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# Delaware Register of Regulations

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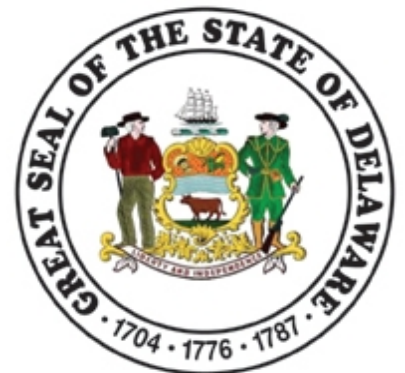


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Regulations:  
Proposed  
Final

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, 2023.

*Cover Photo*  
*Spring Lake*  
*Dover*

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
January 1	December 15	4:30 p.m.
February 1	January 15	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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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.).

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**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 3001A-3005A (14 **Del.C.** §§3001A-3005A)  
9 **DE Admin. Code** 105

**PUBLIC NOTICE****Educational Impact Analysis Pursuant to 14 Del. C. §122(d)****105 Residential Child Care Facilities and Day Treatment Programs****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

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

Pursuant to 14 **Del.C.** §3003A, the Secretary of the Department of Education wishes to transfer 9 **DE Admin. Code** 105 to 14 **DE Admin. Code** by creating 935 DELACARE: Regulations for Residential Child Care Facilities and Day Treatment Programs. The Office of Child Care Licensing which oversees these facilities moved from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020, and this is the final set of regulations that were required to be transferred. The previous 105 regulations are being stricken in their entirety because they were last revised in 1998, new federal legislation (Family First Prevention Services Act) was enacted, and acceptable practices regarding the use of restrictive procedures have also changed. Additional changes were made to ensure alignment with recent changes to background checks and fingerprinting procedures. A task force consisting of stakeholders, licensed facilities, and agency representatives reviewed a draft and provided comments which resulted in the creation of these proposed regulations. Other changes were made to ensure compliance with the Delaware *Administrative Code Drafting and Style Manual*. This regulation was previously proposed in the August 2023 Edition of the *Register of Regulations*.

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Comments received suggested the Department consider the following:

**(1) Governor's Advisory Council for Exceptional Citizens (GACEC)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Department of Education (DDOE) proposal to transfer 9 DE Admin. Code 105 to 14 DE Admin. Code by creating 935 DELACARE: Regulations for Residential Child Care Facilities and Day Treatment Programs. In July 2020, the Office of Child Care Licensing (OCCL) moved from the Department of Services for Children, Youth, and Their Families to DDOE, and this section of regulations is the last required to be transferred. DDOE previously proposed these regulations in the May 2023 Delaware Register of Regulations. Council provided commentary on those proposed regulations in a letter dated 5-30-2023. These proposed regulations replace those proposed in May 2023. Since Council previously provided commentary on these proposed regulations and the DDOE made changes based on some of those comments, this letter thanks the DDOE for the changes made and will only address those areas that Council has concerns about at this time.

**Definition of child** - The prior definition of "child" was: "A person who has not reached 18 years of age. A person in a facility or program who becomes 18 years of age while residing in the facility or participating in the program, and who has not attained the age of 25." Under the proposed regulations, DDOE is proposing to change the definition of "child" to the following: "a person who has not reached the age of 18 years or a person who becomes 18 while residing in the facility or participating in the program, who has not reached the age of 22. Child also includes a person enrolled in a State public school or receiving a board extension to remain in care." DDOE did not provide a reasoning for why it lowered the age of those covered under this definition. Council would like information from the DDOE on why this change was made, the purpose of the change and how the change fits with the definition of 'child' under special education.

**Response:** The Department appreciates this comment. DOE made this change at the recommendation of task force members comprised of DSCYF representatives, other agency partners, and participating residential child care providers to align with disability requirements for a free appropriate public education (FAPE). The definition will remain as written.

**Definition of psychotropic drug** - The definition of "psychotropic drug" has changed from "a drug or substance that alters the chemical balance of neurotransmitters in the central nervous system" to "a chemical substance that changes brain function and alters perception, mood, or consciousness." Consistent with definitions of psychotropic drug in other literature, Council would like to recommend that DDOE include in its definition, that a psychotropic drug is one that also generates changes to behaviors.

**Response:** The Department appreciates this comment. The Department will add "behavior" to the definition. The Department will change the definition to "psychotropic medication" means a chemical substance that changes brain function and alters behavior, perception, mood, or consciousness.

**Definition of facility** - DDOE defines "facility" as a "residential child care facility" and then subsequently states that a "residential child care facility is a "residential facility" in proposed section 4.3. Council would recommend that the DDOE be consistent in how it refers to the different facilities.

**Response:** The Department appreciates this comment. The Department will remove "residential facility" and will consistently use "residential child care facility."

**Definition of physical restraint** - The proposed definition of physical restraint is "the non-punitive, age-appropriate, time-limited, and reasonable use of physical holding that is required to restrict the movement of a child for the purpose of preventing harm to the child or to others when the child fails to respond to other techniques." This proposed definition fails to account for the severity of the child's actions and whether there is a serious and imminent risk of bodily harm to self or others, which is the language currently used in Delaware when referring to physical restraints occurring in school settings. Council recommends that the DDOE use the definition of physical restraint that is used in 14 Del. C. 4112F and 14 Del. Admin. C. 610.

**Response:** The Department appreciates this comment. Regulation 93.2 requires a licensee to have and follow written policies and procedures governing the appropriate use of chemical restraint, physical restraint, or seclusion, as applicable. These policies and procedures require restrictive procedures to be permitted only under specific conditions, which include when "the child is a danger to self or others." The definition will remain as written.

Definition of seclusion - The proposed definition makes it seem as though it only applies to children age six years or older; however there is no explicit mention of seclusion not being available for youth under the age of six or why it is not used for those under the age of six. The GACEC recommends that DDOE include specific language to explicitly state that seclusion is not an approved behavior modification technique used with children under the age of six.

**Response:** The Department appreciates this comment. Regulation 93.2 requires a licensee to have and follow written policies and procedures governing the appropriate use of chemical restraint, physical restraint, or seclusion, as applicable. It states, "These policies and procedures shall: Prohibit the use any restrictive procedure on a child below age 6." The definition will remain as written.

Proposed Section 4.3 - The language in proposed section 4.3 states that a psychiatric hospital is not considered a residential facility. Council would like additional information on the reasoning behind this statement. What is it if a psychiatric hospital is not considered a residential facility, especially since students experience long-term stays at psychiatric hospitals? Please supply more information on this.

**Response:** The Department appreciates this comment. The Office of Child Care Licensing (OCCL) does not regulate hospitals. The Division of Health Care Quality, Office of Health Facilities Licensing and Certification regulates hospitals. The regulation will remain as written.

Proposed Section 5.0 - Proposed Section 5.0 mentions that officials from OCCL or other State and local agencies may interview youth as part of their authority to inspect the licensed facilities. However, there is no mention of whether OCCL or the licensed facility must notify parents or the referring agency when such interviews are taking place. The GACEC would recommend that DDOE include a requirement to ensure parents or the referring agency are notified when such interviews are taking place.

**Response:** The Department appreciates this comment. The facility visit conducted to investigate a complaint is unannounced. Notifying parents or the referring agency could hinder the investigation. The regulation will remain as written.

Proposed Section 12.0 - Proposed Section 12.0 describes OCCL's actions when it receives a complaint from a youth or parent of a youth at a licensed facility. No specific timeframe is noted by which licensed facilities are required to correct noncompliance found by OCCL as a result of a complaint. Council would therefore recommend that DDOE include a timeframe by which a noncompliant licensed facility is required to correct the identified noncompliance.

**Response:** The Department appreciates this comment. While dates for correction of identified non-compliances vary depending on the complexity of the corrective action plan, the written complaint report contains dates for correction. The regulation will remain as written.

Proposed Section 17.0 - Proposed 17.1.2 states that "A photo, video, or recording that reveals a child's identity shall not be used for research, fundraising, or public relations without the written consent of the child's parent or referring agency." It is unclear why the referring agency would (or should) have the authority to consent to the releasing of a young person's identity in such a public manner. Council recommends removing "referring agency" from this section.

**Response:** The Department appreciates this comment. There may be situations where the referring agency would need the authority to provide consent. The regulation will remain as written.

Proposed Section 17.0 (continued) - Proposed 17.1.8.7 states that a licensee is prohibited from "[p]unishing the group for misbehaviors of a child or a group of children unless the policies and procedures clearly list the specific circumstances and safeguards when this would be allowed." This form of discipline, known as "collective punishment" is "fundamentally at odds with the theories of individual responsibility in western, liberal societies." The GACEC recommends removing this proposed section in its entirety.

**Response:** The Department appreciates this comment. Task force members comprised of DSCYF representatives, other agency partners, and participating residential child care providers supported including this specific exception to the prohibition. The regulation will remain as written.

Proposed Section 17.0 (continued) - There is a typo in proposed 17.1.9.3 - should be "self-control" and it currently says "self-contro,".

**Response:** The Department appreciates this comment. The Department will make the necessary correction.

Proposed Section 17.0 (continued) - Proposed 17.1.10.8 provides additional requirements for reporting and addressing situations where a child is in time-out more than fifteen times in a 24-hour period. This number seems excessively high. Council recommends that these requirements and actions kick in when a young person has been in time-out for more than five times in a 24-hour period.

**Response:** The Department appreciates this comment. The number was reduced from the current requirement of more than 25 time-outs for an individual child or a cumulative total of four hours spent in time-out within any consecutive 24-hour period. The regulation will remain as written.

Proposed Section 25.6 - Proposed Section 25.6 states that "[w]hen a licensee declines to admit a child, a licensee shall provide the child's parent or the referring agency with a written explanation of the reasons for refusal, if requested." It should not be a burden of the parent to request an explanation for why a licensee refused to admit the young person. Council recommends removing the words "if requested". This would ensure that every time a licensee declines to admit a young person, it is required to provide a written explanation for why.

**Response:** The Department appreciates this comment. The Department will change regulation 25.6 to state, "When a licensee declines to admit a child, a licensee shall verbally provide the child's parent or the referring agency with an explanation of the reasons for refusal. A written explanation of the reasons for refusal shall be provided upon request."

Proposed Section 29.0 - Proposed Section 29.0 describes the certification requirements for teachers in a licensed facility, which is providing in-facility education services. The current language requires only that the teacher be certified for the age range of youth to whom the facility is licensed to provide services. It is not specific to the youth the teacher is educating. Therefore, there may be a situation where a licensee is providing services to youth aged 6-13 and it employs an elementary certified teacher to provide education. It would not be appropriate for that teacher to provide education to youth who are middle school aged. Council recommends that the certification requirement relate to the age of the children the teacher is teaching rather than to the age of the youth to whom the licensee is providing services.

**Response:** The Department appreciates this comment. Due to the potential of mixed age groups, requiring a certified teacher for each age group would be burdensome for the facility. The regulation will remain as written.

Proposed Section 49.5.12 - Current proposed 49.5.12 states that "A written schedule of monthly planned recreation, physical exercise, and leisure time activities be posted in a noticeable location on the premises, and be maintained on file for at least 90 days." Council would like to recommend that DDOE include language that this written schedule also be provided directly to the parent or referring agency as well.

**Response:** The Department appreciates this comment. The facility is required to post the written schedule in a noticeable location so that is available for viewing by parents and the referring agency. The regulation will remain as written.

Proposed Section 49.8 - Proposed Section 49.8 states the following: "A licensee shall have and follow written policies and procedures governing preventative, routine, and emergency dental and medical care, including provisions for effective coordination of such dental and medical care with those responsible for the child's aftercare." Although it lists a number of requirements for these written policies and procedures, it does not include any notification to the parent or referring agency. Council recommends that DDOE include an additional requirement that the licensee notify and receive consent from the parent or referring agency to any dental or medical procedure.

**Response:** The Department appreciates this comment. Regulation 25.4.6 requires a licensee to obtain authorization to provide or obtain medical care for the child. The Department will change regulation 25.4.6 to state, "Authorization to provide or obtain routine medical and dental care for the child."

Proposed Section 52.8 - Proposed Section 52.8 states that "A licensee shall make provisions with the referring agency for a child to receive any needed eyeglasses, hearing aids, prosthetic devices, or other corrective devices,

as deemed medically necessary by a licensed physician." The current language makes this list an exhaustive one. Council would like to recommend that DDOE also include in this list any assistive technology or any other health-related device. We would also recommend that DDOE include language such as "including" which would make the list non-exhaustive.

**Response:** The Department appreciates this comment. The Department will change regulation 52.8 to state, "A licensee shall make provisions with the referring agency for a child to receive assistive technology or other health-related devices, including any needed eyeglasses, hearing aids, prosthetic devices, or other corrective devices, as deemed medically necessary by a licensed physician."

Proposed Sections 66.0-76.0 - Proposed Sections 66.0-76.0 govern the requirements for Parenting Adolescent Facilities. The proposed regulations do not contain a requirement related to any specific qualifications for staff at these facilities outside of the general requirements included in the regulation, which apply to all facilities, unless specifically exempted. Because of the special nature of this population, staff is tasked with supporting not only the parenting young person, but with supporting the child of the young person as well. Council recommends the DDOE include additional qualifications for staff employed to work at these facilities, such as being training in pediatric care or early childhood education.

**Response:** The Department appreciates this comment. Requiring this additional specialized training of direct care workers would be burdensome for the facility. The regulation will remain as written.

Proposed Section 93.0 - Proposed Section 93.0 governs the use of restrictive procedures, such as physical and chemical restraints and seclusion. Proposed 93.2 requires that licensees have and follow written policies and procedures related to the use of restrictive procedures. Proposed 93.2.2 states that these restrictive procedures are to be permitted only where (1) a trauma-informed treatment model is used; (2) the child is a danger to self or others; (3) the child's behavior is seriously disruptive; (4) other ways to manage the child's dangerous behavior have failed; and (5) staff members administering a restrictive procedure were trained to administer that procedure. Council has several concerns in reference to the use of physical and chemical restraints on children with disabilities. First, we would like the DDOE to explain and provide clarification on what is meant by "seriously disruptive" because neither word is defined anywhere in the regulations and whether something is disruptive (or seriously disruptive, or mildly disruptive) is an exceptionally subjective determination. Council would also recommend that DDOE add the additional missing requirements to the use of physical restraint as provided in 14 Del. Admin. C. 610.

**Response:** The Department appreciates these comments. The Department will change regulation 93.2.2.3 to state, "The child's behavior is seriously disruptive, meaning the conduct is so unruly, violent, or abusive that it interferes with a staff member's ability to communicate with a child or children, with a child's ability to learn, or with the effective operation of the residential child care facility or day treatment program or a sponsored activity." A child's service plan lists approved restrictive procedures as applicable to the individual child. The regulation will remain as written.

Proposed Section 93.0 (continued) - Proposed Section 93.2.8 would prohibit several aversive punishment procedures. Council recommends including the use of prone restraint to this list of prohibited procedures.

**Response:** The Department appreciates this comment. A licensee must receive written permission from OCCL before a facility or program uses the restrictive procedures of chemical restraint, physical restraint, or seclusion. Use of a physical restraint must be reviewed by the facility's chief administrator and forwarded to DSCYF. The regulation will remain as written.

Proposed Section 93.0 (continued) - Proposed Section 93.2.17 requires that the licensee's policies or procedures include a requirement that "a physical restraint [is] to be applied for the minimum time necessary to accomplish the purpose. It shall not exceed 10 minutes without documentation on attempts made to release the child from the hold if more than 10 minutes is required. A licensee shall ensure a child is released from a physical restraint as soon as the child gains control, or before 10 minutes have elapsed, whichever occurs first[.]" 14 Del Admin. C. 610 contains additional requirements for when physical restraints must be ended. Council recommends including those requirements in this section as well.

**Response:** The Department appreciates this comment. The Department will change regulation 93.2.17 to state, "A licensee shall ensure a child is released from a physical restraint if a medical condition occurs putting the child at

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risk of harm, as soon as the child gains control, or before 10 minutes have elapsed, whichever occurs first."

**(2) State Council for Persons with Disabilities (SCPD)**

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's proposed regulations on Residential Child Care Facilities and has the following observations:

o In May 2023, DDOE made changes to proposed regulations based on comments received from stake-holders. These changes included amending the definition of chemical restraint to match the definition used in DSCYF's "Operating Guidelines for Contracted Children and Family Programs and Services." In addition, safeguards were included in the "time-out" procedure by adding, "The events and actions of the child leading up to each "time-out" are evaluated and staff responses to those events and actions are reviewed to ensure competency of staff to implement a "time-out" only when necessary."

o The proposed regulations are to replace the May 2023 changes.

**The State Council for Persons with Disabilities strongly opposes the use of restraint and seclusion on persons with disabilities, including children.**

**The below comments and recommended changes to this proposed regulation should not be construed as an abandonment of this position that all individuals with disabilities should be free of restraint and seclusion.**

Our further observations include:

o The prior definition of "child" was: "A person who has not reached 18 years of age. A person in a facility or program who becomes 18 years of age while residing in the facility or participating in the program, and who has not attained the age of 25." Under the proposed regulations, DDOE is proposing to change the definition of "child" to: "a person who has not reached the age of 18 years or a person who becomes 18 while residing in the facility or participating in the program, who has not reached the age of 22. Child also includes a person enrolled in a State public school or receiving a board extension to remain in care." DDOE did not provide a reasoning for why it lowered the age of those covered under this definition. **The SCPD would like clarification as to why this change was made and how it reconciles with the definition of child under special education.**

**Response:** The Department appreciates this comment. DOE made this change at the recommendation of task force members comprised of DSCYF representatives, other agency partners, and participating residential child care providers to align with disability requirements for a free appropriate public education (FAPE). The definition will remain as written.

The definition of "psychotropic drug" has changed from "a drug or substance that alters the chemical balance of neurotransmitters in the central nervous system" to "a chemical substance that changes brain function and alters perception, mood, or consciousness." Consistent with definitions of psychotropic drug in other literature, **SCPD recommends DDOE include in its definition, that a psychotropic drug is one that produces change to behaviors.**

**Response:** The Department appreciates this comment. The Department will add "behavior" to the definition. The Department will change the definition to "psychotropic medication" means a chemical substance that changes brain function and alters behavior, perception, mood, or consciousness.

DDOE defines "facility" as a "residential child care facility" and then subsequently states that a "residential child care facility is a "residential facility" in proposed section 4.3. **SCPD would ask DDOE to be consistent in references to different facilities.**

**Response:** The Department appreciates this comment. The Department will remove "residential facility" and will consistently use "residential child care facility."

The proposed definition of physical restraint is "the non-punitive, age-appropriate, time-limited, and reasonable use of physical holding that is required to restrict the movement of a child for the purpose of preventing harm to the child or to others when the child fails to respond to other techniques." This proposed definition fails to account for the severity of the child's actions and whether there is a serious and imminent risk of bodily harm to self or others, which is the language currently used in Delaware when referring to physical restraints occurring in school settings. **SCPD recommends DDOE align its DELACARE definition of physical restraint with that used in 14 Del. C. 4112F and 14 Del. Admin. C. 610.**

**Response:** The Department appreciates this comment. Regulation 93.2 requires a licensee to have and follow written policies and procedures governing the appropriate use of chemical restraint, physical restraint, or seclusion, as applicable. These policies and procedures require restrictive procedures to be permitted only under specific conditions, which include when "the child is a danger to self or others." The definition will remain as written.

The proposed definition of seclusion makes it seem as though it only applies to children aged six years or older; however, there is no explicit mention of seclusion not being available for youth under the age of six or why it is not used for those under the age of six. **SCPD recommends DDOE include specific language explicitly stating that seclusion is not an approved behavior technique used for children under the age of six.**

**Response:** The Department appreciates this comment. Regulation 93.2 requires a licensee to have and follow written policies and procedures governing the appropriate use of chemical restraint, physical restraint, or seclusion, as applicable. It states, "These policies and procedures shall: Prohibit the use any restrictive procedure on a child below age 6." The definition will remain as written.

The language in proposed section 4.3 states that a psychiatric hospital is not considered a residential facility. **SCPD would ask DDOE for an explanation as to why it is not a residential facility, what is it, especially considering students who experience long-term stays at psychiatric hospitals?**

**Response:** The Department appreciates this comment. The Office of Child Care Licensing (OCCL) does not regulate hospitals. The Division of Health Care Quality, Office of Health Facilities Licensing and Certification regulates hospitals. The regulation will remain as written.

Proposed Section 5.0 mentions that officials from OCCL or other State and local agencies may interview youth as part of their authority to inspect the licensed facilities. However, there is no mention of whether OCCL or the licensed facility must notify parents or the referring agency when such interviews are taking place. **SCPD recommends DDOE include a requirement for notification.**

**Response:** The Department appreciates this comment. The facility visit conducted to investigate a complaint is unannounced. Notifying parents or the referring agency could hinder the investigation. The regulation will remain as written.

Proposed Section 12.0 describes OCCL's actions when it receives a complaint from a youth or parent of a youth at a licensed facility. **SCPD recommends DDOE include a timeframe by which a noncompliant licensed facility is required to correct the identified noncompliance.**

**Response:** The Department appreciates this comment. While dates for correction of identified non-compliances vary depending on the complexity of the corrective action plan, the written complaint report contains dates for correction. The regulation will remain as written.

Proposed 17.1.2 states that "A photo, video, or recording that reveals a child's identity shall not be used for research, fundraising, or public relations without the written consent of the child's parent or referring agency." It is unclear why the referring agency would (or should) have the authority to consent to the releasing of a young person's identity in such a public manner. **Therefore, SCPD recommends DDOE re-move "referring agency" from this section.**

**Response:** The Department appreciates this comment. There may be situations where the referring agency would need the authority to provide consent. The regulation will remain as written.

Proposed 17.1.8.7 states that a licensee is prohibited from "[p]unishing the group for misbehaviors of a child or a group of children unless the policies and procedures clearly list the specific circumstances and safeguards when this would be allowed." This form of discipline, known as "collective punishment," is "fun-damentally at odds with the theories of individual responsibility in western, liberal societies."<sup>1</sup> **SCPD recommends DDOE remove this proposed section in its entirety.**

**Response:** The Department appreciates this comment. Task force members comprised of DSCYF representatives, other agency partners, and participating residential child care providers supported including this specific exception to the prohibition. The regulation will remain as written.

There is a typo in proposed 17.1.9.3 - this should be "self-control" and it currently says "self-contro,".



**Response:** The Department appreciates this comment. The Department will make the necessary correction.

Proposed 17.1.10.8 provides additional requirements for reporting and addressing situations where a child is in time-out more than fifteen times in a 24-hour period. This number should be far less, and **SCPD recommends these requirements and actions kick in when a young person has been in time-out for more than five times in a 24-hour period.**

**Response:** The Department appreciates this comment. The number was reduced from the current requirement of more than 25 time-outs for an individual child or a cumulative total of four hours spent in time-out within any consecutive 24-hour period. The regulation will remain as written.

Proposed Section 25.6 states that "[w]hen a licensee declines to admit a child, a licensee shall provide the child's parent or the referring agency with a written explanation of the reasons for refusal, if requested." It should not be a burden of the parent to request an explanation for why a licensee refused to admit the young person. Therefore, **SCPD recommends removal of the words "if requested". This would ensure that every time a licensee declines to admit a young person, it is required to provide a written explanation for why.**

**Response:** The Department appreciates this comment. The Department will change regulation 25.6 to state, "When a licensee declines to admit a child, a licensee shall verbally provide the child's parent or the referring agency with an explanation of the reasons for refusal. A written explanation of the reasons for refusal shall be provided upon request."

Proposed Section 29.0 describes the certification requirements for teachers in a licensed facility which is providing in-facility education services. The current language requires only that the teacher be certified for the age range of youth to whom the facility is licensed to provide services. It is not specific to the youth the teacher is educating. Therefore, there may be a situation where a licensee is providing services to youth aged 6-13 and it employs an elementary certified teacher to provide education. It would not be appropriate for that teacher to provide education to youth who are middle-school aged. Therefore, **SCPD recommends the certification requirement relate to the age of the youth the teacher is teaching rather than to the age of the youth to whom the licensee is providing services.**

**Response:** The Department appreciates this comment. Due to the potential of mixed age groups, requiring a certified teacher for each age group would be burdensome for the facility. The regulation will remain as written.

Current proposed 49.5.12 states that "A written schedule of monthly planned recreation, physical exercise, and leisure time activities be posted in a noticeable location on the premises and be maintained on file for at least 90 days." **SCPD recommends DDOE include language that this written schedule also be provided directly to the parent or referring agency as well.**

**Response:** The Department appreciates this comment. The facility is required to post the written schedule in a noticeable location so that is available for viewing by parents and the referring agency. The regulation will remain as written.

Proposed Section 49.8 states that "A licensee shall have and follow written policies and procedures governing preventative, routine, and emergency dental and medical care, including provisions for effective coordination of such dental and medical care with those responsible for the child's aftercare." Although it lists a number of requirements for these written policies and procedures, it does not include any notification to the parent or referring agency. Therefore, **SCPD recommends DDOE include an additional requirement that the licensee notify and receive consent from the parent or referring agency to any dental or medical procedure.**

**Response:** The Department appreciates this comment. Regulation 25.4.6 requires a licensee to obtain authorization to provide or obtain medical care for the child. The Department will change regulation 25.4.6 to state, "Authorization to provide or obtain routine medical and dental care for the child."

Proposed Section 52.8 states that "A licensee shall make provisions with the referring agency for a child to receive any needed eyeglasses, hearing aids, prosthetic devices, or other corrective devices, as deemed medically necessary by a licensed physician." The current language makes this list an exhaustive one. Therefore, **SCPD recommends DDOE include language such as "including" which would make the list non-exhaustive and allow for any assistive technology or any other health-related device.**

**Response:** The Department appreciates this comment. The Department will change regulation 52.8 to state, "A licensee shall make provisions with the referring agency for a child to receive assistive technology or other health-related devices, including any needed eyeglasses, hearing aids, prosthetic devices, or other corrective devices, as deemed medically necessary by a licensed physician."

