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# Delaware Register of Regulations

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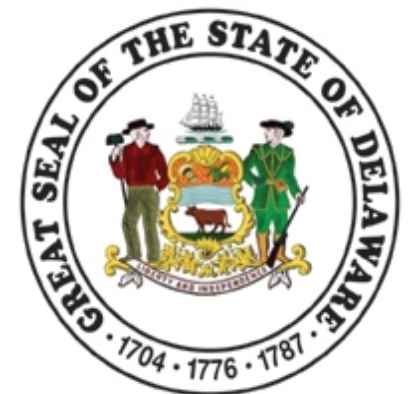
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## IN THIS ISSUE:

Regulations:  
Emergency  
Proposed  
Final

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 June 15, 2015.

Cover Photo by  
Dolores Michels

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
August 1	July 15	4:30 p.m.
September 1	August 17	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 16	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

**Lori Christiansen**, Director; **Mark J. Cutrona**, Deputy Director; **Tara Donofrio**, Administrative Specialist II; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Human Resources/Financials; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Printer; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Wagner**, Research Analyst; **Verity Watson**, Joint Sunset Analyst; **Rochelle Yerkes**, Office Manager; **Sara Zimmerman**, Legislative Librarian.

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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 SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES****DIVISION OF FAMILY SERVICES****Office of Child Care Licensing**

Statutory Authority: 29 Delaware Code, Chapter 3, Subchapter III (29 **Del.C.** Ch. 3, Subch. III)  
**9 DE Admin. Code 101**

**NOTICE OF EMERGENCY PROMULGATION****101 Rules for Early Care and Education and School-Age Centers**

The Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates this emergency regulation for Homes and Centers pursuant to the authority in Delaware Code, Title 31, Welfare, Part I, In General, Chapter 3, Child Welfare, Subchapter III, The Delaware Child Care Act, Subsections 341-345 and Title 29, State Government, Part VIII, Departments of Government, Chapter 90, Department of Services for Children, Youth And Their Families, Subsection 9003 (7).

The Department of Services for Children, Youth and their Families (DSCYF) promulgates this emergency regulation pursuant to 29 **Del.C.** §10119. This emergency regulation is necessary to protect children in camps during the summer 2015 season. By Executive Order, Governor Markell established the Delaware Background Checks Task Force in January 2014 (Task Force). The Task Force underwent a comprehensive review of Delaware's background check laws for those who work with children and youth and completed a report consisting of recommendations for improving the current system on December 31, 2014. The recommendations included expanding the requirement for background checks to youth camp employees and volunteers. The Department is working with the legislature to make comprehensive changes in the Delaware Code to improve the background checks system as were identified by the Background Checks Task Force. These changes include expanding background check requirements for youth camp employees and volunteers. If or until those changes become part of the Delaware Code, children who attend these camps may be at risk because employees and volunteers at youth summer camps are not currently required to have background checks. DSCYF in partnership with the

Delaware Justice Information System (DELJIS) has created a process for the 2015 summer camp season to check a potential camp employee's background for crimes and placement on the Child Placement Registry which would make them ineligible to work with children. This process will be of no cost to employers and potential employees and will be as efficient as possible for all involved.

Presently there exists no law, rule or regulation that those who have access to children in youth camps must have background checks or submit to a check of the Child Protection Registry. Individuals with certain criminal convictions and/or placement on the Child Abuse Registry have been determined to be prohibited from working with children in other contexts (education and licensed child care, for example). There is no such prohibition for those who work with children in youth camps, though the contact with children is substantially similar between camp employees and school employees or child care employees.

Therefore, for all of the foregoing reasons and in order to help protect Delaware's children in youth camps this summer, DSCYF promulgates the following emergency regulation. DSCYF will receive, consider and respond to petitions by any interested person for the reconsideration or revision of this amendment.

#### **EFFECTIVE DATE OF THE ORDER**

This Emergency Order shall take effect at 8:00 a.m. June 5, 2015 and shall remain in effect for 120 days.

#### **ORDER**

It is hereby ordered this 5<sup>th</sup> day of June, 2015 that the above referenced amendment to 9 **DE Admin. Code** 101 is adopted pursuant to 29 **Delaware Code**, Section 4819.

Jennifer B. Ranji, Secretary  
Department of Services for Children, Youth and Their Families  
6/3/15

Victoria Kelly, Director  
Division of Family Services  
6/3/15

#### **101 Rules for Early Care and Education and School-Age Centers** *(Break in Continuity of Sections)*

### **3.0 Definition of Regulated Service**

- 3.1 Early Care and Education and School-Age Centers provide care, education, protection, supervision or guidance for thirteen (13) or more children, including children who are related to the operator. Service is provided on a regular basis for periods of less than twenty-four (24) hours per day, unattended by parent or guardian, and for compensation. This definition shall include but is not limited to full and part time - day care, child care, early care, early care and education, early childhood education, preschool, nursery school, extended care, extended day care, extended child care, independently operated kindergartens, before and/or after school care, school-age center, school-age care, out of school care, school's out care, school vacation/holiday care and summer child care.
- 3.2 Early care and education and school-age Centers located at public or private schools that are operated by an agency or individual other than the public or private school entity shall be required to be licensed under these rules.
- 3.3 The following facilities that operate for less than twenty-four (24) hours per day shall be exempt from licensure under these rules:
  - 3.3.1 ~~Camps permitted or exempted by the Division of Public Health;~~ Youth Camps, defined as camps which:
    - 3.3.1.1 Have in their custody or control one or more school-age children;
    - 3.3.1.2 Said children are unattended by parent or guardian;

## EMERGENCY REGULATIONS

- 3.3.1.3 Provide a program of recreational, athletic, educational and/or religious instruction or guidance;
  - 3.3.1.4 Operate for up to 12 weeks for three or more hours per day, during the months of May through September or some portion thereof, or during holiday breaks in the course of a school year; and
  - 3.3.1.5 Operate in a space or at a location other than a space or location subject to licensing pursuant to §344 of Title 31.
  - 3.3.1.6 Youth camps do not include public and private schools or individuals that a parent contracts with on an individual basis for the purpose of providing training or educational opportunities if the parent contracts directly with the actual provider and not a group, agency, firm, company or corporation employing that individual provider.
- 3.3.2 Summer schools or classes specifically for religious instruction conducted by religious institutions during summer months;
- 3.3.3 Programs established in connection with a religious institution, a business, or recreation center, in which children are provided care for brief periods of time, while parents/guardians are on the premises, are readily accessible at all times on an on-call basis and are able to resume control of the child immediately;
- 3.3.4 Programs that offer activities for children over the age of six (6) who attend at their own discretion on an "open door" basis, where there is no compensation, and where there is no agreement, written or implied, between the program and the parent(s)/guardian(s) for the program to assume responsibility for the care of the child;
- 3.3.5 Programs that offer care on an ad hoc, sporadic and isolated basis in order to meet an emergency or special need; or,
- 3.3.6 Any public or private school that provides regular and thorough instruction through at least the sixth (6<sup>th</sup>) grade in the subjects prescribed for the schools of the State, in a manner suitable to children of the same age and stage of advancement, and that reports to the State Board of Education pursuant to Delaware Code, Title 14, Chapter 27, Subchapter I, Subsection 2704. This exclusion shall include all programs operated by such schools and shall also include preschool education programs for handicapped persons as defined by Delaware Code, Title 14, Chapter 31, Subchapter I, Subsection 3101 (4).
- 3.4 Youth Camps
- 3.4.1 All employees, owners, operators or volunteers of Youth Camps having regular direct access to children in camp must be checked by the Delaware Criminal Justice Information System (DELJIS) for criminal convictions which would make them ineligible to have regular direct access to children.
  - 3.4.2 No employee, owner, operator or volunteer may work or volunteer in a youth summer camp if convicted of:
    - 3.4.2.1 A felony involving physical or sexual assault crimes against a child, vulnerable adult or elderly victim;
    - 3.4.2.2 A felony involving a physical or sexual assault crime against another adult within the past 10 years;
    - 3.4.2.3 Any other felony within the past 7 years;
    - 3.4.2.4 A misdemeanor against a child, in which case the individual shall be prohibited for the time period aligned with those prohibitions already delineated in the Child Protection Registry.
  - 3.4.3 All employees, owners, operators or volunteers of said camps having regular direct access to children in camp must be checked against the Department of Services for Children, Youth and Their Families Child Protection Registry.
  - 3.4.4 No employee, owner, operator or volunteer may work or volunteer in such capacity if the person is currently on the Child Protection Registry at Child Protection Level III or IV as provided in subchapter II of Chapter 9 of Title 16 of the Delaware Code.



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- 3.4.5 A person who is employed by or is a volunteer in such a camp, is required to inform and shall inform that person's own employer of any criminal conviction or of any entry on the Child Protection Registry.
- 3.4.6 Forms consenting to the background checks must be submitted prior to beginning employment. The consent forms and information on how to submit them may be obtained from the Office of Child Care Licensing. Employees, owners, operators or volunteers may be conditionally employed until the background checks are completed.
- 3.4.7 Employees, owners, operators or volunteers who were hired prior to the effective date of this regulation have ten (10) days from the effective date of this regulation to submit the consent forms for background checks.
- 3.45 The rules are divided into three (3) parts:  
Part I - General Provisions;  
Part II - Night Care; and  
Part III - School-Age Center
- 3.56 To be licensed as an Early Care and Education and School-Age Center, the General Provisions of Part I shall be met. In addition, Centers shall also meet the following rules before providing Night Care or operating a School-Age Center:
- 3.56.1 To provide Night Care, an Early Care and Education Center shall also meet Part II rules;
- 3.56.2 To operate a School-Age Center, a Center shall also meet Part III rules.

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

**101 Rules for Early Care and Education and School-Age Centers**

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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 AGRICULTURE HARNESS RACING COMMISSION

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

### PUBLIC NOTICE

#### 501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the Uniform Classification Guidelines of Foreign Substances to include cobalt, reference 8.3.1.5, 8.3.2.5.1 and 8.3.2.5.2.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on June 2, 2015, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On June 9, 2015, at its regular monthly meeting, the DHRC unanimously approved these amendments. The DHRC rules committee meetings and regular monthly meetings are noticed public meetings. Subsequent to a 30-day comment period from July 1 to 31, 2015 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on August 11, 2015 during its regularly scheduled monthly meeting. The DHRC August 2015 monthly meeting is public and is noticed on the state meeting notice website. Those meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB August 10, 2015. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

#### 501 Harness Racing Rules and Regulations (Break in Continuity of Sections)

#### 8.0 Veterinary Practices, Equine Health Medication

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

- 8.3 Medications and Foreign Substances. Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all

narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the Presiding Judge or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the DHRC Uniform Classification Guidelines found in subsection 8.3.1 of this section, and may consider the most recent recommendations by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International. In addition, the Presiding Judge or other designee of the Commission shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The Presiding Judge may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

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

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

- 8.3.1.5 Class 5. Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents which have very localized action only, such as anti-ulcer drugs, and certain antiallergic drugs, and the anticoagulant drugs are also included. Cobalt is also included, along with its own accompanying penalty recommendations.
- 8.3.2 Penalty Recommendations. The following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:
- 8.3.2.1 Class 1 - in the absence of extraordinary circumstances, a minimum license revocation of eighteen months and a minimum fine of \$5,000, and a maximum fine up to the amount of the purse money for the race in which the infraction occurred, forfeiture of the purse money, and assessment for cost of the drug testing.
- 8.3.2.2 Class 2 - in the absence of extraordinary circumstances, a minimum license revocation of nine months and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.
- 8.3.2.3 Class 3 - in the absence of extraordinary circumstances, a minimum license revocation of ninety days, and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.
- 8.3.2.4 Class 4 - in the absence of extraordinary circumstances, a minimum license revocation of thirty days, and a minimum fine of \$2,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for the cost of the drug testing.
- 8.3.2.5 Class 5 - Zero to 15 days suspension with a possible loss of purse and/or fine and assessment for the cost of the drug testing.
- 8.3.2.5.1 Cobalt detected at or above 25 ng/kg (ppb), but below 50 ppb in blood or serum will result in placement of the effected horse on the "Vet's List" until blood or serum test results are below 25 ppb. Testing will be administered at no less than seven (7) day intervals. The cost of subsequent testing after initial finding will be conducted at owner's expense.

# PROPOSED REGULATIONS

8.3.2.5.2 Cobalt detected at or above 50 ng/kg (ppb) in blood or serum will result in a minimum: \$500 fine and 15-day suspension for the trainer; the owner would lose any purse money gained; and, the horse would be placed on the "Vet's List" in accordance with the protocol detailed in 8.3.2.5.1 above.

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

**501 Harness Racing Rules and Regulations**

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## DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b)  
14 DE Admin. Code 1560

### PUBLIC NOTICE

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

### 1560 Art Teacher

#### A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1560 Art Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). There have been no changes in the certification requirements, however a non-regulatory note is being added to make candidates aware that a Praxis exam is needed before obtaining certification. This regulation sets forth the requirements for an Art Teacher. It is necessary to reauthorize this regulation due to the regulation being out of its five year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, July 31, 2015 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. Impact Criteria

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject, or to instruct a particular category of students.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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 will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 Del.C. requires that we promulgate this regulation.

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

## 1560 Art Teacher

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

### 1.0 Content

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

### 2.0 Definitions

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

### 3.0 Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as an Art Teacher to an educator who has met the following:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and
  - 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.

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# PROPOSED REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1563

### PUBLIC NOTICE

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

#### 1563 Music Teacher

#### A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1563 Music Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). There have been no changes in the certification requirements, however a non-regulatory note is being added to make candidates aware that a Praxis exam is needed before obtaining certification. This regulation sets forth the requirements for a Music Teacher. It is necessary to reauthorize this regulation due to the regulation being out of its five year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, July 31, 2015 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. Impact Criteria

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject, or to instruct a particular category of students.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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 will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 Del.C. requires that we promulgate this regulation.

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

## 1563 Music Teacher

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

### 1.0 Content

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

### 2.0 Definitions

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

### 3.0 Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Music Teacher to an educator who has met the following:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and
  - 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision there.

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b)  
14 DE Admin. Code 1564

### PUBLIC NOTICE

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

## 1564 Physical Education Teacher

### A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education,

seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1564 Physical Education Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). There have been no changes in the certification requirements, however a non-regulatory note is being added to make candidates aware that a Praxis exam is needed before obtaining certification. This regulation sets forth the requirements for a Physical Education Teacher. It is necessary to reauthorize this regulation due to the regulation being out of its five year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, July 31, 2015 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

### **C. Impact Criteria**

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject, or to instruct a particular category of students.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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 will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 Del.C. requires that we promulgate this regulation.

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

### **1564 Physical Education Teacher**

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



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## 1.0 Content

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

## 2.0 Definitions

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

## 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Physical Education Teacher to an educator who has met the following:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and
  - 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.

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### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b)  
14 **DE Admin. Code** 1571

### PUBLIC NOTICE

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

#### 1571 Exceptional Children Special Education Teacher

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1571 Exceptional Children Special Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to update and clarify some of the definitions, requirements, and to align title as this certification is required for an educator within the Delaware public school system whose primary assignment is teaching children with disabilities. This regulation sets forth the requirements for an Exceptional Children Special Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, July 31, 2015 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. Impact Criteria

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

students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject, or to instruct a particular category of students.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

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

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 will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 Del.C. requires that we promulgate this regulation.

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

## 1571 ~~Exceptional Children~~ Special Education Teacher of Students with Disabilities

### 1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for ~~Exceptional Children~~ Special Education Teacher of Students with Disabilities (Category).

1.1.1 This certification is required for an educator within the Delaware public school system whose primary assignment is teaching children with disabilities in grades K to 12.

1.1.1.1 Notwithstanding the above, the The Early Childhood Exceptional Children Special Education Teacher certification may be used for K to grade 2 in lieu of this Special Education Teacher of Students with Disabilities certification.

1.1.1.2 Teachers of Students Who Are Deaf or Hard of Hearing Certification; and Teacher of Students with Visual Impairments Certification; and Teacher of Students with Autism or Students with severe Intellectual Disabilities Certification shall be used for grades K to 12 when the teacher's primary assignment is serving the special population designated within those category certifications.

1.1.2 This certification is a category certificate and does not certify an educator to practice in a particular area or teach a particular subject. A category certification only establishes that an educator has met the prescribed knowledge, skill, or education to instruct the particular category of students specified. This certification is limited to the specific category of teaching students with disabilities.

1.1.3 Subject or area certification also required.

1.1.3.1 A category certificate may not be issued alone and an educator shall hold at least one subject or area certification.

- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

## 2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:
- "Students with Disabilities" means the same as "Child with a Disability" as provided in 14 Del.C. §3101(2).

## 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an ~~Exceptional Children~~ Special Education Teacher of Students with Disabilities to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; ~~and,~~
- 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto;
- 3.1.3 Holds a Standard Certificate in a subject or area; and
- 3.1.4 Has satisfied the additional requirements in this regulation.

## 4.0 Additional Requirements

- 4.1 An educator shall also have satisfied one of the following additional education requirements:
- 4.1.1 Holding a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent, in special education or students with disabilities, from a National Council for the Accreditation of Teacher Education (NCATE) or the Council for the Accreditation of Educator Preparation (CAEP) specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate standards; or
- 4.1.2 Completion of a minimum of fifteen (15) credits or their equivalent in professional development as approved by the Department, with a focus in special education or students with disabilities in the following content areas:
- 4.1.2.1 Diagnosis and Instruction for Reading / Literacy (3 credits);
- 4.1.2.2 Education Evaluation and IEP Development (3 credits);
- 4.1.2.3 Curriculum and Instruction in Special Education (3 credits);
- 4.1.2.4 Applied Behavior Analysis (3 credits); and
- 4.1.2.5 One of the following areas:
- 4.1.2.5.1 Legislation, Policy & Procedures/ Special Issues in Special Education (3 credits);
- 4.1.2.5.2 Transitions from Secondary Special Education or Secondary Transition Planning (3 credits);
- 4.1.2.5.3 Collaborative Teaming in Special Education (3 credits); or
- 4.1.2.5.4 Assistive Technology (3 credits).

## 5.0 Past Certification Recognized

The Department shall recognize a Standard Certificate Exceptional Children Special Education Teacher or other valid equivalent Special Education Certification including Exceptional Children Special Education - Elementary and Exceptional Children Special Education - Secondary issued

before July 1, 2016. A teacher holding such a Standard Certificate issued by the Department before July 1, 2016 shall be considered certified to instruct all subjects and areas to students with disabilities

**6.0 Effective Date**

Section 4.0 of this regulation shall be effective on July 1, 2016.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**PUBLIC NOTICE****Telemedicine Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) intends to submit a state plan amendment regarding telemedicine services, specifically, to recognize the Medicaid beneficiary's place of residence as an originating site.

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

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

**SUMMARY OF PROPOSAL**

The proposed provides notice to the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding telemedicine services, specifically, to recognize the Medicaid beneficiary's place of residence as an originating site.

**Statutory Authority**

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

**Background**

For the purposes of Medicaid, telemedicine seeks to improve a patient's health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site. This electronic communication means the use of interactive telecommunications equipment that includes, at a minimum, audio and visual equipment. This definition is modeled on Medicare's definition of telehealth services (42 CFR §410.78).

