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# Delaware Register of Regulations

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Issue Date: January 1, 2015

Volume 18 - Issue 7, Pages 480 - 597

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Errata

Proposed

Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before December 15, 2014.

*Killens Pond*  
cover photo by  
Dolores Michels

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

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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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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
February 1	January 15	4:30 p.m.
March 1	February 16	4:30 p.m.
April 1	March 16	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

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

**ERRATA****501 Harness Racing Rules and Regulations**

\* **Please Note:** *The submitted final regulation for the December 2014 issue of the Delaware Register of Regulations erroneously contained amendments to Sections 7.6.13.14.1.3 and 7.6.13.14.1.4 that were not previously published as proposed. The final regulation was published in the December 2014 issue of the Delaware Register of Regulations (18 DE Reg. 466).*

*For the current version of 501 Harness Racing Rules and Regulations, see <http://regulations.delaware.gov/AdminCode/title3/500/501/501.shtml#TopOfPage>. The amendments to Sections 7.6.13.14.1.3 and 7.6.13.14.1.4 appearing in the December 2014 issue of the Register are not finalized. The proposed amendments to those provisions appear in this Register issue (18 DE Reg. 491). The effective date as to the amendments to the other provisions appearing in the December 2014 Register remains the same.*

**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

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

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

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the striking or whipping rule to maintain the integrity of racing 7.6.13.14.1.3 and 7.6.13.14.1.4.

The DHRC proposes this rule amendment to ensure adherence to appropriate animal welfare standards and fair racing standards. Subsequent to a 30-day comment period from January 1 to 30, 2015 and notice in the *Register of Regulations*, the DHRC will finalize the regulations on February 10, 2015 during its regularly scheduled monthly meeting. The DHRC February 2015 monthly meeting is public and is noticed on the state meeting notice website. Those meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB February 9, 2015. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

**501 Harness Racing Rules and Regulations**

*(Break in Continuity of Sections)*

**7.0 Rules of the Race**

*(Break in Continuity Within Section)*

**7.6 Racing Rules**

*(Break in Continuity Within Section)*

**7.6.13 Conduct of the Race**

*(Break in Continuity Within Section)*

# PROPOSED REGULATIONS

## 7.6.13.14 Impelling of a Horse

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

7.6.13.14.1.3 From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes, but must pause after each strike (NO REPETITIVE WHIPPING).

7.6.13.14.1.4 Once the lead horse has reached the 7/8 mile pole, the driver may, in a one handed motion, strike the shaft of the sulky or the saddlepad in a reasonable and responsible manner, (approximately 6 strikes) but must pause after 2 strikes (NO REPETITIVE WHIPPING FOR MORE THAN 2 STRIKES).

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

**501 Harness Racing Rules and Regulations**

## HARNES RACING COMMISSION

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

### PUBLIC NOTICE

## 501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission (DHRC) pursuant to 3 Del.C. §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the Uniform Classification Guidelines of Foreign Substances, reference 8.3 and 8.3.1.

The DHRC voted to approve this rule amendment on December 2, 2014 at its regular monthly meeting. The monthly meetings are noticed public meetings. Subsequent to this public notice in the *Register of Regulations*, the DHRC will leave the public comment period open until February 10, 2015 when the DHRC will hold its regularly scheduled monthly meeting. The DHRC February 2015 monthly meeting is public and is noticed on the state meeting notice website. Those meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB February 9, 2015. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

## 501 Harness Racing Rules and Regulations

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

## 8.0 Veterinary Practices, Equine Health Medication

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

8.3 Medications and Foreign Substances. Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the Presiding Judge or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the DHRC Uniform Classification Guidelines found in subsection 8.3.1 of this section, and may consider the most recent recommendations by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International. In addition, the Presiding Judge or other designee of the Commission ~~and~~ shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted

the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The Presiding Judge may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

- 8.3.1 DHRC Uniform Classification Guidelines. The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the Commission ~~Veterinarian(s)~~ and the racing secretary entry areas.

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

**501 Harness Racing Rules and Regulations**

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## HARNESS RACING COMMISSION

### DELAWARE STANDARDBRED BREEDERS' FUND

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

#### PUBLIC NOTICE

### 502 Delaware Standardbred Breeders' Fund Regulations

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulation under 9.2 expands the current bonus payments to include consolation races.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by February 1, 2015.

### 502 Delaware Standardbred Breeders' Fund Regulations

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

#### 9.0 Purses and Bonus Awards

- 9.1 A purse or bonus awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. The Administrator shall send a confirmation to the Department of Agriculture on a race week basis which will state the amount owed for purses of the Program.
- 9.2 Administrator of the Program shall compile bonus payments earned by breeders of Delaware Sires and Dams and maintain a separate ledger of them. Starting in race year 2012, the Administrator of the Program shall compile bonus payments earned by breeders and owners of Delaware Standardbred Breeders' Fund four year olds in overnight races at each racing meet and maintain a separate ledger for them. Starting in race year 2015 bonus payments will be paid on consolation races. Bonus payments will be paid out at the end of the racing year.

- 9.3 A person interested in the bonus payments and objecting to calculations or determinations thereof as shown on the records of the Administrator of the Program shall be responsible for taking written appeals to the Board in the manner provided for appeals from decisions of the Administrator pertaining to registrations.
- 9.4 Records, funds and accounts of funds, prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds and accounts and may not become co-mingled with other matters. The records, funds and accounts shall be kept continuously open for inspection by the Administrator of the Program.

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

**502 Delaware Standardbred Breeders' Fund Regulations**

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 235

#### PUBLIC NOTICE

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

#### **235 Teacher of the Year Award**

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

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 235 Teacher of the Year Award. This regulation is being amended to clarify representatives serving on the panel of judges for the Teacher of the Year Award.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 5, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

#### **C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not 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 is intended to continue to 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 amendments do not address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all student's 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 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 decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.

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 amendment 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 not a less burdensome method for addressing the purpose of the regulation.

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

### **235 Teacher of the Year Award**

This program shall be administered in accordance with 14 **Del.C.** Ch. 89, and the following rules and regulations.

#### **1.0 Qualifications**

To be considered for the Teacher of the Year award a person shall:

- 1.1 Have taught, continuously or intermittently, for an accumulative period of three years or more in a Delaware public school previous to the date of such person's nomination.
- 1.2 Have been formally nominated.
- 1.3 Be actively teaching in their district or charter school in this state at the time of their nomination.
- 1.4 Continue to actively teach in the nominating district or charter school for the duration of the school year of their nomination.
  - 1.4.1 If the nominee chooses to leave the district or charter school during the selection period the district or charter school shall submit another nominee.
- 1.5 Meet all the requirements for a Standard Certificate for the position held and hold a valid and current license, as approved by the Professional Standards Board, Department of Education and the State Board of Education.

#### **2.0 Nominations**

The following shall apply in preparing nominations in accordance with the requirements of the Act.

- 2.1 The Department of Education shall meet annually with the district coordinators of the Teacher of the Year Program and the representative for the charter schools for the purpose of providing them with detailed instructions and proper forms for the presentation of nominees. Each district is invited to nominate one teacher employed by the district and the charter schools are invited to select one nominee to represent all of the charter schools.
  - 2.1.1 Nominees shall be skillful and dedicated teachers, prekindergarten through grade 12. Administrative personnel such as principals and guidance counselors are not eligible to be considered for State Teacher of the Year. Nominees for State Teacher of the Year who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 2.2 below shall be disqualified.
- 2.2 Nominees shall submit a portfolio describing themselves and setting forth their positions on educational issues. Format will be based on the National Teacher of the Year program.
- 2.3 Following the submission of the portfolios, selected Department of Education staff members and selected former state and local district Teachers of the Year shall be assigned in pairs to read the portfolios of two nominees and observe those nominees in the classroom based on the criteria stipulated in the Teacher of the Year Program Guide that is updated each year. Another group of Department of Education Staff members shall be assigned to read all of the portfolios and rate them



based on forms found in the Teacher of the Year Program Guide. Based on the numerical ratings from both the portfolio readers and from the observations, three nominees shall be identified as finalists for consideration by a panel of judges.

- 2.4 The panel of judges shall include: the current State Teacher of the Year; the President of the State ~~Congress of Parents and Teachers~~ Parent Teacher Association; the ~~President of the State Student Council Association~~ President of the Future Educators Association; a member of the State Board of Education; a representative of the Chamber of Commerce; the President of the Delaware State Education Association; and the Chair of the Professional Standards Board or, if necessary, their designees.
- 2.5 The judges shall recommend one person for the Secretary of Education to declare as the State Teacher of the Year.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b)  
14 **DE Admin. Code** 1507

### PUBLIC NOTICE

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

#### 1507 Alternative Routes to Teacher Licensure and Certification Program

#### A. Type of Regulatory Action Requested

Reauthorization of Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize regulation 14 **DE Admin. Code** 1507 Alternative Routes to Teacher Licensure and Certification Program. The Professional Standards Board has reviewed the regulation under a five year review cycle and concluded that the regulation should be readopted without any changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, February 2, 2015 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the approval of alternative routes to teacher licensure and issuance of an initial license and standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The reauthorization of the regulation addresses approval of Alternative Routes Teacher Licensure and Certification programs and not equity issues; however the regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation addresses educator licensure and certification not students' health and safety.

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

addresses educator certification, does not directly impact students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The regulation will preserve the necessary 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 regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education. The implementation of the regulation remains with the Department of Education.

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 regulation remains 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.

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

**\*Please note that no changes are being proposed to the regulation as originally finalized and published in the November 2009 issue of the *Register* at page 642 (13 DE Reg. 642). Therefore, the regulation is not being republished here. A copy of the regulation is available at:**

**1507 Alternative Routes to Teacher Licensure and Certification Program**

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 **Del.C.** §7903(10))

#### **PUBLIC NOTICE**

#### **3325 Financial Capability Reporting**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the Delaware Code, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to create Regulation 3325, Financial Capability Reporting.

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 Thomas Murray, Deputy Director, Division of Long Term Care Resident Protection, 3 Mill Road, Suite 308, Wilmington, Delaware 19806 by January 31, 2015.

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.

#### **Background**

For some time there have existed various interpretations of the requirement for facilities to submit financial documents to allow staff to effectively assess the financial capability of the facilities. This regulation details the information that must be submitted and the circumstances under which it must be submitted. It will establish

consistency in the application of 16 **Del.C.** §§1104(b)(2) and 1104(e).

### **Summary of Proposal**

This regulation details the level of information that must be provided by the facility under various circumstances. It also details when and in what form the department will require the submission of audited financial statements.

### **Statutory Authority**

16 **Del.C.** §1119C, Nursing Facilities and Similar Facilities

29 **Del.C.** §7903(10), Powers, duties and functions of the Secretary

## **3325 Financial Capability Reporting**

### **1.0 Authority**

This regulation is promulgated and adopted pursuant to 29 **Del.C.** §7971(d).

### **2.0 Purpose and Scope**

- 2.1 The purpose of this regulation is to detail the Department of Health and Social Services' authority to monitor the financial capability of licensed long term care (LTC) providers. It details the level of information that must be provided by the licensee, or potential licensee, under various circumstances. It also defines when and in what form the Department will require the submission of audited financial statements reporting the financial position and the results of operations of facilities by independent certified public accountants.
- 2.2 Every facility (as defined in 16 **Del.C.** §1102(4)) licensed to provide care for more than three (3) residents shall be subject to this regulation. Facilities licensed to provide care for 3 or fewer residents shall be required to submit documentation demonstrating financial capability as required by the Department.
- 2.3 This regulation shall not prohibit, preclude or in any way limit DHSS from ordering, conducting or performing examinations of facilities under the rules and regulations of the Delaware Department of Health and Social Services and the practices and procedures of its regulations.

### **3.0 Definitions**

"Accountant" means a practitioner of accounting or accountancy, which is the measurement, disclosure or provision of assurance about financial information that helps managers, investors, tax authorities and others make decisions about allocating resources.

An "Affiliate" of, or person "Affiliated" with, means a person that directly/or indirectly; through one or more intermediaries, controls, or is controlled by, or is under common control of the facility specified.

"Audited Financial Report" means and includes those items specified in subsection 7.4 of this regulation.

"Department" means the Delaware Department of Health and Social Services (DHSS)

"Division" means the DHSS Division of Long Term Care Residents Protection (DLTCRP)

"Facility" means a long term care facility as defined in 16 **Del.C.** §1102(4) and is licensed under 16 **Del.C.** §1103 to provide care and services to more than three (3) residents.

"Financial Distress" means a finding by the Department following the analysis of an audit, complaint or data indicating that the financial condition of the facility threatens the health or safety of a resident(s) of a facility.

"Generally Accepted Accounting Principles (GAAP)" means those principles that are recognized as the standard framework of guidelines for financial accounting.

"Independent Certified Public Accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice.

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**4.0 Requirements for the Submission of Financial Documents Upon Application for Renewal of a License**

- 4.1 All annual applications for renewal of a license shall be submitted at least thirty (30) calendar days prior to the expiration date of the license. The application must include a transmittal letter containing:
  - 4.1.1 The type of ownership for the facility as well as senior, subordinate and affiliated organizations, i.e. proprietorship, partnership, corporation, Subchapter S Corporation or Limited Liability Company and;
  - 4.1.2 The place of incorporation/registration: including names and addresses for all persons/entities with a 5% or greater ownership;
  - 4.1.3 Year-end financial statement(s) – balance sheet, income statement, and statement of cash flows for the facility and, if applicable, the controlling organization (most recent year at year-end). If the year-end statement that is provided is three (3) or more months old when it is received by the Department a supplemental statement through the most recent month must be submitted. If the supplemental statement(s) is not prepared by independent accountants, it is to be attested to by the treasurer and a second officer;
  - 4.1.4 A list of officers with addresses;
  - 4.1.5 Organization charts with names and titles (personnel – facility and parent);
  - 4.1.6 Organization chart (corporate structure), delineating senior, subordinate and affiliated organizations, lines of authority/ownership, and homes of record;
  - 4.1.7 Facility address (home of record), all aliases and E.I.N. (employer identification number);
  - 4.1.8 Information on the ownership of the real estate on which the facility is located including: name of the organization, address (home of record), E.I.N and officers (5% or more) or principals;
  - 4.1.9 Name, address (home of record), and E.I.N. of the management entity involved in the operation of the facility, if any;
  - 4.1.10 All items submitted separately must bear the signed certification statement: "I certify, under penalty of perjury, the attached statement is true, complete and correct";
  - 4.1.11 Information on the controlling organization to include:
    - 4.1.11.1 The most recent year-end financial statements for the controlling organization;
    - 4.1.11.2 The most recent year-end personal financial statements of the proprietors or partners; and
    - 4.1.11.3 The most recent year-end personal financial statement for guarantors of a corporate transaction.
- 4.2 Any material adverse change to the facility's financial position must be reported to the Department by the facility in writing within five (5) business days of its occurrence or discovery.

**5.0 Requirements for the Submission of Financial Documents Upon Application for New/Change of Ownership**

- 5.1 All applications for a license for a new facility or for a change of ownership for an existing facility shall include with the application a transmittal letter to include all the items listed in subsection 4.1 except 4.1.3 and;
- 5.2 Transaction Documents to include:
  - 5.2.1 Sale/Purchase Agreement
  - 5.2.2 Closing Statement
  - 5.2.3 Notes (must include all terms and conditions, including but not limited to balance, payment amount, payment period, interest rate and mandated ratios)
  - 5.2.4 Mortgages (see 5.2.3)
  - 5.2.5 Leases (Complete)
- 5.3 Financial Documents to include:
  - 5.3.1 Projected statement of Revenue and Expenses for thirty-six (36) months;
  - 5.3.2 Projected statement of Revenue and Expenses converted to cash flow (for 36 months);

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# PROPOSED REGULATIONS

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- 5.3.3 Beginning Pro Forma Balance Sheet. (end of first, second and third years):
- 5.3.4 Ending Pro Forma Balance Sheets (end of year, second and third years):
- 5.3.5 Any newly established Facility without a parent, or any new or newly owned facility with a newly established parent without a financial history of at least thirty-six (36) months will provide evidence of capital availability equal to four (4) months of anticipated facility expenses as evidenced on the pro forma profit and loss statement. Said capital availability shall be maintained at a local financial institution for the first twenty-four (24) months of operation of the facility:
- 5.3.6 A letter from the facility instructing the local financial institution to notify DHSS immediately if the agreed upon balance is not maintained:
- 5.3.7 Information on the controlling organization to include:
  - 5.3.7.1 The most recent three (3) years of audited year-end financial statements for the controlling organization:
  - 5.3.7.2 The most recent three (3) years of audited personal financial statements for the proprietors or partners:
  - 5.3.7.3 The most recent three (3) years of audited personal financial statements for guarantors of a corporate transaction:
- 5.3.8 The Department reserves the right to require the submission of additional information upon initial review: and
- 5.3.9 Additional materials which will facilitate analysis are encouraged.
- 5.4 Effective upon the date of purchase or change of ownership the facility will provide monthly financial information to DHSS as required. All in-house prepared financial information is to include the following certification signed by the Chief Financial Officer: "All financial information provided herewith is certified to be true and correct to the best of my knowledge and belief, under penalty of perjury." The information will include:
  - 5.4.1 Balance sheet:
  - 5.4.2 Profit/Loss statement:
  - 5.4.3 Statement of cash flow: and
  - 5.4.4 Current resident census.
- 5.5 Any material adverse change to the facility's cash flow or financial position must be reported to the Department by the facility in writing within five (5) business days of its occurrence or discovery.

## **6.0 Resident Trust Funds**

- 6.1 Every facility that receives, holds or disburses funds belonging to the residents shall maintain and retain the below listed documentation. The documentation must be provided to DHSS upon request.
  - 6.1.1 Copy of the current Surety Bond covering Resident Trust Funds.
  - 6.1.2 Copies of appropriate account statements for the Fund (bank statements) for the most recent month.
  - 6.1.3 Copies of ledger account records for each resident having funds in the account corresponding to the most recent account statement.
  - 6.1.4 If reconciliations are performed, copies of the statement of reconciliation for the appropriate month.
  - 6.1.5 A record of all residents discharged from the facility during the previous twelve (12) months. For each discharged resident the facility shall document the following:
    - 6.1.5.1 Date of departure:
    - 6.1.5.2 Reason for departure:
    - 6.1.5.3 Resident balance in trust fund at date of departure:
    - 6.1.5.4 Date and disposition of resident funds.

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## **7.0 Audited Financial Disclosure Requirement**

- 7.1 When the Department determines that financial conditions exist which threaten the health or safety of a resident(s) in a facility, the Department may require the facility to submit certified in-house financial statements within 15 days of request and audited financial information prepared by an Independent Certified Public Accountant within 60 days, which may be extended by the Department upon written request.
- 7.2 Conditions which may prompt the Department to require audited financial disclosure include but are not limited to:
  - 7.2.1 Substandard Quality of Care that is linked to an adverse financial condition.
  - 7.2.2 A material adverse change to the facility's financial position.
  - 7.2.3 Facility/Equipment maintenance inadequacies that are linked to an adverse financial condition.
  - 7.2.4 Repeated or frequent payroll interruptions or shortages.
  - 7.2.5 Confirmed delinquencies on invoices from suppliers or attendant court actions.
  - 7.2.6 Personnel shortages (understaffing and /or under-qualification of staff) that are linked to an adverse financial condition.
  - 7.2.7 Delinquent tax payments.
  - 7.2.8 Bankruptcy, reorganization or closure.
- 7.3 Audits may be transmitted to the Department by electronic means. An original, bound, signed audit, prepared by an independent certified public accountant, must be forwarded to the Departments.
- 7.4 Contents of an Audited Financial Report:
  - 7.4.1 The audited financial report shall indicate the current financial position of the facility and the results of its operations, cash flows and changes in capital. The report shall conform to GAAP practices. It shall include:
    - 7.4.1.1 Report of independent certified public accountant;
    - 7.4.1.2 Balance sheet reporting assets, liabilities, and capital;
    - 7.4.1.3 Statement of operations;
    - 7.4.1.4 Statement of cash flows;
    - 7.4.1.5 Statement of changes in capital; and
    - 7.4.1.6 Notes to financial statements. These notes shall be those required by GAAP.

## **8.0 Qualifications of Independent Certified Public Accountant**

- 8.1 In order for the Department to recognize a person or firm as a qualified independent certified public accountant the person or firm must meet or exceed the following qualifications:
  - 8.1.1 Is in good standing with the AICPA and in all states in which the accountant is licensed to practice;
  - 8.1.2 Has neither directly nor indirectly entered into an agreement of indemnification with respect to the audit of the facility; and
  - 8.1.3 He or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Delaware State Board of Accountancy, or similar code.

## **9.0 Consolidated Audits**

- 9.1 A facility may make written application to DHSS for approval to file consolidated financial statements in lieu of separate annual financial statements if the facility is part of a group. Consolidated statements must meet the following requirements:
  - 9.1.1 Amounts shown on the consolidated audited financial report shall be shown on the worksheet;
  - 9.1.2 Amounts for each separately licensed facility subject to this section shall be stated separately;
  - 9.1.3 Non-facility operations may be shown on the worksheet on a consolidated or individual basis;
  - 9.1.4 Explanations of consolidating and eliminating entries shall be included;

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# PROPOSED REGULATIONS

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- 9.1.5 A reconciliation of any differences between the amounts shown in the individual facility columns of the worksheet and comparable amounts shown on the annual statements of the facilities shall be included;
- 9.1.6 Notes on each facility included in a consolidated audit will be included with the notes of the consolidation with each separate facility clearly identified; and
- 9.1.7 Any statements completed in excess of 30 days after the closing of the audited period will be accompanied by an in-house prepared financial statement for each separately licensed facility. The period covered by the in-house statement will be from the audit end-date through the most recent facility monthly statement. The statement will be dated and certified as correct by the signature of the Chief Financial Officer.

## **10.0 Scope of Audit and Report of Independent Certified Public Accountant**

Financial statements furnished pursuant to Section 7.4 shall be examined by the independent certified public accountant. The audit of the facility's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, *Consideration of Internal Control in a Financial Statement Audit*, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit.

## **11.0 Notification of Adverse Financial Condition**

- 11.1 A facility that is required to furnish an annual audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the facility has materially misstated its financial condition to the Department. A facility that receives a report pursuant to this paragraph shall forward a copy of the report to the Department within five (5) business days of receipt of the report accompanied by any amended or corrected audit generated as a result of the misstatement.
- 11.2 No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with Section 10.1.
- 11.3 If the accountant, subsequent to the date of the audited financial report filed pursuant to this regulation, becomes aware of facts that might have affected his or her report, the Department notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

## **12.0 Conduct of Facility in Connection with the Preparation of Required Reports and Documents**

- 12.1 No director or officer of a facility shall, directly or indirectly:
  - 12.1.1 Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this regulation; or
  - 12.1.2 Fail to accurately report any material fact or information to the accountant in connection with any audit or review required under this regulation; or
  - 12.1.3 Directly or indirectly coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this regulation that results in the submission materially misleading financial statements.

## **13.0 Enforcement and Oversight Authority**

- 13.1 The Department is authorized to impose the below listed actions to monitor the financial capability of a facility it has determined to be in financial distress. Noncompliance with any imposed action may result in the imposition of civil penalties or other remedies for compliance as authorized by 16 **Del.C.** Chapter 11, Subchapter I.
  - 13.1.1 Monthly submission within thirty (30) calendar days of the end of the month of monthly financial information from the facility to include:

- 13.1.1.1 Balance Sheet, Profit and Loss Statement, Statement of Cash Flows, Census Information; and
- 13.1.1.2 Certification by the Chief Financial or Corporate Officer with the following statement: "All financial information provided herein is certified to be true and correct to the best of my knowledge and belief, under penalty of perjury."
- 13.1.2 Submission of monthly certifications from the facility that all required licenses, taxes and insurances are paid-to-date, are current and in effect.
- 13.1.3 Attendance of facility and corporate staff at periodic meetings with the Department to discuss past performance and expectations for future performance, to include:
  - Facility Administrator
  - Regional/Corporate CFO/Controller
  - Regional Administrator
- 13.1.4 Requirement of a written plan from the facility indicating how it will return to profitability.
- 13.1.5 Reclassification of the facility license from annual to provisional status.
- 13.1.6 Requirement that the parent organization (if any) facility provide a written assurance to the Department that the parent company will step in to provide financial support to ensure that the residents continue to receive quality care. The written assurance is to include text as provided by the Department.
- 13.1.7 Query courts of local jurisdiction for pending or past legal actions or judgments against the facility by suppliers and/or government agencies.
- 13.1.8 Notification to The Centers for Medicare and Medicaid Services of the facility's financial difficulty (federally certified facilities).
- 13.1.9 The issuance of an emergency order temporarily transferring the management of the facility to another qualified entity in cases where the physical health or safety of a resident(s) is in imminent risk. The terms and conditions of the order are to be determined by the Department. At the conclusion of which the Department will make a final determination regarding the facility's ongoing licensure status.
- 13.1.10 Require written notification from the facility, to the each individual resident and, if known, a family member or legal representative that the financial capability of the facility is under review by the Department. The notification must be written in a language and manner that is easily understood by the individual resident and/or individual resident's representative.
  - 13.1.10.1 Provide a copy of the notice to the DHSS; the State Long Term Care Ombudsman; managed care organization (MCO), as appropriate; any Departmental DHSS agency involved in the resident placement in the facility, including Adult Protective Services; and the protection and advocacy agency as defined in 16 Del.C. §1102 if the resident is an individual with a developmental disability or mental illness.

## **14.0 Confidentiality of Facility Financial Records**

- 14.1 The Department shall maintain the financial documents submitted by facilities in a secure and confidential manner.
- 14.2 Financial documents submitted pursuant to these regulations are not departmental records and are not subject to 29 Del.C. Chapter 100.

## **15.0 Severability Provision**

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.



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# PROPOSED REGULATIONS

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### 70000 Certification and Regulation of Medicaid Managed Care Organizations

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM), regarding Solvency Standards for Managed Care Organizations Participating in Medicaid, specifically, *Certification and Regulation of Medicaid Managed Care Organizations*.

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 Sharon L. Summers, Planning, Policy Development and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by January 31, 2015.

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/Division of Medicaid and Medical Assistance is proposing to amend the Division of Social Services Manual (DSSM) regarding fiscal solvency standards for managed care organizations (MCOs) serving State Medicaid clients, specifically, *Certification and Regulation of Medicaid Managed Care Organizations*.

#### Statutory Authority and Other References

- Section 1902(a)(4) of the Social Security Act, *State Plan for Medical Assistance, Methods of Administration*
- Section 1903(m), *Medicaid Managed Care Organization*
- 29 Del.C. §7931, *Division of Medicaid and Medical Assistance*
- 42 CFR §483.1, *Managed Care, Basis and scope*
- 42 CFR §483.116, *Solvency standards*
- State Medicaid Director Letter, December 30, 1997, An array of provisions including *beneficiary protections, solvency standards and contract administration*

#### Background

##### *Medicaid Managed Care*

Managed Care is a health care delivery system organized to manage cost, utilization, and quality. Medicaid managed care provides for the delivery of Medicaid health benefits and additional services through contracted arrangements between state Medicaid agencies and managed care organizations (MCOs) that accept a set per member per month (capitation) payment for these services. By contracting with various types of MCOs to deliver Medicaid program health care services to their beneficiaries, states can reduce Medicaid program costs and better manage utilization of health services. Improvement in health plan performance, health care quality, and outcomes are key objectives of Medicaid managed care.

##### *Managed Care in Delaware*

Delaware has been operating a mandatory managed care program since 1996 when it implemented Diamond State Health Plan (DSHP), which covers acute, primary, and behavioral health care services for low-income children, families, and adults; children and adults with disabilities; and foster care children. In April 2012, the state expanded managed care to additional populations and added long term supports and services (LTSS) to the

benefit package with the implementation of the DSHP-Plus program. This program enrolls dual eligible beneficiaries, individuals enrolled in the Elderly and Disabled and AIDS home and community-based service (HCBS) waivers, and nursing facility residents on a mandatory basis and provides LTSS and acute, primary, and behavioral health care services to eligible individuals. DSHP and DSHP-Plus cover a limited number of outpatient and inpatient behavioral health and substance abuse services and any services in excess of the limits on visits are provided as a fee-for-service wraparound.

#### *Solvency Standards*

With respect to solvency standards imposed on the MCO by the State, federal law indicates that MCOs should meet solvency standards that the State establishes for its private MCOs or should be licensed by the State as risk-bearing entities. In accordance with above-referenced federal and state regulations:

1. States are authorized to administer Medicaid through Medicaid managed care organizations (each an "MMCO").
2. An MMCO shall provide assurances satisfactory to the State showing that its provision against the risk of insolvency is adequate to ensure that its Medicaid enrollees will not be liable for the debts if the MMCO becomes insolvent.
3. An MMCO, in order to make the required showing under Section 438.116(a), must either meet state solvency requirements for a private health maintenance organization, or be licensed or certified by the State as a risk bearing entity.

#### **Summary of Proposal**

##### *Purpose*

The purpose of these regulations is to create standards of fiscal solvency for participating managed care organizations, specifically, the certification of Medicaid Managed Care Organizations (MMCOs) as risk bearing entities. These regulations establish the standards by which Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) will evaluate and, where appropriate, certify insurers as MMCOs.

##### Summary of Proposal

This administrative regulation establishes the operational and related requirements and policies of managed care organization serving State Medicaid clients. DHSS/DMMA proposes new DSSM 70000 concerning the solvency standards required by managed care organizations participating in the Delaware Medical Assistance Program (DMAP). This new section is proposed as, *Certification and Regulation of Medicaid Managed Care Organizations* and is consistent with federal regulations.

