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# Delaware Register of Regulations

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Volume 25 - Issue 7, Pages 645 - 733

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Errata

Emergency

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, 2021.

*Cover Photo*  
by  
*Arun Reddy Katta*

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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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 17	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 16	4:30 p.m.
July 1	June 15	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

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

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

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

**ERRATA****1003 Credit for Reinsurance**

\* **Please Note:** The proposed regulation for 1003 Credit for Reinsurance was originally submitted for publication in the September 1, 2021 issue of the *Register of Regulations*.

Accompanying Form CR-S-Part 3-Section 2, included as a link to a PDF document, was inadvertently linked to Form RJ-1. The linked document was corrected to Form CR-S-Part 3-Section 2 when the regulation was published as Final in the December 1, 2021 issue of the *Register of Regulations*.

The corrected Form CR-S-Part 3-Section 2 can be found in this PDF document:

<http://regulations.delaware.gov/register/january2022/errata/Form CR-S - Part 3 - Section 2.pdf>

The full text of the final regulation was published in the December 1, 2021 *Register of Regulations*. See 25 **DE Reg.** 630 (12/01/2021) (Final).

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**Symbol Key**

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

**Emergency Regulations**

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

**§ 10119. Emergency regulations.**

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

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

Statutory Authority: 14 Delaware Code, Section 3003A and 29 Delaware Code, Section 10119  
(14 **Del.C.** §3003A & 29 **Del.C.** §10119)  
9 **DE Admin. Code** 105

**EMERGENCY ORDER****9 DE Admin. Code 105 Residential Child Care Facilities and Day Treatment Programs****105 Residential Child Care Facilities and Day Treatment Programs****AUTHORITY**

Pursuant to 14 **Del. C.** §3003A and 29 **Del. C.** §10119, the Department of Education ("Department") is renewing emergency regulatory amendments to 9 **DE Admin. Code** 105 Residential Child Care Facilities and Day Treatment Programs. Additionally, 29 **Del. C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** §10115. Also, 14 **Del. C.** §3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** §3002A(1).

**REASON FOR THE EMERGENCY ORDER**

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

An emergency order regulation to require persons in residential child care facilities and day treatment programs to wear masks was published in the September 1, 2021 issue of the *Register*.

### EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 9 **DE Admin. Code** 105 Residential Child Care Facilities and Day Treatment Programs is amended by adding Section 3.7 which requires certain facilities to require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

### 3.0. General Provisions

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#### 3.7 COVID-19 Mitigation and Prevention in Residential Child Care Facilities and Day Treatment Programs

3.7.1. All persons or associations conducting child care as defined in 14 Del.C. § 3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

3.7.2. Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

#### 3.7.3. Masks are not required in child care facilities:

3.7.3.1. When seated at a table to eat or drink.

3.7.3.2. When asleep.

3.7.3.3. When engaged in any activity that makes wearing a mask not feasible, such as swimming.

3.7.3.4. When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

3.7.3.5. When outdoors.

3.7.3.6. When children are not in the building.

3.7.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order took effect on August 16, 2021 and was effective for 120 days. Because the public health threat continues, this renewal shall take effect on December 14, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** § 10119(3).

### PETITION FOR RECOMMENDATIONS

In accordance with 29 **Del. C.** §10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOeregulations.comment@doe.k12.de.us](mailto:DOeregulations.comment@doe.k12.de.us).

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## ORDER

It is hereby ordered, this 3rd day of December, 2021, that the above referenced amendment to 9 **DE Admin. Code** 105 Residential Child Care Facilities and Day Treatment Programs, a copy of which is hereby attached, is renewed, pursuant to 14 **Del.C.** §3003A and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

**IT IS SO ORDERED** the 3rd day of December, 2021.

### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

### 105 Residential Child Care Facilities and Day Treatment Programs (Break in Continuity of Sections)

#### 3.0 General Provisions

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

#### 3.7 COVID-19 Mitigation and Prevention in Residential Child Care Facilities and Day Treatment Programs

- 3.7.1 All persons or associations conducting child care as defined in 14 **Del.C.** §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.
- 3.7.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.
- 3.7.3 Masks are not required in child care facilities:
  - 3.7.3.1 When seated at a table to eat or drink.
  - 3.7.3.2 When asleep.
  - 3.7.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.
  - 3.7.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.
  - 3.7.3.5 When outdoors.
  - 3.7.3.6 When children are not in the building.
- 3.7.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

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

**105 Residential Child Care Facilities and Day Treatment Programs**



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**EMERGENCY REGULATIONS**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(2) and 3003A, 29 Delaware Code, Section 10119 (14 **Del.C.** §§122(b)(2) & 3003A & 29 **Del.C.** §10119)  
14 **DE Admin. Code** 815

**EMERGENCY ORDER****14 DE Admin. Code 815 Health Examinations and Screening****815 Health Examinations and Screening****AUTHORITY**

Pursuant to 14 **Del. C.** § 122(b)(2), 14 **Del. C.** §3003A, and 29 **Del. C.** §10119, the Department of Education ("Department") is renewing emergency regulatory amendments to 14 **DE Admin. Code** 815 Health Examinations and Screening. Additionally, 29 **Del. C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** §10115. Moreover, 14 **Del. C.** §122(b)(2) authorizes the Department to prescribe rules and regulations governing the physical inspection of and the protection of the health and physical welfare of public school students in the State.

**REASON FOR THE EMERGENCY ORDER**

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

An emergency order regulation to require persons in schools and child care facilities to wear masks was published in the September 1, 2021 issue of the *Register*.

**EFFECTIVE DATE OF ORDER**

Accordingly, it is hereby ordered, that 14 **DE Admin. Code** 815 Health Examinations and Screening, is amended by adding Section 6.0 which requires certain facilities to require masks. The regulation is temporarily modified by making deletions as shown by strikethrough and insertions as shown by underline as follows:

6.0 COVID-19 Mitigation and Prevention6.1 Schools

6.1.1 All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.

6.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask

can request a reasonable accommodation from the school.

6.1.3 Masks are not required in school buildings:

6.1.3.1 When seated at a table to eat or drink.

6.1.3.2 When asleep.

6.1.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

6.1.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

6.1.3.5 When outdoors.

6.1.3.6 When students are not in the building, except when students travel on school buses.

6.1.4 All schools that provide bus service to and from school shall require mask use by all students, faculty, staff, and visitors riding school buses, regardless of vaccination status.

## 6.2 Child Care Facilities

6.2.1 All persons or associations conducting child care as defined in 14 Del.C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

6.2.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

6.2.3 Masks are not required in child care facilities:

6.2.3.1 When seated at a table to eat or drink.

6.2.3.2 When asleep.

6.2.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

6.2.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

6.2.3.5 When outdoors.

6.2.3.6 When children are not in the building.

6.2.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order took effect on August 16, 2021 and was effective for 120 days. Because the public health threat continues, this renewal shall take effect on December 14, 2021 and shall remain in effect for 60 days, consistent with 29 Del.C. § 10119(3).

## **PETITION FOR RECOMMENDATIONS**

In accordance with 29 Del. C. §10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us).

## **ORDER**

It is hereby ordered, this 3rd day of December, 2021, that the above referenced amendment to 14 DE Admin. Code 815 Health Examinations and Screening, a copy of which is hereby attached, is renewed, pursuant to 14 Del.C. §3003A and 29 Del.C. §10119, as referenced above, and supported by the evidence contained herein.

**IT IS SO ORDERED** the 3rd day of December, 2021.

**Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

**815 Health Examinations and Screening**  
*(Break in Continuity of Sections)***6.0 COVID-19 Mitigation and Prevention****6.1 Schools**

- 6.1.1** All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.
- 6.1.2** Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.
- 6.1.3** Masks are not required in school buildings:
- 6.1.3.1** When seated at a table to eat or drink.
  - 6.1.3.2** When asleep.
  - 6.1.3.3** When engaged in any activity that makes wearing a mask not feasible, such as swimming.
  - 6.1.3.4** When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.
  - 6.1.3.5** When outdoors.
  - 6.1.3.6** When students are not in the building, except when students travel on school buses.
- 6.1.4** All schools that provide bus service to and from school shall require mask use by all students, faculty, staff, and visitors riding school buses, regardless of vaccination status.

**6.2 Child Care Facilities**

- 6.2.1** All persons or associations conducting child care as defined in 14 Del.C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.
- 6.2.2** Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.
- 6.2.3** Masks are not required in child care facilities:
- 6.2.3.1** When seated at a table to eat or drink.
  - 6.2.3.2** When asleep.
  - 6.2.3.3** When engaged in any activity that makes wearing a mask not feasible, such as swimming.
  - 6.2.3.4** When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.
  - 6.2.3.5** When outdoors.
  - 6.2.3.6** When children are not in the building.
- 6.2.4** All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

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

**815 Health Examinations and Screening**

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A and 29 Delaware Code, Section 10119  
(14 Del.C. §122(b)(2), 14 Del.C. §3003A, 29 Del.C. §10119)  
14 DE Admin. Code 933

### EMERGENCY ORDER

**14 DE Admin Code 933 DELACARE: Regulations for Early Care and Education and School-Age Centers**

**933 DELACARE: Regulations for Early Care and Education and School-Age Centers**

### AUTHORITY

Pursuant to 14 Del. C. §3003A and 29 Del. C. §10119, the Department of Education ("Department") is renewing emergency regulatory amendments to 14 DE Admin Code 933 DELACARE: Regulations for Early Care and Education and School-Age Centers. Additionally, 29 Del. C. §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del. C. § 10115. Also, 14 Del. C. §3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 Del. C. §3002A(1).

### REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

An emergency order regulation to require persons in child care facilities to wear masks was published in the September 1, 2021 issue of the *Register*.

### EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 14 DE Admin. Code 933 DELACARE: Regulations for Early Care and Education and School-Age Centers is amended by adding Section 5.3 which requires certain facilities to recommend or require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

#### **5.0 Authority to Inspect and COVID-19 Mitigation and Prevention**

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##### 5.3 COVID-19 Mitigation and Prevention in Early Care and Education and School-Age Centers

5.3.1. All persons or associations conducting child care as defined in 14 Del.C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care

facility, regardless of vaccination status.

5.3.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.3 Masks are not required in child care facilities:

5.3.3.1 When seated at a table to eat or drink.

5.3.3.2 When asleep.

5.3.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

5.3.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

5.3.3.5 When outdoors.

5.3.3.6 When children are not in the building.

5.3.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order took effect on August 16, 2021 and was effective for 120 days. Because the public health threat continues, this renewal shall take effect on December 14, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** § 10119(3).

#### PETITION FOR RECOMMENDATIONS

In accordance with 29 **Del. C.** §10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOeregulations.comment@doe.k12.de.us](mailto:DOeregulations.comment@doe.k12.de.us).

#### ORDER

It is hereby ordered, this 3rd day of December, 2021, that the above referenced amendment to 14 **DE Admin Code** 933 DELACARE: Regulations for Early Care and Education and School-Age Centers, a copy of which is hereby attached, is renewed, pursuant to 14 **Del.C.** §3003A and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

**IT IS SO ORDERED** the 3rd day of December, 2021.

**Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

**933 DELACARE: Regulations for Early Care and Education and School-Age Centers**  
*(Break in Continuity of Sections)*

#### **5.0 Authority to Inspect and COVID-19 Mitigation and Prevention** *(Break in Continuity Within Section)*

##### **5.3 COVID-19 Mitigation and Prevention in Early Care and Education and School-Age Centers**

**5.3.1** All persons or associations conducting child care as defined in 14 **Del.C.** §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

- 5.3.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.
- 5.3.3 Masks are not required in child care facilities:
- 5.3.3.1 When seated at a table to eat or drink.
  - 5.3.3.2 When asleep.
  - 5.3.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.
  - 5.3.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.
  - 5.3.3.5 When outdoors.
  - 5.3.3.6 When children are not in the building.
- 5.3.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

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

**933 DELACARE: Regulations for Early Care and Education and School-Age Centers**

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A and 29 Delaware Code, Section 10119  
(14 **Del.C.** §3003A & 29 **Del.C.** §10119)  
14 **DE Admin. Code** 934

## EMERGENCY ORDER

**14 DE Admin Code 934 Regulations for Family and Large Family Child Care Homes**

**934 Regulations for Family and Large Family Child Care Homes**

## AUTHORITY

Pursuant to 14 **Del. C.** §3003A and 29 **Del. C.** §10119, the Department of Education ("Department") is renewing emergency regulatory amendments to 14 **DE Admin Code** 934 DELACARE: Regulations for Family and Large Family Child Care Homes. Additionally, 29 **Del. C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** § 10115. Moreover, 14 **Del. C.** §122(b)(2) authorizes the Department to prescribe rules and regulations governing the physical inspection of and the protection of the health and physical welfare of public school students in the State. Also, 14 **Del. C.** §3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** §3002A(1).

## REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon

guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

An emergency order regulation to require persons in family and large family child care facilities to wear masks was published in the September 1, 2021 issue of the *Register*.

### EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 14 **DE Admin Code** 934 DELACARE: Regulations for Family and Large Family Child Care Homes amended by adding Section 5.3 which requires certain facilities to recommend or require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

#### **5.0 Authority to Inspect and COVID-19 Mitigation and Prevention**

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#### 5.3 COVID-19 Mitigation and Prevention in Family and Large Family Child Care Homes

##### 5.3.1 Family and Large Family Child Care Homes

5.3.1.1. All persons or associations conducting child care as defined in 14 **Del.C.** §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

5.3.1.2. Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.1.3. Masks are not required in child care facilities:

5.3.1.3.1. When seated at a table to eat or drink.

5.3.1.3.2. When asleep.

5.3.1.3.3. When engaged in any activity that makes wearing a mask not feasible, such as swimming.

5.3.1.3.4. When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

5.3.1.3.5. When outdoors.

5.3.1.3.6. When children are not in the building.

5.3.1.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order took effect on August 16, 2021 and was effective for 120 days. Because the public health threat continues, this renewal shall take effect on December 14, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** § 10119(3).

### PETITION FOR RECOMMENDATIONS

In accordance with 29 **Del. C.** §10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency



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Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us).

## ORDER

It is hereby ordered, this 3rd day of December, 2021, that the above referenced amendment to 14 **DE Admin Code** 934 DELACARE: Regulations for Family and Large Family Child Care Homes, a copy of which is hereby attached, is renewed, pursuant to 14 **Del.C.** §3003A, and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

**IT IS SO ORDERED** the 3rd day of December, 2021.

### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

### 934 Regulations for Family and Large Family Child Care Homes (Break in Continuity of Sections)

#### 5.0 Authority to Inspect and COVID-19 Mitigation and Prevention

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

#### 5.3 COVID-19 Mitigation and Prevention in Family and Large Family Child Care Homes

##### 5.3.1 Family and Large Family Child Care Homes

5.3.1.1 All persons or associations conducting child care as defined in 14 **Del.C.** §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

5.3.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.1.3 Masks are not required in child care facilities:

5.3.1.3.1 When seated at a table to eat or drink.

5.3.1.3.2 When asleep.

5.3.1.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

5.3.1.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

5.3.1.3.5 When outdoors.

5.3.1.3.6 When children are not in the building.

5.3.1.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

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

**934 Regulations for Family and Large Family Child Care Homes**

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(2) and 3003(A); 29 Delaware Code, Section 10119; (14 **Del.C.** §§122(b)(2) and 3003(A) & 29 **Del.C.** §10119)  
14 **DE Admin. Code** 938

**EMERGENCY ORDER****14 DE Admin Code 938 Regulations for Youth Camps****938 Regulations for Youth Camps**

Pursuant to 14 **Del. C.** §§3001A-3005A, and 29 **Del. C.** §10119, the Department of Education ("Department") is renewing emergency regulatory amendments to 14 **DE Admin. Code** 938 Regulations for Youth Camps. Additionally, 29 **Del. C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** §10115. Also, 14 **Del. C.** §3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** §3002A(1).

**REASON FOR THE EMERGENCY ORDER**

While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

An emergency order regulation to require persons in youth camps to wear masks was published in the September 1, 2021 issue of the *Register*.

**EFFECTIVE DATE OF ORDER**

Accordingly, it is hereby ordered, that 14 **DE Admin. Code** 938 Regulations for Youth Camps is amended by adding Section 5.3 which requires certain facilities to recommend or require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

**5.0 Authority to Inspect and COVID-19 Mitigation and Prevention**

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**5.3 COVID-19 Mitigation and Prevention in Youth Camps**

5.3.1. All persons or associations conducting child care as defined in 14 **Del.C.** §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

5.3.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.3 Masks are not required in child care facilities:

5.3.3.1 When seated at a table to eat or drink.

5.3.3.2 When asleep.

5.3.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

5.3.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

5.3.3.5 When outdoors.

5.3.3.6 When children are not in the building.

5.3.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order took effect on August 16, 2021 and was effective for 120 days. Because the public health threat continues, this renewal shall take effect on December 14, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** § 10119(3).

### **PETITION FOR RECOMMENDATIONS**

In accordance with 29 **Del. C.** §10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us).

### **ORDER**

It is hereby ordered, this 3rd day of December, 2021, that the above referenced amendment to 14 **DE Admin Code** 938 Regulations for Youth Camps, a copy of which is hereby attached, is renewed, pursuant to 14 **Del.C.** §3003A and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

**IT IS SO ORDERED** the 3rd day of December, 2021.

**Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

**938 Regulations for Youth Camps**  
***(Break in Continuity of Sections)***

## **5.0 Authority to Inspect and COVID-19 Mitigation and Prevention**

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

### 5.3 COVID-19 Mitigation and Prevention in Youth Camps

5.3.1 All persons or associations conducting child care as defined in 14 **Del.C.** §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

5.3.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.3 Masks are not required in child care facilities:

- 5.3.3.1 When seated at a table to eat or drink.
- 5.3.3.2 When asleep.
- 5.3.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.
- 5.3.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.
- 5.3.3.5 When outdoors.
- 5.3.3.6 When children are not in the building.
- 5.3.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

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

**938 Regulations for Youth Camps**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122 and 128, and 29 Delaware Code, Section 10119 (16 **Del.C.** §§122 and 128 & 29 **Del.C.** §10119)  
16 **DE Admin. Code** 4202

#### EMERGENCY SECRETARY'S ORDER

Pursuant to 16 *Del. C.* §§ 122 & 128 and 29 *Del. C.* § 10119

(Extension of Emergency Order)

#### 4202 Control of Communicable and Other Disease Conditions

#### AUTHORITY

Pursuant to 16 *Del.C.* §§ 122(3)(a) & 128 and 29 *Del.C.* § 10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 4202 Control of Communicable and Other Disease Conditions. Additionally, 29 *Del.C.* § 10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 *Del.C.* § 10115. Moreover, 16 *Del.C.* § 122(3)(a) authorizes the Department to adopt, amend, repeal, or issue regulations to prevent and control the spread of all diseases that are dangerous to the public health. Further, 16 *Del.C.* § 128 authorizes the Department, as the advisor to authorities of the State in all matters pertaining to public hygiene, to make such regulations and may adopt such measures, including quarantine, vaccination, etc., as it deems most efficient to eradicate all infectious diseases.

#### REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon

guidance from the Centers for Disease Control and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk. Emergency regulations to require this mask usage in schools were published in the September 2021 *Register* at 25 **DE Reg.** 248 (09/01/21).

### **EFFECTIVE DATE OF ORDER**

Accordingly, it is hereby ordered, that 16 **DE Admin. Code** 4202 Control of Communicable and Other Disease Conditions, specifically, subsection 7.7 which requires certain facilities to require masks, and Section 12.0 which adds a severability clause, are temporarily modified by making insertions as shown by underline as follows:

#### 7.7 COVID-19 Mitigation and Prevention

##### 7.7.1 Schools

7.7.1.1 All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.

7.7.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.

##### 7.7.1.3 Masks are not required in school buildings:

7.7.1.3.1 When seated at a table to eat or drink;

7.7.1.3.2 When engaged in any activity that makes wearing a mask not feasible, such as swimming;

7.7.1.3.3 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present;

7.7.1.3.4 When outdoors; or

7.7.1.3.5 When students are not in the building.

7.7.1.4 For schools with student housing, masks are not required inside an individual student's residence hall room.

##### 7.7.2 Other Authorities of the State and Public Institutions

7.7.2.1 Authorities of the State shall require masks in congregate settings.

#### 12.0 Severability

In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

This Emergency Order took effect on August 16, 2021 and was effective for 120 days. This renewal shall take effect on December 14, 2021 and shall remain in effect for 60 days, consistent with 29 *Del.C.* § 10119(3).

### **PETITION FOR RECOMMENDATIONS**

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Public Health, 417 Federal St., Dover, DE 19901 or by email to [DHSS\\_DPH\\_regulations@Delaware.gov](mailto:DHSS_DPH_regulations@Delaware.gov).

### **ORDER**

It is hereby ordered, this 6th day of December, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4202 Control of Communicable and Other Disease Conditions, a copy of which is hereby attached, is adopted, pursuant to 16 *Del.C.* §§122(3) & 128, and 29 *Del.C.* § 10119, as referenced above, and supported by the

evidence contained herein.

Molly K. Magarik, MS  
Secretary

**4202 Control of Communicable and Other Disease Conditions**  
*(Break in Continuity of Sections)*

**7.0 Control of Specific Contagious Diseases**

*(Break in Continuity Within Section)*

7.7 COVID-19 Mitigation and Prevention

7.7.1 Schools

7.7.1.1 All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.

7.7.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.

7.7.1.3 Masks are not required in school buildings:

7.7.1.3.1 When seated at a table to eat or drink;

7.7.1.3.2 When engaged in any activity that makes wearing a mask not feasible, such as swimming;

7.7.1.3.3 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present;

7.7.1.3.4 When outdoors; or

7.7.1.3.5 When students are not in the building.

7.7.1.4 For schools with student housing, masks are not required inside an individual student's residence hall room.

7.7.2 Other Authorities of the State and Public Institutions

7.7.2.1 Authorities of the State shall require masks in congregate settings.

*(Break in Continuity of Sections)*

**12.0 Severability**

In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

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

**4202 Control of Communicable and Other Disease Conditions**

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**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DELAWARE COUNCIL ON POLICE TRAINING**

Statutory Authority: 11 Delaware Code, Section 8404(a)(14) and (c) (11 **Del.C.** §8404(a)(14)  
and (c))  
1 DE Admin. Code 801

**PUBLIC NOTICE****801 Regulations of the Delaware Council on Police Training**

The Council on Police Training (COPT), pursuant to 11 **Del.C.** §8404 (a)(14) and (c), proposes to amend its regulations to add Mandatory Standards for Use of Body Worn Cameras. The proposed amendments, which were voted on during a public meeting of the COPT, on November 17, 2021, seek to add these mandatory standards to COPT's existing Regulation 801. The amendment will set mandatory standards on police body worn camera use, activation, electronic storage and dissemination as required by 11 **Del.C.** §8404(c).

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the COPT Attn: Susan McNatt, P.O. Box 430, Dover, DE 19903 or e-mail [susan.a.mcnatt@delaware.gov](mailto:susan.a.mcnatt@delaware.gov). Any written submission in response to this notice and the relevant proposed regulations must be received by the COPT no later than 4:30 p.m. (EST) on January 31, 2022. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

**DECISION AND ORDER CONCERNING THE REGULATIONS**

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Council on Police Training does hereby ORDER that the regulations be, and that they hereby are, proposed to be enacted as set forth below.

Nathaniel McQueen, Jr., Chairman COPT



# PROPOSED REGULATIONS

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

<http://regulations.delaware.gov/register/january2022/proposed/25 DE Reg 673RFA 01-01-22.pdf>

## 801 Regulations of the Delaware Council on Police Training (Break in Continuity of Sections)

### 12.0 Minimum Standards Firearms Qualification

#### (Break in Continuity Within Section)

#### 12.3 Shotgun Minimum Standards

12.3.1 Departments using shotguns will be required to qualify three times a year, ~~two-day~~ two day courses and one "low light" course. A minimum of 60 days is required between the ~~two-day~~ two day courses. The "low light" course may be conducted on the same day as ~~one-day~~ one day qualification course.

#### (Break in Continuity Within Section)

#### 12.4 Patrol Rifle Minimum Standards

12.4.1 Departments using patrol rifles will be required to qualify three times a year, ~~two-day~~ two day courses and one "low light" course. A minimum of 60 days is required between the ~~two-day~~ two day courses. The "low light" course may be conducted on the same day as ~~one-day~~ one day qualification course.

#### (Break in Continuity of Sections)

### 26.0 Mandatory Standards for Use of Body Worn Cameras

26.1 Definitions. The following definitions apply solely to Section 26.0 of this regulation:

"BWC" means body worn cameras.

"Chief" means the colonel, executive, director or head of the department or agency, or the Chief's designee.

"DCRPT" means the Delaware Department of Justice's Division of Civil Rights and Public Trust.

"Officers" shall be those officers described in 11 Del.C. §8402A.

"SROs" means School Resource Officers.

26.2 As required by 11 Del.C. §8404(c), Section 26.0 sets forth certain standards required for policies to be developed for the use of BWC as those cameras are required to be worn by the officers. Agencies employing officers using BWC are required to develop policies containing these standards and are encouraged to expand and to customize those policies so that they both accomplish the requirements of 11 Del.C. Ch. 84A and meet the needs of their specific agencies.

26.3 Requirement to Wear BWC. BWC shall be worn by officers while on duty in a role that is likely to result in interactions with the public. Officers who serve in administrative functions or who do not regularly interact with the public are not required to wear BWC.

26.3.1 Officers who are required to wear BWC will typically include:

26.3.1.1 Officers in uniform while acting in the performance of official duties;

26.3.1.2 Officers whose assigned duties include regular interaction with members of the public where such duties might lead to an arrest situation or use of force event;

26.3.1.3 Officers assigned to enforcement-related activities such as demonstrations or potential civil disturbances, tactical response teams, pre-planned arrest or search warrant teams, traffic units, proactive enforcement teams, canine officers, mounted units, probation or parole compliance, security or crowd-control functions at special events;

26.3.1.4 While in the field, officers assigned to field investigations for police agencies, Department of Corrections, and the Department of Services for Children, Youth, and Their Families; and

26.3.1.5 Officers assigned to "front desk" duty whose duties include interaction with members of the public.

26.3.2 Officers not required to wear BWC will typically include:

- 26.3.2.1 Officers in undercover assignments, administrative positions, hostage or crises negotiators, officers meeting with or recruiting confidential sources, non-uniformed officers assigned to non-enforcement duties;
- 26.3.2.2 Officers engaged in union representation of a member of the collective bargaining unit; and
- 26.3.2.3 In extraordinary circumstances (riot, large concert), where an agency has to deploy so many officers that the agency cannot reasonably provide each officer with a BWC.
  - 26.3.2.3.1 Subsection 26.19 concerning special exceptions must be followed for planned events.
- 26.3.3 SROs. School Resource Officers performing in a law enforcement capacity and not an educational capacity shall follow Section 26.0 of this regulation.
- 26.4 Activation of BWCs. BWC shall be active to record contacts with citizens in the performance of official duties, including:
  - 26.4.1 During calls for service;
  - 26.4.2 Where an arrest or detention appears to be likely;
  - 26.4.3 Where use of force appears to be likely;
  - 26.4.4 Where it appears doing so may promote the safety of people and property; and
  - 26.4.5 Where doing so may be helpful to preserve evidence.
- 26.5 Notwithstanding subsection 26.4, at no time are officers expected to jeopardize their safety or the safety of others in order to activate BWC.
  - 26.5.1 BWC shall be activated as soon as the circumstances permit safe activation.
  - 26.5.2 Officers shall document the exigency that prohibited the immediate activation of BWC. See also subsection 26.7.
- 26.6 BWC shall remain activated until the entire contact is completed in order to ensure the integrity of the recording unless the contact moves into an area restricted by these regulations.
- 26.7 If BWC are not activated for an entire contact, or a recording is interrupted, the officer shall document why a recording was not made, was interrupted, or was terminated.
- 26.8 Absent exigent circumstances, recordings shall not be permitted to be reviewed by members of the public at the scene of an incident or event.
- 26.9 Agencies shall ensure that officers assigned BWC receive approved training on BWC use and operation pursuant to these regulations as well as all applicable law and policies prior to using BWC.
- 26.10 Officers who are assigned or utilize BWCs shall inspect and test the BWC prior to each shift or special event to verify proper functioning and shall notify their supervisor of any problems. Officers shall document any unusual circumstances why a test did not occur such as the emergency activation of a special response unit.
- 26.11 Officers shall not, in any manner, edit, alter, or erase BWC recordings. Officers may duplicate, copy or distribute BWC recordings with the Chief's prior written approval.
- 26.12 Officers shall note in incident, arrest, and related reports when recordings were made during the incident in question and if a BWC recording was reviewed by the officer prior to or during report writing. Additionally, an officer's report should note any discrepancies in material information between the officer's perception and the video. BWC recordings are not a replacement for written reports.
- 26.13 Recording Prohibitions. BWC shall be used only in conjunction with official law enforcement duties and to record interactions with the public and, absent exigent circumstances, shall not be used to record:
  - 26.13.1 Private communications with other police personnel without the permission of the Chief;
  - 26.13.2 Encounters with undercover officers or confidential informants;
  - 26.13.3 Moments while on break or otherwise engaged in personal activities;
  - 26.13.4 Any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room;
  - 26.13.5 A strip search;

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## PROPOSED REGULATIONS

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- 26.13.6 Court proceedings by non-court personnel officers, except where an incident occurs during a court proceeding; and
- 26.13.7 Any other situation where applicable law or regulation provides for confidentiality including but not limited to:
  - 26.13.7.1 HIPAA;
  - 26.13.7.2 Conversations between medical treatment providers and patients;
  - 26.13.7.3 Conversations with counsel or union representatives; and
  - 26.13.7.4 Any other privileged conversations.
- 26.14 Storage of Digital Files
  - 26.14.1 Agencies will not store digital files in an unsecured manner.
  - 26.14.2 Considering the rapid evolution of technology, it is expected that agencies will utilize best practices related to cyber security.
  - 26.14.3 Local storage will feature competent security barriers and full-sized backup capacity.
  - 26.14.4 Remote storage vendors will have competent security protocols and proven ability in public sector service.
  - 26.14.5 All access to BWC data (images, sounds, and metadata) must be specifically authorized by the Chief, and all access is to be audited on a reasonable schedule to ensure that only authorized users are accessing the data for legitimate and authorized purposes.
  - 26.14.6 Files should be securely stored in accordance with any state or municipal records retention law or policy and no longer than useful for purposes of liability protection, training or for use in an investigation or prosecution.
- 26.15 Agencies will adopt quality control mechanisms to ensure compliance with these regulations.
- 26.16 Dissemination. In addition to the prohibitions in subsection 26.11, no officer shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose as specified in subsection 26.16 and applicable law. BWC recordings shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose. Access to and use of a stored BWC recording is permitted only:
  - 26.16.1 When relevant to and in furtherance of an official investigation or prosecution;
  - 26.16.2 To principals or their family members, or vested individuals, when deemed necessary and appropriate;
  - 26.16.3 When relevant to and in furtherance of a management review process to identify circumstances indicating possible police misconduct or to determine the existence of a pattern or practice of possible misconduct;
  - 26.16.4 When relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency;
  - 26.16.5 To comply with the State's discovery obligations in prosecutions pursuant to court rules;
  - 26.16.6 To comply with any other legal obligation to turn over the recording to a person or entity;
  - 26.16.7 For training purposes, provided the recording is edited so that the identity of individuals depicted in the recording cannot be determined by persons viewing the training video unless the depicted individual has consented to the recording being used for training purposes;
  - 26.16.8 To conduct an audit to ensure compliance with these regulations and a department's policy, standard operating procedure, directive, or order promulgated pursuant to these regulations;
  - 26.16.9 To enhance officer and public safety by providing intelligence information in preparation for a raid/warrant execution (e.g., by providing information about the layout of a premises to be searched);
  - 26.16.10 To assist an office in writing their report; and
  - 26.16.11 Any other official and specified purpose where the Chief determines that good and sufficient cause exists to authorize access to a particular BWC recording as specified in a written policy of the department.

- 26.16.11.1 This determination will take into consideration the public interest, the rights of any potential criminal suspect, and the applicability of any rights and protections provided anyone under state and federal law, including consideration of the Delaware Lawyer's Rules of Professional Conduct.
- 26.16.11.2 Video shall not be released until DCRPT has completed any criminal investigation or subsequent prosecution, unless authorized by DCRPT.
- 26.17 Any authorized dissemination will include appropriate redactions for statutory and common law regulations, including but not limited to:
- 26.17.1 Victim's Bill of Rights;
  - 26.17.2 Right to Privacy; and
  - 26.17.3 Considerations in subsection 26.13.7.
- 26.18 Nothing in these regulations shall create a private right of action in any third party. These regulations set mandatory standards for implementation and enforcement by agencies employing officers using BWC and it shall be the responsibility of such agencies to enforce their policies and issue any appropriate discipline for violations of those policies.
- 26.19 Exemptions from the requirements in subsection 26.3.2.3 are permitted only when approved by the Chief, and only under special circumstances that warrant an exception. The reasons for the exemption must be documented and demonstrate a special need. Such requests for exemption, when possible, shall be made in advance and approved in writing by the Chief.

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

**801 Regulations of the Delaware Council on Police Training**

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## DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), 1211, 1213 and 1218(k) (14  
**Del.C. §§1203, 1205(b), 1211, 1213 & 1218(k))**  
14 DE Admin. Code 1511

### PUBLIC NOTICE

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

**1511 Issuance and Renewal of Continuing License**

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C. §§1203, 1205(b), 1211, 1213, and 1218(k)** the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code 1511** Issuance and Renewal of Continuing License. The regulation concerns the requirements for the issuance, renewal, and retention of a Continuing License in accordance with 14 **Del.C. §§1211, 1213, and 1218(k)**. The proposed amendments include revising the title of the regulation; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Continuing License in Section 3.0; specifying the requirements for an applicant to obtain a Continuing License in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the requirements for reissuance of an expired Continuing License in Section 6.0; specifying the application requirements for issuance or reissuance of a Continuing License in Section 7.0; revising Section 8.0, which concerns requests for the Secretary of Education to review applications for the issuance of a Continuing License; clarifying the requirements for renewal and application requirements to renew a

Continuing License in Section 9.0; revising the professional development activities for renewal in Section 10.0; adding Section 11.0, which concerns the validity of a Continuing License; clarifying the requirements for extensions for exigent circumstances in Section 12.0; specifying the requirements for retaining a Continuing License in Section 13.0; adding Section 14.0, which concerns disciplinary actions; and adding Section 15.0, which concerns an applicant's or license holder's contact information and the requirements to change an applicant's or license holder's name or address.

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

### **C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The requirements in Sections 4.0, 5.0, and 6.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The requirements in Sections 4.0, 5.0, and 6.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

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

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

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Sections 7.0 and 9.0 apply to individual applicants.

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

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

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

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

#### **\*Please Note:**

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

<http://regulations.delaware.gov/register/january2022/proposed/25 DE Reg 677RFA 01-01-22.pdf>

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

**1511 Issuance and Renewal of Continuing License**

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))  
14 DE Admin. Code 1532

### PUBLIC NOTICE

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

**1532 Middle Level Mathematics Teacher**

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1532 Middle Level Mathematics Teacher. The regulation concerns the requirements for a Middle Level Mathematics Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include specifying the courses for which the Middle Level Standard Certificate is required in Section 1.0; adding defined terms in, and striking a defined term from, Section 2.0; clarifying the requirements for issuing a Middle Level Mathematics Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Middle Level Mathematics Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Middle Level Mathematics Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

The proposed amendments were initially published in the *Register of Regulations* on October 1, 2021. The Board received one written submittal from Sam Golder, Senior Director of Teaching and Learning, and Christine Smith, Director of Human Resources, for the Red Clay Consolidated School District. They commented that the proposed regulation "would force LEAs that offer courses above Algebra 1 in the middle school to ensure that at least one high school certified teacher is on staff to teach all courses above Algebra 1" and that the Praxis Subject Assessment - Middle School Mathematics (ETS Test Code #5169) includes 38% Geometry content whereas the Praxis Subject Assessment for high school math contains 20% Geometry content and almost half of the test covers Calculus and other advanced math concepts. On November 4, 2021, the Board considered the written submittal, withdrew the proposed regulation, and requested further information regarding Geometry courses taught at the middle school level.

