department is not required to perform and issue a written educational impact analysis.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before January 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

***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/december2022/proposed/26 DE Reg 449RFA 12-01-22.pdf>

1205 Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program

4.0 Purpose

~~4.1 Pursuant to 14 Del.C. §3423, the purpose of this regulation is to provide eligibility criteria and to delineate the process for applying for the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program.~~

- 1.2 ~~The Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program encourages and enables academically talented Delawareans to pursue careers as Librarians and Archivists in Delaware.~~

2.0 Definitions

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

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

~~"Archivist"~~ means a person employed by a Delaware archive facility in a position deemed eligible by the State Librarian or their designee.

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

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

~~"Expected Family Contribution" or "EFC"~~ means a number that is calculated using the financial information an applicant provides on his or her Free Application for Federal Student Aid (FAFSA) to determine an applicant's eligibility for federal student aid.

~~"Free Application for Federal Student Aid (FAFSA)" or "FAFSA"~~ means the data supplied in connection with the federal government's application for federal financial aid which DHEO uses to determine an applicant's eligibility for a scholarship or loan forgiveness program.

~~"Full Time Student"~~ means an undergraduate student enrolled in 12 or more college credit hours or a graduate student enrolled in 9 or more credit hours.

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

~~"Graduate Student"~~ means a full-time student enrolled in a post-baccalaureate program.

~~"Institution"~~ means a post-secondary institution or institution of higher education that is accredited by a nationally recognized accrediting agency.

~~"Librarian"~~ means a person employed by a Delaware public library, county department library, public school library, state agency library, a member library of the Delaware Library Consortium, or archive in a position deemed eligible by the State Librarian or their designee.

~~"Nationally Recognized Accrediting Agency"~~ means a nationally recognized accrediting agency or association that appears on the list published by the U.S. Secretary of Education.

~~"Part Time Student"~~ means a student enrolled in an undergraduate program that is more than six and less than eleven college credit hours per term or a student enrolled in a graduate program that is at least five and less than nine credit hours per term.

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

~~"Semester"~~ means a half-year term in a school or college, typically lasting 15 to 18 weeks.

~~"Student Account Access Site"~~ means the webpage on the DHEO's website where students can access scholarship and loan forgiveness opportunities.

~~"Undergraduate Student"~~ means a full-time student at a regionally accredited college or university who has not yet earned a bachelor's or equivalent degree.

3.0 Application Acceptance and Submission Period

- 3.1 ~~The application acceptance and submission period for the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program shall be posted on the DHEO's website by April 1 each calendar year.~~

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

- ~~3.1.2 Incomplete applications shall not be accepted or processed.~~
 - ~~3.2 In order for an application to be considered complete, an applicant must:~~
 - ~~3.2.1 Complete the FAFSA for the school year in which the scholarship or loan forgiveness award is sought by the state deadline for Delaware that is posted online at [FAFSA.ed.gov](https://fafsa.ed.gov).~~
 - ~~3.2.2 Submit the applicant's Academic Record to DHEO by mail, fax, or email by the last date of the application acceptance period.~~
 - ~~3.2.3 Complete an application through the Student Account Access Site by the last date of the application acceptance period. Application must include:~~
 - ~~3.2.3.1 The applicant's major and the name of the institution in which the applicant will be enrolled for the school year in which the loan forgiveness award will be awarded.~~
 - ~~3.2.3.2 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.~~
 - ~~3.2.3.3 A first time applicant must establish an account and provide his or her valid email address and permanent mailing address before being permitted to submit the information required in subsection 3.2.3 of this regulation.~~
- 4.0 Eligibility for Awards**
- ~~4.1 Applicants must meet the following requirements to be eligible for the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program:~~
 - ~~4.1.1 Be a Resident of the State; and~~
 - ~~4.1.2 Be a Full Time or Part Time Student enrolled in either:~~
 - ~~4.1.2.1 A bachelors or doctoral degree program at an institution that is accredited by a Nationally Recognized Accrediting Agency; and~~
 - ~~4.1.2.1.1 Be a current employee or worked for at least two years before the date of application at a Delaware library as described in subsection 4.2 below; or~~
 - ~~4.1.2.2 A master's degree program in a library science or similar program approved by the American Library Association.~~
 - ~~4.2 Preference will be given to persons currently employed by a Delaware public library, county department library, public school library, state agency library, a member library of the Delaware Library Consortium, or archive.~~
- 5.0 Awards**
- ~~5.1 DHEO determines the number and amount of awards to be given annually. The number and amount of awards each year will vary and is based on and subject to DHEO receiving funds appropriated for the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program.~~
 - ~~5.2 DHEO shall grant awards on the basis of financial need, community service, GPA, current employment, and academic merit.~~
 - ~~5.2.1 To determine an applicant's financial need, DHEO will consider:~~
 - ~~5.2.1.1 The applicant's EFC;~~
 - ~~5.2.1.2 The expense of attending the college or university in which the applicant is enrolled; and~~
 - ~~5.2.1.3 The applicant's eligibility for Pell grants and other federal, state, or private grant assistance.~~
 - ~~5.3 An award shall be used for, and not in excess of, Direct Educational Expenses.~~
 - ~~5.4 An award may be renewable. Students must submit an annual Academic Record and updated enrollment information in order to be eligible for renewal.~~
 - ~~5.4.1 Students in bachelors and doctoral programs shall continue to be employed in an eligible library in order to be eligible for renewal of the Ada Leigh Soles Memorial Professional Librarian and Archivist Incentive Program.~~

PROPOSED REGULATIONS

6.0 Award Payment

- 6.1 DHEO shall contact a recipient's college or university to verify the recipient's academic, financial, and enrollment status each Semester prior to the awarded funds being disbursed.
- 6.1.1 ~~A signed promissory note must be executed before disbursement of funds.~~
- 6.2 ~~All payments shall be disbursed directly to the eligible recipient's college or university only.~~
- 6.3 ~~If a recipient withdraws from school or otherwise does not qualify for full payment at the end of the add/drop period for a Semester, DHEO will apply the refund policy set forth in 14 Del.C. §3402(k).~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 181(15), 183, 3402(c), and 3421 (14 Del.C. §§181(15), 183, 3402(c), & 3421)
14 DE Admin. Code 1207

PUBLIC NOTICE

1207 Delaware Nursing Incentive Program

A. TYPE OF REGULATORY ACTION REQUIRED

Repeal of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §§ 181(15), 183, 3402(c), and 3421, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office, proposes to repeal 14 DE Admin. Code 1207 Delaware Nursing Incentive Program. In accordance with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022, Delaware nursing incentive program loans are no longer awarded. Repayment and forgiveness of loans that were awarded prior to July 1, 2022 are addressed in statute (14 Del.C. §3421(c)).

In accordance with 14 Del.C. §122(d), the Department is required to perform and issue a written educational impact analysis of any new proposed regulation and of any regulation that is proposed to be continued. Because this regulation is proposed to be repealed, the Department is not required to perform and issue a written educational impact analysis.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before January 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

***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/december2022/proposed/26 DE Reg 452RFA 12-01-22.pdf>

1207 Delaware Nursing Incentive Program

1.0 Purpose

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

2.0 Definitions

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

context in which they are used clearly indicates otherwise:

- ~~“Academic Record” means the applicant’s unofficial transcript from high school, college, or graduate school for the most recent academic year.~~
- ~~“Award” means a loan under the Delaware Nursing Award Program, the repayment of which is forgiven when the borrower is employed as a licensed practical nurse or registered nurse at a State-owned hospital or clinic or a nonprofit hospital located in Delaware for the period of time specified in 14 Del.C. §3421(c)(2).~~
- ~~“Delaware Higher Education Office” or “DHEO” means the Department of Education’s office which administers specific programs related to higher education, including, but not limited to, scholarship and loan programs.~~
- ~~“Full Time Student” means an Undergraduate Student enrolled in twelve (12) or more college credit hours or a graduate student enrolled in nine (9) or more credit hours.~~
- ~~“Grade Point Average” or “GPA” means the number representing the average value of the accumulated final grades earned in courses over time.~~
- ~~“Institution” means a post-secondary college, university, or institution of higher education that is accredited by a nationally recognized regional accrediting agency.~~
- ~~“Part Time Student” means a student enrolled in an Undergraduate program that is more than six (6) and less than eleven (11) college credit hours per term or a student enrolled in a graduate program that is at least five (5) and less than nine (9) credit hours per term.~~
- ~~“Resident of the State” means an applicant who meets the definition of residency as defined in 14 Del.C. §3402(f).~~
- ~~“Semester” means a half year term in a school or college, typically lasting fifteen (15) to eighteen (18) weeks.~~
- ~~“Student Account Access Site” means the webpage on the DHEO’s website where students can access scholarship and loan forgiveness opportunities.~~
- ~~“Undergraduate Student” means a Full-Time or Part-Time Student at a regionally accredited college or university or accredited hospital school of nursing who has not yet earned a bachelor’s or equivalent degree.~~

3.0 Application Acceptance and Submission Period

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

4.0 Eligibility for Awards

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

5.0 Awards

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

6.0 Award Payment

- 6.1 DHEO shall contact the Institution where the recipient is enrolled to verify the recipient's enrollment each Semester, fall and spring, before dispersing funds.
- 6.2 A signed promissory note, which includes the terms of repayment and loan forgiveness, must be executed before disbursement of funds.
- 6.3 All payments shall be disbursed directly to the eligible recipient's Institution only.
- 6.4 An Award may be pro-rated for Part-Time Students.

7.0 Repayment and Forgiveness

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1505

PUBLIC NOTICE

1505 Standard Certificate

A. TYPE OF REGULATORY ACTION REQUESTED

Repeal of 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"), proposes to repeal 14 Del. Admin. Code 1505 Standard Certificate. The regulation provides the general requirements for the issuance of a Standard Certificate. Over the past few years, the Board has incorporated the specific requirements for each Standard Certificate into each of the Standard Certificate regulations. As a result, this regulation is no longer necessary.

In accordance with 14 Del.C. §122(d), the Department is required to perform and issue a written educational impact analysis of any new proposed regulation and of any regulation that is proposed to be continued. Because this regulation is proposed to be repealed, the Department is not required to perform and issue a written educational impact analysis.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before January 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

***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/december2022/proposed/26 DE Reg 455RFA 12-01-22.pdf>

1505 Standard Certificate

1-0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a).