##### *Public Notice*

In accordance with public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act, and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is seeking public comment on the proposed regulations.

#### **Fiscal Impact Statement**

There is no estimated fiscal impact.

#### **DMMA PROPOSED REGULATION #14-48**

#### **NEW**

#### **70000 Certification and Regulation of Medicaid Managed Care Organizations**

##### **1. Authority and Purpose**

- 1.1 This regulation is promulgated pursuant to Section 7931(d) of Title 29, Delaware Code.
- 1.2 Pursuant to Section 1902(a)(4) of Title XIX of the Social Security Act (42 U.S.C. §1396a(4)) and 42 C.F.R. §438.1 et. seq., the states are authorized to administer Medicaid through Medicaid managed care organizations (each an "MMCO").

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# PROPOSED REGULATIONS

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- 1.3 Pursuant to 42 C.F.R. §438.116(a), an MMCO shall provide assurances satisfactory to the State showing that its provision against the risk of insolvency is adequate to ensure that its Medicaid enrollees will not be liable for its debts if the MMCO becomes insolvent.
- 1.4 Pursuant to 42 C.F.R. §438.116(b)(1), in order to make the required showing under Section 438.116(a), an MMCO must either meet state solvency requirements for a private health maintenance organization, or be licensed or certified by the State as a risk bearing entity.
- 1.5 Pursuant to 18 Del.C. §7931(c), the Division of Medicaid and Medical Assistance (“DMMA”), which is under the direction and control of the Secretary of the Department of Health and Social Services (“DHSS”), is responsible for the performance of all of the powers, duties, and functions specifically related to Medicaid, which includes certification of MMCOs.
- 1.6 The purpose of these regulations is to set forth standards for the certification of MMCOs as risk bearing entities.

## **2. Formation and Existence**

- 2.1 Each MMCO seeking certification from DHSS shall demonstrate to the satisfaction of DHSS that:
  - 2.1.1 The MMCO is duly formed and validly existing under the laws of the State of Delaware.
  - 2.1.2 The MMCO has the necessary corporate or company power to enter into and perform its obligations under the State Medicaid Managed Care Contract (the “Contract”).
  - 2.1.3 The MMCO has taken all necessary corporate or company action to authorize the execution, delivery and performance of the Contract.
  - 2.1.4 The execution and delivery of the Contract will not, and the performance of the MMCO’s obligations under the Contract will not, result in a violation of any provision of the MMCO’s certificate of incorporation, bylaws or other governing instrument or document.
  - 2.1.5 An opinion of Delaware counsel to the MMCO will be *prima facie* evidence that the criteria in this Section 2 are satisfied.

## **3. Experience and Net Worth**

- 3.1 Either the MMCO, or a parent company or person affiliated with the MMCO, shall demonstrate, to the satisfaction of DHSS, the following:
  - 3.1.1 Five years’ experience writing or administering health insurance benefits or administering health plans, or both.
  - 3.1.2 Audited financial statements for the most recent calendar or fiscal year demonstrating, on a consolidated basis, GAAP net equity in excess of \$[10] million.

## **4. Identification of Accountant, Auditor and Actuary**

- 4.1 Each MMCO seeking certification shall identify:
  - 4.1.1 The person or persons responsible for preparing the MMCO’s financial statements in U.S. GAAP and/or STAT format and for preparing any financial reporting required under the Contract. Such person shall have accounting or finance training and experience, and shall have experience in the preparation of financial statements for health plans.
  - 4.1.2 The independent auditor that the MMCO proposes to engage for the purpose of auditing its financial books and records. Such independent auditor shall be a certified public accountant, or employ same, and shall be a member in good standing with the American Institute of Certified Public Accountants. The independent auditor shall have experience auditing health plans.
  - 4.1.3 The actuary it proposes to use for the purpose of certifying loss reserves. Such actuary shall be a member of the American Academy of Actuaries in good standing and shall demonstrate experience in the setting and/or certification of loss reserves for health plans.

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## 5. Performance Bond

- 5.1 Prior to certification, the MMCO shall obtain and submit to DHSS a performance bond from a surety licensed to write surety business in Delaware and rated A- (Excellent) or better by A.M. Best and Company. The performance bond shall be restricted to the Contract.
- 5.2 The performance bond shall identify the Delaware Department of Health and Social Services as obligee and shall be in the amount of the projected first month's capitation payment under the Contract, as agreed to by the MMCO and DHSS.
- 5.3 The MMCO shall secure and maintain the performance bond in the amount of 100% of the first month of capitation payment for each of the first 12 months after the Start Date of Operations (as defined in the Contract).
- 5.4 If the performance bond falls below 90% of the first month's capitation in any month, the MMCO has 30 calendar days to comply with the requirements of this Section and provide proof of the increased bond amount.
- 5.5 The terms of the performance bond shall be such as to allow for adjustment in the amount of the penal sum payable thereon in accordance with the performance bond requirements of the Contract.

## 6. Initial Capitalization and Solvency

- 6.1 Each MMCO seeking certification shall provide DHSS with a description of the MMCO's capitalization and the manner in which it proposes to ensure solvency during the term of the Contract. This description may include one or a combination of some or all of the following:
  - 6.1.1 A minimum level of paid-in capital and surplus as established by DHSS.
  - 6.1.2 Reinsurance or insurance transactions.
  - 6.1.3 Derivative instruments.
  - 6.1.4 Guaranties from parent or affiliated entities.
  - 6.1.5 Any other method determined by DHSS to provide adequate solvency safeguards.
- 6.2 Prior to certification, the MMCO shall provide DHSS with bank confirmations for all funds it identifies, or plans to identify, as assets on its financial statements.
- 6.3 Each MMCO seeking certification shall establish an investment policy for the investment of its assets. Such investment policy shall not deviate from the following:
  - 6.3.1 Investments in any one entity shall not exceed 10% of the MMCOs' assets unless:
    - 6.3.1.1 Such investments are the voting stock or other interests in a subsidiary.
    - 6.3.1.2 Such investments are general obligations of the United States or of a state.
    - 6.3.1.3 Such investments are issued, assumed or guaranteed by an agency of the United States government, or in which the United States government is a participant.
  - 6.3.2 Investments in medium or lower grade corporate obligations shall comply with the requirements of 18 Del.C. Ch. 13.
  - 6.3.3 Investments in real estate mortgages and mortgage pools are permitted provided that such investments comply with the requirements of 18 Del.C. §1323.
  - 6.3.4 Investments in the MMCO's own capital stock or other equity interests are prohibited.
  - 6.3.5 Notes or other evidence of indebtedness of any director, officer, employee or controlling shareholder of the MMCO are prohibited.

## 7. Certification.

- 7.1 If upon completion of its application, DHSS finds that the MMCO has met the requirements therefor under this regulation; DHSS shall issue to the MMCO a proper certificate confirming that the MMCO has been certified as a risk bearing entity for purposes of the Delaware Medicaid program. If DHSS finds that the MMCO has not met the requirements for certification under this regulation, DHSS shall issue an order refusing such certification.

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# PROPOSED REGULATIONS

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7.2 DHSS's certification of an MMCO as a risk bearing entity shall be limited to the MMCO's business related to the Delaware Medicaid program and shall not authorize the MMCO to conduct business that would otherwise require licensure under Title 18 of the Delaware Code.

7.3 Although issued and delivered to the MMCO, the certificate issued pursuant to Section 7.1 of this regulation at all times shall be property of the State. Upon expiration, suspension or termination thereof, the MMCO shall promptly deliver the certificate to DHSS.

## **8. Financial Stability**

8.1 The MMCO shall be responsible for its sound financial management in accordance with applicable professional standards. The MMCO shall:

8.1.1 Present to DHSS any information and records deemed necessary to determine its financial condition. The response to requests for information and records shall be delivered to DHSS, at no cost to DHSS, in a reasonable time from the date of the request or as specified therein.

8.1.2 Immediately notify DHSS when the MMCO has reason to consider insolvency or otherwise has reason to believe it or any of its subcontractors is other than financially sound and stable, or when financial difficulties are significant enough for the Chief Executive Officer or Chief Financial Officer to notify the MMCO's governing body of the potential for insolvency, and

8.1.3 Maintain a uniform accounting system that adheres to generally accepted accounting principles for charging and allocating to all funding resources the MMCO's costs incurred hereunder including, but not limited to, the American Institute of Certified Public Accountants Statement of Position 89-5 "Financial Accounting and Reporting by Providers of Prepaid Health Care Services."

8.2 The MMCO shall contract with an independent licensed certified public accountant to conduct an annual financial audit of the MMCO, including but not limited to the financial transactions made under the Contract.

8.3 The MMCO shall notify DHSS within 10 calendar days if its contract with an independent auditor or actuary has changed or been terminated. The notification shall include the date of and reason for the change or termination. If the change or termination occurred as a result of a disagreement or dispute, the notification shall include the nature of the disagreement or dispute. In addition, the notification shall include the name of the replacement auditor or actuary, if any.

## **9. Reserved Funds For Incurred But Not Reported Costs And Received But Unpaid Claims**

9.1 The MMCO shall establish and maintain an actuarially sound process for estimating and tracking incurred but not reported costs and received but unpaid claims. The MMCO shall reserve funds for each major category of service (e.g., hospital inpatient, physician, nursing facility) to cover both incurred but not reported and reported but unpaid claims. The MMCO shall conduct reviews, at least annually, to assess its reserving methodology and make adjustments deemed by DHSS to be necessary to the methodology.

## **10. Inspection and Audit of Financial Records**

10.1 The MMCO shall meet all federal and state requirements with respect to inspection and auditing of financial records. The MMCO shall cooperate with DHSS or its authorized representative and provide all financial records, including but not limited to records of its subcontractors, related party agreements, and provider participation agreements as specified by DHSS so that DHSS or its authorized representative or the federal Department of Health and Human Services or its authorized representative may inspect and audit the MMCO's financial records at least annually or at DHSS's discretion.

10.2 The MMCO shall submit financial reports as described in the Financial Reporting Guide, which is incorporated by reference into this regulation.

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## 11. **Decertification**

- 11.1 The MMCO shall at all times comply with the requirements set forth in the Contract. DHSS may immediately revoke the MCCO's certification upon termination of the Contract in accordance with its terms or as a result of a breach thereof by the MMCO, or upon the determination of DHSS that:
- 11.1.1 the MMCO has become financially unsound to the point of threatening the ability of DHSS to obtain the services provided for under the Contract.
  - 11.1.2 the MMCO ceases to conduct business in the normal course.
  - 11.1.3 the MMCO makes a general assignment for the benefit of creditors, or
  - 11.1.4 the MMCO suffers or permits the appointment of a receiver for its business or its assets.
- 11.2 In the event of such decertification, DHSS shall notify the MMCO of the proposed decertification in accordance with 29 Del.C. §§10122 and 10131. If the MMCO requests a hearing on the proposed decertification, DHSS shall appoint a hearing officer to preside over the hearing.
- 11.3 Hearing procedures
- 11.3.1 At any hearing on the proposed decertification, the parties shall have the right to appear in person or be represented by counsel, or both. The parties shall have the right to produce evidence and witnesses on their behalf and to cross examine witnesses.
  - 11.3.2 No fewer than 10 days prior to the date set for any hearing on the proposed decertification, the parties shall submit to the hearing officer a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.
  - 11.3.3 The hearing officer may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.
  - 11.3.4 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.
  - 11.3.5 An attorney representing a party in a hearing or matter before the hearing officer shall notify the hearing officer of the representation in writing as soon as practicable.
  - 11.3.6 Requests for postponements of any matter scheduled before the hearing officer shall be submitted to the hearing officer in writing no fewer than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.
  - 11.3.7 If the MMCO fails to appear at the decertification hearing after receiving the notice required by 29 Del.C. §10122 and 10131, the hearing officer may proceed to hear and determine the validity of the proposed decertification.
  - 11.3.8 The hearing officer shall render a decision based solely on the evidence admitted at the hearing.
- 11.4 In the event of decertification, the MMCO shall be paid for any outstanding monies due less any assessed sanctions in accordance with the Contract.
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### **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

### **PUBLIC NOTICE**

### **Inpatient Hospital Services Freestanding Inpatient Rehabilitation Hospital Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Inpatient Hospital Services, specifically,

*Freestanding Inpatient Rehabilitation Hospital Services.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy Development and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by January 31, 2015.

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/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan regarding Inpatient Hospital Services, specifically, *Freestanding Inpatient Rehabilitation Hospital Services*.

**Statutory Authority**

- Section 1886(j) of the Social Security Act, *Prospective Payment for Inpatient Rehabilitation Services*
- 42 CFR §412.604, *Conditions for payment under the prospective payment system for inpatient rehabilitation facilities*
- 42 CFR §440.10, *Inpatient hospital services, other than services in an institution for mental diseases*
- 42 CFR §447, Subpart C - *Payment for Inpatient Hospital and Long-Term Care Facility Services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

**Background**

Delaware Medicaid reimburses enrolled providers for services provided to Medical Assistance recipients, including hospitals, under the authority of Title XIX of the Social Security Act. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services.

Inpatient hospital services means services that are ordinarily furnished in a hospital for the care and treatment of inpatients; are furnished under the direction of a physician or dentist; and, are furnished in an institution that (i) is maintained primarily for the care and treatment of patients with disorders other than mental diseases; (ii) is licensed or formally approved as a hospital by an officially designated authority for State standard-setting; (iii) meets the requirements for participation in Medicare as a hospital; and (iv) has in effect a utilization review plan, applicable to all Medicaid patients, that meets the requirements of 42 CFR §482.30, unless a waiver has been granted by the Secretary. Inpatient hospital services do not include skilled nursing facility (SNF) and intermediate care facility (ICF) services furnished by a hospital with a swing-bed approval.

Inpatient hospital services are paid for Medicaid recipients by means of rates determined in accordance with the following principles, methods and standards which comply with Federal regulations at 42 CFR §447.250 through 42 CFR §447.299 and 1902(a)(13)(A), 1902(a)(30), and 1923 of the Social Security Act.

*Inpatient Rehabilitation Hospital Services*

In accordance with 42 CFR §485.58, an inpatient rehabilitation hospital must provide a coordinated rehabilitation program that includes, at a minimum, physicians' services, physical therapy services, and social or psychological services. These services must be consistent with the plan of treatment and the results of comprehensive patient assessments.

**Summary of Proposal***Purpose*

To establish payment methodology for freestanding inpatient rehabilitation hospital services reimbursement in the Delaware Medicaid State Plan.

*Payment Methodology for Freestanding Rehabilitation Hospital Services*

For claims with dates of discharge on or after December 1, 2014, the Delaware Medical Assistance Program (DMAP) shall reimburse freestanding inpatient rehabilitation hospital services using the Medicare Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS).

The Medicare IRF PPS is based on a Patient Assessment Instrument (PAI). The PAI contains patient clinical and demographic information. The PAI classifies the patient into distinct groups based on their clinical characteristics and what the patient's expected resource needs will be. Separate payment rates are then calculated for each group.

Medicare rates are updated annually to reflect changes in local wages using the hospital wage index. Delaware Medicaid will follow Medicare policy on local wage rate increases.

*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) published notice of proposed amendment to the methods and standards governing reimbursement methodology for freestanding inpatient rehabilitation hospitals participating in the Delaware Medical Assistance Program (DMAP) before the proposed effective date of December 1, 2014 on November 15, 2014 in *The News Journal* and on November 17, 2014 in the *Delaware State News*.

To satisfy *state* public notice requirements established at Title 29, Chapter 101 of the Delaware Code, this notice appears in the January 1, 2015 issue of the Delaware *Register of Regulations*.

The provisions of this draft state plan amendment (SPA) are subject to the Centers for Medicare and Medicaid Services (CMS) review and approval. 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.

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

**Fiscal Impact Statement**

The Title XIX Medicaid State Plan will be amended to add information about the payment methodology for freestanding inpatient rehabilitation hospital services to clarify that the Delaware Medical Assistance Program (DMAP) uses the Medicare Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS) methodology.

DMAP's proposal involves no change in the definition of those eligible to receive the inpatient rehabilitation hospital services benefit under Medicaid, and the inpatient rehabilitation hospital services benefit to eligible recipients remains the same.

There is no estimated fiscal impact.

**DMMA PROPOSED REGULATION #14-47**

REVISION:

ATTACHMENT 4.19-A.2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES FOR INPATIENT HOSPITAL SERVICES

CONTINUED

Freestanding Inpatient Rehabilitation Hospital Services

For claims with dates of discharge on or after December 1, 2014, the Delaware Medical Assistance Program



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# PROPOSED REGULATIONS

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(DMAP) shall reimburse freestanding inpatient rehabilitation hospital services using the Medicare Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS).

The Medicare IRF PPS is based on a Patient Assessment Instrument (PAI). The PAI contains patient clinical and demographic information. The PAI classifies the patient into distinct groups based on their clinical characteristics and what the patient's expected resource needs will be. Separate payment rates are then calculated for each group.

Medicare rates are updated annually to reflect changes in local wages using the hospital wage index. Delaware Medicaid will follow Medicare policy on local wage rate increases.

The fee schedule and any annual/periodic adjustments to the fee schedule and effective dates are available on the Delaware Medical Assistance Program (DMAP) website at: <http://www.dmap.state.de.us/downloads/feeschedules.html>

Except as otherwise noted in the plan, payment for these services is based on State-developed fee schedule rates, which are the same for both governmental and private providers of freestanding inpatient rehabilitation hospital services.

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)v (16 Del.C. §122(3)v)  
16 DE Admin. Code 4453

### PUBLIC NOTICE

#### 4453 Regulations Governing Cosmetology and Barbering

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (the Department), is proposing revisions to the State of Delaware Regulations Governing Cosmetology and Barbering. Amendments have been made to the existing regulation to add requirements and definitions for mobile units; clarify ventilation and hand wash sink requirements, and to whom may remove hair; prohibits use of razor blades and animals such as fish for removing calluses during pedicures, laser technology and threading to remove hair; and the application of permanent makeup unless it is separately permitted by the Department. On January 1, 2015, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the January 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4705

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by January 31, 2015 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700

#### 4453 Cosmetology and Barbering

### 1.0 General Provisions

*(Break in Continuity Within Section)*

- 1.6 Effective Date. These Regulations shall ~~become~~ are adopted on (date) and have an effective date of October 11, 2014 April 11, 2015.

## 2.0 Definitions

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

**“Instructor”** means any person who is a cosmetologist, barber, electrologist, aesthetician or nail technician, who teaches cosmetology, barbering, electrology, aesthetics or nail technology in a duly registered school of cosmetology, barbering, electrology, aesthetics or nail technology.

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

**“Mobile Unit”** means any self-contained, self-supporting, enclosed mobile unit which is at least 24 feet in length which is licensed as a salon, has a servicing area that is licensed for the practice of certain licensed practices by the Board of Cosmetology and complies with these Regulations.

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

**“Servicing Area”** means an operating base location to which a mobile unit returns regularly for cleaning of the vehicle, equipment and utensils, and solid wastes; refilling water tanks, replenishing supplies and utensils. Unless otherwise approved by the Board of Cosmetology the operator of the mobile unit shall have a written letter agreement with the license holder of the salon to use such premises as a servicing area. To function as an operating base for a mobile unit, the servicing area shall be a fixed location salon with a valid operating license issued by the Division of Professional Regulations.

## 3.0 Inspections

The Secretary shall have right of entry, during the facility's hours of operation and other reasonable times and in a reasonable manner without fee or hindrance, for the purpose of determining if the facility is in compliance with these Regulations. The facility shall allow for inspection and shall provide information and records needed to determine compliance with these Regulations, whether or not the evidence exists that the facility is in violation of these Regulations.

## 4.0 Operational Requirements

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

- 4.5 ~~Ventilation. Each licensed facility shall have a system of adequate ventilation in accordance with the provisions of local building codes.~~ Every licensed facility shall be provided with adequate ventilation which draws air away from employees and patrons, and vents to the outside. A minimum of 50 cubic feet per minute (CFM) intermittent or 20 CFM continuous shall be provided to protect the health of employees and patrons. Ventilation units must be kept in proper working condition. The use of filtering devices which merely remove odors and not gases, mists, dust, etc., shall not constitute ventilation.

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

- 4.9 Hand Washing Sinks. A hand washing sink which is convenient and accessible to all work stations shall be provided and separate from the sink provided in the bathroom. This sink must be supplied with liquid soap, disposable paper towels and a covered waste receptacle and shall be used for no other purpose. One hand washing sink per 40 people is required. The number of people will be determined by the occupant load.

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

### 4.15 Mobile Units

- 4.15.1 Shall possess a self-contained, potable water supply. The portable water tanks shall be not less than 100 gallons and the holding tanks shall be of adequate capacity. In the event of depletion of potable water, operations shall cease until the supply is replenished.
- 4.15.2 Shall possess a self-contained, recirculating, flush chemical toilet with holding tank.
- 4.15.3 Shall possess a covered galvanized, stainless steel or other non-corrosive metal container for purposes of depositing hair clippings refuse, and other waste materials.

# PROPOSED REGULATIONS

- 4.15.4 Shall possess a split lead generator with a remote starter, muffler, and a vent to the outside.
- 4.15.5 Shall possess a sealed combustible heater with an outside vent.
- 4.15.6 A mobile unit shall at all times be in the charge of a person licensed pursuant to this Regulation.
- 4.15.7 The grey and black water discharge shall be disposed of at a Department of Natural Resources and Environmental Control approved Discharge Station.
- 4.15.8 Shall meet all requirements in this regulation.
- 4.15.9 Shall have a signed agreement with a servicing area.

## 5.0 Safety and Sanitation Requirements

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

- 5.2 Additional Requirements for Cosmetologists. In addition to the sanitation requirements in Section 5.1 of these Regulations, licensed facilities that offer or provide services normally performed by a cosmetologist shall also comply with the following requirements:

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

- 5.2.7 The use of laser technology for hair removal is prohibited. Hair removal shall be performed by a licensed cosmetologist or licensed aesthetician only. Nail technicians are prohibited from performing any type of hair removal, including waxing, or tweezing.

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

## 10.0 Prohibited Hazardous Substances/Use of Products

- 10.1 No licensed facility shall have on the premises cosmetic products containing hazardous substances, which have been banned by federal, state or local law for use in cosmetic products.
- 10.2 No product shall be used in a manner that is disapproved by the Board, DHSS, or the FDA, or is in violation of any applicable Federal or State statute or Regulation.
- 10.3 Razor blades shall not be used to remove calluses during pedicures and other foot and skin treatment.
- 10.4 Fish or any other animal may not be used to remove calluses or dead skin during a pedicure or any other foot and skin treatment.
- 10.5 Application of permanent make up is considered Body Art and is prohibited unless the facility is separately permitted as a Body Art Establishment by the Division of Public Health.
- 10.6 The use of laser technology for hair removal is prohibited.
- 10.7 The practice of threading for hair removal is prohibited.

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

**4453 Regulations Governing Cosmetology and Barbering**

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

### **Child Care Subsidy Program, Child Support Policies and Procedures**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Child Support Policies and Procedures*.

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 Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2015.

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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Child Support Policies and Procedures*.

### Statutory Authority

- 45 CFR §98.1, *Goals and purposes*
- 45 CFR §98.20, *A child's eligibility for child care services*
- 45 CFR §205.10, *Hearings*

### Background

Delaware Health and Social Services ("DHSS")/Division of Social Services ("DSS") is designated as the lead agency with primary responsibilities for the planning and administration of child care subsidies funded with the Child Care Development Fund.

The Child Care and Development Fund ("CCDF") Block Grant Act of 1990, as amended, 42 USC § 9858b (b)(1)(A), (the "Act") requires the Lead Agency to "administer, directly, or through other governmental or non-governmental agencies" the funds received. The regulations at 45 CFR 98.11 provide that, in addition to retaining "overall responsibilities" for the administration of the program, the Lead Agency must also (among other things) promulgate all rules and regulations governing the overall administration of the CCDF program.

### Summary of Proposed Changes

The Division of Social Services (DSS) is removing and amending child support rules that require a client to cooperate with the Division of Child Support Enforcement (DCSE) as a condition for eligibility for subsidized child care services. The current rule creates unintended delays and barriers to accessing child care services to low income working families seeking assistance.

There are a number of valid reasons that lead parents to decide not to pursue formal child support services. Many parents have informal agreements that establish the non-custodial parent will assist the custodial parent in supporting their children in common. Sometimes those agreements include cash payments to the non-custodial parent at other times support is made in the form of non-cash assistance such as paying specific bills, providing services, or purchasing items needed by the family. Mandating child support cooperation or court involvement is seen by many custodial parents as potentially jeopardizing the relationship that has been forged with the non-custodial parent and as a threat to relationship between the non-custodial parent and their children. Additionally there are circumstances when parents decide not to pursue child support services for fear of retributions from the absent parent; this is often the case in domestic violence situations even though parents may request good cause for non-cooperation with child support enforcement. In these cases, employment or appropriate care of children can be put in jeopardy. Whatever the immediate reason for not accessing services through DCSE, these families have the option of pursuing assistance through DCSE on a volunteer basis at any time.

The following policy sections in the Division of Social Services Manual (DSSM) are affected by the proposed changes:

- DSSM 11003.4, ~~*Cooperating with Child Support*~~ RESERVED
- DSSM 11003.4.2, ~~*Sanctions for Child Support Non-Cooperation*~~ RESERVED
- DSSM 11003.4.3, ~~*Curing Child Support Sanctions*~~ RESERVED
- DSSM 11003.4.4, ~~*Good Faith Determination*~~ RESERVED
- DSSM 11003.4.6, ~~*Fair Hearings*~~ RESERVED
- DSSM 11003.4.7, ~~*Child Support Enforcement Procedures*~~ RESERVED

DSSM11004.2.1, *Conducting the Interview*

DSSM 11004.11, *Review/Determination*

**DSS PROPOSED REGULATION #14-46****REVISION:****11003.4 Cooperating with Child Support RESERVED**

45-CFR-98.20

All applicants and recipients must be referred to the Division of Child Support Enforcement (DCSE) as a condition of eligibility for child care services. Do not delay approval of child care services (if otherwise eligible) while waiting for a response from DCSE. The Division of Social Services will presume cooperation until notified otherwise by DCSE.

Failure of a parent/caretaker to cooperate with and provide information to the DCSE will result in the case being sanctioned. This means the child care case will close until the applicant or recipient has complied with all DCSE requirements.

*(Break in Continuity of Sections)*

**11003.4.2 Sanctions for Child Support Non-Cooperation RESERVED**

45-CFR-98.20

Applicants and recipients who do not cooperate with or provide requested information to the Division of Child Support Enforcement (DCSE) will have their child care case closed until DCSE determines they have cooperated.

**11003.4.3 Curing Child Support Sanctions RESERVED**

45-CFR-98.20

Once DCSE notifies DSS of cooperation or good faith effort, DSS will remove the sanction.

**11003.4.4 Good Faith Determination RESERVED**

45-CFR-98.20

All determinations of good faith effort are the responsibility of the Division of Child Support Enforcement (DCSE). Applicants and recipients for whom DCSE has made a good faith determination may receive child care services without cooperating fully with DCSE.

*(Break in Continuity of Sections)*

**11003.4.6 Fair Hearings RESERVED**

45-CFR-205.10

Applicants and recipients have the right to request a fair hearing if they disagree with any DSS decision. See DSSM section 5000. DCSE will schedule and conduct fair hearings on issues of non-cooperation and parents good faith efforts to establish paternity and secure child support.

**11003.4.7 Child Support Enforcement Procedures RESERVED**

4. At the eligibility interview, the DSS worker will explain the client's responsibilities in relation to securing support

and the circumstances that are acceptable for refusal to cooperate. The applicant and worker will sign Form 204. A copy of Form 204 will be given to the applicant.

~~2. At the time of application, if applicants have at least the minimum information required for child support case initiation, DSS staff should initiate the child support case via the computer. DSS assumes cooperation unless otherwise notified by DCSE.~~

An interview with the DCSE is waived in the following cases:

- ~~a) Child Care cases where there are no children with absent parents;~~
  - ~~b) Child Care cases where deprivation is based on incapacity;~~
  - ~~c) Child Care cases in which an acceptable reason for non-cooperation has been determined by DCSE;~~
  - ~~d) Child Care reapplications where the caretaker has previously cooperated with the Division, and the absent parents involved in the case are the same individuals that were involved when the case was previously open.~~
- ~~3. When the DCSE indicates that the caretaker has been uncooperative, the Child Care case is closed.~~
- ~~4. The client is responsible for proving necessary verifications to DCSE.~~

*(Break in Continuity of Sections)*

## 11004.2.1 Conducting the Interview

The interview will include:

- ~~A. an An evaluation of parents/caretakers need for child care services (see Section 11003);~~
- ~~B. a A determination of financial eligibility as needed;~~
- ~~C. an An assessment of the family's child care needs as well as the needs of the ~~child(ren)~~ children to be placed in care;~~
- ~~D. an explanation of the Child Support Cooperation requirement;~~
- ~~E. D. an An explanation of the available types of child care; the choices parents/caretakers have regarding these provider types; the various provider requirements regarding licensure, possible co-pays, health, and safety, including record of immunization; and required child abuse and criminal history checks;~~
- ~~F. E. an An explanation of DSS payment rates and parent fee scale, including a discussion of how fees are assessed, where fees are to be paid, what happens if the fee is not paid, and how parents/caretakers are to keep DSS informed of changes that affect fees;~~
- ~~G. F. an An explanation of parents/ caretakers rights and responsibilities;~~
- ~~H. G. completion Completion of the Application for Child Care Assistance, and as applicable completion of the Child Care Authorization and the Child Care Payment Agreement form; and~~
- ~~I. H. verification Verification of appropriate information establishing need and income.~~

The entire process, from the time when parents/caretakers make an informal request for child care to the time when a decision is finally made, should take no longer than one month.