On December 2, 2021, the Board considered information on the development of the amendments to the regulation, data on the number of teachers who currently teach Geometry or Integrated Math II at the middle school level, and data on the Praxis Subject Assessment - Middle School Mathematics. The Board also heard from the Department's Mathematics Education Associates. The Board voted to publish the amendments that were originally published on October 1, 2021. Thus, the proposed amendments in this regulation are the same amendments that were proposed on October 1, 2021. The Board is not proposing any further changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business (4:30 p.m.) on or before February 2, 2022 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to [DOERegulations.comment@doe.k12.de.us](mailto:DOERegulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, <http://>



[regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

## C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Theatre Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.
9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of this amended regulation.
10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

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

<http://regulations.delaware.gov/register/january2022/proposed/25 DE Reg 679RFA 01-01-22.pdf>

## 1532 Middle Level Mathematics Teacher

### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Middle Level Mathematics Teacher Standard Certificate pursuant to 14 **Del.C.** §1220(a), ~~for Middle Level Mathematics Teacher~~. This certification Standard Certificate is required ~~for~~ to teach mathematics courses up to and including Algebra 1 and Integrated Math 1 in grades 6, 7 and 8 in a Middle Level Delaware public school. Notwithstanding the above requirement, the Secondary Mathematics Teacher ~~Certification Standard Certificate~~ Standard Certificate may be used for

grades 6, 7 and 8 in a ~~Middle Level~~ middle level school in lieu of this ~~certification~~ the Middle Level Mathematics Teacher Standard Certificate.

- 1.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference. The Middle Level Mathematics Teacher Standard Certificate may be used to teach Algebra 1 and Integrated Math 1 at the high school level.~~

## 2.0 Definitions

- 2-1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

- 2-2 The following ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise:~~

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

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

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

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

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

**“Passing Score”** ~~means a minimum score as established by the Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.~~

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

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

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

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

## 3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Middle Level Mathematics Teacher Standard Certificate ~~as a Middle Level Mathematics Teacher~~ to an educator applicant who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; License or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; 2003 and meets the requirements set forth in Section 4.0 of this regulation; or

3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for an educator’s license in Delaware and presents proof of a Valid and Current License or Certificate as a middle level mathematics teacher issued by another state or jurisdiction.



# PROPOSED REGULATIONS

~~3.1.3 Has satisfied the additional requirements in this regulation.~~

3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Middle Level Mathematics Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

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

~~4.1 An educator shall have also met the following:~~

~~4.1.1 achieved on the Praxis Subject Assessment – Middle School Mathematics (ETS Test # 5169) a Passing Score of 165.~~

4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.

4.1.1 The applicant shall have:

4.1.1.1 Obtained and currently maintain a Mathematics certificate from the National Board for Professional Teaching Standards; or

4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in middle level mathematics education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or

4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach middle level mathematics as provided in 14 Del.C. §§1260 – 1266; or

4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in middle mathematics education.

4.1.2 The applicant shall have achieved a minimum score on one of the following examinations:

4.1.2.1 A minimum score of 155 on the Praxis Subject Assessment – Middle School Mathematics (ETS Test Code # 5164).

4.1.2.2 A minimum score of 165 on the Praxis Subject Assessment – Middle School Mathematics (ETS Test Code # 5169); or

4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a minimum score on the Praxis Subject Assessment as provided in subsection 4.1.2.

## 5.0 **Application Requirements**

5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.

5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Middle Level Mathematics Teacher Standard Certificate:

5.2.1 Evidence of obtaining and maintaining a Mathematics certificate from the National Board for Professional Teaching Standards, if applicable; and

5.2.2 Official transcript from the applicant's Regionally Accredited college or university.

5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or

5.2.2.2 Sealed paper transcripts may be submitted.

5.2.2.3 The Department will not accept copies of transcripts; and

5.2.3 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and

5.2.4 Additional documentation as required by the Department.

5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Middle Level Mathematics Teacher Standard Certificate:

5.3.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and

5.3.2 Additional documentation as required by the Department.

5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate as a middle level mathematics teacher, the following documentation is required in the application for a Middle Level Mathematics Teacher Standard Certificate:

5.4.1 An official copy of the Valid and Current License or Certificate; and

5.4.2 Additional documentation as required by the Department.

## **6.0 Validity of a Standard Certificate**

6.1 A Middle Level Mathematics Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

6.2 A Middle Level Mathematics Teacher Standard Certificate is not subject to renewal.

## **7.0 Disciplinary Action**

7.1 An Educator's Middle Level Mathematics Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.

7.2 An Educator's Middle Level Mathematics Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.

7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

## **8.0 Secretary of Education Review**

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

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

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

## **9.0 Past Certificate Recognized**

The Department shall recognize a Middle Level Mathematics Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach middle level mathematics and Algebra 1 and Integrated Math 1 at either the middle or secondary school level.

# PROPOSED REGULATIONS

## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 334, 2503, 3342B and 3556A, and 29 Delaware Code, Chapter 101 (18 **Del.C.** §§311, 334, 2503, 3342B & 3556A; 29 **Del.C.** Ch. 101)

### PUBLIC NOTICE

#### 1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance

#### A. Type of Regulatory Action Required

Proposal of new Regulation 1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance.

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

The Office of Value Based Health Care Delivery (OVBHCD) was established within the Department of Insurance (the Department) to "reduce health-care costs by increasing the availability of high quality, cost-efficient health insurance products that have stable, predictable, and affordable rates." See 18 **Del.C.** § 334(a). Senate Substitute 1 for Senate Bill 120 (SS1 for SB 120), among other things, gave the OVBHCD the regulatory authority to:

- Define "affordability standard" (see 18 **Del.C.** § 334(b)(1));
- Define "primary care" (see 18 **Del.C.** § 334(b)(3)); and
- "Establish, through regulations adopted under this section [18 **Del.C.** § 334], mandatory minimums for payment innovations, including alternative payment models, provider price increases, carrier investment in primary care, and other activities deemed necessary to achieve the purpose of this section [18 **Del.C.** § 334], to support a robust system of primary care by January 1, 2026" (see 18 **Del.C.** § 334(c)(2)).

In addition to and separate from the regulatory authority set forth in 18 **Del.C.** § 334, SS1 for SB 120 amended the rate filing sections of the Insurance Code by requiring that rate filings for health benefit plans may not include aggregate unit price growth for nonprofessional services that exceed the greater of:

- 3 percent or Core CPI plus 1 percent for rates filed in 2022 for the 2023 plan year;
- 2.5 percent or Core CPI plus 1 percent for rates filed in 2023 for the 2024 plan year; and
- 2 percent or Core CPI plus 1 percent for rates filed in 2024, 2025, and 2026 for the following plan years.

It also requires that rate filings by carriers with health benefit plans that cover more than 10,000 members across all fully-insured products, at a minimum, must have 50 percent of total cost of care tied to an alternative payment model contract that meets the Health Care Payment Learning and Action Network (HCP-LAN) Category 3 definition for shared savings or shared savings with downside risk by 2023, with a minimum of 25 percent of total cost of care covered by an alternative payment model contract that meets the definition of HCP-LAN Category 3B, which includes only contracts with downside risk. See 18 **Del.C.** § 2503.

Lastly, SS1 for SB 120 amended 18 **Del.C.** §§ 3342B and 3556A (regarding individual and group health care coverage respectively) to mandate carrier spending on primary care as follows:

Rate Filing Year	Plan Year	Minimum % Total Cost of Medical Care Spent on Primary Care
2022	2023	7%
2023	2024	8.5%
2024	2025	10%
2025	2026	11.5%

The Department proposes to implement SS1 for SB 120 through proposed new Regulation 1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance. The Department notes that the amendments to 18 **Del.C.** § 2503 sunset on January 1, 2027. However, no such sunset date is included in those

amendments to 18 **Del.C.** § 334, including the Department's authority to set affordability standards. Moreover, as detailed in the OVBHCD's February 15, 2021 Report, "Delaware Health Care Affordability Standards: An Integrated Approach to Improve Access, Quality and Value"<sup>1</sup>, the three affordability standards set by the OVBHCD and upon which SS1 for SB 120 are based require carriers to:

1. Increase primary care investment;
2. Decrease unit price growth for non-primary care services; and
3. Expand alternative payment model adoption.

Accordingly, the Department anticipates that proposed new Regulation 1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance will stand well beyond the sunset date of the amendments to the Department's rate making statute.

## C. Notice and Public Comment

The proposed new regulation appears below and may also be viewed on the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department will not be holding a public hearing on the proposed new regulation.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EDT, the 31<sup>st</sup> day of January 2022 and should be directed to:

Regulatory Specialist  
Delaware Department of Insurance  
1351 West North Street, Suite 101  
Dover, DE 19904  
(302) 674-7349  
Email: [DOI\\_Legal@delaware.gov](mailto:DOI_Legal@delaware.gov)

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

<http://regulations.delaware.gov/register/january2022/proposed/25 DE Reg 684RFA 01-01-22.pdf>

## 1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance

### **1.0 Authority**

This regulation is promulgated and adopted pursuant to the authority granted in 18 **Del.C.** §§311, 334, 2503, 3342B and 3556A, and in accordance with 29 **Del.C.** Ch. 101. Subsection 9.0 is codified under the Department's express authority under 18 **Del.C.** §334 to set affordability standards, which do not include a sunset date.

### **2.0 Purpose**

The purpose of this regulation is to establish a process through which carriers must demonstrate compliance with requirements for mandatory minimum payment innovations, including alternative payment models, provider price increases, carrier investment in primary care, and other activities deemed necessary to support a robust system of primary care by January 1, 2026 pursuant to 18 **Del.C.** §334.

### **3.0 Scope**

This regulation applies to insurers, health service corporations, and managed care organizations that deliver or issue for delivery individual and group insurance policies or plans in this State.

### **4.0 Definitions**

1. The Report is available for download from the Department's website at <https://insurance.delaware.gov/wp-content/uploads/sites/15/2021/03/Delaware-Health-Care-Affordability-Standards-Report-Final-03042021.pdf>

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# PROPOSED REGULATIONS

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

**"Accountable care organization"** means an organization formed when a group or groups of doctors, hospitals, and other health care providers come together voluntarily to give coordinated high-quality care to their patients.

**"Ambulatory Payment Classification" or "APC"** means the classification system described in 42 CFR 419.31 that is the basis of Medicare's reimbursement system for hospital outpatient services.

**"Annual notice"** means the bulletins issued by the Commissioner that establish the format, definition, codes and supporting information that carriers must use to comply with the reporting requirements of this regulation. Such notices will be issued not later than 90 days prior to annual premium rate filing deadlines established under 18 Del.C. §2503.

**"Capitated Services"** means services paid through a fixed amount of money per patient per unit of time paid in advance for the delivery of health care services. The actual amount of money paid is determined by the ranges of services that are provided, the number of patients involved, and the period of time during which the services are provided.

**"Carrier"** has the meaning set forth in 18 Del.C. §334(b)(2).

**"Chronic care management services"** means the specific services included in the Chronic Care Management Services program, as administered by the Centers for Medicare and Medicaid Services (CMS) and includes Current Procedural Terminology ("CPT") codes 99487, 99489, and 99490.

**"Commissioner"** means the Commissioner of the Delaware Department of Insurance.

**"Comprehensive Primary Care Plus" or "CPC+"** means the national advanced primary care medical home model contemplated by Section 3021 of the Patient Protection and Affordable Care Act that aims to strengthen primary care through regionally-based multi-payer payment reform and care delivery transformation.

**"Comprehensive Primary Care Plus Track 1" or "CPC+ Track 1"** means the version of the CPC+ program in which providers are reimbursed the full Medicare Physician Fee Schedule as well as a risk-adjusted care management fee, with an opportunity to earn a performance-based incentive payment.

**"Comprehensive Primary Care Plus Track 2" or "CPC+ Track 2"** means the version of the CPC+ program in which providers are reimbursed less than the full Medicare Physician Fee Schedule in exchange for receiving higher non-fee-for-service payments than in CPC+ Track 1.

**"Core CPI"** means the Consumer Price Index for All Urban Consumers, All Items Less Food & Energy as developed by the United States Bureau of Labor Statistics.

**"Delaware Health Information Network Health Care Claims Database" or "DHIN HCCD"** means the data base in which health care claims data that are collected from commercial and public payers under regulations promulgated pursuant to 16 Del.C. §10306 are stored.

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

**"Diagnosis Related Groups" or "DRGs"** means the patient classification scheme set forth in 42 CFR 412.60.

**"Episode-based payments"** means a discounted payment or pre-determined price against which actual payments are retrospectively reconciled, that is specific to conditions for a discrete timeframe and that are initiated by combinations of diagnoses, procedures, and drugs furnished to a patient.

**"Facility"** means a place where healthcare is delivered, including by way of example only, a hospital, outpatient clinic or nursing home.

**"Health benefit plan"** has the meaning set forth in 18 Del.C. §§3342A(a)(3)a. and 3559(a)(3)a.

**"Inpatient hospital services"** means non-capitated facility services for medical, surgical, maternity, skilled nursing, and other services provided in an inpatient facility setting and billed by the facility.

**"Medicare Shared Savings Program Pathways to Success" or "MSSP Pathways"** means the CMS alternative payment model program adopted by the Federal Centers for Medicare & Medicaid Services in the "Pathways to Success" Final Rule, 83 FR 67816 (December 31, 2018), and codified in 42 CFR 425.

**"Nonprofessional services"** means services categorized as part of development of the Unified Rate Review Template as inpatient hospital, outpatient hospital, and other medical services.

**"Other medical services"** means non-capitated ambulance, home health care, durable medical equipment, prosthetics, supplies, and the facility component of vision exams, dental services, and other services when billed separately from professional services and categorized as such as part of development of the Unified Rate Review Template.

**"Outpatient hospital services"** means non-capitated facility services for surgery, emergency services, lab, radiology, therapy, observation, and other services provided in an outpatient facility setting and billed by the facility.

**"Population-based payment"** means an arrangement in which a provider entity accepts responsibility for delivering covered services to a group of patients for a predetermined payment amount.

**"Primary Care First"** or **"PCF"** means the CMS five-year alternative payment model program established under the authority of Section 1115A of the Social Security Act that aims to reward value and quality by offering an innovative payment structure to support delivery of advanced primary care.

**"Primary Care Provider"** or **"PCP"** means an individual licensed under Title 24 of the Delaware Code to provide health care, with whom the patient has initial contact and by whom the patient may be referred to a specialist. This definition includes family practice, pediatrics, internal medicine, and geriatrics.

**"Primary care services"** or **"primary care"** means the provision of integrated, accessible health care services by primary care providers and their health care teams who are accountable for addressing a large majority of personal health care needs, developing a sustained partnership with patients, and practicing in the context of family and community. The care is person-centered, team-based, community-aligned, and designed to achieve better health, better care, and lower costs. Services qualifying as primary care services or primary care will be determined by the Department and changes will be communicated annually to carriers by annual notice.

**"Professional services"** includes primary care, dental, specialist, therapy, the professional component of laboratory and radiology, and similar services, other than the facility fee component of hospital-based services.

**"Total cost of medical care"** means the sum of all payments by carriers, including fee-for-service and non-fee-for-service payments, for medical services paid to healthcare providers on behalf of patients and excludes spending on pharmaceutical products categorized as "pharmacy" as part of development of the Unified Rate Review Template.

**"Year"** means the calendar year in which rates are filed with the Department and applicable to the following plan year.

## **5.0 Coverage for Primary Care and Chronic Care Management Services**

**5.1** A carrier shall reimburse contracted primary care providers, their care teams and their organizations for primary care and chronic care management services furnished to Delaware residents on a fee-for-service basis according to the following:

**5.1.1** The reimbursement rate shall be greater than or equal to the non-facility Delaware Medicare fee schedule that is in effect at the time the service is billed and that can be found in the Medicare Physician Fee Schedule published online at [CMS.gov](https://www.cms.gov); and

**5.1.2** A carrier shall not use business rules or any other mechanism to discount a reimbursement rate such that the resulting payment would be less than the Medicare payment that would have been made had the Medicare rate been utilized.

**5.2** A carrier shall reimburse contracted primary care providers, their care teams, and organizations for primary care and chronic care management services not provided to Delaware residents on a fee-for-service basis by offering the primary care provider the opportunity to participate in one or more of the following primary care incentive programs:

**5.2.1** A program in which non-fee-for-service reimbursement is greater than or equal to primary care incentive programs offered by Medicare (including by way of example only, Comprehensive Primary Care Plus (CPC+) Track 1) adjusted for the age, gender, and health status of the

## PROPOSED REGULATIONS

- population, as defined by the contract. A carrier that offers a program under subsection 5.2.1 of this regulation shall ensure that the total reimbursement available to a primary care provider, the provider's care teams and organizations, is greater than or equal to the total reimbursement that would be provided according to the methodology of such program, as adjusted for the age, gender, and health status of the population;
- 5.2.2 A primary care incentive program (including by way of example only, the Medicare Primary Care First Program or CPC+ Track 2) in which non-fee-for-service payments comprise a larger proportion of total provider reimbursement. A carrier that offers a program under subsection 5.2.2 of this regulation shall ensure that the total reimbursement made to a participating primary care provider, the provider's care teams and organizations, is greater than or equal to the total reimbursement that would be provided according to the methodology of such program, as adjusted for the age, gender and health status of the population, as defined by the contract;
- 5.2.3 A carrier-designed primary care incentive program that transitions a portion of fee-for-service payment to non-fee-for-service payment, provided that:
- 5.2.3.1 The total PCP reimbursement under the carrier-designed program is greater than or equal to what would be paid by Medicare, adjusted for age, gender, and health status; and
- 5.2.3.2 The carrier has applied for approval to use the program pursuant to subsection 5.2.4 of this regulation and the Department has granted its approval; or
- 5.2.4 Any other qualifying primary care incentive program as may be determined by the Department and communicated annually to carriers by annual notice.