Proposed Sections 66.0-76.0 govern the requirements for Parenting Adolescent Facilities. The proposed regulations do not contain a requirement related to any specific qualifications for staff at these facilities outside of the general requirements included in the regulation which apply to all facilities, unless specifically exempted. Because of the special nature of this population, staff is tasked with supporting not only the parenting young person, but with the young person's child as well. Therefore, **SCPD recommends DDOE include additional qualifications for staff employed to work at these facilities, such as training in pediatric care or early childhood education.**

**Response:** The Department appreciates this comment. Requiring this additional specialized training of direct care workers would be burdensome for the facility. The regulation will remain as written.

Proposed Section 93.0 governs the use of restrictive procedures, such as physical and chemical restraints and seclusion. Proposed 93.2 requires that licensees have and follow written policies and procedures related to the use of restrictive procedures. Proposed 93.2.2 states that these restrictive procedures are to be permitted only where (1) A trauma-informed treatment model is used; (2) The child is a danger to self or others; (3) The child's behavior is seriously disruptive; (4) Other ways to manage the child's dangerous behavior have failed; and (5) Staff members administering a restrictive procedure were trained to administer that procedure. **SCPD would ask DDOE to explain what it means by "seriously disruptive" because neither word is defined anywhere in the regulations and whether something is disruptive (or seriously disruptive, or mildly disruptive) is an exceptionally subjective determination. Further, SCPD recommends DDOE add the additional missing requirements to the use of physical restraint as provided in 14 Del. Admin. C. 610.**

Proposed Section 93.2.8 would prohibit several aversive punishment procedures. **SCPD recommends DDOE include the use of prone restraint to this list of prohibited procedures.**

**Response:** The Department appreciates these comments. The Department will change regulation 93.2.2.3 to state, "The child's behavior is seriously disruptive, meaning the conduct is so unruly, violent, or abusive that it interferes with a staff member's ability to communicate with a child or children, with a child's ability to learn, or with the effective operation of the residential child care facility or day treatment program or a sponsored activity."

A child's service plan lists approved restrictive procedures as applicable to the individual child. The regulation will remain as written.

Proposed Section 93.2.17 requires that the licensee's policies or procedures include a requirement that "a physical restraint [is] to be applied for the minimum time necessary to accomplish the purpose. It shall not exceed 10 minutes without documentation on attempts made to release the child from the hold if more than 10 minutes is required. A licensee shall ensure a child is released from a physical restraint as soon as the child gains control, or before 10 minutes have elapsed, whichever occurs first[.]" 14 Del Admin. C. 610 contains additional requirements for when physical restraints must be ended. **SCPD recommends DDOE include those requirements here as well.**

**Response:** The Department appreciates this comment. The Department will change regulation 93.2.17 to state, "A licensee shall ensure a child is released from a physical restraint if a medical condition occurs putting the child at risk of harm, as soon as the child gains control, or before 10 minutes have elapsed, whichever occurs first."

### (3) Zoe Ministries

"**Provisional license**" means a license issued for a time-limited period under a corrective action plan when a licensee is temporarily unable to comply fully with these regulations. There can be no serious risk to the health, safety, and well-being of children. An extension to the provisional license requires the director's approval.

**Comment:** The wording "corrective action plan" seems to imply some sort of discipline. Section 7.2.2 of the new proposed regulations imply that all applicants receive a 6-month provisional license even when they are in full compliance. Fully compliant applicants who receive a provisional license, should not be under any corrective action.

**Response:** The Department appreciates this comment. The Department will change the definition of "provisional license" to "provisional license" means a license issued for a time-limited period when a facility or program receives its initial license or is under a corrective action plan because a licensee is temporarily unable to comply fully with these regulations. There can be no serious risk to the health, safety, and well-being of children. An extension to the provisional license requires the director's approval.

4.3 "Residential childcare facility" or "residential facility" means a facility that provides out-of-home, 24-hour care, protection, and supervision for children who have: behavioral dysfunctions; developmental, emotional, mental or physical impairments; or chemical dependencies. Children may also reside in a residential facility when they are in the Department of Services for Children, Youth and Their Families' Division of Family Service's custody, pregnant or have children, awaiting a court appearance, needing temporary living arrangements, or are preparing to live on their own. A psychiatric hospital or an approved foster home is not a residential facility.

**Comment:** The definition should include children who have experienced and exhibit symptoms of complex trauma. Also, it should be clear that a residential childcare facility is not required to be used for emergency or temporary placement of a child when a suitable placement is not available. We suggest that residential childcare facilities have categories appropriate to the service they provide. For example, Zoe Ministries is providing services specific to adolescent girls who have experienced complex trauma due to sex trafficking.

**Response:** The Department appreciates these comments. The Department will add the words "have experienced trauma" to the definition. The Department will change the definition to "residential child care facility" means a facility that provides out-of-home, 24-hour care, protection, and supervision for children who have: behavioral dysfunctions; developmental, emotional, mental, or physical impairments; or chemical dependencies. Children may also reside in a residential child care facility when they are in the Department of Services for Children, Youth and Their Families' Division of Family Service's custody, pregnant or have children, awaiting a court appearance, needing temporary living arrangements, preparing to live on their own, or have experienced trauma. A psychiatric hospital or an approved foster home is not a residential child care facility.

4.4.3 "Independent living" means a facility that provides care for 12 or fewer adolescents to prepare them to live as self-sufficient adults.

**Comment:** The definition for "Independent Living" facility should be further defined to differentiate between a residential childcare facility that houses adolescents who are receiving similar services on teaching life skills while they are residents in order to live as self-sufficient adults when they turn 18. A safe house for sex trafficked youth could fall into both these categories as the definitions are currently written.

**Response:** The Department appreciates this comment. All facilities in the regulations, except for day treatment programs, are residential child care facilities. Residential child care facilities may also include specific service types. If a residential child care facility also includes one or more specific service types, the facility must meet the additional provisions listed in the regulations. The definition will remain as written.

5.1 Applicants, licensees, staff members, and volunteers if applicable shall allow access to the facility or program to officials from OCCL and other State and local agencies during the hours of operation to determine compliance with applicable codes, regulations, or laws. This includes access to information, files, documents, and video recordings needed to determine compliance.

12.2 OCCL shall conduct an unannounced visit to investigate the complaint and notify the licensee or staff member that a complaint is being investigated at that unannounced visit.

13.4.1 OCCL may deny a license application or revoke a license for good cause, including the following:

13.4.1.5 Refusal to permit an authorized representative of OCCL to gain admission to the facility or pro-gram during operating hours.

**Comment for 5.1, 12.2 and 13.4.1.5** - For the safety of safe house residents, it should be noted in that the facility can require the inspectors/investigators to sign a nondisclosure agreement that prohibits disclosure of the safe house's location or property details to those who are not part of the investigation. In the case of sex trafficked youth, it is very important to keep the location of the home as confidential as possible for the safety of the residents and staff.

**Response:** The Department appreciates this comment. OCCL cannot sign a nondisclosure agreement due to the Freedom of Information Act (29 Del.C. Ch. 100) and the Parents' Right to Know Act (14 Del.C. Ch. 30B); however, information that could endanger the life or physical safety of an individual is not public. Additionally, OCCL does not

post contact information, including site address, regarding licensed residential child care facilities and day treatment programs on our website.

7.1.2.2 Applicant's references including: For corporations, contact information for board president; and for LLCs, contact information for managing member.

*Comment:* Most corporations would have an Executive Director who is responsible for daily operations and would know the details and responsibilities or structure of the organization and staff. The recommendation is to require the contact information for the Executive Director since the applicant would be the Chief Administrator.

*Response:* The Department appreciates this comment. An applicant is the person or entity, such as a company, corporation, business, organization, or agency. When the applicant is a corporation, OCCL obtains references for the board president. The board president may or may not also be the chief administrator. The regulation will remain as written.

11.5 A variance denial or withdrawal of approval may be appealed by requesting a conference with the Associate Secretary of Early Childhood Support within 5 business days of receiving the denial or withdrawal.

12.5 Within 5 business days of receiving the complaint investigation report, a licensee may dispute citations or findings by contacting a licensing supervisor to request a conference or by discussing the citations over the phone.

*Comment for 11.5 and 12.5:* Unless the notice requires the recipient's signature to acknowledge that they have received the mail, the appeal/dispute period should be extended to at least 10 business days.

*Response:* The Department appreciates this comment. OCCL sends a variance denial or withdrawal approval via email to the requester. A signature is required for monitoring visits at the time of the visit. Complaint reports with cited non-compliance are sent via standard and certified mail, which requires a signature. The regulations will remain as written.

13.4.7 When a license has been revoked or an application has been denied, the licensee may not apply for a license from OCCL for 3 years from the date that the revocation or denial was upheld.

*Comment:* This seems a bit extreme in the case of a denial. Especially if the denial is due to non-compliance for making corrections that are costly and rectify or takes time to comply due to processes out of the applicant's control.

*Response:* The Department appreciates this comment. OCCL is aware that some corrections could take time and considers that in timelines for compliance as long as the health and safety of children are not at risk. The regulation will remain as written.

36.1.2 Hazards such as animal feces, toxic plants, broken seating or outdoor furniture, building supplies, power equipment, glass, sharp rocks, cigarette butts, beehives and wasp nests, and lawn mowers are not present when an area is used by children.

*Comment:* The safe house is on farmland and programming includes equine therapy. Therefore, there will be horse manure and the potential for beehives and wasp nests (which would be removed as soon as possible). Also, regarding life skills training, the residents would be given chores which may include removal of manure and grass cutting with supervision and proper training.

*Response:* The Department appreciates this comment. An applicant or licensee can submit a variance request for permission to request allowing children to have access to animal feces and use lawn mowers as part of life skills training. The regulation will remain as written.

36.1.5 All areas determined to be unsafe including steep grades, cliffs, open pits, swimming pools, high voltage boosters, propane gas tanks, streets or roads, driveways, railroad tracks, or parking lots are fenced off or have natural barriers to protect children.

*Comment:* How do you fence off a driveway?

*Response:* The Department appreciates this comment. The driveway does not need to be fenced off. There needs to be fencing or natural barriers in the outdoor play area to prevent access to the driveway. The regulation will remain as written.

47.5 A licensee shall ensure an individual currently certified as a Red Cross Lifeguard or a nationally recognized equivalent is on duty and supervising swimming activities.

*Comment:* There are not many residential childcare facilities in this state, partially because they are very expensive to run. The cost of having a licensed lifeguard on-site would be a major deterrent for people to even apply to open a home that would benefit children. There must be a way to put in safety measures that don't require a hired lifeguard.

*Response:* The Department appreciates this comment. The safety of children around water activities is paramount. A staff member can become a certified lifeguard. Permanent or built-in swimming pools are not required. A licensee may choose not to allow children in care to use a permanent or built-in swimming pool on the premises. The regulation will remain as written.

51.2 A licensee shall not deny or restrict a child's right to send and receive mail without censorship and without limiting the amount of mail a child sends or receives, except when:

51.2.1 The facility has reason to believe that a child's mail may contain unauthorized, injurious, or illegal materials.

*Comment:* Please add language that requires any resident receiving mail only doing so when the sender is listed on the "safe" or "approved" list.

*Response:* The Department appreciates this comment. A child is not required to have a list of "safe" or "approved" senders for mail. A court order may impose restrictions for receiving and sending mail. The regulation will remain as written.

Other changes were made to ensure compliance with the *Delaware Administrative Code Drafting and Style Manual*. The current proposal replaces the previous proposal.

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 02, 2024. 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 and safe education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help the Office of Child Care Licensing in its efforts to ensure 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:**

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 370RFA 12-01-23.pdf>

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 370 12-01-23.htm>

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)  
14 DE Admin. Code 705

**PUBLIC NOTICE**

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

**705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States**

**A. Type of Regulatory Action Required**

Repeal of Existing Regulation

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

Pursuant to 14 Del.C. §122(e), the Secretary of Education intends to repeal 14 DE Admin. Code 705 Leave for Training Camp or Special Duty in the National Guard of the Military Reserves of the United States. The current regulation is unnecessary given the statutory requirements in 29 Del.C. §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees and 14 Del.C. §1327 Leave of Absence for Person in Military Service.

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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before January 2, 2024. Anyone wishing to receive a copy of the proposed regulation may obtain one 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:**

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 382RFA 12-01-23.pdf>

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**705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States****4.0 ~~Leave for Training or Special Duty~~**

- 4.1 ~~Any permanent and full time employee shall be excused from work with pay to attend training camp or special duty on orders as a member of the military reserves of the United States or the National Guard, not to exceed fifteen (15) days or the equivalent hours as required by the ~~Delaware Code~~, on a prorated basis in any calendar year.~~
- 4.1.1 ~~Such training or special duty leave shall not be deducted from their annual leave or in any other way result in loss of privileges or compensation to said employee.~~
- 4.1.2 ~~Any permanent or full time employee shall file a request for military leave with their employer at least two weeks prior to their leave, along with a copy of their official orders.~~

~~(Non regulatory Note: See 29 ~~Del.C.~~ §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees and 14 ~~Del.C.~~ §1327 Leave of Absence for Person in Military Service)~~

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 3126 (14 **Del.C.** §3126)  
14 **DE Admin. Code** 902

**PUBLIC NOTICE****Educational Impact Analysis Pursuant to 14 Del. C. §122(d)****902 Gifted or Talented Education Plan****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

Pursuant to 14 **Del.C.** §3126, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 902 Gifted or Talented Education Plan. This regulation was proposed in October 2023 to clarify language in order to continue to allow gifted and talented services to be provided based on a school district's or charter school's capacity, and to outline school district and charter school responsibilities. In November 2023 it was determined that additional clarification was needed to explain that both school districts and charter schools must have a gifted and talented education plan, but school districts and charter schools could determine the extent of the plan and the areas of giftedness covered.

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 2, 2024. 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 will help improve student achievement as measured against state

achievement standards by ensuring each district and charter school has the flexibility to offer identification and support for students based on the district's or charter school's individual capacity. This will provide districts and charter schools the autonomy needed to provide the most equitable supports and services possible for students.

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 amendment regulation does not significantly 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 regarding the promotion of students.

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 anticipated 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:**

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 383RFA 12-01-23.pdf>

## 902 Gifted or Talented Education Plan

### 1.0 Purpose

The purpose of this regulation is to establish that a gifted or talented student, as identified by a professionally qualified person or persons, may require differentiated educational programs or services beyond those normally provided by the regular school program in order to address the individual's individual student's capabilities. The school districts' or charter schools' capacity to provide differentiated educational programs or services should also be considered as this varies between school districts and charter schools. Capacity means the way in which a school district or charter school chooses to identify its areas of giftedness and the types of services they choose to provide. A school district or charter school is not required to provide programming for all giftedness areas.

### 2.0 Definitions

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

**"Gifted or Talented Education Plan talented education plan"** or **"Plan plan"** means a Delaware Department of Education ~~approved document~~ approved document created by a school district or charter school for the development, implementation, and evaluation of an identification process and appropriate services for gifted or talented students.

**"Gifted or Talented Student talented student"** means a child enrolled in a Delaware public school who has been identified by a professionally qualified person or persons as meeting the following definition of gifted or talented:



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A child capable of high performance with demonstrated achievement ~~and/or~~ or potential ability in any of the following giftedness areas, singularly or in combination:

- General intellectual ability;
- Specific academic aptitude;
- Creative or productive thinking;
- Leadership ability;
- Visual and performing arts ability; or
- Psychomotor ability.

**"Relative Caregiver caregiver"** means, pursuant to 14 Del.C. §202(f)(2), an adult who, by blood, marriage or adoption, is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, step parent, brother, sister, step brother, step sister, half brother, half sister, niece, nephew, first cousin, or first cousin once removed but who does not have legal custody or legal guardianship of the student.

### **3.0 ~~Development and Components of the Plan~~ Development, Components and Plan Review**

- 3.1 Each school district or charter school shall have a ~~Plan~~ plan which, at a minimum, shall:
- ~~3.1.1~~ 3.1.1 Outline the anticipated services to be provided and giftedness areas to be covered based upon each individual district or charter school's capacity.
  - ~~3.1.4~~ 3.1.2 Outline goals and specific outcomes;
  - ~~3.1.2~~ 3.1.3 Be developed with input from various stakeholder groups including parents;
  - ~~3.1.3~~ 3.1.4 Provide the process for identification of gifted or talented students by professionally qualified persons;
  - ~~3.1.4~~ 3.1.5 Outline an identification process that includes how each district or charter identifies gifted learners and in which defined giftedness areas that ensures all students have an equal opportunity to be identified and participate in the program;
  - ~~3.1.5~~ 3.1.6 Provide for a communication process, which shall include procedures to inform ~~parent(s), guardian(s), or Relative Caregiver(s)~~ parents, guardians, or relative caregivers of a student's participation in the gifted or talented education program;
  - ~~3.1.6~~ 3.1.7 Establish procedures for requiring that, at a minimum, each teacher assigned to teach a student identified as gifted or talented be certified in accordance with the applicable Professional Standards Board regulations.
  - ~~3.1.7~~ 3.1.8 Establish procedures for ~~the identification and placement of a student who was identified as gifted or talented in the school district from which the student transferred~~ students who transfer into the school district or charter school who have been identified as gifted or talented in their prior school; and
  - ~~3.1.8~~ 3.1.9 Provide for an evaluation of the ~~Plan provided for its gifted or talented students~~ plan.
- 3.2 Implementation of the gifted or talented programs and services shall be aligned to the ~~Plan~~ plan.
- 3.3 The Department of Education shall review each plan periodically, but not less than every 5 years for compliance with this regulation and equitable practices. If a school district or charter school makes any substantive changes to the gifted or talented education plan, the plan shall be provided to the Department of Education within 1 year of the change for review for compliance with this regulation.

### **4.0 ~~Department of Education Responsibilities~~ Resources**

- 4.1 The Department of Education shall maintain a resource guide of best ~~practices,~~ practices on its ~~website,~~ website that a school district or charter school may use in the development and implementation of its ~~Plan~~ plan.
- 4.2 Each ~~Plan~~ shall be reviewed periodically, but not less than every five years, by the Department of Education for compliance with this regulation, and any substantive changes to the ~~Plan~~ shall be provided for review for compliance with this regulation.

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# PROPOSED REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1221(2) (14 Del.C. §§1203, 1205(b), and 1221(2))  
14 DE Admin. Code 1504

### PUBLIC NOTICE

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

#### 1504 Certificate of Eligibility

#### 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), and 1221(2), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1504 Certificate of Eligibility. The regulation concerns the issuance, extension, and retention of a Certificate of Eligibility. The proposed amendments include clarifying Section 1.0; striking terms in Section 2.0; revising Section 3.0, which concerns issuing a Certificate of Eligibility; adding the issuance, extension, application, and retention requirements for individuals who seek an Initial License and content area Standard Certificate in Section 4.0; adding the issuance, extension, application, and retention requirements for individuals who hold an Initial, Continuing, or Advanced License and content area Standard Certificate in Section 5.0; revising Section 6.0, which concerns validity of a Certificate of Eligibility; revising Section 8.0, which concerns disciplinary action; and adding Section 9.0, which concerns applicants' and educators' contact information.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, 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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before January 2, 2024. 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 in Sections 3.0, 4.0, and 5.0 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 in Sections 3.0, 4.0 and 5.0 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 certificate of eligibility 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 certificate of eligibility 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 the authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in subsections 4.3 and 5.3 apply to individual applicants.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in

the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

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

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

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

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 386RFA 12-01-23.pdf>

### **1504 Certificate of Eligibility**

#### **1.0 Content**

1.1 This regulation shall apply to the issuance, extension, and retention of a Certificate of Eligibility pursuant to 14 **Del.C.** §1221(2) for educators who are pursuing the following certifications:

1.1.1 14 **DE Admin. Code** 1570 Early Childhood Exceptional Children Special Education Teacher; or

1.1.2 14 **DE Admin. Code** 1571 Special Education Teacher of Students with Disabilities; or

1.1.3 14 **DE Admin. Code** 1573 Teacher of Students with Autism or with Severe Intellectual Disabilities;  
or

1.1.4 14 **DE Admin. Code** 1574 Teacher of Students Who Are Deaf or Hard of Hearing; or

1.1.5 14 **DE Admin. Code** 1575 Teacher of Students with Visual Impairments.

1.2 This regulation does not apply to an Emergency Certificate, which is a temporary credential that may be issued to an applicant who is not fully certified in a specific area to serve as the educator of record in that area while the applicant pursues a Standard Certificate.

#### **2.0 Definitions**

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

**"Certificate of Eligibility"** means a credential which may be issued to teachers of students with disabilities if the employing district or charter school establishes that the proposed recipient meets the requirements of 14 **Del.C.** §1221(2).

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

~~**"Credentialed"** means holding an active license and an active certificate in a specific content area at appropriate grade levels.~~

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

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

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

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

"**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.

### 3.0 Issuance of a Certificate of Eligibility

- 3.1 ~~Upon receipt of a completed application from the Employing Authority, the Department may issue a Certificate of Eligibility to an Educator who holds a valid Delaware Initial, Continuing, or Advanced License, but who is not eligible for Certification in the area of need for students with disabilities identified in Section 1.0 of this regulation. In accordance with 14 **Del.C.** §1221(2), the Department may issue a Certificate of Eligibility to an applicant who satisfies all of the requirements in subsections 3.1.1 through 3.1.6.~~
- 3.1.1 ~~A Certificate of Eligibility is valid for one school year subject to subsection 3.1.3 of this regulation. The applicant shall meet the requirements for issuance of a Delaware Initial License or hold a valid and current Delaware Initial, Continuing, or Advanced License.~~
- 3.1.2 ~~The Certificate of Eligibility is issued for one school year and expires on June 30<sup>th</sup>. The applicant seeks 1 of the Standard Certificates in subsection 1.1 but does not meet the requirements for issuance of the Standard Certificate sought.~~
- 3.1.3 ~~The Department may grant a second year Certificate of Eligibility and a third year Certificate of Eligibility if the Educator has met the requirements outlined in Section 5.0 of this regulation. The applicant is enrolled and participating in a Department-approved Alternative Routes for Teacher Licensure and Certification (ARTC) program for teachers in the area of need for students with disabilities for which the Standard Certificate is sought.~~
- 3.1.4 ~~The applicant shall be employed as the educator of record for the Standard Certificate sought in a position in a Delaware traditional, vocational-technical, or charter school.~~
- 3.1.5 ~~The applicant's Employing Authority will support and assist the applicant in completing the requirements for the Standard Certificate sought.~~
- 3.1.6 ~~The applicant shall also meet the requirements for the issuance of the applicable Certificate of Eligibility set forth in either Section 4.0 or Section 5.0.~~

### 4.0 Application Procedures

- 4.1 ~~The Employing Authority shall:~~
- 4.1.1 ~~Establish that the proposed recipient of a Certificate of Eligibility is competent by submitting evidence of the Educator's License and other considerations; and~~
- 4.1.2 ~~Apply for the Certificate of Eligibility within sixty (60) calendar days of the Educator's hire or new job assignment; and~~
- 4.1.3 ~~Establish that the proposed recipient is participating in a state approved alternative route for teacher licensure and certification program which is appropriate to the Certification, as identified in Section 1.0 of this regulation, that the proposed recipient is pursuing; and~~
- 4.1.4 ~~Support and assist the Educator in achieving the skills and knowledge necessary to meet applicable Certification requirements; and~~
- 4.1.5 ~~Verify that the Educator understands the Standard Certificate requirements, the deadline in which to complete requirements, and the expectation to earn a Standard Certificate.~~
- 4.2 ~~Failure by the Employing Authority to fulfill the conditions set forth shall result in denial of the Certificate of Eligibility.~~

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## **4.0 Certificate of Eligibility for Individuals Who Seek a Delaware Initial License and Content Area Standard Certificate**

- 4.1** The Department may issue a Certificate of Eligibility to an applicant who meets the requirements in Section 3.0 and the applicant has applied for and met the requirements of a content area Standard Certificate or is eligible to be issued a content area Emergency Certificate.
- 4.2** The Department may extend a Certificate of Eligibility that was issued pursuant to subsection 4.1 up to 2 times if the educator meets the requirements in subsections 4.2.1 through 4.2.7.
- 4.2.1** The educator shall hold a valid and current Delaware Initial, Continuing, or Advanced License.
- 4.2.2** The educator continues to be enrolled and participating in a Department-approved ARTC program for teachers in the area of need for students with disabilities for which the Standard Certificate is sought.
- 4.2.3** The educator continues to seek 1 of the Standard Certificates in subsection 1.1 and has not met the requirements for issuance of the Standard Certificate sought but shall be making satisfactory progress towards the completion of all program requirements.
- 4.2.4** The educator has met the requirements for issuance of a content area Standard Certificate or has not met the requirements for issuance of the content area Standard Certificate sought but is making progress toward completing the requirements by completing coursework or achieving the minimum score on the examination of content knowledge.
- 4.2.5** The educator's Employing Authority and program recommend an extension based on the educator's performance in the assignment and progress in the program.
- 4.2.6** The educator shall be employed as the educator of record for both of the Standard Certificates sought in a position in a Delaware traditional, vocational-technical, or charter school.
- 4.2.7** The educator's Employing Authority will continue to support and assist the educator in completing the requirements for the Standard Certificate sought.
- 4.3** Application Requirements
- 4.3.1** If the applicant is applying for the issuance or renewal of an educator's license, the applicant must disclose the applicant's criminal conviction history upon application. Failure to disclose a criminal conviction history is grounds for denial of the license application as specified in 14 **Del.C.** §1219 and could delay the processing or result in the denial of the application for a Certificate of Eligibility.
- 4.3.2** For applicants who seek a Certificate of Eligibility under subsection 4.1, the following documentation is required with the application:
- 4.3.2.1** Documentation that the applicant meets the requirements for issuance of a Delaware Initial License or holds a valid and current Delaware Initial, Continuing, or Advanced License;
- 4.3.2.2** A copy of the welcome letter from the applicant's ARTC program, documenting enrollment in the program in the area of need for students with disabilities for which the Standard Certificate is sought;
- 4.3.2.3** Documentation that the applicant is employed as the educator of record for the Standard Certificate sought in a position in a Delaware traditional, vocational-technical, or charter school;
- 4.3.2.4** Documentation that the applicant's Employing Authority will support and assist the applicant in completing the requirements for the Standard Certificate sought; and
- 4.3.2.5** Documentation that the applicant has applied for and met the requirements of a content area Standard Certificate or is eligible to be issued a content area Emergency Certificate.
- 4.3.3** For applicants who seek extension of a Certificate of Eligibility under subsection 4.2, the following documentation is required with the application:
- 4.3.3.1** Documentation that the educator holds a valid and current Delaware Initial, Continuing, or Advanced License;

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- 4.3.3.2 A request from the applicant's Employing Authority, documenting that it recommends an extension based on the educator's performance in the assignment and progress in the program and that it will continue to support and assist the educator in completing the requirements for the Standard Certificate sought;
  - 4.3.3.3 A letter from the educator's ARTC program, documenting that it recommends an extension based on the educator's performance in the assignment and progress in the program;
  - 4.3.3.4 Documentation that the educator is employed as the educator of record for both of the Standard Certificates sought in a position in a Delaware traditional, vocational-technical, or charter school;
  - 4.3.3.5 Official transcript from the applicant's Regionally Accredited college or university or, if applicable, documents verifying successful completion of Department-approved professional development; and
  - 4.3.3.6 Official score on the examination of content knowledge for the Content Area Standard Certificate sought.
- 4.4 In order to retain the Certificate of Eligibility, the educator shall meet the requirements in subsections 4.4.1 through 4.4.5. If the educator fails to meet any of the requirements related to retaining the Certificate of Eligibility, the educator and the educator's Employing Authority shall immediately notify the Department in writing. The requirements set forth in this subsection apply to all educators regardless of the date the Certificate of Eligibility was issued.
- 4.4.1 The educator shall hold an Initial, Continuing, or Advanced License.
  - 4.4.2 The educator shall continue to be employed as the educator of record for both of the Standard Certificates sought in a position in a Delaware traditional, vocational-technical, or charter school.
  - 4.4.3 The educator shall continue to be enrolled and participating in the Department-approved ARTC program for teachers of students with disabilities.
  - 4.4.4 The educator shall maintain satisfactory progress towards completion of all of the ARTC program's requirements.
  - 4.4.5 The educator shall make progress toward completing the requirements of the content area Standard Certificate sought.