Parents/caretakers who fail to keep their initial appointment for an interview are given the opportunity to reschedule.

*(Break in Continuity of Sections)*

## 11004.11 Review/Determination

45 CFR 98.1

All childcare applicants and recipients are continuously eligible for child care services for twelve months. This means that the applicants and recipients remain eligible for child care services unless:

- A. The child moves out of or is removed from the parent's/caretaker's home, or
- B. The child moves out of state, or
- C. The child is deceased, ~~or,~~
- ~~D. The parent/caretaker does not cooperate with child support requirements~~

In the event of any of the above, close the child care case.

Additionally, the child care parent fee will not change during the authorization unless the parent/caretaker in a single parent home loses his or her job or one or both parents in a two parent home loses his or her job. (See DSSM 11004.12.1 Continuing Child Care after Loss of Need.)

Complete a review/redetermination of the circumstances of each parent/caretaker at least once every twelve months and just prior to the end of each authorization period.

Close the child care case if parents/caretakers fail to complete a review or return the six month interim report. Only child care/food benefit cases will receive an interim report. If the parents/caretakers provide good cause for their failure to complete or return the report, the case should be processed.

Good cause can be anything believed to be reasonable, but generally includes things such as:

1. ~~Illness~~ Illness;
2. ~~court~~ Court required appearance;
3. a ~~household~~ Household emergency (fire, heating problem, family crisis, etc.);
4. ~~lack~~ Lack of transportation; or
5. ~~bad~~ Inclement weather.

Parents/caretakers whose child care cases close because they failed to complete a redetermination or provide verification, can reapply for service. However, if DSS is in a "wait list" situation, these parents/caretakers will be subject to DSS' priority service order (see Section 11004.3.1).

Do not allow an authorization to end or close a case without first ensuring the parents/caretakers were given timely and adequate notice.

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 & 2503; 29 Delaware Code, Chapter 101  
(18 **Del.C.** §§311 and 2503; 29 **Del.C.**, Ch. 101;)  
18 **DE Admin. Code** 607

### PUBLIC NOTICE

#### 607 Defensive Driving Course Discount (Automobiles and Motorcycles)

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 607 relating to Defensive Driving Course Discount (Automobiles and Motorcycles) [Formerly Regulation 37]. The docket number for this proposed AMENDED regulation is 2428.

Senate Bill 178 with Senate Amendment 1 of the 147<sup>th</sup> General Assembly transfers the authority to regulate Delaware's state-approved motor vehicle accident prevention (defensive driving) courses from the Department of Insurance to the Division of Motor Vehicles, except for the regulatory authority over the insurance discount as required by the program, which will remain under the Department of Insurance. The Delaware Code authority for the change is 18 **Del.C.** §§311 and 2503; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

[www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml](http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml)

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, January 30, 2015. Any such requests should be directed to:

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

#### 607 ~~Defensive Driving~~ Motor Vehicle Accident Prevention Course Discount (Automobiles and Motorcycles)

##### 1.0 Purpose and Authority

The purpose of this Regulation is to provide a discount applicable to total premiums for persons who voluntarily attend and complete a Defensive Driving Motor Vehicle Accident Prevention Course and to ~~provide criteria for Defensive Driving Courses, Providers and Instructors.~~ This Regulation is adopted pursuant to 18 **Del.C.** §~~314~~ 311, and 18 **Del.C.** §2503 and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 **Del.C.** Ch. 101.

##### 2.0 Definitions

~~“Classroom courses” for the purpose of this regulation means a defensive driving program conducted with students and instructors in a location common to all. These courses may include the use of audio or visual aides or materials.~~

“Department” means the Delaware Insurance Department.

“Division” means the Delaware Division of Motor Vehicles.



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“Motor Vehicle Accident Prevention Course” means approved courses referred to as defensive driving courses.

~~“On-line courses” for the purpose of this regulation means instruction provided online or offline through the use of a computer (or digital reader) including the use of CD-ROMS or similar pre-recorded media or websites.~~

~~“Providers” means corporate sponsor for any course as well as the individual who signs the application for the course.~~

## 3.0 Minimum Requirements

A ~~Defensive Driving~~ Motor Vehicle Accident Prevention Course Discount shall be applied to the total premiums for bodily injury liability coverage, property damage liability coverage, and personal injury protection coverage provided:

- 3.1 The automobile, motor home, or motorcycle is individually owned or jointly owned by husband and wife or by members of the same household and is classified and rated as a private passenger automobile, motor home, or motorcycle; and
- 3.2 The driver who customarily operates the automobile, motor home, or motorcycle has a certificate certifying voluntary attendance and successful completion within the last 36 months from the date of application of a motor vehicle accident prevention course or motorcycle rider course, as appropriate, which is approved by the ~~Department~~ Division. The presentation of a course-completion certificate (whether for an initial or refresher course) shall constitute conclusive evidence of satisfaction of the requirements of this regulation for purposes of receiving the discount; and insurance carriers may not demand or require any other form of documentation or prior course completion certificates in order to apply the applicable discount required by this regulation.

## 4.0 Application

- 4.1 A 10% discount shall be applied with respect to the applicable premium(s) for each automobile, motor home, or motorcycle insured under a policy if all operators named on the policy as insureds complete the course. If fewer than all the operators covered as principal or occasional drivers complete the course, then the discount shall be a fraction of 10%. The fraction shall be the number of operators completing the course, divided by the total number operators. The discount shall begin at the inception date of the policy or the first renewal date following application by the insured and shall terminate at the policy renewal date subsequent to the expiration of three years since completion of the course. Insurance carriers shall provide notice at the renewal period immediately prior to expiration of the discount that the policyholder must take a refresher course within the timeframe set forth in this regulation in order to continue the discount.
- 4.2 An insured who has received a ~~defensive driving motor vehicle accident prevention~~ discount as outlined in section 4.1 above may take, and must then complete, a refresher ~~defensive driving motor vehicle accident prevention~~ course. An insured who completes a refresher course within the ~~ninety one hundred and eighty~~ ninety one hundred and eighty days prior to the three year expiration date shall receive a 15% discount effective the next renewal date. An insured who completes the refresher course after the expiration of the three year period shall lose the 10% or 15% discount on the expiration date, but shall receive the 15% discount effective on the date of completion of the refresher course, if said completion is within two years of the expiration date.
- 4.3 Motor Vehicle Accident Prevention Course instructors that are certified by the Division shall be entitled to the same insurance discount set forth in this regulation as those individuals who have completed a refresher motor vehicle accident prevention course.

## 5.0 Implementation

- 5.4 The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

- 5.2 All courses certified by this Department as of September 1, 2009 shall apply for re-certification under the provisions of section 7 of this regulation on or before January 1, 2011.

## **6.0 Certification Criteria for Defensive Driving Programs and Providers**

- 6.1 Each provider of a defensive driving course that seeks certification by the Department shall submit to the Department for approval the following materials:
- 6.1.1 All written instructor materials, testing materials and curricula utilized for classroom instruction.
  - 6.1.2 All written materials provided to students in connection with classroom instruction.
  - 6.1.3 Identity and qualifications of all instructors.
  - 6.1.4 All curricula and testing material used in connection with an on-line course.
  - 6.1.5 All materials available to students in connection with an on-line course.
  - 6.1.6 All testing and grading criteria used in an on-line course.
  - 6.1.7 Identity and qualifications of persons available to answer student questions respecting content and technical support for an on-line course.
- 6.2 On-line courses shall provide free site access to the Department for purposes of verification of compliance. Department Defensive Driving personnel shall have access to audit classroom courses at no cost, but with no credit. The course materials for each defensive driving course shall include, at a minimum, the following:
- 6.2.1 Information provided within the course will include, at a minimum, State of Delaware traffic laws, defensive driving and collision prevention techniques/theory.
  - 6.2.2 A discussion of vehicle safety devices, including the requirement for and use of seat belts, child restraint devices and their proper use and relationship to a child's age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems with special attention to proper passenger seating and proper use of anti-lock braking systems and how they compare to standard braking systems;
  - 6.2.3 A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs, as well as Delaware "Zero Tolerance" for drivers under 21;
  - 6.2.4 A discussion of the factors affecting driving and how they pertain to driving defensively, including, but not limited to:
    - 6.2.4.1 The condition of the driver, the vehicle, the road, sun glare, weather, such as rain, fog, sleet, hail and snow, and lighting;
    - 6.2.4.2 Distractions such as use of cellular telephones while driving, adjusting radios, audio and video tapes and compact discs, and DVDs, talking with a passenger, reading, eating, billboards, and other roadside distractions;
  - 6.2.5 A discussion, including specific requirements of Delaware law where applicable, of pertinent driving situations, including stopping distances, proper following distances, proper intersection driving, roundabouts, stopping at railroad crossings, right-of-way and traffic devices, pavement line markings, blind spots, as well as situations involving passing and being passed and head-on collisions; and
  - 6.2.6 Consideration of the hazards and techniques of various driving situations such, as but not limited to, city, highway, expressway and rural driving, proper use of exit and entrance ramps, driving in parking lots.
  - 6.2.7 A discussion of aggressive driving including but not limited to identifying an aggressive driver and providing appropriate defensive driving techniques. Discussion shall also include how to identify oneself as an aggressive driver and the appropriate manner to respond.
  - 6.2.8 Speed limits
  - 6.2.9 School buses
  - 6.2.10 Emergency vehicle right of way
  - 6.2.11 Turn signals

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- 6.2.12 Headlight usage
- 6.2.13 A discussion of the 10% and 15% premium discounts as well as the 3 point DMV credit.
- 6.2.14 A discussion of how and when the insured will receive the course completion certificate and how the 3 point credit is provided to the DMV.
- 6.3 ~~Require instructors in classroom courses to present information in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.~~
- 6.4 ~~Require on-line courses, as well as other courses available other than in a classroom, to provide toll free telephone lines staffed by knowledgeable customer service personnel who can assist with content based questions during normal business hours which shall appear in bold large lettering on the website prior to the course sign up page. The set hours must be submitted to the Department for prior approval.~~
- 6.5 ~~Require that each student receives a minimum of six hours of classroom or on-line time for the initial course and three hours of classroom or on-line time for the renewal courses. Each classroom hour shall consist of not less than an average of 50 minutes of instructional time devoted to the presentation of course curriculum. Online courses shall be structured to provide the same learning time as required for classroom and shall submit to the Department any materials necessary to demonstrate their ability to comply with the minimum time requirement set forth in this section. A minimum of three hours must be devoted to the requirements in 6.1 through 6.2.14.~~
- 6.6 ~~Require that registration shall be completed prior to the beginning of any type of instruction and shall not be counted as instructional time.~~
- 6.7 ~~Require its instructors in classroom courses to be in the classroom with the students during any and all periods of instructional time.~~
- 6.8 ~~Require instructors in classroom courses to maintain an atmosphere appropriate for class-work.~~
- 6.9 ~~Material required to be covered by this Regulation shall be discussed by the instructor in a classroom situation and be included as on screen information in an on-line course. Changes in such material shall be submitted to the Department for pre approval before utilization in the classroom.~~
- 6.10 ~~Supply students who complete a defensive driving course and who have presented a valid Delaware driver's license and/or government issued photo identification with a certificate of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course provider, with contact information and the course sponsor's authorized signature.~~
- 6.10.1 ~~All online courses shall be required to obtain the student's driver's license number as part of the student identification information prior to permitting the student access to the course materials and have each student complete an online affidavit with a verification that they are the person who took the course and who is receiving the completion certificate and credit and that they understand that making a false unsworn falsification is a violation of 11 ~~Del.C.~~ §1233 of the Delaware Crimes Code, subjecting a violator to fine, imprisonment, or both.~~
- 6.11 ~~All courses shall provide all students with a copy of a letter provided by the Department informing the student how to provide comment or file a complaint regarding a defensive driving course. This letter shall be in hard copy form for classroom courses. On-line courses shall place the letter with registration on-line and/or shall provide a hard copy with the certificate of completion.~~
- 6.12 ~~Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division. Said notification shall be made within fourteen days of the student's course completion.~~
- 6.13 ~~Each provider of a defensive driving course shall utilize and maintain either its own proprietary teaching or testing materials, or teaching and testing material properly obtained by a third party under a written license agreement. An on-line course provider may not submit an original course application for a course previously approved by the Department and owned or licensed to another course provider. This section shall not limit the ability of an approved on-line course provider to have independent licensing agreements with other entities.~~
- 6.14 ~~Each provider of a defensive driving course shall maintain requisite staffing, facilities, and resources necessary to process student payments, provide competent instruction, administer effective testing,~~

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issue timely completion certificates and provide proper notice to the Division of Motor Vehicles regarding credit earned from successful completion of the course.

## **7.0 Complaints, Hearings, De-certification, Suspension and Probationary Status**

- 7.1 The following procedure shall be followed for the investigation of complaints against course providers and/or instructors certified under section 6.0 of this Regulation (the term "course provider" as used in section 7.0 of this Regulation shall include individual instructors as may be appropriate in the context of this section):
- 7.1.1 Any person who desires to file a complaint against any course provider must do so in writing.
  - 7.1.2 The complaint shall state the name of the course provider and the facts that allegedly constitute the basis for the complaint. If either of these elements is missing from the complaint, the Department may, in its discretion, dismiss the complaint without further notice or a hearing.
  - 7.1.3 The Department, upon determining that the complaint is complete as provided in section 7.1.2 above, shall, within 15 days of the receipt of the complaint, assign a docket number to the complaint and shall transmit a copy of the complaint by certified mail, receipted email or other receipted delivery service to the course provider named in the complaint at the course provider's address of record in the Department's files. The named course provider may file an answer to the complaint within 20 calendar days with the Department.
  - 7.1.4. The Department shall assign a staff member to investigate the complaint and the course provider's response.
  - 7.1.5 The staff member, as part of the investigation, shall provide a report of the staff member's findings and recommendations to the Commissioner or the Commissioner's designee for further action as may be appropriate under this section. The report shall list the evidence reviewed, the witnesses interviewed and cite the law or regulation alleged to have been violated and the facts to support such finding. The report shall contain a written recommendation either to take such action as may be authorized by this section or to dismiss the complaint.
  - 7.1.6 A dismissal of the complaint shall be without prejudice and no further action shall be taken by the Department. The Department shall provide a written notification of the Department's action and the basic reason(s) therefor to the complainant and to the course provider.
- 7.2 Upon a recommendation for further action under section 7.1 of this Regulation, the Commissioner shall determine whether the course provider should be warned (with or without conditions), placed on probation (with or without conditions) for not more than 90 days, suspended for a period not to exceed 6 months, or to be permanently decertified for one or more violations of this Regulation. For purposes of the enforcement of this Regulation and the protection of the public, progressive discipline is not required.
- 7.3 Upon making a determination as provided for in section 7.2 of this Regulation, the Department shall provide written notice to the course provider by certified mail, receipted email or other receipted delivery service. A copy of the notice shall be provided to the complainant. The notice shall include the following:
- 7.3.1 a summary of the complaint;
  - 7.3.2 a summary of the information obtained in the investigation;
  - 7.3.3 findings of fact and/or law; and
  - 7.3.4 the sanction to be imposed by the Department.
- 7.4 Upon receipt of the notice provided for in section 7.3 of this Regulation, the course provider shall have the rights to a hearing and appeal as provided for in 18 ~~Del.C.~~ §§323-28.
- 7.5 Nothing in section 7.0 of this Regulation shall preclude the course provider from entering into a consent agreement with the Department.
- 7.6 A course provider or instructor who receives a warning or is placed on probation and does not show proof of compliance with the conditions of the warning or probation within the time set forth in the consent agreement or order shall be subject to suspension or decertification.

- ~~7.7 In addition to the other provisions of this Regulation, a course provider may be placed on probation, suspended or decertified for any one or more of the following:~~
- ~~7.7.1 Falsification of information on, or accompanying, the Application for Certification/Re-certification;~~
  - ~~7.7.2 Falsification of, or failure to keep and provide, adequate student records and information as required herein; or~~
  - ~~7.7.3 Falsification of, or failure to keep and provide, adequate financial records and documents as required.~~
  - ~~7.7.4 Failure to comply with the course content requirements set forth in 6.0 above.~~

## **8.0 Certification Process for Defensive Driving Instructors**

- ~~8.1 Basic Requirements. Each instructor shall:~~
- ~~8.1.1 Be a licensed driver for a minimum of thirty-six months;~~
  - ~~8.1.2 Be a high school graduate or have a G.E.D.;~~
  - ~~8.1.3 Provide a certified copy of his or her driving record showing he or she holds a valid driver's license with no more than four (4) points, no suspensions or revocations in the past two years; and~~
  - ~~8.1.4 Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Department may require a criminal history background check of all applicants for an instructor's certification.~~
  - ~~8.1.5 Submit the Application for Certification with documentation showing that the applicant has:~~
    - ~~8.1.5.1 a minimum of 9 hours of inservice training classes taught by a certified instructor;~~
    - ~~8.1.5.2 a maximum of 3 of those 9 hours may be satisfied by observing a certified instructor teaching an actual class;~~
    - ~~8.1.5.3 a minimum of 6 hours of trainee instructor class presentations observed by a provider certified instructor.~~
- ~~8.2 Re-certification. Every three years each instructor shall:~~
- ~~8.2.1 Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous calendar year;~~
  - ~~8.2.2 Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and~~
  - ~~8.2.3 Submit a form as prescribed by the Department certifying that he or she continues to meet the requirements of an instructor as outlined in this Regulation.~~
  - ~~8.2.4 Submit a certified copy of his or her driving record.~~
- ~~8.3 The above described submissions shall be filed not later than three months prior to the expiration date of the then current certification. Instructors whose certification have expired shall not instruct any courses until they have been recertified.~~
- ~~8.4 The Department may provide procedural guidelines and directives through the use of bulletins and/or circular letters through the Commissioner's website from time to time as may be appropriate.~~

## **9.0 Course Recertification**

- ~~9.1 Course certifications shall expire three years after approval or of the effective date of this Regulation, whichever date occurs later. Course providers shall submit applications for recertification no earlier than 6 months prior to expiration. Course providers that submit recertification applications no later than ninety days prior to the expiration date shall be deemed approved until the Department has acted on the application. In all other cases course certification shall expire on the three year anniversary date and those courses shall be decertified until such time as approval is granted.~~

**406.0 Effective Date**

~~This regulation shall become effective on January 1, 2010 for providers approved prior to September 1, 2009. All courses applying for approval after September 1, 2009 shall meet the requirements of this regulation prior to approval. This regulation shall become effective on the 11<sup>th</sup> day of March, 2015.~~

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901(c & d), 903(e)(2)a and 903(e)(3)  
(7 **Del.C.** §§901(c & d), 903(e)(2)a and 903(e)(3))  
**7 DE Admin. Code 3541**

**REGISTER NOTICE #2014-07****3541 Atlantic Sharks****1. TITLE OF THE REGULATION:**

3541 Atlantic Sharks

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:**

The purpose of this action is to adopt provisions consistent with Addenda II and III to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Atlantic Coastal Sharks. The proposed action will maintain consistency between the federal (2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan as amended) and ASMFC management plans, preserve the historical distribution of smoothhound (*Mustelus canis* and *Mustelis norrisi*) landings, and protect hammerhead shark to maturity.

This action defines a smoothhound (colloquially referred to as smooth dogfish or sand sharks) complex. Although the smoothhound complex has not been assessed, NOAA Fisheries is developing a coastwide smoothhound quota. In anticipation of a coastwide quota, the ASMFC developed state allocations under Addendum II to preserve the historical distribution of smoothhound. The proposed action will also implement shark finning limits consistent with the Shark Conservation Act of 2010 and 7 **Del.C.** §928A.

Consistent with Addendum III, the proposed action adjusts the shark species groupings for management purposes. Most significantly, the proposed action groups scalloped (*Sphyrna lewini*), great (*S. mokarran*) and smooth (*S. zygaena*) hammerhead sharks into a single complex, as it is difficult to differentiate the species. A recent assessment of scalloped hammerhead sharks indicated that the species is overfished and overfishing is occurring. It was also determined that female scalloped hammerhead sharks reach maturity at 78 inches fork length (Hazin et al. 2001, NOAA Fisheries FEIS for Amendment 5a, pp. 2-19). Therefore, NOAA Fisheries changed the recreational size limit for all hammerhead sharks to 78 inches. The proposed action also separates the blacknose shark (*Carcharhinus acronotus*) from the small coastal shark complex.

Finally, the action proposes changes to the regulation that improve readability, but do not change regulatory intent.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Delaware Code, Sections 901(c & d), 903(e)(2)a, and 903(e)(3)

**5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:**

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to 3541 Atlantic Sharks will be open January 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on January 22, 2015 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**7. PREPARED BY:**

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

David E. Saveikis, Director

**3541 Atlantic Sharks**

(Penalty Section 7 Del.C. §936(b)(2))

## 1.0 Definitions:

**~~Non-Sandbar~~ Aggregated large coastal species** shall mean any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*  
 Scalloped hammerhead, *Sphyrna lewini*  
~~Smooth hammerhead, *Sphyrna zygaena*~~  
 Nurse shark, *Ginglymostoma cirratum*  
 Blacktip shark, *Carcharhinus limbatus*  
 Bull shark, *Carcharhinus leucas*  
 Lemon shark, *Neqapron brevirostris*  
 Silky shark, *Carcharhinus falciformis*  
 Spinner shark, *Carcharhinus brevipinna*  
 Tiger shark, *Galeocerdo cuvieri*

**Blacknose shark** means *Carcharhinus acronotus* or any parts thereof.

**Fillet** shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

**Hammerhead species** means any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*  
 Scalloped hammerhead, *Sphyrna lewini*  
 Smooth hammerhead, *Sphyrna zygaena*

**Land or landing** shall mean to put or cause to go on shore from a vessel.

**Management unit** shall mean any of the ~~non-sandbar~~ aggregated large coastal species, small coastal species, blacknose shark, hammerhead species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation. ~~Smooth dogfish (*Mustelus canus*), although they are a species of shark, are not presently part of the management unit as defined above, and are not subject to minimum size or daily harvest restrictions. They are subject to the provisions of Regulation 3541, Sections 3.0 and 4.0.~~

**NOAA Fisheries** means National Oceanic and Atmospheric Administration's National Marine Fisheries Service.

**Pelagic species** shall mean any of the following species of sharks or parts thereof:

Porbeagle shark, *Lamna nasus*  
 Shortfin mako, *Isurus oxyrinchus*  
 Blue shark, *Prionace glauca*  
 Oceanic whitetip shark, *Carcharhinus longimanus*  
 Thresher Common thresher shark, *Alopias vulpinus*

**"Prohibited species"** shall mean any of the following species of sharks or parts thereof:

Basking shark, *Cetorhinidae maximus*  
White shark, *Carcharodon carcharias*  
Bigeye sand tiger, *Odontaspis noronhai*  
Sand tiger, *Odontaspis taurus*  
Whale shark, *Rhincodon typus*  
Bignose shark, *Carcharhinus altimus*  
Caribbean reef shark, *Carcharhinus perezi*  
Dusky shark, *Carcharhinus obscurus*  
Galapagos shark, *Carcharhinus galapagensis*  
Narrowtooth shark, *Carcharhinus brachyurus*  
Night shark, *Carcharhinus signatus*  
Atlantic angel shark, *Squatina dumerili*  
Caribbean sharpnose shark, *Rhizoprionodon porosus*  
Smalltail shark, *Carcharhinus porosus*  
Bigeye sixgill shark, *Hexanchus vitulus*  
Sevengill shark, *Heptranchias perlo*  
Sixgill shark, *Hexanchus griseus*  
Longfin mako, *Isurus paucus*  
Bigeye thresher, *Alopias superciliosus*

**"Sandbar shark"** or **"research species"** shall mean *Carcharhinus plumbeus* or any parts thereof.

**"Shore fishing"** or **"shore angler"** shall mean any fishing that does not take place on board a vessel. The terms "shore fishing" and "shore angler" are synonymous.

**"Small coastal species"** shall mean any of the following species of sharks or parts thereof:

Bonnethead, *Sphyrna tiburo*  
Atlantic sharpnose shark, *Rhizoprionodon terraenovae*  
~~Blacknose shark, *Carcharhinus acronotus*~~  
Finetooth shark, *Carcharhinus isodon*

**"Smoothhound"** means any of the following species of sharks or parts thereof:

Smooth dogfish, *Mustelus canis*  
Florida smoothhound, *Mustelus norrisi*

## 2.0 Prohibited Species

- 2.1 It shall be ~~is~~ unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species (1.9).
- 2.42 It shall be ~~is~~ unlawful for any hook and line fisherman to remove from the water sandbar shark, or any other species of shark when prohibited from harvest under §3541.
- 2.3 It is unlawful for any person to engage in a directed commercial fishery for a prohibited (1.9) or research species (1.10).

## 3.0 Finning

- 3.01 ~~It shall be~~ Except as provided in 3.2, it is unlawful for any person to possess the fins from any shark in the management unit (1.6) prior to landing said shark unless said fins are naturally attached to the body of said shark.
- 3.2 A person issued a valid commercial food fish license may completely remove the fins from any smoothhound, provided the total weight of the fins does not exceed twelve (12) percent of the total dressed weight of smoothhound complex carcasses on board a vessel.



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# PROPOSED REGULATIONS

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## 4.0 Fishing Methods

~~4.0~~ It shall be is unlawful for any person to fish for any shark while in state waters with any fishing equipment or by any method, except: (1) Hook and Line; (2) Gill Net.

## 5.0 Filleting Prior to Landing

~~5.0~~ It shall be is unlawful for any person to fillet a shark in the management unit (1.6) prior to landing said shark. A shark may be eviscerated prior to landing said shark, but the head, tail, and fins must remain naturally attached to the carcass, ~~except that as provided in 3.2 and~~ commercial fishermen may eviscerate and remove the head of any shark reduced to possession, but the tail and fins must remain attached to the carcass.

## 6.0 Shark Handling

~~6.0~~ It shall be is unlawful to release any shark in the management unit (1.6) or any sandbar shark in a manner that will not ensure said sharks maximum probability of survival. All species of shark when prohibited from harvest under §3541 must be immediately released.

## 7.0 Recreational Possession Limits

~~7.01~~ It shall be is unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one non-prohibited shark per trip from among those species in the management unit (1.6), regardless of the number of people on board the vessel. In addition each recreational angler fishing from a vessel may harvest and possess one bonnethead, and one Atlantic sharpnose shark per trip.

7.2 It is unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession more than one non-prohibited shark from among those species in the management unit (1.6) per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, and one additional Atlantic sharpnose shark per day.

## 8.0 Unlawful Sale

~~7.4~~ It shall be is unlawful for any shark from the management unit (1.6) caught in state waters to be bought and sold without a federal ~~Commercial~~ shark dealer permit.

~~9.0~~ It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species. Commercial Quotas and Limits

~~8.09.1~~ It shall be is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-prohibited shark from among those species in the management unit (1.6) during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce after the closure date set by NOAA Fisheries for that fishery. Further, it shall be is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any ~~non-sandbar large coastal sharks, small coastal sharks, or pelagic non-prohibited~~ sharks from the management unit in excess excess of current federal daily harvest limits administered by the National Marine Fisheries Service NOAA Fisheries.

9.2 Delaware's annual smoothhound quota will be 0.339 percent of the coastwide quota in accordance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks.

9.3 When the Department has determined that 95% of Delaware's annual smoothhound quota allocation has been landed, the Department shall establish, based on recent fishery performance and landings, a date and time to order the fishery closed.

9.4 It is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any smoothhound once the Department has ordered the fishery closed.

9.5 Any overage in the Delaware's annual commercial smoothhound quota will be subtracted from the following year's smoothhound quota allocation.

## 10.0 Recreational Size Limits

10.01 ~~It shall be is unlawful for the operator of any vessel to possess without a valid commercial foodfishing license to have on board said vessel any non-prohibited shark from among those species in the management unit (1.6) that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes), with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no minimum size limit applies except as provided in 10.2 and 10.3.~~

10.2 It is unlawful to possess without a valid commercial food fishing license any hammerhead species (1.4) that measures less than 78 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes).

10.3 Smoothhound, bonnethead, Atlantic sharpnose, blacknose, and finetooth sharks are exempt from size limits.

11.0 ~~It shall be unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession any non-prohibited shark from among those species in the management unit less than 54 inches, with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no size limit applies. Aggregated Large Coastal Sharks Closed Season~~

13.0 ~~It shall be is unlawful for any recreational or commercial fisherman to possess silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead sharks from May 15 through July 15, regardless of where the shark was caught. Fishermen who catch any of these species in federal waters may not transport them through Delaware state waters during the aforementioned closed season.~~

12.0 ~~It shall be unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession more than one non-prohibited shark from among those species in the management unit per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, and one additional Atlantic sharpnose shark per day.~~

## 12.0 Unlawful Possession of Sandbar Shark and Exception

14.0 ~~It shall be is unlawful for any recreational or commercial fisherman to land or possess any sandbar sharks, except for a commercial fisherman in possession of a valid sandbar shark research permit issued by the National Marine Fisheries Service NOAA Fisheries. There must be a qualified observer aboard any vessel that lands and possesses sandbar sharks fishing under the auspices of a valid federal research permit.~~

## 13.0 Federally Prohibited Shark Reciprocity

15.0 ~~It shall is unlawful for any Delaware recreational or commercial fisherman to land or possess any species of shark in state waters that is illegal to catch or land or possess in federal waters. Presently it is unlawful for recreational fishermen to take and possess silky sharks in federal waters at any time of the year.~~

## 14.0 Collecting for Research or Display

16.0 ~~The Department may grant anyone permission to take and possess sharks that would otherwise be illegal to take and possess when used for display and/or research purposes. Applicants will need a current State of Delaware scientific collecting permit and a valid federal sandbar shark research permit, if collecting sandbar sharks. Applicants must annually report the number, weight,~~

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# PROPOSED REGULATIONS

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species, location caught, and gear used for each shark collected for research or display purposes, and the annual disposition of said sharks throughout the life of each shark so taken. The Division reserves the right to place limits on or deny any request to take prohibited species of sharks under the auspices of a scientific collecting permit.