2-0 Definitions

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

"Certification" means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

"Department" means the Delaware Department of Education.

"DPAS" means an approved state educator performance system pursuant to 14 Del.C. Ch. 12, Subchapter VII.

"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

~~Standards Board and approved by the State Board. 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, or management companies.~~

~~"Examination of Content Knowledge" means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.~~

~~"Fifteen (15) Credits or Their Equivalent in Professional Development" means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to it, from a regionally accredited college or university or a professional development provider approved by the Department.~~

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

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

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

~~"NASDTEC" means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all fifty (50) states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.~~

~~"NCATE" means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.~~

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

~~"Second Certificate" or "Second Standard Certificate" means any Standard Certificate issue after the first Standard Certificate including any second or subsequent Standard Certificate.~~

~~"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.~~

~~"State Board" means the State Board of Education of the State of Delaware pursuant to 14 Del.C. §104.~~

~~"Teaching Experience" means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance under a State credential in any PreK to 12 public school setting or an equivalent setting as approved by the Department.~~

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

3.0 Standard Certificate

The Department shall issue a Standard Certificate to an educator who holds a valid Delaware Initial, Continuing or Advanced License; or Standard or Professional Status Certificate issued prior to August 31, 2003, who has met the following requirements:

- 3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
 - 3.1.1 Completing an Approved Educator Preparation Program or Advanced Certification
 - 3.1.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or
 - 3.1.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, offered by a regionally accredited college or university with a major or its equivalent in the area of the Standard Certificate requested. For both programs, the state approval body shall employ the appropriate NASDTEC or NCATE specialty organization standards; or
 - 3.1.1.3 Satisfactorily completing an Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other educator preparation programs as the Secretary or the Standards Board with the consent of the State Board, may approve; or
 - 3.1.2 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a Standard Certificate in the area for which a Standard Certificate is sought; or
 - 3.1.3 Holding a bachelor's degree from a regionally accredited college or university in any content area and
 - 3.1.3.1 for applicants applying for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) or their equivalent credits must focus on pedagogy:
 - 3.1.3.1.1 The fifteen (15) credits or their equivalent in professional development are selected by the applicant in consultation with the employing school district or charter school.
 - 3.1.3.1.2 The fifteen (15) credits or their equivalent in professional development is subject to Department approval.
 - 3.1.3.1.3 In the case where there is no employing authority or the new Standard Certificate requested is outside the applicant's current spectrum of employment, the proposed fifteen (15) credits or their equivalent in professional development is selected by the applicant in consultation with the Department. The final selection is subject to Department approval; or
- 3.2 Met the requirements for licensure and holding a valid and current license or certificate from another state in the area for which a Standard Certificate is requested; or
- 3.3 Met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 **Del.C.** §1203.
- 3.4 If additional criteria are imposed by a specific regulation in the area for which a Standard Certificate is sought, the additional requirement(s) must also be met.

4.0 Testing Requirements

Pursuant to 14 **Del.C.** §1220, where an examination of content knowledge such as a Praxis™ II examination is applicable and available in the area of the Standard Certificate sought, the applicant shall achieve a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board.

5.0 Multiple Standard Certificates

- 5.1 Educators may hold a Standard Certificates in more than one area.

- 5.2 Educators applying for their second or subsequent Standard Certificate(s) must meet the qualifications in section 3.0 for each additional Standard Certificate.

6.0 Application Requirements

- 6.1 The following documents are required in the application for a Standard Certificate:
- 6.1.1 Official transcripts from a regionally accredited college or university:
- 6.1.1.1 Electronic transcripts may be submitted by the employing authority or by the regionally accredited college or university; or
- 6.1.1.2 Sealed paper transcripts may be submitted.
- 6.2 If applicable, documents verifying successful completion of professional development; and
- 6.3 Official scores on an examination of content knowledge such as the Praxis II examination if applicable and available; or
- 6.4 Evidence of passage of the National Board for Professional Teaching Standards Certificate; if applicable; or
- 6.5 An official copy of the valid and current license or certificate from another state.
- 6.6 If applying for an initial license, a Standard Certificate must be applied for simultaneously with application for a License, and the applicant shall also provide all required documentation for the license.

7.0 Application Procedures for License Holders

- 7.1 If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.
- 7.2 Notwithstanding any provision to the contrary herein, or in any Department or Standards Board content area, subject or category Standard Certificate regulation (including 14 **DE Admin. Code**, 1500, et. seq.), the Department shall not act on an application for certification if the applicant is under official investigation by any national, state or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

8.0 Validity of a Standard Certificate

- 8.1 A Standard Certificate is valid regardless of the assignment or employment status of the holder of a Standard Certificate or Standard Certificates.
- 8.1.1 A Standard Certificate is not subject to renewal.
- 8.2 An educator's Standard Certificate(s) shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Standard, or Professional Status Certificate is revoked in accordance with 14 **DE Admin Code** 1514.
- 8.3 An educator whose License or Standard Certificate is revoked is entitled to a full and fair hearing before the Standards Board.
- 8.3.1 Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

9.0 Secretary of Education Review

The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Standard Certificate on an individual basis and grant a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate, but whose

~~effectiveness is documented by the local school district or charter school administrator or other employing authority.~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), 1213, and 1214 (14 Del.C. §§1203, 1205(b), 1213 & 1214)
14 DE Admin. Code 1512

PUBLIC NOTICE

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

1512 Issuance and Renewal of Advanced License

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203, 1205(b), 1213, and 1214, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1512 Issuance and Renewal of Advanced License. The regulation concerns the requirements for the issuance, renewal, and retention of an Advanced License in accordance with 14 Del.C. §§1213 and 1214. The proposed amendments include revising the title of the regulation; clarifying Section 1.0; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing an Advanced License in Section 3.0; specifying the requirements for obtaining an Advanced License in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the requirements for renewing an Advanced License; adding Section 7.0, which concerns the validity of an Advanced License; adding Section 8.0, which concerns extensions for exigent circumstances; adding Section 9.0, which concerns leaves of absence; adding Section 10.0, which concerns the requirements for retaining an Advanced License; adding Section 11.0, which concerns disciplinary actions; and adding Section 12.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before January 3, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The requirements for the issuance of an Advanced License in Section 4.0, the renewal of an Advanced License in Section 6.0, and the retention of an Advanced License in Section 10.0 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 requirements for the issuance of an Advanced License in Section 4.0, the renewal of an Advanced License in Section 6.0, and the retention of an Advanced License in Section 10.0 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 license 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 license 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. The requirements for an Advanced License are based on the requirements set forth in the governing statute (14 **Del.C.** §§1213 and 1214).

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. In addition, the requirements in Section 12.0 apply to individual applicants and Educators.

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/december2022/proposed/26 DE Reg 459RFA 12-01-22.pdf>

1512 ~~Issuance and Renewal of~~ Advanced License

1.0 Content

This regulation shall apply to the ~~issuance and renewal~~ issuance, renewal, and retention of an Advanced License for ~~educators~~ Educators, pursuant to 14 **Del.C.** §1213 and §1214.

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"Comprehensive Educator Induction Program" means an educator induction program approved by the Department to provide mentoring and professional development for Educators.

"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 Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Exigent Circumstances" ~~means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his or her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.~~

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

~~"National Board Certification" means certification of an educator by the National Board for Professional Teaching Standards.~~

"Standard Certificate" means a credential issued to certify that an educator has the prescribed education, knowledge, or skill 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.

"State" means State of Delaware.

3.0 Issuance of an Advanced License

- 3.1 ~~In accordance with 14 Del.C. §1213, the Department, upon application and receipt of the list of successful candidates provided annually by the National Board for Professional Teaching Standards, shall issue an Advanced License to any educator who receives National Board for Professional Teaching Standards certification. An Advanced License is valid for up to ten (10) years unless extended pursuant to 14 Del.C. §1216 or revoked for cause, as defined in 14 Del.C. §1218 shall issue an Advanced License to an applicant who meets the requirements for issuance of an Advanced License as set forth in Section 4.0 of this regulation.~~
- 3.2 ~~The term of the Advanced License shall be the same as the balance of the term of the educator's National Board for Professional Teaching Standards certification.~~
- 3.3 ~~The Department may issue, upon application, an Advanced License to an educator licensed in another jurisdiction who provides verification of receipt of National Board certification.~~
- 3.4 3.2 The Notwithstanding any provision to the contrary herein, the Department shall not act on an application for ~~licensure~~ an Advanced License if the applicant is under official investigation by any state national, state, or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution. 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 ~~RESERVED (For Equivalent Program See 14 Del.C. §1213)~~

5.0 Renewal of Advanced License

- 5.1 ~~In accordance with 14 Del.C. §1214, upon application, the Department shall renew an Advanced License, valid for up to an additional ten (10) years, to an educator who has maintained proficiency through the National Board for Professional Teaching Standards. Proficiency for National Board certification shall be deemed to have been maintained if the educator provides evidence of valid renewal of National Board for Professional Teaching Standards certification.~~
- 5.2 ~~The term of the renewed advanced license shall be the same as the balance of the term of the educator's National Board for Professional Teaching Standards certification.~~
- 5.3 ~~The Department shall renew an Advanced License upon application and receipt of a list of successful Delaware candidates for renewal provided annually by the National Board for Professional Teaching Standards.~~
- 5.4 ~~An applicant who elects not to renew with the National Board for Professional Teaching standards or who fails to meet the recertification requirements set forth by the National Board shall be issued a Continuing License.~~

PROPOSED REGULATIONS

6.0 Extension for Exigent Circumstances

- 6.1 The Department may extend an Advanced License for a period not to exceed one (1) year, upon the license holder's showing of exigent circumstances warranting the necessity of such extension.
- 6.1.1 A license holder whose Advanced License expires during the school year may have the Advanced License extended until the last day of the fiscal year upon a request from the district superintendent or charter school administrator. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

7.0 Leave of Absence

- 7.1 At the discretion of the hiring district or charter school, an educator may take a leave of absence of up to three years. The date of expiration of the Advanced License will be extended commensurate with the length of the leave of absence.
- 7.2 The Department may require that the educator provide documentation sufficient to establish the leave of absence.
- 7.3 An educator's Advanced License shall not be automatically extended under this section and the burden is on the educator to submit an extension request with sufficient documentation to the Department and to establish the leave of absence.