## **5.0 Second Year and Third Year Reissue of Certificate of Eligibility**

- 5.1 ~~If the Educator does not meet all Standard Certificate requirements during the first school year, the Employing Authority may apply for a second year Certificate of Eligibility in the same area.~~
- 5.2 ~~If the Department grants an Educator a second-year Certificate of Eligibility and the Educator does not meet all Standard Certificate requirements during the second school year, the Employing Authority may apply for a third-year Certificate of Eligibility in the same area.~~
- 5.3 ~~The Department may issue a second-year Certificate of Eligibility or a third-year Certificate of Eligibility if the following requirements are met:~~
  - 5.3.1 ~~The Employing Authority submits a request for the Certificate of Eligibility within sixty (60) calendar days of the start of the next consecutive school year.~~
  - 5.3.2 ~~The Employing Authority has established that the Educator has made documented progress toward earning the Standard Certificate by continuing to participate in a state-approved alternative route for teacher licensure and certification program which is appropriate to the Certification identified in Section 1.0 of this regulation that the Educator is pursuing.~~

## **5.0 Certificate of Eligibility for Individuals Who Hold a Delaware Initial, Continuing, or Advanced License and Content Area Standard Certificate**

- 5.1 The Department may issue a Certificate of Eligibility to an applicant who meets the requirements in Section 3.0 and the applicant holds a valid content area Standard Certificate.

- 5.2 The Department may extend a Certificate of Eligibility that was issued pursuant to subsection 5.1 up to 2 times if the educator meets the requirements in subsections 5.2.1 through 5.2.6.
- 5.2.1 The educator shall hold a valid and current Delaware Initial, Continuing, or Advanced License.
- 5.2.2 The educator continues to seek 1 of the Standard Certificates in subsection 1.1 and has not met the requirements for issuance of the Standard Certificate sought but shall be making satisfactory progress towards the completion of all program requirements.
- 5.2.3 The educator holds a valid content area Standard Certificate.
- 5.2.4 The educator's Employing Authority and program recommend an extension based on the educator's performance in the assignment and progress in the program.
- 5.2.5 The educator shall be employed as the educator of record for the Standard Certificate sought in a position in a Delaware traditional, vocational-technical, or charter school.
- 5.2.6 The educator's Employing Authority will continue to support and assist the educator in completing the requirements for the Standard Certificate sought.
- 5.3 Application Requirements
- 5.3.1 If the applicant is applying for the issuance or renewal of an educator's license, the applicant must disclose the applicant's criminal conviction history upon application. Failure to disclose a criminal conviction history is grounds for denial of the license application as specified in 14 Del.C. §1219 and could delay the processing or result in the denial of the application for a Certificate of Eligibility.
- 5.3.2 For applicants who seek a Certificate of Eligibility under subsection 5.1, the following documentation is required with the application:
- 5.3.2.1 Documentation that the educator holds a valid and current Delaware Initial, Continuing, or Advanced License;
- 5.3.2.2 A copy of the welcome letter from the applicant's ARTC program, documenting enrollment in the program in the area of need for students with disabilities for which the Standard Certificate is sought;
- 5.3.2.3 Documentation that the applicant is employed as the educator of record for the Standard Certificate sought in a position in a Delaware traditional, vocational-technical, or charter school;
- 5.3.2.4 Documentation that the applicant's Employing Authority will support and assist the applicant in completing the requirements for the Standard Certificate sought; and
- 5.3.2.5 Documentation that the applicant holds a valid content area Standard Certificate.
- 5.3.3 For applicants who seek extension of a Certificate of Eligibility under subsection 5.2, the following documentation is required with the application:
- 5.3.3.1 Documentation that the educator holds a valid and current Delaware Initial, Continuing, or Advanced License;
- 5.3.3.2 A request from the applicant's Employing Authority, documenting that it recommends an extension based on the educator's performance in the assignment and progress in the program and that it will continue to support and assist the educator in completing the requirements for the Standard Certificate sought;
- 5.3.3.3 A letter from the educator's ARTC program, documenting that it recommends an extension based on the educator's performance in the assignment and progress in the program;
- 5.3.3.4 Documentation that the educator is employed as the educator of record for the Standard Certificate sought in a position in a Delaware traditional, vocational-technical, or charter school; and
- 5.3.3.5 Documentation the applicant holds a valid content area Standard Certificate.
- 5.4 In order to retain the Certificate of Eligibility, the educator shall meet the requirements in subsections 5.4.1 through 5.4.5. If the educator fails to meet any of the requirements related to retaining the Certificate of Eligibility, the educator and the educator's Employing Authority shall immediately notify

# PROPOSED REGULATIONS

the Department in writing. The requirements set forth in this subsection apply to all educators regardless of the date the Certificate of Eligibility was issued.

- 5.4.1 The educator shall hold an Initial, Continuing, or Advanced License.
- 5.4.2 The educator shall continue to be employed as the educator of record for the Standard Certificate sought in a position in a Delaware traditional, vocational-technical, or charter school.
- 5.4.3 The educator shall continue to be enrolled and participating in the Department-approved ARTC program for teachers of students with disabilities.
- 5.4.4 The educator shall maintain satisfactory progress towards completion of all of the ARTC program's requirements.
- 5.4.5 The educator shall hold a content area Standard Certificate.

## 6.0 Expiration of Validity of a Certificate of Eligibility

- 6.1 ~~Certificates of Eligibility shall expire on June 30<sup>th</sup>.~~ A Certificate of Eligibility is issued for up to 1 school year and expires on June 30th of the end of the school year it is issued unless it is revoked.
- 6.2 ~~Certificates of Eligibility that have been issued for three 3 consecutive school years may not be extended, including for Educators who have switched ARTC programs. The Educator shall meet the requirements for issuance of a Standard Certificate in the area of Certification identified in Section 1.0 of this regulation that the Educator is pursuing need for students with disabilities for which the Standard Certificate is sought. Upon successful completion of a Department-approved ARTC program to teach students with disabilities, an Educator who subsequently enrolls in an ARTC program to teach students with disabilities that is in a different area of need may be issued a new Certificate of Eligibility.~~
- 6.3 ~~Educators holding an active License without a current or valid certificate are not considered Credentialed authorized to teach in a Delaware public school.~~
- 6.4 ~~A Certificate of Eligibility may not be renewed or extended for a leave of absence.~~
- 6.5 ~~A Certificate of Eligibility may not be extended for exigent circumstances.~~

## 7.0 Transfer of Certificate of Eligibility to a New Employing Authority

The Department may approve the transfer of a Certificate of Eligibility from one Employing Authority to another if the new Employing Authority conducts an independent review of the Educator's progress towards a Standard Certificate and assumes the commitments and responsibilities of an Employing Authority within this regulation.

## 8.0 Revocation of Certificate of Eligibility Disciplinary Action

- 8.1 ~~A An Educator's Certificate of Eligibility shall be revoked in the event an Educator's Initial, Continuing, or Advanced License is revoked in accordance with~~ may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Revocation, Limitation, or Suspension of Licenses 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 the Educator's Certificate of Eligibility.
- 8.1.1 ~~An Educator is entitled to a full and fair hearing before the Standards Board.~~
- 8.1.2 ~~Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearings Procedures and Rules.~~
- 8.2 An Educator's Certificate of Eligibility shall be revoked if the Educator's license is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.
- 8.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

## 9.0 Contact Information and Change of Name or Address



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- 9.1 All applicants and Educators are required to update their contact information in DEEDS if their contact information changes.
- 9.2 An Educator who legally changes the Educator's name and wishes to change the name on the Certificate of Eligibility shall provide a notarized copy of evidence of the name change such as a marriage license or court action.
- 9.3 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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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)  
14 DE Admin. Code 1553

### PUBLIC NOTICE

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

#### 1553 Driver and Traffic Safety Education Teacher

#### 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), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1553 Driver and Traffic Safety Education Teacher. The regulation concerns the requirements for a Driver and Traffic Safety Education Teacher Standard Certificate. The proposed amendments include clarifying the requirement regarding an applicant's driving record in subsections 4.1.3 and 5.1.5 and specifying that a 5-year driving record is required to be submitted with an application in subsections 6.3.4 and 6.5.5.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, 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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before January 2, 2024. 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 in Sections 4.0 and 5.0 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 in Sections 4.0 and 5.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local

board and school level? The amended regulation does not change the authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 6.0 apply to individual applicants.

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

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

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

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

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 393RFA 12-01-23.pdf>

## 1553 Driver and Traffic Safety Education Teacher

### 1.0 Content

This regulation shall apply to the requirements for a Driver and Traffic Safety Education Teacher Standard Certificate pursuant to 14 **Del.C.** §1220(a). This Standard Certificate is required to teach driver and traffic safety education in a Delaware public school.

### 2.0 Definitions

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

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

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

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

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

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

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

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

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

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

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

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Driver and Traffic Safety Education Teacher Standard Certificate to an applicant who:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 and meets the requirements in Section 4.0 of this regulation; or
  - 3.1.2 Has met the requirements for an educator's license in Delaware and presents proof of a Valid and Current License or Certificate as a driver and traffic safety education teacher issued by another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or
  - 3.1.3 Has met the requirements for an educator's license in Delaware and meets the requirements set forth in Section 5.0 of this regulation.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Driver and Traffic Safety Education Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

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

- 4.1 An applicant for a Driver and Traffic Safety Education Teacher Standard Certificate shall have satisfied the requirements in subsections 4.1.1 through 4.1.3.
- 4.1.1 The applicant shall have completed a minimum of 21 college credits or an equivalent number of hours in professional development with ~~one~~ 1 credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department in the following areas:
- 4.1.1.1 Human development (~~three~~ 3 credits);
  - 4.1.1.2 Introduction to exceptional children (~~three~~ 3 credits);
  - 4.1.1.3 Effective teaching strategies (~~three~~ 3 credits);
  - 4.1.1.4 Cultural diversity (~~three~~ 3 credits);
  - 4.1.1.5 Driver education: methods and materials (~~three~~ 3 credits);
  - 4.1.1.6 Driver education: in-car training (~~three~~ 3 credits); and
  - 4.1.1.7 One of the following:
    - 4.1.1.7.1 Alcohol and drug education (~~three~~ 3 credits);
    - 4.1.1.7.2 Current issues in driver education (~~three~~ 3 credits);
    - 4.1.1.7.3 Safety in driver education (~~three~~ 3 credits);
    - 4.1.1.7.4 First aid (~~three~~ 3 credits);
    - 4.1.1.7.5 Curriculum and instruction for exceptional learners (~~three~~ 3 credits);

# PROPOSED REGULATIONS

- 4.1.1.7.6 Education for safe living (~~three~~ 3 credits);
- 4.1.1.7.7 Technology and teaching driver education (~~three~~ 3 credits); or
- 4.1.1.7.8 Driving task analysis (~~three~~ 3 credits).
- 4.1.2 The applicant shall hold a valid and current driver's license.
- 4.1.3 The applicant's driving record shall have no more than ~~five~~ 5 points total from Delaware or ~~five~~ 5 points or the equivalence of ~~five~~ 5 points in citations from any other jurisdiction in the 5 years prior to the date of the application.
- 4.1.4 The applicant's driver's license shall not have been suspended, revoked, or disqualified in Delaware or any other jurisdiction in the ~~five~~ 5 years prior to the date of the application.

## 5.0 Reciprocity

- 5.1 If an applicant is already licensed or certified as a driver and traffic safety education teacher in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.6 in order for the Department to issue a Driver and Traffic Safety Education Teacher Standard Certificate.
  - 5.1.1 The applicant shall hold a Valid and Current License or Certificate as a driver and safety education teacher.
  - 5.1.2 The applicant shall hold a bachelor's degree in any content area from a Regionally Accredited college or university.
  - 5.1.3 The applicant shall have completed a minimum of 21 college credits or an equivalent number of hours in professional development with ~~one~~ 1 credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department in the areas specified in subsections 4.1.1.1 through 4.1.1.7.
  - 5.1.4 The applicant shall hold a valid and current driver's license.
  - 5.1.5 The applicant's driving record shall have no more than ~~five~~ 5 points total or the equivalence of ~~five~~ 5 points in citations from any jurisdiction in the 5 years prior to the date of the application.
  - 5.1.6 The applicant's driver's license shall not have been suspended, revoked, or disqualified in any jurisdiction in the ~~five~~ 5 years prior to the date of the application.

## 6.0 Application Requirements

- 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 6.2 An applicant must disclose the applicant's criminal conviction history upon application for a Driver and Traffic Safety Education Teacher Standard Certificate. Failure to disclose a criminal conviction history is grounds for denial of a Driver and Traffic Safety Education Teacher Standard Certificate as specified in 14 **Del.C.** §1219.
- 6.3 For an applicant who is applying under subsection 3.1.1, the following documentation is required with the application for a Driver and Traffic Safety Education Teacher Standard Certificate:
  - 6.3.1 Official transcript from the applicant's Regionally Accredited college or university.
    - 6.3.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
    - 6.3.1.2 Sealed paper transcripts may be submitted.
    - 6.3.1.3 The Department will not accept copies of transcripts; and
  - 6.3.2 Documents verifying successful completion of Department-approved professional development, if applicable; and
  - 6.3.3 Documentation that the applicant holds a valid and current driver's license; and
  - 6.3.4 A copy of the applicant's 5-year driving record; and

- 6.3.5 Additional documentation as required by the Department.
- 6.4 For an applicant who is applying under subsection 3.1.2, the following documentation is required with the application for a Driver and Traffic Safety Education Teacher Standard Certificate:
  - 6.4.1 An official copy of the Valid and Current License or Certificate as a driver and traffic safety education teacher; and
  - 6.4.2 Additional documentation as required by the Department.
- 6.5 For an applicant who is applying under subsection 3.1.3, the following documentation is required with the application for a Driver and Traffic Safety Education Teacher Standard Certificate:
  - 6.5.1 An official copy of the Valid and Current License or Certificate as a driver and traffic safety education teacher; and
  - 6.5.2 Official transcript from the applicant's Regionally Accredited college or university.
    - 6.5.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
    - 6.5.2.2 Sealed paper transcripts may be submitted.
    - 6.5.2.3 The Department will not accept copies of transcripts; and
  - 6.5.3 Documents verifying successful completion of Department-approved professional development, if applicable; and
  - 6.5.4 Documentation that the applicant holds a valid and current driver's license; and
  - 6.5.5 A copy of the applicant's 5-year driving record; and
  - 6.5.6 Additional documentation as required by the Department.

## **7.0 Secretary of Education Review**

- 7.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Driver and Traffic Safety Education Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Driver and Traffic Safety Education Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.
  - 7.1.1 For school districts, requests shall be approved by the superintendent of the school district.
  - 7.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

## **8.0 Validity of a Standard Certificate**

- 8.1 A Driver and Traffic Safety Education Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 8.2 A Driver and Traffic Safety Education Teacher Standard Certificate is not subject to renewal.

## **9.0 Requirements Related to the Retention of a Driver and Traffic Safety Education Teacher Standard Certificate**

- 9.1 In order to retain a Driver and Traffic Safety Education Teacher Standard Certificate, the Educator shall:
  - 9.1.1 Hold a valid and current driver's license; and
  - 9.1.2 Maintain a driving record that has no more than ~~five~~ 5 points total from Delaware or ~~five~~ 5 points or the equivalence of ~~five~~ 5 points in citations from any other jurisdiction; and
  - 9.1.3 Prior to the expiration of the Educator's license, affirm and document to the Department that the Educator satisfies the applicable requirements in subsections 9.1.1 and 9.1.2 of this regulation.

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- 9.2 If an Educator fails to meet any of the requirements related to retaining a Driver and Traffic Safety Education Teacher Standard Certificate, the Educator shall immediately notify the Department in writing.
- 9.3 The requirements set forth in subsection 9.1 apply to all Educators regardless of the date the Driver and Traffic Safety Education Teacher Standard Certificate was issued to them.

## 10.0 Disciplinary Action

- 10.1 An Educator's Driver and Traffic Safety Education Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits or for the Educator's failure to comply with the requirements related to the retention of a Driver and Traffic Safety Education Teacher Standard Certificate as provided in Section 9.0.
- 10.2 An Educator's Driver and Traffic Safety Education Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 10.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

## 11.0 Past Certificate Recognized

The Department shall recognize a Driver and Traffic Safety Education Teacher Standard Certificate issued prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach driver and traffic safety education.

## 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 Driver and Traffic Safety Education Teacher Standard Certificate 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** 14000, 15000

### PUBLIC NOTICE

### Retroactive Eligibility

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 the Division of Social Services Manual (DSSM) 14100.6, 14920, 14920.1, 14920.5, 15200.3, 15200.6, and Title XIX Medicaid State Plan Attachment 4.17-1 regarding Retroactive Eligibility, specifically, to support our goal of expanding access to coverage, including

coverage for those who need immediate care while applying for Medicaid.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs, or other written materials concerning the proposed new regulations must submit same to, Planning 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](mailto:DHSS_DMMA_Publiccomment@Delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on January 2, 2024. Please identify in the subject line: Retroactive Eligibility

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

### **SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and Division of Social Services Manual (DSSM) regarding Retroactive Eligibility.

#### **Statutory Authority**

- 42 CFR 435.915
- 42 CFR 435.916

#### **Background**

Federal regulation requires states to provide three months of retroactive eligibility for Medicaid, if an individual received Medicaid covered services and would have been eligible at the time the service was provided. Under the current Diamond State Health Plan (DSHP) 1115 Waiver of Section 1902(a)(34) of the Social Security Act, Delaware has an approved waiver of retroactive eligibility (meaning retroactive eligibility is not available) for most eligibility categories. In 2019 Delaware expanded the groups of members to which this waiver would no longer apply. As a result, retroactive eligibility is currently available to the following groups, if general financial and technical eligibility requirements are met:

- Individuals entitled to or eligible for one of the following Medicare Savings Program (excludes QMB)
  - Specified Low Income Medicare Beneficiaries (SLMB)
  - Qualifying Individuals (QI)
  - Qualified and Disabled Working Individuals (QDWI)
- Individuals residing in a nursing facility
- Individuals residing in an intermediate care facility for individuals with intellectual disabilities (ICF/IID) or for individuals with mental disease (ICF/IMD)
- Individuals in need of only the 30-day Acute Care Hospital Program (in no case should the effective date be earlier than the first day of hospitalization)
- Women eligible under the Breast and Cervical Cancer Treatment Group
- Individuals eligible under the Medicaid for Worker's with Disabilities Group
- Pregnant and Postpartum Women
- Infants under age 1
- Individuals under the age of 19

Effective no later than January 1, 2024, with the expiration of the current DSHP 1115 waiver, retroactive coverage is potentially available, if general financial and technical eligibility requirements are met, to all eligible DSHP and DSHP-Plus participants, with some exceptions. Individuals eligible under the Delaware Healthy Children's Program (DHCP) continue to be ineligible for retroactive Medicaid.

#### **Summary of Proposal**

##### *Purpose*

The purpose of this proposed regulation is to support expanding access to coverage for those who need immediate care while applying for Medicaid and to align the reconsideration period with the retroactive eligibility period.

## Summary of Proposed Changes

Effective January 1, 2024, the DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM) and Title XIX Medicaid State Plan to support our goal of expanding access to coverage, including coverage for those who need immediate care while applying for Medicaid.

## 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 January 2, 2024.

## 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

	Federal Fiscal Year 2024	Federal Fiscal Year 2025
General (State) funds	\$2,301,877.72	\$2,274,934.35
Federal funds	\$9,222,325.66	\$9,249,269.03

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 398RFA 12-01-23.pdf>

Revision: HCFA-PM 95-3 (MB)

May 1995

Attachment

4.17-1

Page 5

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

LIENS AND ADJUSTMENTS OR RECOVERIES CONTINUED

Specifies which Medicaid payments DHSS will seek to recover: and,

Notifies the applicant, guardian, and/or responsible party of appeal procedures, specifically stating, "If you are dissatisfied with any decision made by the Division of Medicaid and Medical Assistance (DMMA), you have the



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right to request an appeal of the decision by requesting a fair hearing. You must submit a written request to the local DHSS office within 90 days of the action".

DHSS exempts from estate recovery all Medicare Savings Program cost sharing benefits with dates of service on or after January 1, 2010 for qualified dual eligibles age 55 and over, but otherwise DHSS shall seek estate recovery after the client's death of the maximum recoverable amount to be defined as the total of funds disbursed or incurred by DHSS (including Federal matching dollars) during the time an individual, age 55 and over, receives covered Medicaid services paid for by DHSS including the total capitation payments for the period the beneficiary was enrolled in the managed care organization (MCO), and for any medical assistance payments made for nursing facility services, home and community-based services, and related hospital and prescription drug services paid during a period of retroactive eligibility. When the beneficiary enrolls in the MCO, the State provides a separate notice to the beneficiary, explaining premium payments made to the MCO are included in the claim against the estate.

Collections efforts will include written notification to the executor, guardian, and/or responsible party of the client's long-term care balance owed via a claim summary report. If a lien was placed on the client's property upon entry to the long-term care institution, DHSS will place a recovery claim against the proceeds from the sale of the property. DHSS will also pursue obtaining any residual funds remaining in a trust to offset any balance owed DHSS. Upon request, DHSS will work with heirs of the estate who voluntarily wish to satisfy the recovery claim on a case-by-case basis offering mutually agreed upon payment schedules if necessary. Additionally, when the maximum recoverable amount cannot be collected DHSS may agree to accept partial recoveries.

TN No. SPA# <del>42-008</del> <u>23-0010</u>	Approval Date <del>November 21, 2012</del>
Supersedes	
TN No. SPA# <del>41-004</del> <u>12-008</u>	Effective Date <del>April 1, 2012</del> <u>January 1, 2024</u>

### **14000 Medicaid General Eligibility Requirements**

#### **14100.6 Annual Renewal of Eligibility**

42 CFR 435.916

The eligibility of Medicaid beneficiaries must be renewed once every ~~twelve (12)~~ 12 months and no more frequently than once every ~~twelve (12)~~ 12 months. The agency will redetermine eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual's record or other more current information available to the agency. Information available to the agency includes but is not limited to information accessed through the electronic data sources described in DSSM 14800 - Verifications of Factors of Eligibility.

If the agency is able to renew eligibility based on the available information, the agency will notify the individual of:

- ~~the~~ The eligibility determination and the information used for the determination; and
- ~~the~~ The individual's responsibility to inform the agency if any of the information contained in the agency's notice is inaccurate. The individual may report this information via the agency's Application for Social Service and Internet Screening Tool (ASSIST) self-service Internet web site, by telephone, via mail, in person with reasonable accommodations for those with disabilities as defined by the Americans with Disabilities Act (ADA), and through other commonly available electronic means.

If the agency cannot renew eligibility as described above, the agency will provide the individual with a pre-populated renewal form. The pre-populated renewal form will contain information available to the agency about factors of eligibility. The renewal form will also include basic screening questions necessary to indicate potential eligibility on a basis other than modified adjusted gross income (MAGI).