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## DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)  
7 DE Admin. Code 1301

### REGISTER NOTICE SAN # 2011-13

#### 1. TITLE OF THE REGULATIONS:

Delaware's *Regulations Governing Solid Waste* (DRGSW)

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

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to add scrap tire facility management provisions to DRGSW. This amendment will enable the SHWMS to have oversight on the management of scrap tires, including limiting the amount of tires allowed to be accumulated in one area, providing environmental and human health protection via siting restrictions and mosquito control, and providing a mechanism for enforcement if the need arises.

#### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

#### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGSW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

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

None

#### 6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGSW will be held on Monday, January 26, 2015 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

#### 7. PREPARED BY:

Bethany Fiske, Environmental Scientist III, Solid and Hazardous Waste Management Section - (302) 739-9403

### Regulatory Flexibility Act Compliance Form

#### Background:

The Regulatory Flexibility Act (29 Del.C. Chapter 104) states that prior to the issuance of any rule or regulation an agency shall consider whether it is lawful, feasible and desirable for the agency to exempt individuals and small businesses from the effect of the rule or regulation or whether the agency may and should promulgate a rule or regulation which sets less stringent standards for compliance by individuals and/or small businesses.

#### Instructions:

This form must accompany your Register Notice and the proposed regulation prior to being published in the Register of Regulations. Please explain your considerations for each of the following factors (attach additional pages or documents as needed):

- 1) The nature of any reports and the estimated cost of their preparation by individuals and/or small business which would be required to comply with the new rule:

Owners or operators of scrap tire facilities will be required to submit an application packet to obtain a permit. The required documents in the application are minimal and all can be achieved either by the individual themselves (i.e. a description; a site diagram; proof of title, right or interest in the property; and an operations manual) or by using free internet databases (i.e. FEMA flood data and a GIS Image). Therefore, the cost for assembling the application materials is minimal. The application will need to be renewed periodically; however, as discussed above, the cost will be minimal.

There will be a minimal permit fee to offset some of the administrative costs of processing the application.

- 2) The nature and estimated costs of other measures or investments that would be required by individuals and/or small businesses in complying with the rule:

For larger scrap tire facilities (referred to as Group 2 in the regulations), owners or operators of scrap tire facilities must obtain and retain financial assurance of \$10,000 for cleanup and closure costs.

In addition, if the owner or operator chooses to accumulate their scrap tires in such a manner so that water will not accumulate inside the tires, then the owner or operator will not have to implement mosquito control measures. Such management would then eliminate the need to apply larvicide or adulticide, therefore reducing cost.

- 3) The nature and estimated cost of any legal, consulting and accounting services which individuals and/or small businesses would incur in complying with the rule:

No legal, consulting, or accounting services are anticipated for the amendments being considered.

- 4) The ability of individuals and/or small businesses to absorb the costs estimated under questions 1, 2 and 3 of this form without suffering economic harm and without adversely affecting competition in the marketplace:

Owners or operators of scrap tire facilities should be able to absorb the costs discussed in questions 1, 2, and 3 as a part of doing business. In fact, Delaware statute previously addressed many of the scrap tire management provisions currently being considered. This statutory provision was replaced by a directive to the Department of Natural Resources and Environmental Control to develop scrap tire regulations. Many businesses should have the previous management practices already in place.

The regulations are purposely divided into two groups, Group 1 for small scrap tire facilities and Group 2 for larger scrap tire facilities. Group 1 has less stringent regulatory requirements and does not require any financial assurance. However, if a larger scrap tire facility is necessary (which would typically occur in the case of a larger business), then financial assurance is required. Presumably, the resources to cover the costs of a scrap tire facility will be greater for these larger businesses.

Furthermore, many of the regulatory costs can be avoided by choices made by the owners or operators of scrap tire facilities. For example, if the owner or operator chooses to keep their scrap tires in an enclosure that does not receive rainwater, e.g., a semitrailer, then the cost for mosquito control will be zero.

Finally, it is important to note that lack of action, i.e., lack of scrap tire management standards, can lead to much higher costs to individuals, small business owners, and to the public if mismanagement of scrap tire facilities occurs. In fact, it is Delaware residents themselves who currently fund the scrap tire management fund to remove old, previously mismanaged tires from the Delaware landscape.

Failure to implant fire safeguards and restrict the volume of tires can lead to devastating tire fires that will not only cause environmental damage but most likely significant economic damage, especially if the fire spreads to surroundings buildings and structures. In addition, economic costs will be incurred to the public by public resources being utilized to control the fire. Economic damages in terms of disease, decreased property values, and decreased recreational/tourism income streams will be experienced if an area has a mosquito problem due to the existence of prime mosquito breeding grounds in scrap tires. Regardless of whether an individual and/or small business falls into Group 1 or Group 2, the costs to be incurred are not so prohibitive as to adversely affect competition in the marketplace. The benefits of the regulations outweigh any potential economic hardships.

- 5) The additional cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by individuals and/or small business:

# PROPOSED REGULATIONS

The agency has already developed the regulations in such a way that small businesses can be afforded lesser standards for compliance with lesser economic impact on the business owners.

- 6) The impact on the public interest of exempting or setting lesser standards of compliance for individuals and/or small businesses.

There is a desire to allow less stringent requirements for smaller scrap tire facilities so as to not hinder their ability to continue conducting their business. For this reason, the agency has already constructed the regulations to achieve this exact purpose. The regulations are divided into two groups, Group 1 and Group 2, with Group 1 for smaller scrap tire facilities and less stringent standards.

- 7) What accommodations, if any, have been made in the regulations to address individual or small business concerns identified above?

The regulations are divided into two groups, Group 1 and Group 2, with Group 1 for smaller scrap tire facilities and less stringent standards; for example, no financial assurance is required for Group 1. The Department of Natural Resources and Environmental Control sought input from the stakeholders and that input affected the development of these regulations.

## 1301 Regulations Governing Solid Waste

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

**1301 Regulations Governing Solid Waste**

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## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

#### 2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE

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

#### PUBLIC NOTICE

### 2000 Board of Occupational Therapy Practice

Pursuant to 24 Del.C. §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to continuing education are amended to clarify their application. Additionally rules of an administrative nature are changed to reflect current practices.

A public hearing will be held on March 4, 2015 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 Del.C. §10118(a).

### 2000 Board of Occupational Therapy Practice

#### 1.0 Supervision/consultation Requirements for Occupational Therapy Assistants

*(Break in Continuity Within Section)*

- 1.3 Minimum supervision requirements:

*(Break in Continuity Within Section)*

- ~~1.3.4 Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness.~~
- 1.3.54 Effective July 1, 2009, the supervising occupational therapist shall submit to the Board a completed Verification of Occupational Therapy Assistant Supervision form upon the commencement of supervision.
- 1.3.65 Effective July 1, 2009, the supervising occupational therapist shall immediately advise the Board in writing when he or she is no longer supervising an occupational therapy assistant and shall provide the Board with an updated Verification of Occupational Therapy Assistant Supervision form.
- 1.3.76 Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness.
- 1.3.87 The supervising occupational therapist, in collaboration with the occupational therapy assistant, shall maintain a written supervisory plan specifying the level of supervision and shall document the supervision of each occupational therapy assistant. Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness. This plan shall be reviewed at least every six months or more frequently as demands of service changes.
- 1.3.98 A supervisor who is temporarily unable to provide supervision shall arrange for substitute supervision by an occupational therapist licensed by the Board with at least one (1) year of clinical experience, as defined above, to provide supervision as specified by Rule 1.0 of these rules and regulations.

**2.0 Licensure Procedures:*****(Break in Continuity Within Section)***

- 2.4 To apply for renewal, an applicant shall submit:
- 2.4.1 A completed online renewal application ~~on the form approved by the Board. License renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov);~~
- 2.4.2 Renewal fee payable to the State of Delaware.
- 2.4.3 Evidence of completion of the required continuing education.
- 2.5 To apply for inactive status:  
A licensee may, upon written request to the Board and payment of the fee established by the Division of Professional Regulation, have his/her license placed on inactive status if he/she is not actively engaged in the practice of occupational therapy in the State. To renew an inactive license, a licensee shall submit an online renewal application and renewal fee payable to the State of Delaware.
- 2.6 To apply for reactivation of an inactive license, a licensee shall submit:
- 2.6.1 ~~A letter requesting reactivation~~ A reactivation request form;
- 2.6.2 ~~A completed application for renewal~~
- 2.6.32 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule 3.0 of these rules and regulations;
- 2.6.43 Fee payable to the State of Delaware.
- 2.7 To apply for reinstatement of an expired license, an applicant shall submit (within ~~three (3) years~~ one year of the expiration date):
- 2.7.1 A completed application for renewal;
- 2.7.2 Proof of continuing education attained within the past ~~two~~ two years (~~20~~ 10 contact hours). The ~~twenty (20)~~ ten (10) hours must be in accordance with Rule 3.0 of these rules and regulations;
- 2.7.3 Licensure and late fee payable to the State of Delaware.

## 3.0 Continuing Education

### 3.1 Continuing Education Content Hours

3.1.1 Continuing education (CE) is required for license renewal and shall be completed by July 31st of each even numbered year. Occupational therapists and occupational therapy assistants are required to complete 20 hours per biennial period. Continuing education must be earned in two (2) or more of the seven (7) categories for continuing education described in Rule 3.5.

3.1.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 3.0;

3.1.1.2 Attestation ~~may~~ shall be completed electronically ~~if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted;~~

3.1.1.3 Licensees selected for random audit are required to supplement the attestation with attendance verification as provided in 3.1.2.

3.1.2 Random audits will be performed by the Board to ensure compliance with the CE requirement.

3.1.2.1 The Board will notify licensees ~~within sixty (60) days~~ after July 31 of each biennial renewal period that they have been selected for audit.

3.1.2.2 Licensees selected for random audit shall be required to submit verification within ten (10) business days of ~~receipt~~ the date of notification of selection for audit.

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

### 3.2 Definition of Acceptable Continuing Education Credits:

3.2.1 ~~Activities~~ Continuing education must be earned in two (2) or more of the seven (7) ~~categories activities~~ for continuing education ~~beginning~~ described in Rule 3.35.

### 3.3 Continuing Education Content:

3.3.1 ~~Activities~~ Continuing education must be in a field of health and social services related to occupational therapy, must be related to a licensee's current or anticipated roles and responsibilities in occupational therapy, and must directly or indirectly serve to protect the public by enhancing the licensee's continuing competence.

3.3.2 Approval will be at the discretion of the Board. A licensee or continuing education provider may request prior approval by the Board by submitting an outline of the activity before it is scheduled. The Board pre-approves continuing education ~~activities~~ sponsored or approved by AOTA or offered by AOTA-approved providers as long as the content is not within the exclusion in Rule 3.5.1.1 for courses covering documentation for reimbursement or other business matters.

3.3.3 CE earned in excess of the required credits for the two (2) year period may not be carried over to the next biennial period.

### 3.4 Definition of Contact Hours:

3.4.1 **"Contact Hour"** means a unit of measure for a continuing education activity. One contact hour equals 60 minutes in a learning activity, excluding meals and breaks."

3.4.2 One (1) academic semester hour shall be equal to fifteen (15) contact hours.

3.4.3 One (1) academic quarter hour shall be equal to ten (10) contact hours.

3.4.4 The preparing of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) contact hour for preparation fro each contact hour of presentation. Credit for preparation shall be give for the first presentation only.

### 3.5 Continuing Education ~~Activities~~ Categories:

3.5.1 Category 1: Courses: (Classroom or home study/correspondence/online) The maximum credit for course work shall not exceed nineteen (19) hours. Course work involving alternative therapies shall be limited to five (5) hours. Course work by home study, correspondence or online of a non-interactive nature shall be limited to ten (10) hours. Extension courses, refresher courses, workshops, seminars, lectures, conferences, and non patient-specific in-service training qualify under this provision as long as they are presented in a structured educational experience beyond entry-level academic degree level and satisfy the criteria in 3.3.1.

*(Break in Continuity Within Section)*

- 3.5.2 Category 2: Professional Meetings & Activities: The maximum number of credit hours shall not exceed ten (10) hours. Approved credit includes attendance at: DOTA business meetings, AOTA business meetings, AOTA Representative Assembly meetings, NBCOT meetings, OT Licensure Board meetings and AOTA National Round Table discussions. Credit will be given for participation as an elected or appointed member/officer on a board, committee or council in the field of health and social service related to occupational therapy. Seminars or other training related to management or administration are considered professional activities. Excluded are any job related meetings such a department meetings, supervision of students and business meetings within the work setting.

*(Break in Continuity Within Section)*

- 3.5.3 Category 3: Publications: The maximum number of credit hours shall not exceed fifteen (15) hours. These include writing chapters, books, abstracts, book reviews accepted for publication and media/ video for professional development in any venue.

- 3.5.3.1 Documentation shall include the full reference for publication including title, author, editor and date of publication; or a copy of acceptance letter if not yet published.

- 3.5.4 Category 4: Presentations: The maximum number of credit hours shall not exceed fifteen (15) hours. This includes workshops and community service organizations presentations that the licensee presents. The preparation of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

*(Break in Continuity Within Section)*

- 3.5.5 Category 5: Research/Grants: Credit may be awarded one time for contact hours per study/topic regardless of length of project, not to exceed ten (10) hours. Contact hours accumulated under this category may not be used under the publication category.

*(Break in Continuity Within Section)*

- 3.5.6 Category 6: Specialty Certification: Approval for credit hours for specialty certification, requiring successful completion of courses and exams attained during the current licensure period will be at the discretion of the Board. Examples include Certified Hand Therapist (CHT) and Occupational Therapist, Board Certified in Pediatrics (BCP).

- 3.5.6.1 Documentation includes a certificate of completion or other documentation from the recognized certifying body that identifies satisfactory completion of the requirements for obtaining board certification of specialty certification.

- 3.5.7 Category 7: Fieldwork Supervision: The maximum number of credit hours shall not exceed ten (10) hours. One CE hour may be awarded for each Level I OT or OTA fieldwork student. One CE hour may be awarded for each week of participation as the primary clinical fieldwork educator for Level II OT or OTA fieldwork students.

## 4.0 Competence to Administer Treatment Modalities

Upon the request of the Board, or a member of the public, the licensee shall produce documentation demonstrating his or her competence to administer a particular treatment modality. Competence may be shown by documented professional education, such as continuing education, in-service training or accredited higher education programs with documented coursework related to the modality in question. Determination of competence is at the discretion of 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:**

**2000 Board of Occupational Therapy Practice**



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# PROPOSED REGULATIONS

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## DIVISION OF PROFESSIONAL REGULATION

### 2500 BOARD OF PHARMACY

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

#### PUBLIC NOTICE

#### 2500 Board of Pharmacy

Pursuant to 24 Del.C. §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations.

A public hearing will be held on January 21, 2015 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board liaison, Christine Mast, at the above address.

The proposed revisions consist of a new Rule 5.1.14.3 which specifies that disposal methods for dispensed medications must comply with State and Federal requirements. In addition, Rule 14.1.1 is amended to state that CPR certification must be obtained through hands-on education.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be February 5, 2015 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on February 18, 2015, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

#### 2500 Board of Pharmacy

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

### 5.0 Dispensing

- 5.1 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist.

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

#### 5.1.14 Return and Disposal of Medications and Supply

- 5.1.14.1 Except as provided in Regulation 5.1.14.2, non-controlled substance prescriptions may not be returned to the pharmacy except for disposal.
- 5.1.14.2 Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, and which have been stored under USPNF (United States Pharmacopeia/National Formulary) conditions, may be redispensed in accordance with expiration dating. The pharmacist must examine the medication prior to re-dispensing for obvious signs of misbranding or adulteration. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.
- 5.1.14.3 Dispensed medications returned by the public shall be properly disposed of in accordance with Delaware Controlled Substance laws and regulations and the federal Controlled Substance Act, 21 CFR 1300 to the end. Proposed disposal methods must be authorized by the Delaware Office of Controlled Substances and federal authority.

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

**14.0 Administration of Injectable Medications, Biologicals and Adult Immunizations**

The purpose of this regulation is to implement provisions relating to the training, administration, and documentation of injectable medications, biologicals, and adult immunizations by pharmacists, registered interns and pharmacy students pursuant to 24 **Del.C.** Ch. 25 relating to Pharmacy.

**14.1 Educational Requirements**

14.1.1 In order to administer injectable medications, biologicals, and adult immunizations a licensed pharmacist, a registered intern or a pharmacy student shall complete a Board approved academic and hands-on practical curriculum and maintain a current Cardio-Pulmonary Resuscitation (CPR) certificate acceptable to the Board of Pharmacy. CPR certification cannot be obtained through an on-line course.

14.1.1.1 An approved academic and practical curriculum includes, but is not limited to, disease epidemiology, vaccine characteristics, injection technique, emergency response to adverse events, and related topics.

14.1.1.2 Pharmacists successfully completing the above education and practical training shall notify the Board. The Board will record the successful training in Board database systems.

14.1.2 A licensed pharmacist, registered intern or pharmacy student may only administer injections consistent with public health and safety and in a competent manner consistent with the academic curriculum and training completed.

14.1.3 Continued competency shall be maintained and available for Board inspection.

14.1.3.1 A minimum of two hours (0.2 C.E.U.) of the thirty hour requirement for continuing education for licensed pharmacists, every licensure period, must be dedicated to this area of practice.

14.1.3.2 A minimum of two hours of continuing education every two years for registered interns and pharmacy students must be dedicated to this area of practice.

14.1.4 Documentation of the satisfactory completion of the proper academic and practical training requirements shall be listed in a policy and procedures manual available for inspection by the Board of Pharmacy. Maintaining such documentation shall be the responsibility of the pharmacist-in-charge.

**14.2 Practice Requirements**

14.2.1 The pharmacist-in-charge must maintain a manual with policies consistent with OSHA (Occupational Exposure to Bloodborne Pathogens) and procedures for dealing with acute adverse events.

14.2.2 The administration of injectable medications, biologicals and adult immunizations by registered interns and pharmacy students must be directly supervised by a licensed pharmacist who is approved for injectable administration.

14.2.3 The pharmacist, registered intern, or pharmacy student, before administering an injectable medication, biological, or immunization, must counsel the patient and/or the patient's representative about contraindications and inform them in writing in specific and readily understood terms about the risks and benefits. A signed copy of the patient's consent shall be filed and available for inspection by the Board of Pharmacy.

14.2.4 The pharmacist, registered intern, or pharmacy student must document all injections made and have such documentation available for inspection by the Board of Pharmacy. Documentation shall include:

14.2.4.1 Patient's name, address, phone number, date of birth, and gender.

14.2.4.2 Medication or vaccine administered, expiration date, lot number, site of administration, dose administered.

14.2.4.3 Date of original order and the date of administration(s).

14.2.4.4 The name of the prescribing practitioner and the pharmacist, registered intern, or pharmacy student administering the dose.

# PROPOSED REGULATIONS

- 14.2.5 The pharmacist, registered intern, or pharmacy student must document fully and report all clinically significant adverse events to the primary-care provider and to the Vaccine Adverse Event Reporting System (VAERS) when appropriate.
- 14.2.6 The pharmacist, registered intern, or pharmacy student shall provide documentation to each person receiving immunizations and shall report to the Immunization Vaccination Registry.
- 14.2.7 All documentation and records required by this Regulation must be maintained for a period of not less than three years and available for inspection by the Board of Pharmacy.
- 14.3 Administration of medications includes injectable medications, biologicals and adult immunizations pursuant to a valid prescription or approved protocol approved by a physician duly licensed in this State.

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

**2500 Board of Pharmacy**

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## DIVISION OF PROFESSIONAL REGULATION

### 2930 COUNCIL ON REAL ESTATE APPRAISERS

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

#### PUBLIC NOTICE

### 2930 Council on Real Estate Appraisers

Pursuant to 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to continuing education and the responsibilities of state licensed supervisory appraisers and appraiser trainees are amended to conform to new Appraisal Qualifications Board criteria.

A public hearing will be held on February 17, 2015 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a).

### 2930 Council on Real Estate Appraisers

*(Break in Continuity of Sections)*

## 2.0 Appraiser Licensing and Certification

*(Break in Continuity Within Section)*

- 2.5 Random audits will be performed by the Council to ensure compliance with the CEU requirements. At least 25% of the licensees shall be audited at each renewal. The Council shall have the discretion to increase the percentage of licensees to be audited. Every licensee renewing during the permissible late period after the expiration of the license or certificate will be included in the audit.

*(Break in Continuity Within Section)*

- 2.5.8 Continuing education credit may be awarded for participation in field trips, conferences, and trade association meetings, excluding travel time, if those activities specifically relate to real estate appraisal education, but for no more than eight (8) hours per licensure period. Continuing education credit may be awarded for attendance at meetings of the Council on Real Estate Appraisers. The meeting for which credit is sought must have been a minimum of one hour in

duration and is subject to a one hour per meeting maximum. Continuing education credit for attendance at Council meetings is subject to a three hour per biennial renewal period maximum.

*(Break in Continuity of Sections)*

## 4.0 General Appraisal Practice

*(Break in Continuity Within Section)*

### 4.2 Responsibilities of Supervisors of State Licensed Trainees

*(Break in Continuity Within Section)*

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

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

### 4.3 Responsibilities of State Licensed Appraiser Trainees

4.3.1 All appraiser trainees must be licensed as required under 24 Del.C. Ch. 40. All qualifying education must be completed within the five (5) year period prior to the date of submission of an application for a trainee appraiser license. A trainee appraiser is permitted to have more than one supervisory appraiser.

4.3.2 A State licensed trainee may assist in the performance of real estate appraisals provided that:

4.3.2.1 The trainee shall only work under the direct supervision of one or more State certified real property appraiser(s); an individual who is no longer supervised shall not engage in the act of appraising until a new license is issued showing a new supervisor;

4.3.2.2 The trainee shall maintain an appraisal experience log on a form provided by the Council and certified by the supervising appraiser;

4.3.2.3 The trainee shall inspect the property and participate in the appraisal process in order to receive experience credit for the hours spent. In order for the trainee to receive experience log credit, either the contribution of the trainee shall be identified in the report, with the trainee identified by name, state and license number, or the trainee shall sign the report. The appraisal shall be signed by the trainee as follows:

The trainee shall place on the "other" line in the signature section of the appraisal forms, his or her license # and the title "appraiser Trainee" in the appropriate places. For example:

"or other (describe) Appraiser Trainee State# X4-xxx"

4.3.2.4 The trainee shall ensure that the log is available at all times for inspection by the Council; and

4.3.2.5 When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.

4.3.3 Effective January 1, 2015 the Appraiser trainee shall be required to complete a course that, at a minimum, complies with the specifications for course content established by the AQB prior to obtaining a trainee appraiser license. This course is in addition to the qualifying education hours needed for trainee licensure. The course shall be oriented toward the requirements and responsibilities of supervisory appraisers and expectations for trainees. The course must be

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# PROPOSED REGULATIONS

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completed by the trainee appraiser prior to obtaining a trainee appraiser credential, and completed by the supervisory appraiser prior to supervising a trainee.

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

**2930 Council on Real Estate Appraisers**

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## DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 18 Delaware Code, Section 2503; 21 Delaware Code, Section 302  
(18 Del.C. §2503; 21 Del.C. §302)

### PUBLIC NOTICE

#### **2224 Defensive Driving Course, Providers, and Instructors**

The Delaware Division of Motor Vehicles gives notice of intent to transfer a portion of regulatory authority for the Defensive Driving Course from Title 18 Insurance Regulation 607 to a new Title 2 Transportation Regulation 2224.

This proposal is pursuant to Senate Bill 178 with Senate Amendment 1 of the 147<sup>th</sup> General Assembly, which transfers the authority to regulate Delaware's state-approved defensive driving courses from the Department of Insurance to the Division of Motor Vehicles, except for the regulatory authority over the insurance discount, as required by the program, which will remain under the Department of Insurance.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed new regulation must submit the same to Kami Beers, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-4750 Attn: Kami Beers by February 1, 2015.

#### **2224 Defensive Driving Course, Providers, and Instructors**

##### **1.0 Purpose and Authority**

The purpose of this Regulation is to provide criteria for certification of Motor Vehicle Accident Prevention Courses, commonly referred to as Defensive Driving Courses (herein after "DDC") and Instructors. This Regulation is adopted pursuant to 18 Del.C. §2503(6). The authority to promulgate is in accordance with 21 Del.C. §302 and the procedures specified in the Administrative Procedures Act, 29 Del.C. Ch. 101.

##### **2.0 Definitions**

"Classroom courses" for the purpose of this regulation means a defensive driving program conducted with students and instructors in a location common to all. These courses may include the use of audio or visual aids or materials.

"Division" means the Delaware Division of Motor Vehicles

"Instructors" means those who are authorized to instruct course material for certified DDC courses offered by Providers.

"On-line courses" for the purpose of this regulation means instruction provided online or offline through the use of a computer (or digital reader) including the use of CD-ROMS or similar pre-recorded media or websites.

"Providers" means corporate sponsor for any course as well as the individual who signs the application for the course.

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## **3.0 Certification Criteria for Defensive Driving Course**

- 3.1** Each provider of a defensive driving course that seeks certification of that course by the Division shall submit to the Division for approval the following materials:
- 3.1.1** All written instructor materials, testing materials and curricula utilized for classroom instruction.
  - 3.1.2** All written materials provided to students in connection utilized for classroom instruction.
  - 3.1.3** Identity and qualifications of all Instructors.
  - 3.1.4** All curricula and testing material used in connection with an on-line course.
  - 3.1.5** All materials available to students in connection with an on-line course.
  - 3.1.6** All testing and grading criteria used in an on-line course.
  - 3.1.7** Identity and qualifications of persons available to answer student questions respecting content and technical support for an on-line course.
- 3.2** The course materials for each defensive driving course shall include, at a minimum, the following:
- 3.2.1** State of Delaware traffic laws, defensive driving and collision prevention techniques/theory.
  - 3.2.2** A discussion of vehicle safety devices, including the requirement for and use of seat belts, child restraint devices and their proper use and relationship to a child's age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems with special attention to proper passenger seating and proper use of anti-lock breaking systems and how they compare to standard braking systems;
  - 3.2.3** A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs, as well as Delaware "Zero Tolerance" for drivers under 21;
  - 3.2.4** A discussion of the factors affecting driving and how they pertain to driving defensively, including, but not limited to:
    - 3.2.4.1** The condition of the driver, the vehicle, the road, sun glare, weather, such as rain, fog, sleet, hail and snow, and lightening;
    - 3.2.4.2** Distractions such as use of cellular telephones while driving, adjusting radios, audio and video tapes and compact discs, and DVDs, talking with a passenger, reading, eating, billboards, and other roadside distractions;
  - 3.2.5** A discussion, including specific requirements of Delaware law where applicable, of pertinent driving situations, including stopping distances, proper following distances, proper intersection driving, roundabouts, stopping at railroad crossings, right-of-way and traffic devices, pavement line markings, blind spots, as well as situations involving passing and being passed and head-on collisions; and
  - 3.2.6** Consideration of the hazards and techniques of various driving situations such as, but not limited to, city, highway, expressway and rural driving, proper use of exit and entrance ramps, driving in parking lots.
  - 3.2.7** A discussion of aggressive driving including but not limited to identifying an aggressive driver and providing appropriate defensive driving techniques. Discussion shall also include how to identify oneself as an aggressive driver and the appropriate manner to respond.
  - 3.2.8** Speed limits
  - 3.2.9** School buses
  - 3.2.10** Emergency vehicle right of way
  - 3.2.11** Turn signals/Turning maneuvers
  - 3.2.12** Headlight usage
  - 3.2.13** Motorcycle
  - 3.2.14** Pedestrian
  - 3.2.15** A discussion of the 10% and 15% premium discounts as well as the 3 point Division credit.
  - 3.2.16** A discussion of how and when the insured will receive the course completion certificate and how the 3 point credit is provided to the Division.