According to the Centers for Medicare and Medicaid Services (CMS), the Medicaid program and the federal Medicaid statute (Title XIX of the Social Security Act) do not recognize telemedicine as a distinct service. CMS does note, however, that "telemedicine is viewed as a cost-effective alternative to the more traditional face-to-face way of providing medical care" (e.g., face-to-face consultations or examinations between provider and patient) that states can choose to cover under Medicaid and that there is "flexibility inherent in federal law to create innovative payment methodologies for services that incorporate telemedicine technology."

## *Coverage of Telemedicine in the Delaware Medical Assistance Program*

Telemedicine is the real-time or near real-time two-way transfer of medical data and information using an interactive audio/video connection for the purposes of medical diagnosis and treatment. The Medicaid member is located with a provider at the originating site, while the "remote" provider renders services via the audio/video connection at the distant site. The Delaware Medical Assistance Program (DMAP) has covered telemedicine on a statewide basis since July 2012. Consistent with guidance from the Centers for Medicare and Medicaid Services (CMS), DMAP considers telemedicine as a cost-effective alternative for delivering covered services to the Medicaid-eligible populations.

The following are DMAP objectives for reimbursing providers for services delivered via telemedicine:

- Improved access to health care services;
- Improved member compliance with treatment plans;
- Medical services rendered at an earlier stage of disease, thereby improving long-term patient outcomes; and,
- Reduced DMAP costs for covered services such as hospitalization and transportation.

## *Originating Site and Distant Site*

CMS defines the originating site as the location of the Medicaid patient at the time the service being furnished via a telecommunications system occurs; and, the distant site as the site at which the physician or other licensed practitioner delivering the service is located at the time the service is provided via telecommunications system.

## **Summary of Proposal**

Traditional approaches to telemedicine coverage require that the patient be served from a specific type of healthcare facility, such as a hospital or physician's office. Not included are sites where people spend much of their time, such as homes. With advances in decentralized computing power, such as cloud processing, and mobile telecommunications, such as 4G wireless, the current approach is to cover health services to patients wherever they are.

For conditions of coverage and payment, the Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 3.1-A of the Medicaid State Plan to recognize the Medicaid beneficiary's place of residence as an originating site. Upon CMS approval, the proposed state plan amendment (SPA) is effective for dates of service on or after July 1, 2015.

## *Public Notice*

In accordance with the public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the proposed state plan amendment. Comments must be received by 4:30 p.m. on July 31, 2015.

## *CMS Review and Approval*

The provisions of this state plan amendment relating to eligible originating sites for telemedicine services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

## *Federal Financial Participation*

Federal financial participation (FFP) means the federal government's share of expenditures made by a state agency in implementing a medical assistance program. CMS will not provide FFP for any State plan amendment until it is approved.

## *Provider Manuals Update*

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

## Fiscal Impact Statement

Current policy allows for the use of telemedicine. The Delaware Medical Assistance Program could potentially achieve savings by reducing transportation expenses, increasing treatment compliance and monitoring for patients with chronic conditions, and other delivery improvements.

## DMMA PROPOSED REGULATION #15-13

### REVISION:

ATTACHMENT 3.1-A  
Introductory Page 1

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

### TELEMEDICINE

The Delaware Medical Assistance Program (DMAP) covers medically necessary health services furnished to eligible DMAP members as specified in the Medicaid State Plan. To facilitate the ability of recipients to receive medically necessary services, DMAP allows for the use of a telemedicine delivery system for providers enrolled under Delaware Medicaid.

Telemedicine services under DMAP are subject to the specifications, conditions, and limitations set by the State. Telemedicine is the practice of health care delivery by a practitioner who is located at a site, known as the distant site, other than the site where the patient is located, known as the originating site, for the purposes of consultation, evaluation, diagnosis, or recommendation of treatment. An approved originating site may include the DMAP member's place of residence.

Providers rendering telemedicine must be able to use interactive telecommunications equipment that includes, at a minimum, audio and video equipment permitting two-way, real time, interactive communication between the recipient and the practitioner to provide and support care when distance separates participants who are in different geographical locations.

The provision of services through telemedicine must include accommodations, including interpreter and audio-visual modification, where required under the Americans with Disabilities Act (ADA), to ensure effective communication.

Telephone conversations, chart reviews, electronic mail messages, facsimile transmissions or internet services for online medical evaluations are not considered telemedicine.

All equipment required to provide telemedicine services is the responsibility of the providers.

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### DIVISION OF PUBLIC HEALTH

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

### PUBLIC NOTICE

### 4462 Public Drinking Water Systems

On July 1, 2015, the Department of Health and Social Services, Division of Public Health, Office of Drinking Water, plans to publish revised Regulations Governing Public Drinking Water Systems and hold them out for public comment per Delaware law.

The purpose of the regulations is to update the regulations to align them with federal requirements and clarify the current regulations. The regulations are being revised to include:

- Revised Total Coliform Rule (RTCR) as section 7.4. This rule was finalized by EPA on April 1, 2012.
- Reorganization of the regulations by breaking up the large sections into smaller sections, allowing for easier reviews and checking of regulatory requirements. The Regulations are going from 10 sections to 20 sections.

- Section 4.1.6 on page 16 is being expanded to provide specific examples of unusual events so water system owners/operators have a more clear idea of when they need to contact DPH.
- Incorporate revisions identified by EPA when they reviewed the previous regulations.
- Sections that are no longer relevant or that have been superseded by more recent regulations have been deleted.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Tuesday, August 11, 2015 to:

Jamie Mack, Executive Assistant  
Office of the Director  
Delaware Division of Public Health  
Jesse Cooper Building  
417 Federal St.  
Dover, DE 19901  
Email: [jamie.mack@state.de.us](mailto:jamie.mack@state.de.us)  
Fax: 302-739-3984

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

**4462 Public Drinking Water Systems**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)  
7 **DE Admin. Code** 1138

#### REGISTER NOTICE SAN # 2015-01

#### **1138 Emission Standards for Hazardous Air Pollutants for Source Categories**

##### 1. TITLE OF THE REGULATIONS:

Amendment to 7 **DE Admin Code** 1138 Emission Standards for Hazardous Air Pollutants for Source Categories

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

The Clean Air Act Amendments of 1990 stipulated a 2-phase rulemaking process that the EPA must use to protect the public health from exposure to hazardous air pollutants (HAPs). Consistent with this 2-phase process, the EPA adopted the maximum achievable control technology (MACT) standard (phase 1) applicable chromium electroplating and chromium anodizing facilities on January 25, 1995 as Subpart N in 40 CFR Part 63 and later amended those requirements (phase 2) by promulgating the more health-protective residual risk requirements on September 19, 2012.

Delaware adopted the federal MACT standard, i.e. the Subpart N requirements, as Section 6 of 7 **DE Admin. Code** 1138 on November 1, 2001 and later, amended Section 6 on September 1, 2013 to incorporate the more health-protective residual risk requirements.

On February 27, 2014, the EPA finalized, under a single rulemaking, over 80 additions to and revisions of the test methods and the testing provisions in various standards in order to improve the quality of test data and to provide testers the additional flexibility of using these newly approved alternative procedures. Subpart N was one of the changed standards.

Prior to that February 27 rulemaking, subsection §63.344(c) of Subpart N provided the owners or operators of

affected chromium electroplating and chromium anodizing facilities up to 4 test methods to demonstrate compliance with the standard. In the February 27 final rule, the EPA provided the owners or operators subject to Subpart N with an optional 5<sup>th</sup> test method to select from by adding the South Coast Air Quality Management District "Test Method 205.1". The Department is proposing to amend Section 6 by adding the same optional, alternative test method, in order (1) to maintain the consistency of Delaware's air regulatory requirements under Section 6 with the national requirements under Subpart N and (2) to give owners or operators of Delaware's affected facilities and their testers the additional flexibility to use the EPA's newly approved testing alternative.

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

None

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

7 **Delaware Code**, Chapter 60

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

None

**6. NOTICE OF PUBLIC COMMENT:**

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Tuesday, August 4, 2015 starting at 6:00 PM in the DNREC Richardson & Robbins Auditorium, 89 Kings Highway, Dover, DE. If you are unable to attend or wish to submit your comments in advance of the public hearing, please send your comments to address below. Interested parties may also submit written comments to the Department, to the same address below, up until the end of the comment period, which will extend through August 19, 2015, unless a longer period is designated by the hearing officer at the public hearing.

DNREC – Division of Air Quality

Subject: August 4 Public Hearing

715 Grantham Lane

New Castle, DE 19720

**7. PREPARED BY:**

James R. Snead (302) 323-4542 jsnead@state.de.us May 14, 2015

**1138 Emission Standards for Hazardous Air Pollutants for Source Categories**  
*(Break in Continuity of Sections)*

9/11/13 10/11/15

**6.0 Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks**

*(Break in Continuity Within Section)*

6.5 Performance test requirements and test methods.

*(Break in Continuity Within Section)*

6.5.3 Test methods. Each owner or operator subject to the provisions of 6.0 of this regulation and required in 6.4.2 of this regulation to conduct an initial performance test shall use the test methods identified in 6.0 to demonstrate compliance with the standards in 6.3 of this regulation.

*(Break in Continuity Within Section)*

6.5.3.5 The South Coast Air Quality Management District (SCAQMD) Method 205.1, dated August 1991, may be used to determine the total chromium concentration from hard and decorative chromium electroplating tanks and chromium anodizing tanks.

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



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regulation is available at:

**1138 Emission Standards for Hazardous Air Pollutants for Source Categories**

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**DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)  
7 DE Admin. Code 1141

**REGISTER NOTICE**

**SAN #2014-09**

**1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**

**1. TITLE OF THE REGULATION:**

Amendments to Regulation 1141 "Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products", Section 2.0 "Consumer Products".

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

New Castle and Sussex Counties are in non-attainment under the 2008 ground-level ozone National Ambient Air Quality Standards (NAAQS) and further reduction in the emissions of volatile organic compounds (VOC), a precursor to ground-level ozone, is needed to meet the NAAQS. The amendments include adding 10 more products and/or product types to be regulated for VOC content and lowering the VOC content limits for 14 existing products and/or product types. This brings the total product types regulated under this regulation to 120 and will show a reduction in Delaware VOC emissions of 330 tons per year.

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

None.

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

7 Delaware Code, Chapter 60.

**5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL: None.**

**6. NOTICE OF PUBLIC COMMENT:**

There will be a hearing on this proposed amendment on August 4, 2015 beginning at 6pm in the DNREC Auditorium in the Richardson & Robbins Building located at 89 Kings Highway in Dover, Delaware. Interested parties may submit comments in writing to David Fees, Division of Air Quality, Blue Hen Corporate Center, Suite 5N, 655 South Bay Road, Dover, DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

**7. PREPARED BY:**

David Fees  
May 24, 2015

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

**1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**

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# PROPOSED REGULATIONS

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**2100 BOARD OF EXAMINERS IN OPTOMETRY**  
Statutory Authority: 24 Del.C. §2104(a)(1); 24 DE Admin. Code 2100

**PUBLIC NOTICE**

**2100 Board of Examiners in Optometry**

The Delaware Board of Examiners in Optometry, pursuant to 24 Del.C. §2104(a)(1), proposes to revise its regulations. The proposed regulatory overhaul seeks to bring the regulations into conformity with current law and remove outdated and inconsistent provisions. For example, the proposed changes update the ethics section to more succinctly define unprofessional conduct. In addition, the proposed changes remove several regulations which are nothing more than a verbatim recitation of the Board's practice act and thus unnecessary.

The Board will hold a public hearing on the proposed rule change on July 22, 2015 at 4:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Lisa Smith, Administrator of the Delaware Board of Examiners in Optometry, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

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

**2100 Board of Examiners in Optometry**

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

**PUBLIC NOTICE**

**2500 Board of Pharmacy**

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

A public hearing will be held on August 19, 2015 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board liaison, Christine Mast, at the above address.

The proposed revisions address the subject of pharmaceutical compounding. Section 5.1.7 is amended to provide that compounded products may not be sold to a practitioner for use in his or her office to administer to patients. Section 10.0 is re-written to establish comprehensive requirements for non-sterile and sterile compounding consistent with USP Chapters 795 and 797.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be September 3, 2015 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

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

**2500 Board of Pharmacy**

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## **DIVISION OF PROFESSIONAL REGULATION**

### **3800 BOARD OF DIETETICS/NUTRITION**

Statutory Authority: 24 Delaware Code, Section 3805(11) (24 **Del.C.** §3805(11))  
24 **DE Admin. Code** 3800

#### **PUBLIC NOTICE**

### **3800 State Board of Dietetics/Nutrition**

The Delaware Board of Dietetics/Nutrition, pursuant to 24 **Del.C.** §3805(11), proposes to revise its regulations. The proposed amendments to the regulations seek to further clarify the scope of practice of a Dietitian/Nutritionist by defining various terms set forth in the Board's enabling statute.

The Board originally scheduled a hearing on this matter for May 8, 2015 at 1:30 p.m. but was unable to hold the hearing due to insufficient notice of the hearing under the Delaware Administrative Procedures Act. The Board will now hold a public hearing on the proposed rule change on August 14, 2015 at 1:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until August 29, 2015.

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

**3800 State Board of Dietetics/Nutrition**

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## **DIVISION OF PROFESSIONAL REGULATION**

### **CONTROLLED SUBSTANCE ADVISORY COMMITTEE**

Statutory Authority: 16 Delaware Code, Section 4731 (16 **Del.C.** §4731)

#### **PUBLIC NOTICE**

### **Uniform Controlled Substances Act Regulations**

Pursuant to 16 **Del.C.** §4731, the Delaware Controlled Substance Advisory Committee ("Committee") has proposed revisions to its rules and regulations. New Section 9.0 is added to provide requirements for the prescribing of opiates in order to address potential prescription drug overdose, abuse and diversion. The Section puts safeguards in place with respect to prescribing practices and patient monitoring. These safeguards will serve to protect patients and the public. Former Sections 9.0 and 10.0 have been renumbered.

A public hearing will be held on July 29, 2015 at 9:00 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Committee at the above address. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be August 13, 2015 which is 15 days following the public hearing. The Committee will deliberate on any public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to public comment.

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# PROPOSED REGULATIONS

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## Uniform Controlled Substances Act Regulations (Break in Continuity of Sections)

### 9.0 Safe Opiate Prescribing

9.1 This Regulation provides requirements for the prescribing of opiates in order to address potential prescription drug overdose, abuse, and diversion. To prescribe opiates in Delaware, the practitioner must be licensed in this state and registered with the U.S. Drug Enforcement Administration and must comply with all applicable federal and state regulations. Out-of-state practitioners, who are prescribing controlled substances to patients in Delaware, must hold active licensure and registration in the home state. Practitioners are referred to the Practitioner's Manual of the U.S. Drug Enforcement Administration and specific rules governing controlled substances.

9.2 The following definitions apply to Section 9.0:

"Acute Care" means pain less than three months in duration.

"Acute Pain" means the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. It is generally time-limited.

"Addiction" means a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

"Chronic Care" means pain more than three months in duration.

"Chronic Pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under §4711 of this title, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Physical dependence" means a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, and/or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

"Practitioner" means physician, dentist, podiatrist, nurse practitioner, physician assistant or other individual, licensed, registered, or otherwise permitted, by the United States or the State of Delaware to prescribe, dispense, or store a controlled substance in the course of professional practice but does not include a veterinarian, a pharmacist, a pharmacy, or an institutional practitioner.

"Risk Assessment" means utilizing a tool, such as the Screener and Opioid Assessment for Patients with Pain ("SOAPP"), which is designed for predicting the likelihood that a patient will abuse or misuse a prescribed controlled substance based on past behavior, genetic predispositions, social or environmental factors, or other risks.

"Substance Abuse" means using a controlled substance in a way that is not prescribed.

"Tolerance" means a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

"Treatment Agreement" means a written agreement between the practitioner and patient outlining patient responsibilities, including:

- The rights, responsibilities, and risks of being on a controlled substance and the treatment being received;
- Urine/serum/saliva medication levels screening when requested;
- Number and frequency of all prescription refills;
- Reasons for which drug therapy may be discontinued (e.g., violation of agreement); and
- Where possible, the patient should receive prescriptions from one licensed practitioner and one pharmacy.

9.3 A practitioner may not prescribe opiates unless a practitioner-patient relationship has been established.

9.4 Prior to prescribing an opiate for acute care the practitioner must perform an appropriate evaluation of the patient's medical history and condition.

9.5 For instances of chronic care, the practitioner must adhere to the following additional requirements:

9.5.1 Evaluate and document relative risks and benefits for the individual patient of the use of an opiate. The evaluation must include, but not be limited to, a Risk Assessment as defined in subsection 9.2;

9.5.2 Document in the medical record that the prescription of an opiate required for the management of pain for which alternative treatment options, including non-pharmacological treatments, are ineffective, not tolerated, or would otherwise be inadequate to provide sufficient management of pain;

9.5.3 Develop written treatment plan regarding treatment goal, duration, risks and benefits, alternatives, patient's responsibilities for safe medication use and compliance;

9.5.4 Query the Delaware Prescription Monitoring Program ("PMP") for a prescriptive history;

9.5.5 Assure that all psychiatric and medical comorbidities are addressed concurrently rather than sequentially when concurrent treatment is clinically feasible;

9.5.6 Receive a signed Controlled Substance Treatment Agreement;

9.5.7 Receive a signed Informed Consent form and Agreement from the patient, or if the patient is not competent to provide informed consent, from the patient's legal representative, that must include information regarding the drug's potential for addiction, abuse, and misuse; and the risks associated with the drug of life-threatening respiratory depression; overdose as a result of accidental exposure potentially fatal, especially in children; neonatal opioid withdrawal symptoms; and potentially fatal overdose when interacting with alcohol; and other potentially fatal drug/drug interactions;

9.5.8 Prescribe controlled substance prescriptions that must be filled within seven (7) days and that do not exceed a 31 day or a maximum of 100 dosage unit supply, whichever is greater;

9.5.9 Schedule and undertake periodic follow-up visits and evaluations of the patient to monitor and assess progress toward goals in the treatment plan and modify the treatment plan, as necessary. The practitioner must determine whether to continue the treatment of pain with an opiate, whether there is an available alternative, whether to refer the patient for a pain management or substance abuse consultation. Periodic follow-up evaluations must include:

9.5.9.1 Querying the PMP at least annually; and

9.5.9.2 Administering drug tests at least once every six months.

9.5.10 Develop a plan for the discontinuance of prescribed opiates if the patient has failed to adhere to the Controlled Substance Treatment Agreement or upon completion of pain management therapy; and

9.5.11 Seek a case review and consult with, or otherwise refer the patient to, a state-licensed physician who holds a subspecialty board certification in addiction psychiatry from the American Board of Psychiatry and Neurology, an addiction certification from the American Board of Addiction Medicine, or a relevant subspecialty board certification by the American Board of Medical Specialties if any of the following occur:

9.5.11.1 Adulterated drug tests;

9.5.11.2 Diversion of prescribed medications;

# PROPOSED REGULATIONS

9.5.11.3 Confirmatory drug tests; or

9.5.11.4 The patient has obtained controlled substances elsewhere without disclosure to the physician, as evidenced by PMP data.