The individual will be given ~~thirty (30)~~ 30 days from the date of the renewal form to respond. The individual must provide any additional information requested and sign and return the renewal form. The request for additional

information from the individual will be limited to only the information needed to renew eligibility. The individual may return the additional information and the renewal form through any of the submission modes described above.

If the individual does not respond to the renewal form and provide the additional information requested and eligibility is terminated on that basis, eligibility can be reconsidered if the individual responds within ~~four months~~ 90 days after the date of termination. The individual is not required to submit a new application. Coverage ~~will~~ may extend back to the date of termination provided the individual is found eligible as described in DSSM 14920 - Retroactive Coverage.

The agency will consider all categories of eligibility prior to a termination of eligibility as described in DSSM 14100.5 - Determination of Eligibility.

### 14920 Retroactive Coverage

42 CFR 435.915

The agency must make eligibility for Medicaid effective no later than the third month before the month of application if the individual:

- Received Medicaid services, at any time during that period, of a type covered under the plan; and
- Would have been eligible for Medicaid in one of the below retroactive eligibility groups at the time the individual received the services if the individual had applied (or someone had applied on their behalf) regardless of whether the individual is alive when application for Medicaid is made; and
- Is eligible under 1 of the below eligibility groups at the time of application for Medicaid.

Individuals eligible under the Delaware Healthy Children's Program (DHCP) are not eligible for retroactive Medicaid.

Effective April 1, 2012, those that may be found eligible for retroactive Medicaid coverage, if general financial and technical eligibility requirements are met, include:

- a. Individuals entitled to or eligible for a 1 of the following Medicare Savings Program ~~(excluding QMB); Programs (excludes QMB):~~
  - i. Specified Low Income Medicare Beneficiaries (SLMB)
  - ii. Qualifying Individuals (QI)
  - iii. Qualified and Disabled Working Individuals (QDWI)
- b. Individuals residing in a nursing ~~facility; facility~~
- c. Individuals residing in an intermediate care facility for individuals with intellectual disabilities (ICF/IID) or for individuals with mental disease ~~(ICF/IMD); (ICF/IMD)~~
- d. Individuals in need of only the 30-day Acute Care Hospital Program (in no case should the effective date be earlier than the first day of ~~hospitalization); hospitalization)~~
- e. Women eligible under the Breast and Cervical Cancer Treatment ~~Group; Group~~
- f. Individuals eligible under the Medicaid for Worker's with Disabilities Group (provided premium requirements are ~~met); met)~~

Effective August 1, 2019, ~~these~~ the groups that may be found eligible for retroactive Medicaid coverage, if general financial and technical eligibility requirements are met, ~~was expanded to include:~~

- a. Pregnant and Postpartum ~~Women; Women~~
- b. Infants under age ~~4; 1~~
- c. Individuals under the age of ~~49; 19~~

**Example 1:** ~~A woman (over the age of 19) applies for Medicaid March 1, 2020 and requests retroactive Medicaid for the previous three months (February, January and December). She had a baby on December 10, 2020 so she was in her postpartum period through February 2020. She is not eligible for retroactive Medicaid because she does not qualify for and is not receiving Medicaid in any of the retroactive eligibility groups listed above at the time of her application.~~

~~**Example 2:** An individual applies for Medicaid on February 2, 2020 and requests retroactive Medicaid. The individual turned 20 years old on January 31, 2020 and was 19 years old during the three-month retroactive Medicaid period. This individual is not eligible for retroactive Medicaid because at the time of application the individual was not in or eligible for one of the above retroactive Medicaid eligibility groups.~~

~~**Example 3:** A woman applies for Medicaid on March 10, 2020 during her post-partum period. She had her baby on February 5, 2020. As long as she meets all financial and technical eligibility requirements for one of the retroactive Medicaid eligibility groups listed above at the time of application and during the three (3) months immediately preceding the month of application, she is eligible for retroactive Medicaid coverage for December 2019, January 2020, and February 2020.~~

Effective January 1, 2024, the groups that may be found eligible for retroactive Medicaid coverage, if general financial and technical eligibility requirements are met, was expanded to all eligible DSHP and DSHP-Plus Medicaid participants, with some exceptions, as described in DSSM 14920.1 Retroactive Coverage Limitations.

### **14920.1 Retroactive Coverage Limitations**

~~Effective August 1, 2019 retroactive Medicaid coverage is available to some individuals who are eligible for enrollment under the Diamond State Health Plan or the Diamond State Health Plan Plus.~~

~~See DSSM 14920 for eligibility groups that may be found eligible for retroactive Medicaid coverage.~~

Effective January 1, 2024, retroactive medical coverage is potentially available, if general financial and technical eligibility requirements are met, for all Medicaid individuals enrolled under the Diamond State Health Plan (DSHP) and Diamond State Health Plan Plus (DSHP-Plus).

Individuals eligible under the Delaware Healthy Children's Program (DHCP) are not eligible for retroactive Medicaid.

Individuals in the following programs are excluded from DSHP and DSHP-Plus, but may be found eligible for retroactive Medicaid coverage, if general financial and technical eligibility requirements are met.

- a. Individuals entitled to the following Medicare Savings Programs
  - i. Specified Low Income Medicare Beneficiaries (SLMB)
  - ii. Qualifying Individuals (QI)
  - iii. Qualified and Disabled Working Individuals (QDWI)
- b. Individuals residing in an intermediate care facility for individuals with intellectual disabilities (ICF/IID) or for individuals with mental disease (ICF/IMD)
- c. Individuals in need of only the 30-Day Acute Care Hospital Program
- d. Individuals eligible under the Breast and Cervical Cancer Treatment Group.
- e. Individuals eligible for emergency, labor, and delivery coverage only.
- f. Incarcerated Medicaid members.

All other individuals in programs excluded from DSHP and DSHP-Plus are not eligible for retroactive Medicaid Coverage. These include, but may not be limited to, individuals enrolled in the following programs:

- a. The following Medicare Savings Program - Qualified Medicare Beneficiary.
- b. The Chronic Renal Disease Program.
- c. The Delaware Prescription Assistance Program.
- d. The Delaware Cancer Treatment Program.
- e. The Part C Program.
- f. The VFC Immunization Program.

**14920.5 Retroactive Eligibility Determination**

If the individual is determined to be eligible for retroactive coverage, the worker must confirm that the date of service of the individual's medical bill(s) falls within the 3 months prior to the month of application and that the individual meets the financial and technical eligibility requirements under Medicaid in 1 of the programs eligible for retroactive coverage. Retroactive coverage for Children's Community Alternative Disability Program must be approved by the Medical Review Team. Verify income or resources ~~through ASSIST Worker Web (AWW) or other available electronic data sources, if available. If information is not in AWW or available through other electronic data sources, accept the individual's declaration on the application and obtain post-eligibility verification in accordance with DSSM 14800.~~

Obtain information about third party liability information and forward to the TPL Unit.

A notice of Retroactive Medicaid Approval or Denial will be used to inform the client of the agency's disposition of the request for retroactive coverage. The client should be aware that even those bills submitted for payment may not be reimbursed by Medicaid (i.e., service not covered by Medicaid, non-participating provider, etc.).

**15000 Family and Community Medicaid Eligibility Groups****15200.3 Technical Eligibility**

~~A woman may apply for Medicaid at any time during her pregnancy or 60-day postpartum period, as defined under 15200.6 Postpartum Period.~~

A woman may apply for Medicaid and be found eligible under the Pregnant Woman Group in the month the pregnancy ends or in a month prior to the month the pregnancy ends (while still pregnant), including during a period of retroactive eligibility.

Self-attestation of pregnancy and the unborn fetus count is accepted unless the information provided is not reasonably compatible with other available information. Other available information may include medical claims that are not reasonably compatible with such attestation.

**15200.6 Postpartum Period**

Statutory Authority

42 CFR 435.116

42 CFR 435.170

~~The 60-day postpartum period is a mandatory extension of coverage for women who were determined eligible under the pregnancy eligibility category. A woman applying in her postpartum period could be determined eligible using the eligibility criteria applicable to postpartum coverage (pregnant woman group), even if she was not open in the pregnant woman group at the time of the birth of her child.~~

The ~~42-month~~ 12-month postpartum period is a mandatory extension of coverage for women who were determined eligible in the month the pregnancy ends, in a month prior to the month the pregnancy ends (while still pregnant), or who received services while pregnant during a period of retroactive eligibility. A woman cannot apply and be found eligible for the postpartum period alone. Coverage begins on the day the pregnancy ends and continues through the last day of the month in which the 12 months ends.

Undocumented aliens are not eligible for the postpartum period.

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 3001O-3003O (16 Del. C. §§3001O-3003O)

### PUBLIC NOTICE

#### 4110 Pharmacists Dispensing and Administering Contraceptives

Pursuant to 16 Del.C. §§3001O-3003O and 83 Del. Laws, c. 240, the Department of Health and Social Services, Division of Public Health, is proposing new regulation 4110 Pharmacists Dispensing and Administering Contraceptives. This regulation includes requirements, standard procedures, and conditions under which pharmacists may dispense or dispense and administer contraceptives.

Copies of the proposed regulations are available for review in the December 1, 2023 issue of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them by the close of business January 2, 2024, at:

Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov)

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 405RFA 12-01-23.pdf>

#### 4110 Pharmacists Dispensing and Administering Contraceptives

##### 1.0 Purpose

These regulations are adopted by the Secretary of Delaware Health and Social Services pursuant to 16 Del.C. §§3001O-3003O. These regulations establish requirements, standard procedures, and conditions under which pharmacists may dispense or dispense and administer contraceptives.

##### 2.0 Definitions

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

**"Accreditation Counsel for Pharmacy Education" or "ACPE"** means the non-profit accreditation national agency recognized by the Council on Higher Education Accreditation and the U.S. Department of Education. The ACPE accredits and pre-accredits schools offering PharmD degrees and providers of continuing pharmacy education.

**"Contraceptives"** means medications approved by the Food and Drug Administration to prevent pregnancy.

**"Healthcare practitioner"** means an individual licensed and authorized to write medical orders for an individual under Title 24 of the Delaware Code.

**"Injectable hormonal contraceptive"** means a medication composed of a hormone or a combination of hormones that is approved by the U.S. Food and Drug Administration to prevent pregnancy and is administered by injection.

**"Pharmacist"** means an individual licensed under 24 Del.C. Ch. 25 to engage in the practice of pharmacy.

**"Self-screening tool"** means a patient self-assessment questionnaire.

**"United States Medical Eligibility Criteria for Contraceptive Use" or "USMEC"** as issued by the Centers for Disease Control and Prevention, is available at the following link: [https://www.cdc.gov/reproductivehealth/contraception/contraception\\_guidance.htm](https://www.cdc.gov/reproductivehealth/contraception/contraception_guidance.htm)

##### 3.0 Pharmacist Education and Training

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# PROPOSED REGULATIONS

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- 3.1 Prior to dispensing contraceptives or administering injectable hormonal contraception under this regulation, the pharmacist shall have completed education:
- 3.1.1 Related to dispensing and administering contraceptives, including:
- 3.1.1.1 Application of the USMEC; and
- 3.1.1.2 Other guidance on contraception as provided by the Centers for Disease Control and Prevention.
- 3.1.2 In the form of:
- 3.1.2.1 A training program offered from an ACPE-accredited provider of continuing pharmacy education; or
- 3.1.2.2 A curriculum-based training program completed in an ACPE-eligible or ACPE-accredited school of pharmacy.

## **4.0 Patient Eligibility**

- 4.1 Patients eligible for contraception under this regulation are individuals that are determined to be eligible under 13 Del.C. §§707 - 710.
- 4.2 An individual must confirm that they have seen a healthcare practitioner within 3 years of the initial dispensation or administration of contraception to continue to receive contraception under these regulations.
- 4.3 Ineligible patients. Patients identified by a pharmacist to be ineligible for contraceptives based on the self-screening tool shall:
- 4.3.1 Not receive contraception under these regulations;
- 4.3.2 Be advised why they are ineligible to receive contraception under these regulations; and
- 4.3.3 Be referred to their health-care practitioner for further evaluation.

## **5.0 Procedures**

- 5.1 Screening and eligibility
- 5.1.1 Patients shall be provided with a self-screening tool to complete.
- 5.1.1.1 A copy of the completed self-screening tool shall be securely stored within the originating pharmacy or healthcare facility for a period of at least 3 years from the date of dispensation or administration of the contraception.
- 5.1.1.2 The patient shall complete the self-screening tool annually at minimum.
- 5.1.2 If combined hormonal contraceptives are dispensed, a seated blood pressure measurement is recorded.
- 5.1.3 A pharmacist shall use the screening tool to determine eligibility for contraceptive use.
- 5.2 Product selection, dispensation, and administration
- 5.2.1 The pharmacist, in consultation with the patient, may dispense any non-hormonal contraceptive.
- 5.2.2 The pharmacist, in consultation with the patient, may dispense any hormonal contraceptive listed in the current USMEC for individuals with:
- 5.2.2.1 Conditions for which there is no restriction for the use of the contraceptive method ("Category 1"); or
- 5.2.2.2 Conditions for which the advantages of using the method generally outweigh the theoretical or proven risk ("Category 2").
- 5.2.3 The pharmacist may administer injectable hormonal contraceptives prescribed by healthcare practitioners or dispensed by a pharmacist.
- 5.2.4 The pharmacist must dispense the contraceptive or dispense and administer the contraceptive as soon as practicable after the pharmacist determines that the patient meets the requirements under the written standing order created by the Department.
- 5.3 Information provided to patient. The pharmacist shall provide the patient with:
- 5.3.1 A record of the encounter, including the patient's self-screening tool;

- 5.3.2 A record of the contraceptive dispensed or dispensed and administered or the basis for not dispensing or dispensing and administering a contraceptive; and
- 5.3.3 Written information about the importance of seeing the patient's healthcare practitioner to obtain recommended tests and screenings.
- 5.4 Referrals and follow-up care. A pharmacist shall refer the patient for appropriate follow-up care to the patient's healthcare practitioner or clinic in the following circumstances:
- 5.4.1 Upon dispensing a contraceptive to the patient; or
- 5.4.2 Upon determining ineligibility for contraception.
- 5.5 Documentation
- 5.5.1 Each contraceptive dispensed or administered by a pharmacist pursuant to this regulation shall be documented in a patient record and securely stored within the originating pharmacy or healthcare facility for a period of at least 3 years from the dispensed date.
- 5.5.2 A patient medication record shall be maintained in an automated data processing or manual record mode such that the required information under subsection 5.5.1 of this regulation is readily retrievable during the pharmacy's or facility's normal operating hours.

## **6.0 Severability**

If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect the validity of other provisions or applications of these regulations.

## **7.0 Penalty**

Violators are subject to sanctions pursuant to 16 Del.C. §107 for each violation of the requirements established in these regulations.

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### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)t (16 Del.C. §122(3)t)  
16 DE Admin. Code 4459

### **PUBLIC NOTICE**

#### **4459 Lead-Based Paint Hazards**

Pursuant to 16 Del.C. §122(3)t, the Department of Health and Social Services, Division of Public Health, Health Systems Protection section, is proposing revisions to Regulation 4459 Lead Based Paints Hazards. The revisions include:

- Addition of electronic payments for accreditation of training programs;
- Removal of the requirement for the Secretary to maintain a list of parties whose accreditation has changed status; and
- Addition of the ability for an abatement worker to apply for a 1-year provisional certification.

These amendments were previously published in the November 2023 issue of the Register (27 DE Reg. 315 (11/01/23) (Prop.) and are hereby repropoed. Copies of the proposed regulations are available for review in the December 1, 2023, issue of the *Delaware Register of Regulations*, accessible online at: <https://regulations.delaware.gov>, or by calling the Division of Public Health at (302) 744-4700.

### **NOTICE OF PUBLIC HEARING**

A public hearing will be held in hybrid format on Thursday, December 21, 2023, at 2:30 p.m. at the Department of Natural Resources and Environmental Control Richardson & Robbins Building Auditorium, located at 89 Kings Highway, Dover, Delaware 19901.

Via video and teleconferencing:

Zoom meeting URL:

<https://us06web.zoom.us/j/81003211489?pwd=uJZrt6jnrhnaEVQt4laj3P7HI1y6od.1>

Meeting ID: 810 0321 1489

Passcode: 523652

Dial: 1 301 715 8592

Those wishing to offer verbal comments during this public hearing must pre-register no later than noon on the date of the virtual public hearing.

Public comments will be received until the close of business Monday, January 8, 2024. Comments will be accepted in written form via email to [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov), or by U.S. mail to the following address:

Vicki Schultes, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 407RFA 12-01-23.pdf>

## 4459 Lead-Based Paint Hazards (Break in Continuity of Sections)

### 3.0 Accreditation of Training Programs and Application and Renewal Requirements

#### (Break in Continuity Within Section)

3.2 Application process. The following are procedures a training provider shall follow to receive accreditation to offer lead-based paint activities courses:

3.2.1 A training provider seeking accreditation shall submit a written application to the Secretary containing the following information:

#### (Break in Continuity Within Section)

3.2.1.8 All training providers shall include in their application for accreditation the following:

3.2.1.8.1 A description of the facilities and equipment to be used for lecture and hands-on training.

3.2.1.8.2 The name, address, and location of the training facility.

3.2.1.8.3 A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

3.2.1.8.4 A copy of the quality control plan as described in subsection 3.3.9.

3.2.1.8.5 A An electronic payment, a certified check check, or a check written on a business account in the appropriate amount made payable to the Division of Public Health.

3.2.1.8.6 A copy of the course test blueprint for each course.

#### (Break in Continuity Within Section)

3.8 Procedures for suspension, revocation, or modification of training program accreditation.

#### (Break in Continuity Within Section)

~~3.8.7 The Secretary shall maintain a list of parties whose accreditation has been suspended, revoked, modified, or reinstated.~~

#### (Break in Continuity Within Section)

### 4.0 Certification of Individuals and Firms Engaged in Lead-Based Paint Activities

4.1 Certification of individuals.



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*(Break in Continuity Within Section)*

- 4.1.5 An individual certified outside of Delaware as an Abatement Worker under a jurisdiction with which Delaware does not have reciprocity (see subsection 6.3) may apply for provisional certification for a period of 1 year provided the individual's certification is issued through an EPA-approved training course and approved provider.

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 407 12-01-23.htm>

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)t (16 **Del.C.** §122(3)t)  
16 **DE Admin. Code** 4459A

### PUBLIC NOTICE

#### 4459A Regulations Governing the Childhood Lead Poisoning Prevention Act

Pursuant to 16 **Del.C.** §122(3)t, the Department of Health and Social Services, Division of Public Health, Health Systems Protection section, is proposing revisions to 4459A Regulations Governing the Childhood Lead Poisoning Prevention Act. The revisions include:

- Addition of the Division's investigation and reporting obligations; and
- Technical and renumbering revisions.

These amendments were previously published in the November 2023 issue of the Register (27 **DE Reg.** 315 (11/01/23) (Prop.) and are hereby repropoed. Copies of the proposed regulations are available for review in the December 1, 2023, issue of the *Delaware Register of Regulations*, accessible online at: <https://regulations.delaware.gov>, or by calling the Division of Public Health at (302) 744-4700.

### NOTICE OF PUBLIC HEARING

A public hearing will be held in hybrid format on Thursday, December 21, 2023, at 3:00 p.m. at the Department of Natural Resources and Environmental Control Richardson & Robbins Building Auditorium, located at 89 Kings Highway, Dover, Delaware 19901.

Via video and teleconferencing:

Zoom meeting URL:

<https://us06web.zoom.us/j/84423347909?pwd=WrMablaEIMmig0OFuYkXaUKvgGbOg6.1>

Meeting ID: 844 2334 7909

Passcode: 028501

Dial: 1 301 715 8592

Those wishing to offer verbal comments during this public hearing must pre-register no later than noon on the date of the virtual public hearing. There will still be an opportunity for anyone to speak during the hearing.

Public comments will be received until the close of business Monday, January 8, 2024. Comments will be accepted in written form via email to [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov), or by U.S. mail to the following address:

Vicki Schultes, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by**

29 Del. C. Ch. 104, is available at:

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 409RFA 12-01-23.pdf>

**4459A Regulations Governing the Childhood Lead Poisoning Prevention Act**  
*(Break in Continuity of Sections)*

**11.0 Division's Investigation and Reporting Obligations**

11.1 Within 60 days of receiving notification that a child has an elevated blood lead level, the Division shall determine: the child's residential address from birth through testing, the site of the child's lead exposure, and the property owner of the site at which the child became exposed to lead. Any documents that the Division creates or holds that contain confidential health information shall be conspicuously marked and will not become public documents.

11.2 Within 10 days of identifying the site of lead exposure, the Division shall notify the Delaware State Lead-Based Paint Program, created by 16 Del.C. §2607, of the location and contact information of the property owner. These communications will be public records subject to disclosure under the Freedom of Information Act, Delaware Code, Title 29, Chapter 100.

**44.0 ~~12.0~~ Severability**

If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect the validity of other provisions or applications of these regulations.

**42.0 ~~13.0~~ Penalty**

Violators are subject to sanctions pursuant to 16 Del.C. §107 for each violation of the requirements established in these regulations.

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 409 12-01-23.htm>

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 1902 (7 Del.C. §1902)  
**7 DE Admin. Code 3755**

**REGISTER NOTICE**

**SAN #2023-10**

**DOCKET # 2023-R-F-0020**

**3755 Lobsters (*Homarus americanus*)**

1. TITLE OF THE REGULATIONS:  
Amend 7 **DE Admin. Code** 3755 Lobsters (*Homarus americanus*).
2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:  
This action is being proposed to comply with the Atlantic States Marine Fisheries Commission's Addendum XXIX to Amendment 3 to the American Lobster Fishery Management Plan (FMP), which requires all vessels with federal lobster permits to install and maintain an electronic tracking device that will transmit location data while the vessel is in the water. The FMP is requiring the electronic trackers because the trackers are now required by a NOAA Fisheries federal regulation intended to reduce interactions between fishing boats and

gear and the endangered North Atlantic Right Whale.

3. POSSIBLE TERMS OF THE AGENCY ACTION:  
N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:  
7 **Del.C.** §1902

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

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 **DE Admin. Code** 3755 will be open December 1, 2023. The virtual public hearing will be held on Thursday, December 21, 2023, beginning at 6:00 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://dnrec.alpha.delaware.gov/public-hearings/>. If prompted, use Meeting ID: 885 0576 5378 Passcode: 499825. To access the audio-only portion of the virtual hearing, dial (305) 224- 1968 and enter the Meeting ID and Passcode noted above. Closed captioning is available in over 20 languages, including English and Spanish, to attendees via the Zoom platform utilized for all DNREC Public Hearings.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing. The designated page for this Pre-Registration process can be found here: <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>

The proposed amendments may be inspected online starting December 1, 2023 at [https://regulations.delaware.gov/services/current\\_issue.shtml](https://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting John Clark by phone at 302-739-9914 or by email at [John.Clark@delaware.gov](mailto:John.Clark@delaware.gov).

Public comments will be received until close of business Friday, January 5, 2024. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

7. PREPARED BY:  
John H. Clark  
Email: [John.Clark@delaware.gov](mailto:John.Clark@delaware.gov)  
Phone: (302)739-9914

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 410RFA 12-01-23.pdf>

## 3755 Lobsters (*Homarus americanus*)

### 1.0 Lobsters Pot Design

(Penalty Section 7 **Del.C.** §1912)

- 1.1 It is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap in the waters under the jurisdiction of the State unless said pot or trap has an escape vent, slot or port of not less than two (2) inches by 5 ¾ inches located in the parlor section of each pot or trap, or if a circular

escape vent is used in the parlor section of any lobster pot or trap, it is unlawful to use less than two (2) circular vents that are less than 2 5/8 inches inside diameter.

- 1.2 It is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap, not constructed entirely of wood, excluding heading or parlor twine and the escape vent, that does not contain a ghost panel covering an opening that measures at least 3 ¼ inches by 3 ¼ inches. A ghost panel means a panel, or other mechanism, designed to allow the escapement of lobsters after a period of time if the pot or trap has been abandoned or lost. The panel must be constructed of, or fastened to the pot or trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter. The door of the pot or trap may serve as the ghost panel, if fastened with a material specified in this subsection. The ghost panel must be located in the outer parlor(s) of the pot or trap and not the bottom of the pot or trap.
- 1.3 It is unlawful for any recreational or commercial lobster pot fisherman to set, tend or conduct shellfishing for lobsters with a lobster pot or trap with a volume larger than 22,950 cubic inches.

## **2.0 Lobsters Pot Season And Limits**

Penalty Section 7 **Del.C.** §1912)

- 2.1 Except as provided in subsections 2.1.1 and 2.1.2, it is unlawful to set or tend lobster pots or to take and reduce to possession or attempt to take and reduce to possession lobsters during the period February 1 through March 31.
- 2.1.1 A person with a valid Commercial Lobster Pot License may remove lobster gear from the water during the period February 1 through February 14; however, no lobsters may be reduced to possession.
- 2.1.2 A person with a valid Commercial Lobster Pot License may set lobster gear during the period March 25 through March 31; however, the gear cannot be tended and no lobsters may be reduced to possession.
- 2.2 It is unlawful for any person who has a valid Commercial Lobster Pot License to harvest lobsters in the waters under the jurisdiction of the State on any Sunday.
- 2.3 It is unlawful for any person who has a valid Commercial Lobster Pot License to set, tend or use in any manner in excess of fifty (50) lobster pots for the taking of lobsters in the waters under the jurisdiction of the State.
- 2.4 It shall be unlawful for any person, licensed to catch or land lobsters for commercial purposes in this State, who uses gear or methods other than pots or traps outside the jurisdiction of this State, to land more than 100 lobsters per day for each day at sea during the same trip, up to a maximum of 500 lobsters per trip for trips 5 days or longer.

