
Delaware Register of Regulations

Issue Date: July 1, 2023

Volume 27 - Issue 1, Pages 1-71



IN THIS ISSUE:

Errata

Regulations:
Emergency
Proposed
Final

General Notices

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before June 15, 2023.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF RESEARCH STAFF

Mark J. Cutrona, Director; **Richard Dillard**, Legislative Drafting Advisor; **Amanda Fulton**, Special Projects Administrative Specialist; **Deborah Gottschalk**, Sr. Legislative Attorney; **Quran Hernandez**, Graphics and Printing Technician III; **Benjamin Kowal**, Legislative Research Analyst; **Robert Lupo**, Graphics and Printing Supervisor; **Colinda Marker**, Executive Assistant; **Amanda McAtee**, Joint Legislative Oversight Sunset Committee Analyst; **Carolyn Meier**, Delaware Code Editor; **Kathleen Morris**, Fiscal Administrative Officer; **Nathan Poore**, Graphics and Printing Technician IV; **Joel Rudnick**, Legislative Librarian; **Erika Schrader**, Assistant Registrar of Regulations; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Vaughn Wagner**, Deputy Director; **Carrie Wanstall**, Administrative Specialist III; **Natalie White**, Legal Publications Editor; **Cara Wilson**, Legislative Attorney.

TABLE OF CONTENTS

ERRATA

DEPARTMENT OF EDUCATION

Public Standards Board

1519 Multiple Measures for Demonstrating Content Knowledge.....	6
-----------------------------------------------------------------	---

EMERGENCY

DEPARTMENT OF STATE

Division of Professional Regulation

Uniform Controlled Substances Act Regulations.....	7
----------------------------------------------------	---

PROPOSED

DEPARTMENT OF AGRICULTURE

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations - Section 1.0 Definitions and Interpretations....	10
--------------------------------------------------------------------------------------------------	----

DEPARTMENT OF EDUCATION

Office of the Secretary

1213 Speech-Language Pathologist Student Loan Repayment Program.....	11
1215 High Needs Educator Student Loan Payment Program.....	14
1216 Educator Support Scholarship Program.....	18
1218 Mental Health Services Student Loan Repayment Program.....	21

Professional Standards Board

1571 Special Education Teacher of Students with Disabilities.....	24
-------------------------------------------------------------------	----

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Public Health

4458A Cottage Food Regulations.....	30
-------------------------------------	----

DEPARTMENT OF STATE

Division of Professional Regulation

3600 Board of Geologists.....	31
-------------------------------	----

DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

2226 Third Party Commercial Driver License Skills Testing.....	35
----------------------------------------------------------------	----

FINAL

DEPARTMENT OF EDUCATION

Professional Standards Board

1519 Multiple Measures for Demonstrating Content Knowledge.....	37
1596 Charter School Leader.....	39

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Health Care Quality

3345 Personal Assistance Services Agencies.....	43
3350 Skilled Home Health Agencies (Licensure).....	44
3351 Home Health Agencies--Aide Only (Licensure).....	45

TABLE OF CONTENTS

5

Division of Medicaid and Medical Assistance	
US Savings Bonds: DSSM 20330.7.....	46
Division of Social Services	
Determining Relative Child Care: DSSM 11006.7.....	49
DEPARTMENT OF LABOR	
Division of Paid Leave	
1401 Rules Defining and Regulating the Healthy Delaware Families Act, Family and Medical Leave Insurance Program and the Division of Paid Leave.....	51
DEPARTMENT OF STATE	
Division of Professional Regulation	
1900 Board of Nursing.....	61
5300 Board of Massage and Bodywork.....	63

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Watershed Stewardship	
Delaware Erosion and Sediment Control Handbook for 5101 Sediment and Stormwater Regulations.....	65
Watershed Stewardship Sediment and Stormwater Program.....	68