9.6 Medical Records: The practitioner must keep accurate and complete records in compliance with state and federal law.

9.7 Records must remain current and be maintained in an accessible manner and readily available for review. Each practitioner must include documentation appropriate for each visit's level of care, in compliance with state and federal law.

9.8 Practitioners treating the following patients with chronic care are exempted from Section 9.0:

9.8.1 Practitioners treating the following chronic or long-term treatment groups:

9.8.1.1 Hospice care patients;

9.8.1.2 Active cancer treatment patients;

9.8.1.3 Patients experiencing cancer-related pain; and

9.8.1.4 Terminally ill/palliative care patients.

## **910.0 Procedures for Adoption of Regulations**

910.1 Notice. Prior to the adoption, amendment or repeal of any of these controlled substances regulations, the Secretary of State/Committee will give at least twenty (20) days notice of the intended action.

910.1.1 The notice will include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, or the time when, and the place where to present their views thereon. The notice will be mailed to persons who have made timely request of the Office of Controlled Substances for advance notice of such rule-making proceedings and shall be published in two newspapers of general circulation in this State.

910.2 Hearing. The Secretary of State shall designate the Committee to preside over hearings. The Committee will afford all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing.

910.3 Emergency Regulations. If the Secretary of State, upon the recommendation of the Committee, finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than twenty (20) days notice and states in writing his/her reasons for that finding, the Secretary of State may proceed without prior notice or hearing or upon any abbreviated notice and hearing he/she finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not precluded.

910.4 Finding and Availability. The Secretary of State will maintain on file any adoption, amendment or repeal of these regulations. In addition, copies of these regulations will be available for public inspection at the Office of Controlled Substances.

## **4011.0 Severability**

4011.1 If any provision of these regulations is held invalid the invalidity does not affect other provisions of the regulations which can be given effect without the invalid provisions or application, and to this end the provisions of the regulation are severable.

4011.2 Pursuant to 16 **Del.C.** §4718(f) and 16 **Del.C.** §4720(c) the Secretary of State finds that the compounds, mixtures or preparations listed in 21 **CFR** 1301.21, 21 **CFR** 1308.24 contain one or more active medical ingredients not having a stimulant or depressant effect on the central nervous system and that the admixtures included therein are in combinations, quantities, proportions, or concentrations that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system, and therefore:

4011.2.1 The Secretary of State, as authorized by 16 **Del.C.** §4718(f) and 16 **Del.C.** §4720(c), does hereby except by rule the substances listed in 21 **CFR** 130.21, **CFR** 1308.24 and 21 **CFR** 1308.32 from Schedules III and IV of the Uniform Controlled Substances Act, 16 **Del.C.** Ch. 47.

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

**Uniform Controlled Substances Act Regulations**

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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  
THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))  
3 **DE Admin. Code** 1001

**ORDER****1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission ("Commission") issues this Order to take effect ten (10) days after the publication of this Order in the Delaware *Register of Regulations*:

1. Pursuant to its statutory authority, the Commission proposed for adoption revisions to the Commission's Regulation 18.1.1.5, 19.2.2 and 19.6. Other regulations issued by the Thoroughbred Racing Commission are not affected by this Order.

2. A copy of the proposed regulations was published in the May 1, 2015 edition of the Delaware *Register of Regulations* and has been available for inspection in the office of the Commission at 777 Delaware Park Boulevard, Wilmington, Delaware 19804 during regular office hours.

3. The Commission did not receive any written comments on the proposed regulations during the 30 day period following publication of the proposed regulations on May 1, 2015.

4. **THEREFORE, IT IS ORDERED**, that the proposed regulations are adopted and shall become effective July 11, 2015, after publication of the final regulation in the Delaware *Register of Regulations*.

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2015 issue of the *Register* at page 815 (18 DE Reg. 815). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1001 Thoroughbred Racing Rules and Regulations**



## THOROUGHBRED RACING COMMISSION

### DELAWARE JOCKEY'S HEALTH AND WELFARE BOARD

Statutory Authority: 29 Del.C. Code, Section 4815(b)(3)c. (29 Del.C. §4815(b)(3)c.)  
3 DE Admin. Code 1002

#### ORDER

#### 1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations

Pursuant to the authority provided by 29 Del.C. §4815(b)(3)c., the Delaware Jockey's Health and Welfare Benefit Board issues this Order adopting amendments to 3 DE Admin. Code 1002 Delaware Jockey's Health and Welfare Benefit Board Regulations.

This Order is adopted pursuant to 29 Del.C. §10113(b)(4) to correct a technical error by reinserting section 2.1.2.3 into the eligibility criteria as this provision was previously included in the eligibility criteria and was apparently erroneously deleted. This Order shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation.

So ordered as of May 13, 2015

Ed Stegemeier  
Chairman, Delaware Jockey's Health and Welfare Benefit Board

#### 1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations

##### 1.0 Introduction

- 1.1 These regulations are authorized pursuant to 3 Del.C. §10171 and 29 Del.C. §4815(b)(3)c which established a Delaware Jockeys' Health and Welfare Benefit Board (hereinafter "the Board") and Delaware Jockeys' Health and Welfare Benefit Fund (hereinafter "the Fund").
- 1.2 The Delaware Jockeys' Health and Welfare Benefit Board shall consist of 1 member of the Delaware Thoroughbred Racing Commission, 1 member from the licensed agent under Chapter 1010 of **Title 3** or Chapter 4 of **Title 28**, 1 member of the Delaware Horsemen's Association, 1 representative from the organization that represents the majority of the jockeys who are licensed and ride regularly in Delaware, and 2 jockeys who are licensed and ride regularly in Delaware. The Chairman of the Thoroughbred Racing Commission shall serve as an *ex officio* member, and vote on matters in the event of a tie vote on any issue. All members shall be appointed by the Thoroughbred Racing Commission, and shall serve a two year term.
- 1.3 The Board shall elect a Chairperson from among the appointed members of the Board. The Chairperson shall serve a two year term and may serve consecutive terms. The Chairperson shall be the presiding officer at all meetings of the Board.
- 1.4 The Board shall administer the Fund pursuant to these regulations and other reasonable criteria for benefit eligibility.
- 1.5 A special fund of the State has been established and will be known as the "Delaware Jockeys' Health and Welfare Benefit Fund." The Fund shall consist of the proceeds transferred from the licensed video lottery agent and the purse account pursuant to 29 Del.C. §4815(b)(3)c. The proceeds transferred to the Fund will be maintained in an account established in the Department of Agriculture.
- 1.6 The Fund will be invested by the State Treasurer consistent with the investment policies established by the Cash Management Policy Board. All income earned by the Fund will be reinvested in the Delaware Jockeys' Health and Welfare Benefit Fund.
- 1.7 The Board shall use the Fund to provide for jockeys who regularly ride in Delaware, health benefits for active, disabled and retired jockeys. The Board may also expend usual and customary expenses for administrative purposes from the Fund.

- 1.8 The Thoroughbred Racing Commission's Administrator of Racing will provide administrative support to the Board and keep minutes of all the meetings of the Board and preserve all records of the Board. The Board's Office will be considered as part of the Office of the Thoroughbred Racing Commission.
- 1.9 The Board can propose to amend these regulations by an affirmative vote of the majority of the Board.

**2.0 Eligibility Criteria for Health Coverage**

- 2.1 The Board will pay from the Fund for health coverage for active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
    - 2.1.1 An Active Delaware Jockey, who regularly rides in Delaware, is eligible for health insurance coverage under the fund, if the jockey had fifty (50) mounts in a Delaware Park season at Delaware Park; and
      - 2.1.1.1 If the jockey's Delaware Park mounts are less than 100 in a Delaware Park season, then 50% or more of that jockey's total mounts during the regular Delaware Park season must be at Delaware Park.
      - 2.1.1.2 If the jockey's Delaware Park mounts are 100 or more in a Delaware Park season, the jockey is eligible for health insurance coverage, regardless of the amount of total mounts at other tracks.
    - 2.1.2 A Retired Delaware Jockey is eligible for health insurance coverage under the Fund if:
      - 2.1.2.1 The Jockey was receiving health insurance coverage as a retired jockey provided by the Delaware Thoroughbred Racing Commission's health insurance plan with the Jockey's Guild on January 1, 2006; or
      - 2.1.2.2 The Jockey rode a minimum of 100 mounts at Delaware Park during the regular Delaware Park season for at least seven years.
      - 2.1.2.3 The Jockey is not licensed as a jockey in any racing jurisdiction.
    - 2.1.3 A disabled Delaware Jockey's spouse and dependents qualify for health benefits if the disabled jockey meets all of the following requirements:
      - 2.1.3.1 The jockey was an active participant in the Delaware Jockeys' Health and Welfare Fund benefit program at the time of the on-track accident that resulted in total and permanent disability; and
      - 2.1.3.2 Be deemed permanently disabled by Social Security and qualify for Medicare as a result of an injury sustained during the regular Delaware Park season on the premises of Delaware Park, and arising in the course of his/her participation as a licensed jockey.
  - 2.2 A jockey and/or the jockey's family who meets the eligibility requirements of either an active Delaware jockey, a retired Delaware jockey, or a disabled Delaware jockey's family will be entitled to health coverage beginning on the first of the month after it can be determined the eligibility requirement has been met, and continuing until December 31<sup>st</sup> of the next calendar year.
  - 2.3 The Board will pay from the Fund for health coverage for the dependents of active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
    - 2.3.1 Eligibility for coverage for dependents will be determined by the company providing the insurance coverage.
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**DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 106A

**REGULATORY IMPLEMENTING ORDER****106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. For ease of reading, the regulation has been provided in its entirety. The revisions include, but are not limited to, the vertical articulation and symmetry of language across the majority of Appraisal Criteria, Component, and Summative ratings areas, an increase in the weight of the observational Components and a decrease in the weight of the Student Improvement Component in certain summative scenarios, and an overall shift to Annual Appraisal Cycles for all teachers. This regulation is being amended to ensure continuity of language in the Appraisal Criteria, Component and Summative ratings section and to ensure the shift to Annual Appraisal Cycles for all teachers (to begin in the 2017-2018 school year). The proposed revisions respond to stakeholder feedback, in particular the direction of the DPAS-II Advisory Committee, by further streamlining the evaluation system, giving administrators greater ability to differentiate support, and promoting a greater emphasis on the annual processes of observation, feedback, and professional growth.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 27, 2015, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities, and the Delaware State Education Association. Several teachers and the Supervisor of Instruction for Capital School District on behalf of the Capital District Administrator Association submitted comments relative to 106A and 107A, with those comments addressed in both orders.

The first comment was related to clarification potentially needed in the 2.0 definition of "Student Achievement." The suggestion was to clarify the exclusion of certain student test results from the performance appraisal of the teacher continued to the 2015-2106 school year if DOE obtains federal approval prior to the publication of a final regulation. The Department included the "may" language due to the fact that although it anticipated receiving it, and it does not know when or if federal approval will be granted. The Department intends to exercise its discretion to include the additional year of exemption upon receiving federal approval of its ESEA Flexibility Renewal Proposal.

The second comment notes the definition of "Interim Assessment" is not needed, as the term is not explicitly used in the regulation. The Department will delete this definition.

The third comment asks the Department to review the descriptions of Effective, Ineffective, and Needs Improvement in 6.0, noting that it appears the descriptions are the same. The Department notes that 6.0 describes how summative ratings are determined for teachers. Although the same general logic pattern is used throughout, the definitions of each are different, outlining different performance patterns on the first four Appraisal Components and the Student Improvement Component that result in different summative ratings.

The fourth comment requests the Department to define the charts in 7.0. The current text prior to the chart describes the pattern of ineffective teaching defined in that subsection.

The fifth comment requests the regulation be more specific with regard to Improvement Plans. It requests more specific detail within the regulation of what supports or intervention may be available when a plan is initiated or further developed. The Department notes that the required elements of an Improvement Plan are outlined in subsection 8.3. Additionally, further clarification is included in the DPAS-II Guides for Teachers and Specialists.

The sixth comment is relative to both 106A and 107A and expresses concern with moving to an annual appraisal cycle for all teachers for the 2016-2017 school year, notably due to the amount of time it may take to complete such appraisals. The Department notes the DPAS-II Advisory Committee recommended adopting an annual appraisal cycle with a change of date to 2017-2018, and the Department made that change in 3.5 of this

regulation.

There was also concern expressed relating to changing the composition of the summative rating system (for Experienced Teachers) based upon only one year of observations and the result of multiple measures of Student Improvement for each teacher. Part of this concern was based upon the current minimum requirement of only one 30-minute observation per year. The Department notes that annual appraisals would not take effect until 2017-2018 under this proposal, so additional observations could be incorporated.

Relatedly, the comment also noted that a change to the DPAS II regulations should not be made at this time, as future changes to the DPAS II system may occur as a result of the Statewide Educator Engagement, Evaluation Systems Design and Re-design project that the Department is considering. The Department notes that additional stakeholder engagement was requested by the DPAS-II Advisory Committee, and that such engagement immediately occurred with two groups of teachers in Spring 2015. Further, the Department plans to launch an 18-month educator engagement process to hear even more feedback on system design & implementation, via an RFP utilizing an "external facilitator", which has also been consistently requested by stakeholders.

DSEA commented that recently a DASA/DSEA DPASII Work Group proposal has been generated that is less burdensome than this amendment. The Work Group proposal was presented to the DPAS-II Advisory Committee on May 1, 2015, well after this proposed amended regulation had been sent to the Registrar for publication. The Department notes that only a few select DASA/DSEA members became part of this workgroup, which did not utilize any additional stakeholder engagement process. When the workgroup's proposal was made available in May, both the DPAS-II Advisory Committee and the Department of Education, through the members of its Teacher & Leader Effectiveness Unit (TLEU), encouraged the proposal, identified areas that needed further clarification, and were supportive. The DPAS-II Advisory Committee recommended the workgroup find local education agencies (LEA) willing to utilize this proposal as an alternative system for the 2015-2016 school year, thereby allowing the entire state to learn from early adopters. The Advisory Committee added they looked forward to a report on how the system fares in the field. The deadline for submitting an application for an alternative educator evaluation system for implementation in 2015-2016 was June 11, 2015.

Several educators also noted that ratings of "Highly Effective" are still restricted to those educators who receive an "Exceeds" rating on the Student Improvement Component and that instructional practices have a far greater influence on improving educator outcomes than how a student performs on a single test once a year. The Department recognizes that educator evaluation should not be dependent on a single assessment and requires the use of multiple measures. In addition, the Summative Evaluation Ratings outlined in 6.0 put greater weight on areas identified in several educator letters (e.g. planning, preparation, and instructional practices).

Finally, nearly all educator letters indicated they value the feedback performance appraisals provide and regularly utilize the suggestions offered by their evaluators. The Department recognizes the need for more educator feedback and a focus on planning, preparation, and instructional practices. The Department notes that the eventual shift to annual appraisals of all educators is for this very reason. Currently, Student Improvement Component meetings are required annually, however conversation focusing on planning and preparation, classroom environment, and instruction is not. The incorporation of annual appraisals will allow more opportunity for feedback and conversation related to these instructional areas, rather than focusing solely on the Student Improvement Component.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to revise the vertical articulation and symmetry of language across the majority of Appraisal Criteria, Component, and Summative ratings areas, an increase in the weight of the observational Components and a decrease in the weight of the Student Improvement Component in certain summative scenarios, and an overall shift to Annual Appraisal Cycles for all specialists. This regulation is being amended to ensure continuity of language in the Appraisal Criteria, Component and Summative ratings section and to identify the shift to Annual Appraisal Cycles for all teachers (to begin in the 2016-2017 school year). The proposed revisions respond to stakeholder feedback by further streamlining the evaluation system, giving administrators greater ability to differentiate support, and promoting a greater emphasis on the annual processes of observation, feedback, and professional growth.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 June 18, 2015. 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 18th day of June 2015.

**Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 18th day of June 2015

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

**106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised**  
***(Break in Continuity of Sections)***

**2.0 Definitions**

The following definitions shall be applied for purposes of this regulation:

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

~~["Interim assessment" shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers and administrators at the student, classroom, school, and district levels.]~~

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

**3.0 Appraisal Cycle**

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

3.5 Beginning in the ~~[2016-2017]~~ **[2017-2018]** school year, all Teachers shall receive an annual appraisal subject to the following conditions:

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\*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2015 issue of the *Register* at page 817 (18 DE Reg. 817). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 107A

**REGULATORY IMPLEMENTING ORDER**

**107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised**

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. For ease of reading, the regulation has been provided in its entirety. The revisions include, but are not limited to, the vertical articulation and symmetry of language across the majority of Appraisal Criteria, Component, and Summative ratings areas, an increase in the weight of the observational Components and a decrease in the weight of the Student Improvement Component in certain summative scenarios, and an overall shift to Annual Appraisal Cycles for all specialists. This regulation is being amended to ensure continuity of language in the Appraisal Criteria, Component and Summative ratings section and to ensure the shift to Annual Appraisal Cycles for all specialists (to begin in the 2017-2018 school year). The proposed revisions respond to stakeholder feedback, in particular the direction of the DPAS-II Advisory Committee, by further streamlining the evaluation system, giving administrators greater ability to differentiate support, and promoting a greater emphasis on the annual processes of observation, feedback, and professional growth.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 27, 2015, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities, and the Delaware State Education Association. Several teachers and the Supervisor of Instruction for Capital School District on behalf of the Capital District Administrator Association submitted comments relative to 106A and 107A, with those comments addressed in both orders.

The first comment noted that the term "specialist" should also be defined to include an occupational, physical or speech therapist. The Department notes the regulation defines "specialist" to mean an educator other than a teacher or administrator and includes, but is not limited to, School Counselors, Library Media Specialists, School Psychologists, and School Nurses. There are many educator roles that may not be specifically listed but are inclusive of the definition.

The second comment was related to clarification potentially needed in the definition in 2.0 of "Student Achievement." The suggestion was to clarify the exclusion of certain student test results for the performance appraisal of the specialist continued to the 2015-2016 school year if the Department of Education obtains federal approval prior to the publication of a final regulation. The Department included the "may" language due to the fact that although it anticipated receiving it, it does not know when or if federal approval will be granted. The Department intends to exercise its discretion to include the additional year of exemption upon receiving federal approval of its ESEA Flexibility Renewal Proposal.

The third comment notes the definition of "Interim Assessment" is not needed, as the term is not explicitly used in the regulation. The Department will delete this definition.

The fourth comment asks the Department to review the descriptions of Effective, Ineffective, and Needs Improvement in 6.0, noting that it appears the descriptions are the same. The Department notes that 6.0 describes how summative ratings are determined for specialists. Although the same general logic pattern is used throughout, the definitions of each are in-fact different, outlining different performance patterns on the first four Appraisal Components and the Student Improvement Component that result in different summative ratings.

The fifth comment requests the Department to define the charts in 7.0. The current text prior to the chart describes the pattern of ineffective teaching defined in that sub-section.

The sixth comment is relative to both 106A and 107A and expresses concern with moving to an annual appraisal cycle for all specialists for the 2016-2017 school year, notably due to the amount of time it may take to complete such appraisals. The Department notes the DPAS-II Advisory Committee recommended adopting an annual appraisal cycle with a change of date to 2017-2018, and the Department made that change in 3.5 of this regulation.