### **6.0 Primary Care Spending Requirements for Rate Filings**

- 6.1 No carrier shall submit a rate filing for a health benefit plan to the Department for approval unless the rate filing reflects the following primary care spending minimums for the applicable plan year to which the rate filing pertains:
- 6.1.1 In 2022, at least 7.0 percent of the total cost of medical care will be expended on primary care during plan year 2023.
- 6.1.2 In 2023, at least 8.5 percent of the total cost of medical care will be expended on primary care during plan year 2024.
- 6.1.3 In 2024, at least 10 percent of the total cost of medical care will be expended on primary care during plan year 2025.
- 6.1.4 In 2025, at least 11.5 percent of the total cost of medical care will be expended on primary care during plan year 2026.
- 6.2 Each carrier rate filing shall include the following:
- 6.2.1 A report on eligible primary care expenses using a template supplied by the Department. The report shall include prospective and retrospective data on eligible fee-for-service and non-fee-for-service payments as well as other information as required by the Department. Definitions of eligible expenses shall be defined in an annual notice. A carrier may submit a request to the Department for a determination on whether an expense qualifies as a primary care expense for purposes of fulfilling the reporting requirements of subsection 6.2.1 of this regulation;
- 6.2.2 A written demonstration of the carrier's compliance with the primary care spending minimums set forth in subsection 6.1 of this regulation that is based on eligible fee-for-service and non-fee-for-service payments for Delaware residents who are attributed patients of contracted primary care providers, care teams and organizations participating in care transformation activities, and in accordance with the following:
- 6.2.2.1 In 2022 rate filings for the 2023 plan year, a carrier shall file a plan per instructions issued in an annual notice that describes how the carrier will make progress towards achieving 75 percent of Delaware primary care providers and care team members with attributed patients participating in eligible care transformation activities by 2026;
- 6.2.2.2 In 2023, 2024, and 2025 rate filings for plan years 2024, 2025, and 2026 respectively, a carrier shall include a report on progress toward achieving 75 percent of Delaware primary

care providers and care team members with attributed patients participating in eligible care transformation activities by 2026. A carrier may submit a request to the Department for a determination on whether a care transformation activity meets the standards of programs in this subsection; and

6.2.2.3 Eligible activities under subsection 6.2.2 of this regulation include meeting the standards of:

6.2.2.3.1 A carrier primary care incentive program;

6.2.2.3.2 The Delaware Primary Care Model established by the Primary Care Reform Collaborative under the authority of 16 Del.C. §9903(a)(1);

6.2.2.3.3 The National Committee for Quality Assurance Patient-Centered Medical Home certification program as detailed at [NCQA.org](https://www.ncqa.org); or

6.2.2.3.4 Any other standards as may be added by the Department and communicated annually to carriers by annual notice.

## **7.0 Price Growth Limits for Non-Professional Services**

7.1 No carrier shall submit a rate filing for a health benefit plan that includes aggregate unit price growth for nonprofessional services that exceeds the following:

7.1.1 In 2022, the greater of 3 percent or Core CPI plus 1 percent.

7.1.2 In 2023, the greater of 2.5 percent or Core CPI plus 1 percent.

7.1.3 In 2024, 2025, and 2026, the greater of 2 percent or Core CPI plus 1 percent.

7.2 Each carrier rate filing for a health benefit plan for each plan year shall be based on fee schedules and reimbursement structures that include increases that are no greater than the limits set forth in subsection 7.1 of this regulation.

7.3 The Commissioner shall annually determine the Core CPI percentage increase based on an average of the previous three years United States Department of Labor data and shall communicate this determination annually to carriers by Bulletin or other form of notice.

## **8.0 Alternative Payment Model Adoption**

8.1 By 2023, each carrier rate filing for a health benefit plan shall reflect fee schedules and reimbursement structures for inpatient and outpatient hospital facility services delivered in Delaware that are based on a fixed payment, episode-based or population-based payment methodology (e.g., not a percent of charges), including but not limited to:

8.1.1 DRGs for inpatient facility care; and

8.1.2 APCs for outpatient facility care.

8.2 By 2023, each carrier's rate filing for a health benefit plan with more than 10,000 Delaware residents enrolled across all fully-insured products shall reflect 50 percent of total cost of care of those Delaware residents tied to an alternative payment model contract that qualifies as a Health Care Payment Learning and Action Network (HCP-LAN) Category 3 shared savings or shared savings with downside risk, with a minimum of 25 percent total cost of care of those Delaware residents covered by an alternative payment model contract that qualifies as HCP-LAN Category 3B, which includes only contracts with downside risk, and in accordance with the following:

8.2.1 For a program to qualify as HCP-LAN Category 3A in 2023 and 2024, it must offer provider organizations the ability to receive shared savings at a minimum split of 30 percent to the accountable care organizations and 70 percent to the carrier. For a program to qualify as HCP-LAN Category 3A in 2025, it must offer provider organizations the ability to receive shared savings at a minimum split of 40 percent to the accountable care organizations and 60 percent to the carrier.

8.2.2 For a program to qualify as HCP-LAN Category 3B in 2023 and 2024, it must require accountable care organizations to be responsible for at least 30 percent of losses, or 15 percent of losses if the accountable care organization would be considered low revenue by CMS. For a program to qualify



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as HCP-LAN Category 3B in 2025, it must require accountable care organizations to be responsible for at least 40 percent of losses, or 20 percent of losses if the accountable care organization would be considered low revenue by CMS.

- 8.2.3 Program design elements regarding risk corridors (i.e., minimum shared savings rate and minimum loss rate) and loss sharing limits should be consistent with the MSSP Pathways model. A carrier may submit a request to the Department for a determination on whether a program design element is consistent with the MSSP Pathways.

## **9.0 Affordability Standards**

- 9.1 Each of the following affordability standards shall be included in every health benefit plan reimbursement structure and fee schedule implemented by every carrier in this state, and shall be unaffected by the sunset provisions of Senate Substitute 1 for Senate Bill 120 (SS1 for SB 120) of the 151st General Assembly:
- 9.1.1 For plan years through 2026, an increase in primary care spending described in Section 6.0 of this regulation at the rate set forth in Section 6.0 of this regulation for each specified plan year, and for plan years beyond 2026, an increase in primary care spending at a rate not less than the rate set forth in subsection 6.1.4 of this regulation;
- 9.1.2 For plan years through 2027, a limit in price growth for nonprofessional services described in Section 7.0 of this regulation at the rate set forth in Section 7.0 of this regulation for each specified plan year, and for plan years beyond 2027, a limit in price growth for nonprofessional services at the rate set forth in subsection 7.1.3 of this regulation; and
- 9.1.3 The adoption of an alternative payment model or models described in Section 8.0 of this regulation at the rate set forth in Section 8.0 of this regulation. For a program to continue to qualify as HCP-LAN Category 3A or HCP-LAN Category 3B beyond 2025, it must continue to satisfy the respective requirements applicable to year 2025 as set forth in subsections 8.2.1 and 8.2.2 of this regulation, respectively.
- 9.2 No carrier shall implement one of the affordability standards set forth in subsection 9.1 of this regulation without also implementing the other two affordability standards set forth in subsection 9.1 of this regulation.
- 9.3 The OVBHCD shall annually monitor carrier compliance with subsections 9.1 and 9.2 of this regulation as set forth in Section 10.0 of this regulation and may refer a non-compliant carrier to the Commissioner for disciplinary action in accordance with Section 10.0 of this regulation.

## **10.0 Enforcement**

- 10.1 The Department shall monitor carrier compliance with the requirements of this regulation through an annual review of any or all of the following:
- 10.1.1 Carrier-specific and Medicare fee-for-service data from the DHIN HCCD;
- 10.1.2 Carrier-submitted templates that report information such as: fee-for-service payments, non-fee-for-service payments, and primary care incentive programs, requirements, numbers of participating providers, performance metrics, price, utilization and total cost trends and other information, as required in this regulation and as identified in annual notices. Carriers shall use templates supplied by the department to provide prospective and retrospective information to confirm carrier requirements were met; and
- 10.1.3 As necessary, a market conduct exam of a carrier that may include a review of carrier contracts with healthcare providers and additional information as necessary. Any market conduct exam pursuant to this regulation shall be conducted in accordance with the provisions of 18 Del.C. §§318-321.
- 10.2 The Department may report on carrier compliance with this regulation by carrier and market segment.
- 10.3 The Commissioner may deem carriers as non-compliant for failure to:
- 10.3.1 Submit a rate filing that conforms to the requirements of this regulation;
- 10.3.2 Timely remediate filing deficiencies; or

10.3.3 Achieve any of the requirements of this regulation and as approved in annual rate filings.

10.4 The Commissioner may elect to take one or more of the following actions for non-compliant carriers:

10.4.1 Return a rate filing to the carrier for amendments and correction of deficiencies;

10.4.2 Require the carrier to submit a corrective action plan;

10.4.3 Create carrier-specific, ongoing, additional reporting and monitoring requirements starting immediately and continuing through the following two rate years;

10.4.4 Impose administrative penalties, after notice and hearing as specified in 18 Del.C. Chapter 3 including but not limited to:

10.4.4.1 Daily fines of up to \$10,000 per day for failure to submit initial, revised or final filing documents per established timelines or department instructions.

10.4.4.2 Fines equal to each year's value of the deficiency in reimbursement, payment and cost growth limits as set forth in Section 10.0 of this regulation.

## **11.0 Effective Date of Regulation**

This regulation shall become effective on March 11, 2022.

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### **DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 1400 BOARD OF ELECTRICAL EXAMINERS**

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

#### **PUBLIC NOTICE**

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

Pursuant to 24 Del.C. §1406(a)(1), the Delaware Board of Electrical Examiners has proposed revisions to its rules and regulations. The rules are designed to address how engineers register with the Board and supervise journeypersons.

A public hearing will be held on February 2, 2022 at 8:30 a.m. (on the second floor in conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904) 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 Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until February 17, 2022 in accordance with 29 Del.C. §10118(a).

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

<http://regulations.delaware.gov/register/january2022/proposed/25 DE Reg 691RFA 01-01-22.pdf>

#### **1400 Board of Electrical Examiners (Break in Continuity of Sections)**

### **10.0 Exceptions.**

10.1 No license is required for performing electrical work by the following persons or entities:

10.1.1 Any of the following individuals working in a manufacturing or industrial facility:

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

10.1.1.4 For purposes of subsection 10.1.1, the phrase "registered with the Board" shall require the engineer to provide the Board with a written document briefly explaining the nature of the

## PROPOSED REGULATIONS

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electrician's responsibilities. In addition, the registering engineer shall provide evidence satisfactory to the Board which demonstrates competency to properly supervise journeyperson electricians:

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

**1400 Board of Electrical Examiners**

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## Symbol Key

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

## Final Regulations

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

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

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## DEPARTMENT OF AGRICULTURE

### HARNESS RACING COMMISSION

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

### ORDER

### 501 Harness Racing Rules and Regulations

#### BEFORE THE DELAWARE HARNESS RACING COMMISSION

Pursuant to 29 Del. C. § 10118 and Del. C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on October 12, 2021 the Commission makes the following findings and conclusions:

#### SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 7.1.2.8 in the November 1, 2021 *Register of Regulations*.

2. The Commission received no written comments. The Commission held the public comment period open until close of business on December 1, 2021. The Delaware Harness Racing Commission will finalize the regulations at its regularly scheduled monthly meeting on December 14, 2021. Monthly meetings are noticed public meetings.

#### FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

4. After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness racing Commission rules to more accurately reflect current policy and procedures.

5. The effective date of this Order will be ten (10) days from publication of this Order in the *Register of Regulations* on January 1, 2022

IT IS SO ORDERED this 14<sup>th</sup> day of December 2021.

Beverly H. Steele, Chairman

Stephanie Liguori, Commissioner

Patt Wagner, Vice-Chairman (Absent)

Jack Berberian, Commissioner

George P. Staats, Commissioner

\*Please note that no changes were made to the regulation as originally proposed and published in the November 2021 issue of the *Register* at page 476 (25 DE Reg. 476). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**501 Harness Racing Rules and Regulations**

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(26) (14 Del.C. §122(b)(26))  
14 DE Admin. Code 613

### REGULATORY IMPLEMENTING ORDER

#### **613 Uniform Procedures for Processing Attorney General's Reports**

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

Pursuant to 14 Del.C. §122(b)(26), the Secretary of Education intends to amend 14 DE Admin. Code 613 Uniform Procedures for Processing Attorney General's Reports. This regulation is being amended pursuant to 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. This regulation is being amended to correct typographical errors and comply with *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on November 1, 2021 in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 613 Uniform Procedures for Processing Attorney General's Reports pursuant to 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. This regulation is being amended to correct typographical errors and comply with *Delaware Administrative Code Drafting and Style Manual*.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 613 Uniform Procedures for Processing Attorney General's Reports. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 613 Uniform Procedures for Processing Attorney General's Reports attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 613 Uniform Procedures for Processing Attorney General's Reports 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 613 Uniform Procedures for Processing Attorney General's Reports amended

hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports 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 3, 2021. 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 3rd day of December 2021.

### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 3<sup>rd</sup> day of December 2021

## 613 Uniform Procedures for Processing Attorney General's Reports

### 1.0 Purpose

Pursuant to 14 **Del.C.** §122(b)(26), this regulation, which applies to all public school Districts and Charter Schools, provides uniform procedures for processing Delaware Attorney General's Reports.

### 2.0 Terms and Definitions

In this regulation, the following terms and words shall have the following meaning unless the context clearly indicates otherwise:

**"Administration"** means administrative staff from a District, school, or Charter School.

**"Alternative Placement"** means the removal of a student from ~~his or her~~ the student's school on a temporary basis for a period of time as determined by the Alternative Placement Team and Assignment to an Alternative Program.

**"Alternative Program"** means a school discipline improvement program that provides Appropriate Educational Services ~~that has been created~~ for students whose ~~behavior(s) is~~ behaviors are within the defined conduct under 14 **DE Admin. Code** 614. This includes any programs managed by a ~~school~~ District or Charter School or the Consortium Discipline Alternative Program.

**"Appropriate Educational Services"** means instruction and assessment provided by the District or Charter School and includes access to instructional materials, graded homework and communication with educators so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting a level of proficiency in that curriculum.

**"Assignment to an Alternative Program"** means student Assignment to an Alternative Program, including Consortium Discipline Alternative Program and any Alternative Program maintained by a District or Charter School, until the student has fulfilled the requirements to return to the Regular School Program.

**"Attorney General's Report (~~Electronic Notice of Charges~~)"** or **"Report"** means the Delaware Department of Justice's report of: 1) an enrolled student's alleged criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and drug offenses; 2) wanted persons enrolled in a ~~school and;~~ school; and 3) missing persons enrolled in a school.

**~~"Board of Education"~~** means ~~the Board of Education of a District or the Board of Directors of a Charter School.~~

**"Charter School"** means a ~~charter school board~~ non-home based, full-time public school established pursuant to Chapter 5 of Title 14 of the Delaware Code.

**"Consortium Discipline Alternative Program"** means a school discipline improvement program which serves an organized consortium of school Districts or Charter Schools as provided for in 14 **Del.C.** Ch. 16.

**"Criminal History Record Information"** or **"CHRI"** means a subset of CJI, set forth in 11 **Del.C.** §8602(2), that includes identifiable descriptions and notations of arrests, detentions, indictments, information or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision and release.

**"Criminal Justice Information"** or **"CJI"** means all Criminal Justice Information System data. The term ~~includes:~~ includes criminal history record information; biographic data; biometric data; identity history; person, organization, property, or Division of Motor Vehicles data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission, and enforce the laws of this State.

**"Criminal Justice Information System"** or **"CJIS"** means the computer hardware, software, and communication network which is managed, operated, and maintained by the DELJIS for the collection, warehousing, and timely dissemination of CJI to authorized agencies.

**"Delaware Criminal Justice Information System"** or **"DELJIS"** means the administrative body created within 11 **Del.C.** Ch. 86 that manages, operates, and maintains CJIS in the State of Delaware.

**"Disciplinary Action"** means the action taken against the student identified for Short or Long-Term Suspension, Expulsion, or Alternative Placement ~~who~~ Placement. The student may be excluded from all school activities, including but not limited to, extracurricular sports/programs, field trips, and ceremonies; is not allowed on School Property unless placed in an Alternative Placement on School Property; and, if applicable, will have ~~his or her~~ the student's driver's license suspended in accordance with 14 **Del.C.** §4130(e).

**"District"** means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.

**"Expulsion"** means Disciplinary Action approved by the ~~Board of Education~~ School Board resulting in a student being removed from the Regular School Program for a duration not to exceed the total number of student days in a school year. ~~A student expelled without Appropriate Educational Services shall be unenrolled from the District or Charter School during the term of the expulsion. Regardless of whether without or with services, including Alternative Placement, the expelled student is not eligible to enroll in any other Delaware public school during the period of the Expulsion and until any reasonable terms of the Expulsion are fulfilled.~~

**"Grievance"** means a formal complaint, filed per specific District or Charter School procedures, to school Administration regarding a student's rights or liberty interests having been denied or impaired. At a minimum, the procedures shall be similar to the Grievance Guidelines applicable to this regulation, as posted on the Department of Education website.

**"Interagency Agreement"** means the Interagency Agreement between the Delaware Criminal Justice Information System Board of Managers; the Delaware Department of Education; the Delaware Police Chiefs Council; Local Educational Agencies (LEAs) and Charter Schools; and the Delaware Department of Justice governing access to the Criminal Justice Information System (CJIS).

**"Parent"** means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a **Relative Caregiver's School Authorization** executed in compliance with 14 **Del.C.** §202(f)(1) is on file; an individual or entity who is otherwise legally responsible for the child's welfare; a surrogate parent who has been appointed in accordance with 14 **DE Admin. Code** ~~926-49~~ 926, Section 19.0; or a student who has reached the age of majority as defined in 1 **Del.C.** §701.

**"Principal"** means the building principal, or the equivalent of the building principal, of any District or Charter School, or the principal's designee.

**"Regular School Program"** means student enrollment in a traditional public school or Charter School, not including specially assigned non-special education or student behavioral intervention programs within or outside the enrolled school, in which the student's classroom or course placement is based primarily on age, grade level and cognitive abilities as assigned by the school Administration or an IEP team and the student's participation in daily course instruction and activities within the assigned classroom or course.

**"School Board"** means charter school boards of directors organized pursuant to 14 Del.C. Ch. 5, and reorganized school district boards and vocational technical school district boards duly appointed or elected pursuant to 14 Del.C. Ch. 10.

**"School Discipline Committee"** means a school-level committee consisting of appropriate school personnel, similar to those identified in 14 Del.C. Ch. 16, which meets to decide on student Disciplinary Action recommendations made by the Principal.