CALENDAR OF EVENTS/HEARING NOTICES

Department of Agriculture, Thoroughbred Racing Commission; Notice of Public Comment Period..	69
Department of Education; Notice of Monthly Public Meeting.....	69
Department of Health and Social Services, Division of Public Health; Notice of Public Comment Period.....	70
Department of State, Division of Professional Regulation, Board of Geologists; Notice of Public Hearing and Public Comment Period.....	70
Department of Transportation, Division of Motor Vehicles; Notice of Public Comment Period.....	71

**DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1519

ERRATA**1519 Multiple Measures for Demonstrating Content Knowledge**

* **Please Note:** The Department of Education, Professional Standards Board, regulation, 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge, was published as proposed in the *Delaware Register of Regulations*, 26 **DE Reg.** 803 (04/01/23). Subsection 6.1.2.2.2 was inadvertently published incorrectly.

Subsection 6.1.2.2 was published as:

6.1.2.2 The applicant is required to submit one of following:

- 6.1.2.2.1 Official score on edTPA; or
- 6.1.2.2.2 Official score on ~~PPAT~~ PPAT; or
- 6.1.2.2.3 Proof of completion of a microcredential in the content area for the Standard Certificate sought; or
- 6.1.2.2.4 Proof of completing a year-long residency with a grade of A or S.

Subsection 6.1.2.2 should have read:

6.1.2.2 The applicant is required to submit one of following:

- 6.1.2.2.1 Official score on edTPA; or
- 6.1.2.2.2 Official score on ~~PPAT~~ PPAT; or
- 6.1.2.2.3 Proof of completion of a microcredential in the content area for the Standard Certificate sought; or
- 6.1.2.2.4 Proof of completing a year-long residency with a grade of A or S.

This regulation is being published as a final regulation in the July 2023 *Register*.

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.)

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****CONTROLLED SUBSTANCE ADVISORY COMMITTEE**

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

ORDER**Uniform Controlled Substances Act Regulations**

**In Re: EMERGENCY RULE
PLACING ILLICIT XYLAZINE
IN SCHEDULE III**

WHEREAS, pursuant to 29 **Del.C.** §10004(e)(1) of the Freedom of Information Act, an emergency meeting of the Delaware Controlled Substance Advisory Committee ("Committee") was held on May 5, 2023 in Dover, Delaware concerning the non-opioid sedative xylazine; and

WHEREAS, the Committee considered the following exhibits: H.R. 1839, 118th Congress, "Combating Illicit Xylazine Act" (Ex. 1); Proposal from Ohio Board of Pharmacy to Place Xylazine in Schedule III (Ex. 2); Executive Order 2023-08D from Ohio Governor DeWine Adding Xylazine to Schedule III (Ex. 3); and Notice from Pennsylvania Department of Health Concerning Adding Xylazine to Schedule III (Ex. 4); and

WHEREAS, the Committee made certain findings of facts, including:

1. Although approved only for veterinary use, xylazine is a non-opioid with increasing presence as an adulterant, often in conjunction with opioids, in the illicit drug supply. Adulterants are often added to illicit drugs to (1) increase or decrease a drug's effects or (2) increase a drug's resale value. Both isolated and in conjunction with other drugs, xylazine is implicated as a cause or contributing cause of

death in the United States. According to the United States Drug Enforcement Administration ("DEA"): (1) the emergence of xylazine across the United States appears to be following the same path as Fentanyl, starting in the Northeast and then spreading to the South and working its way into drug markets westward, and (2) the low cost of xylazine contributes, in part, to xylazine's increased presence in the nation's illegal drug supply.