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## PROPOSED REGULATIONS

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### 3.3 All Providers shall:

- 3.3.1 Require Instructors in classroom courses to present information in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.
- 3.3.2 Require on-line courses, as well as other courses available other than in a classroom, to provide toll free telephone lines staffed by knowledgeable customer service personnel who can assist with content based questions during normal business hours which shall appear in bold large lettering on the website prior to the course sign up page. The set hours must be submitted to the Division for prior approval.
- 3.3.3 Require that each student receives a minimum of six hours of classroom or on-line time for the initial course and three hours of classroom or on-line time for the renewal courses. Each classroom hour shall consist of not less than an average of 50 minutes of instructional time devoted to the presentation of course curriculum. Online courses shall be structured to provide the same learning time as required for classroom and shall submit to the Division any materials necessary to demonstrate their ability to comply with the minimum time requirement set forth in this section. A minimum of three hours must be devoted to the requirements in 3.1 through 3.2.16.
- 3.3.4 Require that registration shall be completed prior to the beginning of any type of instruction and shall not be counted as instructional time.
- 3.3.5 Require its Instructor in classroom courses to be in the classroom with the students during any and all periods of instructional time.
- 3.3.6 Require Instructors in classroom courses to maintain an atmosphere appropriate for class-work.
- 3.3.7 Material required to be covered by this Regulation shall be discussed by the Instructor in a classroom situation and be included as on screen information in an on-line course. Changes in such material shall be submitted to the Division for pre-approval utilization in the classroom.
- 3.3.8 Supply students who complete a defensive driving course and who have presented a valid Delaware driver's license and/or government issued photo identification with a certificate of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course Provider as well as Instructor, with contact information and the Provider's authorized signature.
  - 3.3.8.1 All online courses shall be required to obtain the student's driver's license number as part of the student identification information prior to permitting the student access to the course materials and have each student complete an online affidavit with a verification that they are the person who took the course and who is receiving the completion certificate and credit and that they understand that making a false unsworn falsification is a violation of 11 Del.C. §1233 of the Delaware Crimes Code, subjecting a violator to fine, imprisonment, or both.
- 3.3.9 Provide all students with a copy of a letter provided by the Division informing the student how to provide comment or file a complaint regarding a defensive driving course. This letter shall be in hard copy form for classroom courses. On-line courses shall place the letter with registration on-line and/or shall provide a hard copy with the certificate of completion.
- 3.3.10 Notify the Division of each student's successful completion of the course in the manner and form required by the Division. Said notification shall be made within fourteen days of the student 's course completion.
- 3.3.11 Utilize and maintain either its own proprietary teaching or testing materials, or teaching and testing material properly obtained by a third party under a written license agreement. The Provider of an on-line course may not submit an original course application for a course previously approved by the Division and owned or licensed to another Provider. This section shall not limit the ability of a Provider of an approved on-line course to have independent licensing agreements with other entities.
- 3.3.12 Maintain requisite staffing, facilities, and resources necessary to process student payments, provide competent instruction, administer effective testing, issue timely completion certificates and provide proper notice to the Division of Motor Vehicles regarding credit earned from successful completion of the course.

3.3.13 Provide the Division with free site access to online courses for purposes of verification of compliance. Division Defensive Driving personnel shall have access to audit classroom courses at no cost, but with no credit.

## **4.0 Course Recertification**

Course certifications shall expire three years after approval or of the effective date of this Regulation, whichever date occurs later. Providers shall submit applications for recertification no earlier than 6 months prior to expiration. Providers that submit recertification applications no later than ninety days prior to the expiration date shall be deemed approved until the Division has acted on the application. In all other cases course certification shall expire on the three year anniversary date and those courses shall be decertified until such time as approval is granted.

## **5.0 Certification Criteria for Defensive Driving Instructors**

5.1 Basic Requirements. Each Instructor shall:

5.1.1 Be a licensed driver for a minimum of thirty-six months;

5.1.2 Be a high school graduate or have a G.E.D.;

5.1.3 Provide a certified copy of his or her driving record showing he or she holds a valid driver's license with no more than four (4) points, no suspensions or revocations in the past two years; and

5.1.4 Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Division may require a criminal history background check of all applicants for an Instructor's certification.

5.1.5 Submit the Application for Certification with documentation showing that the applicant has:

5.1.5.1 a minimum of 9 hours of in-service training classes taught by a certified Instructor;

5.1.5.2 a maximum of 3 of those 9 hours may be satisfied by observing a certified Instructor teaching an actual class;

5.1.5.3 a minimum of 6 hours of trainee Instructor class presentations observed by a Provider-certified Instructor.

## **6.0 Instructor Re-certification**

6.1 Every three years each certified Instructor shall:

6.1.1 Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous calendar year;

6.1.2 Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and

6.1.3 Submit a form as prescribed by the Division certifying that he or she continues to meet the requirements of an Instructor as outlined in this Regulation.

6.1.4 Submit a certified copy of his or her driving record.

6.2 The above-described submissions shall be filed not later than three months prior to the expiration date of the then-current certification. Instructors whose certification have expired shall not instruct any courses until they have been recertified.

6.3 The Division may provide procedural guidelines and directives through the use of bulletins and/or circular letters through the Division's website from time to time as may be appropriate.

## **7.0 Complaints, Hearings, De-certification, Suspension and Probationary Status**

7.1 The following procedure shall be followed for the investigation of complaints regarding a DDC course and/or Instructors certified under section 3.0 and section 5.0, respectively, of this Regulation:

7.1.1 Any person who desires to files a complaint regarding a course and/or an Instructor of any course must do so in writing.



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## PROPOSED REGULATIONS

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- 7.1.2 The complaint shall state the name of the course, its provider and/or Instructor and the facts that allegedly constitute the basis for the complaint. If either of these elements is missing from the complaint, the Division may, in its discretion, dismiss the complaint without further notice or a hearing.
- 7.1.3 The Division, upon determining that the complaint is complete as provided in section 7.1.2 above shall, within 15 days of the receipt of the complaint, transmit a copy of the complaint by certified mail, receipted email or other receipted delivery service to the Provider and/or Instructor named in the complaint at their address(es) of record in the Division files. The named Provider and/or Instructor may file an answer to the complaint within 20 calendar days with the Division.
- 7.1.4 The Division shall assign a staff member to investigate the complaint and the Provider's and/or Instructor's response.
- 7.1.5 The staff member, as part of the investigation, shall provide a report of the staff member's findings and recommendations to the Director or the Director's designee for further action as may be appropriate under this section. The report shall list the evidence reviewed, the witnesses interviewed and cite the law or regulation alleged to have been violated and the facts to support such finding. The report shall contain a written recommendation either to take such action as may be authorized by this section or to dismiss the complaint.
- 7.1.6 A dismissal of the complaint shall be without prejudice and no further action shall be taken by the Division. The Division shall provide a written notification of the Division action and the basic reason(s) therefore to the complainant and to the Provider and/or Instructor.
- 7.2 Nothing in this section of this Regulation shall preclude the Provider or Instructors from entering into a consent agreement with the Division.
- 7.3 A Provider and/or Instructor who receives a warning or is placed on probation and does not show proof of compliance with the conditions of the warning or probation within the time set forth in the consent agreement or order shall be subject to suspension or decertification.
- 7.4 In addition to the other provisions of this Regulation, a Provider and/or Instructor may be placed on probation, suspended or decertified for any one or more of the following:
- 7.4.1 Falsification of information on, or accompanying, the Application for Certification/Re-certification;
- 7.4.2 Falsification of, or failure to keep and provide, adequate student records and information as required herein; or
- 7.4.3 Falsification of, or failure to keep and provide, adequate financial records and documents as required.
- 7.4.4 Failure to comply with the course content requirements set forth in 3.0 above.
- 7.5 Upon a recommendation for further action under section 7.1 of this Regulation, the Director or the Directors' designee, shall determine whether the Provider and/or Instructor should be warned (with or without conditions), placed on probation (with or without conditions) for not more than 90 days, suspended for a period not to exceed 6 months, or to be permanently decertified for one or more violations of this Regulation. For purposes of the enforcement of this Regulation and the protection of the public, progressive discipline is not required.
- 7.6 Upon making a determination as provided for in section 7.5 of this Regulation, the Division shall provide written notice to the Provider and/or Instructor by certified mail, receipted email or other receipted delivery service. A copy of the notice shall be provided to the complainant. The notice shall include the following:
- 7.6.1 a summary of the complaint;
- 7.6.2 a summary of the information obtained in the investigation;
- 7.6.3 findings of fact and/or law; and
- 7.6.4 the sanction to be imposed by the Division.
- 7.7 Upon receipt of the notice provided for in section 7.6 of this Regulation, the Provider and/or Instructor shall have the right to a hearing and appeal.
- 7.7.1 Such written request must be filed with the Director within 14 days after receipt of a copy of the notice.

- 7.7.2 The hearing shall be before the Director or the Directors' designee.
- 7.7.3 Any such hearing shall be held within thirty (30) days after the date upon which the Director received the timely written request, unless there is a postponement or continuance. The Director, or the Directors' designee, may postpone or continue any hearing on their own motion, or upon written application of the Provider or Instructor for good cause shown.
- 7.7.4 During the pendency of any such hearing, the action taken shall be forthwith returned pending the outcome of such hearing, unless action taken was based upon a conviction of the Provider or any partner, officer, agent or employee of such Provider, and/or Instructor of a felony or of any crime or improper conduct, involving violence, dishonesty, indecency, degeneracy or moral turpitude or where the Provider has been found by the Division to be involved in improper conduct involving violence, dishonest, deceit, indecency, degeneracy, or moral turpitude, while acting as a Provider and/or Instructor.
- 7.8 A Provider or Instructor who is de-certified pursuant to this regulation must wait six (6) months from the date of de-certification before requesting re-certification.

## **8.0 Effective Date**

This regulation shall become effective on March 11, 2015. Previously approved courses through the Department of Insurance will be honored until the expiration of their existing approval. All courses applying for approval on or after March 11, 2015, shall meet the requirements of this regulation prior to being approved.

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### **DIVISION OF TRANSPORTATION SOLUTIONS**

Statutory Authority: 17 Delaware Code, Sections 137 and 145; 29 Delaware Code, Section 8404  
(17 Del.C. §§137 & 145; 29 Del.C. §8404)

### **PUBLIC NOTICE**

#### **2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property Interests**

#### **Background**

The Delaware Department of Transportation is seeking public comment regarding an alternative dispute resolution procedure to assist in reaching or finally determine the amount of compensation to be paid for the acquisition of real property, when the Department has filed a condemnation action for that acquisition, in the manner otherwise prescribed by 10 Del.C. Ch. 61.

In some instances, the parties involved may find it useful to engage in either a binding or non-binding review of their respective property valuations, using a panel of qualified appraisers for the purpose. The protocols for this alternative dispute resolution mechanism are outlined in the draft regulations.

#### **Public Comment Period**

The Department will take written comments on the proposed Regulation for this Alternative Dispute Resolution Protocol for Acquisition of Certain Real Property Interests from January 1, 2015 through January 31, 2015. The proposed Regulation appears below.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Robert Cunningham  
Chief of Right of Way  
Division of Transportation Solutions  
Delaware Department of Transportation  
P.O. Box 778

Dover, DE 19903  
(302) 760-2303 (telephone)  
(302) 739-2895 (fax)  
robert.cunningham3@state.de.us

### **2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property**

#### **1.0 Purpose**

The Department may initiate an Alternative Dispute Resolution (ADR) process, at the discretion of the Chief Engineer, on a per project basis to provide a property owner the opportunity to initiate and/or agree to a binding or non-binding review to determine the Just Compensation for the acquisition. This review will be held in an attempt to amicably settle the case without going to a formal court hearing. The results of this review will be either binding or non-binding on either party as they may agree in writing. If non-binding, either party can request the case proceed thereafter to a formal hearing. The results of the non-binding review will be considered privileged information and any part of the review, including value conclusions shall not be admissible in any future valuation hearings by either party.

#### **2.0 Requirements**

- 2.1 Both parties must agree to the ADR and the process listed below. Any changes to the process must be approved by both parties and a DAG assigned to the case.
- 2.2 The ADR review can only take place after an Order for Possession has occurred. However, an agreement to proceed to an ADR is allowed at anytime prior to the Order for Possession.
- 2.3 Expenses related to the conducting of the ADR review shall be borne by DeIDOT, except for any cost incurred by the defendant, their attorney or witnesses in preparing or presenting their case.
- 2.4 No discovery other than the transfer of appraisals, engineering reports or other documentation typically available during negotiations is allowed.
- 2.5 All information related to the case shall be held as confidential in the non-binding ADR.

#### **3.0 Steps**

- 3.1 Upon the entering of an Order for Possession by the Courts, either party (DeIDOT or the owner, or their respective representatives) may request an ADR review. This request must be in writing and may be submitted any time after the initiation of negotiations, but no later than within 45 days of the Order for Possession.
- 3.2 A response to the ADR request must be sent to the requesting party within 15 days of receipt of the request. Non-response by the party receiving the request within the 15 day period shall be construed as a refusal to the request for an ADR review.
- 3.3 All ADR requests or responses to a request made to DeIDOT, or activities/determinations performed by DeIDOT as part of the review process must have approval of the Assistant Director with concurrence from a DAG. In cases with Just Compensation in excess of \$500,000, approval of the Secretary is also required.
- 3.4 If no request is made or response received within the time frames identified, no ADR shall be allowed. If any activity or determination of either party is not performed within the identified time frames during the ADR process, without a written request and agreement for additional time to meet the obligation, the ADR process will be considered canceled by the obliged party.
- 3.5 Both parties shall have the right to cancel the ADR at any time. However if the ADR review is canceled by the property owner less than 30 days prior to the hearing, they shall be responsible for any costs incurred by DeIDOT related to the conducting of the ADR review.
- 3.6 Within 30 days of agreement between the parties to meet, each party shall submit the name of one Delaware Licensed Real Estate Appraiser that is qualified to appraise the property being acquired, who shall act as a review panel member.

- 3.7 The parties shall mutually select a third, independent, qualified member for the ADR review panel. If no agreement for a third member is reached, the parties shall request the Board of Realtors for the County the property is located in to appoint a Delaware Licensed Real Estate Broker, or Delaware Licensed Real Estate Appraiser, whose expertise includes the type of property being acquired, to act as the Chief ADR officer. This person shall be compensated for their time at the review as well as any travel in accordance with DeIDOT's reimbursement for Fee Appraisers.
- 3.8 The Chief ADR Officer will act as the lead for the review panel and will be responsible to prepare the final report.
- 3.9 The date and place of the review shall be arranged between the two parties and the members of the ADR review panel.
- 3.10 All documentation to be supplied by the parties shall be presented to the ADR officers and the opposing party no less than 15 days prior to the review.
- 3.11 The members of the ADR review panel shall meet in private to discuss the merits of each party's appraisal and documentation. There will not be any testimony or input required from either party for the review unless requested by the ADR review panel. Copies of any testimony or input required of the parties shall be made available to the opposing party.
- 3.12 The ADR review panel shall then reach a value conclusion based upon the information provided. A majority vote of the members must agree to approve the final value determination.
- 3.13 The Chief ADR officer, with assistance from the other members, shall present a report detailing the determination of value as well as the justification for the determination. The amount of detail required is to be determined by the ADR panel members; however, the report must clearly justify the panel's findings and reference any materials, testimony or input used to arrive at the determination.
- 3.14 The final report shall be transmitted in writing to the parties within 30 days of the review meeting.
- 3.15 If the ADR is a non-binding review, each party shall have 20 days to accept or reject the ADR determination. If both parties accept, the parties shall proceed to settlement. If either party rejects the determination, the case shall continue the normal eminent domain process.
- 3.16 The parties shall notify the other party as well as the ADR of their determination in writing.
- 3.17 Upon final receipt of the ADR report, the ADR review panel shall be dismissed and any compensation will be made to the members.
- 3.18 The ADR report is considered a protected document and may not be distributed to any party without consent by both parties and the members of the ADR prior to completion of all portions of the real estate transaction or any ancillary activities relating to the real estate transaction.
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## OFFICE OF MANAGEMENT AND BUDGET DIVISION OF FACILITIES MANAGEMENT

Statutory Authority: 16 Delaware Code, Chapter 78 (16 Del.C. Ch. 78)

### PUBLIC NOTICE

#### 4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program

In accordance and compliance with the procedures set forth at 29 Del.C. §§1131, *et seq.* and 29 Del.C. §§10101, *et seq.*, the Director of the Office of Management and Budget is proposing to adopt the following amendments to a Regulation:

**I. Title of Regulation to be Amended:**

4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program

**II. Brief Synopsis of the Subject, Substance, and Issues:**

The Office of Management and Budget, Division of Facilities Management has proposed amendments to the State of Delaware 4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program.

The presently existing regulation can be found at:

<http://dfm.delaware.gov/docs/regulations.pdf>

The proposed amendment updates training requirements and adds cash as a payment option for various fees related to certification of employees and professionals affected by this regulation.

### III. Possible Terms of Agency Action:

There is no sunset date for this Regulation.

### IV. Statutory Basis or Legal Authority to Act:

16 Del.C. §7801, *et seq.*

### V. Other Regulations that May be Affected by the Proposal:

None Known.

### VI. Notice of Public Comment:

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed amended regulation must submit same to Robert Scoglietti by 4:30 p.m. on Wednesday, February 4, 2015. Any such requests should be directed to:

Robert Scoglietti  
 Delaware Office of Management and Budget  
 122 Martin Luther King Jr. Blvd. South  
 Dover, DE 19901  
 Email: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)

### VII. Prepared By:

Robert Scoglietti  
 Director of Policy and External Affairs  
 Delaware Office of Management and Budget

## 4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program

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

### 4.0 Training Requirements for Asbestos Contractors/Supervisors/Workers Class "A" and "B" Environmental Project Monitors

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

- 4.5 Asbestos Abatement Contractor/supervisor - Class "B"
- 4.5.1 One competent person (per work site) for a "B" Contractor or Supervisor must have the forty (40) hour Class "A" Supervisor Training to meet OSHA Class II requirements.
- 4.5.2 Shall successfully complete a two (2) day, fourteen (14) hour course approved by Facilities Management which includes hand-on training in accordance with OSHA 1926.1101 "Asbestos". ~~And must and pass a 35-question an~~ examination with a passing score of 70%. An examination is required for Initial and Refresher "B" Training.
- 4.5.3 Asbestos Worker Class "B" Training:
- 4.5.3.1 Shall successfully complete a 1 ½ day, twelve (12) hour course approved by ~~Facilities Management the Department.~~ ~~Must and pass a 25-question an~~ examination with a passing score of 70%. An examination is required for Initial and Refresher "B" Training.
- 4.6 Annual re-training ~~and examinations are required for Class "A" certifications as approved by Facilities Management.~~ Biennial ~~two (2) year~~ re-training is required for Class "B" certification.

*(Break in Continuity of Sections)*

**7.0 Application for Asbestos Abatement Contractor Certification or Renewal of Certifications**

*(Break in Continuity Within Section)*

- 7.2 All applications for renewal of Asbestos Abatement Contractor Certification shall be submitted as follows:
- 7.2.1 A certificate holder who intends to seek renewal of an Asbestos Abatement Contractor Certification issued by Facilities Management under this Regulation shall submit application to renew the certificate at least thirty (30) days prior to its expiration. The renewal application may request the applicant to inform Facilities Management of any changes in information previously provided to Facilities Management and any other information deemed by Facilities Management to be relevant.
- 7.2.2 The completed application shall be sent to Facilities Management at the address specified in the application package accompanied by a non-refundable renewal application fee of one hundred dollars (\$100.00). The fee shall be paid in the form of cash, a bank or postal money order, bank cashier's check, or certified check payable to the State of Delaware. No other instrument shall be used for payment of an application fee for certification renewal. The renewal fee for Class "B" contractor shall be one hundred (\$100.00) dollars.

*(Break in Continuity of Sections)*

**13.0 Certification for Professional Service Firms**

- 13.1 Architectural/Engineering/Environmental Consulting Firms who provide services such as specifications and design, project administration and management, perform bulk and air sampling for asbestos abatement projects and/or who provide technical consulting services for asbestos abatement projects shall be certified and regulated by this Regulation.
- 13.2 Qualifications for certification of asbestos professional services.

*(Break in Continuity Within Section)*

- 13.2.7 Completed application shall be sent to the address specified in the application package accompanied by a non-refundable application fee of one hundred (\$100) dollars. The fee shall be paid in the form of cash, a bank or postal money order or postal money order, bank cashier's check, or certified check made payable to the State of Delaware.
- 13.2.8 All applications for Professional Service Firms shall be submitted in writing on forms furnished by the agency.
- 13.2.9 An applicant denied certification on any grounds other than failure to complete an application may request a hearing before the Director of Facilities Management and/or his/her designee by submitting a written request for such hearing within thirty (30) days of receipt of denial.
- 13.2.10 Certification will be valid for one (1) year from the date of issuance unless previously suspended or revoked.

**14.0 Asbestos Class "A" Project Supervisors Certification**

*(Break in Continuity Within Section)*

- 14.5 All applications for Asbestos Project Supervisors Certification shall be submitted as follows:
- 14.5.1 All applications for Asbestos Project Supervisors Certification shall be submitted in writing on forms provided by Facilities Management. Copies of such forms may also be obtained from the Division of Facilities Management or the State website.
- 14.5.2 Completion of such forms may require the inclusion of any information deemed appropriate by Facilities Management. Along with such application forms, every applicant shall submit full face photographs of himself/herself in such number and sizes as Facilities Management shall prescribe. Such photographs shall have been taken within thirty (30) days of such application.

# PROPOSED REGULATIONS

14.5.3 Each application for Asbestos Project Supervisors Certificate shall contain a verified statement by the applicant that he/she will abide by all rules and regulations promulgated by either Facilities Management or any other State agency as appropriate.

14.5.4 Completed applications shall be sent to the address specified in the application package accompanied by a non-refundable application fee of fifty (\$50.00). The fee shall be paid in the form of cash, a bank or postal money order, bank cashier's check or certified check payable to the State of Delaware. No other instrument shall be used for payment of an application fee.

**(Break in Continuity Within Section)**

14.8 Lost, damaged or destroyed Asbestos Project Supervisor license can be replaced by Facilities Management. The request must be accompanied by a statement from the applicant that the certificate was lost, damaged or destroyed through no fault of the applicant. A fee of fifteen dollars (\$15.00) in the form of cash, a bank or postal money order, bank cashier's check, or certified check payable to the State of Delaware must be submitted for replacement to cover administrative costs.

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

**4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program**

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## DIVISION OF FACILITIES MANAGEMENT

Statutory Authority: 29 Delaware Code, Section 6908(a)(6) (29 **Del.C.** §6908(a)(6))

### PUBLIC NOTICE

#### **Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects**

In accordance and compliance with the procedures set forth at 29 **Del.C.** §§1131, *et seq.* and 29 **Del.C.** §§10101, *et seq.*, the Director of the Office of Management and Budget is proposing to adopt the following Regulation:

#### **I. Title of Regulation:**

Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.

#### **II. Brief Synopsis of the Subject, Substance, and Issues:**

The proposed regulation is intended to safeguard the public by establishing the mechanism, standards and requirements of a Mandatory Drug Testing Program for Contractors and Subcontractors that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 **Del.C.** §6962.

The key components of the Drug Testing Regulation include the following:

- Applicability for all public works projects bid under 29 **Del.C.** §6962.
- A requirement that all Large Public Works RFP's require each Contractor and Subcontractor to have a program of drug testing.
- Conformance to federal (SAMHSA) standards for collection, chain of custody procedures, laboratory testing, and Medical Officer review.
- Requirements for Initial Testing, Random Testing, Reasonable Suspicion Testing, Return to Duty Testing, and Accident Triggered Testing.
- Consequences of a positive test result by an Employee of a Contractor or Subcontractor.
- Penalties for non-compliance with this regulation.

On January 1, 2014 (Volume 17, Issue 7), OMB published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It was requested that written materials and suggestions from the public concerning the proposed regulations be delivered to OMB by February 4, 2014 or be presented at a

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public hearing on February 5, 2014, after which time OMB would review information, factual evidence and public comment to the proposed regulations. Considerable public comment was received by the following organizations:

- Associated Builders and Contractors of Delaware
- Delaware Contractors Association
- Richard Johnson and Sons Inc.
- Wohlsen Construction
- EDIS Company
- Delaware Army National Guard
- Diamond Materials LLC
- Ventresca Brothers Construction
- Wayman Fire Protection Inc.
- Marijuana Policy Project

The comments that were received have been considered and resulted in substantive changes to the form and content of the initially proposed regulation. In accordance with 29 **Del.C.** §10118(c), the amended regulation is hereby proposed as a newly proposed regulation.

### III. Possible Terms of Agency Action:

There is no sunset date for this Regulation.

### IV. Statutory Basis or Legal Authority to Act:

29 **Del.C.** §6908(a)(6)

### V. Other Regulations that May be Affected by the Proposal:

None Known.

### VI. Notice of Public Comment:

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed amended regulation must submit same to Robert Scoglietti by 4:30 p.m. on Friday, March 6, 2015. Any such requests should be directed to:

Robert Scoglietti  
Delaware Office of Management and Budget  
122 Martin Luther King Jr. Blvd. South  
Dover, DE 19901  
Email: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)

### VII. Public Hearing:

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on Wednesday, February 11, 2015 in Room 219 of the Haslet Armory, 122 Martin Luther King Jr. Blvd South, Dover DE at 2:00 PM.

### VIII. Prepared By:

Robert Scoglietti  
Director of Policy and External Affairs  
Delaware Office of Management and Budget

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

**[Regulations for the Drug Testing of Contractor and Subcontractor Employees](#)**

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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.

**DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM**

Statutory Authority: 11 Delaware Code, Section 8605 (11 **Del.C.** §8605)

## ORDER

**1301 Delaware Criminal Justice Information System Rules and Regulations**

AND NOW, this 20th day of November, 2014, the Delaware Criminal Justice Information System ("DELJIS"), issues the following Order which shall be effective ten (10) days after the publication of this Order in the Delaware *Register of Regulations*:

1. Pursuant to its statutory authority, the DELJIS Board of Managers ("Board") has proposed for adoption a comprehensive set of regulations (the "Proposed Regulations") to be used for system access and security protocol as set forth in 11 **Del.C.** §8605.

2. These regulations are applicable to all users of the Delaware Criminal Justice Information System (CJIS) and to any agency requesting access to CJIS from the Board. These regulations will ensure that access to criminal justice information conforms to the statutory requirements outlined in Chapters 85 and 86 of Title 11 of the Delaware Code.

**Summary of the Evidence and Information Submitted**

3. The Proposed Rules were published in the Delaware *Register of Regulations* on October 1, 2014, and were also placed on the DELJIS website. Written comments from the public were invited.

4. The DELJIS Board of Managers held a public hearing on October 22, 2014 from 1:00-3:00 p.m., at the Division of Accounting, New Castle Conference Room, 820 Silver Lake Boulevard Dover, DE 19904 at which members of the public were permitted to present comments on the proposed regulations. At the hearing, the Board accepted as evidence and marked as Board Exhibit 1 and Board Exhibit 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*, respectfully.

5. One commentator recommended several non-substantive changes to the Board including the following: clarification of administrative leave (Section 6.7), grandfathering existing agencies (Section 5.2) waiving

fingerprinting fees (Section 6.1), permitting notice as soon as practical (Sections 6.6, 6.7, 6.8, 6.9), removing prepositions (Section 6.10), destruction of records protocol by the Delaware Public Archives (Section 7.3.1), the retention of criminal history in personal files and other non-public court records (Section 7.2), and the pro-se litigants and union representatives discussion on the practice of law.

6. No written comments were submitted by members of the public in the 15 days following the public hearing. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of the Evidence and Information Submitted."

## Summary of the Findings of Fact

7. The DELJIS Board of Managers considered the comments received at the Public Hearing and the Proposed Regulations at its regularly scheduled Board meeting held on November 20, 2014.

8. Pursuant to discussions held at the November Board meeting, the Board proposed to amend Regulation 2.0 to include military leave to avoid use of CJIS while deployed unless otherwise authorized, and to add a definition of Interstate Identification Index ("Triple-I or III") to provide uniform definitions throughout the Regulations.

9. Pursuant to discussions held at the November Board meeting, the Board proposed to amend Regulation 5.2 to clarify that existing CJIS agencies will not need to reapply for CJIS access but instead that applications for new or enhanced access to CJIS must apply for such access.

10. Pursuant to discussions held at the November Board meeting, the Board rejected any revisions to amend Regulation 6.1 because the Board does not control fingerprint fees charged by for SBI or FBI.

11. Pursuant to discussions held at the November Board meeting, the Board proposed to amend Regulations 6.6, 6.7, 6.8, and 6.9 to clarify the term immediately. This clarification is needed to include that notification may be immediately or as soon as practical.

12. Pursuant to discussions held at the November Board meeting, the Board proposed to amend Regulations 6.10, 7.1, and 7.3.2 to include Triple-I documents within the records retention and destruction procedures.

13. Pursuant to discussions held at the November Board meeting, the Board proposed to amend Regulation 7.2 to clarify that printed criminal history information should not maintained in personnel files, court records, and Superior Court sentence reports and must be immediately destroyed after its intended use.

14. Pursuant to discussions held at the November Board meeting, the Board proposed to amend Regulation 7.3, 7.3.1, and 7.3.2 to clarify that agency need not notify the Delaware Public Archives for every document that needs to be destroyed, and for ease of reference, to include a citation to the federal CJIS Security Policy.

15. Pursuant to discussions held at the November Board meeting, the Board proposed to amend Regulation 13.3. to clarify that a party may appear with a union representative at a hearing before the Board.

16. At its November 20, 2014 Board meeting, the Board adopted a resolution pursuant to which DELJIS adopted the Proposed Regulations as a final set of regulations to be followed in the administration of the access to the system access and security protocol.

## Text and Citation

17. Said Regulations shall be cited as 1 **DE Admin. Code** 1301 Delaware Criminal Justice Information System Rules and Regulations.

## Decision of the Board

NOW THEREFORE, for the reasons set forth above, **IT IS ORDERED** this 20<sup>th</sup> day of November, 2014, by the DELJIS Board of Managers, that having found that the proposed regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These regulations will become effective ten days following publication of this order in the Delaware *Register of Regulations* on January 1, 2015.

Earl McCloskey, Vice Chairperson

Marian Bhate, Board Member

Phillip Winder, Board Member

Lieutenant Frederick Calhoun, Board Member

Michael McDonald, Board Member  
 Deborah Lindell, Board Member  
 Michelle Brogden Proxy for Nancy Dietz, Board Member

### **1301 Delaware Criminal Justice Information System [Rules and] Regulations**

*(Break in Continuity of Sections)*

#### **2.0 Definitions**

The definitions set forth in 11 **Del.C.** §8602 are hereby adopted and incorporated by reference in these regulations. The following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise.