## **3.0 V-notched Lobsters**

(Penalty Section 7 **Del.C.** §1912)

- 3.1 It is unlawful for any person to possess a V-notched female lobster. V-notched female lobster means any female lobster bearing a V-notch, a straight-sided triangular cut with or without setal hairs at least 1/8 inch in depth and tapering to a sharp point, in the flipper (uropod) next to the right of center flipper (telson) as viewed from the rear of the female lobster with the underside (ventral side) facing down.
- 3.2 Any person that catches an egg-bearing female lobster shall notch it as outlined in subsections 3.2.1 through 3.2.5.
- 3.2.1 The notch shall be made on the flipper (uropod) immediately to the right of the central flipper (telson) as viewed from the rear of the lobster with the underside (ventral side) facing down.
- 3.2.2 The notch shall be made by means of a sharp bladed instrument.
- 3.2.3 The notch shall be made at least ¼ inch in width along the outer margin of the flipper.
- 3.2.4 The notch shall taper to a sharp point at least ½ inch deep.
- 3.2.5 The lobster shall be immediately returned to the water upon completion of the notch.
- 3.3 It is unlawful to possess a female lobster that is mutilated in a manner that could hide, obscure or obliterate a V-notch.

## **4.0 Electronic Tracking Devices**

- 4.1 Definitions  
The following words and terms, when used in this regulation, have the following meanings unless the context clearly indicates otherwise:  
**"Electronic Tracking Device"** means an electronic device approved by the Atlantic States Marine Fisheries Commission and used to track vessel location and collect and transmit this spatial data to the Division in compliance with Addendum XXIX to the Interstate Fishery Management Plan for American Lobster and Addendum IV to the Interstate Fishery Management Plan for Jonah Crabs.
- 4.2 An electronic tracking device shall be installed and activated prior to beginning a lobster fishing trip with pot gear onboard by a Delaware commercial lobster pot licensee operating any vessel named on a NOAA Fisheries limited access lobster permit, pursuant to 50 CFR § 697.4, to fish trap gear for lobsters and Jonah crabs in the Exclusive Economic Zone. All permit holders shall sign a written affidavit confirming the electronic tracking device has been installed.
- 4.3 The electronic tracking device shall remain onboard the vessel and powered on at all times when the vessel is in the water.
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## **DEPARTMENT OF STATE**

### **DIVISION OF PROFESSIONAL REGULATION**

### **Board of Dentistry and Dental Hygiene**

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

### **PUBLIC NOTICE**

#### **1100 Board of Dentistry and Dental Hygiene**

The Delaware Board of Dentistry and Dental Hygiene pursuant to 24 *Del. C.* § 1106(a)(1), proposes to revise its regulations. The proposed amendment eliminates the need for an inactive licensee to renew an inactive license.

The Board will hold a public hearing on the proposed rule change on January 11, 2024 at 3:00 PM virtually and at the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 26, 2024.

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 413RFA 12-01-23.pdf>

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

## **8.0 Inactive Status**

- 8.1 A licensee may be placed on inactive status by the Board for a period of no more than four years. Requests for inactive status shall be made, in writing, to the Board, ~~and requests which exceed one year shall be renewed biennially at the time of regular license renewals.~~
- 8.2 To apply for reactivation of an inactive license, a licensee shall:
- 8.2.1 Submit a letter requesting reactivation;
  - 8.2.2 Submit a prorated reactivation fee;
  - 8.2.3 Submit proof of completion of the continuing education requirements set forth below;

- 8.2.3.1 All licensees who are inactive for one year or less must complete one half of the required CPE requirement prior to reactivation;
- 8.2.3.2 All licensees who are inactive for more than one year must complete the full CPE requirement within 24 months prior to reapplication.

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 413 12-01-23.htm>

### **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

#### **PUBLIC NOTICE**

#### **1400 Board of Electrical Examiners**

Pursuant to 24 **Del.C.** §1406(a)(1), the Delaware Board of Electrical Examiners ("Board") has proposed revisions to its Rules and Regulations. The Board proposes these amendments to advance its primary objective, which is to protect the general public, specifically those persons who are the direct recipients of electrical services, regulated by 24 **Del.C.**, Ch. 14.

Amendments are proposed to subsection 3.4 because the current regulation contains inaccurate statutory references and because upon the creation of the journeyman and apprentice license categories, the pertinent regulations were not also updated. The proposed amendment corrects the statutory reference and clarifies how and from whom journeyman and apprentice electricians may accumulate the qualifying experience required to obtain more senior licenses under 24 **Del.C.** §1408(a).

Amendments are proposed to subsection 7.2 to provide definition of what it means for an apprentice electrician to be enrolled in an apprentice program approved by the Board as provided in 24 **Del.C.** §1408(a)(7). The Board seeks to ensure that apprentice electricians are making appropriate and regular strides toward the next stage of their professional development.

Amendments are proposed to subsection 11.0 to provide definition of what it means for a license to be "current" and what factors the Board will consider in deciding whether a state's licensing requirements are "substantially similar" to those of Delaware in the context of applications for license by reciprocity under 24 **Del.C.** §1409. The amendments provide clarity for the Board and applicants regarding the process and requirements for reciprocal admission.

Amendments are proposed to subsections 1.3, 6.1, 8.4 and 12.1 to include licensed residential electricians among the excepted license categories for requirements pertaining to vehicle lettering, insurance, continuing education, and inspection requests. When the residential electrician license category was created by statute, the corresponding regulations were not updated. It has come to the attention of the Board that certain residential electricians have sought inspection by licensed inspection agencies. The amendment clarifies that doing so is outside the scope of a residential electrician's license defined by 24 **Del.C.** §1422A.

Additional revisions are technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

The Board will hold a public hearing on January 3, 2024, at 8:30 a.m. in conference room A on the second floor of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at [Nikki.Pecora@delaware.gov](mailto:Nikki.Pecora@delaware.gov).

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In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be January 18, 2024. The Board will deliberate on all the public comments at its regularly scheduled meeting thereafter.

**\*Please Note:**

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 414RFA 12-01-23.pdf>

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 414 12-01-23.htm>

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## DIVISION OF PROFESSIONAL REGULATION

### Board of Cosmetology and Barbering

Statutory Authority: 24 Delaware Code, Section 5106(a)(1) (24 Del.C. §5106(a)(1))  
24 DE Admin. Code 5100

#### PUBLIC NOTICE

#### 5100 Board of Cosmetology and Barbering

Pursuant to 24 Del.C. §5106(a)(1), the Delaware Board of Cosmetology and Barbering ("Board") has proposed revisions to its Rules and Regulations. The proposed amendments set forth standards and requirements for a temporary instructor permit through a provisional pathway. This new method for obtaining licensure is designed to address the current shortage of instructors in schools training individuals for licensure under Chapter 51 of Title 24 of the Delaware Code.

A public hearing will be held on January 29, 2024 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Cosmetology and Barbering, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at [danielle.ridgway@delaware.gov](mailto:danielle.ridgway@delaware.gov).

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be February 13, 2024. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 415RFA 12-01-23.pdf>

#### 5100 Board of Cosmetology and Barbering

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

#### 2.0 Temporary Work Permits [24 Del.C. §5106(a)(7)]

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

##### 2.11 Temporary instructor permit - provisional pathway

2.11.1 A temporary instructor permit - provisional pathway, may be issued to an applicant who meets the following requirements:

2.11.1.1 Has successfully completed the 12th grade in school or its equivalent as documented pursuant to subsection 1.2.

2.11.1.2 Holds an active license as a cosmetologist, barber, aesthetician, nail technician, or electrologist.

# PROPOSED REGULATIONS

- 2.11.1.3 Will be employed by a vocational school or accredited school as a temporary instructor as verified by the proof of employment form.
- 2.11.2 The holder of a temporary instructor permit - provisional pathway must complete the following to be eligible for licensure as an instructor:
- 2.11.2.1 Completion of 500 hours of supervised experience at a vocational or accredited school or 250 hours of supervised experience at a vocational or accredited school and 2 years of licensed, full-time experience. Supervision must be provided by a licensed instructor. Experience must be documented by the employer.
- 2.11.2.2 Successful completion of instructor examination.
- 2.11.3 A temporary instructor permit - provisional pathway expires upon the completion of the hours of training as set forth in subsection 2.11.2 or 1 year after the date of issuance, whichever occurs first. The Board may grant an extension of not more than 45 days to the licensee holding a temporary instructor permit - provisional pathway who has applied for examination and is awaiting examination.
- 2.11.4 The temporary instructor permit - provisional pathway is not transferable to another school unless approved by the Board.

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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 415 12-01-23.htm>

## DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4170A (21 **Del.C.** §4170A)

### PUBLIC NOTICE

#### 1207 Electronic Speed Monitoring System

Pursuant to the authority provided by 21 **Del.C.** §4170A, the Delaware Department of Transportation (DelDOT) established an Electronic Speed Monitoring System (ESMS) program along qualifying roadways across the State of Delaware.

The Department, through its Division of Transportation Solutions seeks to adopt this regulation to administer the ESMS program, which is established in support of DelDOT's Highway Safety Improvement Program and, in particular, its Strategic Highway Safety Plan, which has identified speeding as an emphasis area to target the overall program goal of reducing fatalities and serious injuries on all public roads.

#### Public Comment Period

DelDOT will take written comments on the proposed Regulation 1207 of Title 2, Delaware Administrative Code, from December 1, 2023 through January 2, 2024. The public may submit their comments to:

Peter Haag, P.E.  
Chief of Traffic Engineering  
([Peter.Haag@delaware.gov](mailto:Peter.Haag@delaware.gov)) or in writing to his attention,  
Delaware Department of Transportation  
Division of Transportation Solutions  
169 Brick Store Landing Road  
Smyrna, DE 19977



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

<https://regulations.delaware.gov/register/december2023/proposed/27 DE Reg 416RFA 12-01-23.pdf>

## **1207 Electronic Speed Monitoring System**

### **1.0 Statement of Purpose**

The purpose of these regulations is to provide for the establishment and administration of an Electronic Speed Monitoring System (ESMS) program along qualifying roadways across the State of Delaware. The Delaware Department of Transportation (DelDOT), the governing body of New Castle County, or any municipality within the State may install and operate an ESMS and assess fines in accordance with 21 **Del.C.** §4170A. The ESMS program is established in support of DelDOT's Highway Safety Improvement Program (HSIP) and, in particular, its Strategic Highway Safety Plan (SHSP), which has identified speeding as an emphasis area to target the overall program goal of reducing fatalities and serious injuries on all public roads. The ESMS shall be installed and used to record images of a motor vehicle travelling in a work zone, or in a residence district in either New Castle County or a municipality. Work zones and residence districts were selected for implementation in part due to the presence of vulnerable road users (e.g., highway workers and other people walking or biking) which account for a growing share of roadway fatalities. To install and use ESMS, a municipality or New Castle County must pass an ordinance enabling the program. The municipality or New Castle County must also approve the road and extent of the road eligible for electronic speed monitoring. These regulations are being promulgated in accordance with 21 **Del.C.** §4170A(c), 21 **Del.C.** §4105, and 84 **Del. Laws**, c. 74, §1.

### **2.0 Definitions**

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

**"DelDOT"** means the Delaware Department of Transportation.

**"ESMS"** means Electronic Speed Monitoring System.

**"Residence district"**, as defined in 21 **Del.C.** §101, means the territory contiguous to and including a highway not comprising a business district where 50 percent or more of the property on such highway for a distance of 300 feet or more is improved with residences or residences and buildings in use for business.

**"Work zone"**, as defined in 21 **Del.C.** §4105(f)(2), means a highway construction or maintenance area.

### **3.0 Electronic Speed Monitoring Systems Program Requirements**

3.1 DelDOT may approve the installation and use of an ESMS in a DelDOT work zone or a residence district if the conditions in subsection 3.2.1 of this regulation are met. The Delaware State Police shall have enforcement authority over the ESMS in all work zones. For ESMS used in residence districts, the police agency with jurisdiction over the road shall have enforcement authority over the ESMS. Prior to DelDOT approval of entities requesting to use the system in residence districts, participating municipalities and New Castle County shall authorize the use of ESMS in their code or ordinance and sign a memorandum of understanding or an agreement with DelDOT regarding the operation of the ESMS.

3.2 Once a road is approved for an ESMS, the use of the system will be at the discretion of the police agency with jurisdiction over the residence district or at the discretion of the Delaware State Police in a work zone where the system will be implemented.

3.3 The conditions for installation and operation of an ESMS are as follows:

3.3.1 If in a residence district, unless in a designated work zone, a study must be provided to DelDOT by the requesting municipality or New Castle County. DelDOT may perform speed data collection or provide recently collected speed data along state-maintained roadways, based on available resources, and provide the information to the requesting municipality or New Castle County to be included in the required study.

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# PROPOSED REGULATIONS

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- 3.3.1.1 The study must be no more than 1 year old from the date of the initial request and approved by DeIDOT.
- 3.3.1.2 The study must document that the 85th-percentile speed on the road is 5 miles per hour or greater than the posted speed limit.
- 3.3.1.3 The study must have been overseen by a Delaware Registered Professional Engineer, a sworn law enforcement officer, or a municipal or county official acting in their official capacity.
- 3.3.1.4 The study must include continuous speed data, collected across a 24-hour window, at minimum.
- 3.3.2 If in a residence district, the police agency with jurisdiction over the road must approve the road and extent of the road eligible for electronic speed monitoring prior to DeIDOT approval.
- 3.3.3 If the road is within the boundaries of a municipality, the municipality must approve the road and extent of the road eligible for electronic speed monitoring prior to DeIDOT approval.
- 3.3.4 The police agency with jurisdiction over the road must notify DeIDOT of the intent to use the ESMS at least 30 calendar days in advance of implementation.
- 3.3.5 DeIDOT and the police agency with jurisdiction must provide notice on their publicly accessible websites of the intended use of the ESMS at least 14 calendar days prior to its implementation.
- 3.3.6 Traffic control devices must be in accordance with the Delaware Manual on Uniform Traffic Control Devices, 2 **DE Admin. Code** 2402.
- 3.3.7 The ESMS unit and enforcement area of roadway must be within the same jurisdictional boundary.

## **4.0** Site Selection and Approval

### 4.1 DeIDOT Work Zones

- 4.1.1 All roadway functional classifications and all posted speed limits are eligible for use of ESMS in work zones; however, DeIDOT will implement procedures and guidelines to aid the selection of appropriate work zones at which to implement monitoring.
- 4.1.2 If the road is within the boundaries of a municipality, approval must be obtained as described in subsection 3.3.3 of this regulation.
- 4.1.3 The posted work zone speed limit may be equal to the normal regulatory speed limit of the roadway or may be reduced to a lower speed limit as determined by DeIDOT.

### 4.2 Residence Districts

- 4.2.1 A study is required to be provided for each location requested for approval as described in subsection 3.3.1 of this regulation.
- 4.2.2 If the road is also within the boundaries of a municipality, approval must be obtained as described in subsection 3.3.3 of this regulation.
- 4.2.3 Sites requested for ESMS will be reviewed and approved by DeIDOT in the order received.
- 4.2.4 Once installed, ESMS shall remain at the location installed for a minimum of 75 calendar days. While systems may remain at a location longer than 75 calendar days, the municipality or New Castle County may need to relocate the systems or work with the selected vendor to provide additional systems to accommodate approved requests for additional roadways or locations.

## **5.0** Deployment

An ESMS will be deployed to an approved location by the approved vendor once available either as a new installation or transferred from a current location. The jurisdictional police agency may have a limited number of units available to use based on the approved vendor's supply. The participating police agency may prioritize sites within their boundaries; the police agency may consider crash data in prioritizing locations where the system is to be implemented in addition to the requirements noted in subsection 3.3.1 of this regulation. Once installed, ESMS shall issue violation warnings without penalty for a 21 calendar day period following activation of the camera.

## **6.0** Installation

## 6.1 Site Considerations

- 6.1.1 The ESMS must be installed within the work zone or on the same roadway that the speed study was conducted for approval and in the vicinity of where the speeds were collected.
- 6.1.2 The technology and housing unit installation must comply with typical traffic control device requirements (e.g., Americans with Disabilities Act (ADA) compliance and geometric design policies and manuals).
- 6.1.3 The authorizing legislation establishes an end date for the Electronic Speed Monitoring program; therefore, all installations should be treated as "portable" or "temporary" traffic device installations.
- 6.1.4 The authorizing legislation requires annual reporting as described in Section 7.0 of this regulation. Data from the program will be collected and summarized to determine if any ESMS locations should become permanent installations.

## 6.2 Other Program Requirements

- 6.2.1 To inform motorists clearly of the posted speed limit and the ESMS enforcement area, a speed limit sign with photo enforced camera symbol or a "PHOTO ENFORCED" plaque mounted directly below must be installed in a location or locations where all motorists passing through the enforcement area would be expected to have seen the posted speed limit sign and photo enforced plaque.
- 6.2.2 Radar speed feedback signs (i.e., "YOUR SPEED" signs), must be used for motorist awareness and as speed data collection units in work zone applications of ESMS. Radar speed feedback signs may be used for motorist awareness and as speed data collection units in residence district applications of ESMS. Due to technological differences between radar speed feedback signs and the ESMS unit, a digital radar speed display may not be used in the immediate proximity of the enforcement area and must comply with DeIDOT policy.

## 7.0 Reporting

- 7.1 DeIDOT shall be responsible for preparing an annual report on the ESMS as implemented statewide. The report must include the following:
  - 7.1.1 Where and when the system was used. The approved vendor shall maintain a log of ESMS locations and activation and shut-down dates.
  - 7.1.2 Citation data. The approved vendor shall maintain a log of ESMS violations by location, date, and time.
  - 7.1.3 Crash data. DeIDOT shall monitor crashes at a minimum 0.1 miles upstream and downstream of each enforcement area (or to the end of roadway or to outside the influence area of the nearest intersection with a state-maintained roadway, if less than 0.1 miles), for 1 year before enforcement, during enforcement, and up to 1 year after enforcement ends.
  - 7.1.4 Speed data. Readily available speed data should be used when possible. However, speed data is unlikely to be "readily available", thus, speed data collected as part of the site approval process, described in subsection 3.3.1 of this regulation, may be used as "before enforcement" speed data. Data collected from the enforcement units may be used for "after enforcement" speed data.
  - 7.1.5 Financial data, including expenditures and revenues. All financial data and itemized transactions for ESMS locations in residence districts is the sole responsibility of the municipality or New Castle County and the selected vendor.
- 7.2 Police agencies shall cooperate with DeIDOT regarding the collection of data necessary to prepare the annual report. In the event a police agency does not provide the requested information in a timely manner to DeIDOT, the police agency will no longer be eligible for use of ESMS.

## 8.0 System Approved Vendor

- 8.1 DeIDOT utilizes a supporting approved vendor to provide enforcement monitoring systems and assist in administering the program. The approved vendor is selected through an open competitive procurement process which allows for the government and the taxpayer to benefit from improved quality at lower pricing. To assure integrity and propriety, any person involved in the administration or

enforcement of the program may not own any interest or equity in the approved vendor used by DelDOT to support the administrative elements of the program. Any such person with an ownership or equity interest in such approved vendor must divest from this ownership or investment no later than 90 days after the effective date of this act. This restriction applies to anyone with either direct involvement in the administering or enforcement of the program and those in any supervisory capacity above such persons.

- 8.2 To participate in the program, and in accordance with 29 Del.C. §6904, municipalities and New Castle County shall utilize "piggyback" agreements with DelDOT's selected vendor for speed monitoring as well as collections activities.

## 9.0 Fines

- 9.1 Violation notices are sent to the registered owner of the vehicle that fails to comply with the posted speed limit or posted work zone speed limit, as evidenced by information obtained from an ESMS and shall be subject to a civil offense rather than a criminal offense. The present violation fine structure is established under 11 Del.C. §4169(c). Assessments defined under 11 Del.C. §4105, 11 Del.C. §4101, 11 Del.C. §9016, and 10 Del.C. §8505 shall only be assessed for violations occurring in a work zone.
- 9.2 The base fine for a vehicle that fails to comply with the posted speed limit or posted work zone speed limit, as evidenced by information obtained from an ESMS, is \$20 for first offense and \$25 for each subsequent offense pursuant to 21 Del.C. §4169(c).
- 9.2.1 A subsequent violation, before being punishable as such, shall have been committed within 24 months after the commission of the prior offense.
- 9.2.2 Violations occurring in work zones are considered separate from violations occurring in residence districts for the purposes of determining if a subsequent violation occurred.
- 9.2.3 Prior non-electronic moving violations issued by an officer are considered separate from ESMS violations for the purposes of determining if a subsequent violation occurred.
- 9.3 Additional speeding fines per mile per hour (mph) in excess of the posted speed limit pursuant to 21 Del.C. §4169(c) are as follows:
- 9.3.1 \$1.00 per mph if the recorded speed was between 11 and 15 mph over the posted speed limit or posted work zone speed limit for the first offense and \$2.00 per mph for subsequent offenses.
- 9.3.2 \$2.00 per mph if the recorded speed was between 16 and 19 mph over the posted speed limit or posted work zone speed limit for the first offense and \$3.00 per mph for subsequent offenses.
- 9.3.3 \$3.00 per mph if the recorded speed was 20 mph or more over the posted speed limit or posted work zone speed limit for the first offense and \$4.00 per mph for subsequent offenses.
- 9.4 For violations occurring in a work zone, the sum total of the base fine plus the additional speeding fine is doubled pursuant to 21 Del.C. §4105(f).
- 9.5 For violations occurring in a work zone the following surcharges will be levied:
- 9.5.1 A Transportation Trust Fund Surcharge equal to 50% of the sum total of the base fine, the additional speeding fine, and the work zone fine, pursuant to 11 Del.C. §4101, which requires fines or fees levied for violations of Title 21 to include an additional 50% surcharge assessment.
- 9.5.2 A Violent Crimes Fund Surcharge of \$15 pursuant to 11 Del.C. 4101(h).
- 9.5.3 An Ambulance Fund Surcharge of \$10 pursuant to 11 Del.C. 4101(j).

## 10.0 Violation Criteria

For a violation to occur, a motor vehicle must exceed the posted speed limit or posted work zone speed limit by 11 miles per hour or more in the residence district or work zone.

## 11.0 Determination of Violation

The technology for electronic enforcement utilizes a specialized camera, which detects the movement of vehicles through a defined area of roadway. Sensors detect the speed of the vehicle through the area. If the speed is above the violation criteria, the technology records this movement while simultaneously taking a photograph of

the violator's license plate to identify the vehicle. A trained technician, such as a law enforcement officer, employed by a state agency or entity designated by a state agency for this purpose, inspects the evidence. Using this information, a violation notice is generated and sent to the registered owner of the vehicle.

## **12.0 Exemptions**

- 12.1 Emergency vehicles with active emergency lights and vehicles yielding the right-of-way to emergency vehicles are exempt from receiving a notice of violation.
- 12.2 No other exemptions are provided for in Delaware Code and no other exemptions will be considered as defenses to the issuance of a violation.

## **13.0 Notice of Violation Content**

- 13.1 A Notice of Violation must contain:
  - 13.1.1 The name and address of the registered owner of the vehicle that committed the violation;
  - 13.1.2 The registration number of the motor vehicle involved in the violation;
  - 13.1.3 The violation charges;
  - 13.1.4 The location where the violation occurred;
  - 13.1.5 The date and time of the violation;
  - 13.1.6 Copies of 2 or more photographs, or microphotographs, or other recorded images, taken as proof of the violation, which also include the distance traveled between the 2 photographs as well as the time gap between the 2 photographs;
  - 13.1.7 The amount of the civil penalty imposed and the date by which the civil penalty shall be paid;
  - 13.1.8 The length of time and location for contesting liability and notice that the failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the summonsed person and the denial of the registration or renewal of registration of any of the owner's vehicles; and
  - 13.1.9 Notice of the summonsed person's ability, via an enclosed affidavit form, to rebut the presumption under Section 13.0 of this regulation that the summonsed person was the operator of the vehicle at the time of the violation and the manner of rebutting said presumption.

## **14.0 Affidavits**

- 14.1 If the registered owner of a vehicle who has received a notice of violation contends that the registered owner was not the operator of the vehicle at the time of the violation, the registered owner must furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. Such presumption shall be rebutted if the owner:
  - 14.1.1 Furnishes an affidavit by regular mail to the entity indicated on the summons that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate or plates had been reported to the police as stolen prior to the time of the alleged violation; or
  - 14.1.2 Provides proof in court or to the entity handling the administrative appeal process that the owner was not the operator of the vehicle at the time of the alleged violation or that the owner failed to comply with the speed limit or work zone speed limit in order to yield the right-of-way to an emergency vehicle.
- 14.2 An affidavit must be provided by the registered owner of a vehicle receiving a Notice of Violation within 90 days of the issue date of the Notice of Violation or no later than 10 days prior to a hearing if one is requested, whichever date is earlier.
- 14.3 Upon receipt of an affidavit by the State of Delaware or the system approved vendor, the newly implicated person will be mailed a notification of the violation.

**15.0 Payment of Civil Assessment**

A person electing to pay the civil assessment shall follow the process as outlined on the Notice of Violation.

**16.0 Procedures to Contest a Violation**

A person receiving a Notice of Violation may request a hearing to contest the violation by notifying in writing the entity designated on the summons, within 20 days of the issue date. Upon timely receipt of a hearing request, a civil hearing will be scheduled and the defendant will be notified of the hearing date by first class mail. Costs for this hearing may not be assessed against the prevailing party. Jurisdiction for adjudicating alleged violations would be in the Justice of the Peace Court and there would only be a right of appeal to the Court of Common Pleas if the penalty exceeds \$100.