2. Heroin and xylazine have some similar pharmacological effects including bradycardia, hypotension, central nervous system depression and respiratory depression. When used in conjunction with an opioid, such as heroin or fentanyl, xylazine may worsen respiratory depression in the event of a drug overdose. Because xylazine is not an opioid, naloxone is not known to be effective at reversing overdoses caused by xylazine and there is no known antidote or reversal agent for xylazine overdose in humans. Xylazine may be accompanied by skin ulcers with wounds that secrete pus, decaying tissue and bacterial infections which can lead to amputations at higher rates than other injectable drugs.
3. Other states have taken steps to schedule xylazine. The Governor of Ohio issued an Executive Order adopting an emergency regulation to place xylazine in Schedule III. The Pennsylvania Department of Health issued a Notice of Intent to temporarily place xylazine in Schedule III. In addition, there is a bill pending in the United States Congress, H.R. 1839, 118th Congress, 1st Session, "Combating Illicit Xylazine Act", adding illicit xylazine to Schedule III in the Controlled Substance Act, 21 U.S.C. 802; and

WHEREAS, the Committee found that allowing xylazine to remain unscheduled in the State of Delaware presents an imminent peril to the public health, safety and welfare and recommended to the Secretary that xylazine be added to Schedule III of the Delaware Uniform Controlled Substances Act pursuant to an emergency regulation; and

WHEREAS, emergency regulations may be promulgated pursuant to the Administrative Procedures Act, so long as an agency determines there exists "an imminent peril to the public health, safety or welfare." 29 **Del.C.** §10119. Such regulation will only be effective for a maximum of 120 days, but may be renewed once for an additional period of 60 days. 29 **Del.C.** §10119(3); and

WHEREAS, subsection 10.3 of the Uniform Controlled Substance Act Regulations provides that if the Secretary, 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 the reasons for that finding, the Secretary may proceed without prior notice or hearing or upon any abbreviated notice and hearing the Secretary finds practicable, to adopt an emergency regulation; and

WHEREAS, the Secretary has been charged by the General Assembly with placing a substance in Schedule III if the Secretary finds that: "(1) The substance has a potential for abuse less than the substances listed in Schedules I and II; (2) The substance has currently accepted medical use in treatment in the United States; and (3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence." 16 **Del.C.** §4717; and

WHEREAS, the proposed federal "Combating Illicit Xylazine Act" makes a distinction between the illicit use of xylazine in the human species, and the licit, legitimate use of xylazine in the context of veterinarian use; and

WHEREAS, while the illicit use of xylazine poses an imminent peril to the public health, safety or welfare, the licit use of xylazine is needed to ensure the availability of the substance for use in the non-human population; and

WHEREAS, the Secretary finds that adoption of a regulation placing illicit xylazine temporarily in Schedule III in Delaware must occur on an emergency basis in order to properly protect the public until such time as the legislature may adopt a statutory amendment to 16 **Del.C.** §4718; and

WHEREAS, the Secretary will accept, consider and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of the Office of Controlled Substances, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904; and

WHEREAS, a copy of this Emergency Order will be submitted to the Registrar of Regulations for publication in the next Delaware *Register of Regulations*;

NOW, THEREFORE, IT IS ORDERED this 2nd day of June 2023:

1. The Uniform Controlled Substance Act Regulations are amended as follows:

10.3.2 Pursuant to 16 Del.C. §4717, the Secretary of State has the authority to place a substance in Schedule III where the Secretary finds that the substance has a potential for abuse less than the substances listed in Schedules I and II; has currently accepted medical use in treatment in the United States; and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence, and therefore:

10.3.2.1 The Secretary of State, as authorized by 16 Del.C. §4717, does hereby add by regulation illicit xylazine and its isomers, esters, ethers, salts and salts of isomers, esters and ethers, in Schedule III of the Uniform Controlled Substances Act, 16 Del.C. Ch. 47.

10.3.2.1.1 Testing strips to determine the presence of xylazine or xylazine-related substances are exempt from subsection 10.3.2.1.

10.3.2.2 For the purpose of this subsection:

10.3.2.2.1 "Illicit" use of xylazine means any use in the human species or any use that is not licit use.

10.3.2.2.2 "Licit" use of xylazine means:

10.3.2.2.2.1 Any administration to nonhuman species a drug containing xylazine that has been approved by the Secretary of Health and Human Services under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b); or that is permissible under section 512(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(a)(4)).