8.0 Criminal Conviction History

An applicant shall disclose his or her criminal conviction history upon application for an Advanced License, the renewal of an Advanced License, or upon the issuance of a Continuing License pursuant to subsection 5.4. Failure to disclose a criminal conviction history is grounds for denial or revocation of an Advanced License or a Continuing License and criminal prosecution as specified in 14 ~~Del.C.~~ §1219.

4.0 Requirements for an Advanced License

- 4.1 Pursuant to 14 ~~Del.C.~~ §1213, the Department may issue an Advanced License to an applicant who meets the requirements of subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant achieves and currently maintains National Board Certification from the National Board for Professional Teaching Standards.
- 4.1.2 The applicant holds a Standard Certificate issued by the Department.

5.0 Application Requirements for Issuance of an Advanced License

- 5.1 An applicant must disclose the applicant's criminal conviction history upon application for the issuance of an Advanced License. Failure to disclose a criminal conviction history is grounds for denial of an Advanced License as specified in 14 ~~Del.C.~~ §1219.
- 5.2 The Department will not process an application for an Advanced License until the applicant has submitted all of the required documentation.
- 5.3 The following documentation is required for applicants who are applying for the Advanced License:
- 5.3.1 Proof the applicant holds a certificate from the National Board for Professional Teaching Standards; and
- 5.3.2 Proof the applicant holds a Standard Certificate issued by the Department; and
- 5.3.3 Additional documentation as required by the Department.

6.0 Renewal of the Advanced License

- 6.1 In order to continue practicing as an educator in a Delaware public school, an Educator who holds an Advanced License shall renew the Educator's Advanced License prior to the expiration date. Pursuant to 14 ~~Del.C.~~ §1214, the Department may renew an Educator's Advanced License for up to 10 additional years if the Educator maintained proficiency through the National Board for Professional Teaching Standards. The term of renewal shall be the same as the balance of the term of the Educator's National Board for Professional Teaching Standards certificate.

6.2 Application for Renewal

- 6.2.1 An applicant must disclose the applicant's criminal conviction history upon application for renewal of an Advanced License. Failure to disclose a criminal conviction history is grounds for denial of an Advanced License as specified in 14 Del.C. §1219.
- 6.2.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application to renew an Advanced License 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.
- 6.2.3 The Department will not process an application to renew an Advanced License until the applicant has submitted all of the required documentation. The following documentation is required to be submitted to the Department with the application for renewal of an Advanced License:
 - 6.2.3.1 A completed renewal application; and
 - 6.2.3.2 Proof of renewal of National Board for Professional Teaching Standards certificate or the applicable equivalent certificate; and
 - 6.2.3.3 Additional documentation as required by the Department.
- 6.3 An applicant who elects not to renew the applicant's National Board for Professional Teaching Standards certificate or who fails to meet the recertification requirements set forth by the National Board for Professional Teaching Standards shall notify the Department and apply for a Continuing License if the applicant wants to continue practicing as an Educator in a Delaware public school.

7.0 Validity of an Advanced License

- 7.1 For an applicant who applied for and met the requirements of the Advanced License under Section 4.0, the Advanced License is issued for a period of up to 10 years. The term of the applicant's Advanced License shall be the same as the balance of the term of the applicant's National Board for Professional Teaching Standards certificate.
- 7.2 For an applicant who applied for and met the requirements for renewal of the applicant's Advanced License under Section 6.0, the Advanced License may be renewed for up to 10 years. The term of the applicant's Advanced License shall be the same as the balance of the term of the applicant's National Board for Professional Teaching Standards certificate.

8.0 Extension for Exigent Circumstances

- 8.1 The Department may extend an Advanced License for a period not to exceed 1 year, upon the license holder's showing of exigent circumstances warranting the necessity of such extension. Exigent circumstances are unanticipated circumstances or circumstances beyond the license holder's control, including serious illness of the license holder or a member of the license holder's immediate family, activation to active military duty, and serious emergencies that necessitate the license holder's temporarily leaving active service as an Educator.
- 8.2 A license holder whose Advanced License expires during the school year may have the Advanced License extended until the last day of the fiscal year upon a request from the public school district superintendent or charter school administrator. This extension shall be considered an exigent circumstance and shall not exceed 1 school year in length. Notwithstanding an extension, the effective date of any renewed license shall be the original expiration date.

9.0 Leave of Absence

- 9.1 An Educator who holds an Advanced License may take a leave of absence for up to 3 years with no effect upon the validity or expiration of the Educator's Advanced License if approved by the Department.

PROPOSED REGULATIONS

- 9.2 The Educator shall submit to the Department a request with documentation that the Educator is approved by the Educator's employing school district or charter school to take a leave of absence and the length of the leave of absence.
- 9.3 If the Department approves the Educator's request, the Educator's Advanced License will be frozen for an amount of time that is commensurate with the length of the leave of absence up to 3 years.

10.0 Requirements Related to Retention of the Advanced License

- 10.1 In order to retain an Advanced License, the Educator shall:
- 10.1.1 Hold at least one Standard Certificate and meet any requirements related to retention of the Standard Certificate.
- 10.1.2 Maintain the Educator's National Board for Professional Teaching Standards certificate.
- 10.1.3 For an Educator who is new to the state or new to an area, complete the applicable Comprehensive Educator Induction Program as provided in **14 DE Admin. Code 1503**.
- 10.2 If an Educator fails to meet any of the requirements related to retaining an Advanced License, the Educator shall immediately notify the Department in writing.
- 10.3 The requirements set forth in subsection 10.1 apply to all Educators regardless of the date the Advanced License was issued.

11.0 Disciplinary Action

- 11.1 An Educator's Advanced License 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 or for the Educator's failure to comply with the requirements related to the retention of an Advanced License as provided in Section 10.0.
- 11.2 An Educator's Advanced License shall be revoked if the Educator's Standard 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**.
- 11.3 An Educator whose license 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.

12.0 Contact Information and Change of Name or Address

- 12.1 All applicants and Educators are required to update their contact information in DEEDS if their contact information changes.
- 12.2 An Educator who legally changes the Educator's name and wishes to change the name on the Advanced License shall provide a notarized copy of evidence of the name change such as a marriage license or court action.
- 12.3 An applicant or Educator whose mailing address, email address, or phone number changes shall provide the Department with the new mailing address, email address, or phone number within 14 calendar days of the change.
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DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 20620

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 the Division of Social Services Manual (DSSM) 20620.1 to align language with the recently approved Title XIX Medicaid State Plan allowing 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 DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2022. 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 proposed regulation is to advise the public that Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) is proposing to revise Division of Social Services Manual (DSSM) section 20620.1 to align with the CMS approved language.

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. 25 DE Reg. 866 (03/01/22) amended Title XIX Medicaid State Plan to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship not to exceed \$100 and to include the establishment of a guardianship (to include attorney's fees) not to exceed \$750.

DMMA published revisions to the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) 20620.1 regarding guardianship fees and post-eligibility treatment of income that were adopted as final in August of 2022. DMMA subsequently submitted the Title XIX Medicaid State Plan changes to the Centers for Medicare and Medicaid Services (CMS). After review and discussions with CMS, gross earned income was revised to gross income; this change must be revised in Section 20620.1 of the DSSM.

Summary of Proposal*Purpose*

The purpose of this proposed regulation is to advise the public that Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) is proposing to revise Division of Social Services Manual (DSSM) section 20620.1 to align with the CMS approved language.

Summary of Proposed Changes

Effective for services provided on and after April 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, 2022.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

There is no anticipated increase in the fiscal impact from the original publication to align with the CMS approved language.

***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/december2022/proposed/26 DE Reg 465RFA 12-01-22.pdf>

20000 Medicaid Long Term Care**20620.1 Personal Needs Allowance**

- 20620.1.1 \$50.00 per month of available income is to be protected for the Medicaid recipients recipient's direct personal needs; or
- 20620.1.2 If the recipient regularly attends a rehab/educational program off the grounds of his or her long-term care facility, including employment for the purpose of rehabilitation in a sheltered workshop, \$50.00 per month will be protected; or
- 20620.1.3 For long-term care facility residents who are participating in substantial gainful activity (SGA) (20 CFR 416.971), the following amounts, not to exceed the Adult Foster Care rate will be deducted from gross earned income:

20620.1.3.1 Mandatory payroll deductions that are a condition of employment including, but not limited to:

- Federal, State and Local Taxes
- FICA
- Union Dues
- Insurance premiums
- Pension contributions
- Transportation costs as paid to & from work
- Clothing and personal needs allowance of \$75/month.

20620.1.3.2 If monthly earnings average more than the current SGA amount in a calendar year, this is considered SGA and the Division of Medical Assistance (DMMA) can allow a personal needs allowance of up to the AFC rate.

20620.1.3.3 If earnings average less than \$300 a month in a calendar year, this is not ordinarily considered SGA and DMMA can allow the \$50 personal needs allowance.

20620.1.3.4 If average earnings are between \$300 and the current SGA amount, DMMA must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to persons without disabilities in the community performing similar jobs.

20620.1.4 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
- ii. Initial establishment of a guardianship (to include attorney's fees) not to exceed \$750

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE**Children's Health Insurance Program (CHIP) - Early, Periodic, Screening, Diagnosis, & Treatment (EPSDT) Coverage**

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 Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XXI Children's Health Insurance Program (CHIP) State Plan regarding Early, Periodic, Screening, Diagnosis, & Treatment (EPSDT) coverage in the Delaware Healthy Children's Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, 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 DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2022. Please identify in the subject line: CHIP - EPSDT

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 proposed regulation is to align services provided to children under the Title XXI CHIP State Plan with services provided to children under the Title XIX Medicaid State Plan.

Statutory Authority

42 CFR 457.65

42 CFR 457.450

Section 2103(a) of the Social Security Act

Background

The Children's Health Insurance Program (CHIP) is an optional program established and administered by a State, jointly funded with the Federal government, to provide child health assistance to uninsured, low-income children through a separate child health program, a Medicaid expansion program, or a combination program. Coverage provided under a CHIP State Plan must consist of any of the four types of coverage outlined in Section 2103(a) of the Social Security Act, specifically, benchmark coverage; benchmark-equivalent coverage; existing comprehensive state-based coverage; and/or Secretary-approved coverage. Within each of these types of coverages, there are additional options.