There was also concern expressed relating to changing the composition of the summative rating system (for Experienced Specialists) based upon only one year of observations and the result of multiple measures of Student Improvement for each specialist. Part of this concern was based upon the current minimum requirement of only one 30-minute observation per year. The Department notes that annual appraisals would not take effect until 2017-2018 under this proposal, so additional observations could be incorporated.

Relatedly, the comment also noted that a change to the DPAS II regulations should not be made at this time, as future changes to the DPAS II system may occur as a result of the Statewide Educator Engagement, Evaluation Systems Design and Re-design project that the Department is considering. The Department notes that additional stakeholder engagement was requested by the DPAS-II Advisory Committee, and that such engagement immediately occurred with two groups of teachers in Spring 2015. Further, the Department plans to launch an 18-month educator engagement process to hear even more feedback on system design and implementation, via an RFP utilizing an "external facilitator", which has also been consistently requested by stakeholders.

DSEA commented that recently a DASA/DSEA DPASII Work Group proposal has been generated that is less burdensome than this amendment. The Work Group proposal was presented to the DPAS-II Advisory Committee on May 1, 2015, well after this proposed amended regulation had been sent to the Registrar for publication. The Department notes that only a few select DASA/DSEA members became part of this workgroup, which did not utilize any additional stakeholder engagement process. When the workgroup's proposal was made available in May, both the DPAS-II Advisory Committee and the Department of Education, through the members of its Teacher & Leader Effectiveness Unit (TLEU), encouraged the proposal, identified areas that needed further clarification, and were supportive. The DPAS-II Advisory Committee recommended the workgroup find local education agencies (LEA) willing to utilize this proposal as an alternative system for the 2015-2016 school year, thereby allowing the entire state to learn from early adopters. The Advisory Committee added they looked forward to a report on how the system fares in the field. The deadline for submitting an application for an alternative educator evaluation system for implementation in 2015-2016 was June 11, 2015.

Several educators also noted that ratings of "Highly Effective" are still restricted to those educators who receive an "Exceeds" rating on the Student Improvement Component and that instructional practices have a far greater influence on improving educator outcomes than how a student performs on a single test once a year. The Department recognizes that educator evaluation should not be dependent on a single assessment and requires the use multiple measures. In addition, the Summative Evaluation Ratings outlined in 6.0 put greater weight on areas identified in several educator letters (e.g. planning, preparation, and instructional practices).

Finally, nearly all educator letters indicated they value the feedback performance appraisals provide and regularly utilize the suggestions offered by their evaluators. The Department recognizes the need for more educator feedback and a focus on planning, preparation, and instructional practices. The Department notes that the eventual shift to annual appraisals of all educators is for this very reason. Currently, Student Improvement Component meetings are required annually, however conversation focusing on planning and preparation, classroom environment, and instruction is not. The incorporation of annual appraisals will allow more opportunity for feedback and conversation related to these instructional areas, rather than focusing solely on the Student Improvement Component.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to revise the vertical articulation and symmetry of language across the majority of Appraisal Criteria, Component, and Summative ratings areas, an increase in the weight of the observational Components and a decrease in the weight of the Student Improvement Component in certain summative scenarios, and an overall shift to Annual Appraisal Cycles for all specialists. This regulation is being amended to ensure continuity of language in the Appraisal Criteria, Component and Summative

ratings section and to identify the shift to Annual Appraisal Cycles for all specialists (to begin in the 2016-2017 school year). The proposed revisions respond to stakeholder feedback by further streamlining the evaluation system, giving administrators greater ability to differentiate support, and promoting a greater emphasis on the annual processes of observation, feedback, and professional growth.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 June 18, 2015. 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 June 2015.

#### **Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 18th day of June 2015

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

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

### **107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised** *(Break in Continuity of Sections)*

#### **2.0 Definitions**

The following definitions shall be applied for purposes of this regulation:

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

~~["Interim assessment" shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers, administrators, and specialists at the student, classroom, school, and district levels.]~~



*(Break in Continuity of Sections)*

## 3.0 Appraisal Cycles

*(Break in Continuity Within Section)*

3.5 Beginning in the ~~2016-2017~~ 2017-2018 school year, all Specialists shall receive an Annual Appraisal subject to the following conditions:

*(Break in Continuity Within Section)*

\*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2015 issue of the *Register* at page 823 (18 DE Reg. 823). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised**

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 108A

### REGULATORY IMPLEMENTING ORDER

**108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised**

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include, but are not limited to, clarifying the possible combination of summative ratings for "Needs Improvement", clarifying the processes to earn credentials to evaluate administrators utilizing DPAS-II, and issuing the proposed amended regulation to be in effect beginning with the 2015-2016 school year.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 27, 2015, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities.

The first comment was related to clarification needed in 1.1 and 2.0 relative to the Department not using the statewide assessment scores to evaluate educators in the 2015-2016 school year dependent upon federal approval. The Department only included the "may" language due to the fact federal approval has not yet been granted. The Department fully intends to implement the changes associated with the request upon federal approval of the ESEA Flexibility Proposal; however, it cannot do so until federal approval is granted.

The second comment was related to the definition of "Credentialed Evaluator", and noted clarification may be needed as to the number of members of the Board who shall evaluate a superintendent or head of a charter school. The Department's intent was to provide the opportunity for multiple individuals (i.e. local board of education members (plural)) to evaluate the administrator and thus edited the proposed regulation to remove the parentheses around the "s" in the word "members". This ensures that the option to have multiple credentialed evaluators partaking in an individual's evaluation exists. No further clarification is needed.

The third comment was regarding clarification of the definitions of "Goal Setting" and "Mid-Year Conference". The Department notes that the content within an administrator's improvement plan could be incorporated into Goal-Setting and Mid-Year conferences. Such detail, however, would be outlined within the procedures found in the respective Guides and not noted here in the regulation.

The fourth comment requested that the Department further define the charts in 7.0. Section 7.0 already includes a heading titled "Pattern of Ineffective Administrative Performance" and explanatory text is provided before the chart. The Department does not believe any further clarification is needed for the chart.

The fifth comment requested grammatical correction to the use of plural pronouns with singular antecedents. These were corrected to ensure the sentences are grammatically correct.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to clarify the possible combination of summative ratings for "Needs Improvement", clarify the processes to earn credentials to evaluate various administrators utilizing DPAS-II, and issue the proposed amended regulation to be in effect beginning with the 2015-2016 school year.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 **June 18, 2015**. 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 18th day of June 2015.

### Department of Education

Mark T. Murphy, Secretary of Education

Approved this 18th day of June 2015

### State Board of Education

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

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

## 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised (Break in Continuity of Sections)

### 10.0 Evaluator(s) Credentials

#### (Break in Continuity Within Section)

10.2 ~~The training shall occur no less than once every three (3) years and shall include techniques for observation and conferencing, content and relationships of the state standards for administrators, and a thorough review of the DPAS II Revised Guides for Administrators. Activities in which participants~~

~~practice implementation of DPAS II procedures shall be included in the training. Evaluator credentials for the utilization of each of the DPAS II Revised Guides are earned upon successful completion of the credentialing assessment for the appropriate Guide. Evaluator credentials are valid for five years from the date of issue. Evaluators may seek to renew their credentials within 24 months prior to the expiration date. Credentialing assessment(s) for all Guides shall be established and implemented no later than August 1, 2017.~~

10.2.1 Completion of a foundational DPAS II training for the appropriate Guide(s) shall allow evaluators to conduct administrator evaluations until the credentialing assessment is established and implemented for the applicable DPAS II Revised Guide for Administrators.

10.2.2 Upon the initial implementation of the credentialing assessment, the Department shall establish a time period during which the assessment will be offered at least three (3) times in order to provide multiple opportunities for an individual to earn the credential. Once available, an administrator shall have the opportunity to take the assessment for each applicable Guide three times. Administrators shall earn their credential during one of those opportunities before continuing their work. If ~~an~~ administrator[s] do[es] not earn a credential, they will not be permitted to conduct administrator evaluations in the applicable Guide(s), but, in order to earn their credential, shall have the opportunity to take the assessment again during the next time period that such a credentialing assessment is offered.

10.2.3 Thereafter, the Department shall establish a schedule during which each administrator shall have no less than three opportunities to renew ~~their a~~ credential, for each applicable Guide, prior to its expiration.

~~40.3 The credentialing process shall be conducted by the Department of Education.~~

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2015 issue of the *Register* at page 828 (18 DE Reg. 828). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**[108A Administrator Appraisal Process Delaware Performance Appraisal System \(DPAS II\) Revised](#)**

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 804

### REGULATORY IMPLEMENTING ORDER

#### 804 Immunizations

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

The Secretary of Education seeks to amend 14 **DE Admin. Code** 804 Immunizations. This regulation is being amended to be in alignment with advice from the Delaware Division of Public Health related to immunizations for students. This regulation has been and continues to be promulgated pursuant to 14 **Del.C.** §131. A purpose statement has been added to specify this statutory requirement.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **April 27, 2015**, in the form hereto attached as *Exhibit "A"*. Comments were received from the March of Dimes Foundation-Delaware Chapter, Pfizer, Immunization Coalition of Delaware, Delaware School Nurse Association, Sanofi Pasteur, Sussex County Health Promotion Coalition, the Delaware Division of Public Health, Nemours/Alfred I. duPont Hospital for Children, the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens. Please note the adding of the purpose statement as 1.0 required the regulation to be renumbered. The comment references have been updated to align with the new numbering.

Comments were related to:

- (1) clarification to 4.1.1 regarding the recommended age at which the adolescent booster dose of diphtheria, tetanus and pertussis should be given. The Department clarified in 4.1.1 that the preferred age for the Tdap or other approved vaccine is age 11-12;
- (2) clarification to 4.1.2 to address that the recommended one dose of meningococcal vaccine to be given at age of 11 or 12, with a booster dose at age 16. The Department addressed this comment by adding language to 3.1.6;
- (3) removal of the words in 3.1.1 "DT, or other" and adding "Tdap". The Department clarified in 3.1.1 the specific vaccines or combinations thereof that school enterers shall have;
- (4) adding language in 3.1.1.2 that this requirement can be met with a dose of Tdap and a total of two doses of Td vaccine. The Department addressed this by adding the definition of an "Approved Vaccine";
- (5) editing 3.1.3 to include MMRV (measles, mumps, rubella, varicella) as an additional optional vaccine. The Department addressed this by adding the definition of an "Approved Vaccine";
- (6) inclusion of the recommendation of a vaccine with protection from pertussis for children previously unimmunized over the age of seven. The Department addressed this in 3.1.1.3 and 4.1.1;
- (7) explanation of how schools will coordinate with the DPH to provide services to non-compliant secondary school students. The Department addressed this in 4.2 which notes that schools will coordinate with DPH. Additionally, the Department of Education is collaborating with DPH to advise and train school nurses and school officials regarding the recommended immunizations for the 2015-2016 school year and beyond;
- (8) requesting that DOE implement the regulation by requiring proof of immunizations starting in the 2015-2016 school year. The Department is unable to implement the immunization requirements for the 2105-2016 as sufficient time must be provided to notify school staff and parents on the new requirements;
- (9) review of "school enterer" and "school districts" to ensure that the regulation applies to all those in a public school, including charter schools. The regulation does apply to public schools, which includes charter schools. Charter schools was specifically added to 5.4 of the regulation;
- (10) request for DOE or DPH to consult with DMMA to ensure that the listed immunizations and schedules are covered by Medicaid. The Department has confirmed that the listed immunizations are covered by Medicaid;
- (11) a comment to add a statement in 3.1.5 that notes that in the 2020-2021 school year all students must have two doses of varicella. The Department amended language in 3.1.5 to address this;
- (12) a comment regarding language be added in 4.1 that each year one grade will be added so that by 2019-2020 school year all students in grade 9-12 will have received immunizations. The Department revised 4.0 and 4.1 for clarification;
- (13) a request to change the word "provide" to "assure" regarding the services of DPH. This change was made in 4.2.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 804 Immunizations in order to ensure that this regulation is in alignment with recommendations made by the Delaware Department of Public Health related to immunizations for students.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 804. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 804 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 804 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** 804 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 804 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 **June 18, 2015**. 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 June 2015.

**Department of Education**  
Mark T. Murphy, Secretary of Education

Approved this 18th day of June 2015

## 804 Immunizations

### [1.0 Purpose

**This regulation is promulgated pursuant to Title 14 Del.C. Ch. 1, §131 which states that, “the Department (of Education) shall from time to time, with advice from Division of Public Health (DPH), adopt and promulgate rules and regulations to establish an immunization program to protect pupils enrolled in public schools from certain diseases.]**

### [42].0 Definitions

**["Approved Vaccine" means a vaccine, vaccine combination, formulation, or schedule which has been reviewed and accepted by the Division of Public Health (DPH) based upon Centers for Disease Control and Prevention (CDC) Recommended Immunization Schedule.**

~~**"Entering Grade 9 Students" means any child entering Grade 9 or an equivalent school or program for this age.]**~~

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

**["Secondary School", for the purposes of this regulation, means a school with a grade or age configuration including any of the following: grade 9, grade 10, grade 11, or grade 12.]**

### [23].0 Minimum Immunizations Required for All School Enterers

**[23].1 All School Enterers shall have immunizations given up to four days prior to the minimum interval or age and shall include:**

**[23].1.1 Four or more doses of diphtheria, tetanus, pertussis (~~DTaP, DTP, or other approved vaccine~~) ~~[or a an approved combination of these vaccines (DTaP, DTP, DT, or other)].~~ A booster dose of Td or Tdap (adult) is recommended by the Division of Public Health for all students at age 11 or five years after the last DTaP, DTP or DT dose was administered whichever is later. ~~[(DTaP, DTP, or other Approved Vaccine)]~~ Notwithstanding this requirement:**

**[23].1.1.1 A child who received a fourth dose prior to his or her fourth birthday shall have a fifth dose;**

**[23].1.1.2 A child<sub>[x]</sub> who received the first dose of Td (adult) diphtheria and tetanus containing vaccine as adult Td vaccine at or after age seven<sub>[x]</sub> may meet this requirement with only three doses of Td or ~~[a Approved Vaccine formulation, e.g., Tdap]~~ (adult).**

**[3.1.1.3 A booster dose of Tdap (adult) is strongly recommended by DPH for all students at age 11-12 years (preferred) or through 18 years and required as per 4.1 and 4.1.1 below.]**

**[23].1.2 Three or more doses of inactivated polio virus vaccine (IPV), oral polio vaccine (OPV), or a<sub>[n]</sub> ~~Approved Vaccine combination of these vaccines~~. Notwithstanding this requirement:**

# FINAL REGULATIONS

- [23].1.2.1 A child who received a third dose prior to his or her fourth birthday shall have a fourth dose.
- [23].1.3 Two doses of measles, mumps and rubella (MMR) **[Approved vV]accine**. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday. ~~[Individual combination vaccines of measles, mumps, rubella (MMR) may be used to meet this requirement.]~~
- [23].1.3.1 Disease histories for measles, rubella and mumps shall not be accepted unless serologically confirmed.
- [23].1.4 Three doses of Hepatitis B vaccine.
- [23].1.4.1 For children 11 to 15 years old age, two doses of a **[n Approved vVaccine approved by the Center for Disease Control (CDC)]** may be used.
- [23].1.4.2 Titers are not acceptable in lieu of completing the vaccine series and a disease history for Hepatitis B shall not be accepted unless serologically confirmed.
- [23].1.5 ~~Two doses of~~ Varicella **[Approved vV]accine**, ~~is required beginning in the 2003-2004 school year with kindergarten. One grade shall be added each year thereafter so that by the 2015-2016 school year all children in grades kindergarten through 12 shall have received the vaccination. Beginning in the 2008-2009 school year new enterers into the affected grades shall be required to have two doses of the Varicella vaccine. The first dose shall be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school. A written disease history, provided by the health care provider, parent, legal guardian, Relative Caregiver or School Enterer who has reached the statutory age of majority (18), 14 **Del.C. §131(a)(9)**, will be accepted in lieu of the Varicella vaccination. Beginning in the 2008-2009 school year, a disease history for the Varicella vaccination must be verified by a health care provider to be exempted from the vaccination. **[Students who entered during or prior to the 2008-2009 school year are required to have one dose. By the 2020-2021 school year all students must have two doses. DPH strongly recommends two doses for all students regardless of date of school entry.]**~~
- [23].1.5.1 The first dose ~~[shall should]~~ be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school.
- [23].1.5.2 A written disease history, provided by the health care provider, will be accepted in lieu of the Varicella vaccination.
- [3.1.6 **Two doses of meningococcal vaccine are strongly recommended by DPH, with an initial dose at ages 11-12 and a booster at ages 16-18, and required as per 4.1 and 4.1.2 below.]**
- [23].2 Children who enter school prior to age four (4) shall follow current Delaware Division of Public Health recommendations.

## [34].0 Minimum Immunizations for ~~[Entering Grade 9 Secondary School] Students~~

- [34].1 ~~Beginning in school year 2016-2017[, in addition to those in Section 2.0, proof of the below identified immunizations shall be provided by Ee]ntering [Gg]rade 9 [Ss]tudents[. These immunizations are strongly recommended, but not required, for Entering Grade 9 Students in school year 2015-2016;~~ shall show proof of immunizations. One Secondary School grade shall be added each year thereafter.]
- [34].1.1 ~~An adolescent booster dose of [DTaP or DTP administered at age 11 or five years after the last DTaP, DTP, or DT dose, whichever is later] Tdap or other Approved Vaccine administered at age 11-12 (preferred) or prior to entry to Grade 9].~~
- [34].1.2 One dose of meningococcal **[Approved vV]accine**.
- [34].2 Schools will coordinate with the Division of Public Health to **[provide assure]** services to non-compliant **[Entering Grade 9 Secondary School Ss]tudents**.

(Non-regulatory guidance: Please refer to 14 **DE Admin. Code** 815 Health Examinations and Screenings for health examinations required for entering grade 9 students.)

**3-0[45].0 Certification of Immunization**

- 3[45].1 The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18)[, ~~14 Del.C. §131(a)(9),~~] shall present a certificate specifying the month, day, and year that the immunizations were administered by a licensed health care practitioner.
- 3[45].2 According to 14 Del.C. §131, a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent, legal guardian, Relative Caregiver[, ] or a School Enterer who has reached the statutory age of majority (18)[, ~~14 Del.C. §131(a)(9),~~] shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.
- 3[45].3 A [sS]chool [eE]nterer may be conditionally admitted to a Delaware school district by presenting a statement from a licensed health care practitioner who specifies that the School Enterer has received at least:
  - 3[45].3.1 One dose of DTaP, or DTP, or DT[, or **Approved Vaccine**]; and
  - 3[45].3.2 One dose of IPV or OPV[, or **Approved Vaccine**]; and
  - 3[45].3.3 One dose of measles, mumps and rubella (MMR) [**Approved vV**]accine; and
  - 3[45].3.4 The first dose of the Hepatitis B series; and
  - 3[45].3.5 One dose of Varicella vaccine as per 2-5.
  - 145.3.6 One dose of meningococcal vaccine[, if entering a Secondary School according to 4.1 and 4.1.2].
- 3[45].4 ~~14 DE Admin. Code 901 Education of Homeless Children and Youth 6.0 states that "School districts [and charter schools] shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth". To that end, school districts shall as stated in 14 DE Admin. Code "assist homeless children and youth in meeting the immunization requirements".~~
- 3[45].5 ~~Title~~ In accordance with the provisions of 14 Del.C., Ch. 1, Subchapter III-A Interstate Compact on Education For Children of Military Families (MIC3) and its enabling regulation, [provides that] a School Enterer or [Entering Grade 9 Secondary School Ss]tudent who is subject to MIC3 shall be allowed thirty (30) calendar days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, to obtain or to initiate the basic a series of immunizations required by this regulation.
- 3[45].6 If the School Enterer or [Entering Grade 9 Secondary School Ss]tudent fails to complete the series of required immunizations, the parent, legal guardian, Relative Caregiver or a school enterer student who has reached the statutory age of majority (18)[, ~~14 Del.C. §131(a)(9),~~] shall be notified that the School Enterer or [Entering Grade 9 Secondary School Ss]tudent will be excluded according to 14 Del.C. §131.