*(Break in Continuity Within Section)*

**"Administrative leave"** means a temporary leave from employment, including without limitation, extended leave, [military leave,] family medical leave, or suspension from an agency.

*(Break in Continuity Within Section)*

**"Interstate Identification Index (Triple-I or III)"** means a national index containing automated criminal history record information maintained by the Federal Bureau of Investigation (FBI) at the National Crime Information Center, and accessible by appropriate Federal, state, and local law enforcement and other criminal justice agencies through the same network as NCIC.]

*(Break in Continuity of Sections)*

#### **5.0 Agency Access to CJIS**

- 5.1 To determine if access should be granted to an agency, the Board will consider whether the agency meets the conditions outlined in 11 **Del.C.** §8610.
- 5.2 An application for [new or enhanced] access to CJIS shall be submitted to the DELJIS Security Manager on forms approved by the Board.

*(Break in Continuity of Sections)*

#### **6.0 Responsibilities of Authorized Agencies**

- 6.1 Authorized Agencies shall obtain a fingerprint based criminal history report from SBI [~~&~~ and] FBI for each Authorized User.
- 6.2 Authorized Agencies must ensure all Authorized Users within their agency annually acknowledge that they have read and understand these regulations. The Authorized Agency shall be responsible for returning a signed acknowledgment for each Authorized User to the DELJIS Security Manager.
- 6.3 Authorized Agencies must ensure that Authorized Users within their agency comply with Chapters 85 and 86 of Title 11 of the Delaware Code and these regulations.
- 6.4 The Authorized Agency head or designee is responsible for ensuring all Authorized Users attend the DELJIS training commensurate to each Authorized User's employment position, as set forth by DELJIS.
- 6.5 The Authorized Agency head or designee shall certify for completeness and accuracy a list of Authorized Users provided annually by DELJIS to the agency head. The list shall be certified as is, or corrected to delete, add, or change Authorized Users and returned to DELJIS within 60 days of receipt of said list by the agency head or designee.
- 6.6 Authorized Agencies are responsible for notifying the DELJIS Security Manager or designee immediately [or as soon as practical] upon an Authorized User's departure (transfer, termination, resignation, or retirement) from the agency.

- 6.7 Authorized Agencies are responsible for notifying the DELJIS Security Manager or designee immediately [or as soon as practical] upon an Authorized User's administrative leave from the agency, if the administrative leave exceeds 24 hours or results in loss of agency privileges, identification credentials, or departmental weapon.
- 6.8 Authorized Agencies are responsible for notifying the DELJIS Security Manager or designee immediately [or as soon as practical] upon an Authorized User's arrest, charge, or conviction of a criminal violation or offense in any jurisdiction immediately upon receiving notification of the same.
- 6.9 Authorized Agencies are responsible for notifying the DELJIS Security Manager or designee immediately [or as soon as practical] upon discovery of an Authorized User's Improper Access or Breach.
- 6.10 Authorized Agencies are required to follow the Records Retention and Destruction procedures provided in Section 7.0, that require CJIS, NCIC[~~, or~~] NICS[~~, or~~ Triple-I] information be [disposed of] securely [~~disposed of~~]. Whether the information is in a physical form (printout) or an electronic form (hard drive, flash drive, etc.) the information must be disposed of in such a way that unauthorized people cannot retrieve it. For most agencies, this means ensuring printed information is shredded onsite by the user.
- 6.11 The DELJIS Security Manager or designee will conduct an Authorized Agency site inspection when required to ensure physical site suitability and security.
- 6.12 Authorized Agencies must maintain secondary dissemination logs consistent with 11 Del.C. §8513(e).

**7.0 CJI Records Retention and Destruction**

- 7.1 All information retrieved via CJIS, NCIC[~~, or~~] NICS[~~, or~~ Triple-I] is highly confidential and shall be afforded security to prevent unauthorized access to or use of that data. To prevent the misuse or improper dissemination of information, any printed information must be immediately destroyed after its intended use. Documents stored in electronic form (hard drive, flash drive, etc.) must be disposed of in such a way that unauthorized people cannot retrieve it. [Under no circumstances should printed information be maintained in any agency files or records, including, without limitation, in personnel files.]
- 7.2 ~~[Under no circumstances should printed information be maintained in personnel files by any Authorized Agency or in court records by any Delaware court.]~~
- ~~7.3~~ Printed information shall be destroyed by shredding as follows:
  - 7.~~[32]~~.1 In-state information, including CJIS information, may be shredded onsite or [added to the purge list and] delivered to the Delaware Public Archives for shredding[~~, and must follow the destruction protocols used by Delaware Public Archives in accordance with 29 Del.C. §504(b)~~]. [Regardless of who destroys the records, they must follow the destruction protocols used by Delaware Public Archives in accordance with 29 Del.C. §504(b) and U.S. Department of Justice, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy at §5.8 (Media Protection).]
  - 7.~~[32]~~.2 Out-of-state information, including NCIC[~~, or~~] NICS[~~, or~~ Triple-I] information, must be shredded onsite and witnessed or carried out by authorized personnel. Paper shredding service providers are prohibited from shredding printed information offsite, but may conduct agency supervised onsite shredding. Regardless of who destroys the records, they must follow the destruction protocols used by Delaware Public Archives in accordance with 29 Del.C. §504(b) [and U.S. Department of Justice, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy at §5.8 (Media Protection)].
- 7.~~[43]~~ Electronic information shall be destroyed as follows:
  - 7.~~[43]~~.1 The agency shall sanitize, that is, overwrite at least three times or degauss electronic media prior to disposal or release for reuse by unauthorized individuals. Inoperable electronic media shall be destroyed (cut up, shredded, etc.). The agency shall maintain written documentation of the steps taken to sanitize or destroy electronic media. Agencies shall ensure the sanitization or destruction is witnessed or carried out by authorized personnel and follow the destruction

protocols used by Delaware Public Archives in accordance with 29 Del.C. §504(b) [and U.S. Department of Justice, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy at §5.8 (Media Protection)].

*(Break in Continuity of Sections)*

## **9.0 Responsibilities of Authorized Users**

*(Break in Continuity Within Section)*

- 9.6 Authorized Users are required to follow the Records Retention and Destruction procedures provided in Section 7.0, that require CJIS, NCIC[, ~~or~~ NICS[, or Triple-I] information be [disposed of] securely [disposed of].

*(Break in Continuity of Sections)*

## **13.0 Hearings**

*(Break in Continuity Within Section)*

- 13.3 At any hearing, a party may appear pro se or be represented by an attorney-at-law duly admitted to practice law in the State of Delaware or [by appear with] a union representative at his or her own expense. The appellant will have the right to appear and testify at the hearing; the right to call witnesses and to present other evidence in the form of testimony and/or documents; and the right to cross-examine any witnesses who may testify at the hearing.

*(Break in Continuity of Sections)*

\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 265 (18 DE Reg. 265). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1301 Delaware Criminal Justice Information System Rules and Regulations**

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

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 101

### **REGULATORY IMPLEMENTING ORDER**

#### **101 State Assessment System**

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 101 State Assessment System. As a result of House Bill 334 and Senate Bill 229 of the 147<sup>th</sup> General Assembly, this regulation is amended based on changes in the state assessment system and provides clarification as to the assessment of students with disabilities as per 14 Del.C. §151.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2014, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities, Delaware State Education Association, the U.S. Department of Education's Office of Special Education Programs and the State Board of Education. Comments received were related to: (1) the request to use Local Agency Test Coordinator over District Test Coordinator or Test Coordinator designation, with the decision being made to use the District Test Coordinator because it is what is used in the Department of Education's (DOE) paperwork and in practice, and change would

tend to create confusion; (2) the definition of Local Education Agency (LEA) to ensure it includes both school districts and charter schools, with the decision to maintain the current definition, which is used throughout the DOE's regulations and which covers both school districts and charters schools; (3) the request to include a definition for School Test Coordinator, and DOE added a definition for School Test Coordinator; (4) the ability to apply the regulation to districts solely or districts and charter schools, and it was determined that the using the term Local Education Agency does ensure the regulation can be applied to both; (5) whether the regulation applies to incarcerated students, and DOE believes that state correctional facilities do not administer state assessments to IDEA-eligible students in their facilities, thus the regulation does not need to specify type of Test Coordinator for this population; (6) a reference to the trigger for a mandatory DOE review, and DOE notes this trigger is not one required by the legislation, rather it is a federally required trigger and thus the regulation will not be changed in 4.6.1.1.; (7) the term "physician" being too narrowly defined, with the definition changed to "healthcare provider"; (8) the need for a reference to School Test Coordinator, which was added in 12.2.2.2; (9) the use of the word "advocate" in Section 4.4.4, which DOE confirmed is the correct terminology and was used as specified in the legislation; (10) a request to clarify as to who (principal, superintendent, etc.) is included in the IEP team, with the regulation clarified to state it is the LEA representative (e.g. administrator/designee); (11) the requested review of Extended Standards, which DOE undertook and determined that a change or clarification from Grade Band Extensions was not needed; (12) the requested review of Selected Response definition, which DOE undertook and determined was appropriate as is; (13) a request to add a definition for Alternate Achievement Standards, which was added for clarification; (14) a clarification on 6.0, 7.0 and 8.0 and 9.0 to indicate that this part of the regulation was suspended pursuant to the annual appropriations bills beginning in FY08, and not just the FY15 Budget Epilogue; and (15) various other minor grammatical changes.

## **II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 101 State Assessment System in order to be in compliance with House Bill 334 and Senate Bill 229 which amends this regulation based on changes to the state assessment system and provides clarification as to the assessment of students with disabilities as per 14 **Del.C.** §151.

## **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 101 State Assessment System. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 101 State Assessment System attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 101 State Assessment System hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## **IV. Text and Citation**

The text of 14 **DE Admin. Code** 101 State Assessment System amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 101 State Assessment System in the *Administrative Code of Regulations* for the Department of Education.

## **V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 18, 2014. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18<sup>th</sup> day of December 2014.

### **Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 18<sup>th</sup> day of December 2014

**State Board of Education**

Teri Quinn Gray, Ph.D., President  
 Jorge L. Melendez, Vice President  
 G. Patrick Heffernan  
 Barbara B. Rutt

Gregory B. Coverdale, Jr.  
 Terry M. Whittaker, Ed.D.  
 Randall L. Hughes II

**101 State Assessment System****1.0 Purpose and Definition**

1.1 Purpose: The purpose of this regulation is to outline the procedures, criteria and responsibilities related to the state assessment system required pursuant to 14 **Del.C.** §151.

1.2 Definitions:

**["Alternate Achievement Standards" means targets that define how well and how much students should know and do in the content to be considered proficient on the alternate assessment.]**

**"Alternate Assessment" means an assessment which is based on Alternate Achievement Standards which is designed for students with the most significant cognitive disabilities who cannot participate in the General Assessment even with appropriate accommodations. Per §4.1, there are two types of Alternate Assessment in Delaware – Selected Response Alternate Assessment and Portfolio Alternate Assessment.**

*(Break in Continuity Within Section)*

**["Invalidation" means a response to an event or situation that occurs during the administration of the assessment which may result in a statistically unreliable or invalid score report for a student. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.]**

*(Break in Continuity Within Section)*

**["School Test Coordinator (STC)" means the educator assigned by the school to be the primary contact for DeSSA information at the school level. The STC is responsible for coordinating the administration of state assessments within the school. The STC is also required to complete training and be knowledgeable of proper test administration and test security, and ensure that all personnel assigned to testing are adequately trained in proper test administration and test security.]**

*(Break in Continuity of Sections)*

**4.0 Alternate Assessments**

*(Break in Continuity Within Section)*

4.4 Portfolio Alternate Assessment

*(Break in Continuity Within Section)*

4.4.3 Participation in the Portfolio Alternate Assessment is an annual decision made by the IEP team [including the LEA representative (e.g. administrator/designee)] through consideration of the criteria outlined in the *Portfolio Alternate Assessment Participation Guidelines*. ~~[The determination regarding the Portfolio Alternate Assessment shall include the superintendent, charter school leader, or a representative of the public agency pursuant to 14 DE Admin. Code 925.21.1.4 (e.g., administrator/designee).]~~

4.4.4 In no event shall an IEP team, school or district advocate for parents to exercise the right to request a Portfolio Alternate Assessment.

*(Break in Continuity Within Section)*

**25.0 Levels of Performance**

- 25.1 There shall be four levels of student performance relative to the ~~State Content Standards on the [State's General and Alternate aAssessments]~~ administered to students in grades 3 through 40 8 and 11 in reading English Language Arts/Literacy and mathematics; to students in grades 5, 8, and 10 in science; and to students in grades 4 and 7 in Social Studies, and high school students taking U.S. History (EOC). The cut points for ~~Advanced, Meets the Standard, Below the Standard Performance Levels 1 through 4~~ shall be determined by the Department of ~~Education~~ with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student assessment data in making the recommendation. Said levels are defined and shall be determined as follows:

*(Break in Continuity Within Section)*

**36.0 Other Indicators of Student Performance (~~Suspended pursuant to [FY 15 Budget Epilogue] the annual appropriations bills beginning in FY08~~)**

*(Break in Continuity Within Section)*

- 36.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of ~~Education~~.

- 36.3.1 The academic review committee shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one ~~[guidance school]~~ counselor or other student support staff member and two school building administrators.

*(Break in Continuity Within Section)*

**47.0 Individual Improvement Plan (IIP) (~~Suspended pursuant to [FY 15 Budget Epilogue] the annual appropriations bills beginning in FY08~~)**

*(Break in Continuity Within Section)*

**58.0 Summer School Programs for Students in Grades 3, 5, and 8 as required pursuant to 14 Del.C. §153 (~~Suspended pursuant to [FY 15 Budget Epilogue] the annual appropriations bills beginning in FY08~~)**

*(Break in Continuity Within Section)*

**69.0 State of Delaware High School Diploma Requirements (~~Suspended pursuant to [FY 15 Budget Epilogue] the annual appropriations bills beginning in FY08~~)**

*(Break in Continuity Within Section)*

**710.0 Security and Confidentiality**

In order to assure uniform and secure procedures, the ~~Delaware Comprehensive Assessment System DeSSA~~ shall be administered pursuant to the ~~Delaware Comprehensive Assessment System Coordinators Handbook DeSSA Test Security Manual~~, as the same, may from time to time be amended hereafter.

*(Break in Continuity Within Section)*

**7.410.5 Procedures for Reporting Security Breaches**

- 7.4.110.5.1 ~~School State Assessment Test~~ Coordinators shall report any questionable situations to the District ~~State Assessment Test~~ Coordinators immediately.

- 7.4.210.5.2 District Test ~~State Assessment~~ Coordinators, and for ~~charter schools~~, the School ~~State Assessment Test~~ Coordinators shall report all situations immediately to the State Director of ~~Accountability Resources~~ the Office of Assessment.

- 7.4.2410.5.2.1 Within 5 working days of the incident the District ~~State Assessment Test~~ Coordinator or ~~charter school~~ School ~~State Assessment Test~~ Coordinator shall file a written report with the State Director of ~~Accountability Resources~~ the Office of Assessment that includes the



sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district or charter school.

~~7.4.2-210.5.2.2~~ Following a review of the report by the State Director of Accountability Resources the Office of Assessment and the Associate Secretary of Education for Teaching and Learning Chief **[Academic Accountability and] Performance Officer**, an investigator from the State Department of Education will be assigned to verify the district or charter school report.

~~7.4.2-310.5.2.3~~ Within 20 working days of the receipt of the report from the District State Assessment Coordinator or, for a charter school, the School State Assessment Test Coordinator or the School Test Coordinator, the assigned investigator shall meet with the district or charter school personnel involved in the alleged violation. The meeting will be scheduled through the District State Assessment Coordinator or, for a charter school, School State Assessment Coordinator School or District Test Coordinators and the investigator shall be provided access to all parties involved and to any witnesses.

~~7.4.2-410.5.2.4~~ The investigator shall report the findings to the Associate Secretary for Teaching and Learning Chief **[Academic Accountability and] Performance Officer**. Following the review the Associate Secretary Chief **[Academic Accountability and] Performance Officer** shall make a ruling describing any recommendations and or required actions as appropriate.

~~7.4.2-510.5.2.5~~ The ruling shall be delivered within 20 working days of the receipt of all reports and information and records shall be kept of all investigations.

*(Break in Continuity of Sections)*

**912.0 Invalidations and Special Exemptions**

912.1 ~~[There may be invalidations]~~ for students in grades ~~2 through 4~~ **3 through 8 and 11** for reading English Language Arts/Literacy and Mathematics, students in grades 5, 8, and 10 in Science; and students in grades 4 and 7 in Social Studies; and high school students taking U.S. History (EOC). An Invalidation is a response to an events or situation that occurs during the administration of the DCAS assessments which may result in a statistically unreliable or invalid score report for a student. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.

*(Break in Continuity Within Section)*

912.2 Special Exemptions for students in grades ~~2 3~~ through ~~4~~ **8 and 11** for Reading and Mathematics, students in grades 5, 8, and 10 in Science; and students in grades 4 and 7 in Social Studies.

*(Break in Continuity Within Section)*

912.2.2 The District State Assessment Test Coordinator or charter school School State Assessment School Test Coordinator shall submit a Request for Special Exemption to the State Director of Accountability Resources the Office of Assessment at the Department of Education within ten (10) days of the date the school becomes aware of the student's issue. A copy of the **[physician's healthcare provider's]** statement shall be required for ~~9.2.1-412.2.2.1~~ in the preceding subsection and shall be maintained as documentation at the school or district.

912.2.2.1 The State Director of Accountability Resources the Office of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Teaching and Learning.

912.2.2.2 The Associate Secretary Office of Assessment shall decide whether a request for a special exemption should be granted. The Associate Secretary Office of Assessment shall notify the District State Assessment Test Coordinator or charter school School

~~[State Assessment Test]~~ Coordinator of the decision. The ~~Associate Secretary's~~ Office of Assessment decision shall be final.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 279 (18 DE Reg. 279). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**101 State Assessment System**

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 915

### REGULATORY IMPLEMENTING ORDER

#### 915 James H. Groves High School

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 915 James H. Groves High School. This regulation clarifies 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas with regard to the World Languages credit requirement and provides other minor clarifications. This regulation also clarifies that the Groves In School Credit Program cannot occur during the school's regularly scheduled school day.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on November 3, 2014, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Comments were received relative to students in the In School Credit Program not receiving instruction during the school's regularly scheduled school day. This was intentional. The In School Credit program is funded and designed to supplement the instruction provided to students during the day. Another comment related to conditions of admittance to the James H. Groves High School with regard to a pending or actual expulsion for a nonviolent act was received. There are provisions in the regulation that permit students who have committed both nonviolent and violent crimes to participate in a James H. Groves High School Program.

There was a suggestion to remove language that bars a 16-17 year old student subject to a pending or actual expulsion from admission unless the student confirms an intent to graduate. At a Groves Center the emphasis is always on graduation. A student can be re-admitted to their home school at any time, should they choose to leave Groves. There was also a suggestion to omit the requirement for a letter of recommendation in situations where there is a pending or actual expulsion. The Department does not believe this is warranted, as experience shows several principals, or their designees recommend students attend Groves to attain their diploma. This has been a standing requirement and has not been an issue in the past. A final comment was related to whether the regulation encourages, rather than discourages, enrollment in the James H. Groves High School. The Department of Education believes the regulation is written to provide guidance and structure and includes various ways to pursue and attain a diploma for anyone wishing to do so. Consequently no changes were made to the regulation.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School in order to clarify alignment to 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas with regard to the World Languages credit requirement and for other minor clarifications. This regulation also clarifies that the Groves In School Credit Program cannot occur during the school's regularly scheduled school day.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 915 James H. Groves High School attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14

**DE Admin. Code** 915 James H. Groves High School hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 915 James H. Groves High School amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 915 James H. Groves High School in the *Administrative Code of Regulations* for the Department of Education.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 18, 2014. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18<sup>th</sup> day of December 2014.

#### Department of Education

Mark T. Murphy, Secretary of Education

Approved this 18<sup>th</sup> day of December 2014

#### State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2014 issue of the *Register* at page 343 (18 DE Reg. 343). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**915 James H. Groves High School**

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#### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 923

#### REGULATORY IMPLEMENTING ORDER

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

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. As a result of Senate Bill 229 of the 147<sup>th</sup> General Assembly, this regulation has been amended in order to clarify the eligibility for extended school year (ESY) reading services for students who are not beginning to read by age seven.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2014, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Comments were related to the reading acquisition piece of the IEP not being presumptive or in line with extended school year services, or providing the team opportunity to decline the services with a specific explanation. The Department of Education (DOE) addressed these concerns by explaining reading acquisition needs to be aligned with other ESY factors; by adding

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a sentence to target evidence-based reading interventions and by adding that the IEP team must provide written rationale as to why ESY services are or are not being provided.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies in order to be in compliance with Senate Bill 229 which amends this regulation based on changes to the state assessment system and provides clarification as to the eligibility for extended school year reading services for students who are not beginning to read by age seven.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 18, 2014. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18<sup>th</sup> day of December 2014.

**Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 18<sup>th</sup> day of December 2014

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

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

**Non-regulatory note:** Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

*(Break in Continuity of Sections)*

**6.0 Extended School Year Services*****(Break in Continuity Within Section)***

- 6.5 *Determining need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education (FAPE) during the regular school year.*

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

- 6.5.4 Reading acquisition: For a child who is not beginning to read by age seven, or who is beyond age seven and not yet beginning to read, the team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goal(s) related to reading will not be achieved. [If extended school year services are needed related to reading acquisition, the IEP team must describe the evidence-based interventions that will be provided to address the child's reading deficits.]

- 6.5.4.1 For purposes of the extended school year services (ESY) determination, a child is beginning to read if the child demonstrates phonological awareness and ability to use letter sound knowledge and decode unknown words.

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

\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 280 (18 DE Reg. 280). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

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

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 925

**REGULATORY IMPLEMENTING ORDER****925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. As a result of Senate Bill 229 of the 147<sup>th</sup> General Assembly, this regulation has been amended to meet the requirements of 14 Del.C., Ch. 31, Section 3110(e) to address reading services and supports in a child's Individualized Education Program (IEP), if the child is a student with a disability who is not beginning to read by age seven.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 1, 2014, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Comments were related to the age of eligibility and to the development of an IEP to include extended school year services. Amendments were made pursuant to both Council's suggestions to provide clarification regarding the identification of the age of eligibility and a grammatical correction in regard to extended school year services. The Department addresses extended school year services in Regulation 923. Another minor grammatical correction was made in 24.2.7 to clarify the "evidence-based" interventions.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 925 Children with Disabilities Subpart

D, Evaluations, Eligibility Determination, Individualized Education Programs in order to be in compliance with Senate Bill 229 which amends this regulation based on changes to the state assessment system and provides clarification as to reading services and supports in a child's IEP, if the child is a student with a disability who is not beginning to read by age seven.

### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

### **IV. Text and Citation**

The text of 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs in the *Administrative Code of Regulations* for the Department of Education.

### **V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 18, 2014. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18<sup>th</sup> day of December 2014.

#### **Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 18<sup>th</sup> day of December 2014

#### **State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

### **925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs**

**Non-regulatory note:** Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

*(Break in Continuity of Sections)*

#### **6.0 Determination of Eligibility**

*(Break in Continuity Within Section)*

- 6.12 Eligibility Criteria for intellectual Disability: Eligibility Criteria for intellectual Disability: In order for the IEP team to determine eligibility for special education services under the intellectual Disability category, the following is required:

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

- 6.12.4 Age of Eligibility: The age of eligibility for children identified as under Moderate Intellectual Disability and Severe Intellectual Disability Categories shall be from the third birthday **[through] 20 years, inclusive ~~[21 years of age until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first]~~**. Children identified as Mild Intellectual Disability shall be from the fourth birthday until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first. These children may be served at age 3, as having a Developmental Delay.

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

**24.0 Development, Review, and Revision of IEP**

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

- 24.2 Consideration of special factors: The IEP Team shall:

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

- 24.2.7 *In the case of any child with limited reading proficiency, consider the reading services, supports and **[evidenced-based]** interventions as those relate to the child's IEP:*

- 24.2.7.1 *For a child who is not beginning to read by age seven, or who is beyond age seven and is not yet beginning to read, enumerate the specific, evidence-based interventions that are being provided to that child to address the child's inability to read.*

\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 281 (18 DE Reg. 281). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**925 Children with Disabilities Subpart D**

**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1572

**REGULATORY IMPLEMENTING ORDER**

**1572 Teacher of Students Who Are Gifted and Talented**

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

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1572 Teachers of Students Who are Gifted And Talented. This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Teacher of Students Who Are Gifted or Talented. This regulation sets forth the requirements for a teacher of gifted or talented students. It was necessary to amend this regulation in order to update and clarify some of the definitions, requirements and to align title as this certification is required in programs that are identified as specific to students who have been identified as gifted or talented through assessments and other criteria set forth by local school districts or other programs specifically identified by the Department as programs for students who are gifted or talented.

Notice of the proposed amendment of the regulation was published in the *Register of Regulations* on November 1, 2014. The notice invited written comments. Comments were received from the Governor's Advisory

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Council for Exceptional Citizens and the State Council for Persons with Disabilities that solely addressed grammar and formatting. The suggested changes have been taken into consideration and the regulation has been subsequently amended.

## II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation in order to update and clarify some of the definitions, requirements and to align title as this certification is required in programs that are identified as specific to students who have been identified as gifted or talented through assessments and other criteria set forth by local school districts or other programs specifically identified by the Department as programs for students who are gifted or talented.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached, and said regulation shall be cited as 14 **DE Admin. Code** 1572 of the *Administrative Code of Regulations* of the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

### APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4<sup>th</sup> DAY OF DECEMBER, 2014

Bryon Murphy, Chair	Darren Guido (absent)
Diane Albanese	David Kohan
Linda Brown	Rosaria Macera
Jennifer Burton	Wendy Murray
Michael Casson (absent)	Darlene O'Neill
Stephanie DeWitt	Mary Pinkston (abstained)
Nelia Dolan	Stephanie Smith
Cristy Greaves	

### IT IS SO ORDERED THIS 4<sup>th</sup> DAY OF DECEMBER, 2014

#### DEPARTMENT OF EDUCATION

Mark T. Murphy, Secretary of Education

#### Approved this 4<sup>th</sup> day of December, 2014

#### State Board of Education

Teri Quinn Gray, Ph.D., President	Gregory B. Coverdale, Jr.
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	Randall L. Hughes II
Barbara B. Rutt	



1572 Teacher of Students Who Are Gifted ~~and~~ or Talented

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

*(Break in Continuity of Sections)***4.0 Additional Requirements**

- 4.1 ~~If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following~~ An educator shall also have satisfied one of the following additional education requirements:
- 4.1.2 ~~If the educator is applying for a first Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5.1 the required 15 credits or their equivalent in professional development required in 14 DE Admin. Code 1505 Standard Certificate 3.1.5.1 that must be satisfactorily completed for this standard certificate must at a minimum include the following areas;~~
- 4.1.1 ~~Holding a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent in~~ [gifted or talented education, teaching gifted students, or special education with a gifted or talented endorsement or specialization, from a National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate standards; or an area listed in
- 4.1.1.1 ~~from a program approved or recognized as provided in 4.1.1.2.~~
- 4.1.1.1 **Approved majors**
- 4.1.1.1.1 **gifted or talented education;**
- 4.1.1.1.2 **teaching gifted students; or**
- 4.1.1.1.3 **special education with a gifted or talented endorsement or specialization.**
- 4.1.1.2 **Required Program Approval or Recognition**
- 4.1.1.2.1 **National Council for the Accreditation of Teacher Education (NCATE) recognized educator preparation program; or**
- 4.1.1.2.2 **The Council for the Accreditation of Educator Preparation (CAEP) specialty organization recognized educator preparation program; or**
- 4.1.1.2.3 **State approved educator preparation program where the state approval body employed the appropriate standards; or]**
- 4.1.2 ~~Completion of a minimum of fifteen (15) credits or their equivalent in professional development as approved by the Department, with a focus in special education for gifted or talented students or students who are gifted or talented in the following content areas:~~
- 4.1.2.1 **Foundations of Giftedness, including Cultural and Socioeconomic Equity (3 credits);**
- 4.1.2.2 **Curriculum Design and Instructional Strategies for Gifted Students (3 credits);**
- 4.1.2.3 **Psychology of Gifted Students (3 credits); and**
- 4.1.2.4 **Creative and Critical Thinking Skills (3 credits); [and]**
- 4.1.2.5 **Practicum or Internship (3 credits).**
- 4.1.3 ~~If the educator is applying for a second Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the areas of:~~
- 4.1.3.1 **Foundations of Giftedness, including Cultural and Socioeconomic Equity (3 credits);**
- 4.1.3.2 **Curriculum Design and Instructional Strategies for Gifted Students (3 credits);**

- 4.1.3.3 ~~Psychology of Gifted Students (3 credits); and~~  
4.1.3.4 ~~Creative and Critical Thinking Skills (3 credits).~~

\*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2014 issue of the *Register* at page 350 (18 DE Reg. 350). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1572 Teacher of Students Who Are Gifted and Talented**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 29 Delaware Code, Section 7971(d)(1) (29 **Del.C.** §7971(d)(1))  
16 **DE Admin. Code** 3315

### ORDER

### 3315 Rest (Family) Care Homes

#### NATURE OF THE PROCEEDINGS:

The Department of Health and Social Services ("Department") / Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings to establish Regulation 3315 Family Care Homes. The Department's proceedings to establish the regulation was initiated pursuant to 16 **Del.C.** §1119C and its authority as prescribed by 29 Delaware Code §7971.