Delaware's CHIP Program, the Delaware Healthy Children's Program (DHCP), provides Secretary-approved coverage; specifically, it provides coverage that includes benchmark coverage plus additional coverage. This coverage includes all services that are provided to children under the Medicaid State Plan, except Non-Emergency Transportation (NEMT) and Prescribed Pediatric Extended Care (PPEC).

NEMT is an important benefit provided through Medicaid and is associated with a significant reduction in missed appointments. Transportation barriers can prevent individuals from accessing vital medical care. Extension of the NEMT benefit to children enrolled in CHIP will increase access to care for these targeted low-income children. PPEC facilities are provided as an alternative to more expensive institutionalization or as an alternative to community/home care for children who are determined to be in medical need of the service. These services include nursing services, speech therapy, physical therapy, and occupational therapy provided in an outpatient setting, up to twelve hours per day, five days a week. Typically, children that are eligible for PPEC services are enrolled with Medicaid under the Children's Community Alternative Disability Program (CCADP). If a child in CHIP were to be medically complex enough to receive PPEC services, they would be referred to the CCADP to be reviewed for coverage under that benefit. However, revising the coverage provided under the CHIP State Plan, to Secretary-approved coverage, coverage the same as Medicaid State plan, including Early Periodic Screening Diagnosis and Treatment (EPSDT) will ensure that no child enrolled in the CHIP program will go without access to transportation, or in the rare instance, PPEC services until the child was able to be reviewed for the CCADP.

Additionally, this State Plan Amendment will allow for easier administration of the CHIP program by aligning services and reducing CMS administrative requirements on states that do not align services between the Medicaid and CHIP State Plans.

Summary of Proposal

Effective for services provided on and after July 1, 2023, DHSS/DMMA proposes to amend the Title XXI Children's Health Insurance Program (CHIP) State Plan regarding Early, Periodic, Screening, Diagnosis, & Treatment (EPSDT) coverage in the Delaware Healthy Children's Program.

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, 2022.

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 2023	Federal Fiscal Year 2024
Federal funds	\$125,816	\$679,212
General (State) funds	\$51,539	\$266,765

***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/december2022/proposed/26 DE Reg 467RFA 12-01-22.pdf>

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

<http://regulations.delaware.gov/register/december2022/proposed/Proposed APA 22-33 CHIP EPSDT Coverage Sec. 1 and Sec. 6 AMENDED.pdf>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions

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 Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions, specifically, to request that an extension for co-pays and premiums to be waived.

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 DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2022. Please identify in the subject line: Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions.

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 the Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions, specifically, to request that an extension for co-pays and premiums to be waived.

Statutory Authority

- Section 1135(b) of the Social Security Act

Background

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency. Additionally, on March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS). This is to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

Summary of Proposal*Purpose*

The purpose of this proposed regulation is to temporarily extend the suspension of member copays and premiums for six months following the end of the PHE.

Summary of Proposed Changes

Effective for services provided on the day after the end of the PHE until 6 months following the end of the month in which the PHE ends, DHSS/DMMA proposes to amend Section 7.4-B of the Medicaid State Plan to temporarily extend the provision approved by CMS to waive member copays and premiums.

Public Notice

In accordance with the *federal* public notice requirements established in 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, 2022.

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 provide other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

There is no anticipated fiscal impact as co-pays and premiums have been waived since March of 2020.

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

<http://regulations.delaware.gov/register/december2022/proposed/26 DE Reg 469RFA 12-01-22.pdf>

State/Territory: Delaware

Section 7 - General Provisions
7.4. Temporary Extension to the Medicaid Disaster Relief Policies
for the COVID-19 National Emergency

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

[http://regulations.delaware.gov/register/december2022/proposed/Section 7.4.B - Temporary Extension to COVID-19 DR Provisions AMENDED.pdf](http://regulations.delaware.gov/register/december2022/proposed/Section%207.4.B%20-%20Temporary%20Extension%20to%20COVID-19%20DR%20Provisions%20AMENDED.pdf)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 4112F(c) (14 Del.C. §4112F(c))
14 DE Admin. Code 610

REGULATORY IMPLEMENTING ORDER

610 Limitations on Use of Seclusion and Restraint

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §4112F(c), the Secretary of Education intends to amend 14 DE Admin. Code 610 Limitations on Use of Seclusion and Restraint. This regulation is being amended pursuant to 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. This regulation was reviewed to ensure alignment with existing practice and is being amended to correct typographical and grammatical errors to comply with *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on October 1, 2022. The Department of Education did not receive any written comments concerning the proposed amendments.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 610 Limitations on Use of Seclusion and Restraint in order to ensure alignment with existing practice and to correct typographical and grammatical errors to comply with *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint. Therefore, pursuant to 14 Del.C. §122, 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint attached hereto is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint amended hereby shall be in the form attached hereto, and said regulation shall be cited as 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 9, 2022. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 9th day of November 2022.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 9th day of November 2022

610 Limitations on Use of Seclusion and Restraint

1.0 Purpose and Authority

- 1.1 The purpose of ~~these regulations~~ this regulation is to establish standards and procedures for the use of physical restraint, chemical restraint, mechanical restraint, and seclusion to provide safety for all individuals. The regulations set forth permitted and prohibited uses of restraint and seclusion, required training for public school, private program, or alternative program personnel, required documentation and reporting of incidents of restraint and seclusion, required notification to parents, and waiver procedures for individual students.
- 1.2 These regulations are promulgated in accordance with 14 **Del.C.** §4112F.

2.0 Definitions

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

“**Alternative program**” means a program established pursuant to 14 **Del.C.** Ch. 16.

“**Chemical restraint**” means a drug or medication used on a student to control behavior or restrict freedom of movement that is either not medically prescribed for the standard treatment of a student’s medical or psychiatric condition or not administered as prescribed. (Authority: 14 **Del.C.** §4112F(a)(1)).

“**Individualized Education Program**” or “**IEP**” means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Sections 7.0 through 11.0 of 14 **DE Admin. Code** 925.

“**Mechanical restraint**” means the application of any device or object that restricts a student’s freedom of movement or normal access to a portion of the body that the student cannot easily remove.

“Mechanical restraint” does not include devices or objects used by trained school personnel, or used

by a student, for the specific and approved therapeutic or safety purposes for which they were designed and, if applicable, prescribed, including the following:

- Restraints for medical immobilization;
- Adaptive devices or mechanical supports used to allow greater freedom of movement stability than would be possible without use of such devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- Instruction and use of restraints as part of a criminal justice or other course; or
- Notwithstanding their design for other purposes, adaptive use of benign devices or objects, including mittens and caps, to deter self-injury.

(Authority: 14 **Del.C.** §4112F(a)(2))

“Parent” means:

- A biological or adoptive parent of a child;
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver's School Authorization executed in compliance with 14 **Del.C.** §202(f)(1) is on file;
- An individual who is otherwise legally responsible for the child's welfare; or
- A surrogate parent who has been appointed in accordance with Section 19.0 of 14 DE Admin. Code 926,19.0 or Section 639(a)(5) of the Act.

The biological or adoptive parent, when attempting to act as the parent under these regulations, and when more than one party is qualified under this definition to act as a parent, must be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this definition.

(Authority: 20 U.S.C. 1401(23); 14 **Del.C.** §3110)

“Physical restraint” means a restriction imposed by a person that immobilizes or reduces the ability of a student to freely move arms, legs, body, or head. “Physical restraint” does not include physical contact that:

- Helps a student respond or complete a task;
- Is needed to administer an authorized health-related service or procedure; or
- Is needed to physically escort a student when the student does not resist or the student's resistance is minimal.

(Authority: 14 **Del.C.** §4112F(a)(3))

“Principal” means the building principal, or the equivalent of the building principal, of any public school or charter school, or the building principal's designee.

“Private program” means a non-public school or program contracted by a school district or charter school.

“Public school personnel” means an employee or contractor of a public school district or charter school. “Public school personnel” does not include the following:

- A law enforcement officer as defined in § 9200(b) of Title 11; unless the law enforcement officer meets the definition of a School Resource Officer/SRO; or
- An employee or contractor providing educational services within a Department of Correction or Division of Youth Rehabilitative Services facility.(Authority: 14 **Del.C.** §4112F(a)(4))

“School Resource Officer (SRO)” or **“SRO”** means a contractor, subcontractor or employee of a public school district or charter school who is a sworn law enforcement officer as defined in 11 **Del.C.** §9200.

“Seclusion” means the involuntary confinement of a student alone in a room, enclosure, or space that is either locked or, while unlocked, physically disallows egress. The use of a “timeout” procedure during which a staff member remains accessible to the student shall not be considered “seclusion.” (Authority: 14 **Del.C.** §4112F(a)(5))

“Student” means any individual enrolled in a Delaware public school or charter school, an alternative program pursuant to 14 **Del.C.** Ch. 16, or a private program pursuant to Title 14 **Del.C.** Chapter 31, Section 3124.

“Timeout” means a behavior management technique in which, to provide a student with the opportunity to reflect or regain self-control, a student is separated from others for a limited period in a setting that is not locked and the exit is not physically blocked by furniture, closed door held shut from outside, or other inanimate object. (Authority: 14 **Del.C.** §4112F(a)(6))

“Written report” means printed paper filings and electronic filings that can be printed.