**4-0[56].0 Lost or Destroyed Immunization Record**

When a student's immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent, legal guardian, Relative Caregiver[, ] or a [sS]chool [eE]nterer who has reached the statutory age of majority (18)[, ~~14 Del.C. §131(a)(9),~~] shall sign a written statement to this effect and must obtain at least one dose of each of the immunizations as identified in 3-3 [45].3. Evidence that the vaccines were administered shall be presented to the superintendent or his or her designee.

**5-0[67].0 Exemption from Immunization**

- 5[67].1 Exemption from this requirement may be granted in accordance with 14 Del.C. §131 which permits approved medical and notarized religious exemptions.
  - [67].1.1 Medical exemptions are reviewed and approved by the Delaware Division of Public Health.
- 5[67].2 Alternative dosages or immunization schedules may be accepted with the written approval of the Delaware Division of Public Health.

**6.0[78].0 Verification of School Records**

The Delaware Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

**7.0[89].0 Documentation**

- 7[89].1 School nurses shall record and maintain documentation of each student's immunization status.  
7[89].2 Each student's immunization record shall be included in the Delaware Immunization Registry.

**OFFICE OF THE SECRETARY**

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

**REGULATORY IMPLEMENTING ORDER****902 Gifted or Talented Education Plan****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education seeks the consent of the State Board of Education to establish 14 **DE Admin. Code** 902 Gifted or Talented Education Plan. This regulation is being established pursuant to 14 **Del.C.** §3126, which states that the extent of programs and facilities provided for children determined to be gifted or talented shall be in accordance with the rules and regulations of the Department of Education. This regulation develops the rules and regulations relative to standards for identifying gifted or talented students, and the development, implementation and monitoring of programs for gifted or talented children.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on April 27, 2015, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens, State Council for Persons with Disabilities, and the Delaware Talented and Gifted State Affiliate of the National Association for Gifted Children (NAGC).

One comment was regarding the rationale for not including charter schools in the regulation. This comment noted that Delaware statutory law does not exclude charter schools from offering gifted or talented education, and that all students need to receive an equitable education, including students who may transfer from a school district to a charter school. The Department's rationale for not including charter schools in this regulation was that, pursuant to 14 **Del.C.**, Ch. 5, charter schools are provided the opportunity to use different or innovative school environments and teaching/learning methods. Additionally, the charter school application process includes a review of the proposed programs.

Another comment requested that the wording in 3.1 be clarified to state "Each school district shall have a Plan, which, at a minimum, shall:" The Department is in agreement and made the change.

An additional comment noted there was little value to language in 3.1.6 regarding the certification for teachers who will instruct identified gifted or talented students. The proposed regulation states that "each teacher...be certified in accordance with the applicable Professional Standards Board regulations." The Department does not believe a change in this language is warranted, as the reference to the certification by the Professional Standards Board is specific and reflects what is required for teaching students identified as gifted or talented.

Another comment noted that the term "periodic review" in 4.2 may need to be changed to include a specific timetable. The Department agrees with this and the regulation is clarified to provide for each Plan to be reviewed periodically, but not less than every five years.

Lastly, the Department of Education also added the word "beginning" and deleted "and each year thereafter" in 3.2 to clarify that the Plan should be provided to the Department by July 1, 2016 for implementation beginning no later than August 1, 2017.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to establish 14 **DE Admin. Code** 902 Gifted or Talented Education Plan pursuant to 14 **Del.C.** §3126, which states that the extent of programs and facilities provided for children



determined to be gifted or talented shall be in accordance with the rules and regulations of the Department of Education. This regulation provides the rules and regulations relative to standards for identifying gifted or talented students, and the development, implementation and monitoring of programs for gifted or talented children.

### III. DECISION TO ESTABLISH THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to establish 14 **DE Admin. Code** 902 Gifted or Talented Education Plan. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 902 Gifted or Talented Education Plan attached hereto as *Exhibit "B"* is hereby established. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 902 Gifted or Talented Education Plan hereby established 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** 902 Gifted or Talented Education Plan established hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 902 Gifted or Talented Education Plan 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 June 18, 2015. 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 18th day of June 2015.

#### **Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 18th day of June 2015

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

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

### **902 Gifted or Talented Education Plan**

#### **1.0 Purpose**

The purpose of this regulation is to establish that a gifted or talented student, as identified by professionally qualified person(s), may require differentiated educational program(s) or service(s) beyond those normally provided by the regular school program in order to address the individual's capabilities.

#### **2.0 Definitions**

"Gifted or Talented Education Plan (Plan)" means a document developed by a school district for the development, implementation, and evaluation of an identification process and appropriate services for gifted or talented students.

"Gifted or Talented Student" means a student in the chronological age group four (4) through the end of the school year in which the child attains the age of 21 or until receipt of a regular high school diploma, whichever occurs first, who has been identified by a professionally qualified person(s) as meeting the following definition of gifted or talented:

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

General intellectual ability;

Specific academic aptitude;

Creative or productive thinking;

Leadership ability;

Visual and performing arts ability; or

Psychomotor ability.

"Relative Caregiver" means, pursuant to 14 Del.C. §202 (f)(1), an adult who, by blood, marriage or adoption, is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, step parent, brother, sister, step brother, step sister, half brother, half sister, niece, nephew, first cousin, or first cousin once removed but who does not have legal custody or legal guardianship of the student.

### **3.0 Development and Components of the Plan**

- 3.1 Each school district shall have a Plan ~~[for educational services for identified gifted or talented students. The Plan which]~~, at a minimum, shall:
- 3.1.1 Outline goals and specific outcomes;
  - 3.1.2 Be developed with input from various stakeholder groups including parents;
  - 3.1.3 Provide the process for identification of gifted or talented students by professionally qualified persons;
  - 3.1.4 Outline an identification process that ensures all students have an equal opportunity to be identified and participate in the program;
  - 3.1.5 Provide for a communication process, which shall include procedures to inform parent(s), guardian(s), or Relative Caregiver(s) of a student's participation in the gifted or talented education program;
  - 3.1.6 Establish procedures for requiring that, at a minimum, each teacher assigned to teach a student identified as gifted or talented be certified in accordance with the applicable Professional Standards Board regulations.
  - 3.1.7 Establish procedures for consideration of the identification and placement of a student who was identified as gifted or talented in the school district from which the student transferred; and
  - 3.1.8 Provide for an evaluation of the Plan provided for its gifted or talented students.
- 3.2 The Plan should be provided to the Department of Education by July 1, 2016 for implementation **[beginning]** no later than August 1, 2017 ~~[and each year thereafter]~~.

### **4.0 Department of Education Responsibilities**

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

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 1105

### REGULATORY IMPLEMENTING ORDER

#### 1150 School Transportation

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

The Secretary of Education needs to amend 14 **DE Admin. Code** 1150 School Transportation. This regulation is being amended to make a technical correction to the purpose statement to ensure that it is aligned with Delaware Code. Under Title 29 **Del.C.** §10113 this regulation is exempted from the procedural requirements of the APA and may be adopted informally without notice.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 27, 2015, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities and an employee of the Colonial School District. Following the publication of the regulation, it was noted that a technical change needed to be made to the purpose statement. This amended Regulatory Implementing Order is for that purpose.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1150 School Transportation to make a technical correction to the purpose statement to ensure that it is aligned with Delaware Code. Under Title 29 **Del.C.** §10113 this regulation is exempted from the procedural requirements of the APA and may be adopted informally without notice.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1150 School Transportation. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1150 School Transportation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1150 School Transportation 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** 1150 School Transportation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1150 School Transportation 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 June 10, 2015. 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 10th day of June 2015.

Department of Education  
Mark T. Murphy, Secretary of Education

Approved this 10<sup>th</sup> day of June, 2015

## 1150 School Transportation

## 1.0 Purpose

- 4.1 ~~This regulation is in accordance with 14 Del.C. §2905 Transportation of students of nonpublic, nonprofit elementary and high schools, which states that the Department of Education shall make rules and regulations concerning the transportation of pupils in nonpublic, nonprofit elementary and secondary (high) schools in this State. Such rules and regulations shall provide for at least the following:~~
- 4.1.1 ~~All rules and regulations relative to pupil transportation to nonpublic, nonprofit schools shall be the same as those applicable to public schools;~~
  - 4.1.2 ~~Such rules and regulations shall limit transportation of pupils in nonpublic, nonprofit schools to the elementary and secondary schools, except as provisions of this title may assign such transportation responsibility to the Department of Education on behalf of pupils enrolled at other levels in a public school system;~~
  - 4.1.3 ~~Pupils enrolled in nonpublic, nonprofit schools shall only be entitled to transportation within the described boundaries of a public school district and not beyond those boundaries.~~

This regulation is in accordance with 14 Del.C. Ch. 29 to regulate transportation to elementary and secondary (high) schools in Delaware, including, but not limited to, nonpublic, nonprofit elementary and secondary (high) schools.

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

**1150 School Transportation**

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

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

#### ORDER

### 3325 Financial Capability Reporting

#### NATURE OF THE PROCEEDINGS:

The Department of Health and Social Services ("Department") / Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings to establish Regulation 3325 Financial Capability Reporting.

The Department's proceedings to establish the regulation was initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 16 **Delaware Code** Section 1124 and 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the April 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2015, at which time the Department would receive information, factual evidence, and public comment to the said proposed regulations.

#### SUMMARY OF PROPOSED AMENDMENT

The proposal establishes Regulation 3325 Financial Capability Reporting. The proposed change will establish the regulation as required by 16 **Del.C** §1124.

#### Statutory Authority

- 29 **Del.C.** Ch. 79, "Department of Health and Social Services."
- 16 **Del.C** §1124, "Staff training; issuance of regulations."

## Background

DLCTRP is revising these regulations pursuant to 16 Del.C §1124.

## Summary of Proposed Amendment

The proposal establishes regulation which detail the Department of Health and Social Services' authority to monitor the financial capability of licensed long term care (LTC) providers. It details the level of information that must be provided by the licensee, or potential licensee, under various circumstances. It also defines when and in what form the Department will require the submission of audited financial statements reporting the financial position and the results of operations of facilities by independent certified public accountants.

The comments we received resulted in revisions to the proposed regulation, some of them substantive. Therefore we published these again as proposed and accepted comments on them.

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

The Governor's Advisory Council for Exceptional Citizens ("GACEC"), the State Council for Persons with Disabilities (SCPD) and Ezra P. Smith submitted comments and suggestions. DLCTRP has considered each comment and responds as follows:

Comment: The regulations apply only to facilities with 4 or more residents. This appears appropriate. Facilities with 3 or fewer residents would be subject to less prescriptive obligations.

**Response:** No response required.

**Response:** Revised as recommended.

Comment 2: There is tension between the statute and regulations in the context of the "look-back" period.

**Response:** The comment cites 16 Del. C. §1104(d) and its requirement for the license holder to file a sworn affidavit of a "satisfactory compliance history." The comment doesn't specify the section of the regulation causing the tension. At §5.3.6.1 through §5.3.6.3 of the regulation there are requirements for the submission of 3 years of historical financial data. If this is the section the comment is addressing it should be noted that we interpret "satisfactory compliance history" in the statute as compliance with the accepted standards of practice and compliance with established statute and regulations for long term care facilities which the license holder may have been a party to. It is not a review of historical financial data as is the case in the financial review of 3 years of historical data.

Comment 3: §5.3.5 refers to "local financial institution". The term is undefined. It is unclear if it refers to an institution that operates only in Delaware, an nearby institution operating in another state (e.g. Elkton, MD, West Chester, PA, etc.,) or a national institution with a local branch in Delaware (e.g. Bank of America). It would be preferable to clarify the term.

**Response:** Revised as recommended.

Comment 4: The commenter assumes the State of Delaware has financial safeguards and auditing protocol which cover state owned facilities. Literally they would be required to comply with all of the requirements in the regulations. The Division may wish to exempt State or DHSS-owned facilities from the regulations.

**Response:** Revised as recommended.

Comment 5: In §14.2 the Division could consider adding a second supporting citation, i.e., to Title 16 Del.C. §1104(e)

**Response:** Revised as recommended.

Comment 6: Much of the regulation is duplicative of 24 Del.C. Chapter 1 and the Board of Accountancy rules and regulation. It is suggested that the Division remove all the detailed accounting and audit rules and replace them with "All audits shall be done in accordance with the provision of 24 Del.C. Chapter 1 and the Board of Accountancy rules and regulations."

**Response:** Revised as recommended.

Comment 7: The term "Independent Accountant" does not describe a class of accountants. Rather it refers to the relationship between the auditor and a specific client.

**Response:** The term Independent Auditor was deleted.

Comment 8: Membership in the AICPA is not mandatory and some have chosen not to join. Also, AICPA is not primarily responsible for the discipline of members of the profession.

**Response:** AICPA was replaced with "the Delaware Board of Accountancy" where appropriate.

Comment 9: The flood of documents proposed in the regulation may generate a flood of documents which may

burden the staff of the Division.

**Response:** We accept this statement as true.

Comment 10: Audits are not inexpensive. Accordingly they should not be performed more frequently than is really necessary. In many situations annually may be considered sufficient.

**Response:** The Division recognizes the cost of audits. However, the regulation only requires audits; at initial application; upon change of ownership and when the Department determines that financial conditions exist which threaten the health and safety of a resident(s) as detailed in §7.

Comment 11: Interim Statements add to the paperwork burden. It may be best to avoid them if possible.

**Response:** The Division accepts this statement as true.

Comment 12: Audits of Personal Financial Statements are unusual and perhaps best avoided.

**Response:** Personal Financial Statements are only required when the Controlling Organization is a closely held privately owned entity without a parent or with a parent without a financial history.

Comment 13: Interpretation of financial statements of non-profits would require special attention if they are being compared to statements of profit making entities. Perhaps the regulations could make special provisions for non-profits.

**Response:** Financial statements from a facility will not be compared nor measured against those of another facility. The Division recognizes that circumstances can vary greatly.

Comment 14: Sec 5.3.5 The requirement that a deposit held by a bank seems bizarre. It is doubtful that any bank would agree to assume the responsibility for notification described here.

**Response:** We have imposed this in the past and not met with opposition.

Comment 15: Due dates are mentioned in several places it is suggested that the Division review these provisions with the managing partner of a local firm with a large audit practice on whether these dates and timelines are practical.

**Response:** The dates and time lines, as set forth, have been imposed in the past and have not met with opposition

Comment 16: Small Nursing Homes I can see why their financial strength would concern the Division. However caution is suggested lest the regulations force them to operate underground.

**Response:** The Division is developing a separate financial review process for small nursing homes (Family Care Homes).

Comment 17: The regulation appears more restrictive than the accountancy law provides.

**Response:** This has been corrected by the revision to the definition of "Accountant".

Comment 18: 24 **Del.C.** Chapter 1, § provides that both Certified Public Accountants and Licensed Accountants who are not CPAs may perform audits. Non-CPAs are limited to auditing "Nonpublic Entities".

**Response:** This has been corrected by the revision to the definition of "Accountant".

#### FINDINGS OF FACT:

The Department finds that the proposed changes set forth in the April 2015 *Register of Regulations* should be adopted, subject to the modification set forth above which is not substantive.

**THEREFORE, IT IS ORDERED**, that the proposed changes to 3325 Financial Capability Reporting, with the modification indicated herein, is adopted and shall be final effective July 11, 2015.

Rita Landgraf, Secretary, DHSS

#### **3325 Financial Capability Reporting** *(Break in Continuity of Sections)*

## **2.0 Purpose and Scope**

2.1 The purpose of this regulation is to detail the Department of Health and Social Services' authority to monitor the financial capability of licensed long term care (LTC) providers. It details the level of information that must be provided by the licensee, or potential licensee, under various circumstances. It also defines when and in what form the Department will require the submission of audited financial statements reporting the financial position and the results of operations of facilities by [independent certified public] accountants.

- 2.2 Every facility (as defined in 16 Del.C. §1102(4)) licensed to provide care for more than three (3) residents shall be subject to this regulation[, with the exception of state owned/operated facilities]. Facilities licensed to provide care for 3 or fewer residents shall be required to submit documentation demonstrating financial capability as required by the Department.
- 2.3 This regulation shall not prohibit, preclude or in any way limit DHSS from ordering, conducting or performing examinations of facilities under the rules and regulations of the Delaware Department of Health and Social Services and the practices and procedures of its regulations.

### 3.0 **Definitions**

“Accountant” means a ~~[practitioner of accounting or accountancy, which is the measurement, disclosure or provision of assurance about financial information that helps managers, investors, tax authorities and others make decisions about allocating resources]~~ Certified Public Accountant or Public Accountant in good standing, as those terms are defined at 24 Del.C. §102].

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

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

“Controlling Organization” means an entity that has a majority ownership interest in the licensed facility.

“Department” means the Delaware Department of Health and Social Services (DHSS).

“Division” means the DHSS Division of Long Term Care Residents Protection (DLTCRP).

“Domicile” means the location of the headquarters of the business.

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

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

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

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

["Local Financial Institution" means a bank or other institution offering financial services with headquarters or branch offices in Delaware.]

“Material Adverse Change” means a change in the financial position of the facility or the controlling organization that threatens the health or safety of a resident(s) of a facility.

*(Break in Continuity of Sections)*

### 7.0 **Audited Financial Disclosure Requirement**

- 7.1 When the Department determines that financial conditions exist which threaten the health or safety of a resident(s) in a facility, the Department may require the facility to submit certified in-house financial statements within 15 days of request and an audited financial report prepared by an ~~[Independent Certified Public]~~ accountant within 60 days. The foregoing time frames may be extended by the Department upon written request.

*(Break in Continuity Within Section)*

- 7.3 Audits may initially be transmitted to the Department by electronic means. The electronic submission must be followed by an original, bound, signed audit, prepared by an ~~[independent certified public]~~ accountant.
- 7.4 Contents of an Audited Financial Report:

# FINAL REGULATIONS

7.4.1 The audited financial report shall indicate the current financial position of the facility and the results of its operations, cash flows and changes in capital. The report shall conform to GAAP practices. It shall include:

- 7.4.1.1 Report of ~~[independent certified public]~~ accountant;
- 7.4.1.2 Balance sheet reporting assets, liabilities, and capital;
- 7.4.1.3 Statement of operations;
- 7.4.1.4 Statement of cash flows;
- 7.4.1.5 Statement of changes in capital; and
- 7.4.1.6 Notes to financial statements. These notes shall be those required by GAAP.