10.3.2.2.2.2 The manufacturing, importation, or use of xylazine as an active pharmaceutical ingredient for manufacturing an animal drug approved under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b) or issued an investigation use exemption under subsection (j) of such section 512.

10.3.2.2.2.3 The manufacturing, importation, or use of a xylazine bulk chemical for pharmaceutical compounding by licensed pharmacists or veterinarians.

10.3.2.2.2.4 Another use approved or permissible under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

2. In accordance with the requirements of 29 Del.C. §10119(3), this Order shall be effective 120 days from the date of execution.

IT IS SO ORDERED this 2nd day of June 2023.

DELAWARE DEPARTMENT OF STATE
SECRETARY OF STATE
Jeffrey W. Bullock

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

<https://regulations.delaware.gov/register/july2023/emergency/27 DE Reg 7 07-01-23.htm>

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE**THOROUGHBRED RACING COMMISSION**Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))3 **DE Admin. Code** 1001**PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations****Summary**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the proposed regulations is to amend the definitions of "horse" in Section 1.0 to include Quarter Horses. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the July 1, 2023 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the Register of Regulations website: https://regulations.delaware.gov/register/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** § 10118(a), public comments must be received on or before August 1, 2023. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after August 1, 2023, following review of the public comment, the Thoroughbred Racing Commission will

determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Thoroughbred Racing Commission, the amendments shall take effect ten days after being published as final in the Delaware Register of Regulations.

Delaware Thoroughbred Racing Commission
Sarah A. Crane, Executive Director

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 10RFA 07-01-23.pdf>

1001 Thoroughbred Racing Rules and Regulations

1.0 Definitions and Interpretations

In the context of these Rules of Racing, the following words and phrases shall be construed as having the following special meanings:

(Break in Continuity Within Section)

“Horse”: Any Thoroughbred, whether mare, gelding, colt or filly, which is registered as such with the Jockey Club in Lexington, Kentucky, or, for Steeplechase racing purposes, by the National Steeplechase Association in Fair Hill, ~~Maryland and Maryland~~; any Arabian whether mare, gelding, colt or filly which is registered as such with the Arabian Horse Registry of America, Inc. in Westminster, Colorado and for which an Identification Supplement has been issued; and any Quarter Horse whether mare, gelding, colt or filly, which is registered as such with the American Quarter Horse Association (AQHA).

- In these rules of racing, unless otherwise noted, the use of the word "Thoroughbred" shall likewise apply to Arabian horses and Quarter Horses.

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 10 07-01-23.htm>

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), and 3435(b)
(14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), & 3435(b))

PUBLIC NOTICE

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

1213 Speech-Language Pathologist Student Loan Repayment Program

A. TYPE OF REGULATORY ACTION REQUESTED

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), and 3435(b), the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14

DE Admin. Code 1213 Speech-Language Pathologist Student Loan Repayment Program. The Speech-Language Pathologist Student Loan Repayment Program is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the program. The proposed regulation is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022. In addition, the proposed definition of Qualified Educational Loan in Section 2.0 and the substantiation requirement in subsection 4.2.3 are consistent with 26 C.F.R. § 1.127-2, the Internal Revenue Service's regulation concerning qualified educational assistance programs.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before August 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns a student financial assistance for higher education program and is not designed to help improve student achievement as measured against state achievement standards.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns a student financial assistance for higher education program and is not designed to help ensure that all students receive an equitable education.
3. Will the new regulation help to ensure all students' health and safety are adequately protected? The new regulation concerns a student financial assistance for higher education program and is not designed to help to ensure all students' health and safety are adequately protected.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation concerns a student financial assistance for higher education program and is not designed to help to ensure that all students' legal rights are respected.
5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation concerns a student financial assistance for higher education program and does not change authority and flexibility of decision makers at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation concerns a student financial assistance for higher education program and does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department, through DHEO, implements the regulations promulgated and adopted relating to student financial assistance for higher education programs that are administered by DHEO.
8. Will the new 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 new regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.
9. Is there a less burdensome method for addressing the purpose of the new regulation? There is not a less burdensome method for addressing the purpose of this new regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state of complying with this new regulation. The regulation does not apply to local school boards.