3.0 Use of Restraints

- 3.1 Public school personnel, private program personnel, and alternative program personnel are prohibited from imposing on any student:
- 3.1.1 Chemical restraint; and
 - 3.1.2 Subject to waiver authorized by 14 **Del.C.** §4112F(c)(4) and Section 8.0, mechanical restraint and seclusion.
- 3.2 Such personnel may impose physical restraint only in conformity with all of the following standards:
- 3.2.1 The student’s behavior presents a significant and imminent risk of bodily harm to self or others;
 - 3.2.2 The physical restraint does not interfere with the student’s ability to communicate in the student’s primary language or mode of communication;
 - 3.2.3 The physical restraint does not interfere with the student’s ability to breathe or place weight or pressure on the student’s head, throat, or neck;
 - 3.2.4 The physical restraint does not recklessly exacerbate a medical or physical condition of the student;
 - 3.2.5 Less restrictive interventions have been ineffective in stopping the imminent risk of bodily harm to the student or others, except in case of a rare and clearly unavoidable emergency circumstance posing imminent risk of bodily harm, including, without limitation, intervening in a student initiated physical assault or altercation;
 - 3.2.6 For a student with a disability as defined in 14 **Del.C.**, Chapter 31 of Title 14 or 34 C.F.R. Part 104, the physical restraint does not contravene provisions in an individualized education program (IEP) IEP, behavior intervention plan, accommodation plan, or any other planning document for the individual student;
 - 3.2.7 Personnel use only the amount of force necessary to protect the student or others from the threatened harm;
 - 3.2.8 The physical restraint ends when a medical condition occurs putting the student at risk of harm or the student’s behavior no longer presents an imminent risk of bodily harm to the student or others;
 - 3.2.9 The physical restraint is within the scope of force authorized by ~~§468 of Title 14~~ 11 **Del.C.** §468.
- (Authority: 14 **Del.C.** §4112F(b))

4.0 Training of Personnel

- 4.1 Except as provided in 14 **Del.C.** §702(c), a student may be physically restrained only by public school personnel, private program personnel, or alternative program personnel who have completed training in physical restraint procedures.
- 4.1.1 Such personnel shall receive annual training in the use of crisis prevention and intervention techniques consistent with nationally-recognized training programs, which shall meet the following minimum requirements:

- 4.1.1.1 The training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies and supports;
- 4.1.1.2 The training shall be designed to meet the needs of such personnel consistent with their duties and the potential need for emergency safety interventions; and
- 4.1.2 Each public school, private program, and alternative program shall maintain written or electronic documentation of each training provided, which shall include a list of all personnel who participated in the training.
- 4.2 Any public school personnel responsible for reporting the physical restraint of a student to the Department of Education shall complete training on the reporting process approved by the Department of Education and any additional training that the Department of Education may prescribe ~~from time to time~~.
- 4.2.1 The approved training shall be provided using a web-based platform through the ~~Department's~~ Department of Education's Professional Development Management System (PDMS) or similar system. The training will be provided on an annual basis and made available throughout each school year.
- 4.2.2 Such personnel responsible for reporting the physical restraint of a student shall complete the approved training at least once every ~~three (3)~~ 3 years and during any year in which reporting procedures were changed from the previous year as indicated by the Department of Education.

5.0 Parental Notification of Use of Physical Restraint

- 5.1 Except as provided in ~~Section subsection~~ 5.1.1, if a student is physically restrained, a reasonable attempt shall be made to notify the parent on the same day, but in no event later than twenty-four hours after, the physical restraint is used. Such notification shall be made in person, by phone or by voicemail, or by e-mail. The school shall maintain written documentation of successful and unsuccessful attempts to notify the parent.
 - 5.1.1 Where physical restraint is included in the student's IEP or Section 504 Plan, the IEP Team or Section 504 Team, including the parent, shall determine a timeframe and manner of notification of each incident of physical restraint.
- 5.2 The parent shall be provided a copy of a final written report no later than the date on which such report is filed with the Department of Education. The written report shall contain, at a minimum, the information required under Section 6.0.

6.0 Uniform Data Collection

- 6.1 When an incident of physical restraint of a student by public school personnel, private program personnel, and charter school personnel occurs:
 - 6.1.1 As soon as practicable thereafter, a reasonable attempt shall be made to interview the student regarding the incident; and
 - 6.1.2 The school principal or charter school leader must provide a written report, in a uniform format as determined by the Department of Education, of the restraint to the Department of Education within ~~seventy-two (72)~~ 72 hours of the restraint, or within ~~seventy-two (72)~~ 72 hours of the time in which the student's district or charter school of residence receives notice of the restraint from the contracted private program or alternative program, whichever the case may be; and
 - 6.1.3 The written report shall include, at a minimum:
 - 6.1.3.1 Details of the restraint incident, including, but not limited to, the student behavior and description of events leading to the use of physical restraint; de-escalation techniques utilized by school personnel prior to the restraint; a description of the student's behavior during the restraint; a summary of witness interviews, if applicable; any injury caused to the student, staff ~~member(s)~~ members, or other ~~student(s)~~ students; and any related treatment deemed necessary as a result of the restraint.
 - 6.1.3.2 Demographic information on affected students to include age, race, ethnicity, and disability category;

- 6.1.3.3 A description of the interview conducted with the student, if applicable; and
- 6.1.3.4 If applicable, a description of changes to any or all of the following that resulted from the restraint incident:
 - 6.1.3.4.1 For a student with a disability as defined in 14 Del.C., Chapter 31 of ~~Title 14~~ or 34 C.F.R. Part 104, the student's IEP, behavioral support, crisis intervention plan, accommodation plan, or any other planning document for the individual student;
 - 6.1.3.4.2 ~~School/LEA~~ School or local educational agency policy or procedure; or
 - 6.1.3.4.3 Additional staff training.

7.0 Annual Reporting Requirement

The Department of Education shall issue an annual report on the use of physical restraint, which shall include rates of usage by school and by subcategories identified pursuant to Section 6.0, identify trends, and analyze significant results. The report shall be posted on the ~~Department's~~ Department of Education's website.

8.0 Waiver

- 8.1 Any public school, private program, or alternative program applicant for a waiver of the prohibition on the use of mechanical restraints or seclusion for an individual student must deliver the request in writing, in a uniform format developed by the Department of Education, to the Secretary or Secretary's designee setting forth the grounds for the request.
 - 8.1.1 The request shall be based on compelling justification supported by documentation, including, but not limited to, educational records, reporting of incidents, and the student's functional behavioral assessment and behavioral intervention plan, including implementation data, and medical documentation, if applicable.
 - 8.1.2 The request shall contain a description of the conditions and safeguards that the applicant will utilize in connection with the waiver, including, but not limited to:
 - 8.1.2.1 A detailed description of the proposed continual visual staff monitoring of student;
 - 8.1.2.2 A requirement that the parent be notified of each use of mechanical restraint or seclusion which conforms to the procedure set forth in Section 5.0 for reporting physical restraint except that the provisions of subsection 5.1.1 shall not apply herein; and
 - 8.1.2.3 A detailed description of the physical space within which the ~~seclusion(s)~~ seclusion will occur, or of the type of mechanical ~~restraint(s)~~ restraints to be utilized, whichever is applicable.
 - 8.1.3 The request shall include a written authorization signed by the parent agreeing to the issuance of a waiver on the prohibition of the use of mechanical restraints or seclusion for that student and a signed written consent for release of information to the Department of Education and the waiver review committee.
 - 8.1.4 All privileged documentation shall be maintained confidentially by the Department of Education and the waiver review committee to the extent permitted by law.
- 8.2 All requests shall be considered by a waiver review committee appointed by the Secretary. A decision by the waiver review committee shall be rendered no later than ~~(60) sixty~~ 60 calendar days of receipt of the waiver request.
- 8.3 The committee shall make a written recommendation to the Secretary, which shall include:
 - 8.3.1 A summary of the compelling justification based on the documentation submitted in support of the waiver requested;
 - 8.3.2 Recommendations to include any specific conditions and safeguards, and a brief statement of the reasons therefore;
 - 8.3.3 A requirement that, where a waiver is issued, there be continual visual monitoring, parental notice of each use of mechanical restraint or seclusion, and collection of data to include the number of times the student was subject to mechanical restraint or seclusion, the duration of each mechanical restraint or seclusion, and any other data as required by the Department of Education;

- 8.3.4 A statement as to the duration of the waiver, not to exceed a period of one calendar year.
- 8.4 The Secretary shall consider the entire record of the case and the committee's recommendations in reaching a final decision. The Secretary's decision shall be issued in writing and mailed to the applicant and the parent by certified mail no later than ~~ten (10)~~ 10 calendar days from receipt of the recommendation of the waiver review committee.
- 8.5 The Secretary's decision shall be final.

9.0 School Resource Officer (SRO) Training

- 9.1 ~~A SRO~~ SROs shall annually receive the following awareness level training from the school district or charter school in which they are assigned:
- 9.1.1 Training which is consistent with that which is required of other public school personnel within their school district or charter school for disability awareness and behaviors that may manifest as a result of disabilities;
- 9.1.2 Best practices for de-escalation techniques utilized in the school setting;
- 9.1.3 Current information on the intervention decisions and techniques used by school personnel within the school setting;
- 9.1.4 Such other training as is necessary to protect the health and well-being of students with disabilities, including students with ~~Individualized Education Programs (IEP)~~ an IEP who enroll after the beginning of the school year, which shall include basic awareness training specific to IEPs, functional behavior assessments and ~~Behavior Support Plans~~ behavioral intervention plans;
- 9.1.5 ~~A SRO~~ SROs shall participate in the annual SRO training provided by the Delaware State Police or equivalent training provided by the police agency employing the SRO.
- 9.2 The training outline in this regulation shall include reference to how it relates to the duties and responsibilities of ~~a the~~ the SRO as outlined in the Memorandum of Agreement between the school district or charter school and the police agency employing the SRO as required under ~~Regulation 14 DE~~ Admin. Code 601.
- 9.3 Prior to the start of each school year, or as soon as practical, but no later than 30 calendar days after the first student day of school, a representative of each school building shall meet with the SRO assigned to that school in order to be familiarized with behaviors related to disabilities that may occur in the school and typical responsive actions that may be taken by school personnel in that school.
- 9.4 Nothing within this regulation or contained within 14 **Del.C.** §4112F shall be interpreted as creating any additional restrictions on the sworn authority of law enforcement officers or their ability to carry out their required sworn duty.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))
14 **DE Admin. Code** 712

REGULATORY IMPLEMENTING ORDER

712 Employee Leave

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(a), the Secretary of Education intends to amend 14 **DE Admin. Code** 712 Employee Leave. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation only needs to be amended to correct grammatical errors in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on October 1, 2022. The Department of Education did not receive any written comments concerning the proposed amendments.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 712 Employee Leave in order to correct grammatical errors to ensure compliance with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 712 Employee Leave. Therefore, pursuant to 14 Del.C. §122, 14 **DE Admin. Code** 712 Employee Leave attached hereto is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 712 Employee Leave hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 712 Employee Leave amended hereby shall be in the form attached hereto, and said regulation shall be cited as 14 **DE Admin. Code** 712 Employee Leave in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 9, 2022. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 9th day of November 2022.