## **8.0 Qualifications of ~~[Independent-Certified Public]~~ Accountant[s]**

~~[8.1]~~ In order for the Department to recognize a person or firm as a qualified ~~[independent certified public]~~ accountant[,], the person or firm must ~~[meet or exceed the following qualifications: be in good standing with the Delaware Board of Accountancy.]~~

- ~~[8.1.1 Is in good standing with the AICPA and in all states in which the accountant is licensed to practice;~~
- ~~8.1.2 Has neither directly nor indirectly entered into an agreement of indemnification with respect to the audit of the facility; and~~
- ~~8.1.3 He or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Delaware State Board of Accountancy, or similar code.]~~

*(Break in Continuity of Sections)*

## **10.0 Scope of Audit and Report ~~[of Independent-Certified Public By]~~ Accountant**

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

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

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

*(Break in Continuity of Sections)*

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

- 14.1 The Department shall maintain the financial documents submitted by facilities in a secure and confidential manner.



14.2 The Department will consider financial documents submitted pursuant to these regulations as exempt from public disclosure consistent with 29 Del.C. §10002(l)(2) [and 16 Del.C. §1104(e)].

*(Break in Continuity of Sections)*

\*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2015 issue of the *Register* at page 761 (18 DE Reg. 761). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**3325 Financial Capability Reporting**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

## Medicaid Reimbursement for Prescription Drugs – Multi-State Purchasing Pool Supplemental Drug Rebate Agreement

### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding the *Multi-State Purchasing Pool Supplemental Rebate Agreement (SRA)* for pharmaceutical products specifically, *to include Medicaid Managed Care Organization (MCO) utilization for accrual of supplemental rebates*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the May 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2015 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the *Multi-State Purchasing Pool Supplemental Rebate Agreement (SRA)* for pharmaceutical products specifically, *to include Medicaid Managed Care Organization (MCO) utilization for accrual of supplemental rebates*.

#### Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act. Specifically, Section 2501, *Prescription Drug Rebates*
- 1927(a)(1) and 1927 (a)(4) of the Social Security Act, *authorizes state to enter directly into separate or supplemental rebate agreements with manufacturers*
- 1902(a)(19) of the Social Security Act, *care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- 42 CFR §440.120, *Prescribed drugs*
- 42 CFR §447.201, *State plan requirements*
- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

#### Background

*Medicaid Supplemental Drug Rebate Agreements*

The federal Omnibus Budget Reconciliation Act of 1990, section 4401 added §1927 to the Social Security Act. Section 1927 provides that States may enter separate or supplemental drug rebate agreements as long as such agreements achieve drug rebates equal to or greater than the drug rebates set forth in the Secretary's national rebate agreement with drug manufacturers, which is published at 56 F.R. 7049 (1991). Specifically, the drug rebate statute, at section 1927(a)(1) of the Social Security Act (Act), provides that "the Secretary may authorize a State to enter directly into agreements with a manufacturer." Also, section 1927(a)(4) of the Act provides that any drug rebate agreement between a State and drug manufacturers and in effect on November 5, 1990, may constitute a rebate agreement in compliance with the statute if the Centers for Medicare and Medicaid Services (CMS) determines that any such agreement "provides for rebates that are at least as large as the rebates otherwise required under this section." CMS accordingly believes that Congress intended that States that seek CMS approval under section 1927(a)(1) to enter directly into agreements with manufacturers must ensure that any such agreement will achieve drug rebates that are at least equal to the rebates set forth in the Secretary's rebate agreements with manufacturers.

Currently, prescription drug manufacturers are required to enter into a rebate agreement. The agreement requires manufacturers to provide state Medicaid programs with rebates for the drugs purchased for recipients on an outpatient basis. Section 2501 of the Patient Protection and Affordable Care Act (ACA) makes two modifications to the prescription drug rebate program. The first modification, which took effect on January 1, 2010, increases the minimum rebate amount but requires the State to remit 100 percent of the additional rebates collected to the federal government. The second modification, which took effect on March 23, 2010, extends the application of the prescription drug rebates program to prescription drugs that are provided to Medicaid recipients who are enrolled in Medicaid Managed Care Organizations (MCOs).

### Summary of Proposal

Among the services provided to recipients of services under the Delaware Medical Assistance Program (DMAP) are prescription drugs and related pharmacy services. Expenditures for pharmacy services are offset in part by rebate agreements with suppliers of prescription drugs. Part of the system by which Delaware receives these rebates is a multi-state purchasing pool supplemental rebate agreement.

The existing multi-state supplemental rebate agreement (SRA) between the State of Delaware and pharmaceutical manufacturers for legend drugs provided fee-for-service to Medicaid individuals was approved by CMS on February 20, 2014 with an effective date of October 1, 2013. Delaware participates in the TOP\$ program, the multistate Medicaid pharmaceutical purchasing pool administered by Provider Synergies, LLC, an affiliate of Magellan Medicaid Administration. This agreement was revised by adding definitions and structural changes to the SRA including the option of including Medicaid Managed Care Organization (MCO) utilization for accrual of supplemental rebates. Upon approval of this agreement, CMS advised that a separate state plan amendment (SPA) will be required if the state intends to exercise the option of including MCO utilization for supplemental rebates.

DHSS/DMMA intends to exercise this option and submit to CMS for review and approval a SPA to include MCO utilization for supplemental rebate collection.

### Public Notice

Under the provisions of 42 U.S.C., §1902(a)(13)(A) of the Social Security Act, 42 CFR §447.205 and Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gives notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity for public input regarding any significant proposed change in its method and standards for setting payment rates for Medicaid services. Comments must have been received by 4:30 p.m. on May 31, 2015.

The provisions of this state plan amendment relating to the methodology and payment rates for prescription drugs and related pharmacy services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

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

**Fiscal Impact Statement**

The following fiscal impact is projected:

	FFY2015	FFY2016	FFY2017
<b>Federal Supplemental</b>	\$ (4,860,453)	\$ (10,012,534)	\$ (10,212,785)
<b>Federal Share</b>	\$ (2,606,661)	\$ (5,489,872)	\$ (5,599,670)
<b>State Share</b>	\$ (2,253,792)	\$ (4,522,662)	\$ (4,613,115)

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

**GACEC and SCPD**

As background, prescription drug manufacturers are required to enter into rebate agreements for drugs purchased through the Medicaid program. Both the federal government and state governments benefit from the rebates. Effective March 23, 2010, the Affordable Care Act extended the application of the prescription drug rebate program to drugs provided to Medicaid beneficiaries enrolled in Medicaid Managed Care Organizations (MCOs). In 2014, CMS approved Delaware's participation in a multi-state drug rebate program known as "TOP\$" for fee for service drugs. Qualification for drug rebates under "TOP\$" is available for drugs provided to MCO participants contingent upon Delaware adopting a Medicaid State Plan amendment. Based on the "Fiscal Impact Statement" on p. 840, it appears that Delaware would benefit from the extension of the rebate program to drugs provided to MCO participants. Since qualifying for drug manufacturer rebates for Medicaid beneficiaries participating in the Delaware Medicaid managed care system should result in financial benefit to the State, the GACEC and the SCPD endorse the proposed regulation.

**Agency Response:** DMMA thanks both Councils for the endorsement.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the May 2015 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED,** that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding the *Multi-State Purchasing Pool Supplemental Rebate Agreement (SRA)* for pharmaceutical products specifically, *to include Medicaid Managed Care Organization (MCO) utilization for accrual of supplemental rebates*, is adopted and shall be final effective July 10, 2015.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #15-12  
REVISION:**

Attachment 3.1-A  
Page 5 Addendum  
Continued 2

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

**LIMITATIONS**

**12.a. Prescribed Drugs Continued:**

**Drug Rebate Agreements**

- A supplemental rebate agreement submitted to CMS on December 10, 2013 amended the December 20, 2005 version of the "State of Delaware TOP\$SM The Optimal PDL \$olution ("TOP\$") State Supplemental Rebate Agreement" authorized under Transmittal Number SP-412, has been authorized by CMS.
  - Pharmaceutical manufacturers are allowed to audit utilization rates;
  - Compliance with the reporting requirements for state utilization information and restrictions to coverage;
  - The unit rebate amount is confidential and cannot be disclosed for purposes other than rebate invoicing and verification; and,
  - Rebate agreements between the state and a pharmaceutical manufacturer that are separate from the drug rebate agreements of Section 1927 are authorized by the Centers for Medicare and Medicaid Services. The state reports rebates from separate agreements to the Secretary for Health and Human Services. The state will remit the federal portion of any state supplemental rebates collected.
  - Participation in the TOP\$ multi-state rebate program will not limit the state's ability to submit a SPA to authorize the implementation of a state-specific supplemental rebate agreement.
  - Supplemental rebate agreements would apply to the drug benefit, both fee-for-service and those paid by contracted managed care organizations (MCOs).

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**ORDER**

**Title XIX Medicaid State Plan, State Plan Rehabilitative Services - Coverage and Reimbursement for Community Support Services**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding State Plan Rehabilitative Services, specifically, *Coverage and Reimbursement for Community Support Services*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the December 1, 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan regarding State Plan Rehabilitative Services specifically, *Coverage and Reimbursement for Community Support Services*.

**Statutory Authority**

- §1905 of the Social Security Act (a)(13), *Other diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §440.130(d), *Diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §440.60, *Medical or other remedial care provided by licensed practitioners*

- 42 CFR §440.225, *Optional services*
- 42 CFR §440.20, *Outpatient hospital services and rural health clinic services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

## Background

Section 1905(a)(13) of the Social Security Act (the Act) includes rehabilitative services as an optional Medicaid State plan benefit. Current Medicaid regulations at 42 CFR §440.130(d) provides a definition of rehabilitative services. Rehabilitative services are defined as "any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice under State law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level." The broad general language in this regulatory definition has afforded States considerable flexibility under their State plans to meet the needs of their State's Medicaid population. Rehabilitative services are specialized services of a medical or remedial nature delivered by uniquely qualified practitioners designed to treat or rehabilitate persons with mental illness or substance use disorder diagnoses. These services will be provided to recipients on the basis of medical necessity.

### *Community Support Services*

Community support services are medically related treatment, rehabilitative and support service provided through self-contained programs by teams of clinicians, associate clinicians and assistant clinicians under the supervision of a physician. Currently, the Delaware Medical Assistance Program (DMAP) covers behavioral health rehabilitative services for persons with disabilities caused by mental illness and substance use disorder. The three (3) categories of community support programs are:

- 1) Community Continuum of Care (CCC) program: CCC provides a comprehensive array of non-residential support services in community-based settings to improve the capacity for self-care and productive daily living of persons whose disabilities markedly impair their ability to live independently without support.
- 2) Psychosocial Rehabilitation Center (PRC) program: PRC provides non-residential facility-based group therapies to improve the capacity for self-care and productive daily living of persons whose disabilities markedly impair their ability to live independently without support.
- 3) Residential Rehabilitation Facility (RRF) program: RRF provides residential facility-based group and individual therapies to improve the capacity for self-care and productive daily living of persons whose disabilities preclude their ability to live independently.

## Summary of Proposal

### *Overview*

On September 18, 2014, the Centers for Medicare and Medicaid Services (CMS) approved Delaware Medicaid State Plan Amendment (SPA) #13-0018. This SPA targets service delivery, specifically, substance use disorder treatment services, crisis intervention services, and other licensed behavioral health practitioners. SPA #13-0018 makes the changes and clarifications necessary for Delaware to be responsive to the United States Department of Justice (DOJ) Settlement through the addition of new services and modifications to existing services.

Effective July 1, 2014, the coverage and reimbursement methodology plan amendments of #DE SPA #13-0018 accomplish the following:

1. Removes mental health clinics from the Medicaid Clinic Option and cover the services provided by those facilities in the Other Licensed Practitioner Section of the State Plan. This allows Medicaid to reimburse Psychologists, Licensed Clinical Social Workers, Licensed Professional Counselors of Mental Health, and Licensed Marriage and Family Therapists (LMFTs) services when provided in a clinic or community setting when permitted under State practice laws.
2. Includes Crisis Intervention and Outpatient and Residential Substance Use Disorder Treatment in the Rehabilitation State Plan. This allows the State to provide Medicaid eligible individuals with mobile and site-based crisis intervention for individuals experiencing a behavioral health crisis. In addition, the State will be able to provide recovery-oriented treatment for individuals with substance use disorders.
3. Removes the Community Support Service Program from the State Plan effective January 1, 2015. On that date, a new 1915(i)-like service under the 1115 demonstration waiver begins operating for

individuals under the DOJ settlement agreement to ensure that individuals with serious mental illness (SMI) receive the supports necessary to remain in the community.

*Proposal*

As referenced in item #3 above, reimbursement and coverage of Community Support Service Program shall cease in the Medicaid State Plan on January 1, 2015. As long as the State is continuing to provide this service, the reimbursement language remains in the reimbursement section of state plan.

With the approval of SPA #13-0018 and anticipated approval of Diamond State Health Plan 1115 Waiver Amendment Covering PROMISE, current community support services coverage and reimbursement language becomes obsolete. Delaware Medicaid is processing a technical amendment to the Medicaid State Plan as directed by the Centers for Medicare and Medicaid Services (CMS) to submit a new SPA prior to January 1, 2015 with an effective date of January 1, 2015, removing all State Plan coverage and reimbursement provisions related to community support services at Attachment 4.19-B Page 4. The proposed rule is necessary for the department to administer and maintain compliance with federal funding requirements.

In accordance with public notice requirements established at 42 CFR 447.205, Section 1902(a)(13)(A) of the Social Security Act, and Title 29, Chapter 101 of the **Delaware Code**, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is seeking public comment on the draft Community Support Service State Plan Amendment.

The provisions of this state plan amendment relating to methodology and payment rates of Community Support Services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

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

**Fiscal Impact Statement**

There will be no fiscal impact as a result of this amendment because it is a technical amendment, and it does not represent a significant change in the payment methods or standards. The fiscal impact for this regulatory action was captured in Delaware Medicaid State Plan Amendment (SPA) #13-0018.

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) considered your comments and respond as follows.

As background, "rehabilitative services" are an optional Medicaid State Plan benefit. Delaware includes "rehabilitative services" within its State Plan. Under the general heading of "rehabilitative services", the Delaware Medicaid Plan included a "Community Support Service Program" which covered "behavioral health rehabilitative services per persons with disabilities caused by mental illness and substance use disorder." This program encompassed both residential and non-residential support services. CMS has already approved an amendment to remove the "Community Support Service Program" entirely from the Medicaid State Plan effective January 1, 2015. The rationale for the deletion of the Program is that the PROMISE program makes it "obsolete". In a nutshell, support services previously provided under the "Community Support Service Program" would be covered (along with other services) by PROMISE. DMMA is proposing to formally delete the "Community Support Service Program" from the State Plan through the current proposed regulation. The GACEC and the SCPD have the following observations.

First, we are concerned that eligibility for PROMISE is more circumscribed than eligibility under the Community Support Service Program. As a result, some classes of individuals who were eligible for behavioral health support services under the former program will be "left in the cold". Consider the following:

A. Per the attached §5.0 from the Community Support Service Program Provider Manual, eligibility for the

program was expansive and not limited by diagnosis:

## 5.0 Service Limitations

### 5.1. Eligibility Limitations

5.1.1 Community support services are limited to eligible DMAP clients who would benefit from services designed for or associated with mental illness, alcoholism or drug addiction.

5.1.1.2 Coverage for community support services is limited to those Medicaid clients who are certified by the program physician as severely disabled according to criteria for severity of disability caused by mental illness and/or substance abuse.

B. In contrast, the PROMISE program is highly prescriptive and only covers individuals with certain diagnoses. See attached excerpt from Medicaid Plan amendment.

While individuals with a TBI diagnosis could have qualified under the "Community Support Service" eligibility standard, that diagnosis is non-qualifying under PROMISE. SCPD has requested reconsideration of DMMA's exclusion of TBI as a qualifying diagnosis under PROMISE. See attachments. Apart from TBI, there may be a host of other classes of individuals who would have been eligible under the "Community Support Service Program" but who will be barred from PROMISE based on a non-qualifying diagnosis, including the following:

- 1) intermittent explosive disorder (DSM V, 312.34);
- 2) conduct disorder (DSM V, 312.81, 312.82, and 312.89);
- 3) all neurocognitive disorders (DSM V, pp. 591-642); and
- 4) all trauma- and stressor-related disorders apart from PTSD (DSM V, pp. 265-290).

Second, DMMA indicates that PROMISE is intended to cover individuals qualifying under the DOJ-Delaware settlement. At p. 430. The population of individuals covered by the Settlement Agreement is not limited to certain diagnoses. See attached pages from Settlement Agreement. As a result, while an individual in DPC with a diagnosis of intermittent explosive disorder will qualify for services under the Settlement Agreement, DHSS will have to spend 100% State funds for the individual's community programming since the person lacks a qualifying diagnosis to be eligible for PROMISE. Alternatively, the individual will be relegated to a narrow scope of services offered by an MCO. See attached Waiver Amendment, p. 9. Query whether these results are fiscally and clinically prudent.

In closing, while the Division characterizes the Community Support Service Program as "obsolete" as supplanted by the PROMISE program, this is not entirely accurate. It is unfortunate that the Division is proposing elimination of a program with more progressive eligibility criteria and substituting a program with brittle, no-exceptions diagnosis-based eligibility criteria.

**Agency Response:** DMMA carefully considered your comments and believe that individuals with Acquired Brain Injury (ABI) are eligible for PROMISE if they meet the stated criteria for the PROMISE program. Individuals with ABI who are not eligible for PROMISE continue to be eligible for Home and Community-Based Services (HCBS) supports under the Diamond State Health Plan Plus program. Individuals with Acquired Brain Injury that are not eligible for PROMISE are still eligible for services through DSAAPD.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 1, 2014 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding State Plan Rehabilitative Services specifically, *Coverage and Reimbursement for Community Support Services* to remove all State Plan coverage and reimbursement provisions related to community support services at Attachment 4.19-B Page 4, is adopted and shall be final effective June 10, 2015.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #15-10  
REVISION:

ATTACHMENT 4.19-B  
Page 4

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –  
OTHER TYPES OF CARE

~~1) Community Support Service Programs~~

~~Reimbursement Methodology for Community Support Services~~

~~Rates for Community Support Services as defined in Attachment 3.1 A will be established by a rate setting committee composed of representatives of various Divisions of Delaware Health and Social Services, including the Division of Social Services (DSS), the Division of Management Services (DMS), and the Division of Substance Abuse and Mental Health (DSAMH).~~

~~A universal per diem rate for all services with the exception of Psychosocial Rehabilitation Center Services and Residential Rehabilitation Services is to be set initially and for three subsequent fiscal years based upon a trend analysis of Medicaid expenditures for individualized home and community based Community Support Services during the base period of SFY 2000 through SFY 2002 and adjusted thereafter by the rate setting committee.~~

~~Rates for Psychosocial Rehabilitation Center Services and Residential Rehabilitation Services are provider specific and are calculated by determining the total costs for each provider of the respective services, including cost of services to all clients regardless of Medicaid eligibility. The rates will be per diem for Residential Rehabilitation Services and per half day unit for Psychosocial Rehabilitation Center Services.~~

(RESERVED FOR FUTURE USE)

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**DEPARTMENT OF LABOR**  
**DIVISION OF UNEMPLOYMENT INSURANCE**

Statutory Authority: 19 Delaware Code, Section 3302(17) (19 Del.C. §3302(17))  
19 DE Admin. Code 1202

ORDER

**1202 Unemployment Insurance Regulations**

In accordance with 29 Del.C. §10118, and for the reasons set forth herein, the Delaware Department of Labor, Division of Unemployment Insurance (hereinafter "the Division") enters this Order adopting the Division of Unemployment Insurance Regulation on Partial Unemployment Insurance.