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 11RFA 07-01-23.pdf>

1213 Speech-Language Pathologist Student Loan Repayment Program

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the Speech-Language Pathologist Student Loan Repayment Program pursuant to 14 **Del.C.** §3435(b).

2.0 Definitions

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

"Award" means the Delaware Higher Education Office's decision to make a loan payment on an applicant's behalf.

"Delaware Higher Education Office" or **"DHEO"** means the Department of Education's office which administers specific programs related to higher education, including student financial assistance programs.

"Qualified Educational Loan" means a government, commercial, or foundation loan for actual costs paid for tuition and reasonable educational expenses related to an applicant's undergraduate or graduate degree program. Reasonable educational expenses do not include tools or supplies (other than textbooks) that are retained by the recipient after the course of instruction; meals, lodging, or transportation; or education involving sports, games, or hobbies unless such education is required as part of a degree program.

3.0 Eligibility

3.1 In order to be eligible for an Award under the Speech-Language Pathologist Student Loan Repayment Program, an applicant shall meet the requirements of subsections 3.1.1 and 3.1.2.

3.1.1 The applicant shall be employed full-time as a speech-language pathologist in a Delaware public school for a minimum of 1 school year.

3.1.2 The applicant must have secured a Qualified Educational Loan prior to submitting the application.

4.0 Application Requirements

4.1 The application acceptance and submission period for the Speech-Language Pathologist Student Loan Repayment Program shall be posted on the DHEO's website by December 1 of each calendar year.

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

4.1.2 Incomplete applications shall not be accepted or processed.

4.2 In order for an application to be considered complete, the applicant shall complete all of the requirements in subsections 4.2.1 through 4.2.3.

4.2.1 The applicant shall certify to DHEO that the applicant meets all of the eligibility requirements in Section 3.0.

4.2.2 The applicant shall provide the applicant's current employment information, lender, and loan amount to DHEO.

4.2.3 The applicant shall provide substantiation to DHEO that the Award will be used for a Qualified Educational Loan as defined in Section 2.0.

5.0 Awards

5.1 The ability to make Awards each year is contingent upon the availability of funds.

5.2 If possible, DHEO shall make an Award to every applicant who satisfies the requirements of this regulation, consistent with Section 6.0 of this regulation. Awards will be determined based on the pool of eligible applicants in the given year.

PROPOSED REGULATIONS

- 5.2.1 If there are insufficient funds to make a loan payment on behalf of every applicant who satisfies the requirements of this regulation, DHEO shall give priority to applicants who have the greatest financial need as determined by DHEO.
- 5.2.2 To determine an applicant's financial need, DHEO shall request the applicant provide the applicant's income and total amount of Qualified Educational Loans.
- 5.3 DHEO shall have the sole discretion to prioritize applications and determine Awards consistent with the requirements of the Program as noted in this regulation.
- 5.4 DHEO shall make a loan payment directly to the applicant's lending agency, on behalf of the applicant, to retire a portion of the applicant's Qualified Educational Loan.
- 5.5 An Award is not renewable.
- 5.6 To be considered for a second and third Award, an applicant shall submit a new, completed application and meet all of the requirements in Section 3.0 of this regulation each year.
- 5.7 An applicant may receive only 1 Award per year and may not receive more than 3 Awards in the applicant's lifetime.