Department of Education
Mark A. Holodick, Ed.D., Secretary of Education

Approved this 9th day of November 2022

712 Employee Leave

1.0 Sick Leave

- 1.1 Sick leave accumulated by an employee of any state agency or school district shall be transferred when said employee begins subsequent employment in a school district. If there is a break in ~~service~~ service, the transfer can only occur if the break was for less than ~~six (6)~~ 6 months.
- 1.2 Sick leave days are made available at the start of the fiscal year, but adjustments for employees who terminate service prior to the end of the school year shall be made in the final paycheck.

8 DE Reg. 1479 (04/01/05)

13 DE Reg. 1302 (04/01/10)

2.0 Annual Leave

Subject to any limitation imposed by statute, accumulated annual leave shall be paid upon termination of employment. The employer may allow the employee to either remain on the regular payroll until such time as all annual leave is exhausted or receive a lump sum payment for all unused annual leave in the employee's final paycheck. The vacated position may be filled at any time provided that the two employees do not receive compensation for the same pay period. Accumulated annual leave shall not be transferred between different employing state agencies or school districts.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCEStatutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**ORDER****Qualifying Clinical Trials**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Qualifying Clinical Trials, specifically, to assure coverage of routine patient costs associated with participation in qualifying clinical trials. 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 October *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2022 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, 2022 Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) proposes to amend Title XIX Medicaid State Plan attachment 3.1-A regarding Qualifying Clinical Trials.

Background

Historically, the Medicaid regulations did not specify a clear requirement for coverage of routine costs associated with clinical trials, even if those routine costs were for items and services that ordinarily would be covered by a state's Medicaid program. Division CC, Title II, Section 210 of the Consolidated Appropriations Act, 2021 (Public Law 116-260) (section 210) amended section 1905(a) of the Social Security Act (the Act), by adding to the definition of medical assistance a new benefit at section 1905(a)(30) for routine patient costs for items and services furnished in connection with participation by Medicaid beneficiaries in qualifying clinical trials. CMS submitted guidance to states requiring submission of a state plan amendment to effectuate this new coverage requirement under section 1905(a)(30).

Statutory Authority

Sections 1905(a)(30) and 1905(gg)(1) of the Social Security Act

Purpose

The purpose of this proposed regulation is to amend Title XIX Medicaid State Plan regarding Qualifying Clinical Trials.

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 gave public notice and provided 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 October 31, 2022.

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

There were no comments received during the public comment period.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Qualifying Clinical Trials, specifically, to assure coverage of routine patient costs associated with participation in qualifying clinical trials, is adopted and shall be final effective December 11, 2022.

12/1/2022

Date of Signature

Molly K. Magarik, Secretary, DHSS

Attachment 3.1-A

Page 11b

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE/TERRITORY: **DELAWARE**

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

27. Coverage of Routine Patient Cost in Qualifying Clinical Trials

*The state needs to check each assurance below.

I. General Assurances:

Routine Patient Cost - Section 1905(gg)(1)

X. Coverage of routine patient cost for items and services as defined in section 1905(gg)(1) that are furnished in connection with participation in a qualified clinical trial.

Qualifying Clinical Trial - Section 1905(gg)(2)

X. A qualified clinical trial is a clinical trial that meets the definition at section 1905(gg)(2).

Coverage Determination - Section 1905(gg)(3)

X A determination with respect to coverage for an individual participating in a qualified clinical trial will be made in accordance with section 1905(gg)(3).

PRA Disclosure Statement - This information is being collected to assist the Centers for Medicare & Medicaid Services in implementing Section 210 of the Consolidated Appropriations Act of 2021 amending section 1905(a) of the Social Security Act (the Act), by adding a new mandatory benefit at section 1905(a)(30). Section 210 mandates coverage of routine patient services and costs furnished in connection with participation by Medicaid beneficiaries in qualifying clinical trials effective January 1, 2022. Section 210 also amended sections 1902(a)(10)(A) and 1937(b)(5) of the Act to make coverage of this new benefit mandatory under the state plan and any benchmark or benchmark equivalent coverage (also referred to as alternative benefit plans, or ABPs). Under the Privacy Act of 1974 any personally identifying information obtained will be kept private to the extent of the law. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for this project is 0938-1148 (CMS-10398 #74). Public burden for all of the collection of information requirements under this control number is estimated to take about 56 hours per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to CMS, 7500 Security Boulevard, Attn: Paperwork Reduction Act Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER**State Plan Telemedicine Services****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding telemedicine, specifically, to sunset the telemedicine pages of the Medicaid State Plan. 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 October 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2022 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

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 Delaware Title XIX Medicaid State Plan regarding telemedicine, specifically, to remove telemedicine as a state plan services from the Medicaid State Plan.

Background

Telemedicine is a cost-effective alternative to the more traditional face-to-face way of providing medical care (e.g., face-to-face consultations or examinations between provider and patient). States have the flexibility to determine whether (or not) to cover telemedicine; what types of telemedicine to cover; wherein the state it can be covered; how it is provided or covered; what types of telemedicine providers may be covered or reimbursed, as long as such

providers are "recognized" and qualified according to Medicaid statute or regulation; and how much to reimburse for telemedicine services, as long as such payments do not exceed Federal Upper Limits.

In 2012, DMMA submitted a Medicaid State Plan, and received approval from CMS, to cover Telemedicine Services. Since telemedicine is a mode for delivery of services, and not an actual service itself, the Centers for Medicare & Medicaid Services (CMS) has subsequently provided guidance indicating States are not required to submit a (separate) SPA for coverage or reimbursement of telemedicine services if they decide to reimburse for telemedicine services the same way and in the same amount that they pay for face-to-face services, visits, and consultations. However, if a state does have a telemedicine SPA, they are required to submit a SPA whenever any changes are made to the way the state implements telemedicine coverage, including expansion of coverage.

During the COVID-19 Public Health Emergency (PHE), DMMA received emergency authority to expand telehealth services and received greater flexibility in administering them. Additionally, the Delaware Medical Assistance Program (DMAP) reimburses for telemedicine services the same way and in the same amount that it pays for face-to-face services, visits, and consultations. As a result, it does not require SPA authority to cover telemedicine. Therefore, DMMA will sunset telemedicine as a service from the Medicaid State Plan. This will allow the DMMA to continue covering telemedicine and telehealth, the way that it has during the PHE. Additionally, it will allow DMMA to be more flexible and respond more quickly to necessary changes in the way that medical services are delivered in the state. If DMMA does not sunset telemedicine from the Medicaid State Plan, the flexibilities that were put in place during the PHE will be lost.

Statutory Authority

- 42 CFR 410.78, Telehealth services
- 42 CFR Part 440, Services

Purpose

This proposed regulation aims to remove telemedicine as a state plan service from the Medicaid State Plan to allow DMMA to administer this mode of service delivery more effectively and timely.

Summary of Proposed Changes

Effective for services provided on and after September 1, 2022, DHSS/DMMA proposes to amend Delaware Title XIX Medicaid State Plan regarding telemedicine, specifically, to remove telemedicine as a state plan service from the Medicaid State Plan.

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 gave public notice and provided 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 October 31, 2022.

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

The following summarized comments were received:

Comment: There were two endorsements of this regulation, accompanied with the request to continue to monitor outcomes of telehealth, and to ultimately include consumer choice in healthcare options.

Response: DMMA appreciates the support and will ensure that outcomes in all services provided are monitored and that consumers maintain choice.

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

- State Council for Persons with Disabilities (SCPD)
- Governor's Advisory Council for Exceptional Citizens (GACEC)

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2022 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the Sunsetting Telemedicine, specifically, to remove telemedicine as state plan services from the Medicaid State Plan, is adopted and shall be final effective December 11th, 2022.

12/1/2022

Date of Signature

Molly K. Magarik, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the October 2022 issue of the *Register* at page 294 (26 DE Reg. 294). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/december2022/final/26 DE Reg 482 12-01-22.htm>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Transportation Services

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Transportation Services, specifically, to attest that

the Delaware Medicaid transportation program is in compliance with section 1902(a)(87) of the Social Security Act. 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 October *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2022 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, 2022, Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) proposes to amend Title XIX Medicaid State Plan attachment 3.1-D regarding Transportation Services.

Background

In July of 2021 the Centers for Medicare & Medicaid Services provided guidance to states of the provisions added by the Consolidated Appropriations Act, 2021, Division CC, Title II, Section 209, that codify in statute longstanding regulatory requirements for states to assure necessary transportation for beneficiaries to and from covered services and added driver and provider requirements for state Medicaid transportation programs. The requirements include:

- Each provider and individual driver is not excluded from participation in any federal health care program (as defined in section 1128B(f) of the Act) and is not listed on the exclusion list of the Inspector General of the U.S. Department of Health and Human Services;
- Each such individual driver has a valid driver's license;
- Each such provider has in place a process to address any violation of a state drug law; and,
- Each such provider has in place a process to disclose to the state Medicaid program the driving history, including any traffic violations, of each such individual driver employed by such provider, including any traffic violations.

The updated requirements apply to existing and new providers.

Statutory Authority

- Consolidated Appropriations Act, 2021, Division CC, Title II, Section 209
- Section 1902(a)(87) 1902(a)(87) of the Social Security Act

Purpose

The purpose of this proposed regulation is to attest that the Delaware Medicaid transportation program is in compliance with section 1902(a)(87) of the Social Security Act.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided 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 October 31, 2022.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The

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

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Transportation Services, specifically, to attest that the Delaware Medicaid transportation program is in compliance with section 1902(a)(87) of the Social Security Act., is adopted and shall be final effective December 11th, 2022.

12/1/2022

Date of Signature

Molly K. Magarik, Secretary, DHSS

Attachment 3.1-D
Page 1

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

METHODS OF PROVIDING TRANSPORTATION SERVICES

The State of Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) provides transportation services as an "optional medical service" which includes emergency medical transportation and non-emergency medical transportation (NEMT) of eligible recipients in accordance with 42 CFR440.170, 42 CFR431.53, 45 CFR92.36. Further detail on these services is outlined in Attachment 3.1-A: Amount, Duration, and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy.

In addition, the State of Delaware attests that all the minimum requirements outlined in Section 1902(a)(87) of the Social Security Act are met.