**NATURE OF THE PROCEEDINGS**

Pursuant to its authority under 19 Del.C. §3302(17), the Division proposes to adopt a regulation to establish procedures for submitting and processing claims for partial unemployment insurance.

The Division gave notice of its intent to adopt the proposed regulation by publication in the May 1, 2015 issue of the Delaware *Register of Regulations*. The Division solicited written comments from the public concerning the



proposed regulation allowing the period of time for such submissions to remain open for the thirty (30) days mandated by 29 **Del.C.** §10118(a).

The Division received no written comments from the public in response to the notice of intention to adopt the proposed regulation. Therefore, no evaluation or summarization of comments is presented in the "Summary of Evidence" section herein.

## SUMMARY OF EVIDENCE

In accordance with Delaware law, public notice regarding the proposed regulation was published in the Delaware *Register of Regulations*. The public comment period was open from May 1, 2015 through June 1, 2015.

The Division received no written comments in response to the notice of intention to adopt the proposed regulation during the public comment period.

## FINDINGS OF FACT

The public was given the required notice of the Division's intention to adopt the proposed regulation and was given ample opportunity to provide the Division with comments opposing the Division's adoption of the proposed regulation. No public comments were received. Thus, the Division finds that the proposed regulation, as set forth in the attached copy, should be adopted as in the best interest of the general public of the State of Delaware.

## TEXT AND CITATION

The text of the proposed regulation remains as published in the Delaware *Register of Regulations*, Volume 18, Issue 11 on May 1, 2015, and is attached hereto as Exhibit A.

**THEREFORE, IT IS SO ORDERED**, this 3rd day of June, 2015, that the proposed Division of Unemployment Insurance Regulation on Partial Unemployment Insurance is adopted and shall become effective ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(e) and (g).

By: Thomas Ellis, Director  
Division of Unemployment Insurance

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2015 issue of the *Register* at page 843 (18 DE Reg. 843). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**1202 Unemployment Insurance Regulations**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 91 (7 **Del.C.** Ch. 91)  
7 **DE Admin. Code** 1375

Secretary's Order No.: 2015-WH-0023

**1375 Regulations Governing Hazardous Substance Cleanup**

Date of Issuance: June 9, 2015  
Effective Date of the Amendment: July 11, 2015

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, 6010, the following findings of fact based on the record,

reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

### Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 **DE Admin. Code** 1375: *Delaware Regulations Governing Hazardous Substance Cleanup*. The Department's Division of Waste and Hazardous Substances, Site Investigation and Restoration Section, commenced the regulatory development process with Start Action Notice 2013-29 dated November 8, 2013. The Department published its initial proposed regulation Amendments in the April 1, 2015 *Delaware Register of Regulations*. The Department then held a public hearing on April 29, 2015. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through May 14, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to the Delaware Regulations Governing Hazardous Substance Cleanup ("Amendments"), in order to meet current Departmental practices and to remain consistent with current Delaware law. DNREC initially enacted its HSCA Regulations in 1990 to govern actions with sites potentially contaminated with hazardous substance releases in Delaware that will not be addressed under the federal superfund program. Three major programs are administered under the HSCA: Voluntary Cleanup Program, the Brownfields Program, and the HSCA Enforcement Program.

The Department's proposed revisions at this time include additional regulatory language to update the definition of Conditional No Further Action ("CNFA"), to wit: to state that a release does not pose a threat "above the site-specific risk under current conditions." The CNFA determination will list all of the conditions that have to be met in order to maintain the determination under current and future use scenarios, and will be recorded in the property record.

Additionally, a new Section (8.1) to the existing HSCA regulation is being proposed, which states that notice shall be placed in the land record when a release is a threat to public health, welfare or the environment. Pursuant to proposed Section 8.1, the Department will determine a release to be a threat to public health or the environment when "[a] Department approved risk assessment indicates that a remedy must occur on a facility to meet the acceptable risk; or at any time determined by the Department during the remedy to meet the intent of 7 **Del.C.** §9115(a)."

With regard to the aforementioned notice in land records, the proposed regulatory language states that the owner shall place notice in the records of such real property, and that such notice shall, among other things, (1) identify the facility; (2) identify the owner of the facility; (3) state that a release occurred and the date of the occurrence; and (4) record the CNFA determination or the Environmental Covenant from the Department, as necessary. The proposed language further states that DNREC will revoke and rescind the notice when the property no longer poses a threat.

The proposed regulatory amendments also seek to provide additional clarity to the existing HSCA regulations by updating the definitions of the following terms: "acceptable risk"; "cleanup level"; "Conditional No Further Action"; "contaminant of concern"; "contaminant of potential concern"; "hazardous substance"; "HSCA Reporting Levels" & "HSCA Screening Levels"; "initial screening"; "long-term stewardship"; "Maximum Contaminant Level"; and "remedy". Lastly, the proposed promulgation also seeks to correct numerous typographical and/or clerical errors which are presently contained in the existing HSCA regulations.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on April 29, 2015. Members of the public attended the April 29, 2015 hearing, however, no comment was received by the Department with regard to this proposed regulatory promulgation. It should be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated June 2, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

### Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I

find that the proposed regulatory Amendments to 7 **DE Admin. Code** 1375: *Delaware Regulations Governing Hazardous Substance Cleanup* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Waste and Hazardous Substances, Site Investigation and Restoration Section, fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) create new regulatory language for the DNREC "Conditional No Further Action" determination; (2) update the procedures for providing formal public notice in land records with regard to any facility at which a release of a hazardous substance determined by the Department to be a threat to public health, welfare or the environment has occurred, consistent with current Delaware law; and (3) provide clarification of existing definitions contained within the existing HSCA, in order to improve readability and to enhance the public's understanding of this existing regulation, without changing the intent of the same.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** 1375: *Delaware Regulations Governing Hazardous Substance Cleanup*, pursuant to 7 **Delaware Code**, Chapter 91;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on April 29, 2015, and held the record open through close of business on May 14, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

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

5. The adoption of these proposed regulatory Amendments will allow Delaware to (1) create new regulatory language for the DNREC "Conditional No Further Action" determination; (2) update the procedures for providing formal public notice in land records with regard to any facility at which a release of a hazardous substance determined by the Department to be a threat to public health, welfare or the environment has occurred, consistent with current Delaware law; and (3) provide clarification of existing definitions contained within the existing HSCA, in order to improve readability and to enhance the public's understanding of this existing regulation, without changing the intent of the same;

6. The Department has reviewed these proposed regulatory 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, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed regulatory Amendments, as published in the April 1, 2015 *Delaware Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 1375: *Delaware Regulations Governing Hazardous Substance Cleanup* to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2015 issue of the *Register* at page 770 (18 DE Reg. 770). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**[1375 Regulations Governing Hazardous Substance Cleanup](#)**

# FINAL REGULATIONS

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 **Del.C.** §105(a)(1))  
24 **DE Admin. Code** 100

### ORDER

#### 100 Board of Accountancy

On March 1, 2015, the Delaware Board of Accountancy published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 18, Issue 9. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 23, 2015 at a regularly scheduled meeting of the Board of Accountancy to receive verbal comments regarding the Board's proposed amendments to its regulations.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

No verbal testimony was provided at the public hearing. No written comments were received by the Board.

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 24 **Del.C.** §105(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

#### DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 24 **Del.C.** §105(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on March 1, 2015. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 20<sup>th</sup> day of May, 2015.

#### DELAWARE BOARD OF ACCOUNTANCY

Karen S. Schultz, CPA, President

Alison Houck, CPA

Prameela Kaza

John McManus, PA (absent)

Robert Mosch, Jr., CPA (absent)

Robert Paretta

Gary Phippen

Judith Scarborough, CPA

Karen C. Smith, CPA

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the March 2015 issue of the *Register* at page 685 (18 DE Reg. 685). Therefore, the final regulation is not**

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being republished here in its entirety. A copy of the final regulation is available at:

**100 Board of Accountancy**

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## **DIVISION OF PROFESSIONAL REGULATION**

### **1725 POLYSOMNOGRAPHY ADVISORY COUNCIL**

Statutory Authority: 24 Delaware Code, Section 1799W(c) (24 **Del.C.** §1799W(c))  
24 **DE Admin. Code** 1725

#### **ORDER**

#### **1725 Polysomnography Advisory Council**

The Delaware Polysomnography Advisory Council, pursuant to 24 **Del.C.** §1799W(c), proposed to amend the regulations governing the practice of polysomnography in the State of Delaware to clarify that the practice of polysomnography is always deemed to occur where the patient is located.

Following publication in the Delaware *Register of Regulations* on February 1, 2015 a public hearing was held on March 2, 2015. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing.

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

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

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

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

There was no verbal testimony given at the public hearing on March 2, 2015. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

#### **FINDINGS OF FACT AND CONCLUSIONS**

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §1799W(c), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed regulations seek to clarify that the practice of polysomnography is always deemed to occur where the patient is located, regardless of whether the testing is in or out of center. In other words, if a polysomnographer is analyzing and scoring data collected during sleep monitoring which occurs in Delaware, the polysomnographer must have a Delaware license.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

#### **DECISION AND EFFECTIVE DATE**

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

**IT IS SO ORDERED** this 11<sup>th</sup> day of May, 2015 by the Delaware Polysomnography Advisory Council.

Steven D. Conley, President

Theodore S. Kruppa, III

Grace R. Denault

Paul Walker

# FINAL REGULATIONS

**AND NOW**, this 2<sup>nd</sup> day of June, 2015;

**WHEREAS**, the Board of Medical Licensure and Discipline has considered the attached recommendation of the Respiratory Care Practice Advisory Council for approval of amended rules and regulations related to licensure renewal; and

**WHEREAS**, the Board has determined to approve the aforesaid rules and regulations as proposed by the Respiratory Care Practice Advisory Council and attached hereto as Exhibit A.

**NOW THEREFORE IT IS ORDERED** by the Board of Medical Licensure and Discipline:

1. The rules and regulations recommended by the Respiratory Care Practice Advisory Council governing licensure renewal are hereby approved by the Board of Medical Licensure and Discipline.

2. The rules and regulations shall be effective ten days after publication of this Final Order in the *Register of Regulations*.

**IT IS SO ORDERED this 2<sup>nd</sup> day of June, 2015:**

Joseph M. Parise, D.O., President (absent)	Stephen Lawless, M.D.
Daryl Sharman, M.D., Vice-President	Mary Lomax, Ed.D., Public Member
Gregory D. Adams, M.D.	Leslie Ramsey, Public Member, Secretary
Barry L. Bakst, D.O.	Karyl Rattay, M.D.
Vonda Calhoun, Public Member (absent)	Malvine Richard, Ed.D., Public Member
Garrett H. Colmorgen, M.D.	Mary Ryan, Public Member
Stephen G. Cooper, M.D.	N.C. Vasuki, Public Member
Georges A. Dahr, M.D.	Sharon Williams-Mayo, Public Member

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2015 issue of the *Register* at page 633 (18 DE Reg. 633). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**1725 Polysomnography Advisory Council**

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## DIVISION OF PROFESSIONAL REGULATION

### 2930 COUNCIL ON REAL ESTATE APPRAISERS

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

#### ORDER

#### 2930 Council on Real Estate Appraisers

On January 1, 2015, the Delaware Council on Real Estate Appraisers published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 18, Issue 7. The notice was re-published on April 1, 2015 in Volume 18, Issue 10. The notices indicated that written comments would be accepted by the Council, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 21, 2015 at a regularly scheduled meeting of the Council on Real Estate Appraisers to receive verbal comments regarding the Council's proposed amendments to its regulations.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

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

Council.

## FINDINGS OF FACT AND CONCLUSIONS

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

## DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §4006(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on January 1, 2015. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

**IT IS SO ORDERED** this 19th day of May, 2015.

### BEFORE THE COUNCIL ON REAL ESTATE APPRAISERS IN AND FOR THE STATE OF DELAWARE

Lynn Baker, Chairperson

Georgianna Trietley, CGRPA

Kevin Gillis, Banking Member (absent)

Patricia Ennis, Public Member

Douglas Nickel, Vice-Chairperson

Ronald Mandato, CRRPA

Frank Long, Public Member (absent)

Denise R. Stokes, Public Member

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2015 issue of the *Register* at page 538 (18 DE Reg. 538). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**2930 Council on Real Estate Appraisers**

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### PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))  
26 **DE Admin. Code** 4002

IN THE MATTER OF THE INVESTIGATION AND  
ADOPTION OF RULES TO GOVERN PAY PHONE  
SERVICES WITHIN THE STATE OF DELAWARE  
(OPENED OCTOBER 9, 1984; REOPENED JUNE  
7, 1997; REOPENED JANUARY 29, 2002 AND  
REOPENED FEBRUARY 5, 2015)

PSC REGULATION DOCKET NO. 12

**4002 Regulations Governing Payphone Service Providers in Delaware (Docket 12)**

**ORDER NO. 8741**

**AND NOW**, this 19th day of May, 2015:

**WHEREAS**, on February 5, 2015, the Commission reopened PSC Regulation Docket No. 12 to delete the

"Rules and Regulations To Govern Pay Phone Services Within the State of Delaware" ("Pay Phone Rules") in P.S.C. Order No. 8705;

**AND WHEREAS**, these rules are being deleted in light of the passage of Delaware House Bill No. 96 which took effect on July 15, 2013 and reduced the Commission's oversight of telecommunications services. In addition, the widespread availability and use of cell phones have made payphones almost obsolete;

**AND WHEREAS**, notice of these revisions have been published in the Delaware *Register* on March 1, 2015, the *News Journal* on February 12, 2015 and the *Delaware State News* on February 13, 2015;

**AND WHEREAS**, Network Communications International Corp. ("NCIC"), the only party that filed comments, suggested that the Commission propose rules and regulations for inmate calling services;

**AND WHEREAS**, telecommunication services in inmate facilities are provided through a state contract with the Delaware Department of Technology and Information and not the Commission, Staff believes that it is not necessary for the Commission to propose rules as requested by NCIC;

**AND WHEREAS**, Hearing Examiner R. Campbell Hay held a public comment session on April 15, 2015 in the Commission's Hearing Room located in Dover, Delaware and no party attended or commented on the proposed deletion of the rules;

**AND WHEREAS**, Staff filed a report on May 8, 2015 recommending that the Commission approve the deletion of the Payphone Rules as attached as Exhibit B of P.S.C. Order No. 8705 dated February 5, 2015 and that the Commission consider this matter directly and hold an evidentiary hearing on May 19, 2015<sup>1</sup>;

**AND WHEREAS**, an evidentiary hearing on this matter was held on May 19, 2015 before members of the Commission at the Commission's regularly scheduled meeting;

**NOW, THEREFORE, THE COMMISSION HAS CONSIDERED THE RECORD OF EVIDENCE AND IT IS ORDERED:**

1. That the Commission hereby adopts and approves in its entirety the elimination of "Rules and Regulations To Govern Pay Phone Services Within the State of Delaware" (Docket 12) attached as Exhibit "B".
2. That the Secretary shall transmit this Order, together with the attached Exhibit "A" and Exhibit "B" to the Registrar of Regulations for publication in the July *Register*.
3. That the effective date of this Order shall be ten days after the publication in the *Register of Regulations*.
4. That the Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper by Order of the Commission.

**BY ORDER OF THE COMMISSION:**

Dallas Winslow, Chair

Joann T. Conaway, Commissioner

Mike Karia, Commissioner

K. F. Drexler, Commissioner

ATTEST:

Donna Nickerson, Secretary

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the March 2015 issue of the *Register* at page 687 (18 DE Reg. 687). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**[4002 Regulations Governing Payphone Service Providers in Delaware \(Docket 12\)](#)**

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1. Notice of Evidentiary Hearing was published on April 24, 2015 in the [News Journal](#) and the [Delaware State News](#).



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## DEPARTMENT OF TRANSPORTATION

### DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 132(e), 507; 508 and 29 Delaware Code, Section 8404(8)

(17 Del.C. §§132(e), 507 & 508; 29 Del.C. §8404(8))

2 DE Admin. Code 2309

### ORDER

#### 2309 Development Coordination Manual

Pursuant to the authority provided by 17 Del.C. §§132(e), 507, and 508, as well as 21 Del.C. §8404(8), the Delaware Department of Transportation (DelDOT), adopted the Development Coordination Manual. The Department issues this Order adopting revisions to regulations regarding development coordination.

The Department published the proposed revisions in the May 1, 2015, Delaware *Register of Regulations*, pages 853-857.

The Department took written comments on these proposed revisions from May 1, 2015, through May 30, 2015. No comments were received.

#### Summary of the Evidence and Information Submitted

The current regulations were enacted in March of 2015.<sup>1</sup> The proposed revisions address some sections of the manual that were inadvertently changed during final adoption as well as proposed regulations that address procedural changes in the way DelDOT does business, and the addition of clarifying language. The changes take into account the issues and concerns identified and addressed as needing amendment by not only DelDOT staff, but also the end users of the current regulations. A listing of changes made as part of this revision is included in the attached table.

#### Findings of Fact and Conclusions of Law

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

#### Decision and Order Concerning the Regulations

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, the Secretary of the Delaware Department of Transportation does hereby ORDER that these revisions to the Development Coordination Manual be adopted and promulgated as set forth below.

The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(g).

Jennifer Cohan, Secretary  
Delaware Department of Transportation

<sup>1</sup>One revision made in March 2015 was to change the title of the regulation from the Standards and Regulations for Subdivision Streets and State Highway Access to the Development Coordination Manual.

SUMMARY OF PROPOSED CHANGES TO THE DEVELOPMENT COORDINATION MANUAL			
Sec/Fig	Para.	DelDOT Comment/Proposed Change	Justification
P.4.2	1 <sup>st</sup>	Add clarifying language regarding No Objection to Recordation (LONOR) issuance: " <u>except in such individual cases where DelDOT determines that the proposal does not create any transportation impacts and does not trigger entrance/access improvements that would require further review by the Department.</u> "	Allows for administrative correspondence to peer agencies when proposed site changes would pose "No Impact" with respect to DCM requirements.
P.6.B	-	Add clarifying language regarding Letter of no Contention ( $\leq 199$ ADT LONC) or LONOR issuance: " <u>as required (or exempted) in P.4.2</u> "	Allows for administrative correspondence to peer agencies when proposed site changes would pose "No Impact" with respect to DCM requirements.
P.7.B	-	Add clarifying language regarding Letter of no Contention ( $\geq 200$ ADT LONC) or LONOR issuance: " <u>as required (or exempted) in P.4.2</u> "	Allows for administrative correspondence to peer agencies when proposed site changes would pose "No Impact" with respect to DCM requirements.
3.4.2.F	-	Add language directing users to more information: " <u>and Appendix M for more information</u> "	Provide additional data to assist users in developing the Traffic Generation Diagram.
4.3.7.U	-	Add language directing users to more information: " <u>(see Appendix M for example)</u> "	Provide additional data to assist users in developing the Traffic Generation Diagram.
4.4.3.U	-	Add language directing users to more information: " <u>(see Appendix M for example)</u> "	Provide additional data to assist users in developing the Traffic Generation Diagram.
5.5.4	2 <sup>nd</sup>	Add clarifying language. See Section 5.5.4 for full details of the revision.	Expanded list of site-conditions provided to help explain when additional underdrain may be required.
6.4.1.G.3	-	Add clarifying language: "This requires completion of a <u>Federal W-9 form and a Delaware State Substitute W-9 form available online at <a href="http://accounting.delaware.gov/w9_notice.shtml">http://accounting.delaware.gov/w9_notice.shtml</a></u> "	Text is updated to explain that a Federal W-9 Form is required along with Delaware State Substitute W-9 form.