**17.0 Failure to Pay Civil Assessment**

Failure to pay the civil assessment may result in the refusal by the Division of Motor Vehicles to renew the registration of the motor vehicle which committed the violation as well as the driver's license of the owner or operator of the motor vehicle. See 21 Del.C. §4170A(i) and House Bill 244 of the 151st General Assembly.

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## Symbol Key

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

## Final Regulations

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

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

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))  
14 **DE Admin. Code** 901

### ORDER

### **901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness**

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

Pursuant to 14 **Del.C.** §122(a), the Delaware Department of Education ("Department") seeks to amend 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness. This regulation is being amended pursuant to 29 **Del.C.** §10407, which requires regulations to be reviewed on a recurring basis every four years. The amendments include updating definitions to align with 14 **DE Admin. Code** 255 Definitions of Types of Schools and corrections to grammar and style in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Register of Regulations* on September 1, 2023. The Department received written submittals from Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), and Benjamin Shrader, Chairperson of the State Council for Persons with Disabilities ("SCPD"). Ms. Fisher commented that GACEC supports the proposed regulation and shared two recommendations. First, GACEC recommended that subsection 4.2 be amended to require that the school at which enrollment is sought immediately enroll the student, pending final resolution of the dispute. Second, GACEC recommended that subsection 4.1.2 be amended to require that the school refer the parent, guardian, or unaccompanied youth to the school's homeless liaison rather than putting it on the parent, guardian, or unaccompanied youth to make the affirmative contact. Mr. Shrader commented that SCPD supports the proposed regulation and shared the same recommendations as GACEC.

## II. FINDINGS OF FACTS

The Department finds that homeless liaisons currently handle disputes in the manner recommended by GACEC, which is provided in subsection 4.2. The Department further finds that the proposed changes to subsection 4.1.2 are nonsubstantive, the existing language aligns with current practice, and it allows parents, guardians, and unaccompanied youth to control the homeless liaison's involvement. The Department determined that further amendments as a result of the written submittals are not necessary.

In addition, the Department finds that the proposed changes to the defined terms definitions align with 14 **DE Admin. Code** 255 Definitions of Types of Schools. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness. Therefore, pursuant to 14 **Del.C.** §122(a), 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness, attached hereto as Exhibit A, is hereby amended.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness in the *Administrative Code of Regulations* for the Department.

## V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*. Pursuant to 14 **Del.C.** §122(e), 14 **DE Admin. Code** 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness shall be in effect for a period of five years from the effective date of this Order unless it is amended or repealed sooner.

**IT IS SO ORDERED** the 6th day of November, 2023.

### Department of Education

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

### 901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness

#### 1.0 Purpose

~~The intent of this regulation is to outline~~ This regulation outlines the dispute resolution process for disputes related to the educational placement of children and youth experiencing homelessness.

#### 2.0 Definitions

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

"**Charter School school**" means a public school established pursuant to Chapter 5 of Title 14 of the Delaware Code that is operated under a charter granted by, or transferred to, the Department or other authorizing body pursuant to 14 Del.C. Ch. 5.

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

"**Guardian**" means a non-parent legally appointed by the court with the powers, rights, and duties which are necessary to protect, manage, and care for a child.



**"Homeless Children and Youths children and youths"** as defined by the provisions of the 42 U.S.C. §11434a(2), means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. §11302(a)(1)); and includes:

- Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; or are living in emergency or transitional shelters; or are abandoned in hospitals;
- Children and youths who have a primary nighttime residence that is in a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. §11302(a)(2)(C));
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and Migratory children (as such term is defined in section 20 U.S.C. §6399 of the Elementary and Secondary Education Act of 1965, as amended) who qualify as homeless because the children are living in circumstances described above.

**"Inter-Local Education Agency"** or **"Inter-LEA inter-LEA"** means between Local Education Agencies local education agencies.

**"LEA Homeless Liaison homeless liaison"** means the Local Educational Liaison for Homeless Children and Youths local educational agency's liaison for homeless children and youths designated under 42 U.S.C. §11432(g)(1)(J)(ii).

**"Local Education Agency"** or **"LEA"** means a reorganized traditional school district, vocational/technical vocational-technical school district, or Charter School charter school, legally constituted and established under Delaware law for either administrative control or direction of public elementary or secondary school(s) schools.

**"Local School District"** means a reorganized school district or vocational technical school district established pursuant to 14 Del.C., Ch. 10.

**"Relative Caregiver caregiver"** means an adult who by blood, marriage or adoption is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, niece, nephew, first cousin or first cousin once removed but who does not have legal custody or legal guardianship of the child.

**"School district"** means a reorganized school district or vocational-technical school district or both.

**"School of Origin origin"** means the specific public school building that the student attended when permanently housed, the public school in which the student was last enrolled before becoming homeless or the next receiving public school the student would attend for all feeder schools.

**"School of Residence residence"** means the specific public school building that the student would attend based on where the student is currently residing.

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

**"State Coordinator coordinator"** means the Delaware Coordinator for Education of Homeless Children and Youths coordinator for the education of homeless children and youths designated under 42 U.S.C. §11432(d)(3).

**"Unaccompanied Youth youth"** means a homeless child or youth not in the physical custody of a Parent or Guardian parent or guardian.

### 3.0 **Federal Regulations Compliance with Federal Law**

Local School Districts and Charter Schools districts and charter schools shall comply with the provisions of the federal McKinney-Vento Homeless Education Assistance Improvement Act 42 U.S.C. §11431 et. seq and federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. §6301 et seq. as reauthorized by the Every Student Succeeds Act (ESSA), 42 U.S.C. §§11431 - 11435, and any regulations issued pursuant thereto.

#### 4.0 Procedures for the Resolution of Disputes Concerning the Educational Placement of Homeless Children and Youths

- 4.1 The local school shall provide the ~~Parents, Guardians, Relative Caregivers or Unaccompanied Youth~~ parents, guardians, relative caregivers or unaccompanied youth with a written notice of the school's decision regarding school selection or enrollment. The notice shall include:
- 4.1.1 A written explanation of the school's decision regarding school selection or enrollment;
  - 4.1.2 Contact information for the LEA ~~Homeless Liaisons~~ homeless liaisons and ~~State Coordinator~~ state coordinator, with a brief description of their roles;
  - 4.1.3 A form that ~~Parents, Guardians, Relative Caregivers or Unaccompanied Youth~~ parents, guardians, relative caregivers or unaccompanied youth can complete and turn in to the school to initiate the dispute resolution process;
  - 4.1.4 Instructions as to how to dispute the school's decision at the ~~Local School District or Charter School~~ school district or charter school level;
  - 4.1.5 Notice of the right to enroll immediately in the school of choice pending resolution of the dispute;
  - 4.1.6 Notice that immediate enrollment includes full participation in all school activities for which the student is eligible;
  - 4.1.7 Notice of the right to appeal to the State if the ~~Local School District or Charter School~~ school district or charter school level resolution is not satisfactory; and
  - 4.1.8 Timelines for resolving ~~Local School District or Charter School~~ school district or charter school and ~~State-level~~ State-level appeals.
- 4.2 If a dispute arises over school selection or enrollment, the child or youth shall be immediately enrolled in either the ~~School of Origin~~ school of origin or the ~~School of Residence~~ school of residence in which enrollment is sought by the ~~Parents, Guardians, Relative Caregivers, or Unaccompanied Youth~~ parents, guardians, relative caregivers or unaccompanied youth, pending final resolution of the dispute, including all available appeals.
- 4.3 ~~Local School District and Charter School Level Dispute Resolution Process~~
- 4.3.1 ~~Local School Districts and Charter Schools~~ School districts and charter schools shall develop a dispute resolution process at the ~~Local School District or Charter School~~ school district or charter school level. The dispute resolution process shall be as informal and accessible as possible, but shall allow for impartial and complete review. ~~Parents, Guardians, Relative Caregivers and Unaccompanied Youth~~ guardians, relative caregivers or unaccompanied youth shall be able to initiate the dispute resolution process directly at the school they ~~choose or choose~~, the ~~Local School District or Charter School~~ school district or charter school, or LEA Homeless Liaison's ~~the~~ LEA homeless liaison's office.
  - 4.3.2 Within ~~ten (10)~~ 10 business days of the initiation of the ~~Local School District and Charter School~~ school district and charter school level dispute resolution process, the ~~Local School District or Charter School~~ school district or charter school shall inform the parties in writing of its determination, along with notice of the right to appeal to the State if the ~~Local School District or Charter School~~ school district or charter school level resolution is not satisfactory.
- 4.4 Inter-LEA Resolution Process
- 4.4.1 When ~~Inter-LEA~~ inter-LEA issues arise, including transportation, representatives from all involved ~~Local School Districts and Charter Schools~~ school districts and charter schools, the ~~State Coordinator~~ state coordinator, or their designee, and the ~~Parents, Guardians, Relative Caregivers or Unaccompanied Youth~~ parents, guardians, relative caregivers or unaccompanied youth shall meet within ~~ten (10)~~ 10 business days of the initiation of the dispute process to attempt to resolve the dispute.
  - 4.4.2 The ~~State Coordinator's~~ state coordinator's role is to facilitate the meeting.
  - 4.4.3 If the parties are unable to resolve the ~~Inter-LEA~~ inter-LEA dispute, it shall be referred to the Secretary or designee within ~~ten (10)~~ 10 business days of the meeting. Subsection 4.5 shall

govern the Secretary's or designee's determination. The Secretary or designee shall consider the entire record of the dispute, including any written statements submitted and shall make a determination based on the child's or youth's best interest, as defined in 42 U.S.C. §11432(g)(3).

4.4.3.1 Notwithstanding subsection 4.4.3, where the ~~Inter-LEA~~ inter-LEA dispute is limited solely to the issue of the apportionment of responsibility and costs for providing the child transportation to and from the school of origin, there shall be no referral to the Secretary.

4.4.3.2 Pursuant to 42 USC 11432 (g)(1)(J)(iii)(II), if the ~~Local School Districts and Charter Schools~~ school districts and charter schools are unable to agree upon such a method of appropriation, the responsibility for the costs for transportation shall be shared equally.

4.5 State Level Dispute Resolution Process

4.5.1 The ~~State level~~ State-level dispute resolution process is available for appeals from ~~Local School District and Charter School~~ school district or charter school level decisions and ~~Inter-LEA~~ inter-LEA disputes. Appeals may be filed by ~~Parents, Guardians, Unaccompanied Youth, Local School Districts or Charter Schools~~ parents, guardians, relative caregivers or unaccompanied youth, school districts or charter schools. Appeals filed by a local school board within a ~~Local School District~~ school district shall not be accepted.

4.5.2 To initiate the ~~State level~~ State-level dispute resolution process, the appellant must file a written notice of appeal with the Secretary no later than ~~ten (10)~~ 10 business days after receiving written notification of the ~~Local School District or Charter School~~ school district or charter school level or ~~Inter-LEA~~ inter-LEA decision. The notice of appeal shall state with specificity the grounds of the appeal, and shall be signed by the appellant. Where the appeal is being initiated by a ~~Local School District or Charter School~~ school district or charter school, the superintendent of the ~~Local School District or Charter School~~ school district or charter school head of school must sign the notice of appeal.

4.5.3 A copy of the notice of appeal shall be delivered by hand or certified mail or electronically to all other parties to the proceeding at the time it is sent to the Secretary. A copy of any other paper or document filed with the Secretary or designee shall, at the time of filing, also be provided to all other parties to the proceeding.

4.5.4 Upon receipt of a notice of appeal, the Secretary or designee, shall within ~~five (5)~~ 5 business days decide whether to hear the appeal or assign it to an independent and impartial review official and shall so advise the parties.

4.5.5 The ~~Local School District or Charter School~~ school district or charter school shall file a certified record of the ~~Local School District or Charter School~~ school district or charter school or ~~Inter-LEA~~ inter-LEA level dispute proceeding with the Secretary or designee within ~~five (5)~~ 5 business days of the date the Secretary notifies the parties that an appeal has been filed. The record shall contain any written decision, any written minutes of the ~~meeting(s)~~ meetings at which the disputed action was taken, all exhibits or documentation presented at the LEA or ~~Inter-LEA~~ inter-LEA level dispute proceeding, and any other evidence relied on by the ~~Local School District or Charter School~~ school district or charter school in making its decision.

4.5.6 Appeals are limited to the record. The parties may support their positions in written statements limited to matters in the existing record. In order to be considered, written statements must be filed with the Secretary or designee no later than ~~fifteen (15)~~ 15 business days after the appeal is filed.

4.5.7 The Secretary or designee shall consider the entire record of the dispute, including any written statements submitted in reaching a decision. The Secretary or designee shall overturn the ~~Local School District or Charter School~~ school district or charter school or ~~Inter-LEA~~ inter-LEA decision only if it is decided that the ~~Local School District or Charter School~~ school district or charter school decision was not supported by substantial evidence or was arbitrary or capacious or is inconsistent with state and federal law or regulation.

4.5.8 Within ~~thirty (30)~~ 30 business days of the receipt of the notice of appeal, the Secretary or designee shall inform the parties of the appeal determination.

- 4.5.9 The determination of the Secretary or designee shall be final and is not subject to further appeal within the Department.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### ORDER

#### Doula 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 Doula Services, specifically, to provide Doula services as separately reimbursed pregnancy-related services. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the October 2023 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2023, 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 Title XIX Medicaid State Plan regarding Doula Services.

#### Background

Effective January 1, 2024, Delaware proposes to provide doula services for pregnant individuals during pregnancy, childbirth, and the postpartum period. Community based doulas are non-medical professionals who provide emotional, physical, and informational support and guidance in different aspects of reproductive health. Doulas do not provide medical care and do not replace medical providers. Rather, doulas provide additional non-medical support in places and at times where medical providers cannot or do not. Doulas typically come from the same community as the pregnant and postpartum individuals they serve. Service components include Perinatal support services, Labor support, Postpartum support services, and coordination with community-based services, to improve beneficiary outcomes.

#### Statutory Authority

- 42 CFR §440.130 (c), Diagnostic, screening, preventive, and rehabilitative services
- 42 CFR §440.170, Any other medical care or remedial care recognized under State law and specified by the Secretary
- 42 CFR §447, Payments for services

#### Purpose

The purpose of this proposed regulation is to provide Doula services as separately reimbursed pregnancy-related services.

#### *Summary of Proposed Changes*

Effective January 1, 2024, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to enroll doulas as non-medical providers in Diamond State Health Plan (DSHP) and reimburse for doula services.

#### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA 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, 2023.

### *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**

Actuarially confirmed no anticipated fiscal impact on the rates because of the small program. Therefore, the State will not spend any additional funds.

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

**Comment:** First, the proposed language can be interpreted to only require 90-minute sessions for postpartum visits, and not prenatal ones, while the statute very clearly indicates that both can be up to 90 minutes.

**DMMA's Response:** The amendment has been updated to ensure the benefit includes three visits of up to 90 minutes for both prenatal and postpartum visits.

Delaware Medicaid doula benefit is coverage for doula support in the perinatal period, including prenatal support, labor and delivery support, and postpartum support. The scope of the Medicaid doula benefit is to provide doula support to Medicaid members that include:

- Maximum of three (3) prenatal visits, 90 minutes per visit
- Maximum of three (3) postpartum visits, 90 minutes per visit
- Labor/birth attendance

**Comment:** Second, the reimbursement mechanism described is not clear. The language indicates that services are to be billed in 15-minute increments, and then imposes a billing limit of "four units" per visit.

**DMMA's Response:** The amendment has been updated to ensure sessions are billed in 15-minute increments up to the 90-minute limit.

The Doula reimbursement timeframe can run from the date of confirmed conception through 180 days (six months) after delivery, contingent on the member maintaining Medicaid eligibility. Delaware Medicaid will reimburse members for up to three (3) prenatal service visits, up to three (3) postpartum service visits, and attendance at the birth event.

Each perinatal service visit may be billed for and reimbursed separately. All visits are reimbursed in fifteen (15) minute increments. Each visit has a maximum unit capacity of six (6) units. Reimbursement for attendance during delivery is set at a flat rate determined by the State.

**Comment:** We would like additional information on the next steps in planning and implementation of the doula program in Delaware. It is critical that this important service gets the attention, expertise and funding it deserves in order to be successful.

**DMMA's Response:** November 2021: DMMA began regular meetings with Doula Stakeholders to develop the

new benefit.

- Representatives from the Department of Health also participated in the meetings.
- When the doula benefit was determined, the Delaware Certificate Board met with the doula stakeholder group to develop the certification requirements.
- In October 2023, DMMA met with Delaware MCOs serving Medicaid members to discuss implementation. MCOs will educate members and the community on the benefit of doula services and how to engage a doula.

The Doula Ad Hoc Committee, a subgroup of the Delaware Healthy Mother and Infant Consortium (DHMIC), meets monthly. One aim of the committee is to assist the doulas in the development of a doula support entity.

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

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

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2023 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Doula Services specifically, to provide Doula services as separately reimbursed pregnancy-related services and shall be final effective December 11, 2023.

11/14/2023 | 7:51 PM EST

Date of Signature

Josette D. Manning Esq., Secretary, DHSS

#### Doula Services

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

<http://regulations.delaware.gov/register/december2023/final/3.1-A page 3 Amended.pdf>

<http://regulations.delaware.gov/register/december2023/final/4.19-B page 8 Amended.pdf>

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#### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### ORDER

#### Pharmacy Value Based Purchasing (VBP)

#### 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 Pharmacy Value Based Purchasing (VBP), specifically, to participate in the Pharmacy Value Based Purchasing Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the October 2023 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2023, 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 proposed regulation 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 Pharmacy Value Based Purchasing (VBP).

**Background**

CMS has implemented Value Based Purchasing that has manufacturers reporting to the agency multiple best prices for a drug that is connected to a VBP arrangement (as defined at 42 CFR 447.502) and is made available to all states. The VBP arrangements will hold manufacturers more accountable for the clinical outcomes of their medications, while giving states the opportunity to earn additional rebates depending on how a drug works for patients. Delaware currently does not have a SPA that will allow participation in the VBP process.

**Statutory Authority**

42 CFR 447.502

**Purpose**

The purpose of this proposed regulation is to add language to the state Medicaid plan allowing Delaware to participate in the Pharmacy Value Based Purchasing program.

*Summary of Proposed Changes*

Effective October 1, 2023, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to allow Pharmacy Value Based Purchasing.

*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, 2023.

*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**

Projected impact is not available at this time. There is currently only one VBP offer available in the CMS MDRP Portal at the present and Delaware does not have plans to accept this offer at the present.

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

**Comment:** There were comments supporting the proposed changes.

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

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

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

**FINDINGS OF FACT:**

The Department has decided to finalize only the proposed changes set forth in Attachment 3.1-A, Page 5 Addendum, Continued 2, as set forth in the October 2023 Register of Regulations. The change set forth in Attachment 3.1-A, Page 5 Addendum, Continued 1, is not being finalized.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Pharmacy Value Based Purchasing (VBP), specifically, to participate in the Pharmacy Value Based Purchasing Program and shall be final effective December 11, 2023.

11/15/2023 | 5:53 PM EST

Date of Signature

Josette D. Manning Esq., Secretary, DHSS

**Pharmacy Value Based Purchasing (VBP)**

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

<http://regulations.delaware.gov/register/december2023/proposed/Attachment 3.1-A page 5 Addendum 2 Amended.pdf>

**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)u.1. (16 **Del.C.** §122(3)u.1.)  
16 **DE Admin. Code** 4458A

**ORDER**

**4458A Cottage Food Regulations**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("DHSS"), Division of Public Health initiated proceedings to amend 4458A Cottage Food Regulations. These proceedings were initiated pursuant to 29 **Del.C.** Ch. 101 and the authority as prescribed by 16 **Del.C.** §122(3)u.1.

On October 1, 2023 (27 **DE Reg.** 238), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulatory amendments, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 31, 2023, after which time DHSS would review information, factual evidence, and public comment to the said proposed regulations.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED:**

The proposed revisions to 4458A Cottage Food Regulations included:

- Addition of "sesame" to the list of major food allergens;
- Removal of the gross annual sales cap for cottage food establishments;
- Removal of the owner's name and full home address of cottage food establishments on product labels, and in its place requiring the product label list the cottage food establishment's town/city in Delaware; and
- Technical corrections.

No comments were received during the public comment period.



**FINDINGS OF FACT:**

No changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations be adopted in the best interest of the public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed amendments to 4458A Cottage Food Regulations are adopted and shall become effective December 11, 2023 (ten days), after publication of the final regulation in the December 1, 2023 *Delaware Register of Regulations*.

11/7/2023 | 3:01 PM EST

Date

Josette D. Manning, Esq.  
DHSS Cabinet Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2023 issue of the *Register* at page 238 (27 DE Reg. 238). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**<https://regulations.delaware.gov/register/december2023/final/27 DE Reg 432 12-01-23.htm>**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6010 and 6703 (7 **Del.C.** §§6010 & 6703)  
7 **DE Admin. Code** 1140

#### ORDER

Secretary's Order No.: 2023-A-0028

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1140 - *Delaware's Low-Emission Vehicle Program***

**Date of Issuance: November 15, 2023**

**Effective Date of the Amendment: December 11, 2023**

#### **1140 Delaware Low Emission Vehicle Program**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del.C.* §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

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

This Order relates to the proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1140 - *Delaware's Low Emission Vehicle Program* ("Regulation"). The Department is proposing to amend the Regulation by updating the adoption by reference of California's Advanced Clean Car II ("ACC II") program as amended on August 25, 2022, and finalized on November 30, 2022, by the California Air Resource Board ("CARB"). The Advanced Clean Car program is comprised of three elements - (1) low-emission vehicle standards; (2) greenhouse gas emission standards; and (3) zero emission standards for new vehicles weighing up to 14,000 pounds gross vehicle weight. The adoption of the ACC II regulations seeks to reduce criteria pollutant and greenhouse gas emissions from new light- and medium-duty vehicles beginning with model year 2027 and to add new requirements for zero-emission vehicles.

The Clean Air Act ("CAA") authorized the U.S. Environmental Protection Agency ("EPA") to establish the National Ambient Air Quality Standards ("NAAQS") for criteria pollutants shown to threaten human health, welfare, and the environment. The criteria pollutants include sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>), carbon monoxide (CO), ozone (O<sub>3</sub>), lead (Pb), particulate matter less than 10 microns in diameter (PM<sub>10</sub>), and particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>).

The EPA establishes air quality standards for the criteria pollutants and uses measurement of the pollutants from the ambient air monitoring network to determine how high the pollution is in an area. Delaware has monitoring stations throughout the state to measure air pollution concentrations of criteria pollutants. Many of the monitoring stations are concentrated in the northern urban/industrial areas, such as New Castle County, that have the highest population and number of pollutant sources. When levels of criteria pollutants are measured above the levels of the NAAQS, the EPA designates the area as nonattainment for the criteria pollutant.

Today, the largest source of pollution emissions in Delaware is from the transportation sector. These include the criteria pollutants, particulate matter, volatile organic compounds (VOCs), CO, NO<sub>x</sub>, and greenhouse gas (GHG) emissions. When NO<sub>x</sub> emissions from a vehicle are combined with VOCs and sunlight/heat, it produces ground-level ozone. Ground-level ozone ultimately affects public health, especially the elderly and children with underlying health conditions.

Vehicle emissions contribute 30% of greenhouse gas emissions compared to other sectors such as industrial, residential/commercial, and electric power. Of the 30% of GHG emissions produced by Delaware's transportation sector, passenger vehicles and light-duty trucks contribute 60% of these emissions. As the EPA deemed New Castle County as a contributor of emissions in the Philadelphia area, the County is included in the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE metropolitan statistical area. The EPA made a final rule dated November 7, 2022 (87 FR 60897) that designated New Castle County as "Moderate" non-attainment for the 2015 Ozone NAAQS.

In 1967, the CAA established the framework for controlling mobile source emissions. Under subsection 202(a)(1) of the CAA, Congress directed the EPA to promulgate regulations applicable to the emissions of any air pollution from new motor vehicles or new motor vehicle engines that contribute to air pollution that could endanger public health or welfare. The EPA established the federal standards for cars and light-duty trucks in 1975, and under the CAA, state and local agencies were prohibited from enforcing any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines, thus requiring states to adhere to the federal standards established in the CAA. The exception is California, the one state authorized by the CAA to enact stricter standards than the federal standards established by the EPA.

In 1990, Congress amended the CAA by revising the federal standards by adding Section 177, a provision that allows other states that have non-attainment areas to adopt the CARB approved (more stringent) vehicle emission standards, thus providing an additional option to the federal standards. Under Section 209 of the CAA (40 U.S.C. §7507), states that choose to adopt these vehicle emission standards are required (1) to adopt an identical version of California's standards that have been approved by the EPA, and (2) to provide auto manufacturers with a two-year advance notice before the start of the model year.

In 2010, Delaware adopted the vehicle emission standards known as the Low Emission Vehicle Standards (LEV III), beginning with model year (MY) 2014. The CARB then established the Advanced Clean Car program, incorporating LEV III, GHG Standards, and Zero-Emission Vehicles ("ZEV") Standards. The Advanced Clean Car program includes reducing criteria pollutants and greenhouse gas emissions and establishes requirements for the increase of zero-emitting vehicles to be delivered and offered for sale. The three elements combined the control of smog-causing pollutants and greenhouse gas emissions into a single coordinated package of requirements for MY 2015 through MY 2025. After the adoption of the ACCI program, Delaware updated the vehicle emission standards and adopted two of the three standards established by CARB, LEV III standard and GHG standard. To remain in compliance with Section 209 of the CAA, the Department amended the Delaware Low Emission Vehicle Program in 2013, 2018, and 2019.