6.0 Award Payment

- 6.1 An Award shall not exceed \$5,000 per year.
- 6.2 If an applicant knowingly submits false information or commits fraud in connection with the application process, DHEO may reevaluate the applicant's eligibility for a loan payment and may withdraw its decision to make a loan payment on the applicant's behalf.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), and 3437
(14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), & 3437)
14 DE Admin. Code 1215

PUBLIC NOTICE

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

1215 High Needs Educator Student Loan Payment Program

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), and 3437, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes to amend 14 DE Admin. Code 1215 High Needs Educator Student Loan Payment Program. The High Needs Educator Student Loan Payment Program is a student financial assistance for higher education program that is administered by DHEO. The regulation provides the eligibility criteria, application requirements, and award process for the program. The proposed amendments include revising the definition of Qualified Educational Loan in Section 2.0 and adding the substantiation requirement in subsection 4.2.3, which are consistent with 26 C.F.R. § 1.127-2, the Internal Revenue Service's regulation concerning qualified educational assistance programs. In addition, the proposed amendments include adding award process to Section 1.0, striking two terms from Section 2.0, clarifying Section 3.0, revising Section 4.0, adding subsection 5.7, and adding subsection 6.2.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m.

EST) on or before August 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns a student financial assistance for higher education program and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns a student financial assistance for higher education program and is not designed to help ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation concerns a student financial assistance for higher education program and is not designed to help to ensure all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns a student financial assistance for higher education program and is not designed to help to ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation concerns a student financial assistance for higher education program and does not change authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation concerns a student financial assistance for higher education program and does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department, through DHEO, implements the regulations promulgated and adopted relating to student financial assistance for higher education programs that are administered by DHEO.

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

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

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

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 14RFA 07-01-23.pdf>

1215 High Needs Educator Student Loan Payment Program**1.0 Purpose**

The purpose of this regulation is to provide eligibility ~~criteria and to delineate the application~~ criteria, application requirements, and award process for the High Needs Educator Student Loan Payment Program, pursuant to 14 Del.C. §3437.

2.0 Definitions

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

PROPOSED REGULATIONS

"Award" means the Delaware Higher Education Office's decision to make a ~~Loan Payment loan~~ payment on an applicant's behalf.

"Delaware Higher Education Office" or **"DHEO"** means the Delaware Department of Education's office which administers specific programs related to higher education, including student financial assistance programs.

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the Department to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board of Education. For purposes of this regulation, Educator also includes teachers employed by the Delaware Division for the Visually Impaired who teach students with visual impairment.

"High Needs Area" means:

- (1) Any certification field DHEO has identified as being difficult to staff or of critical need; or
- (2) Any school either:
 - (a) In the top quartile in 3 or more of the following:
 - (1) Percentage of Low-Income Students or students within the statewide metric determined by the Department utilizing direct certification for Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP);
 - (2) Percentage of English Learners or students with limited English proficiency and who meet the definition of English Learner as defined by the Department's regulations;
 - (3) Percentage of Students with Disabilities or students who are determined to eligible for 1 or more of the educational classifications under the Department's regulations and who, by reason thereof, need special education and related services; or
 - (4) Percentage of Minority Students or students who are members of a racial or ethnic group other than the racial or ethnic group that represents the majority of the State's population; or
 - (b) Having 90% of its students classified as Low-Income, English Learners, or Minority; or
 - (c) Any facility operated by the Department of Services for Children, Youth and Their Families in which education programs are provided.

"Loan Payment" ~~means a payment by the Department to a successful applicant's lending agency to retire a portion of the applicant's Qualified Educational Loan.~~

"Program" ~~means the High Needs Educator Student Loan Payment Program.~~

"Qualified Educational Loan" means a government, commercial, or foundation loan for actual costs paid for tuition and reasonable educational expenses related to an Educator's undergraduate or graduate degree program. Reasonable educational expenses do not include tools or supplies (other than textbooks) that are retained by the recipient after the course of instruction; meals, lodging, or transportation; or education involving sports, games, or hobbies unless such education is required as part of a degree program.

"School" means a Delaware public school, including a vocational-technical school and a charter school, or a facility operated by the Department of Services for Children, Youth and Their Families.

"Secretary" means the Delaware Secretary of Education.