DEPARTMENT OF LABOR DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Section 3321(a) and 29 Delaware Code, Section 10113(b)(2) and (b)(4) (19 **Del.C.** §3321(a) and 29 **Del.C.** §10113(b)(2) & (b)(4))
19 **DE Admin. Code** 1201

REVISED ORDER

1201 Unemployment Insurance Appeal Board Regulations

I. SUMMARY OF THE EVIDENCE

Pursuant to 19 **Del.C.** §3321(a), 29 **Del.C.** §§10113(b)(2) and 10113(b)(4), the Unemployment Insurance Appeal Board ("Board") proposes the adoption of 19 **DE Admin. Code** 1201 Board Procedures. The proposed regulation sets forth rules of the practice and procedure of the Board. The Board is simultaneously proposing to repeal existing sections from 19 **DE Admin. Code** 1201 Regulation and add new sections based on the Board's current practice and hearing procedures.

The adoption of this regulation is exempt from the requirement of public notice and comment and is adopted informally in accordance with 29 **Del.C.** §§10113(b)(2) and 10113(b)(4).

II. FINDINGS OF FACTS

On November 9, 2022 and revised on November 18, 2022, the Board finds that the proposed regulations relate to its current practice and procedures and is necessary to clarify the expectations of parties before the Board. The Board finds that it is appropriate to adopt 19 **DE Admin. Code** 1201 Unemployment Insurance Appeal Board Regulations.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Board concludes that it is appropriate to adopt 19 **DE Admin. Code** 1201 Unemployment Insurance Appeal Board Procedures. Therefore, pursuant to 19 **Del.C.** § 3321(a) and 29 **Del.C.** §§10113(b)(2) and 10113(b)(4), the 1201 Unemployment Insurance Appeal Board Regulations, attached as Exhibit A, is hereby adopted.

IV. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 18th day of November, 2022.

Elmer L. Newlin, Chairman

Drew A. Dorak, Member

Vance G. Daniels, Sr., Member

William F. Tobin, Jr., Member

Beverly G. Bell, Member

Unemployment Insurance Appeal Board Members

1201 Unemployment Insurance Appeal Board Regulations

1.0 Definitions

~~As used in these Rules and Regulations, the following definitions shall apply:~~ The following words and terms when used in this regulation, have the following meaning:

"Board" shall mean the Unemployment Insurance Appeal Board.

~~“Chairman”~~ **“Chair”** shall mean the ~~Chairman~~ Chair of the Board.

“Hearing Officer” shall mean the Appeals Referee or ~~his or her~~ the Appeals Referee’s designate who heard the initial appeal.

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

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

2.0 Location of Unemployment Insurance Appeal Board

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

3.0 Commencement

- 3.1 A hearing before the Board may be initiated by:
- ~~3.1~~ 3.1.1 Either party to the action heard by the Hearing Officer upon filing a timely Notice of Appeal with the ~~Board;~~ Board. Any request for appeal by a corporation or other artificial entity must be filed by an owner, officer, or employee of the entity or by an attorney-at-law duly admitted to practice law in the State of Delaware.
- ~~3.2~~ 3.1.2 A party whose appeal was dismissed by the Hearing Officer for failure of that party to appear at the scheduled hearing before the Hearing Officer, upon filing of a timely Notice of Appeal with the Board, in which case the Board may, at its sole discretion, remand the case to the Hearing Officer for a prompt hearing to make a full and complete record; or
- ~~3.3~~ 3.1.3 The Board *sua sponte* with notice to the parties below or their counsel.

4.0 Hearings

- 4.1 Purpose. The purpose of a hearing before the Board is to examine the factual and legal bases for the decision rendered by the Hearing Officer. The parties shall not re-litigate the case presented to the ~~Referee~~ Hearing Officer, but may present additional evidence and legal arguments. Both the ~~referee’s~~ Hearing Officer’s record and any new evidence presented to the Board shall be considered by the Board in making its decision.
- 4.2 Presence of parties required. All parties to the appeal and any witnesses shall be present in-person at the Board’s hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.
- 4.2.1 ~~The Board may consider conducting hearings telephonically, when it believes it would be practicable and efficient to do so and will promptly consider any written request by a party to change a hearing from being held in person to a telephonic hearing. Absent any written request by a party, the Board may, on its own initiative, change a hearing from being in person to a telephonic hearing. Parties and witnesses are not permitted to use any cell phones, smart watches, recording devices, or other electronics in the hearing room. This prohibition does not apply to State employees who appear on official business and attorneys.~~
- 4.2.2 Parties and witnesses are not permitted to have large bags or backpacks in the hearing room.
- 4.3 Representation.

- 4.3.1 At any hearing, a party may ~~appear pro se~~ represent themselves (appear pro se) or may be represented by an attorney-at-law duly admitted to practice law in the State of Delaware. A corporation or other artificial entity ~~desiring legal representation~~ must be represented by an owner, officer, or employee of the entity or by an attorney-at-law duly admitted to practice law in the State of Delaware.
- 4.3.1.1 Attorneys-at-law should enter their appearance with the Board's secretary prior to the hearing.
- 4.3.1.2 Only an attorney-at-law may directly question a witness on behalf of a party.
- 4.3.2 The Board or its attorney may examine any ~~witnesses,~~ witnesses and move the admissions of documents and things into evidence.
- 4.4 ~~Continuances and Postponements.~~ Continuances, Postponements, and Withdrawals.
- 4.4.1 Request for continuances or postponements. All request for continuances or postponements are within the discretion of the Chair of the Board.
- 4.4.1.1 Timing of requests. Applications for a continuance or postponement of any hearing shall be made in writing to the ~~Board office~~ Board's secretary no later than ~~6 days~~ 12:00 p.m. the day prior to the hearing. The request shall state the reasons for which the continuance or postponement is requested. ~~The grant or denial of any request for continuance or postponement is within the discretion of the Board Chairman or his or her designee.~~
- 4.4.1.2 Multiple requests. In the case of multiple requests for continuances or postponements, it is generally the Board's practice to allow each party to make a first request for continuance or postponement based on need so long as the request is made before 12:00 p.m. the day prior to the hearing. Any subsequent requests must include a showing of unanticipated emergency circumstances, e.g., death in the family or severe illness, which must be supported by documentation, and are very rarely granted.
- 4.4.1.3 Requests not granted. Any requests for continuances or postponements that are not granted may be renewed in person at the Board hearing by a party or its representative. The grant or denial of any requests for continuances or postponements made in person at the Board hearing is within the discretion of the Board.
- 4.4.1.4 Rescheduling of cases. All cases that are continued or postponed at a party's request will be rescheduled for the next available Board hearing date. Cases will not be rescheduled around a party's availability.
- 4.4.2 ~~Applications for any continuance or postponement of any hearing made less than 6 days prior to the hearing shall set forth with specificity the reason(s) for the continuance or postponement, and shall typically be granted only for reasons of unanticipated emergencies. Untimely request for continuances or postponements. The Board does not accept any requests for continuances or postponements received after 12:00 p.m. the day before the hearing date.~~
- 4.4.3 Withdrawal of appeals. An appealing party may request to withdraw ~~it~~ its appeal at any time prior to hearing. All requests for withdrawal must be made in writing.
- 4.5 Length of hearing. Hearings are scheduled to last 20 minutes from the time the presiding member calls the case, except that the Board may extend the length of the hearing at its discretion. Hearings where one or both parties are represented by an attorney are scheduled for 40 minutes. Extensions of time are rarely granted.
- 4.6 Record. A record shall be made of all hearings before the Board. The record may be made either by a stenographic record or by audio recording. The record does not need to be transcribed unless and until an appeal is taken to Superior Court of the State of Delaware from the Board's decision.
- 4.7 Evidence.
- 4.7.1 The Board follows the Delaware Rules of Evidence. The Board may admit and consider hearsay evidence, however, the Board shall not base its decision solely on hearsay or other evidence not admissible under the Rules of Evidence.
- 4.7.2 The Board may consider any relevant evidence relating to any issue raised below, whether or not that issue was decided by the Hearing Officer.

- 4.7.3 The admissibility of evidence and determinations of the weight to be given evidence and the credibility of witnesses shall be within the sound discretion of the Board.
- 4.7.4 ~~The Prior to the hearing, the Board may receive into evidence any new testimony or document offered by means of a telephone by mail, email, or other electronic or electromagnetic device, and the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device means. Evidence must be submitted to the Board and any other parties to the hearing at least 7 days prior to the scheduled hearing.~~
- 4.7.5 The Board does not permit electronic evidence, such as video or audio, to be submitted or entered into evidence at a hearing.
- 4.7.6 The Board cannot review evidence submitted by USB drive, CD, or other external electronic devices.
- 4.7.7 The Board or its attorney may review testimony contained within the record of the proceedings below that was offered by telephone or other electronic means.
- 4.8 Subpoenas.
- 4.8.1 A party may request subpoenas to compel a witness or witnesses to appear at a hearing or to compel the production of documents at or prior to a hearing. Such a request shall be in writing, be received by the Board at least 7 days prior to the hearing, and state the full name and address of the ~~person(s)~~ person or persons to be subpoenaed ~~and~~ or a detailed description of the documents to be produced and the custodian of the documents and the address where the documents are located. The issuance of ~~such subpoena(s)~~ any subpoenas shall be at the sole discretion of the Board and its attorney. The Board limits witness subpoena requests to two witnesses per party.
- 4.8.2 The Board *sua sponte* may issue subpoenas to compel witnesses to appear at a hearing or documents to be produced at or prior to a hearing.
- 4.9 ~~Exhibits. Any party offering any document into evidence at a hearing shall provide at least 4 copies of such document at the time of the hearing.~~
- 4.10 ~~4.9~~ Written Submissions. The Board or its attorney may at their discretion request written submissions from the parties prior to or following the hearing.

5.0 Remand

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

6.0 Decisions

- 6.1 The Board shall render its decision promptly, ~~usually within 14 days after the hearing~~ and issue its decision by mail.
- 6.2 The Board may affirm, modify, or reverse, in whole or in part, the decision of the ~~Appeals Referee~~ Hearing Officer.
- 6.3 The Board may *sua sponte* affirm, modify or set aside any decision of an appeal tribunal on the basis of evidence previously submitted, without further hearing, or direct the taking of additional evidence or may permit any of the parties to the decision to initiate further appeal before it.
- 6.4 Final decisions shall be accompanied by a notice of the right to appeal the Board's decision to Superior Court of the State of Delaware pursuant to 19 ~~Del.C. §3323~~ §3323(a).