The Department published its notice of proposed regulation changes pursuant to 29 **Del.C.** §10115 in the October 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSED AMENDMENT

The proposal establishes Regulation 3315 Family Care Homes as required by 16 **Del.C.** §1119C.

#### Statutory Authority

29 **Del.C.** Ch. 79, "Department of Health and Social Services."  
16 **Del.C.** §1119C, "Regulations."

#### Background

DLCTRP is establishing these regulations as prescribed by 16 **Del.C.** §1119C.

#### Summary of Proposed Amendment

The proposal establishes regulations Family Care Homes. DLTCRP identified the fact that the regulation for these facilities was last updated in March, 1993. Many changes have occurred in this field especially in the type of care and the delivery of care. This revision will update the regulation to the current standard of care for the population served.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens ("GACEC") and the State Council for Persons with Disabilities ("SCPD") and Generations Home Care offered comments and suggestions. DLTCRP has considered each comment and responds as follows:

Comment 1: Consider amending §3.1.2.1 by adding, "Violation of any of these provisions of these rules and regulations or 16 **Del.C.** Ch 11."

*Response: The regulation was amended as suggested at §3.1.2.1.1.*

Comment 2: Amend §4.4 by adding "The level of care determination shall be made in consultation with the resident's personal primary care licensed independent practitioner, if any."

*Response: §4.4 was amended as suggested.*

Comment 3: At §4.7 consider substituting "admission to" for "placement in". In addition, "placement in" at §4.4 was replaced by "admission to".

*Response: §4.7 was amended as suggested.*

Comment 4: At §5.4.6.1 replace "beated" with "located."

*Response: §5.4.6.1 was amended as suggested.*

Comment 5: It was suggested that §5.4.6.2 be amended to track the American with Disabilities Act.

*Response: §5.4.6.2 was amended as follows: "A ramp must be compliant with the standards outlined in Americans with Disabilities Act (ADA)."*

Comment 6: It was noted that §5.6 disallows portable air conditioners.

*Response: §5.6 was amended as follows: "A licensee must ensure that the facility's or program's premises and equipment accessible to or used by residents are free from any danger to their health, safety and well-being."*

Comment 7: The regulations do not address stair-glides, stair-lifts and elevettes/elevators. The Division may wish to consider whether standards should be included.

*Response: §5.6 addresses such equipment.*

Comment 8: Delete the apostrophe at § 5.9.6.

*Response: Apostrophe deleted.*

Comment 9: §5.10 could be improved by disallowing bunk beds.

*Response: The following sentence was added to §5.10.4.3 "Bunk beds are prohibited."*

Comment 10: §5.10.12 allows three residents per room. This is highly offensive.

*Response: 5.10.12 is amended as follows: "No more than two (2) residents may share a bedroom."*

Comment 11: Consider amending §5.11.3.2 to read, "A resident may choose to provide an individual mattress to be used only by that resident."

*Response: The suggestion was adopted.*

Comment 12: §5.12 allows one toilet and one bathtub/shower for every eight occupants. This is highly offensive.

*Response: To lower the occupancy rate to four (4) would substantially decrease the number of family care homes available. §5.12.4 is amended as follows: "There shall be one (1) bathtub or shower for every six (6) occupants."*

Comment 13: §5.15.6.4 allows the provider to complete laundry for residents. This standard should be embellished to ban commingling of laundry.

*Response: A minimum water temperature of 110° (F) is required in these homes. None of the regulations governing long term care facilities require the separation of laundry by individual resident.*

Comment 14: §7.1.4 should be revised to refer to the "licensed independent practitioner."

*Response: The section was revised.*

Comment 15: §7.1.3 does not offer much flexibility if a resident wishes to keep his/her own medication.

*Response: Due to the communal living situation we require that medications be kept in a locked container. Nothing would prevent a resident from keeping the container in their own bedroom.*

Comment 16: Definition: Family Care Home a home that provides beds and personal care serves for 2 or 3 residents. A home that supports (1) resident is that home considered a "Family Care Home"?

*Response: A home that supports one resident is not required to be licensed.*

Comment 17: "Level Of Care" means a written determination of the amount of assistance a resident requires in the areas of activities of daily living. Per standard who is authorized to provide the written determination of the amount of assistance a resident requires.

*Response: The definition of Level of Care has been amended to read, ""Level of Care means a written determination by a Licensed Independent Practitioner..."*

Comment 18: §3.1 Currently, a license is not required for (1) resident in a FCH. The proposed change indicates that no person shall establish, conduct or maintain in the State any FCH without first obtaining a license from the Dept. Will a home that supports (1) resident be considered a FCH and does it need to be licensed?

*Response: It will not be considered a Family Care Provider under these regulations and does not require a license.*

Comment 19: §3.4.1 What will be the qualifiers to determine financial capability?

*Response: The qualifiers are under development in consultation with the Delaware Department of Justice.*

Comment 20: § 4.11 Currently, Level I Residents in Adult Foster Care can be left alone per regulations up to 12 hours. 4.11 states that the family care provider may NOT leave the FCH when residents are present. This would mean that all residents cannot be left alone in the home without delegating duties to a responsible adult. This is not how Level I is set up or funded. The Provider would require much more financial support if the resident cannot be left alone.

*Response: Because the acuity of these residents varies widely, the Division agrees that there may be times when it's permissible to leave them without supervision. However, we feel that individual assessments should be made by the resident's personal primary care licensed independent practitioner and documented by same in the Level of Care documentation. The regulations have been amended as noted below:*

"Level of Care" means a written determination of the amount of assistance a resident requires in the areas of, activities of daily living, medication, treatments and therapies, mobility, behavior management and supervision. **[The document will also contain the amount of time a resident can be left unsupervised while the FCH provider is out of the residence.]**

4.11 The family care provider may not leave the FCH when residents are present without delegating care duties to a responsible adult **[unless the resident's Level of Care documentation contains an amount of time that the resident can be left unsupervised. In any case, the maximum amount of time the provider can be away is 12 hours.]**

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2014 *Register of Regulations*, with the amendments listed herein, should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Title 16 of the Delaware Administrative Code is adopted and shall be final effective January 12, 2015.

Rita Landgraf, Secretary, DHSS

**3315 Rest (Family) Care Homes**

*(Break in Continuity of Sections)*

## **2.0 Definitions**

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

*(Break in Continuity Within Section)*

"Level of Care" means a written determination of the amount of assistance a resident requires in the areas of, activities of daily living, medication, treatments and therapies, mobility, behavior management and supervision. [The document will also contain the amount of time a resident can be left unsupervised while the FCH provider is out of the residence.]

*(Break in Continuity of Sections)*

## **3.0 Licensing Requirements and Procedures**

3.1 No person shall establish, conduct or maintain in this State any FCH without first obtaining a license from the Department.

*(Break in Continuity Within Section)*

3.1.2 Suspension or Revocation of Licenses

- 3.1.2.1 The Department may suspend or revoke a license issued under this chapter for good cause, including but not limited to the following:
- 3.1.2.1.1 Violation of any of the provisions of these rules and regulations [or 16 Del.C. Ch. 11].
  - 3.1.2.1.2 Deficiencies which present a threat to the health and safety of residents.
  - 3.1.2.1.3 Permitting, aiding, or abetting the commission of any illegal act in the FCH.
  - 3.1.2.1.4 Conduct or practices detrimental to the welfare of the resident.
  - 3.1.2.1.5 Refusal to allow the Department access to the FCH to conduct surveys/investigations as deemed necessary by the Department.

*(Break in Continuity of Sections)*

**4.0 General Requirements**

- 4.1 Admission to an FCH shall be limited to residents whose needs can be met with the following services: assistance with activities of daily living where the resident needs moderate, standby or "hands on" assistance; assistance with/and or administration of medications, interventions to manage occasional behaviors and; scheduling of and, if necessary, transportation to scheduled treatments or therapies.
- 4.2 The holder of the license must be living in the home full-time.
- 4.3 The FCH must meet and maintain compliance with all applicable federal, state, and local laws and regulations.
- 4.4 The affiliated social agency/program or a licensed independent practitioner with the placement agency will establish a level of care. The level of care **[determination shall be made in consultation with the resident's personal primary care licensed independent practitioner if any, and]** will include an assessment of the physical and mental status of the resident prior to **[placement in admission to]** the FCH and annually thereafter.
- 4.4.1 A copy of the level of care must be maintained by the licensee.

*(Break in Continuity Within Section)*

- 4.11 The family care provider may not leave the FCH when residents are present without delegating care duties to a responsible adult **[unless the resident's Level of Care documentation contains an amount of time that the resident can be left unsupervised. In any case, the maximum amount of time the provider can be away is 12 hours]**.
- 4.11.1 The name and contact information for the alternate responsible adult must be on file with the Department.
- 4.12 The family care provider must notify the Department, in advance when possible, of any absence of 1 week or longer.
- 4.13 Each FCH shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by 16 Del.C. Ch. 11.
- 4.14 A family care provider that provides services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall receive annual dementia specific training that includes: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons.
- 4.15 Family pets must have all necessary yearly updated vaccinations from a veterinarian and there will be no vicious or dangerous animals residing in the home that could pose a risk of harm to a resident.

**5.0 Environment**

*(Break in Continuity Within Section)*

- 5.4 Physical Plant

*(Break in Continuity Within Section)*

- 5.4.6 FCHs accommodating residents who regularly require wheelchairs shall be equipped with ramps.

5.4.6.1 Egress ramps must be located at the primary means of egress.

5.4.6.1.1 A secondary means of egress that is independent and remotely located from the primary means of egress must be provided to the outside of the dwelling at street/ground level or open to an exterior balcony.

5.4.6.2 A ramp ~~shall not exceed one (1) foot of rise in 12 feet of run~~ must be compliant with the standards outlined in Americans with Disabilities Act (ADA)].

*(Break in Continuity Within Section)*

5.6 ~~The HVAC systems for all areas shall be adequate, safe, protected, and easily controlled. It shall be capable of maintaining the temperature in each room used by residents between 70°F and 80°F. Portable heating or cooling devices shall not be used.~~ A licensee must ensure that the facility's or program's premises and equipment accessible to or used by residents are free from any danger to their health, safety and well-being.]

5.7 Electric shall meet all municipal, county and State requirements and laws.

5.8 Each room and access way shall be suitably lighted at all times for maximum safety, comfort, sanitation and efficiency of operation particularly in areas that present safety hazards. Careful attention shall be given to avoid glare.

5.9 Safety equipment

*(Break in Continuity Within Section)*

5.9.6 ~~Camera's~~ Cameras] or monitoring devices are not permitted in resident bedrooms or bathrooms unless written permission by resident(s), resident guardian(s) is on file.

5.10 Resident bedrooms

*(Break in Continuity Within Section)*

5.10.4 Multi-person bedrooms shall:

5.10.4.1 Provide at least fifty (50) square feet of floor space per person.

5.10.4.2 Be adequately spaced for comfort.

5.10.4.3 Have the beds spaced at least three (3) feet apart. **[Bunk beds are prohibited.]**

*(Break in Continuity Within Section)*

5.10.12 No more than ~~three (3)~~ two (2)] residents may share a bedroom.

5.11 Bedroom furnishings for each resident must include:

5.11.1 A reading light.

5.11.2 A bed in good repair with a frame.

5.11.3 A comfortable well constructed mattress.

5.11.3.1 The mattress shall be covered or protected with non porous material.

5.11.3.2 ~~[If a resident chooses they may bring their own mattress that may only be used by that resident.~~ A resident may choose to provide an individual mattress to be used only by that resident.]

5.11.4 A sturdy bedside stand and chair.

5.11.5 A chest of drawers with at least 2 drawers.

5.11.6 At least two (2) linear feet in a closet for hanging clothes.

5.12 Bathrooms

*(Break in Continuity Within Section)*

5.12.4 There shall be one (1) bathtub or shower for every ~~eight (8)~~ six (6)] occupants.

5.12.4.1 Each bathtub or shower shall be in an individual room or enclosure which provides private space for bathing, drying and dressing.

5.12.4.2 Each bathtub or shower shall be equipped with grab bars and slip-resistant surfaces.

*(Break in Continuity of Sections)*

**7.0 Resident Services****7.1 Healthcare****(Break in Continuity Within Section)**

- 7.1.4 The family care provider shall maintain a list of each resident's ~~physician(s)~~ or licensed independent practitioner(s), the ~~physician(s)~~ contact information [for each] and all medications taken by the resident.

**(Break in Continuity of Sections)****10.0 Disciplinary Actions**

- 10.1 Any person who fails to comply with these regulations shall be fined not less than \$100 and not more than \$1000, together with costs, unless otherwise provided by law.
- 10.2 Before any disciplinary action is taken:
- 10.2.1 The Department shall give ten calendar days written notice to the holder of the license, setting forth the reasons for the determination.
- 10.2.2 The disciplinary action shall become final ten calendar days after the mailing of the notice unless the licensee, within such ten calendar day period, shall give written notice of the ~~agency's~~ desire for a hearing.
- 10.2.2.1 If the licensee gives such notice, the licensee shall be given a hearing before the Secretary of the Department or her/his designee and may present such evidence as may be proper.
- 10.2.2.2 The Secretary of the Department or her/his designee shall make a determination based upon the evidence presented.
- 10.2.2.3 A written copy of the determination and the reasons upon which it is based shall be sent to the licensee.
- 10.2.2.4 The decision shall become final ten calendar days after the mailing of the determination letter unless the licensee, within the ten calendar day period, appeals the decision to the appropriate court of the State.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 282 (18 DE Reg. 282). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**3315 Rest (Family) Care Homes**

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

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

**ORDER**

**Docket No. 2427**

**1003 Credit for Reinsurance**

Proposed Amended Regulation 1003 relating to Credit for Reinsurance was published in the Delaware *Register of Regulations* on November 1, 2014. The comment period remained open until November 30, 2014. There was no public hearing on proposed amended Regulation 1003. Public notice of the proposed amended Regulation 1003 in the *Register of Regulations* was in conformity with Delaware law.

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## SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were not received on the proposed amended Regulation 1003.

With no comments received and no additional amendments being suggested, no changes were made to the proposed amended Regulation 1003.

### FINDINGS OF FACT

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

18 **Del.C.** §§311 and 915 of the Insurance Code requires a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.

The requirements of proposed amended Regulation 1003 best serve the interests of the public and of insurers and comply with Delaware law.

### DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §§311 and 915, and of 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 1003 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

### TEXT AND CITATION

The text of proposed amended Regulation 1003 last appeared in the *Register of Regulations* Vol. 18, Issue 5, pages 355-357.

**IT IS SO ORDERED** this 12<sup>th</sup> day of December, 2014.

Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

\*Please note that no changes were made to the regulation as originally proposed and published in the November 2014 issue of the *Register* at page 355 (18 DE Reg. 355). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1003 Credit for Reinsurance**

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## DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION DIVISION INVESTOR PROTECTION UNIT

Statutory Authority: 6 Delaware Code, Section 73-102(b) (6 **Del.C.** §73-102(b))

### SUMMARY ORDER

#### **AMENDING THE RULES PURSUANT TO THE DELAWARE SECURITIES ACT**

WHEREAS, on October 10, 2014, the Investor Protection Director ("Director"), pursuant to the Delaware Securities Act (6 **Del.C.** Ch 73, hereinafter the "Act"), amended the Rules and Regulations Pursuant to the Delaware Securities Act ("Rules") to, among other things, require investment professionals in Delaware to display public notice of registration in Delaware in a size of 28 font or greater; and

WHEREAS, Section 73-102(b) of the Act authorizes the Director to make, amend and rescind the Rules to carry out the provisions of the Act; and

WHEREAS, Section 10113(b)(4) of the Administrative Procedures Act, (29 **Del.C.** Ch 101) allows the Director to adopt by informal procedure regulations that are "[n]onsubstantive changes in existing regulations to alter style or form;" and



WHEREAS, the Director finds it to be in the public interest to make a technical change to the Rules reducing the font size requirement for the public notice in Rules 611 and 712, in the form attached hereto as Exhibit A;

**NOW THEREFORE**, the Director hereby enters this Summary Order:

1. The phrase "28 point font" shall be stricken from Rule 611 and replaced with the phrase "20 point font."
2. The phrase "28 point font" shall be stricken from Rule 712 and replaced with the phrase "20 point font."
3. This Summary Order shall take effect as of January 1, 2015.

So ORDERED this \_\_\_\_\_ of December, 2014:

Owen Lefkon, Investor Protection Director

### Rules Pursuant to the Delaware Securities Act

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

#### Part F. Broker-Dealers, Broker-Dealer Agents, and Issuer Agents

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

#### 611 Public Notice of Delaware Registration for Broker-Dealers

- (a) Broker-dealers registered under the Act with a place of business in Delaware shall prominently display in the public area of each such place of business in ~~28 point font~~ 20 point font or greater in a location visible to all customers and potential customers, a notice stating:

"NOTICE REQUIRED BY LAW

Investment firms and professionals in Delaware must be registered with the Investor Protection Unit of the Delaware Department of Justice. This firm has been so registered. Registration does not mean this business has been approved or reviewed by the Investor Protection Unit.

To check the registration status of any investment firm or professional in Delaware, or to file a complaint with the Investor Protection Unit, please call (302) 577-8424 or e-mail Investor.Protection@state.de.us."

- (b) Upon request the Unit will provide each place of business a sign satisfying this Rule.

#### Part G. Investment Advisers and Investment Adviser Representatives

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

#### 712 Public Notice of Delaware Registration for Investment Advisers

- (a) Investment Advisers registered under the Act with a place of business in Delaware shall prominently display in the public area of each such place of business in ~~28 point font~~ 20 point font or greater in a location visible to all customers and potential customers, a notice stating:

"NOTICE REQUIRED BY LAW

Investment firms and professionals in Delaware must be registered with the Investor Protection Unit of the Delaware Department of Justice. This firm has been so registered. Registration does not mean this business has been approved or reviewed by the Investor Protection Unit.

To check the registration status of any investment firm or professional in Delaware, or to file a complaint with the Investor Protection Unit, please call (302)577-8424 or e-mail Investor.Protection@state.de.us."

- (b) Upon request the Unit will provide each place of business a sign satisfying this Rule.

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

**Rules Pursuant to the Delaware Securities Act**

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**DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS  
OFFICE OF WORKERS' COMPENSATION**

Statutory Authority: 19 Delaware Code, Section 2322B(19 Del.C. §§2322B)  
19 DE Admin. Code 1341

**ORDER**

**1341 Workers' Compensation Regulations**

A public meeting was held on November 24, 2014, by the Department of Labor to receive public comments relating to revised sections of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions") to support the significant medical fee schedule changes and cost reductions mandated in House Bill 373. The members of the Workers' Compensation Oversight Panel ("Panel"), signed below, recommend the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Volume 18, Issue 5 (November 2014).

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Exhibits Admitted Prior to and During the Public Meeting:

Exhibit 1 - *Delaware State News*, Affidavit of publication of notice of public meeting.

Exhibit 2 - *News Journal*, Affidavit of publication of notice of public meeting.

Exhibit 3 - State of Delaware Public Meeting Calendar electronic posting of today's meeting.

After the Panel concluded with their introductions, the public was invited to share their comments.

No additional comments were received during the public meeting.

The Panel agreed to submit and recommend for adoption by the Delaware Department of Labor the revisions to the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions").

**RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION**

The Panel is persuaded that the proposals are consistent with administering the statutory directives in the workers' compensation law. In 2013, the Administrative Procedures Act changed to extend the public comment period 15 days past the date of the public meeting, which is December 9, 2014. Any further public comment received between November 24, 2014 and December 9, 2014, is included in the attached addendum, along with an e-mail reaffirmation from each Panel member present at the November 24, 2014, public meeting. If no further public comment was received, no addendum will exist.

**RECOMMENDATION**

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 24<sup>th</sup> day of November, 2014.

**WORKERS' COMPENSATION OVERSIGHT PANEL**

A. Richard Heffron, Chair

Barry Bakst, D.O.

John Casey, Jr.

James Downing, M.D.

Christopher Kenny, Esq.

Karen Jacobs, Esq.

Sajjad Savul, M.D.

Wayne Smith

Secretary John J. McMahon, Jr.

Joseph J. Rhoades, Esq., Vice Chair

Edward Capodanno

N. Lee Dotson

Anthony Frabizzio, Esq.

Samuel Lathem

Bruce Rudin, M.D.

Theresa Smith

Joseph J. Straight, M.D.

Rhonda West

## DECISION AND EFFECTIVE DATE

Having reviewed and considered the record and recommendations of members of the Workers' Compensation Oversight Panel to adopt revisions of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), the revisions are hereby adopted by the Delaware Department of Labor and made effective January 31, 2014.

## TEXT AND CITATION

The proposed Fee Schedule Instructions and Guidelines notice appeared in the *Register of Regulations*, Volume 18, Issue 5 (November 1, 2014). The Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions") are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the *Register of Regulations* web site at

<http://regulations.delaware.gov/register/november2014/proposed/18%20DE%20Reg%20357%2011-01-14.htm> .

### DEPARTMENT OF LABOR

John McMahon, Secretary of Labor

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

**1341 Workers' Compensation Regulations**

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### DIVISION OF STATE POLICE

#### 5500 Bail Enforcement Agents

Statutory Authority: 24 Delaware Code, Section 5504(a) (24 **Del.C.** §5504(a))  
24 **DE Admin. Code** 5500

## ORDER

### 5500 Bail Enforcement Agents

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

- Rule 3.0 - Use of Animals
- Rule 8.0 – Apprehension Procedures
- Rule 9.0 – Notification of Arrest (deletion)
- Rule 9.0 – Electronic Control Device (ECD) (adoption)
- Rule 10.0 – Suspensions and Revocations
- Rule 12.0 – Prohibited Acts

the Board makes the following Findings and Conclusions:

### Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to Rules 3.0, 8.0, 10.0 and 12.0 in order to clean up the verbiage and remain consistent with wording throughout the Rules & Regs. The Board expressed its desire to adopt the amendment to delete (existing) Rule 9.0 in its entirety in accordance with Governor Markell's Directive to remove redundant rules. The Board expressed its desire to adopt the amendment to create a (new) Rule 9.0 allowing BEA's to carry these devices and mandates the training and instructors.

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## Findings of Fact

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

4. The Board finds that the adoption of Rules 3.0, 8.0, 10.0 and 12.0 will clean up the verbiage and remain consistent with wording throughout the Rules & Regs. The Board finds that the deletion of (existing) Rule 9.0 will delete this rule in its entirety in accordance with Governor Markell's Directive to remove redundant rules. The Board finds that the adoption of (new) Rule 9.0 will create a rule allowing BEA's to carry these devices and mandates the training and instructors.

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

6. The Board finds that the amendments are well written and describe the intent to adopt Rules 3.0, 8.0, 10.0 and 12.0 to clean up the verbiage and remain consistent with wording throughout the Rules & Regs. The Board finds that the amendment for (existing) Rule 9.0 is well written and describes its intent to adopt the rule to delete this rule in its entirety in accordance with Governor Markell's Directive to remove redundant rules. The Board finds that the amendment for (new) Rule 9.0 is well written and describes its intent to adopt the rule to create a rule allowing BEA's to carry these devices and mandates the training and instructors.

## Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §5503 et seq. and, in particular, 24 **Del.C.** §5503(d)(2).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §5503 et. seq.

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

10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §5503(d)(2) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

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

12. The effective date of this Order shall be January 11, 2015.

13. Attached hereto and incorporated herein this order are the amended rules marked as exhibit A and executed simultaneously on the 25<sup>th</sup> day of November 2014.

Major Melissa A. Zebley, Chairman  
Rebecca L. Byrd, Esquire  
Mr. R. Dale Hamilton (absent)  
Mr. Kevin C. Jones

Director John Yeomans (absent)  
Mrs. Jennifer A. Esposito  
Mr. Jack McGhee, II  
Ms. Robin David

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 285 (18 DE Reg. 285). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**5500 Bail Enforcement Agents**

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**BOARD OF CHIROPRACTIC**

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10) (24 **Del.C.** §706(a)(1) and (10))

24 **DE Admin. Code** 700

## ORDER

**700 Board of Chiropractic**

On September 1, 2014, the Delaware Board of Chiropractic published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 18, Issue 3. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 2, 2014 at a regularly scheduled meeting of the Board of Chiropractic to receive verbal comments regarding the Board's proposed amendments to its regulations.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

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

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

There was no verbal testimony presented at the public hearing on October 2, 2014. No written comments were received by the Board.

**FINDINGS OF FACT AND CONCLUSIONS**

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the written public comment periods, or at the public hearing.
3. Pursuant to 24 **Del.C.** §706(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

**DECISION AND ORDER CONCERNING THE REGULATIONS**

**NOW THEREFORE**, pursuant to 24 **Del.C.** §706(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on September 1, 2014. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 4<sup>th</sup> day of December, 2014.

**DELAWARE BOARD OF CHIROPRACTIC:**

Dr. Jessica Bohl, D.C.

Lois J. Dunning

Dr. Kelly Keener, D.C.

Jill Morrison

Dr. Brian Chandler, D.C. (absent)

Dr. Trevor Ennis, D.C.

Marceline Knox (absent)

\*Please note that no changes were made to the regulation as originally proposed and published in the September 2014 issue of the *Register* at page 213 (18 DE Reg. 213). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**700 Board of Chiropractic**

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## EXECUTIVE DEPARTMENT OFFICE OF STATE PLANNING COORDINATION

Statutory Authority: 22 Delaware Code, Section 1903 (22 **Del.C.** §1903)

### GENERAL NOTICE

#### PUBLIC NOTICE

#### **Guidelines Governing the Administration and Review of Applications for Designation as Downtown Development Districts**

The November 2014 *Register of Regulations* included proposed guidelines relating to the administration and review of applications for designation as Downtown Development Districts (the "Guidelines"). See 18 DE Reg. 359 (11/01/14) (Prop.). As set forth in the Guidelines, public comments were accepted through November 30, 2014. In the November *Register*, the proposed procedures were incorrectly designated as Regulations. For that reason, the Guidelines have been designated for inclusion in the General Notice section of the January 2015 *Register of Regulations*, and will not be included in the Administrative Code. No changes were made to the Guidelines as a result of the public comment period described above.

#### **Guidelines Governing the Administration and Review of Applications for Designation as Downtown Development Districts**

#### **1.0 Authority**

These guidelines are authorized pursuant to 22 **Del.C.** §1903.

#### **2.0 Background and Purpose**

- 2.1 On June 5, 2014, Governor Markell signed Senate Bill 191, the Downtown Development Districts Act. The purposes of the Act are:
- 2.1.1 To spur private capital investment in commercial business districts and surrounding neighborhoods;
  - 2.1.2 To stimulate job growth and improve the commercial vitality of such districts and neighborhoods;
  - 2.1.3 To help build a stable community of long-term residents in such districts and neighborhoods by improving housing opportunities for persons of all incomes and backgrounds; increasing homeownership rates; building a diverse array of successful businesses; and reducing the number of vacant houses; and
  - 2.1.4 To help strengthen neighborhoods, while harnessing the attraction that vibrant downtowns hold for talented young people, innovative small businesses, and residents from all walks of life.
- 2.2 Under the Act, the Office of State Planning is responsible for administering the application process. The purpose of these Guidelines is to establish procedures relating to the administration and review of Applications for Designation as Downtown Development Districts.

#### **3.0 Definitions**

"Act" means the Downtown Development Districts Act, 22 **Del.C.** §1901 *et seq.*

"Agency Liaison" means the person designated by the Secretary or Director of a Reviewing Agency to fulfill the Reviewing Agency's obligations under §6.0 hereunder.

"Applicant" means any municipality or unincorporated area (as such terms are defined in the Act) filing an Application.

"Application" means the Application for Designation as a Downtown Development District promulgated by the Office in accordance with the Act.

# GENERAL NOTICES

“Central Business District” means an area around the downtown portion of a city or town that allows for higher intensity residential uses as well as commercial, office, personal services, governmental, and similar uses intended to serve the community and surrounding areas of the city or town.

“CCSPI” or “Committee” means the Cabinet Committee on State Planning Issues established pursuant to the Delaware Planning Act, 29 Del.C. §9101 et seq.

“DDD,” “District,” or “Downtown Development District” means an area within a municipality or unincorporated area designated as a Downtown Development District in accordance with the Act.

“District Plan” means the strategic plan or other detailed description of the overall strategy for the development of a proposed district submitted by the municipality or unincorporated area as part of its Application.

“Downtown” means that portion of a city, town, or unincorporated area that traditionally comprises its downtown or central business district, as determined by such city, town, or unincorporated area in accordance with guidelines promulgated by the Office.

“Local Incentives” means the incentives offered by an Applicant as part of its Application that address local economic and community conditions, and that will help achieve the purposes set forth in the Act.

“Office” or “OSPC” means the Office of State Planning Coordination.

“Reviewing Agency” means any State Agency assigned by the Office to review and provide comments regarding an Application or any portion thereof.

“Staff Report” means any report prepared by the Office, with assistance from Reviewing Agencies, to aid the Committee in determining which Applications to recommend to the Governor for District designation.

## **4.0 Responsibilities of Office of State Planning Coordination**

In accordance with the Act, the Office:

- 4.1 Shall develop the Application and other supporting materials and information, with input from other state agencies as appropriate;
- 4.2 Shall solicit Applications, at the request of the Governor, from municipalities and unincorporated areas to have areas designated as Downtown Development Districts;
- 4.3 Shall provide assistance to potential Applicants and other stakeholders in connection with the Application process;
- 4.4 Shall evaluate completed Applications and present recommendations to the Committee in accordance with §7.0 below; and
- 4.5 Shall perform such tasks assume such other responsibilities as may arise from time to time in connection with the administration and review of Applications.