3.0 Eligibility

3.1 ~~In order to qualify to participate in the Program all of the following must apply:~~ be eligible for an Award under the High Needs Educator Student Loan Payment Program, an applicant shall meet the requirements of subsections 3.1.1 through 3.1.5.

3.1.1 The applicant shall be an ~~Educator;~~ Educator.

3.1.2 The applicant shall have secured a Qualified Educational Loan prior to submitting an ~~application;~~ application.

- 3.1.3 The applicant shall have obtained a license and certificate issued by the ~~Department;~~ Department.
- 3.1.4 The applicant has not had an ineffective evaluation on the State's current evaluation system or the equivalent thereof on a State-approved alternative educator evaluation ~~system;~~ system.
- 3.1.5 The applicant shall instruct or provide educational support in an identified High Needs Area or School for 1 school year.

4.0 Application Requirements

- ~~4.1 The application to participate in the Program shall require the applicant to certify that the applicant meets all eligibility requirements.~~
- ~~4.2 The applicant must submit for review and approval a new, completed application each year, along with any additional information the Department requests.~~
- 4.1 The application acceptance and submission period for the High Needs Educator Student Loan Program shall be posted on the DHEO's website by December 1 of each calendar year.
 - 4.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
 - 4.1.2 Incomplete applications shall not be accepted or processed.
- 4.2 In order for an application to be considered complete, the applicant shall complete all of the requirements in subsections 4.2.1 through 4.2.3.
 - 4.2.1 The applicant shall certify to DHEO that the applicant meets all of the eligibility requirements in Section 3.0.
 - 4.2.2 The applicant shall provide the applicant's current employment information, lender, and loan amount to DHEO.
 - 4.2.3 The applicant shall provide substantiation to DHEO that the Award will be used for a Qualified Educational Loan as defined in Section 2.0.

5.0 ~~Award Decision and Disbursement Awards~~

- 5.1 The ability to make Awards each year is contingent upon the availability of funds.
- 5.2 If possible, DHEO shall make an Award to every applicant who satisfies the requirements of this regulation, consistent with Section 6.0 ~~Amount of Award~~ of this regulation. Awards will be determined based on the pool of eligible applicants in the given year.
 - 5.2.1 Applicants seeking eligibility based on eligible school shall maintain continuous employment by the same School as in the previous school year in order to be eligible for the Award.
 - 5.2.1.1 Applicants shall still be eligible for an Award if they have separated from the School they were previously employed with if separation was involuntary, including reduction in force, or was otherwise beyond the applicant's control.
- 5.3 Where there are insufficient funds to make an Award to every applicant who satisfies Program requirements, DHEO shall give priority to applicants who meet the following criteria:
 - 5.3.1 Applicants employed in both a certification field and a School that the Department has identified as a High Needs Area as defined in this regulation.
 - 5.3.2 Applicants having the greatest financial need.
- 5.4 The applicants having the greatest financial need shall be determined at the sole discretion of DHEO. Such decision shall be based upon:
 - 5.4.1 The applicant's income;
 - 5.4.2 The applicant's spousal income;
 - 5.4.3 The number of applicant's dependents; and
 - 5.4.4 The total amount of the applicant's Qualified Educational Loans.
- 5.5 DHEO shall have the sole discretion to prioritize applications and determine Awards consistent with the requirements of the Program as noted in this regulation.

PROPOSED REGULATIONS

- 5.6 DHEO shall make a ~~Loan Payment~~ loan payment directly to the applicant's lending agency on behalf of the applicant.
- 5.7 To be considered for a second, third, fourth, or fifth Award, an applicant shall submit a new, completed application and meet all of the requirements in Section 3.0 of this regulation each year.
- ~~5.7~~ 5.8 An applicant may receive only 1 Award per year, and may receive no more than 5 Awards in their lifetime.