7.0 Rehearing

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

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- 7.1 The grant or denial of a motion for rehearing is solely within the discretion of the Board.
- 7.2 The Board shall not consider any motion for rehearing filed after the Board's decision has become final.
- 7.3 The Board shall not consider any motion for rehearing of the Board's denial of a prior motion for rehearing.
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DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Electrical Examiners

Statutory Authority: 24 Delaware Code, Section 1406(a)(1) (24 Del.C. §1406(a)(1))
24 DE Admin. Code 1400

ORDER

1400 Board of Electrical Examiners

On July 1, 2022 the Delaware Board of Electrical Examiners published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 26, 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 7, 2022 at a regularly scheduled meeting of the Board of Electrical Examiners to receive verbal comments regarding the Board's proposed amendments to its regulations. The rules pertaining to late renewal for electrical inspection agencies are proposed to be amended.

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*.

One verbal comment was presented at the public hearing on September 7, 2022. Neil Donaldson, of Nickel Electrical commented that everybody has to have a license on the commercial side. If this is a one off to allow residential contractors to circumvent having licenses, he disagrees with that. There shouldn't be a one off just to allow guys to work without a license because it's difficult to find licensed electricians now.

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, and the verbal comment presented at the public hearing is summarized above.
3. Pursuant to 24 Del. C. § 1406 (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 comment which convinces the Board otherwise, the Board finds no reason not to amend the regulations as proposed.

FINAL REGULATIONS

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 Del. C. § 1406 (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, 2022. 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 5th day of October, 2022.

Board of Electrical Examiners

/s/ James Murphy

/s/ Karl Segner

/s/ David Smagala

/s/ Donald King

/s/ Patricia Ennis

/s/ Anthony Roca

/s/ Victor Kyler

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

***Please note that no changes were made to the regulation as originally proposed and published in the July 2022 issue of the *Register* at page 43 (26 DE Reg. 43). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/december2022/final/26 DE Reg 491 12-01-22.htm>

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Driver Services

Statutory Authority: 18 Delaware Code, Section 2503, 21 Delaware Code, Section 302, and 29 Delaware Code, Sections 101 and 8404 (18 **Del.C.** 2503, 21 **Del.C.** §302 & 29 **Del.C.** §§101 & 8404)

2 **DE Admin. Code** 2203

ORDER

2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (Formerly Reg. No. 17)

Pursuant to the authority provided by 21 *Del. C.* §302 18 *Del. C.* §2503, and 29 *Del. C.* §101, the Delaware Division of Motor Vehicles (DMV), adopted the Implied Consent and Administrative Per Se Other Administrative Hearings of Record. The Division of Motor Vehicles uses this regulation to initiate program requirements.

Findings of Fact and Conclusions of Law

1. The public was given notice and the opportunity to provide comments in writing concerning the proposed revisions
2. The proposed revisions are useful and proper, and the Department believes that the adoption of this regulation is appropriate.

Decision and Effective Date

Based on the provision of Delaware law and the record of this docket, I hereby adopt the Implied Consent and

Administrative Per Se Other Administrative Hearings of Record as set forth in the version attached, to be effective December 11, 2022.

It is ordered on this 17 day of November 2022.

Nicole Majeski, Secretary
Delaware Department of Transportation

***Please note that no changes were made to the regulation as originally proposed and published in the September 2022 issue of the *Register* at page 167 (26 DE Reg. 167). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/december2022/final/26 DE Reg 492 12-01-22.htm>

GENERAL NOTICES

DEPARTMENT OF FINANCE OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Chapter 83 (29 Del.C. ch. 83)

NOTICE

GENERAL NOTICE REGARDING IMPLEMENTATION OF THE PERSONAL INCOME TAX RELEASE OF THE INTEGRATED REVENUE ADMINISTRATION SYSTEM AND CONTRIBUTIONS TO DELAWARE COLLEGE INVESTMENT PLAN ACCOUNTS

BACKGROUND

House Bill 145, as amended by House Amendment 4, of the 151st Session of the General Assembly, was enacted on June 30, 2022 and codified at 83 Del. Laws, c. 338. For Delaware personal income tax purposes, Section 1 of 83 Del. Laws, c. 338 authorized a subtraction from federal adjusted gross income under § 1106(b)(11) of Title 30 of the Delaware Code for contributions to Delaware College Investment Plan accounts (a "DCIP Contribution Deduction"). The effective date for a DCIP Contribution Deduction became contingent by a condition established in subsequent legislation described in the following paragraph.

Senate Bill No. 252 of the 151st Session of the General Assembly was enacted on June 30, 2022 and codified at 83 Del. Laws, c. 339. Section 22 of 83 Del. Laws, c. 339 requires the Secretary of Finance to notify the Registrar of Regulations when the Division of Revenue has implemented the personal income tax release of the Integrated Revenue Administration System (the "Implementation Notice"). Section 22 of 83 Del. Laws, c. 339 also authorizes the Secretary of Finance to provide notice with respect to the effective date for a DCIP Contribution Deduction in the event of an effective date prior to January 1st of the ensuing year after the calendar year in which the Implementation Notice was given.

PURPOSE

Pursuant to Section 22 of 83 Del. Laws, c. 339, this communication constitutes notice to the Registrar of Regulations that the Division of Revenue has implemented the personal income tax release of the Integrated Revenue Administration System and that a DCIP Contribution Deduction, as authorized under § 1106(b)(11) by Section 1 of House Bill 145, as amended by House Amendment 4, of the 151st Session of the General Assembly, will take effect for contributions to Delaware College Investment Plan accounts made after December 31, 2021.

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Chapter 83 (29 Del.C. ch. 83)

NOTICE

GENERAL NOTICE REGARDING IMPLEMENTATION OF THE PERSONAL INCOME TAX RELEASE OF THE INTEGRATED REVENUE ADMINISTRATION SYSTEM AND ORGAN AND BONE MARROW TRANSPLANTATION PERSONAL TAX CREDIT

BACKGROUND

Senate Substitute 1 for Senate Bill 301, of the 151st Session of the General Assembly, was enacted on October 3, 2022 and codified at 83 Del. Laws, c. 440 (the "Act"). The provisions set forth in §§ 20E-101, 20E-102, and 20E-103 of Section 1 of the Act authorized a credit for resident individuals of Delaware against the tax imposed by Chapter 11 of Title 30 of the Delaware Code for expenses associated with human organ or bone marrow donation ("Organ and Bone Marrow Transplantation Personal Tax Credit"). The effective date for an Organ and Bone Marrow Transplantation Personal Tax Credit is contingent up-on fulfillment of the contingency set forth in Section 2 of the Act.

With respect to the provisions set forth in §§ 20E-101, 20E-102, and 20E-103 of Section 1 of the Act, Section 2 of

the Act requires the Secretary of Finance to notify the Registrar of Regulations when the Division of Revenue has implemented the personal income tax release of the Integrated Revenue Administration System (the "Implementation Notice"). This paragraph of Section 2 of the Act also provides that, in the absence of notice of an earlier effective date set forth in the Implementation Notice, the provisions set forth in §§ 20E-101, 20E-102, and 20E-103 of Section 1 of this Act take effect on January 1 following the calendar year of publication of the Implementation Notice.

PURPOSE

Pursuant to Section 2 of the Act, this communication constitutes notice to the Registrar of Regulations that the Division of Revenue has implemented the personal income tax release of the Integrated Revenue Administration System and that the provisions set forth in §§ 20E-101, 20E-102, and 20E-103 of Section 1 of the Act take effect on January 1, 2023.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 4006(h) and (i) (7 **Del.C.** §4006(h) & (i))

NOTICE

5101 Sediment and Stormwater Regulations

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship Sediment and Stormwater Program has released revised regulatory guidance documents for public review. The documents support Regulation No. 5101 Sediment and Stormwater Regulations, as set forth at 7 **Del.C.** §4006(h) and (i).

The following sections of the Delaware Erosion and Sediment Control Handbook have been revised. A brief description of each revision is provided:

- 3.1.4 Temporary Sediment Basin - Anti-seep collar equation on p. 3.1.4-5 corrected
- 3.4.3 Vegetative Stabilization - Updated to remove invasive or undesirable species
- 3.4.5 Mulching - Clarified that synthetic netting is not acceptable
- 3.6.1 Pollution Prevention - Replaced fueling and spill control guidance with CGP signage recommendations
- 3.6.4 Fueling & Spill Control - New specification with expanded guidance from previous 3.6.1
- Appx. A-3 Geotextile Application Guide - Updated material specifications and example products

The DNREC Sediment and Stormwater Program hereby provides notice of the revised regulatory guidance documents, pursuant to 7 **Del.C.** §4006(i), which incorporates the provisions of 7 **Del.C.** §6004. A public hearing will NOT be held unless the Secretary receives a meritorious request for a hearing within 15 days of date of this notice, ending December 16, 2022. A request for a public hearing shall be in writing and show familiarity with the regulatory guidance document and provide a reasoned statement of the regulatory guidance document's probable impact.

The proposed revisions may be reviewed under the Regulatory Guidance Documents heading at the following link: <https://de.gov/sedimentandstormwater>

Questions regarding the revised regulatory guidance document may be directed to Elaine Webb, elaine.webb@delaware.gov.

PREPARED BY:

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DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE**

The Delaware River Basin Commission will hold its quarterly business meeting on **Thursday, December 7, 2022** commencing at **10:30 a.m.** The business meeting will be conducted remotely. Details about the remote platform and a meeting agenda will be posted on the Commission's website, www.drbc.gov, at least 10 days prior to the meeting date.

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

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 15, 2022.

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 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 the Division of Social Services Manual (DSSM) 20620.1 to align language with the recently approved Title XIX Medicaid State Plan allowing 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 DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2022. 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****Children's Health Insurance Program (CHIP) - Early, Periodic, Screening, Diagnosis, & Treatment (EPSDT) Coverage**

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 Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XXI Children's Health Insurance Program (CHIP) State Plan regarding Early, Periodic, Screening, Diagnosis, & Treatment (EPSDT) coverage in the Delaware Healthy Children's Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, 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 DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2022. Please identify in the subject line: CHIP - EPSDT

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****Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions**

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 Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions, specifically, to request that an extension for co-pays and premiums to be waived.

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 DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 31, 2022. Please identify in the subject line: Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions.

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.