In March 2022, Governor John Carney directed the Department to begin the regulatory development process for the adoption of the ZEV portion of the Advanced Clean Car program to achieve the GHG goals set for 2025. On August 25, 2022, the vehicle emission program was revised, and it was adopted by CARB on November 30, 2022, as the ACC II program. The purpose of the ACC II program is to increase the manufacture and sale of new cars and light-duty trucks to 100% ZEVs by MY 2035, thus reducing smog-forming emissions that form from new internal combustion engine vehicles (ICEVs), GHG, and other toxic air pollutants. This will be achieved by incrementally increasing sales of ZEVs, battery electric vehicles (BEVs), hydrogen fuel cell electric vehicles (FCEV), and the cleanest possible plug-in hybrid-electric vehicles (PHEVs).

The ACC II program requires automobile manufacturers to design, produce, and deliver new vehicles to market that meet the Advanced Clean Car emission standards. Commencing at 35% in MY 2026, auto manufacturers will be required to deliver an increased percentage of ZEVs until it reaches 100% in MY 2035. Auto manufacturers are required to certify that their vehicles meet the Criteria and GHG emissions standards established by CARB. The ACC II program also implements charging and ZEV assurance measures which set minimum warranty and durability requirements, increase serviceability, and facilitate battery labeling. There are also various flexibilities established in the ACC II program to assist manufacturers in meeting the established ZEV goals.

Although the ACC II program moves the new vehicle model year fleet to 100% zero-emission vehicles by 2035, gasoline vehicles purchased prior to MY 2035 are not affected. The proposed ACC II rule also includes low-emission vehicle requirements on ICEVs to continue to reduce smog-forming emissions while the sector transitions toward 100% zero-emitting vehicles by 2035. The updated ICEV standards address the increased emissions associated with aggressive driving and cold starts, more stringent exhaust and evaporative emissions standards, and changes to the fleet average requirements. Additionally, auto manufacturers will be able to continue to deliver for sale PHEVs, to make up to 20% of the ZEV compliance obligations in a model year.

The ACC II program requires auto manufacturers to deliver for sale a percentage of ZEVs that will expand the availability and opportunity for the market to have an upsurge in sales. The increased sales of BEVs, FCEVs, and PHEVs will significantly reduce criteria pollutants and GHG from vehicle emissions yearly, which are the greatest contributors to emissions in Delaware. Beginning with MY 2027 implementation, Delawareans will have realized a reduction of emissions by the year 2030 of 123 tons of nitrogen oxides, 8 tons of particulate matter, and 1.2 million metric tons of well-to-wheel carbon dioxide. Additional emission reductions will continue as more ZEV are incorporated into the fleet of vehicles in use.

As previously mentioned, states have the option to be governed by the federal emissions standards or adopt the CARB approved emission standards. The federal emissions standards, known as tier three engine standards, were adopted by the EPA in 2014 and limit the amount of sulfur in gasoline and reduce nitrogen oxide and other pollutants. The Federal Greenhouse Gas Standards initially covered model years 2012 through 2025 and were recently amended in December 2021, for model years 2023 through 2026.

The Department's mission is to protect public health and the environment by reducing the impact of mobile source emissions on public health and to reduce Delaware's greenhouse gas emissions, which will also reduce emissions to combat climate change goals. These goals move in concert with one another. Increasing the use of ZEVs reduces emissions of criteria pollutants and GHG from the mobile source sector. Pursuant to 7 *Del.C.* §6010 and 7 *Del.C.* §6703, the Department is authorized by the Delaware General Assembly to regulate emissions and reduce air pollution and air contaminants. With this authority, the Department initially adopted the Advanced Clean Car program in 2010 and is now proposing a Regulation update by incorporating the ACC II program by reference.

Furthermore, in accordance with Section 209 of the CAA, the Department is required to adopt an identical version of the standards that have been approved by the EPA (November 2022). The Department is proposing to adopt by reference, all three elements of the ACC II: (1) low-emission vehicle standards; (2) greenhouse gas emission standards; and (3) zero emission standards for new vehicles weighing up to 14,000 pounds gross vehicle weight. By implementing the third element, ZEV standards, the proposed Amendments will help to ensure long-

lasting emissions benefits and enable consumers to successfully replace their ICEVs with new or used ZEVs and PHEVs that meet their transportation needs. Commencing with MY 2027 and progressively elevating the requirement percentage each year, the implementation of ZEV requirements will result in an annual reduction in emissions, ultimately benefiting public health and meeting the goals of the Paris Agreement and establishing standards in accordance with Delaware's House Bill 99 to update *Delaware's Climate Action Plan*.

In addition, the Department proposed to amend the title of the Regulation from "Low Emission Vehicle Program" to "Advanced Clean Car Program," with minor revisions through the Regulation to align with the regulatory style manual and add definitions related to the ACC II program.

The Department held two virtual stakeholder workshops (October 13 and October 26, 2022) and five virtual public workshops (November 15, 16, and 17, 2022, and December 13 and 15, 2022) to review the Regulation language, provide information on complementary policies and programs, review the implementation process of the Amendments, and provide a platform for public comment. At the conclusion of all the workshops held, the Department received over 700 comments from October 2, 2022, through March 31, 2023, on the proposed Amendments.

The Department published its initial proposed Amendments in the April 1, 2023, *Delaware Register of Regulations*. The virtual public hearing regarding this matter was held on April 26, 2023. There were approximately 250 virtual attendees at the Department's virtual public hearing. The Department also provided an opportunity for the public to attend and provide verbal comments at an in-person venue located at the Kent County Levy Court Building in Dover, DE. There were 77 participants in attendance at the in-person venue. The Department received 130 registrations for public comment. Pursuant to 29 *Del.C.* §10118(a), the Hearing Record ("Record") remained open for receipt of written comment for 30 days following the public hearing. The Record formally closed for comment in this matter on May 26, 2023, with 2,469 written comments received by the Department during this phase of the formal promulgation. All comments were posted on the DNREC public hearing web page dedicated to this matter upon their receipt.

Subsequent to the close of the public comment period on May 26, 2023, Hearing Officer Theresa Smith requested a Technical Response Memorandum ("TRM") from the Department's subject matter experts in the Division of Air Quality. That TRM, dated September 15, 2023, is discussed herein in greater detail below. It should be noted that the Department revised the initially proposed Amendment subsequent to the public hearing. These revisions are not substantive in nature therefor no further noticing or additional hearing is necessary in this matter.

Thereafter, Hearing Officer Theresa Smith prepared her report dated October 17, 2023 ("Report"), which expressly incorporated into the Record the above-referenced TRM regarding the comments received from the public in this matter, attached thereto as Appendix "B." Mrs. Smith's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report and provided findings of fact, reasons, and conclusions that recommend the approval of the *revised* proposed Amendments pending before the Department.

The Report, along with its Appendices, is incorporated herein by reference. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* proposed Amendments as attached to the Report as Appendix "A."

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these *revised* proposed Amendments, pursuant to 7 *Del.C.* §6010 and 7 *Del.C.* §6703. All notification and noticing requirements concerning this matter were met by the Department and proper notice of the hearing was provided as required by law.

### Reasons and Conclusions

Currently pending before the Department are the proposed regulatory amendments to 7 DE Admin. Code 1140 - *Low Emission Vehicle Program*. In reviewing the applicable statutes and regulations, as well as weighing the

public benefits of the proposed Amendments against potential detriments, the Department's experts in the Division of Air Quality ("DAQ") have concluded that the proposed Amendments comply with all applicable federal and state laws and regulations. Further, the proposed Amendments as published in the April 1, 2023, *Delaware Register of Regulations*, and subsequently revised, are reflective of the Department's authority under 7 *Del.C.* §6010 and 7 *Del.C.* §6703, to ensure continued protection of public health and the environment by regulating emissions and reduce air pollution and air contaminants.

The Department's TRM, attached and incorporated into Mrs. Smith's Report as Appendix "B," acknowledges the comments received from the public concerning the proposed Amendments, and provides a thorough and balanced response to the same, accurately reflecting the Record generated in this matter. Rather than attempting to relay each of the public comments received in this matter, this Order will highlight the Department's responses to the same, as provided for in full within the Report's Appendices, as referenced above. During the Department's review of the Record generated in this matter, the subject matter experts in the DAQ grouped the comments received into areas of concern or support, and then offered responses to the same.

The topics listed below are related to the proposed Amendments and impacts on public health and the environment and address the public comments received by the Department in this matter. Again, all public comments received can be viewed in their entirety on the Department's hearing web page dedicated to this regulatory matter.

Some members of the public expressed opposition to the rulemaking, stating that they should have the freedom to choose a vehicle that best suits their needs. The focus of the public opposition appears to be the standards for MYs with very high percentages of ZEVs and the final 100% requirement in MY 2035 and later. The Department's intent of the proposed Amendments is to reduce criteria and greenhouse gas emissions through the largest sources of these emissions, the transportation sector, which will enable Delaware to progress towards continuous attainment of all NAAQS and meeting the Climate Action Plan goals. The requirements of ACC II are applicable to auto manufacturers to deliver for sale a certain percentage of new ZEV vehicles per year beginning with 43% in MY 2027, 51% in MY 2028, 59% in MY 2029, 68% in MY 2030, 76% in MY 2031, 82% in MY 2032, 88% in MY 2033, 94% in MY 2034, and 100% in 2035 and thereafter.

In addition to ZEVs, PHEVs will be permitted to make up a maximum of 20% of a manufacturer's ZEV credit compliance obligations in any model year prior to 2035. The ACC II regulations do not prohibit the sale of other light and medium-duty vehicles for model years prior to MY 2035, including vehicles used for farming equipment. Under 21 *Del.C.* §2113- *Special Farm Vehicle Registration*, vehicles tagged as "Farm Vehicles" or "FV" tags, are exempt from the Regulation.

The Department also received concerns about affordability, fueling infrastructure, and access to ZEV charging stations for people in multi-unit dwellings or downtown areas. The Department advised that it is widely expected that advancements in technology, supply chains, and battery cost/performance will allow ZEVs to eclipse conventionally powered vehicles in affordability, range, and performance, even leaving their environmental benefits aside. The CARB and the International Council on Clean Transportation project a decrease in the cost of ZEVs over the next decade, due to expected battery costs decreasing and an increase in ZEV production to meet market demands. Also, lower-cost models, including high-range models, are increasingly available and industry trends indicate that they will become more prevalent, offer extended battery range, and cost less, making the ZEVs competitively priced with ICEVs.

According to the International Council on Clean Transportation analysis, lower-range EVs (i.e., 150-mile ranges) are projected to be at price parity with comparable classes of ICEVs starting in 2024 while larger vehicles such as pickups with large ranges (e.g., 400-mile ranges) are projected to reach price parity with comparable ICEVs around 2033. The ACC II program offers incentives for auto manufacturers to gain credits towards the annual requirement through MY 2028, which generates more than 20% zero emission market shares in 2024 and 2025. The credit incentive is expected to slightly increase sales over the next few years and to support a robust used ZEV market that offers ZEVs at a lower cost for customers.

Additionally, the federal government offers incentives such as tax credits/rebates, up to \$4000 toward used ZEV purchases and up to \$7500 towards new ZEV purchases, and Delaware also offers new and used vehicle rebates of up to \$2,500 for BEVs. In 2023 a federal tax credit was extended to bi-directional charges, which enables electric vehicles to serve as grid-connected batteries typically earning bill credits from their utility for providing this service and providing backup power for the home during blackouts. There is also a federal tax credit, valid through December 31, 2032, which covers 30% of the cost of hardware and installation, up to \$1,000.28, for home charging stations. Specific electricity providers will also provide incentives to their customers for savings on their electric bill.

The infrastructure for ZEVs is expected to expand to a much broader network of charging stations with the increased use of ZEV vehicles. Significant federal funding through the Bipartisan Infrastructure Bill and the Inflation Reduction Act are also helping to accelerate the deployment of ZEVs and fueling stations. Additionally, Delaware's Department of Transportation and the Department's Division of Climate, Coastal, and Energy are developing a Delaware Statewide EV Charging Infrastructure Plan, that will help guide charging station locations and feasibility with a special interest in serving rural communities, disadvantaged communities, and those who live in multi-unit dwellings.

Moreover, under the National Electric Vehicle Infrastructure Formula funding, a program included in the Bipartisan Infrastructure Law, the Delaware Department of Transportation will receive funding over fiscal years 2022 to 2026 for the installation of DC fast charging stations along the state's alternative fuel corridors, including Routes 1, 13, 113, and I-95. The U.S. Department of Transportation's Charging and Fueling Infrastructure Discretionary Grant Program, established by the Bipartisan Infrastructure Law, will provide \$2.5 billion over five years to a wide range of applicants, including cities, counties, local governments, and Tribes. Additionally, \$700 million is available in fiscal years 2022 and 2023 to strategically deploy EV charging and other alternative vehicle-fueling infrastructure project in publicly accessible locations in urban and rural communities, as well as along designated Alternative Fuel Corridors.

The Department also received comments regarding environmental justice strategies to help low-income households afford ZEVs, ensure cultural competence of the Department's outreach strategies, and implement consistent definitions of environmental justice terms such as "community-based clean mobility program" and "financial assistance program" across the Department's programs.

As discussed above, the Department acknowledged the affordability aspect of the concerns, addressing the federal tax credits and incentives, and the expected price parity ZEVs will have with comparable classes of ICEVs, making ZEVs affordable and equaling the market value of a used ZEV to ICEVs. Also as mentioned above, the Delaware Statewide EV Charging Infrastructure Plan is geared towards developing charging station locations to serve rural communities and disadvantaged communities. The proposed Amendments also include incentive opportunities for manufacturers to meet the ZEV percent requirements by investing in community car share programs, producing affordable ZEVs, and keeping used vehicles in Delaware, which in turn will benefit disadvantaged, low-income, and other frontline communities. Terms have also been defined within the proposed Amendments to clarify the Qualifying Community-based Clean Mobility Program.

Lastly, concerns were expressed regarding the timeline of the ACC II program - increasing sales of new ZEVs, commencing at 43% in 2027, and increasing yearly until it reaches 100% by 2035. Some commenters expressed that the timeframe is too short to phase out gasoline and diesel-powered cars. Based on the available evidence, the Department believes the timeline is achievable and allows Delaware to meet its scientifically driven climate goals. Additionally, the Department plans to work with staff from the Northeast States for Coordinated Air Use Management and programmatic staff from other states that have adopted ACC II, using tracking tools developed by CARB, to conduct annual reviews of the program. These annual reviews will confirm the delivery of compliant vehicles to Delaware and indicate that technological advancements are occurring in the automotive industry as anticipated. In addition, concerns related to affordability and whether the infrastructure will manifest can be addressed through the above annual review process as well.

Throughout this process, the Department has been cognizant of the public's concerns that the ACC II will

impose limitations that will require ZEV vehicles to become an increasingly large percentage of the new vehicles sold within Delaware until it reaches 100% in 2035. However, in order to take action to reduce emissions from motor vehicles within Delaware, the Department is limited by Section 177 of the CAA to either adopt the CARB approved or continue to rely on federal standards. Continuing to rely on the federal standards forgoes the significant emissions reductions that could be achieved through the adoption of the CARB approved vehicle emission program.

Significant emissions reductions are necessary and while Delaware cannot adopt standards different from ACC II, the public concerns in the record regarding opposition to a mandate were sufficient for Delaware to consider adopting ACC II only through MY 2032, rather than through MY 2035. The record shows that such a practice has been considered by other states that had similar concerns with adopting the entire ACC II program. If Delaware adopts only through MY 2032, evidence in the record demonstrates that significant reductions in nitrogen oxides, particulate matter, and carbon dioxide will be achieved. This approach not only helps achieve significant pollution reduction from vehicle emissions, but this will ensure that Delaware makes the changes necessary to support the transition to ZEVs, while avoiding the requirement that ZEVs become 100% of the new vehicle sales market.

The Department has the authority to propose and adopt regulations to reduce air pollution from vehicles by the Delaware General Assembly under 7 *Del.C.* Chapters 60 and 67. The Department has the authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del.C.* §6010, and consistent with the CAA, to adopt ACC II through MY 2032, and to revise the initially proposed Amendments to provide further clarity. These revisions are not substantive in nature therefore no further noticing or additional hearing is necessary in this matter. The Department will utilize the annual reviews and may take further action in the future to adopt additional model years of ACC II.

Based on the record developed by the Department's staff in the DAQ, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments are well-supported. I further find that the Amendments will enable the Department to update the adoption by reference of the Advanced Clean Car II low-emission vehicle and greenhouse gas standards and add the requirements for zero-emitting vehicles commencing at 43% in MY 2027 and increasing yearly until it reaches 82% in MY 2032. I find that the Department's only opportunity to seek reductions beyond the federal emissions standards is to adopt the ACC II standards; however, there is no prohibition against adopting selective model years ACC II vehicle standards in order to achieve those reductions. These actions will protect public health and the environment by reducing the impact of mobile source emissions on public health and reducing Delaware's greenhouse gas inventory, which will also reduce emissions to combat climate change goals, established by *Delaware's Climate Action*.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to adopt and enforce these proposed regulatory amendments pursuant to 7 *Del.C.* §6010 and 7 *Del.C.* §6703 and Section 209 of the *Clean Air Act*;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these revised proposed Amendments as final;
3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the time of the virtual public hearing held on April 26, 2023, and during the 30 days subsequent to the hearing (through May 26, 2023), before making any final decision;
4. Promulgation of the *revised* proposed Amendments to 7 DE Admin. Code 1140 - *Low Emission Vehicle Program*, will enable the Department to update the adoption by reference of the Advanced Clean Car II low-emission vehicle and greenhouse gas standards and add the requirements for zero-emitting vehicles commencing at 43% in MY 2027 and increasing yearly until it reaches 82% in MY 2032, thereby protecting public health and the environment by reducing the impact of mobile source emissions on public health and reducing Delaware's greenhouse gas inventory, which will also reduce emissions to combat climate change goals, established by *Delaware's Climate Action Plan*;
5. The Department has reviewed the *revised* proposed Amendments in the light of the Regulatory Flexibility

Act, consistent with 29 *Del.C.* §104, and believes the same to be lawful, feasible and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. Furthermore, the Department has reviewed the Record generated in this matter with the consideration of the Environmental Justice issues related to the *revised* proposed Amendments, and has determined that the approval of the same is consistent with the Department's Environmental Justice policy;

7. The Department has generated an adequate record to support the incorporating by reference the Advanced Clean Car II low-emission vehicle and greenhouse gas standards starting from MY 2027, and may either choose to adopt standards until MY 2035, as initially proposed during the public hearing, or opt for standards until MY 2032 as a reasonable response to the concerns raised in the record, and the decision does not constitute a significant alteration necessitating further public notification or commentary;

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

9. The Department's proposed regulatory Amendments, as initially published in the April 1, 2023, *Delaware Register of Regulations*, and then subsequently *revised* as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;

10. The Department has an adequate Record of its decision, and no further public hearing is appropriate or necessary; and

11. The Department shall submit this Order approving the revised proposed Amendments as final regulations to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require, and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

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

<https://regulations.delaware.gov/register/december2023/final/27 DE Reg 433 12-01-23.htm>

## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

#### Board of Occupational Therapy Practice

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

#### ORDER

#### 2000 Board of Occupational Therapy Practice

After due notice in the Delaware Register of Regulations and two Delaware newspapers, a public hearing was held on September 6, 2023 at a scheduled meeting of the Delaware Board of Occupational Therapy Practice ("Board") to receive comments regarding proposed amendments to the Board's rules and regulations. The revised subsection 1.1, the additions to subsection 1.2.1, and the deletion of former subsections 1.2.2, 1.2.3, and 1.2.4 are designed to address modifications to the supervision of occupational therapy assistants. These revisions will ensure that occupational therapy assistants are properly supervised in the interests of public protection. The remaining alterations to subsection 1.2 propose non-substantive formatting changes consistent with the other revisions. The addition to subsection 3.4.2 adds the Delaware Occupational Therapy Association as a sponsor or provider of continuing education that will be automatically approved. Additional technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual* have also been made.



The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 27, Issue 2 on August 1, 2023, giving notice of a September 6, 2023 public hearing at 4:30 p.m. Notice of the September 6, 2023 hearing was also published in the *News Journal* (Board Exhibit 1) and the *Delaware State News* (Board Exhibit 2). Pursuant to 29 **Del.C.** § 10118(a), the date to receive final written comments was September 21, 2023, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on November 1, 2023.

This amendment was offered in place of a previous proposal that was published in the Register at Vol. 26, Issue 9 because the new proposal is substantively different than the original submission. The previously proposed amendments were published on page 683 of the February 1, 2023 issue of the *Delaware Register of Regulations* (26 **DE Reg.** 683 (2/01/23)). The Board planned to hold a hearing at its March 1, 2023 meeting at 4:30 p.m. but at that meeting, and subsequently at its May 3, 2023 meeting, the Board determined to delay voting on the proposed amended regulations. At its July 5, 2023 meeting, the Board determined to propose a substantively different amendment to its Rules and Regulations.

## Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of Publication.  
Board Exhibit 2: *Delaware State News* Affidavit of Publication.

At the public hearing on September 6, 2023, no public comment was received.

No written comments were submitted.

## Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations. There were no comments provided to the Board in writing.

Pursuant to 24 **Del.C.** § 2006(a)(1), the Board has the statutory authority to promulgate rules and regulations in accordance with the procedures specified in the Administrative Procedures Act. The Board finds reason to amend the regulations as proposed and hereby takes action to do so.

## Decision and Effective Date

The Board hereby adopts the changes to the rules and regulations as proposed, to be effective 10 days following publication of this Order in the *Register of Regulations*. The new rules and regulations are attached.

**IT IS SO ORDERED** this 1st day of November 2023.

### Board of Occupational Therapy Practice

Evan Park, President, Public Member  
(ABSENT) Elaine Smith, Professional Member (ABSENT)

/s/ Karen Rohrer, Vice President, Professional Member  
/s/ Tim Parks, Professional Member

/s/ Angelita Mosely, Secretary, Public Member

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

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

<https://regulations.delaware.gov/register/december2023/final/27 DE Reg 440 12-01-23.htm>

#### **DIVISION OF PROFESSIONAL REGULATION**

#### **Council on Real Estate Appraisers**

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

#### **ORDER**

#### **2930 Council on Real Estate Appraisers**

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on September 19, 2023 at a scheduled meeting of the Delaware Council on Real Estate Appraisers ("Council") to receive comments regarding proposed amendments to the Council's rules and regulations. The proposed amendments pertain to education and qualifications and propose to amend regulations to keep them up to date with the latest guidance promulgated by the Appraisal Foundation.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 27, Issue 2 on August 1, 2023, giving notice of a September 19, 2023 public hearing at 9:30 a.m. Notice of the September 19, 2023 hearing was also published in the News Journal (Council Exhibit 1) and the Delaware State News (Council Exhibit 2). Pursuant to 29 Del.C. § 10118(a), the date to receive final written comments was October 4, 2023, 15 days following the public hearing. The Council deliberated on the proposed revisions at its regularly scheduled meeting on October 17, 2023.

#### **Summary of the Evidence and Information Submitted**

The following exhibits were made a part of the record:

Council Exhibit 1: *News Journal* Affidavit of Publication.

Council Exhibit 2: *Delaware State News* Affidavit of Publication.

Prior to the public hearing on September 19, 2023, the Council received written comments from Ms. Beverly Wilson, President of the Delaware Association of Appraisers, Inc. Those written comments are hereby incorporated in the record as Council Exhibit 3. At the public hearing, Ms. Wilson discussed the purpose of the various suggestions made by her organization.

After the public hearing written comments were submitted to the Council by the Appraisal Institute in support of the proposed amendments. The Appraisal Institute's letter is hereby incorporated in the record as Council Exhibit 4.

#### **Findings of Fact and Conclusions**

The public was given notice and an opportunity to provide the Council with comments in writing and by testimony on the proposed amendments to the Council's rules and regulations.

The Council considered Council Exhibit 3 and Ms. Wilson's comments. The Council determined that most of her organization's suggestions constituted non-substantive changes meant to ensure consistency with the code and internally with the regulations. The Council incorporated those suggestions as long as they did not conflict with the *Delaware Administrative Code Drafting and Style Manual*. The Delaware Association of Appraiser's suggested changes to Regulation 4.1.7 were not incorporated because the Council deemed that proposal to be potentially substantive in nature and more appropriate to discuss during a later round of rule-making deliberations.

The Council also considered the support for the amendments stated by the Appraisal Institute in Council Exhibit 4.

Pursuant to 24 **Del.C.** § 4006(a)(1), the Council has the statutory authority to promulgate rules and regulations related to the practice of real estate appraisal services in the State of Delaware. And, having received only supportive comments concerning the proposed amendment, the Council finds reason to amend the regulations as proposed and hereby takes action to do so.

## Decision and Effective Date

The Council hereby adopts the changes to the rules and regulations as proposed, to be effective 10 days following publication of this Order in the *Register of Regulations*. The new rules and regulations are attached.

**IT IS SO ORDERED** this 17th day of October 2023.

### Delaware Council of Real Estate Appraisers

/s/ Christopher Schneider, Chairperson, Professional Member      /s/ Marilyn Berman, Professional Member

/s/ James Barezewski, Vice-Chairperson, Professional Member      /s/ James Boston, Banking Member

/s/ Alexander Knight, Professional Member      /s/ Patricia Ennis, Public Member

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

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

<https://regulations.delaware.gov/register/december2023/final/27 DE Reg 442 12-01-23.htm>

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## DIVISION OF SMALL BUSINESS

Statutory Authority: 29 Delaware Code, Section 8705A (29 **Del.C.** §8705A)

### ORDER

### The Delaware Sports Tourism Capital Investment Fund

#### SUMMARY OF THE EVIDENCE

1. Senate Bill 160 of the 152nd General Assembly and 29 **Del.C.** §8705A authorize the Department of State, Division of Small Business to promulgate regulations in relation to the powers, duties, and functions for the administration of The Delaware Sports Tourism Capital Investment Fund.