**"School Environment"** means within or on School Property, and at school sponsored or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at school sponsored extracurricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

**"School Property"** means any building, structure, athletic field, sports stadium or real property that is owned, operated, leased or rented by any ~~public school~~ District or Charter School including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or charter school, or any motor vehicle owned, operated, leased, rented or subcontracted by any ~~public school~~ District or Charter School.

**"Student Code of Conduct"** means the District or Charter School approved document which specifies the rights and responsibilities of students, defines conduct that disrupts or threatens a positive and safe School Environment, standardizes procedures for consequences and Disciplinary Action, and defines due process and Grievance procedures.

**"Superintendent"** means the chief school officer of any public school District or Charter School, or the equivalent of a superintendent.

**"Suspension, Long-term (~~Long-term Suspension~~)" or "Long-term Suspension"** means Disciplinary Action approved by the Superintendent upon recommendation of the Principal or District or Charter School Alternative Placement Team resulting in the student being removed from the Regular School Program for eleven (11) consecutive school days or more and not to exceed the total number of school days in a school year. Student chooses to waive ~~his~~ the student's right to a formalized due process hearing as outlined in Section 10.0 of 14 DE Admin. Code 616, maintains enrollment in the District or Charter School, and is provided Appropriate Educational Services during the term of the suspension, but is excluded from all school activities including, but not limited to, extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on School Property when suspension is out-of-school. A Long-term Suspension requires initial due process procedures as outlined in Section 4.0 of 14 DE Admin. Code 616 and the student choosing to waive ~~his~~ the student's right to a formalized due process hearing as outlined in Section 10.0 of 14 DE Admin. Code 616.

**"Suspension, Short-term (~~Short-term Suspension~~)" or "Short-term Suspension"** means Disciplinary Action approved by the Principal or School Discipline Committee resulting in the student being removed from ~~his~~ the student's Regular School Program for at least one half school day and not more than ten (10) consecutive school days. Student maintains enrollment in a District or Charter School, but is excluded from all school activities including, but not limited to extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on School Property when Short-term Suspension is out-of-school. A Short-term Suspension requires initial due process procedures as outlined in subsection 5.1 of 14 DE Admin. Code 616.

### 3.0 Uniform Processing Procedures

- 3.1 When a District or Charter School receives an Attorney General's Report, the following uniform procedures shall be followed:



- 3.1.1 Only the Superintendent or designated District- or Charter School-level administrative professional employee (hereinafter “designee”) shall handle the processing of the Attorney General’s Report. The designee shall be an employee at the District or Charter School administrative office level and shall not be a secretary or administrative assistant.
- 3.1.2 The Superintendent or designee shall review the Attorney General’s Report, as soon as practicable thereafter and no later than three (3) school days after delivery of the Report, to determine if the listed charges warrant accessing the Criminal Justice Information System to obtain additional information. In the event of the absence of the Superintendent or designee, procedures shall be identified for the review of the Attorney General’s Report within the allotted time frame.
- 3.1.2.1 If the Superintendent or designee determines that access to the Criminal Justice Information System is needed, that access will occur as soon as practicable thereafter and no later than three (3) school days of the determination.
- 3.1.2.2 On the basis of that review, the Superintendent or designee shall make a determination as to whether the student’s alleged ~~action(s) is~~ actions are a threat to the health, safety and welfare of others, in particular, staff and students within the School Environment and action needs to be taken.
- 3.1.3 The District or Charter School may provide the Attorney’s General Report and Criminal Justice Information to the school Principal if the District or Charter School decides to take action. The school Principal shall use this information only for action planning purposes.
- 3.1.4 A hard copy of a student’s Report or Criminal Justice Information shall not be maintained in any manner except for use as evidence in a student discipline hearing and manifestation determination meeting. Upon conclusion of the student disciplinary hearing and any ~~appeal(s)~~ appeals, the hard copy of the Report and Criminal Justice Information shall be destroyed. Notwithstanding the foregoing, the hard copy of the Report and Criminal Justice Information used at the manifestation determination meeting shall be maintained as part of the record of that meeting during the time for filing any dispute resolution proceedings under the Individuals with Disabilities Education Act (IDEA).
- 3.1.4.1 Any personally identifiable information relating to a victim listed in a Report or the Criminal Justice Information used for a disciplinary hearing or manifestation determination shall be redacted. For the purposes of this regulation, personally identifiable information includes name, date of birth, age, sex, race, home address, school, workplace, driver license number, and vehicle registration number. If the victim and alleged offender attend the same school, that information may be shared with the Principal of the school for safety planning purposes.

#### **4.0 District or Charter School Action in Response to Attorney General’s Report**

- 4.1 The decision to act upon the information provided in the Attorney General’s Report and Criminal Justice Information shall be the sole discretion of the District or Charter School in accordance with the District’s or Charter School’s policies and procedures including the Student Code of Conduct. Such action may include, but is not limited to, student ~~and/or~~ or Parent conference, counseling, safety planning and Disciplinary Action.
- 4.1.1 If the victim listed in the Criminal Justice Information attends the same school as the Report’s alleged offender, the victim and victim’s Parent shall be notified regarding any safety planning actions decided upon by the District or Charter School. The District or Charter School shall make reasonable efforts to include the victim and victim’s Parent in the safety planning process.
- 4.1.2 If a District or Charter School policy allows for Disciplinary Action to be taken in response to a student Attorney General’s Report, the District’s or Charter School’s Student Code of Conduct shall include a statement that clearly gives notice that all off-campus, non-school activity conduct which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and drug offenses, may subject a student to Disciplinary Action as indicated in the District’s or Charter School’s Student Code of Conduct.

- 4.1.2.1 Any Disciplinary Action taken by the District or Charter School in response to an Attorney General's Report that results in a Short-Term or Long-Term Suspension, Alternative Placement, or Expulsion of a student shall be in accordance with the requirements of 14 **DE Admin. Code** 614 and 616.
- 4.1.2.2 A student expelled without Appropriate Educational Services shall be unenrolled from the District or Charter School during the term of the expulsion. Regardless of whether without or with services, including Alternative Placement, the expelled student is not eligible to enroll in any other Delaware public school during the period of the Expulsion and until any reasonable terms of the Expulsion are fulfilled.

## 5.0 Students with Disabilities

- 5.1 Nothing in this regulation shall alter a District's or Charter School's duties under the Individual with Disabilities Act (IDEA) or 14 **DE Admin. Code** 922 through 929. Nothing in this regulation shall prevent a District or Charter School from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Delaware Department of Education regulations.
- 5.2 Nothing in this regulation shall alter a District's or Charter School's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a District or Charter School from providing supportive instruction to such students.

## 6.0 Implementation

If any portion of this regulation is in conflict with the Interagency Agreement in existence, the Interagency Agreement shall control.

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and (d), 2702(h), and 2707  
(14 **Del.C.** §§122(b) and (d), 2702(h), & 2707)  
14 **DE Admin. Code** 615

### REGULATORY IMPLEMENTING ORDER

#### 615 School Attendance

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

Pursuant to 14 **Del. C.** §§122(b), 2702(h), and 2707 the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 615 School Attendance. This regulation is being amended to clarify the following: (1) to require that school district and charter school attendance policies include how families and students may access supports and resources for student absences due to social, emotional and behavioral wellness; (2) to require the school district and charter school attendance policies and available resources for addressing attendance be given to parents, guardians or caregivers when student absences exceed 10 unexcused absence; (3) to require school districts and charter schools distribute and explain the school attendance policy to all educators and support staff at the beginning of each school year; (4) to comply with HB 163 of the 151<sup>st</sup> General Assembly regarding absences due to religious observances; and (5) to comply with HB 175 of the 151<sup>st</sup> General Assembly regarding absences for the participation in civic engagements.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on October 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on October 1, 2021, in the form hereto attached as *Exhibit "A"*. Comments received which were pertinent to the subject matter of the regulation suggested the following:

- (1) Further amendments addressing student health and wellness as it extends to attendance in light of COVID-19 and as students return to in-person instruction following remote learning during the COVID-19 crisis.

**Response:** *The Department does not believe need further amendments are warranted at this point, but should student health and wellness gaps become apparent, the Department will consider future regulation changes. The language is intentionally broad to provide LEAs opportunities to work with students and their families.*

- (2) Policies to provide more proactive, non-punitive supports for students and families who are experiencing chronic absenteeism, or who have experienced frequent absenteeism since March 2020 during periods of remote instruction.

**Response:** *The Department intentionally wants the language to be broad. Most LEAs are already providing these types of support.*

- (3) The attendance policy be provided to each parent each year.

**Response:** *LEAs didn't believe providing the attendance policy to each parent each year was necessary. This policy will be on LEAs websites and shared as needed, much like other forms.*

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 615 School Attendance in order to clarify the following: (1) to require that school district and charter school attendance policies include how families and students may access supports and resources for student absences due to social, emotional and behavioral wellness; (2) to require the school district and charter school attendance policies and available resources for addressing attendance be given to parents, guardians or caregivers when student absences exceed 10 unexcused absence; (3) to require school districts and charter schools distribute and explain the school attendance policy to all educators and support staff at the beginning of each school year; (4) to comply with HB 163 of the 151<sup>st</sup> General Assembly regarding absences due to religious observances; and (5) to comply with HB 175 of the 151<sup>st</sup> General Assembly regarding absences for the participation in civic engagements.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 615 School Attendance. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 615 School Attendance attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 615 School Attendance 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** 615 School Attendance amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 615 School Attendance in the *Administrative Code of Regulations* for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 18, 2021. 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 November 2021.

**Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 18th day of November 2021

## State Board of Education

/s/ Whitney Townsend Sweeney, President

/s/ Vincent Lofink

/s/ Shawn Brittingham, Vice President

/s/ Audrey J. Noble, Ph.D.

/s/ Wali W. Rushdan, II

/s/ Provey Powell, Jr.

/s/ Candice Fifer

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

## 615 School Attendance

### 1.0 Required Attendance Policy

Each school district and charter school shall have an attendance policy that complies with 14 Del.C. Ch. 27 and which defines and describes the district's or charter school's rules concerning attendance for students K to 12.

### 2.0 Elements of Attendance Policy

- 2.1 The attendance policy shall include information on how families and students may access supports and resources for student absences due to social, emotional and behavioral wellness.
- 2.2 The attendance policy shall permit one excused absence per school year for students in grades 6 through 12 to attend civic engagements, such as visits to the United States Capitol, Delaware Legislative Hall, political or cultural significance sites, to advocate or testify on behalf of legislation, or to participate in a rally, march, or protest. The student's parent, guardian, or relative caregiver must submit a signed, written excuse which is received by the district or charter school at least three (3) days before the student's absence.
- 2.3 The attendance policy shall include how school districts and charter schools will handle absences due to religious observances, including, but not limited to, the following:
- 2.3.1 A student shall be excused for any of the following religious holidays when the school district or charter school receives a student's parent, guardian, or relative caregiver's signed, written excuse:
- Rosh Hashanah (Jewish)
  - Yom Kippur (Jewish)
  - Dussehra (Hindu)
  - Sukkot (Jewish)
  - Diwali (Hindu)
  - Birth of Bahá'u'lláh (Baha'i)
  - Sangha Day (Buddhist)
  - Maha Shivaratri (Hindu)
  - Naw- Rúz (Baha'i)
  - Holi (Hindu)
  - Ram Navami (Hindu)
  - Beginning of Ramadan (Islamic)
  - Theravada (Buddhist)
  - Laitlat Ul Qadr (Islamic)
  - Eid al-Fitr (end of Ramadan) (Islamic)
  - Vesak (Buddhist)
  - Shavuot (Jewish)
- 2.3.2 Each school district and charter school may excuse student absences on any other day not included on this list for religious or cultural observances.
- 2.3.3 A student of any school district or charter school who is absent due to a religious holiday observance shall not be deprived of any award or eligibility to compete for any award.
- 2.3.4 The attendance policy must discourage teachers from scheduling major grading events, such as tests, examinations, presentations, or project due dates on religious holidays.

- 2.3.5 A student who misses a grading event due to excused absence for observance of a religious holiday must be allowed the opportunity to take the test on an alternate day or take an alternate test or be given some other means to recover credit.
- 2.3.6 The Department of Education shall annually release a list of upcoming religious holidays for the upcoming school year and shall also keep an updated list on the Department of Education website.
- 2.3.7 The list in this regulation includes the name of the holiday to be observed. For an annual school year calendar with dates for the school year, visit the Department of Education's website. The annual calendar will be sent to all school districts and charter schools in time for school calendars creation.
- 2.3.8 Religious holidays occurring outside the standard school year are not included on this list. Holidays already included as public holidays on the State of Delaware calendar are not included on this list. All Jewish and Islamic holidays begin at sundown on the evening before the holiday. For holidays more than a day long, the date listed on the annual calendar is considered to be the time a student would be out of school. Additionally, some holidays, including those not listed here, involve fasting; so while a student may be in school, their parent/guardian may consider letting the school know the student is fasting.

### **2.03.0 Distribution of Attendance Policy**

- 2.13.1 Each district or charter school shall distribute and explain these policies to every student at the beginning of each school year.
- 2.23.2 Each district or charter school shall distribute and explain these policies to each student enrolling or re-enrolling during the school year.
- 2.33.3 Each district or charter school shall post the attendance policy on its website and notify a parent, ~~guardian~~ guardian, or relative caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, ~~guardian~~ guardian, or relative caregiver upon request or when absences have exceeded ten (10) unexcused absences. This hard copy will include phone numbers to area supports and a school contact number.
- 3.4 Each district or charter school shall distribute the school's attendance policy to their educators and support staff at the beginning of each school year.

### **3.04.0 Reporting Requirements and Timelines**

- 3.14.1 Each ~~public~~ school district or charter school shall have an electronic copy of its current attendance policy on file with the Department of Education.
- 3.24.2 Each ~~public~~ school district or charter school shall provide an electronic copy of any revised attendance policy within ninety (90) days of such ~~revision(s)~~ revisions regardless of whether said revisions were made as a result of changes to federal, state or local law, regulations, guidance or policies.

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 135 (14 Del.C. §135)

### REGULATORY IMPLEMENTING ORDER

#### 931 Purple Star Schools

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

Pursuant to 14 Del C. §135, the Secretary of Education intends to create 14 DE Admin. Code 931 Purple Star Schools. This regulation is being created to comply with Senate Bill 117 as amended by Senate Amendment No. 1 of the 151<sup>st</sup> General Assembly which requires the Delaware Department of Education to promulgate regulations outlining the criteria for district and charter schools to be designated a Purple Star School.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on November 1, 2021 in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 931 Purple Star Schools in order to comply with Senate Bill 117 as amended by Senate Amendment No. 1 of the 151<sup>st</sup> General Assembly which requires the Delaware Department of Education to promulgate regulations outlining the criteria for district and charter schools to be designated a Purple Star School.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 931 Purple Star Schools. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 931 Purple Star Schools attached hereto as *Exhibit "B"* is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 931 Purple Star Schools hereby created shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 931 Purple Star Schools created hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 931 Purple Star Schools 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 3, 2021. 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 3rd day of December 2021.

### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 3<sup>rd</sup> day of December 2021

### 931 Purple Star Schools

#### **1.0 Purpose**

The purpose of this regulation is to outline criteria for district and charter schools to be designated a Purple Star School under 14 **Del.C.** §135 Purple Star Schools.

#### **2.0 Definitions**

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

"Purple Star School" means a recognition designed to encourage the successful transition of military-connected youth, which may include the development of programs that highlight the importance of military service.

"Purple Star School Designation Application" means the form and process developed by the Department of Education, which may be amended from time to time and shall be maintained on the Department's website.

#### **3.0 Qualifications**

3.1 In order to be designated a Purple Star School, any district or charter school shall qualify by having:

- 3.1.1 A designated staff member as a military liaison, whose duties include:
- 3.1.1.1 Identifying military-connected youth enrolled at the school;
  - 3.1.1.2 Serving as the point of contact between the school and military-connected youth and their families;
  - 3.1.1.3 Determining appropriate school services available to military-connected youth;
  - 3.1.1.4 Assisting in coordinating school programs relevant to military-connected youth;
  - 3.1.1.5 Participating in training specific to supporting the various challenges that face military families; and
  - 3.1.1.6 Conducting school-wide professional development that informs staff of the unique needs of military-connected students and available resources.
- 3.1.2 An easily-accessible, maintained webpage on the school's website that includes resources for military-connected youth and their families, including information regarding:
- 3.1.2.1 Relocating, enrollment, registration, and transferring records to the school.
  - 3.1.2.2 Preparing for a move from the current school.
  - 3.1.2.3 Academic planning information including course sequences, advanced classes, application deadlines, graduation requirements, etc.
  - 3.1.2.4 The Interstate Compact on Educational Opportunities for Military Children (MIC3).
  - 3.1.2.5 Special education services, including related parental rights.
  - 3.1.2.6 Counseling and other support services available for military-connected youth enrolled at the school.
- 3.1.3 A well-maintained transition program led by youth, where appropriate, that assists military-connected youth in transitioning into the school.
- 3.1.4 An assigned central office staff member to be the contact for the school-based liaison and military families, if a district.
- 3.1.5 A designated member of the school leadership team to be the contact for the school-based liaison and military families, if a charter school.
- 3.1.6 Offer at least one (1) of the following initiatives:
- 3.1.6.1 A resolution showing support for military-connected youth and their families;
  - 3.1.6.2 Recognition of the Month of the Military Child or Military Family Month with relevant events hosted by the school;
  - 3.1.6.3 A partnership with a local military installation that provides opportunities for active duty military members to volunteer at the school, speak at an assembly, or host a field trip;
  - 3.1.6.4 A military recognition event designed to demonstrate a military-friendly culture across the school community;
  - 3.1.6.5 A public military display in the school (such as a memorial, tribute wall, bulletin board, or Purple Star room);
  - 3.1.6.6 Military family committees or counseling groups to offer support; or
  - 3.1.6.7 Fundraise to support military veterans and active-duty members.
- 3.1.7 A complete application submitted between November 1<sup>st</sup> and February 1<sup>st</sup> of the school year. Incomplete applications will not be considered.

#### **4.0 Selection Process**

- 4.1 The Department shall identify a panel of stakeholders to review the applications and determine eligibility for the designation based on the criteria in Section 3.0.
- 4.2 Designation announcements shall be made by the Department in April of each year.
- 4.3 The Purple Star School Designation shall be valid for a period of three (3) years. The first year is the year in which the school is awarded. The school will not have to reapply for the designation for the following two (2) years.