6.5.1.E.3	-	Add clarifying language: "This requires completion of a <u>Federal W-9 form and a Delaware State Substitute W-9 form online available online at <a href="http://accounting.delaware.gov/w9_notice.shtml">http://accounting.delaware.gov/w9_notice.shtml</a>"</u>	Text is updated to explain that a Federal W-9 Form is required along with Delaware State Substitute W-9 form.
6.5.2.1	3	Revised Language: "Upon receipt of approved construction drawings and following review of items required in Section 6.5.1, the Public Works Engineer will evaluate the items specified in Section 6.5.2 prior to issuance of a <del>permit for entrance construction</del> final "Notice to Proceed" letter. <del>The permit will serve as the notice to proceed</del> , allowing the developer to proceed with permanent street construction within the subdivision."	Previous text incorrectly described a "Permit" process. Text revised to follow current practice.
6.7.1.D.3	-	Add clarifying language: "This requires completion of a <u>Federal W-9 form and a Delaware State Substitute W-9 Form online available online at <a href="http://accounting.delaware.gov/w9_notice.shtml">http://accounting.delaware.gov/w9_notice.shtml</a>"</u>	Text is updated to explain that a Federal W-9 Form is required along with Delaware State Substitute W-9 form.
6.7.3.B	1	Language Replaced. See Section 6.7.3.B for full details of revision.	Paragraph replaced to reflect current practice, and correct clerical error that was made during manual revisions that occurred prior to adoption.
8.2	1	Add Language to allow for more expedient resolution of improper entrance usage pending notification and actual construction process being complete. See Section 8.2 for full details of revision.	Situations occur where ongoing use of an improper entrance (or use of non-permitted access) poses traffic or safety concerns, current process results in lengthy delays pending implementation of full notification process and eventual construction work.
8.2.D	-	Add new action to listed steps for resolution of improper entrance usage. Allow for streamlined process when voluntary compliance is achieved. See Section 8.2.D for full details of revision.	When there are no physical entrance improvements that must be removed or corrected, the notification/construction part of this process adds much delay. The ability to pursue voluntary compliance provides greater benefit much more quickly.
8.5.2	-	Revise Language in this Section to resolve confusing regulation. See Section 8.5.2 for full details of revision.	The text has been revised to better define a threshold between being able to utilize a standardized improved entrance as shown in Figure 8.5.2-a vs. requirement for a full entrance plan submission.

Figure 8.5.2-a	-	Minor revisions including updates to reflect changes within Section 8.5.2 listed above. See Figure 8.5.2-a for full details of revision.	Changes to the figure's legend provide updates to reflect changes proposed in Section 8.5.2. Additionally: the term "Min." for lane/shoulder widths has been edited for consistency, and the "revised date" label has been removed.
8.5.2	-	Add Language in this Section to require an MOT Plan and a Lines and Grades Plan to allow for adequate consideration of traffic safety and constructability prior to permitting. See Section 8.5.2 for full details of revision.	Practice in the field has demonstrated there are potentially gaps in the consideration of traffic safety and constructability vs. the more detailed requirements used when completing a full entrance plan submission.

**Please Note:** Due to the size of the final regulation, it is not being published here. The following links to the several parts of the final regulation are provided below:

Preface (<http://regulations.delaware.gov/register/july2015/final/Preface.pdf>)  
 Chapter 3 Record Plan Design (<http://regulations.delaware.gov/register/july2015/final/Chap3.pdf>)  
 Chapter 4 Construction Plans (<http://regulations.delaware.gov/register/july2015/final/Chap4.pdf>)  
 Chapter 5 Design Elements (<http://regulations.delaware.gov/register/july2015/final/Chap5.pdf>)  
 Chapter 6 Construction Administration (<http://regulations.delaware.gov/register/july2015/final/Chap6.pdf>)  
 Chapter 8 Miscellaneous Access Guidelines (<http://regulations.delaware.gov/register/july2015/final/Chap8.pdf>)

### DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 134 and 141; 21 Delaware Code, Chapter 41  
 (17 Del.C. §134, 141 and 21 Del.C. Ch. 41)  
 2 DE Admin. Code 2402

#### ORDER

#### 2402 Delaware Manual on Uniform Traffic Control Devices

Pursuant to the authority provided by 17 Del.C. §134, 141, as well as 21 Del.C. Ch. 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department issues this Order adopting revisions to Part 2 (Signing) of the Delaware MUTCD.

The Department published the proposed revisions in the April 1, 2015 *Delaware Register of Regulations*, pages 779-780.

The Department took written comments on these draft revisions to the Delaware MUTCD from April 1, 2015 through April 30, 2015. No comments were received.

#### Summary of the Evidence and Information Submitted

The proposed revisions to Part 2 (Signing) of the 2011 version of the Delaware MUTCD are minor modifications to the manual based on experience using the Delaware MUTCD since its last major revision. A listing of changes made as part of this revision is included in the attached table.

## Findings of Fact and Conclusions of Law

1. The public was given notice and the opportunity to provide comments in writing concerning the proposed revisions to Part 2 (Signing) of the 2011 version of the Delaware MUTCD.
2. The proposed revisions to Part 2 (Signing) of the 2011 version of the Delaware MUTCD are useful and proper and the Department believes that the adoption of these revisions is appropriate.

### Decision and Order Concerning the Regulations

NOW THEREFORE, under the above-described statutory authority, and for the reasons set forth above, the Secretary of the Delaware Department of Transportation does hereby ORDER that these revisions to the Delaware MUTCD be adopted and promulgated as set forth below.

The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(g).

Jennifer Cohan, Secretary  
 Delaware Department of Transportation  
 6/11/15

The following is a summary of proposed changes to be incorporated into Revision 2, dated July 2015 of Part 2 of the DE MUTCD.

Page	Sec/Fig/ Table	Para.	DelDOT Change	Comment / Proposed	Modification
2B-5	Table 2B-1	-	Remove NO TURN ON RED (ARROW symbol) (R10-11-DE) sign from the table		Table updated to remove the sign. <b>Justification:</b> The red symbolic arrow is not MUTCD-compliant
2B-68	Figure 2B-27	-	Remove NO TURN ON RED (ARROW symbol) (R10-11-DE) sign		Figure updated to remove the sign. <b>Justification:</b> The red symbolic arrow is not MUTCD-compliant
2B-69	Section 2B.54	08A	Delete the paragraph providing an option to use the NO TURN ON RED (ARROW symbol) (R10-11-DE) sign		Paragraph deleted. <b>Justification:</b> The red symbolic arrow is not MUTCD-compliant
2H-1	Table 2H-1	-	Revise the table to update the sign sizes for the modified Welcome to Delaware (SI-1-DE) sign		Table update to reflect the modified sign sizes. <b>Justification:</b> Welcome to Delaware sign has been modified in coordination with DEDO
2H-2	Figure 2H-1	-	Replace the Welcome to Delaware (SI-1-DE) sign with a new sign layout		Figure update to depict the new sign layout. <b>Justification:</b> Welcome to Delaware sign has been modified in coordination with DEDO
2J-1 - 2J-2	Section 2J.01	01B, 01C, 05A, 07B, 07C, 10, 10B	Revise the Specific Service eligibility requirements to be consistent with the recently updated Delaware Logo Sign Program and Tourist Attractions Sign Program Policy		Text modified according. <b>Justification:</b> The Delaware Logo Sign Program and Tourist Attractions Sign Program Policy were recently updated in coordination with DEDO

# FINAL REGULATIONS

2J-11	Section 2J.11	01A, 01B	Revise the text to reflect the recently updated Delaware Logo Sign Program and Tourist Attractions Sign Program Policy	Text modified according. <b>Justification:</b> The Delaware Logo Sign Program and Tourist Attractions Sign Program Policy were recently updated in coordination with DEDO
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**\*Please Note: Due to the size of the final regulation, the Delaware Manual on Uniform Traffic Control Devices is not being published here.**

PDF Versions of proposed amendments to Part 2 are available at the following locations:

[DE MUTCD Part 2 - Signs - Revisions Only](#)

[DE MUTCD Part 2 - Signs](#)

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**EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET  
STATEWIDE BENEFITS OFFICE**

Statutory Authority: 29 Delaware Code, Section 5256 (29 Del.C. §5256)  
19 DE Admin. Code 2007

**ORDER**

**2007 Disability Insurance Program Rules and Regulations  
Effective July 1, 2015**

The Statewide Benefits Office is requesting to have the amendments, revisions and/or changes to the Disability Insurance Program (DIP) Rules & Regulations approved by the State Employee Benefits Committee (SEBC) during their public meeting on Friday, June 12, 2015 at the Tatnall Building in Dover, Delaware published in the July 2015 edition of the *Register of Regulations*. Epilogue language referenced below from Section 25 of House Bill Number 200 (147th General Assembly) allows the SEBC to amend the Disability Insurance Program (DIP) Rules & Regulations.

**"Section 25.** Notwithstanding the provisions of the Administrative Procedures Act, 29 Del.C. c. 101 or any other laws to the contrary, the State Employee Benefits Committee is authorized to amend the rules for Employees Eligible to Participate in the State Group Health Insurance Program and the State Disability Insurance Program by approving such amendments and causing the amendments to be published in the *Register of Regulations* with such amendments to be effective as of the date of such publication unless otherwise specified by the State Employee Benefits Committee."

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

**2007 Disability Insurance Program Rules and Regulations**

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION****PUBLIC NOTICE****501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the Uniform Classification Guidelines of Foreign Substances to include cobalt, reference 8.3.1.5, 8.3.2.5.1 and 8.3.2.5.2.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on June 2, 2015, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On June 9, 2015, at its regular monthly meeting, the DHRC unanimously approved these amendments. The DHRC rules committee meetings and regular monthly meetings are noticed public meetings. Subsequent to a 30-day comment period from July 1 to 31, 2015 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on August 11, 2015 during its regularly scheduled monthly meeting. The DHRC August 2015 monthly meeting is public and is noticed on the state meeting notice website. Those meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB August 10, 2015. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

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

The State Board of Education will hold its monthly meeting on Thursday, July 16, 2015 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Telemedicine Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) intends to submit a state plan amendment regarding telemedicine services, specifically, to recognize the Medicaid beneficiary's place of residence as an originating site.

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

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

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**DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****4462 Public Drinking Water Systems**

On July 1, 2015, the Department of Health and Social Services, Division of Public Health, Office of Drinking Water, plans to publish revised Regulations Governing Public Drinking Water Systems and hold them out for public comment per Delaware law.

The purpose of the regulations is to establish minimum training requirements for the certification of animal control officers and animal cruelty agents working in the State of Delaware. They also establish procedures for documenting all complaints filed against officers/agents, and conducting investigation of complaints concerning violations of this chapter.

The regulations are being revised to include:

- Revised Total Coliform Rule (RTCR) as section 7.4. This rule was finalized by EPA on April 1, 2012.
- Reorganization of the regulations by breaking up the large sections into smaller sections, allowing for easier reviews and checking of regulatory requirements. The Regulations are going from 10 sections to 20 sections.
- Section 4.1.6 on page 16 is being expanded to provide specific examples of unusual events so water system owners/operators have a more clear idea of when they need to contact DPH.
- Incorporate revisions identified by EPA when they reviewed the previous regulations.
- Sections that are no longer relevant or that have been superseded by more recent regulations have been deleted.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Tuesday, August 11, 2015 to:

Jamie Mack, Executive Assistant  
Office of the Director  
Delaware Division of Public Health  
Jesse Cooper Building  
417 Federal St.  
Dover, DE 19901  
Email: jamie.mack@state.de.us  
Fax: 302-739-3984

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF AIR QUALITY**

#### **1138 Emission Standards for Hazardous Air Pollutants for Source Categories**

#### **PUBLIC NOTICE**

The Clean Air Act Amendments of 1990 stipulated a 2-phase rulemaking process that the EPA must use to protect the public health from exposure to hazardous air pollutants (HAPs). Consistent with this 2-phase process, the EPA adopted the maximum achievable control technology (MACT) standard (phase 1) applicable chromium electroplating and chromium anodizing facilities on January 25, 1995 as Subpart N in 40 CFR Part 63 and later amended those requirements (phase 2) by promulgating the more health-protective residual risk requirements on September 19, 2012.

Delaware adopted the federal MACT standard, i.e. the Subpart N requirements, as Section 6 of 7 **DE Admin. Code** 1138 on November 1, 2001 and later, amended Section 6 on September 1, 2013 to incorporate the more health-protective residual risk requirements.

On February 27, 2014, the EPA finalized, under a single rulemaking, over 80 additions to and revisions of the test methods and the testing provisions in various standards in order to improve the quality of test data and to provide testers the additional flexibility of using these newly approved alternative procedures. Subpart N was one of the changed standards.

Prior to that February 27 rulemaking, subsection §63.344(c) of Subpart N provided the owners or operators of affected chromium electroplating and chromium anodizing facilities up to 4 test methods to demonstrate compliance with the standard. In the February 27 final rule, the EPA provided the owners or operators subject to Subpart N with an optional 5<sup>th</sup> test method to select from by adding the South Coast Air Quality Management District "Test Method 205.1". The Department is proposing to amend Section 6 by adding the same optional, alternative test method, in order (1) to maintain the consistency of Delaware's air regulatory requirements under



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Section 6 with the national requirements under Subpart N and (2) to give owners or operators of Delaware's affected facilities and their testers the additional flexibility to use the EPA's newly approved testing alternative.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Tuesday, August 4, 2015 starting at 6:00 PM in the DNREC Richardson & Robbins Auditorium, 89 Kings Highway, Dover, DE. If you are unable to attend or wish to submit your comments in advance of the public hearing, please send your comments to address below. Interested parties may also submit written comments to the Department, to the same address below, up until the end of the comment period, which will extend through August 19, 2015, unless a longer period is designated by the hearing officer at the public hearing.

DNREC – Division of Air Quality  
Subject: August 4 Public Hearing  
715 Grantham Lane  
New Castle, DE 19720

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**DIVISION OF AIR QUALITY**

**1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**  
**PUBLIC NOTICE**

New Castle and Sussex Counties are in non-attainment under the 2008 ground-level ozone National Ambient Air Quality Standards (NAAQS) and further reduction in the emissions of volatile organic compounds (VOC), a precursor to ground-level ozone, is needed to meet the NAAQS. The amendments include adding 10 more products and/or product types to be regulated for VOC content and lowering the VOC content limits for 14 existing products and/or product types. This brings the total product types regulated under this regulation to 120 and will show a reduction in Delaware VOC emissions of 330 tons per year.

There will be a hearing on this proposed amendment on August 4, 2015 beginning at 6pm in the DNREC Auditorium in the Richardson & Robbins Building located at 89 Kings Highway in Dover Delaware. Interested parties may submit comments in writing to David Fees, Division of Air Quality, Blue Hen Corporate Center, Suite 5N, 655 South Bay Road, Dover, DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DELAWARE DEVELOPMENTAL DISABILITIES COUNCIL**

**PUBLIC NOTICE**

The Delaware Developmental Disabilities Council is an agency mandated by the Developmental Disabilities Assistance and Bill of Rights Act of 2000 to improve the services and lives for individuals with developmental and other disabilities. To celebrate the 25 year anniversary of the signing of the Americans with Disabilities Act, the Delaware Developmental Disabilities Council will be participating in a collaborative event to be held on July 18, 2015 on Loockerman Street and Legislative Mall in Dover. Please come and celebrate this historical event with the Council. For more information, please contact the Developmental Disabilities Council at 302-739-3333.

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**DEPARTMENT OF STATE**

**DIVISION OF PROFESSIONAL REGULATION**

**2100 BOARD OF EXAMINERS IN OPTOMETRY**

**PUBLIC NOTICE**

The Delaware Board of Examiners in Optometry, pursuant to 24 Del.C. §2104(a)(1), proposes to revise its regulations. The proposed regulatory overhaul seeks to bring the regulations into conformity with current law and remove outdated and inconsistent provisions. For example, the proposed changes update the ethics section to more succinctly define unprofessional conduct. In addition, the proposed changes remove several regulations

which are nothing more than a verbatim recitation of the Board's practice act and thus unnecessary.

The Board will hold a public hearing on the proposed rule change on July 22, 2015 at 4:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Lisa Smith, Administrator of the Delaware Board of Examiners in Optometry, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

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**DIVISION OF PROFESSIONAL REGULATION**  
**2500 BOARD OF PHARMACY**  
**PUBLIC NOTICE**

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

A public hearing will be held on August 19, 2015 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board liaison, Christine Mast, at the above address.

The proposed revisions address the subject of pharmaceutical compounding. Regulation 5.1.7 is amended to provide that compounded products may not be sold to a practitioner for use in his or her office to administer to patients. Regulation 10.0 is re-written to establish comprehensive requirements for non-sterile and sterile compounding consistent with USP Chapters 795 and 797.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be September 3, 2015 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

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**DIVISION OF PROFESSIONAL REGULATION**  
**3800 BOARD OF DIETETICS/NUTRITION**  
**PUBLIC NOTICE**

The Delaware Board of Dietetics/Nutrition, pursuant to 24 **Del.C.** §3805(11), proposes to revise its regulations. The proposed amendments to the regulations seek to further clarify the scope of practice of a Dietitian/Nutritionist by defining various terms set forth in the Board's enabling statute.

The Board originally scheduled a hearing on this matter for May 8, 2015 at 1:30 p.m. but was unable to hold the hearing due to insufficient notice of the hearing under the Delaware Administrative Procedures Act. The Board will now hold a public hearing on the proposed rule change on August 14, 2015 at 1:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until August 29, 2015.

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**DIVISION OF PROFESSIONAL REGULATION**  
**CONTROLLED SUBSTANCE ADVISORY COMMITTEE**  
**PUBLIC NOTICE**  
**Uniform Controlled Substances Act Regulations**

Pursuant to 16 **Del.C.** §4731, the Delaware Controlled Substance Advisory Committee ("Committee") has proposed revisions to its rules and regulations. New Section 9.0 is added to provide requirements for the prescribing of opiates in order to address potential prescription drug overdose, abuse and diversion. The Section puts safeguards in place with respect to prescribing practices and patient monitoring. These safeguards will serve

to protect patients and the public. Former Sections 9.0 and 10.0 have been renumbered.

A public hearing will be held on July 29, 2015 at 9:00 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Committee at the above address. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be August 13, 2015 which is 15 days following the public hearing. The Committee will deliberate on any public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to public comment.