2. Pursuant to this authority, the Division of Small Business is responsible to and intends to promulgate regulations regarding the process, procedures, and requirements concerning the fund.

3. The Division of Small Business will administer the fund.

4. Notice of the proposed regulations was published in the October 1, 2023 edition of the *Delaware Register of Regulations*, and the public was given 30 days to provide written comment.

5. The Division received several comments, all of which the Division thoroughly considered. Upon consideration of the comments received, the Division determined some changes to the proposed regulations were appropriate and considers the changes to be non-substantive.

6. Having provided the opportunity for public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101, et. seq., this is the Order adopting the proposed regulations published previously with non-substantive changes.

**FINDINGS OF FACT**

1. The Director of the Division of Small Business finds that it is necessary to promulgate the proposed regulations published previously with changes determined to be non-substantive, in order to comply with Senate Bill 160 regarding The Delaware Sports Tourism Capital Investment Fund.

**DECISION AND ORDER**

For the foregoing reasons, the Director concludes that it is appropriate to promulgate regulations regarding The Delaware Sports Tourism Capital Investment Fund and in which the text of the final regulation shall be in the form referenced herein. Therefore, the regulations shall be adopted in accordance with this Order. The effective date of this Order shall be 10 days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** this 13th day of November, 2023.

Regina Mitchell, Director  
Division of Small Business  
Department of State

**The Delaware Sports Tourism Capital Investment Fund****1.0 Enabling Legislation**

- 1.1 The Delaware Sports Tourism Capital Investment Fund was established pursuant to Senate Bill 160 of the Bond and Capital Improvements Act of the State of Delaware and Certain of its Authorities for the Fiscal Year ending June 30, 2024; Authorizing the Issuance of General Obligations of the Bonds of the State; Appropriating Funds from the Transportation Trust Fund; Authorizing the issuance of Revenue Bonds of the Delaware Transportation Authority; Appropriating Special Funds of the Delaware Transportation Authority; Appropriating General Funds of the State; Reprogramming Certain Funds of the State; Specifying Certain Procedures, Conditions and Limitations for the Expenditure of Such Funds; and Amending Certain Statutory Provisions and appropriated to the Department of State.
- 1.2 The fund will be administered by the Division of Small Business.
- 1.3 The Division is responsible for the promulgation of regulations of the fund by December 31, 2023.
- 1.4 The following regulations have been adopted by the Division pursuant to its authority in 29 **Del.C.** §8705A and Section 69 of Senate Bill 160.

**2.0 Purpose and Intent**

- 2.1 The purpose of the fund is to provide grants in support of sports facilities (arenas, courts, fields, aquatics facilities, track and field, etc.) that will drive regional and national events to Delaware that will have a broad impact on the state and local economy. The purpose of these regulations is to establish clear criteria and processes for the administration of the fund and for eligibility.
- 2.2 It is the intent that said funds are to be leveraged by other sources including privately sourced debt, privately sourced equity, local, and county government funding.
- 2.3 The regulations contain procedures governing the process for applying to the Division for a grant under the fund, pre-closing and post-closing procedures and criteria for the Division's approval or disapproval of an application for a grant under the fund.

**3.0 Definitions**

The terms defined in Sections 1.0 and 2.0 of this regulation shall have the meanings set forth for such terms therein.

The following words and terms shall have the following respective meanings:

"Applicant" means any person, including individuals, associations, firms, not-for-profit corporations, partnerships, public or private corporations, or other legal entities, including public or governmental bodies as well as natural persons that own or ground lease property of a facility as defined in this Section 3.0 and for which a project is undertaken or proposed to be undertaken, and all subsidiaries, parents, and associated entities of such applicant.

"Application" means a certified application made to the Division of Small Business on such form or forms, together with all relevant attachments, and signed by an authorized officer or representative of the applicant, as the Division may, in its sole discretion, require in connection with administration of the fund.

"Department" means the Department of State.

"Division" means the Division of Small Business.

"Division review panel" or "panel" means the group of individuals designated by the Division and Department consisting of representatives from the Delaware Tourism Office, the General Assembly of the State of Delaware, the Greater Wilmington Convention and Visitors Bureau, Kent County Tourism Office, and Southern Delaware Tourism Office.

"Facility" means a high school, collegiate, or recreational venue located in the State of Delaware that generates positive incremental state tax benefits to the State, is used for public purposes, and regularly hosts sports tourism events as defined in this Section 3.0.

"Fund" means The Delaware Sports Tourism Capital Investment Fund.

"Grant" or "grants" shall have the meaning set forth in Section 9.0 of this regulation.

"Office" means the Delaware Tourism Office.

"Positive incremental state tax benefit" means, for the purposes of this program, a tax benefit demonstrated by either a feasibility study or other evidence satisfactory to the Division review panel in its sole discretion.

"Program" means the plan and process related to the administration of the fund.

"Project" means the specific intended use of proceeds from program funding for a sports facility.

"Sports facility" means an arena, court, field, aquatics facility, track and field facility, etc. located on the grounds of a facility which has the specific intended use of the proceeds from the fund.

"Sports tourism event" means tournaments, championships, or other sports-related event that brings out-of-state participants and visitors to Delaware and has a direct economic impact on tourism in the State.

"State" means the State of Delaware.

## **4.0 Division of Small Business Review Panel**

- 4.1 The fund is administered by the Division. To facilitate with administering, the Division designates a Division review panel that will consist of the following members or the member's designee: the Director of the Office, the Sports Sales Leader of the Office, the Chair and Vice-Chair of the Joint Committee on Capital Improvement, the Executive Director of the Greater Wilmington Convention and Visitors Bureau, the President of the Kent County Tourism Office, and the Executive Director of Southern Delaware Tourism Office.
- 4.2 The panel shall consider criteria and factors as it may deem appropriate including those set forth in the regulations as well as facts relevant to the criteria and factors.
- 4.3 The panel will utilize a rubric process during its consideration of an application. The rubric process will evaluate the criteria outlined in subsection 7.2 of these regulations.
- 4.4 The panel may request documents or information from an applicant, in its sole discretion, in addition to the application.
- 4.5 If an application or requested document or information is incomplete, inaccurate, or provided untimely, the Division will inform the applicant and further consideration of the application will be stayed and taken out of the order in which the application was originally received, if and until the requested documents or information are received by the Division.

- 4.6 Upon preliminary approval by the [Director of the] Division, an application and an applicant evaluation report shall be submitted to the panel for review, and the panel shall make a recommendation with respect to the application to the Director of the Division.
- 4.7 Upon recommendation by the panel, the application shall be submitted to the Director of the Division for consideration and final approval or disapproval. If approved, such approval shall be final. The panel will issue its determination to approve or not approve an application, in whole or in part, and the Division will notify an applicant in writing about the determination.

## **5.0 Facility Eligibility**

- 5.1 An applicant must satisfy the following criteria:
- 5.1.1 Be a facility within the definition set forth in Section 3.0, specifically a high school, collegiate, or recreational venue that generates positive incremental state tax benefits to the State, is used for public purposes, and regularly hosts sports tourism events;
- 5.1.2 Own the property on which the sports facility is to be constructed or renovated or be under a ground lease acceptable to the Division review panel;
- 5.1.3 Possess sufficient committed funds, including funding from this program if approved, to achieve successful completion of the project;
- 5.1.4 Have a useful life of a length satisfactory to the panel with a detailed maintenance plan and a funding source for maintenance;
- 5.1.5 Promote the Office to visitors attending sporting events at their sports facility; and
- 5.1.6 Indicate tourism-based events it intends to target for their sports facility in program application.
- 5.2 An applicant will provide documents and information determined by the panel, in its sole discretion, to satisfy the above criteria.

## **6.0 Application**

- 6.1 An application must contain the following:
- 6.1.1 Show at least a 1-to-1 match of funds. The panel may, in its sole discretion, waive the 1-to-1 match in specific circumstances.
- 6.1.2 A description of anticipated use and any feasibility or economic studies or reports completed in the past [2 5] years; and
- 6.1.3 At least 1 letter of support from a State or local government official representing the area in which the sports facility will be constructed. The letter of support cannot be from a member of the panel. Refer to subsection 4.1 for the list of panel members.
- 6.2 Requested funds can be used for sports facility equipment, however they cannot be used for supplies.
- 6.3 Applicant shall submit a completed original application concerning the project to the Division for review, together with 10 printed copies and an electronic copy included on a thumb drive. All applications must be signed by persons authorized to bind the applicant. Requests for confidential treatment for applicant information may be made pursuant to The Policies and Procedures Regarding FOIA Requests, 8 DE Admin. Code 1500, Section 6.0, <https://regulations.delaware.gov/AdminCode/title8/1500.shtml#TopOfPage>. No application will be reviewed by the Division until it is complete to the satisfaction of the Division. Applicants may obtain application forms by contacting Jessica Welch, Delaware Tourism Office, Division of Small Business, 99 Kings Highway, Dover, DE 19901. Phone (302) 739-4271 / Fax (302) 739-5749, or through the Office's website at <https://www.visitdelaware.com/sports>.

## **7.0 Evaluation Process**

- 7.1 Upon determination that the application is complete, the panel will evaluate the project based upon some or all of the following criteria outlined in the application rubric.
- 7.2 The application rubric includes the following criteria:

- 7.2.1 The project's support of the mission of The Delaware Sports Tourism Capital Investment Fund as outlined in Section 2.0 of these regulations.
- ~~7.2.3~~ 7.2.2]The geographic area where the facility is located, including if there are other sports facilities in the area.
- 7.2.3 The potential economic impact on the state and local economy if the facility is provided funding.
- 7.2.4 Other sources of funding secured by the applicant for the facility, including private, state, and local investment committed to the project.
- 7.2.5 For applications requesting funding for facility improvements, a thorough and substantiated explanation of how funding would enhance their facility and its ability to attract more sports tourism events or increase their current sports tourism event offerings. Facilities must indicate existing tourism-based events or targeted events in the application.
- 7.2.6 How the applicant will recognize the fund's investment in the facility (e.g.: signage on the property; banners; etc.). Recognition will be mutually agreed-upon following approval of the application.

## **8.0 Additional Considerations for Project Funding**

- 8.1 The panel shall consider such factors as it may deem appropriate when reviewing an application for project funding.
- 8.2 Some of the factors deemed appropriate include:
- 8.2.1 The need in the geographic region within which the project is to be located, including other similar sports facilities;
- 8.2.2 General geographic diversity of projects under consideration for or already-approved for funding;
- 8.2.3 Facility's readiness to proceed with construction or renovation;
- 8.2.4 Economic feasibility of the project to support ongoing projected maintenance and operation requirements;
- 8.2.5 Local support for the project;
- 8.2.6 Sources and level of funding commitments other than support from the fund;
- 8.2.7 Owner, operator and manager of the project; and
- 8.2.8 Economic impact on the local economy and overall economic benefit to the State.

## **9.0 Grants**

- 9.1 The fund has been appropriated to the Department and is administered by the Division.
- 9.2 Grant proceeds can be used for renovation, construction, or any other type of improvements to a facility within the definition set forth in Section 3.0, specifically a high school, collegiate, or recreational venue that generates positive incremental state tax benefits to the State, is used for public purposes, and regularly hosts sports tourism events;
- 9.3 Recapture Provision: The Division shall determine, in its sole discretion, those circumstances in which a grantee must repay all or part of a grant (i.e.: grant recapture). Recapture may include substantial or complete cessation of operations by the applicant, or failure to reach completion of the project in a timely manner. The recapture obligation shall be consistent with the fund purposes and should extend for the number of years necessary to realize the objectives of the grant, which is considered as the recapture period. Should an applicant fail to start construction on the sports facility within a certain period of time (e.g. 2 years), the Division has the right to recapture grant funds.
- 9.4 Post-Grant Period and Annual Reporting: The applicant shall, for a period equal to the recapture period of the grant, submit to the Division on an annual basis in a form acceptable to the Division a progress report on the status of the project, including, but not limited to: an update on construction or renovation of the facility, total number of sporting events held at the facility, attendance at sporting events held at the facility, number of hotel rooms booked for sporting events held at the facility, any economic impact information acquired by the applicant for the facility, and any other information required by the Division. This reporting period may be extended or reduced, as appropriate, by the

Division in its sole discretion. Annual reports should be submitted to the Division no later than June 30 of each of the term years of the grant.

- 9.5 Before grant funds are issued, the facility must enter into a written grant agreement in the form required by the Division. Failure to enter into a timely grant agreement may result in the Division rescinding its approval.
- 9.6 Facility must provide data to the Office on sports tourism events held at the facility, including, but not limited to: data on attendance at events, hotel rooms booked for events, estimated economic impact of the event, etc., for the duration of the grant agreement.
- 9.7 Facility must display onsite a plaque, sign, or other recognition that states, "This project was supported by The Delaware Sports Tourism Capital Investment Fund."

#### **10.0 Approval Process**

- 10.1 Timing: The Division shall use its reasonable best efforts to complete its review of the application within 60 days from the date it deems an application complete.
- 10.2 Final approval will be effective for a period not to exceed 1 year from the last date of the Division review panel meetings to review the project prior to such final approval, and all funds committed for a project must be completely dispersed by the Division within that time. The Division, in its sole discretion, may make limitations or grant extensions with respect to this 1-year period.
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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a) and 604(b) (14 **Del.C.** §§122(a) & 604(b))

### PUBLIC NOTICE

#### **737 Tuition Billing for Special Schools and Programs**

The Department published the proposed regulation 14 **DE Admin. Code** 737 in the November 1, 2023 *Delaware Register of Regulations* on page 303 (27 **DE Reg.** 303 11/01/23). Pursuant to 14 **Del.C.** §§122(a) and 604(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 737 Tuition Billing for Special Schools and Programs. This amendment is needed to update language pertaining to tuition eligibility and processing of tuition billing and payments per 14 Del. Code Chapter 6.

The period for submission of public comments was to close on December 1, 2023. The Department, through this notice, is extending the public comment period through January 31, 2024 in consideration of the November and December holidays and desiring to ensure all interested parties are able to provide public comment. 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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before January 31, 2024. 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.

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

The Commission's quarterly business meeting will be held on Wednesday, December 6, 2023, commencing at 10:30 a.m. The business meeting will be held remotely. An agenda will be posted on the Commission's website, [www.drbc.gov](http://www.drbc.gov), at least ten (10) days prior to the meeting date.

For additional information, including a link to live stream of this event, please visit the DRBC website at [www.drbc.gov](http://www.drbc.gov) or contact Patricia Hausler at [patricia.hausler@drbc.gov](mailto:patricia.hausler@drbc.gov).

Pamela M. Bush, Esq.  
Commission Secretary and Assistant General Counsel

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

The State Board of Education meets monthly, generally at 5:00pm on the third Thursday of the month. These meetings are open to the public. The Board rotates locations of regular meetings among the three counties.

The State Board of Education provides information about meeting dates and times, materials, minutes, and audio recordings on its website:

<https://education.delaware.gov/community/governance/state-board-of-education/sbe-monthly-meetings/>

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**  
**Retroactive Eligibility**

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 the Division of Social Services Manual (DSSM) 14100.6, 14920, 14920.1, 14920.5, 15200.3, 15200.6, and Title XIX Medicaid State Plan Attachment 4.17-1 regarding Retroactive Eligibility, specifically, to support our goal of expanding access to coverage, including coverage for those who need immediate care while applying for Medicaid.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs, or other written materials concerning the proposed new regulations must submit same to, Planning 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](mailto:DHSS_DMMA_Publiccomment@Delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on January 2, 2024. Please identify in the subject line: Retroactive Eligibility

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

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**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE****4110 Pharmacists Dispensing and Administering Contraceptives**

Pursuant to 16 **Del.C.** §§30010-30030 and 83 Del. Laws, c. 240, the Department of Health and Social Services, Division of Public Health, is proposing new regulation 4110 Pharmacists Dispensing and Administering Contraceptives. This regulation includes requirements, standard procedures, and conditions under which pharmacists may dispense or dispense and administer contraceptives.

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Copies of the proposed regulations are available for review in the December 1, 2023 issue of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them by the close of business January 2, 2024, at:

Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov)

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**DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****4459 Lead-Based Paint Hazards**

Pursuant to 16 **Del.C.** §122(3)t, the Department of Health and Social Services, Division of Public Health, Health Systems Protection section, is proposing revisions to Regulation 4459 Lead Based Paints Hazards. The revisions include:

- Addition of electronic payments for accreditation of training programs;
- Removal of the requirement for the Secretary to maintain a list of parties whose accreditation has changed status; and
- Addition of the ability for an abatement worker to apply for a 1-year provisional certification.

These amendments were previously published in the November 2023 issue of the Register (27 **DE Reg.** 315 (11/01/23) (Prop.) and are hereby repropose. Copies of the proposed regulations are available for review in the December 1, 2023, issue of the *Delaware Register of Regulations*, accessible online at: <https://regulations.delaware.gov>, or by calling the Division of Public Health at (302) 744-4700.

**NOTICE OF PUBLIC HEARING**

A public hearing will be held in hybrid format on Thursday, December 21, 2023, at 2:30 p.m. at the Department of Natural Resources and Environmental Control Richardson & Robbins Building Auditorium, located at 89 Kings Highway, Dover, Delaware 19901.

Via video and teleconferencing:

Zoom meeting URL:

<https://us06web.zoom.us/j/81003211489?pwd=uJZrt6jnrhnaEVQt4Iaj3P7HI1y6od.1>

Meeting ID: 810 0321 1489

Passcode: 523652

Dial: 1 301 715 8592

Those wishing to offer verbal comments during this public hearing must pre-register no later than noon on the date of the virtual public hearing.

Public comments will be received until the close of business Monday, January 8, 2024. Comments will be accepted in written form via email to [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov), or by U.S. mail to the following address:

Vicki Schultes, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901

**DIVISION OF PUBLIC HEALTH  
PUBLIC NOTICE****4459A Regulations Governing the Childhood Lead Poisoning Prevention Act**

Pursuant to 16 **Del.C.** §122(3)t, the Department of Health and Social Services, Division of Public Health, Health Systems Protection section, is proposing revisions to 4459A Regulations Governing the Childhood Lead Poisoning Prevention Act. The revisions include:

- Addition of the Division's investigation and reporting obligations; and
- Technical and renumbering revisions.

These amendments were previously published in the November 2023 issue of the Register (27 **DE Reg.** 315 (11/01/23) (Prop.) and are hereby repropoed. Copies of the proposed regulations are available for review in the December 1, 2023, issue of the *Delaware Register of Regulations*, accessible online at: <https://regulations.delaware.gov>, or by calling the Division of Public Health at (302) 744-4700.

**NOTICE OF PUBLIC HEARING**

A public hearing will be held in hybrid format on Thursday, December 21, 2023, at 3:00 p.m. at the Department of Natural Resources and Environmental Control Richardson & Robbins Building Auditorium, located at 89 Kings Highway, Dover, Delaware 19901.

Via video and teleconferencing:

Zoom meeting URL:

<https://us06web.zoom.us/j/84423347909?pwd=WrmablaEIMmig0OFuYkXaUKvgGbOg6.1>

Meeting ID: 844 2334 7909

Passcode: 028501

Dial: 1 301 715 8592

Those wishing to offer verbal comments during this public hearing must pre-register no later than noon on the date of the virtual public hearing. There will still be an opportunity for anyone to speak during the hearing.

Public comments will be received until the close of business Monday, January 8, 2024. Comments will be accepted in written form via email to [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov), or by U.S. mail to the following address:

Vicki Schultes, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL****DIVISION OF FISH AND WILDLIFE  
REGISTER NOTICE****3755 Lobsters (*Homarus americanus*)**

This action is being proposed to comply with the Atlantic States Marine Fisheries Commission's Addendum XXIX to Amendment 3 to the American Lobster Fishery Management Plan (FMP), which requires all vessels with federal lobster permits to install and maintain an electronic tracking device that will transmit location data while the vessel is in the water. The FMP is requiring the electronic trackers because the trackers are now required by a NOAA Fisheries federal regulation intended to reduce interactions between fishing boats and gear and the endangered North Atlantic Right Whale.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3755 will be open December 1, 2023. The virtual public hearing will be held on Thursday, December 21, 2023, beginning at 6:00 p.m. The web link to the

virtual hearing can be accessed through the DNREC Public Hearings site at <https://dnrec.alpha.delaware.gov/public-hearings/>. If prompted, use Meeting ID: 885 0576 5378 Passcode: 499825. To access the audio-only portion of the virtual hearing, dial (305) 224- 1968 and enter the Meeting ID and Passcode noted above. Closed captioning is available in over 20 languages, including English and Spanish, to attendees via the Zoom platform utilized for all DNREC Public Hearings.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing. The designated page for this Pre-Registration process can be found here: <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>

The proposed amendments may be inspected online starting December 1, 2023 at [https://regulations.delaware.gov/services/current\\_issue.shtml](https://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting John Clark by phone at 302-739-9914 or by email at [John.Clark@delaware.gov](mailto:John.Clark@delaware.gov).

Public comments will be received until close of business Friday, January 5, 2024. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**Board of Dentistry and Dental Hygiene**  
**PUBLIC NOTICE**  
**1100 Board of Dentistry and Dental Hygiene**

The Delaware Board of Dentistry and Dental Hygiene pursuant to 24 *Del. C.* § 1106(a)(1), proposes to revise its regulations. The proposed amendment eliminates the need for an inactive licensee to renew an inactive license.

The Board will hold a public hearing on the proposed rule change on January 11, 2024 at 3:00 PM virtually and at the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 26, 2024.

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**DIVISION OF PROFESSIONAL REGULATION**  
**Board of Electrical Examiners**  
**PUBLIC NOTICE**  
**1400 Board of Electrical Examiners**

Pursuant to 24 **Del.C.** §1406(a)(1), the Delaware Board of Electrical Examiners ("Board") has proposed revisions to its Rules and Regulations. The Board proposes these amendments to advance its primary objective, which is to protect the general public, specifically those persons who are the direct recipients of electrical services, regulated by 24 **Del.C.**, Ch. 14.

Amendments are proposed to subsection 3.4 because the current regulation contains inaccurate statutory references and because upon the creation of the journeyman and apprentice license categories, the pertinent regulations were not also updated. The proposed amendment corrects the statutory reference and clarifies how and from whom journeyman and apprentice electricians may accumulate the qualifying experience required to obtain more senior licenses under 24 **Del.C.** §1408(a).

Amendments are proposed to subsection 7.2 to provide definition of what it means for an apprentice electrician to be enrolled in an apprentice program approved by the Board as provided in 24 **Del.C.** §1408(a)(7). The Board seeks to ensure that apprentice electricians are making appropriate and regular strides toward the next stage of their professional development.

Amendments are proposed to subsection 11.0 to provide definition of what it means for a license to be "current" and what factors the Board will consider in deciding whether a state's licensing requirements are "substantially similar" to those of Delaware in the context of applications for license by reciprocity under 24 **Del.C.** §1409. The amendments provide clarity for the Board and applicants regarding the process and requirements for reciprocal admission.

Amendments are proposed to subsections 1.3, 6.1, 8.4 and 12.1 to include licensed residential electricians among the excepted license categories for requirements pertaining to vehicle lettering, insurance, continuing education, and inspection requests. When the residential electrician license category was created by statute, the corresponding regulations were not updated. It has come to the attention of the Board that certain residential electricians have sought inspection by licensed inspection agencies. The amendment clarifies that doing so is outside the scope of a residential electrician's license defined by 24 **Del.C.** §1422A.

Additional revisions are technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

The Board will hold a public hearing on January 3, 2024, at 8:30 a.m. in conference room A on the second floor of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at [Nikki.Pecora@delaware.gov](mailto:Nikki.Pecora@delaware.gov).

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be January 18, 2024. The Board will deliberate on all the public comments at its regularly scheduled meeting thereafter.

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**DIVISION OF PROFESSIONAL REGULATION**  
**Board of Cosmetology and Barbering**  
**PUBLIC NOTICE**  
**5100 Board of Cosmetology and Barbering**

Pursuant to 24 **Del.C.** §5106(a)(1), the Delaware Board of Cosmetology and Barbering ("Board") has proposed revisions to its Rules and Regulations. The proposed amendments set forth standards and requirements for a temporary instructor permit through a provisional pathway. This new method for obtaining licensure is designed to address the current shortage of instructors in schools training individuals for licensure under Chapter 51 of Title 24 of the Delaware Code.

A public hearing will be held on January 29, 2024 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Cosmetology and Barbering, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at [danielle.ridgway@delaware.gov](mailto:danielle.ridgway@delaware.gov).

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be February 13, 2024. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

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**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF TRANSPORTATION SOLUTIONS**  
**PUBLIC NOTICE**  
**1207 Electronic Speed Monitoring System**

Pursuant to the authority provided by 21 **Del.C.** §4170A, the Delaware Department of Transportation (DelDOT) established an Electronic Speed Monitoring System (ESMS) program along qualifying roadways across the State

of Delaware.

The Department, through its Division of Transportation Solutions seeks to adopt this regulation to administer the ESMS program, which is established in support of DeIDOT's Highway Safety Improvement Program and, in particular, its Strategic Highway Safety Plan, which has identified speeding as an emphasis area to target the overall program goal of reducing fatalities and serious injuries on all public roads.

**Public Comment Period**

DeIDOT will take written comments on the proposed Regulation 1207 of Title 2, Delaware Administrative Code, from December 1, 2023 through January 2, 2024. The public may submit their comments to:

Peter Haag, P.E.  
Chief of Traffic Engineering  
([Peter.Haag@delaware.gov](mailto:Peter.Haag@delaware.gov)) or in writing to his attention,  
Delaware Department of Transportation  
Division of Transportation Solutions  
169 Brick Store Landing Road  
Smyrna, DE 19977

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