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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(28) (14 **Del.C.** §122(b)(28))  
14 **DE Admin. Code** 932

### REGULATORY IMPLEMENTING ORDER

#### 932 Military-Connected Youth

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

Pursuant to 14 **Del.C.** §122(b)(28), the Secretary of Education seeks the consent of the State Board of Education to reauthorize 14 **DE Admin. Code** 932 Military-Connected Youth. This regulation is being reauthorized in keeping with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. No changes are warranted at this time, therefore it is being reauthorized.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on October 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on October 1, 2021, in the form hereto attached as *Exhibit "A"*. No comments were received.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 932 Military-Connected Youth in keeping with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. No changes are warranted at this time, therefore it is being reauthorized.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 932 Military-Connected Youth. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 932 Military-Connected Youth attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 932 Military-Connected Youth hereby reauthorized 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** 932 Military-Connected Youth reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 932 Military-Connected Youth in the *Administrative Code of Regulations* for the Department of Education.

#### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 18, 2021. 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 November 2021.

#### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 18th day of November 2021

#### State Board of Education

/s/ Whitney Townsend Sweeney, President

/s/ Vincent Lofink

/s/ Shawn Brittingham, Vice President

/s/ Audrey J. Noble, Ph.D.

/s/ Wali W. Rushdan, II

/s/ Provey Powell, Jr.

/s/ Candice Fifer

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

### 932 Military-Connected Youth

#### 1.0 Purpose

This regulation outlines the process for districts and charter schools to annually identify enrolled students who are "military-connected youth." This regulation is established pursuant to 14 Del.C. §122(b)(28).

#### 2.0 Definitions

**"Military-Connected Youth"** means any student having an immediate family member, including a parent, step-parent, sibling or any other person residing in the same household, who is on active duty, serving in the reserve component, or recently retired from a branch of the United States armed forces. Such branches consist of United States Army, United States Air Force, United States Marine Corps, United States Navy, National Guard, United States Coast Guard, National Oceanic and Atmospheric Administration or the United States Public Health Service.

**"Recently Retired"** for the purposes of this regulation, means having left military service within 18 months prior to September 30 of the current school year; identified as a disabled veteran; or killed in action.

#### 3.0 Data Collection and Access

- 3.1 Each district and charter school shall include a military-connected identifier as part of its annual enrollment process and student information update.
- 3.2 Each district and charter school shall identify which school personnel have access to the military-connected identifier.

#### 4.0 Use Exemptions

- 4.1 The identification of a military-connected youth shall not be used for purposes of determining school achievement, growth or performance.
- 4.2 The identification of a military-connected youth is not a public record under Delaware's Freedom of Information Act or any other law, and shall not be made public by any person, except as permitted under the provisions of the Family Educational Rights and Privacy Act of 1974.

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303 (14 Del.C. §§122(b)(15) & 303)

14 DE Admin. Code 1006

### REGULATORY IMPLEMENTING ORDER

#### 1006 Delaware Interscholastic Athletic Association (DIAA)

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

Pursuant to 14 Del.C. §§122(b)(15) and 303, the Delaware Department of Education ("Department") is amending 14 DE Admin. Code 1006 Delaware Interscholastic Athletic Association (DIAA). The Delaware Interscholastic Athletic Association ("DIAA") is a unit of the Department. In accordance with 29 Del.C. §10113(b)(2), Section 9.0 is being amended. Section 9.0 provides the rules of practice and procedure concerning requests for the DIAA Board of Directors to waive an interscholastic athletic rule or regulation.

On December 9, 2021, the DIAA Board of Directors voted to propose that the Department informally adopt the amendments to Section 9.0.

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## II. FINDINGS OF FACTS

The Department finds that the proposed amendments to Section 9.0 are necessary to implement the provisions of 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA).

The Department further finds that the proposed amendments provide rules of practice and procedure concerning waiver requests. As a result, the amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §10113(b)(2).

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303 and 29 **Del.C.** §10113(b)(2), 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) attached hereto as Exhibit "A" is hereby amended.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) in the Administrative Code of Regulations for the Department.

## 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 *Register of Regulations*.

**IT IS SO ORDERED** the 14th day of December, 2021.

### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

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

**1006 Delaware Interscholastic Athletic Association (DIAA)**

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# FINAL REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1539

### REGULATORY IMPLEMENTING ORDER

#### 1539 Health Education Teacher

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

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education (“Department”), developed amendments to 14 **DE Admin. Code** 1539 Health Education Teacher. The regulation concerns the requirements for a Health Education Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Health Education Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Health Education Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Health Education Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2021. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

#### II. FINDINGS OF FACTS

On November 4, 2021, the Professional Standards Board considered the proposed regulation. The Professional Standards Board found that the word “Standard” erroneously appears twice in subsection 3.1. In accordance with 29 **Del.C.** § 10118(c), the Professional Standards Board’s Chairperson determined that striking the extra “Standard” is a nonsubstantive change that does not require the Professional Standards Board to repropose the regulation. The Professional Standards Board voted to propose 14 **DE Admin. Code** 1539 Health Education Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education’s approval.

The Department finds that removing the extra “Standard” from subsection 3.1 is a nonsubstantive change under 29 **Del.C.** § 10118(c). The Department further finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1539 Health Education Teacher.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1539 Health Education Teacher subject to the State Board of Education’s approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1539 Health Education Teacher, attached hereto as Exhibit A, is hereby amended.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1539 Health Education Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1539 Health Education Teacher in the *Administrative Code of Regulations* for the Department.

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## V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 18th day of November, 2021.

### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 18th day of November, 2021.

### State Board of Education

/s/ Whitney Sweeney, President

/s/ Audrey J. Noble, Ph.D.

/s/ Shawn Brittingham, Vice President/s/

/s/ Provey Powell, Jr.

/s/ Candice Fifer

/s/ Wali W. Rushdan, II

/s/ Vincent Lofink

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

### 1539 Health Education Teacher

#### 1.0 Content

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

#### 2.0 Definitions

- 2-1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2-2 The following ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise~~:

"Department" means the Delaware Department of Education.

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

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

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

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

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

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

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

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

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

### 3.0 Issuance of a Standard Certificate

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

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

- 4.1 An educator shall have also met the following:
- 4.1.1 ~~achieved on the Praxis Subject Assessment:~~
    - 4.1.1.1 ~~Health Education (ETS Test # 5551) a Passing Score of 162; or~~
    - 4.1.1.2 ~~Health and Physical Education: Content Knowledge (ETS Test # 5857) a Passing Score of 160.~~
- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have satisfied one of the following education requirements:
    - 4.1.1.1 Obtained and currently maintain a Health Education certificate from the National Board for Professional Teaching Standards; or
    - 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in health education from an educator preparation program approved or recognized by the National Council for the Accreditation

of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or

4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach health education as provided in 14 Del.C. §§1260 – 1266; or

4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in health education; or

4.1.1.5 If the applicant is applying for an Initial License after the applicant completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school as provided in subsection 4.1.3.1 of 14 DE Admin. Code 1510, earned a bachelor's degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 college credits or an equivalent number of hours in professional development with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department related to health education of which at least six credits focus on pedagogy.

4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the 15 credits or the equivalent number of hours in professional development subject to the Department's approval.

4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the 15 credits or the equivalent number of hours in professional development in consultation with the Department and subject to the Department's approval.

4.1.1.5.3 For the purpose of subsection 4.1.1.5, professional development means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants' attitudes, insights, and perspectives and ultimately results in improved professional practice.

4.1.1.5.4 Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:

4.1.1.5.4.1 Relevant courses from a Regionally Accredited college or university in health education are not available to the applicant online or in the applicant's county of residence; and

4.1.1.5.4.2 The activity is grounded in research and current best practices as judged by the Department's content specialist in health education; and

4.1.1.5.4.3 The activity is documented by the provider to provide knowledge and skills that are required for the health education certification; and

4.1.1.5.4.4 The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

4.1.2 The applicant shall have achieved the minimum score on one of the following examinations:

4.1.2.1 A minimum score of 162 on the Praxis Subject Assessment – Health Education (ETS Test Code # 5551); or

4.1.2.2 A minimum score of 160 on the Praxis Subject Assessment – Health and Physical Education – Content Knowledge (ETS Test Code # 5857).

4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved the minimum score on an examination as provided in subsection 4.1.2.

## **5.0 Application Requirements**

5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.

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

## **6.0 Validity of a Standard Certificate**

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

## **7.0 Disciplinary Action**

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

## **8.0 Secretary of Education Review**

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



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

## **9.0 Past Certificate Recognized**

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

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

Statutory Authority: 16 Delaware Code, §122(3)c (16 Del.C. §122(3)c)  
16 DE Admin. Code 4462

### **ORDER**

#### **4462 Public Drinking Water Systems**

IN THE MATTER OF: |  
ADOPTION OF THE STATE OF DELAWARE |  
REGULATIONS GOVERNING |  
PUBLIC DRINKING WATER SYSTEMS |

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Public Drinking Water Systems. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsection 122(3)(c).

On November 1, 2021 (Volume 25, Issue 5), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 *Del.C.* § 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 1, 2021, after which time DHSS would review information, factual evidence, and public comment to the said proposed regulations.

No written comments were received during the public comment period.

#### FINDINGS OF FACT:

No changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Public Drinking Water Systems is adopted and shall become effective January 11, 2022 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

12/6/2021

Date

Molly K. Magarik, MS  
Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2021 issue of the *Register* at page 494 (25 DE Reg. 494). Therefore, the final regulation is not**

being republished. A copy of the final regulation is available at:

**4462 Public Drinking Water Systems**

## DEPARTMENT OF INSURANCE

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 7105 and 7107 (18 **Del.C.** §§311, 7105 & 7107)

18 **DE Admin. Code** 1404

### REGULATORY IMPLEMENTING ORDER

#### **1404 Long-Term Care Insurance**

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

In the July 1, 2021 edition of the *Register of Regulations*, at 25 **DE Reg.** 60 (July 1, 2021), the Commissioner of the Delaware Department of Insurance (Commissioner) published a proposal to amend Regulation 1404. This regulation implements 18 **Del.C.** Ch. 71 by setting forth standards that apply to long term care insurance coverage in Delaware. The purpose of the proposed amendments was to add three additional disclosure requirements upon a rate increase at proposed new subsections 8.2.5.1.4 through 8.2.5.1.6 and to ensure that agents of record are made aware of any rate increases that insurers are imposing on their policy holders by adding proposed new subsection 8.6.

The Department also proposed to update formatting and internal cross-references and adding an effective date of these proposed amendments at Section 33.0.

The Department received timely submitted comments from two commenters, an agent and a representative of the life insurance industry. Both commenters applauded the Department's efforts to increase transparency around rate increases, both to the consumer and to the agent. Additionally, the industry representative requested that the regulation be clarified to specify that subsections 8.2.5.1.1 through 8.2.5.1.3 apply at the time of sale for the scenarios described in subsection 8.2.5.1, and that subsections 8.2.5.1.4 through 8.2.5.1.6 be revised to clarify that they only apply at the time of a rate increase.

The Department is not inclined to make the suggested changes as the Department does not believe they are necessary.

#### II. FINDINGS OF FACTS

The Commissioner finds that the amendments to 18 **DE Admin. Code** 1404 as proposed in the July 1, 2021 *Register of Regulations*, should be adopted for the reasons set forth in the proposal, having been properly noticed and open for public comment.

#### III. DECISION TO ADOPT THE PROPOSED AMENDMENTS

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt the amendments to 18 **DE Admin. Code** 1404 as proposed on July 1, 2021.

#### IV. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§ 311, 7105 and 7107 on the date indicated below. This Order shall be effective on the date signed. The effective date of the Regulation shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*, pursuant to 28 **Del.C.** § 10118 and 29 **DE Admin. Code** 101-5.1.

**IT IS SO ORDERED.**

The 15<sup>th</sup> day of December, 2021.

Trinidad Navarro  
Delaware Department of Insurance

\*Please note that no changes were made to the regulation as originally proposed and published in the July 2021 issue of the *Register* at page 60 (25 DE Reg. 60). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1404 Long-Term Care Insurance**

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## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 3373A(c) (18 Del.C. §§311 & 3373A(c))

18 DE Admin. Code 1411

### EXEMPT FINAL ORDER

#### 1411 Registration of Pharmacy Benefits Managers

Pursuant to 18 Del.C. §§311 and 3359A(c) (redesignated to 3373A(c) in 83 Del. Laws, Ch. 245, Section 14), Regulation 1411, entitled Registration of Pharmacy Benefits Managers, requires all pharmacy benefits managers (PBMs) to:

- Register with the Commissioner before providing pharmacy benefits management services in Delaware to a "purchaser" (a "purchaser" is defined as an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity that: (1) provides prescription drug coverage or benefits in Delaware, and (2) enters into agreement with a pharmacy benefits manager for the provision of pharmacy benefits management services); and
- To annually renew their registration on the May 1 after the initial date of registration and every May 1 thereafter.

On October 26, 2021, House Bill 219 (151st General Assembly) (the Act) became law. The Act, among other things, increases PBM registration fees at 18 Del. C. §§ 3353A and 3354A from \$150 to \$1000.

With this order, the Department is updating Section 8.0 of Regulation 1411 to conform the regulation with the Act. These updates are exempt from the requirement of public notice and comment because they include "amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations," pursuant to 29 Del.C. §10113(b)(5).

This order shall be effective 10 days after publication in the *Register of Regulations*.

IS SO ORDERED.

The 15th day of December, 2021.

Trinidad Navarro

Commissioner, Delaware Department of Insurance

#### 1411 Registration of Pharmacy Benefits Managers

##### 1.0 Scope and Authority

- 1.1 This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§311 and ~~3359A(c)~~ 3373A(c) and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.
- 1.2 This regulation does not apply to plans of health insurance or health benefits designed for issuance to persons eligible for coverage under Titles XVIII, XIX, and XXI of the Social Security Act, 42 U.S.C. §§1395 et seq., 1396 et seq., and 1397aa et seq., known as Medicare, Medicaid, or any other similar coverage under a state or federal government plan.

## 2.0 Definitions

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

**"Affiliate"** means an entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

**"Commissioner"** means the Insurance Commissioner of Delaware.

**"Control"** (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by 18 Del.C. Ch. 50 that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact, notwithstanding the absence of a presumption to that effect.

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

**"Insurer"** means any entity that provides health insurance coverage in this State as defined in 18 Del.C. §903.

**"Person"** means an individual or a business entity.

**"Pharmacy benefits management services"** means all of the following:

- The procurement of prescription drugs at a negotiated rate for dispensation within this State to beneficiaries;
- The administration or management of prescription drug coverage provided by a purchaser for beneficiaries; and
- Any of the following services provided with regard to the administration of prescription drug coverage:
  1. Mail service pharmacy;
  2. Claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;
  3. Clinical formulary development and management services;
  4. Rebate contracting and administration;
  5. Patient compliance, therapeutic intervention, and generic substitution programs; and
  6. Disease management programs.

**"Pharmacy benefits manager"** or **"PBM"** means an entity that contracts with pharmacists or pharmacies on behalf of an insurer or third-party administrator to:

- Process claims for prescription drugs or medical supplies or provide retail network management for pharmacies or pharmacists;
- Pay pharmacies or pharmacists for prescription drugs or medical supplies; or
- Negotiate rebates with manufacturers for drugs paid for or procured as described in this chapter.

**"Pharmacy services administrative organization"** means a cooperative network of independent pharmacies.

**"Purchaser"** means an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity that does all of the following:

1. Provides prescription drug coverage or benefits in this State; and
2. Enters into agreement with a pharmacy benefits manager for the provision of pharmacy benefits management services.

**3.0 Requirement for Registration**

No insurer may enter into a written agreement or contract with a pharmacy benefits manager unless the pharmacy benefits manager is registered with the Department in accordance with Section 4.0 of this regulation.

**4.0 Pharmacy Benefits Manager Registration Requirements**

- 4.1 A pharmacy benefits manager shall register with the Commissioner in accordance with this Section before providing pharmacy benefits management services in this State to a purchaser.
- 4.2 An applicant who wishes to apply to be a pharmacy benefits manager in Delaware shall submit a Pharmacy Benefits Manager Registration Application to the Department, on which the applicant includes all of the following:
  - 4.2.1 Applicant Information:
    - 4.2.1.1 Name, address, telephone number;
    - 4.2.1.2 Name and address of applicant's agent for service of process in this State;
    - 4.2.1.3 Name and address of each person beneficially interested in the applicant's business (e.g. ownership of 10% or more);
    - 4.2.1.4 Name and address of each officer and director; and
    - 4.2.1.5 The non-renewable registration fee set forth in Section 8.0 of this regulation;
  - 4.2.2 Organization and Background Information:
    - 4.2.2.1 All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all amendments to such documents;
    - 4.2.2.2 The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;
    - 4.2.2.3 A biographical affidavit of each individual who is responsible for the conduct of affairs of the applicant, including:
      - 4.2.2.3.1 All members of the board of directors, board of trustees, executive committee or other governing board or committee;
      - 4.2.2.3.2 The principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company;
      - 4.2.2.3.3 Any shareholders or members holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the applicant; and
      - 4.2.2.3.4 Any other person who exercises control or influence over the affairs of the applicant; and
  - 4.2.3 A statement describing the applicant's business plan, that includes the following information:
    - 4.2.3.1 Staffing levels and activities proposed in Delaware and nationwide;
    - 4.2.3.2 Details concerning the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and record keeping; and
    - 4.2.3.3 A list of all insurers for whom applicant provides pharmacy benefits management services in this State; and
  - 4.2.4 Information on the applicant's compliance with Chapter 33A requirements, including:
    - 4.2.4.1 A copy of the PBM's standard, generic contract template, provider manual or other appropriate items incorporated by reference that the PBM uses for contracts entered into by the PBM with pharmacists, pharmacies or pharmacy services administrative organizations in this State in administration of pharmacy benefits for insurers, for the purpose only of the Department's review that such contracts comply with 18 **Del.C.** Ch. 33A;
    - 4.2.4.2 A copy of the written policies and procedures which demonstrate that the applicant has compliant processes established to adhere to all of the following:

- 4.2.4.2.1 The appeals and dispute resolution process as required by 18 **Del.C.** §3324A;
- 4.2.4.2.2 The requirements for maximum allowable cost pricing set forth in 18 **Del.C.** §3323A; and
- 4.2.4.2.3 The Audit Integrity Program set forth in 18 **Del.C.** §§3301A-3310A; and
- 4.2.5 Such other pertinent information as may be required by the Commissioner to verify the information in the application.
- 4.3 A registration certificate issued under this section shall remain valid, unless surrendered, suspended or revoked by the Commissioner, until May 1 following the effective date of the initial registration and the May 1 following the date of the registration renewal, as provided in subsection 4.4 of this regulation.
- 4.4 No pharmacy benefits manager may continue to do business in Delaware unless it has registered annually with the Commissioner on or before May 1 following the effective date of the initial registration and on or before the May 1 following the date of any subsequent registration renewal. A pharmacy benefits manager may renew a certificate of registration for an additional one-year term by timely submitting:
  - 4.4.1 All of the information required in subsection 4.2 of this regulation, updated as necessary to reflect the most current information concerning the pharmacy benefits manager's operations; and
  - 4.4.2 The non-refundable renewal application fee set forth in Section 8.0 of this regulation.
- 4.5 A pharmacy benefits manager who is registered or who is applying for registration under Section 4.0 of this regulation shall, within 15 days after the end of the calendar month in which any of the foregoing transactions occur, notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a registration certificate in this state.
- 4.6 A pharmacy benefits manager who is applying for registration or who is registered under this Section shall make available for inspection by the Commissioner copies of each permit issued to each nonresident pharmacy under 24 **Del.C.** §2535 that the pharmacy benefits manager uses to ship, mail, or deliver prescription drugs or devices in this state.