## **5.0 Content of Applications**

5.1 In accordance with §1903(c) of the Act, the Application shall include but not be limited to the following elements:

### 5.1.1 Need and Impact

5.1.1.1 The Application must require the Applicant to describe the need for the incentives that will be available in the proposed District, and to describe the potential positive impacts that are likely to accrue due to District designation.

5.1.1.2 Whenever possible, the Application should require the Applicant to demonstrate need and impact through the use of U.S. Census data or other objective information.

5.1.1.3 The Applicant shall be permitted to submit as part of its Application any additional information it deems relevant to demonstrate the need for and potential impact of the proposed District designation.

### 5.1.2 District Plan

5.1.2.1 The Application must require the Applicant to submit a detailed description of the overall strategy for the development of the proposed District, with such maps, descriptions, and other information as the Office may require.

5.1.2.2 At minimum, the Application:

5.1.2.2.1 Must require each District Plan to describe the key actions and strategies that will be used to guide growth and revitalization efforts in the proposed District;

5.1.2.2.2 Must require each Applicant to demonstrate that the District Plan is consistent with its certified Comprehensive Plan, the *Strategies for State Policies and Spending*, and any other applicable local planning documents or studies;

5.1.2.2.3 Must require each Applicant to include its Central Business District in its District Plan; and

5.1.2.2.4 Must provide that the proposed District shall be contiguous.

5.1.2.3 In addition, the Application must state that Districts shall be subject to maximum acreage requirements as determined by the Office. For the initial round of Applications, Districts shall be subject to the following area limitations, based on the most recent U.S. Census data:

5.1.2.3.1 No more than 85 acres in area for jurisdictions having a population of less than 9,000 persons; and

5.1.2.3.2 No more than 170 acres for jurisdictions having a population between 9,000 and 30,000 persons; and

5.1.2.3.3 No more than 225 acres for jurisdictions having a population greater than 30,000 persons.

## 5.1.3 Local Incentives

5.1.3.1 The Application must require the Applicant to propose Local Incentives that will help achieve the purposes set forth in the Act, as set forth in §2.1 above. These incentives must address local economic and community conditions, and may include but not be limited to reductions in fees or taxes, permit process and licensing reform, special zoning districts, and exemptions from local ordinances.

5.1.3.2 Upon designation as a District the Applicant shall be required to implement the proposed Local Incentives for the duration of the District designation.

## 5.1.4 Resolution

5.1.4.1 The Application shall require the Applicant to provide a resolution adopted by its governing body stating that the governing body supports the Application and will adhere to the District Plan and the Local Incentives for the duration of the District designation.

5.1.4.2 Upon the written approval of the Office, the Applicant may provide a resolution adopted by its governing body that deviates from the requirements of §5.1.4.1. In no event, however, shall the requirement to provide a resolution be waived.

5.2 In addition to the above, the Office may include such other provisions and adopt such other requirements in connection with the Application process as may be necessary or desirable in connection with the consideration of Applications, or any of them.

## **6.0 Initial Review by Office: Comments from Reviewing Agencies**

6.1 Immediately following the Application deadline, the Office will conduct an initial review to determine the completeness of each Application and, if necessary, to request and receive additional clarifying information.

6.2 If the Office determines that a Reviewing Agency has expertise relevant to the consideration of any Application, the Office may forward the Application or any portion thereof to the Reviewing Agency for review and comment.

6.3 Each Reviewing Agency will designate an Agency Liaison to serve as the Office's point of contact during the Application process. The Agency Liaison will ensure that the Reviewing Agency reviews



and provides comments on the Application in accordance with the deadlines established by the Office. Reviewing Agencies are advised that the Office may request responses on an expedited basis.

**6.4** Comments by Reviewing Agencies shall address:

- 6.4.1** The principal strengths of the Application from the Reviewing Agency's perspective, including those considerations set forth in §8.0 that are within the Reviewing Agency's area of expertise;
- 6.4.2** The principal weaknesses of the Application from the Reviewing Agency's perspective, including those considerations set forth in §8.0 that are within the Reviewing Agency's area of expertise; and
- 6.4.3** Such other information as the Reviewing Agency shall determine is relevant to its consideration of the Application and the District Plan and Local Incentives contained therein.

**7.0** **Staff Reports and Recommendations—Procedure**

- 7.1** Following a review of each Application and comments from Reviewing Agencies, the Office will prepare a Staff Report to assist the Committee in fulfilling its obligations under §9.0 below.
- 7.2** The Office will summarize or incorporate in the body of each Staff Report those comments from Reviewing Agencies that the Office determines are relevant to its review of the underlying Application. In addition, the Office may attach *verbatim* the comments of the Reviewing Agency as an exhibit to such Staff Report.
- 7.3** Upon completion of all Staff Reports, the Office will determine which Applications, in its opinion, have the greatest potential for accomplishing the purposes of the Act, as set forth more fully in §2.1 above.
  - 7.3.1** In distinguishing among competing Applications, the Office will evaluate Applications in accordance with the considerations set forth in §8.0 of these Guidelines.
  - 7.3.2** For the initial round of District designations, the Office will make separate recommendations pursuant to §7.3 for each county.
- 7.4** The Office will present each Staff Report, as well as its recommendations pursuant to §7.3 above, at the next meeting of the Committee. Copies of all Staff Reports, recommendations, and other relevant materials will be provided to members of the Committee at least ten (10) days prior to the date of such meeting.

**8.0** **Evaluation of Applications**

**8.1** General Principles

- 8.1.1** It is understood that Applicants will be given significant flexibility and authority to create a District Plan and propose Local Incentives that best meet the needs of their communities. As a result, each Application will be different, and the evaluation of each Application will require qualitative judgments as well as quantitative factors.
  - 8.1.2** Notwithstanding the above, a substantive framework is necessary to assist the Office and Reviewing Agencies in determining which Applications have the greatest potential for accomplishing the purposes of the Act in accordance with §2.1 above, and to distinguish among competing Applications. To that end, Applications will be reviewed in accordance with the considerations set forth in this section.
  - 8.1.3** Nothing in this section shall be construed to prohibit the establishment or consideration of such other matters as may be necessary or desirable in connection with the consideration of any Application.
- 8.2** Need and Impact – Need and impact factors will account for 50 percent of the consideration given to each Application. Evaluation of need and impact may include but shall not be limited to the following:
- 8.2.1** Economic considerations, including median income, poverty rate, and percentage of low- and moderate-income residents or households;
  - 8.2.2** Considerations relating to housing and community conditions, including the number or percentage of vacant or abandoned properties, homeownership and rental rates, median home value, and average or median age of dwelling units or structures;

- 8.2.3 Other considerations as set forth in the Application pursuant to §5.1.1.2, which may include but shall not be limited to considerations relating to population, crime, and education levels; and
- 8.2.4 The Applicant's description of the potential positive impacts that are likely to result from District designation.
- 8.3 District Plan – The District Plan will account for 30 percent of the consideration given to each Application. Evaluation of each District Plan may include but shall not be limited to the extent to which:**
- 8.3.1 The District Plan is consistent with sound planning principles, including the extent to which:
- 8.3.1.1 The size and shape of the proposed District make sense from an urban planning and revitalization perspective;
- 8.3.1.2 The District Plan clearly and specifically identifies the types of projects and uses intended to be promoted—and discouraged—within the proposed District, for purposes of administering the DDD Grant Program and otherwise;
- 8.3.1.3 The District Plan is consistent with the Applicant's certified Comprehensive Plan, the *Strategies for State Policies and Spending*, and any other applicable planning documents or studies;
- 8.3.1.4 The District Plan is well-coordinated, with clear lines of authority among local government agencies, members of the community, for- and non-profit organizations, and other stakeholders;
- 8.3.1.5 The District Plan complements and is consistent with existing revitalization efforts, including (if applicable) any historic districts or business improvement districts; and
- 8.3.1.6 The District Plan promotes energy-efficient and environmentally sensitive development, and addresses the potential effects of flooding and sea level rise as applicable;
- 8.3.2 The District Plan is likely to leverage significant private funding, including whether District designation is likely to assist or result in specific projects moving forward within the first six (6) to twelve (12) months of District designation;
- 8.3.3 District designation is likely to benefit a wide variety of stakeholders, including investors and other businesses (large and small, non-profit and for-profit), homeowners, and other stakeholders;
- 8.3.4 The District Plan evidences input from, and the support of, such stakeholders;
- 8.3.5 The extent to which the proposed District concentrates benefits in as small an area as possible, which may but shall not be required to includes prioritization, phasing, and/or timing of redevelopment activities as appropriate to maximize the effectiveness of District incentives;
- 8.3.6 The key actions and strategies proposed in the District Plan are realistic in light of existing economic and other conditions;
- 8.3.7 The District Plan encourages accountability by establishing clear lines of responsibility for the applicant to meet its District obligations; and
- 8.3.8 The District Plan evidences a strong and sustained commitment of the Applicant to ensure the long-term success of the District, to the extent it is so designated.
- 8.4 Local Incentives – The Local Incentives shall account for 20 percent of the consideration given to each Application. Evaluation hereunder may include but shall not be limited to the extent to which the proposed Local Incentives:**
- 8.4.1 Are coordinated with and integrated into the District Plan, *i.e.*, they support the specific initiatives contained in or contemplated by such Plan;
- 8.4.2 Are likely to leverage significant private funding;
- 8.4.3 Are meaningful and substantial, thereby demonstrating the Applicant's commitment to the success of the proposed District;
- 8.4.4 Are likely to benefit a wide variety of stakeholders, including those stakeholders described in §8.3.3 above;
- 8.4.5 Promote energy-efficient and environmentally sensitive development, and address the potential effects of flooding and sea level rise as applicable;
- 8.4.6 Are user-friendly, easy to understand, and to the extent possible, cut or minimize red tape;

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## GENERAL NOTICES

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- 8.4.7 Clearly and specifically describe which person(s) are responsible for ensuring that the Local Incentives are available throughout the life of the District; and
- 8.4.8 Are measurable with respect to determining the success or failure of such Local Incentives in accomplishing the purposes of the Act, as set forth more fully in §2.1 above.

### **9.0 Committee Review of Applications**

- 9.1 At a reasonable time following the close of the Application period, a meeting of the Committee will be convened to consider, discuss, and evaluate the Applications.
- 9.2 At such meeting, the Office shall present to the Committee each Application and associated Staff Report, as well as the Office's recommendations in accordance with §7.3 above. The Committee shall give significant weight to the Staff Reports and the recommendations contained therein, but shall not be bound thereby.
- 9.3 At the conclusion of the meeting, the Committee shall recommend to the Governor those applications with the greatest potential for accomplishing the purposes of the Act. In connection therewith, the Committee shall consider the provisions of §§2.1 and 8.0 above.
- 9.4 Recommendations of the Committee shall be made by a resolution adopted by no less than a majority of Committee members present. If the Committee is unable to adopt a resolution at the conclusion of the meeting, the Committee shall defer its recommendations until the next meeting, which shall be scheduled at the earliest possible opportunity in accordance with FOIA. In connection therewith, the Committee may request that the Office provide additional information relevant to its consideration of Applications hereunder.
- 9.5 As soon as is practicable following the date upon which the Committee issues its recommendations, the Office shall forward to the Governor:
  - 9.5.1 All Applications recommended by the Committee in accordance with this §9.0, and any supporting materials submitted by the Applicant in connection therewith;
  - 9.5.2 All Staff Reports prepared by the Office and presented to the Committee in connection with such Applications, including all comments of Reviewing Agencies;
  - 9.5.3 The minutes of the Committee meeting held pursuant to §9.0 above; and
  - 9.5.4 Such other information as the Office or the Committee shall deem relevant, or as otherwise requested by the Governor or his designee(s).

### **10.0 Review and Designation; Agreements Evidencing Designation**

- 10.1 As set forth in §1904(b) of the Act, following receipt of any Application set forth in §9.5 above, the Governor:
  - 10.1.1 Shall approve the Application for immediate designation as a District; or
  - 10.1.2 Shall approve the Application for designation as a District, effective one (1) year from the date of such determination by the Governor; or
  - 10.1.3 Shall deny such Application.
- 10.2 In connection with the Designation of any District hereunder, the Office may require the successful Applicant to execute such documents and enter into such agreements as may be necessary or desirable in connection with such designation and the rights and obligations of the Applicant thereunder.

### **11.0 Preservation of Applications**

- 11.1 Any Application that is not approved for District designation will remain on file with the Office for a period of not less than four (4) years from the date the original Application was filed.
- 11.2 In subsequent Application periods, any Applicant whose Application remains on file will not be required to submit an entirely new Application. Instead, the Office will request that the prior Applicant revise, amend, or supplement only those portions of the prior Application as necessary to update the Application for consideration in the subsequent round of Applications.

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- 11.3 Nothing in this section shall prohibit or prevent the prior Applicant from revising, amending, or supplementing such portions of the Application as may be necessary to improve upon the prior Application and to better position the Applicant for District designation in the subsequent round of Applications.
- 11.4 Notwithstanding the foregoing, a prior Applicant seeking to renew its Application in any subsequent round of Applications shall be required to obtain and submit a new Resolution in accordance with §5.1.4 above.

**DELAWARE ECONOMIC DEVELOPMENT OFFICE****PUBLIC NOTICE****Availability of the Draft State of Delaware Comprehensive Economic Development Strategy (CEDS) for Review and Comment**

The Delaware Economic Development Office ("DEDO"), pursuant to 13 C.F.R § 303.7, seeks public review and comment on the draft State of Delaware Comprehensive Economic Development Strategy (CEDS). CEDS are designed to bring together the public and private sectors in the creation of an economic roadmap to diversify and strengthen Regional economies. The CED analyzes the Regional economy and serves as a guide for establishing Regional goals and objectives, developing and implementing a Regional plan of action, forging public and private partnerships and identifying investment priorities and funding sources. As a performance-based plan, the CEDS will serve a critical role in a Region's efforts to defend against economic dislocations due to global trade, competition and other events resulting in the loss of jobs and private investment. A copy of the draft CEDS document is available only on the Delaware Economic Development Office web site at <http://de.gov/50c>. The public is invited to review this document and provide any written comments no later than January 30, 2015 to Jeffrey Stone at [Jeff.Stone@state.de.us](mailto:Jeff.Stone@state.de.us) or by hard copy to Jeff Stone, Director of Infrastructure and Intergovernmental Relations, Delaware Economic Development Office, 99 Kings Highway, Dover, Delaware 19901.

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

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the striking or whipping rule to maintain the integrity of racing 7.6.13.14.1.3 and 7.6.13.14.1.4.

The DHRC proposes this rule amendment to ensure adherence to appropriate animal welfare standards and fair racing standards. Subsequent to a 30-day comment period from January 1 to 30, 2015 and notice in the *Register of Regulations*, the DHRC will finalize the regulations on February 10, 2015 during its regularly scheduled monthly meeting. The DHRC February 2015 monthly meeting is public and is noticed on the state meeting notice website. Those meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB February 9, 2015. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

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

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the Uniform Classification Guidelines of Foreign Substances, reference 8.3 and 8.3.1.

The DHRC voted to approve this rule amendment on December 2, 2014 at its regular monthly meeting. The monthly meetings are noticed public meetings. Subsequent to this public notice in the *Register of Regulations*, the DHRC will leave the public comment period open until February 10, 2015 when the DHRC will hold its regularly scheduled monthly meeting. The DHRC February 2015 monthly meeting is public and is noticed on the state meeting notice website. Those meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB February 9, 2015. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

**HARNESS RACING COMMISSION**  
**DELAWARE STANDARDBRED BREEDERS' FUND**  
**PUBLIC NOTICE**

**502 Delaware Standardbred Breeders' Fund Regulations**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulation under 9.2 expands the current bonus payments to include consolation races.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by February 1, 2015.

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

The State Board of Education will hold its monthly meeting on Thursday, January 15, 2015 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**  
**PUBLIC NOTICE**

**3325 Financial Capability Reporting**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the Delaware Code, Section 7903(10), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to create Regulation 3325, Financial Capability Reporting.

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 Thomas Murray, Deputy Director, Division of Long Term Care Resident Protection, 3 Mill Road, Suite 308, Wilmington, Delaware 19806 by January 31, 2015.

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.

For some time there have existed various interpretations of the requirement for facilities to submit financial documents to allow staff to effectively assess the financial capability of the facilities. This regulation details the information that must be submitted and the circumstances under which it must be submitted. It will establish consistency in the application of 16 **Del.C.** §§1104(b)(2) and 1104(e).

This regulation details the level of information that must be provided by the facility under various circumstances. It also details when and in what form the department will require the submission of audited financial statements.

# CALENDAR OF EVENTS/HEARING NOTICES

## DIVISION OF MANAGEMENT SERVICES

### PUBLIC NOTICE

#### Birth To Three Early Intervention System

The Birth to Three Early Intervention System, Division of Management Services, Department of Health and Social Services, is seeking public comment on five sets of policies. The purpose of the policies is to ensure compliance under Part C of the Individuals with Disabilities Education Improvement Act of 2004. On January 1, 2015, the Birth to Three Early Intervention System plans to publish the proposed policies specified below, and hold them out for public comment per Delaware law.

The Birth to Three Early Intervention System will hold public hearings to discuss the following policies:

Title
General Education Provisions Act (GEPA)
Public Participation
Eligibility Policy and Definition of Eligible Infants and Toddlers
Statewide System of Early Intervention Services
Early Childhood Transition

Public hearings will be held:

February 26, 2015 at  
6:00 pm

Room 198, Main Administration Building on  
the Herman Holloway Campus, 1901 N.  
Dupont Highway Street, New Castle,  
Delaware 19720

March 2, 2015 at  
10:00 am

Conference Room, Second Floor, 18 North  
Walnut Street, Milford, Delaware 19963

Copies of the proposed regulations are available for review in the January 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling Inita Joyner at (302) 255-9134.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Susan Campbell by Wednesday, March 25, 2015 at:

Susan Campbell  
Birth to Three Early Intervention System  
1901 N Dupont Hwy  
New Castle, DE 19720  
Email: [susan.campbell@state.de.us](mailto:susan.campbell@state.de.us)  
Fax: 302-255-4407

**Please Note: Links to the five proposed policies are provided below:**

**DE Part C Public Participation Policies:**

**DE Statewide System of Early Intervention Services:**

**DE Transition Operations Agreement:**

**Eligibility Policy:**

**General Education Provisions Act (GEPA):**

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****70000 Certification and Regulation of Medicaid Managed Care Organizations**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM), regarding Solvency Standards for Managed Care Organizations Participating in Medicaid, specifically, *Certification and Regulation of Medicaid Managed Care Organizations*.

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 Sharon L. Summers, Planning, Policy Development and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by January 31, 2015.

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Inpatient Hospital Services****Freestanding Inpatient Rehabilitation Hospital Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Inpatient Hospital Services, specifically, *Freestanding Inpatient Rehabilitation Hospital Services*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy Development and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by January 31, 2015.

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

**DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****4453 Regulations Governing Cosmetology and Barbering**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (the Department), is proposing revisions to the State of Delaware Regulations Governing Cosmetology and Barbering. Amendments have been made to the existing regulation to add requirements and definitions for mobile units; clarify ventilation and hand wash sink requirements, and to whom may remove hair; prohibits use of razor blades and animals such as fish for removing calluses during pedicures, laser technology and threading to remove hair; and the application of permanent makeup unless it is separately permitted by the Department. On January 1, 2015, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the January 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4705

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning



the proposed regulations must submit same to Deborah Harvey by January 31, 2015 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700

**DIVISION OF SOCIAL SERVICES**

**PUBLIC NOTICE**

**Child Care Subsidy Program, Child Support Policies and Procedures**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Child Support Policies and Procedures*.

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 Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2015.

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.

**DEPARTMENT OF INSURANCE**

**OFFICE OF THE COMMISSIONER**

**PUBLIC NOTICE**

**607 Defensive Driving Course Discount (Automobiles and Motorcycles) [Formerly Regulation 37]**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 607 relating to Defensive Driving Course Discount (Automobiles and Motorcycles) [Formerly Regulation 37]. The docket number for this proposed AMENDED regulation is 2428.

Senate Bill 178 with Senate Amendment 1 of the 147<sup>th</sup> General Assembly transfers the authority to regulate Delaware's state-approved motor vehicle accident prevention (defensive driving) courses from the Department of Insurance to the Division of Motor Vehicles, except for the regulatory authority over the insurance discount as required by the program, which will remain under the Department of Insurance. The Delaware Code authority for the change is 18 **Del.C.** §§311 and 2503; and 29 **Del.C.**, Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

[www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml](http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml)

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, January 30, 2015. Any such requests should be directed to:

Regulatory Specialist Rhonda West  
Delaware Department of Insurance  
841 Silver Lake Boulevard

Dover, DE 19904  
Phone: (302) 674-7379  
Fax: (302) 739-5566  
Email: [rhonda.west@state.de.us](mailto:rhonda.west@state.de.us)

## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF FISH AND WILDLIFE**

#### **PUBLIC NOTICE**

#### **3541 Atlantic Sharks**

The purpose of this action is to adopt provisions consistent with Addenda II and III to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Atlantic Coastal Sharks. The proposed action will maintain consistency between the federal (2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan as amended) and ASMFC management plans, preserve the historical distribution of smoothhound (*Mustelus canis* and *Mustelis norrisi*) landings, and protect hammerhead shark to maturity.

This action defines a smoothhound (colloquially referred to as smooth dogfish or sand sharks) complex. Although the smoothhound complex has not been assessed, NOAA Fisheries is developing a coastwide smoothhound quota. In anticipation of a coastwide quota, the ASMFC developed state allocations under Addendum II to preserve the historical distribution of smoothhound. The proposed action will also implement shark finning limits consistent with the Shark Conservation Act of 2010 and 7 **Del.C.** §928A.

Consistent with Addendum III, the proposed action adjusts the shark species groupings for management purposes. Most significantly, the proposed action groups scalloped (*Sphyrna lewini*), great (*S. mokarran*) and smooth (*S. zygaena*) hammerhead sharks into a single complex, as it is difficult to differentiate the species. A recent assessment of scalloped hammerhead sharks indicated that the species is overfished and overfishing is occurring. It was also determined that female scalloped hammerhead sharks reach maturity at 78 inches fork length (Hazin et al. 2001, NOAA Fisheries FEIS for Amendment 5a, pp. 2-19). Therefore, NOAA Fisheries changed the recreational size limit for all hammerhead sharks to 78 inches. The proposed action also separates the blacknose shark (*Carcharhinus acronotus*) from the small coastal shark complex.

Finally, the action proposes changes to the regulation that improve readability, but do not change regulatory intent.

The hearing record on the proposed changes to 3541 Atlantic Sharks will be open January 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on January 22, 2015 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

## **DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

#### **PUBLIC NOTICE**

#### **1301 Regulations Governing Solid Waste**

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to add scrap tire facility management provisions to DRGSW. This amendment will enable the SHWMS to have oversight on the management of scrap tires, including limiting the amount of tires allowed to be accumulated in one area, providing environmental and human health protection via siting restrictions and mosquito control, and providing a mechanism for enforcement if the need arises.

The public hearing on the proposed amendments to DRGSW will be held on Monday, January 26, 2015 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to continuing education are amended to clarify their application. Additionally rules of an administrative nature are changed to reflect current practices.

A public hearing will be held on March 4, 2015 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a).

**DIVISION OF PROFESSIONAL REGULATION**  
**2500 BOARD OF PHARMACY**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations.

A public hearing will be held on January 21, 2015 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board liaison, Christine Mast, at the above address.

The proposed revisions consist of a new Rule 5.1.14.3 which specifies that disposal methods for dispensed medications must comply with State and Federal requirements. In addition, Rule 14.1.1 is amended to state that CPR certification must be obtained through hands-on education.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be February 5, 2015 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on February 18, 2015, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

**DIVISION OF PROFESSIONAL REGULATION**  
**2930 COUNCIL ON REAL ESTATE APPRAISERS**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to continuing education and the responsibilities of state licensed supervisory appraisers and appraiser trainees are amended to conform to new Appraisal Qualifications Board criteria.

A public hearing will be held on February 17, 2015 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a).

**DIVISION OF PROFESSIONAL REGULATION**  
**4100 BOARD OF HOME INSPECTORS**  
**PUBLIC NOTICE**

The Delaware Board of Home Inspectors, pursuant to 24 **Del.C.** §4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes decrease the number of supervised inspections a trainee inspector must complete prior to being eligible for full licensure and decreases the number of inspections an experienced applicant must complete to be eligible for licensure. The changes are being proposed in light of a recent statutory change that decreased the number of inspections endorsement candidates are required to complete to be eligible for licensure. The changes also eliminate INTERNACHI membership as a qualification for licensure as an experience applicant as the Board believes that INTERNACHI membership is not as strong an indicator of an applicant's qualifications as ASHI and NAHI membership.

The Board will hold a public hearing on the proposed regulation change on February 10, 2015 at 9:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrative Specialist of the Delaware Board of Home Inspectors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 25, 2015 pursuant to 29 **Del.C.** §10118(a).

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF MOTOR VEHICLES**  
**PUBLIC NOTICE**

**2224 Defensive Driving Course, Providers, and Instructors**

The Delaware Division of Motor Vehicles gives notice of intent to transfer a portion of regulatory authority for the Defensive Driving Course from Title 18 Insurance Regulation 607 to a new Title 2 Transportation Regulation 2224.

This proposal is pursuant to Senate Bill 178 with Senate Amendment 1 of the 147<sup>th</sup> General Assembly, which transfers the authority to regulate Delaware's state-approved defensive driving courses from the Department of Insurance to the Division of Motor Vehicles, except for the regulatory authority over the insurance discount, as required by the program, which will remain under the Department of Insurance.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed new regulation must submit the same to Kami Beers, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-4750 Attn: Kami Beers by February 1, 2015.

**DIVISION OF TRANSPORTATION SOLUTIONS**  
**PUBLIC NOTICE**

**2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property Interests**

The Delaware Department of Transportation is seeking public comment regarding an alternative dispute resolution procedure to assist in reaching or finally determine the amount of compensation to be paid for the acquisition of real property, when the Department has filed a condemnation action for that acquisition, in the manner otherwise prescribed by 10 **Del.C.** ch. 61.

In some instances, the parties involved may find it useful to engage in either a binding or non-binding review of their respective property valuations, using a panel of qualified appraisers for the purpose. The protocols for this alternative dispute resolution mechanism are outlined in the draft regulations.

The Department will take written comments on the proposed Regulation for this Alternative Dispute Resolution Protocol for Acquisition of Certain Real Property Interests from January 1, 2015 through January 31, 2015.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Robert Cunningham  
Chief of Right of Way  
Division of Transportation Solutions  
Delaware Department of Transportation  
P.O. Box 778  
Dover, DE 19903  
(302) 760-2303 (telephone)  
(302) 739-2895 (fax)  
robert.cunningham3@state.de.us

**OFFICE OF MANAGEMENT AND BUDGET**  
**DIVISION OF FACILITIES MANAGEMENT**  
**PUBLIC NOTICE**

**4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program**

The Office of Management and Budget, Division of Facilities Management has proposed amendments to the State of Delaware 4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program. The presently existing regulation can be found at:

<http://dfm.delaware.gov/docs/regulations.pdf>

The proposed amendment updates training requirements and adds cash as a payment option for various fees related to certification of employees and professionals affected by this regulation.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed amended regulation must submit same to Robert Scoglietti by 4:30 p.m. on Wednesday, February 4, 2015. Any such requests should be directed to:

Robert Scoglietti  
Delaware Office of Management and Budget  
122 Martin Luther King Jr. Blvd. South  
Dover, DE 19901  
Email: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)

**DIVISION OF FACILITIES MANAGEMENT**  
**PUBLIC NOTICE**

**Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects**

The proposed regulation is intended to safeguard the public by establishing the mechanism, standards and requirements of a Mandatory Drug Testing Program for Contractors and Subcontractors that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 **Del.C.** §6962.

The key components of the Drug Testing Regulation include the following:

- Applicability for all public works projects bid under 29 **Del.C.** §6962.
- A requirement that all Large Public Works RFP's require each Contractor and Subcontractor to have a program of drug testing.
- Conformance to federal (SAMHSA) standards for collection, chain of custody procedures, laboratory testing, and Medical Officer review.
- Requirements for Initial Testing, Random Testing, Reasonable Suspicion Testing, Return to Duty Testing, and Accident Triggered Testing.
- Consequences of a positive test result by an Employee of a Contractor or Subcontractor.
- Penalties for non-compliance with this regulation.

On January 1, 2014 (Volume 17, Issue 7), OMB published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It was requested that written materials and suggestions from the public concerning the proposed regulations be delivered to OMB by February 4, 2014 or be presented at a public hearing on February 5, 2014, after which time OMB would review information, factual evidence and public comment to the proposed regulations. Considerable public comment was received by the following organizations:

- Associated Builders and Contractors of Delaware
- Delaware Contractors Association
- Richard Johnson and Sons Inc.
- Wohlsen Construction
- EDIS Company
- Delaware Army National Guard
- Diamond Materials LLC
- Ventresca Brothers Construction
- Wayman Fire Protection Inc.
- Marijuana Policy Project

The comments that were received have been considered and resulted in substantive changes to the form and content of the initially proposed regulation. In accordance with 29 **Del.C.** §10118(c), the amended regulation is hereby proposed as a newly proposed regulation.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed amended regulation must submit same to Robert Scoglietti by 4:30 p.m. on Friday, March 6, 2015. Any such requests should be directed to:

Robert Scoglietti  
Delaware Office of Management and Budget  
122 Martin Luther King Jr. Blvd. South  
Dover, DE 19901  
Email: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on Wednesday, February 11, 2015 in Room 219 of the Haslet Armory, 122 Martin Luther King Jr. Blvd South, Dover DE at 2:00 PM.