## 5.0 Standard of Review

- 5.1 The Commissioner shall deny an initial application or renewal application made under this regulation if the pharmacy benefits manager:
  - 5.1.1 Has been determined by the Commissioner to be in violation or non-compliance with the requirements of this regulation or 18 **Del.C.** Ch. 33A; or
  - 5.1.2 Has failed to timely submit information to complete review of the application or has failed to submit a renewal application and information under Section 4.0 of this regulation.
- 5.2 In lieu of a denial for an initial registration or renewal application under subsection 5.1 of this regulation, the Commissioner may permit the pharmacy benefits manager to submit to the Commissioner a corrective action plan to cure or correct deficiencies identified under subsection 5.1 of this regulation.
- 5.3 The Commissioner may refuse to issue a certificate of registration if the Commissioner determines that the pharmacy benefits manager, or any individual responsible for the conduct of affairs of the pharmacy benefits manager:
  - 5.3.1 Has had an insurance or a pharmacy benefits manager certificate or license denied or revoked for cause by any jurisdiction; or
  - 5.3.2 If the Commissioner determines that any of the grounds set forth in Section 6.0 of this regulation exists.

## 6.0 Grounds for Denial, Suspension or Revocation of Registration Certificate

- 6.1 The Commissioner may deny, suspend or revoke the certificate of registration of a pharmacy benefits manager if the Commissioner finds that the pharmacy benefits manager or an officer, director, or employee of the pharmacy benefits manager has engaged in any of the following:

- 6.1.1 A material misstatement, misrepresentation, or omission in a registration or registration renewal application, including but not limited to:
  - 6.1.1.1 Failure to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;
  - 6.1.1.2 Failure to timely file an annual registration pursuant to Section 4.0 of this regulation and filing fee pursuant to Section 8.0 this regulation;
  - 6.1.1.3 Failure to disclose that its license, registration or certification is under suspension or revocation in another state; or
  - 6.1.1.4 Failure to disclose that individuals who are responsible for the conduct of the affairs of the pharmacy benefit manager have been convicted of, or have entered a plea of guilty or nolo contendere to a felony without regard to whether adjudication was withheld;
- 6.1.2 Fraudulently or deceptively obtaining or attempting to obtain a registration or renewal of a registration;
- 6.1.3 In connection with the administration of pharmacy benefits management services, fraud or illegal or dishonest activities, including but not limited to:
  - 6.1.3.1 Using such methods or practices in the conduct of its business that render its further transaction of business in Delaware hazardous or injurious to insured persons or the public;
  - 6.1.3.2 Violating any lawful rule or order of the Commissioner or any applicable law of this state;
  - 6.1.3.3 Failing to pay any judgment rendered against it in this state within sixty days after the judgment has become final; or
  - 6.1.3.4 Without just cause, refusing to make reimbursements in compliance with its contracts and as required by law; or
- 6.1.4 A violation of any provision of 18 **Del.C.** Ch. 33A or this regulation, including but not limited to:
  - 6.1.4.1 In connection with the affairs of the pharmacy benefits manager, refusing to be examined or to produce pharmacy benefits manager-related accounts, records and files for examination, of any individual responsible for the conduct of affairs of the pharmacy benefits manager, including:
    - 6.1.4.1.1 Members of the board of directors, board of trustees, executive committee or other governing board or committee;
    - 6.1.4.1.2 The principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company;
    - 6.1.4.1.3 Any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the pharmacy benefits manager; and
    - 6.1.4.1.4 Any other person who exercises control or influence over the affairs of the pharmacy benefits manager; or
  - 6.1.4.2 Refusing to give information with respect to its affairs or refusing to perform any other legal obligation as to an examination, when required by the Commissioner.
- 6.2 In addition to any other remedies set forth in this regulation, the Commissioner may issue a cease and desist order to a pharmacy benefits manager that is registered or is seeking renewal of a registration if the pharmacy benefits manager, or an officer, director, or employee of the pharmacy benefits manager commits any of the acts set forth in subsection 6.1 of this regulation.
- 6.3 If a pharmacy benefits manager that is registered or seeking renewal of a registration does not comply with a cease and desist order issued by the Commissioner under subsection 6.2 of this regulation, the Commissioner may deny, refuse to renew, suspend, or revoke its registration.
- 6.4 Hearings
  - 6.4.1 If the action by the Commissioner is to deny or not renew a registration, the Commissioner shall notify the pharmacy benefits manager of the decision, in writing, including the reason for the denial or nonrenewal of the registration. The pharmacy benefits manager may, within 10 days after the

Commissioner provides notice under this subsection, make written demand on the Commissioner for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action.

- 6.4.2 If the Commissioner determines that a pharmacy benefits manager has violated any provision of 18 **Del.C.** Ch. 33A or this regulation, the Commissioner may, after notice and a hearing, issue an order in accordance with 18 **Del.C.** §3359A.
- 6.4.3 All hearings under this regulation must be held under 18 **Del.C.** §§323 through 328 and this regulation.

## 7.0 Maintenance of Information – Examination by Commissioner

- 7.1 A pharmacy benefits manager shall maintain adequate books and records about each purchaser for which the pharmacy benefits manager provides pharmacy benefits management services.
- 7.2 The pharmacy benefits manager shall maintain all books and records in accordance with prudent standards of record keeping and shall retain all records referred to in subsection 7.1 of this regulation:
- 7.2.1 For the duration of the agreement between the pharmacy benefits manager and the purchaser; and
- 7.2.2 For three years after the pharmacy benefits manager ceases to provide pharmacy benefits management services for the purchaser.
- 7.3 The Commissioner shall have access to books and records maintained by a pharmacy benefits manager for the purposes of examining the affairs of the pharmacy benefits manager.
- 7.4 The conduct of an examination of any pharmacy benefits manager shall be in accordance with 18 **Del.C.** §§320 and 321, including the confidentiality provisions contained therein.
- 7.5 Nothing in this regulation shall prohibit the Commissioner from releasing final, adjudicated actions that are open to public inspection pursuant to 29 **Del.C.** Ch. 100 to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.
- 7.6 In the event the insurer or purchaser, as applicable, and the pharmacy benefits manager cancel their agreement, notwithstanding the provisions of subsection 7.1 of this regulation, the pharmacy benefits manager may, by written agreement with the insurer or purchaser, as applicable, transfer all records to a new pharmacy benefits manager rather than retain them as is required under subsection 7.1 of this regulation. In such cases, the new pharmacy benefits manager shall acknowledge, in writing, that it is responsible for retaining the records of the prior pharmacy benefits manager as required in subsection 7.1 of this regulation.
- 7.7 A pharmacy benefits manager who is applying for registration or who is registered under this Section shall produce its accounts, records and files for examination, and make its officers available to give information with respect to its affairs, as often as considered advisable by the Commissioner.
- 7.8 A pharmacy benefits manager shall be subject to assessment for all fees, costs, experts and related expenditures with respect to any examination or enforcement action undertaken by the Commissioner pursuant to 18 **Del.C.** Ch. 33A and this regulation.

## 8.0 Fees

The following fees shall be applicable for filings and matters arising under this regulation:

Initial registration application	<del>\$150.00</del> <u>\$1,000.00</u>
Renewal registration application	<del>\$150.00</del> <u>\$1,000.00</u>
Amendment of certificate	<del>\$150.00</del> <u>\$1,000.00</u>
Duplicate or replacement certificate	<del>\$150.00</del> <u>\$1,000.00</u>

## 9.0 Severability

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 this regulation or the applicability of the provision to other persons or



circumstances shall not be affected.

## 10.0 Effective Date

This Regulation shall become effective August 11, 2020. The effective date of the revisions to Section 8.0 is January 11, 2022.

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF CLIMATE, COASTAL AND ENERGY

Statutory Authority: 29 Delaware Code, Section 8057 (29 Del.C. §8057)  
7 DE Admin. Code 2103

Secretary's Order No.: 2021-CCE-0030

**RE: Approving Final Amendments to 7 DE Admin. Code 2103: *Regulations for the Green Energy Program* ("GEF Regulations")**

**Date of Issuance: December 13, 2021**

**Effective Date of the Amendment: January 11, 2022**

### **2103 Regulations for the Green Energy Program**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 29 Del.C. §8057, *Green Energy Fund*, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

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

This Order relates to the Department's proposed regulatory amendments to 7 DE Admin. Code 2103: *Regulations for the Green Energy Program* ("Amendments"). The Green Energy Fund ("GEF") was established by 29 Del.C. §8057 in 1999. The Department initially promulgated the *Regulations for the Green Energy Program* ("GEF Regulations") to govern the GEF in 2004, and then adopted revisions to those regulations in 2006.

At present, the GEF Regulations are outdated, and require revisions to (1) regulate the *Green Energy Endowment Program*, the *Technology Demonstration Program*, and the *Research and Development Program*; (2) correct existing regulatory language regarding grant funding matters; (3) enable the Department to establish a low- and moderate-income solar grant program, subject to the availability of funds; and (4) strike overly detailed and prescriptive regulatory language as presently contained therein.

The promulgation of the proposed Amendments will enable the Department, through the Division of Climate, Coastal and Energy ("CCE"), to manage the GEF more efficiently, and will provide the Department greater flexibility to efficiently operate grant programs. Specifically, the proposed substantive changes to the existing regulations are as follows:

- Section 4.0: *Green Energy Fund* - Adds existing statutory language to allow unexpended funds during a particular year to be allocated for expenditure in subsequent years.
- Section 5.0: *Green Energy Program* - Adds existing statutory language to clarify allowable expenditures under the Green Energy Program. Removes references to outdated grant incentive maximums. Adds regulatory language to allow for the removal of contractors from the Green Energy Program's Participating Contractors List. Removes Energy Efficiency Information Programs that have not been utilized since the creation of the Green Energy Program.
- Section 6.0: *Technology Demonstration Program* - Adds existing statutory language to clarify allowable expenditures under the Technology Demonstration Program. Also adds regulatory language that allows proposals to be received on a rolling basis.

- Section 7.0: Research and Development Program - Adds existing statutory language to clarify allowable expenditures under the Research and Development Program. Also adds regulatory language that allows proposals to be received on a rolling basis.
- Section 10.0: Solar Energy Curriculum Program - Adds the Solar Energy Curriculum Program that exists in the statutory language to the regulatory language.
- Section 11.0: Other Eligible Programs - Adds regulatory language to allow the GEF to develop new programs that are consistent with the goals of the Fund, subject to the availability of funds, as provided for under 29 *Del.C.* §8057(d).

The Department has the statutory basis and legal authority to promulgate these proposed Amendments, pursuant to 29 *Del.C.* §8057, *Green Energy Fund*. It should be noted that the CCE considered input and received technical advice from the offices of both the Delaware Public Advocate and the Public Service Commission during the development of the proposed Amendments.

The Department published the initial proposed Amendments in the July 1, 2021, *Delaware Register of Regulations*. Subsequent to the initial publication, but prior to the public hearing, the Department made several non-substantive clerical corrections to the initial proposed Amendments. Those corrections were fully vetted and discussed by Department staff at the public hearing held on July 28, 2021 and were further documented in the hearing record ("Record") as Department Exhibit 7, *Summary of Edits*.

Two members of the public attended the public hearing held in this matter, and those comments will be discussed further below. Following the close of the public comment period on August 12, 2021, the CCE performed a review of the Record and prepared a Technical Response Memorandum ("TRM"), dated September 3, 2021. The contents of the TRM will be discussed in further detail below. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

As indicated above, comments were received by the Department at the time of the public hearing from Jeremy M. Firestone, Ph.D., and Steven Hegedus, Ph.D. It should be noted that, while both commenters are associated professionally with the University of Delaware, the comments provided for inclusion into the Record were offered as those of private citizens, and not on behalf of any organization. Following the date of the public hearing, the Record remained open for receipt of public comment (through August 12, 2021), however, no comments other than those offered by both Dr. Firestone and Dr. Hegedus at the time of the hearing were received in this matter.

At the hearing, Dr. Firestone offered criticism of existing language contained in the GEF Regulations, specifically, of the requirement "...to show that this 'project' is an improvement over existing products that provide a similar function." He also voiced concern regarding the cost share requirements of the GEF, specifically, that such requirements are problematic in the Social Sciences because "...we don't have industry partners. And.... don't generally want industry partners because we want our work to appear non-biased." In his comments, Dr. Hegedus advised that he believed the GEF is a "...wonderful opportunity to sponsor some exploratory and innovative research here within the State that meets the State's particular needs." He too, however, voiced concerns regarding the cost share requirements set forth in the regulations, specifically, the 65% cost share that university researchers at nonprofit organizations must contribute for a research project. Dr. Hegedus suggested that the Department insert additional regulatory language that would allow a smaller cost share requirement (such as 25%) for a nonprofit research organization located within the State of Delaware.

After the close of the Record, the Department's CCE prepared the TRM, at the request of Hearing Officer Lisa A. Vest. This TRM, dated September 3, 2021, not only provided responses to the comments received at the time of the hearing, but also recommended additional, non-substantive revisions be made to the proposed Amendments. The additional revisions were made by CCE during the post-hearing phase of this promulgation to offer further clarity to the regulatory language governing the GEF, and to provide a greater understanding to the regulatory community regarding this matter.

As a response to the comments received at the time of the hearing, the CCE's TRM indicates that the regulatory language found in subsection 7.4, *Acceptable Projects*, is mirrored after the statutory language found in 29 *Del.C.* §8057(d)(3)(a)(2), which states that the *Research and Development Program* will "...provide grants equal to no greater than 35% of the cost of project for the development of a product in Delaware directly related to Renewable Energy Technology...". Thus, the Department cannot alter the definition of "acceptable projects," as set forth in the GEF Regulations. The CCE's TRM further notes that the statutory language found in 29 *Del.C.* §8057 creates a mechanism for providing funding for Technology Demonstration and Research and Development work in Delaware, and the Department recognizes the value of supporting such work. The cost share requirements

outlined in Section 6.0 for the *Technology Demonstration Program* and Section 7.0 for the *Research and Development Program* are set by 29 Del. C. §8057(d)(2) and (d)(3), respectively. As such, the Department cannot change the cost share percentages set forth in this regulation and must follow the statute. The Department may, however, seek to use other funding mechanisms to support such work as appropriate.

In addition to providing formal responses to the comments received at the time of the hearing, the TRM also recommended additional revisions that the CCE determined to be necessary as a result of the Department's review of the Record during the post-hearing phase of this regulatory promulgation. The additional proposed revisions as set forth in the TRM are non-substantive in nature and are being recommended by the CCE to provide further clarity and understanding to the regulated community regarding the GEF Regulations.

Following her review of the TRM, Hearing Officer Vest prepared her Hearing Officer's Report, dated December 10, 2021 ("Report"), which expressly incorporated into the Record the Department's *revised* proposed Amendments and the CCE's TRM, dated September 3, 2021, attached to her Report as Appendices "A" and "B," respectively. The Report documents the proper completion of the required regulatory development process, establishes the Record, and recommends the adoption of the Department's *revised* proposed Amendments, as attached to the Report as Appendix "A."

### **Reasons and Conclusions**

The Department currently proposes the adoption of the *revised* proposed amendments to 7 DE Admin. Code 2103, *Regulations for the Green Energy Program*. As noted above, the GEF Regulations are outdated, and require revisions to (1) regulate the *Green Energy Endowment Program*, the *Technology Demonstration Program*, and the *Research and Development Program*; (2) correct existing regulatory language regarding grant funding matters; (3) enable the Department to establish a low- and moderate-income solar grant program, subject to the availability of funds; and (4) strike overly detailed and prescriptive regulatory language as presently contained therein. Furthermore, as noted above, the CCE has also recommended additional, non-substantive revisions, developed as a result of the Department's review of the Record during the post-hearing phase of this promulgation. I concur with the recommended, non-substantive revisions to the Amendments, as they provide further clarification of the regulatory language and a greater understanding of the GEF Regulations for the benefit of the regulated community.

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department has provided appropriate reasoning regarding the need for the *revised* proposed Amendments, and that the same is well-supported. I further find that the Department's experts fully developed the Record to support adoption of the revised proposed Amendments to the GEF Regulations, as the same will enable the Department, through the CCE, to manage the GEF more efficiently, and will provide the Department greater flexibility to efficiently operate grant programs.

Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that the revised proposed Amendments to 7 DE Admin. Code 2103, *Regulations for the Green Energy Program*, be promulgated as final.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the *revised* proposed amendments to 7 DE Admin. Code 2103, *Regulations for the Green Energy Program*, pursuant to 29 Del.C. §8057, which authorizes the Department to adopt rules governing the State of Delaware's *Green Energy Fund*;

2. The Department has jurisdiction under its statutory authority to issue an Order adopting the *revised* proposed Amendments as final;

3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same subsequent to the time of the public hearing (through August 12, 2021), in order to consider all public comment on the same before making any final decision;

4. Promulgation of the *revised* proposed Amendments, as set forth in the CCE's TRM expressly incorporated herein, will enable the Department, through the CCE, to manage the GEF more efficiently. The *revised* proposed Amendments will provide the Department greater flexibility to efficiently operate its grant programs, establish a low- and moderate-income solar grant program, subject to the availability of funds, update current regulatory language, and provide greater clarity and understanding to the regulated community;

5. The Department has reviewed the *revised* proposed Amendments in the light of the Regulatory Flexibility

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

6. The Department's proposed Amendments, as initially published in the July 1, 2021, *Delaware Register of Regulations*, and then subsequently *revised* as set forth in Appendix "A" of the Hearing Officer's Report, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the same should be approved as final Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;

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

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

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

Shawn M. Garvin  
Secretary

**2103 Regulations for the Green Energy Program Fund**  
*(Break in Continuity of Sections)*

**3.0 Definitions**

~~For purposes of this regulation, the following words and phrases shall have the meanings set forth below. The following words and terms used in this regulation, have the following meaning unless the context clearly indicates otherwise.~~

~~"**Connectiv Power Delivery [DP&L]" means** the trade name used by Delmarva Power and Light Company.~~

~~"**Department**" means the Department of Natural Resources and Environmental Control, the Delaware Energy Office Division of Climate, Coastal and Energy, [or] such other agents as the department or Secretary may designate.~~

*(Break in Continuity of Sections)*

**5.0 Green Energy Endowment Program**

*(Break in Continuity Within Section)*

**5.4 Evaluation of Renewable Energy Grant Reservation Request Grant Application**

~~5.4.1 Upon On receipt of the Grant Reservation Request part one of the grant application and supporting documents, the Department will perform an evaluation to check evaluate the proposal package application for its compliance with the requirements noted above set forth in subsection ~~[5.3.4~~ **5.3**]. If the proposal package is complete, the Department will process the Grant Reservation and issue a Confirmation and Claim Form to the applicant. All requirements as outlined in Section 5.3 must be provided to the Department prior to processing the grant reservation.~~

*(Break in Continuity Within Section)*

**5.5 Claim for and Distribution of Green Energy [Endowment] Program Renewable Energy Grants Grant Application Part Two**

*(Break in Continuity Within Section)*

**5.6 Green Energy Endowment Program Renewable Energy Project Participating Contractor Guidelines**

*(Break in Continuity Within Section)*

**5.6.5 Participating Contractor Removal or Suspension**

*(Break in Continuity Within Section)*

5.6.5.3 Contractors may apply to DNREC for reinstatement to be on the list. [Eligibility for reinstatement will be determined by the reason for initial removal from the participating contractor’s list and whether the contractor has taken necessary corrective action as determined by the Department.]

*(Break in Continuity Within Section)*

5.95.8 Green Energy Program Renewable Energy Technologies Endowment Program. Renewable energy project equipment must meet the following standards described in Section 5.9:

5.9.15.8.1 Photovoltaic Systems

*(Break in Continuity Within Section)*

5.9.1.35.8.1.3 Array Orientation and Tilt Tilt. Optimum array orientation is a 180° true bearing. However, the program accepts solar arrays oriented between South of due East and South of due West or between 80° and 260° magnetic. Systems installed between 260° and 80° magnetic or North of due East and North of due West are not eligible for a Green Energy Program Grant. All projects should have an orientation between 90° and 270°. The Department has the discretion to accept projects with an azimuth greater than 270° but no more than 280° and projects less [than] 90° but no less than 80°, if a solar shade analysis demonstrates an acceptable Total Solar Resource Fraction percentage according to subsection 5.8.1.4

Optimum array tilt is equal to the latitude at the installation site. However, the program accepts array tilt parameters as specified by the module manufacturer which may allow for tilts greater than and less than latitude.

5.9.1.45.8.1.4 Array Shading Shading. Photovoltaic arrays shall be installed such that the array has a minimum of six (6) hours of unobstructed sunshine daily inclusive of solar noon. A "solar window" of eight (8) hours of unobstructed sunshine is preferred. The installing participating contractor is responsible for [insuring ensuring] that the system is free from shading. The installing participating contractor shall perform a "Solar Shade Analysis" solar shade analysis to ensure the array meets the minimum daily sunshine requirements. Results of the solar shade analysis must determine that 70% of the annual solar path's area is shade free to be considered for a grant. the solar array has a total solar resource fraction of 70% or greater. The Department may request a solar shade analysis report for any project. Any arrays that do not meet the minimum total solar resource fraction threshold will be ineligible for Green Energy Endowment Program funding.

*(Break in Continuity of Sections)*

## 7.0 Research and Development Program

7.1 General Provisions

*(Break in Continuity Within Section)*

7.1.2 [Research and Development Program proposals will be accepted by the Department on a biannual basis subject to the availability of funds.] The total of all grants awarded in any one fiscal year shall not exceed ten percent (10%) of all revenue collected for the Green Energy Fund during the previous fiscal year or 10% of the fund balance whichever is greater. Grants made under the Research and Development Program, in the aggregate, shall not exceed 10% of all expenditures from the Green Energy Fund on an annual basis.

7.1.3 Subject to the future availability of funds, the Department will consider multi-year projects in the Research and Development Program. Proposals seeking grants for multi-year projects shall not exceed fifty percent (50%) 50% of the total annual funds available in the Research and Development Program.

7.1.4 7.1.3] The Delaware Research and Development Program grants are available to applicants located within the State of Delaware for projects conducted in the State of Delaware. Under no circumstances will the Department issue grants for land acquisition in association with any project proposed in the Research and Development Program.

7.2 Grant Limits

*(Break in Continuity Within Section)*

7.2.2 ~~[Subject to the future availability of funds, the~~ The] Department will consider multi-year projects in the Research and Development Program. Proposals seeking grants for multi-year projects shall not exceed ~~fifty percent (50%)~~ 50% of the total annual funds available in the Research and Development Program.

**8.0 Evaluation of Technology Demonstration and Research and Development Applications***(Break in Continuity Within Section)*

## 8.4 Grant Award

8.4.1 ~~[If upon]~~ If, on completion of the Comprehensive Evaluation, the review committee finds that the proposed project fits the criteria of the Technology Demonstration or Research and Development Programs, then a statement of reservation of funds and authorization to proceed will be issued by the Department.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the July 2021 issue of the *Register* at page 63 (25 DE Reg. 63). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**2103 Regulations for the Green Energy Program**

**DIVISION OF WATERSHED STEWARDSHIP**

Statutory Authority: 7 Delaware Code, Sections 6006 and 6010 (7 Del.C. §§6006 & 6010)  
7 DE Admin. Code 7402

Secretary's Order No.: 2021-WS-0031

**RE: Approving Final Regulation Amendments to 7 DE Admin. Code 7402, *Shellfish Sanitation Regulations*, Subsection 3.2.1: Shellfish Growing Area Water Quality and Classification**

**Date of Issuance: December 13, 2021**

**Effective Date of the Amendment: January 11, 2022**

**7402 Shellfish Sanitation Regulations**

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

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

This Order relates to the Department's proposed regulatory amendments to 7 DE Admin. Code 7402, *Shellfish Sanitation Regulations*, Subsection 3.2.1: Shellfish Growing Area Water Quality and Classification ("Amendments"). The Department's objective of this proposed regulatory action is to adopt a bacteriological standard for the classification of shellfish growing areas approved by the National Shellfish Sanitation Program and U.S. Food and Drug Administration for shellfish growing areas classifications.

Specifically, this action proposes to add the membrane-Thermotolerant *Escherichia coli* ("mTEC") method as an approved bacteriological standard for the classification of shellfish growing areas, while maintaining current approved methods found in the regulation. The Department has the statutory basis and legal authority to promulgate these proposed Amendments, pursuant to 7 Del.C. Ch. 19, *Shellfish*, and 7 Del.C. Ch. 60, *Environmental Control*.

The Department's *Shellfish Sanitation Regulations*, last updated in 2019, regulate the harvest, sale and transport of bi-valve molluscan shellfish within Delaware and in interstate commerce. In drafting this proposal, Department staff considered input from the Delaware Shellfish Advisory Council, the Delaware Aquaculture

Association, and Delaware Shellfish Dealers.

Currently, the Department's *Shellfish Sanitation Regulations* do not list the membrane filter mTEC as an approved bacteriological standard for the classification of shellfish growing areas. This method is an approved method under the National Shellfish Sanitation Program and is used by many states to classify the bacteriological water quality of shellfish harvesting areas because of its accuracy and significant cost savings for states due to the speed and simplicity of the test. This promulgation will add the mTEC method as an approved method that can be used to classify shellfish growing areas, as noted above, while maintaining the current approved methods found in the regulation.

It should be noted that the Department conducted a side-by-side analysis for over three (3) years, and the results have shown that no changes in shellfish classifications would be required at this time, should the mTEC method be adopted. Further, the proposed adoption of the mTEC method, as described above, has also been presented to the commercial shellfish industry throughout that three (3) year assessment period, to ensure this regulatory promulgation was fully vetted to the regulated community.

Currently, there are no anticipated impacts to the public associated with this regulatory promulgation, due to no significant shellfish growing area classification changes being required. Additionally, no anticipated costs are associated with the proposed Amendments, and there are minimal to no impacts anticipated to commercial or recreational bi-valve shellfish harvesters.

The proposed adoption of the mTEC method will allow the State of Delaware to increase the speed with which laboratory results are available, increase the ability of the Department to monitor additional geographic areas, as needed, to ensure shellfish safety as the industry continues to grow, and continue to protect the State of Delaware's shellfish resources and public health of shellfish consumers.

The Department published the proposed Amendments in the September 1, 2021, *Delaware Register of Regulations*. Thereafter, the virtual public hearing regarding this matter was held on October 5, 2021. No members of the public attended the public hearing, nor were any comments received by the Department in this matter. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Following the close of the public comment period on October 20, 2021, Hearing Officer Vest prepared her Hearing Officer's Report, dated December 6, 2021 ("Report"). The Report documents the proper completion of the required regulatory development process, establishes the Record, and recommends the adoption of the Department's proposed Amendments, as attached to the Report as Appendix "A."

### **Reasons and Conclusions**

As set forth above, the Department proposes to adopt the mTEC method as an approved bacteriological standard for the classification of shellfish growing areas approved by the National Shellfish Sanitation Program and U.S. Food and Drug Administration for shellfish growing areas classifications, while maintaining current approved methods found in the regulation.

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed Amendments to 7 DE Admin. Code 7402, *Shellfish Sanitation Regulations*, Subsection 3.2.1: Shellfish Growing Area Water Quality and Classification. I further find that the proposed Amendments will enable the Department to add the mTEC method as an approved method to be used to classify shellfish growing areas while maintaining the current approved methodology.

Moreover, I find that the adoption of the proposed Amendments will enable the State of Delaware to increase the speed with which laboratory results are available, increase the ability of the Department to monitor additional geographic areas, as needed, to ensure shellfish safety as the industry continues to grow, and continue to protect the State of Delaware's shellfish resources and public health of shellfish consumers.

Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments to 7 DE Admin. Code 7402, *Shellfish Sanitation Regulations*, Subsection 3.2.1: Shellfish Growing Area Water Quality and Classification be promulgated as final.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 DE Admin. Code 7402, *Shellfish Sanitation Regulations*, specifically, Subsection 3.2.1: Shellfish

Growing Area Water Quality and Classification, pursuant to 7 *Del.C.* Ch.19 and 7 *Del.C.* Ch. 60, which authorize the Department to adopt rules to protect the State of Delaware's shellfish resources and public health of shellfish consumers;

2. The Department has jurisdiction under its statutory authority to issue an Order adopting the proposed Amendments as final;

3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations. The Department also provided the public with an adequate opportunity to comment on the proposed Amendments subsequent to the time of the public hearing (through October 20, 2021), in order to consider all public comment on the same before making any final decision, however, no comment was received by the Department concerning this promulgation;

4. Promulgation of the proposed Amendments, as set forth herein, will enable the State of Delaware to increase the speed with which laboratory results are available, increase the ability of the Department to monitor additional geographic areas, as needed, to ensure shellfish safety as the industry continues to grow, and continue to protect the State of Delaware's shellfish resources and public health of shellfish consumers;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. The Department's proposed Amendments, as published in the September 1, 2021, *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the proposed Amendments should be approved as final Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;

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

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

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

Shawn M. Garvin  
Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the September 2021 issue of the *Register* at page 268 (25 DE Reg. 268). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[7402 Shellfish Sanitation Regulations](#)**

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**OFFICE OF THE STATE TREASURER  
CASH MANAGEMENT POLICY BOARD**

Statutory Authority: 29 Delaware Code, Section 2716 (29 **Del.C.** §2716)  
1 **DE Admin. Code** 1201

**REGULATORY IMPLEMENTING ORDER**

**[1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds](#)**

The Cash Management Policy Board (the "Board") hereby adopts and issues this ORDER repealing the prior guidelines and promulgating revised guidelines for the deposit and investments of State funds (the "Guidelines").



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## I. BACKGROUND

The Board is authorized by statute to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any State Pension Fund or the State Deferred Compensation Program, and (b) to determine the terms, conditions, and other matters relating to those investments, including the designation of permissible investments. See 29 **Del.C.** §2716(a). The Board previously promulgated Guidelines that, among other things, govern the deposit of State funds in demand deposit accounts and the purchase and sale of securities by the State's investment managers. See 1 **DE Admin. Code** §1201.

The Board, upon the recommendations of its investment subcommittee, has proposed changes to the Guidelines. The proposed Guideline amendments will increase to 25% the allowable investment limits for private placement securities held in liquidity accounts. The Board, after a public meeting on August 25, 2021, and by unanimous vote, approved revised Guidelines for proposal under Delaware's Administrative Procedures Act, 29 **Del.C.** Ch. 101 (the "APA").

In accordance with the APA, the Board caused notice and a copy of the revised Guidelines to be published in the *Delaware Register of Regulations*, Vol. 25, Issue 4, from October 1, 2021 through October 31, 2021. No comments were received relating to the proposed changes. The revised Guidelines are approved as proposed.

## II. FINDINGS OF FACT

The Board, for the reasons discussed in detail at, and reflected in the minutes of, the Board meeting convened on August 25, 2021, finds that the revised Guidelines are necessary and appropriate to ensure the safe deposit and prudent investment of State funds.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Board concludes that it is appropriate to repeal the Guidelines presently published at 1 **DE Admin. Code** §1201 and replace them with the revised Guidelines attached hereto as Exhibit A.

## IV. TEXT AND CITATION

The text of 1 **DE Admin. Code** §1201, as amended hereby, shall be in the form attached hereto as Exhibit A and shall be cited as 1 **DE Admin. Code** §1201, Objectives and Guidelines for the Investment of State of Delaware Funds.

## V. EFFECTIVE DATE

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

**IT IS SO ORDERED** the 1st day of December, 2021.

John V. Flynn, Chair  
Cash Management Policy Board

David Marvin, Chair  
Investment Subcommittee

Warren C. Engle, Chair  
Banking Subcommittee

Colleen C. Davis, Member  
State Treasurer

Jeffrey Bullock, Member  
Secretary, Department of State

Manubhai C. Karia, Co-Chair  
Investment Subcommittee

Tarrie Miller, Co-Chair  
Banking Subcommittee

Richard J. Geisenberger, Member  
Secretary, Department of Finance

Ruth Ann Jones, Member  
Controller General

\*Please note that no changes were made to the regulation as originally proposed and published in the October 2021 issue of the *Register* at page 399 (25 DE Reg. 399). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

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

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF WATERSHED STEWARDSHIP

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

#### GENERAL NOTICE

#### Regulatory Guidance Documents for Regulation 5101 Sediment and Stormwater Regulations

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

The regulatory guidance documents include:

- DNREC Approved Stormwater Management Structures
- DNREC Approved Software for Hydrologic & Hydraulic Modeling
- Approved Bio-soil-14 Suppliers

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

These documents may be reviewed under the Engineering tab at the following link: <https://dnrec.alpha.delaware.gov/watershed-stewardship/sediment-stormwater/resources/>

Questions regarding the revised regulatory guidance documents may be directed to Elaine Webb, [elaine.webb@delaware.gov](mailto:elaine.webb@delaware.gov).

PREPARED BY:

Elaine Z. Webb

(302) 739-9921

[elaine.webb@delaware.gov](mailto:elaine.webb@delaware.gov)

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

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

Meeting information can be accessed via the public meeting calendar.

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

The next meeting is scheduled for January 20, 2022.

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

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

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

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

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**DEPARTMENT OF INSURANCE**  
**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE****1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance**

The proposed new regulation appears below and may also be viewed on the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department will not be holding a public hearing on the proposed new regulation.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EDT, the 31<sup>st</sup> day of January 2022 and should be directed to:

Regulatory Specialist  
Delaware Department of Insurance  
1351 West North Street, Suite 101  
Dover, DE 19904  
(302) 674-7349  
Email: [DOI\\_Legal@delaware.gov](mailto:DOI_Legal@delaware.gov)

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DELAWARE COUNCIL ON POLICE TRAINING**  
**PUBLIC NOTICE****801 Regulations of the Delaware Council on Police Training**

The Council on Police Training (COPT), pursuant to 11 **Del.C.** §8404 (a)(14) and (c), proposes to amend its regulations to add Mandatory Standards for Use of Body Worn Cameras. The proposed amendments, which were voted on during a public meeting of the COPT, on November 17, 2021, seek to add these mandatory standards to COPT's existing Regulation 801. The amendment will set mandatory standards on police body worn camera use, activation, electronic storage and dissemination as required by 11 **Del.C.** §8404(c).

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the COPT Attn: Susan McNatt, P.O. Box 430, Dover, DE 19903 or e-mail [susan.a.mcnatt@delaware.gov](mailto:susan.a.mcnatt@delaware.gov). Any written submission in response to this notice and the relevant proposed regulations must be received by the COPT no later than 4:30 p.m. (EST) on January 31, 2022. A copy of this

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regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1400 BOARD OF ELECTRICAL EXAMINERS**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §1406(a)(1), the Delaware Board of Electrical Examiners has proposed revisions to its rules and regulations. The rules are designed to address how engineers register with the Board and supervise journeypersons.

A public hearing will be held on February 2, 2022 at 8:30 a.m. (on the second floor in conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904) 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 Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until February 17, 2022 in accordance with 29 **Del.C.** §10118(a).

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