6.0 Amount of Award Payment

- 6.1 An Award shall be a minimum of \$1,000 and shall not exceed \$2,000.
- 6.2 If an applicant knowingly submits false information or commits fraud in connection with the application process, DHEO may reevaluate the applicant's eligibility for a loan payment and may withdraw its decision to make a loan payment on the applicant's behalf.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), 3402(h), and 3438 (14 **Del.C.** §§122(b)(8), 181(15), 183, 3402(c), 3402(h), & 3438)
14 **DE Admin. Code** 1216

PUBLIC NOTICE

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

1216 Educator Support Scholarship Program

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§ 122(b)(8), 181(15), 183, 3402(c), 3402(h), and 3438, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes to amend 14 **DE Admin. Code** 1216 Educator Support Scholarship Program. The Educator Support Scholarship Program is a student financial assistance for higher education program that is administered by DHEO. The proposed amendments are to add subsections 3.1.1.1, which provides that an applicant who is enrolled in an undergraduate program of study must be enrolled full-time, and 3.1.1.2, which provides that an applicant is enrolled in a graduate program of study must be enrolled part- or full-time. Pursuant to 14 **Del.C.** §3402(h), awards are intended for full-time study; however, DHEO has the discretion to make prorated awards to applicants who are enrolled less than full-time. Many of the applicants for the Educator Support Scholarship Program who are enrolled in a graduate program of student are working full-time in Delaware schools and, as a result, are not enrolled full-time in their programs of study. The proposed amendments are consistent with 14 **Del.C.** §3402(h) and will allow both full-time and part-time graduate-level students to be eligible for an award through the Educator Support Scholarship Program.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before August 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement

standards? The amended regulation concerns a student financial assistance for higher education program and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns a student financial assistance for higher education program and is not designed to help ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation concerns a student financial assistance for higher education program and is not designed to help to ensure all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns a student financial assistance for higher education program and is not designed to help to ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation concerns a student financial assistance for higher education program and does not change authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation concerns a student financial assistance for higher education program and does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department, through DHEO, implements the regulations promulgated and adopted relating to student financial assistance for higher education programs that are administered by DHEO.

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

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

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

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 18RFA 07-01-23.pdf>

1216 Educator Support Scholarship Program

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the Educator Support Scholarship Program pursuant to 14 **Del.C.** §3438.

2.0 Definitions

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

"Area of Need" means 1 of the specific areas of need in which there is a shortage of teachers or specialists in Delaware as determined by the DHEO pursuant to 14 **Del.C.** §3438(b).

"Award" means a scholarship awarded under the Educator Support Scholarship Program.

"Delaware Higher Education Office" or **"DHEO"** means the Department of Education's office which administers specific programs related to higher education, including, ~~but not limited to,~~ student financial assistance programs.

"Free Application for Federal Student Aid" or "FAFSA" means the data supplied in connection with the federal government's application for federal financial aid which DHEO uses to determine an applicant's eligibility for an Award.

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

3.0 Eligibility

3.1 In order to be eligible for an Award under the Educator Support Scholarship Program, an applicant shall meet the requirements of subsections 3.1.1 through 3.1.3.

3.1.1 The applicant shall be enrolled in an undergraduate or graduate program of study leading to a career as a teacher or specialist in an Area of Need.

3.1.1.1 Applicants who are enrolled in an undergraduate program of study shall be enrolled full-time. For the purpose of subsection 3.1.1.1, full-time means the minimum college credit hours for full-time status as an undergraduate student as required by the applicant's college or university. Generally, this is a minimum of 12 credit hours per term.

3.1.1.2 Applicants who are enrolled in a graduate program of study shall be enrolled full-time or part-time.

3.1.1.2.1 For the purpose of subsection 3.1.1.2, full-time means the minimum college credit hours for full-time status as a graduate student as required by the applicant's college or university. Generally, this is a minimum of 9 credit hours.

3.1.1.2.2 For the purpose of subsection 3.1.1.2, part-time means the minimum college credit hours for part-time status as a graduate student as required by the applicant's college or university. Generally, this is less than 9 credit hours.

3.1.2 The applicant shall meet the definition of residency as defined in 14 Del.C. §3402(f).

3.1.3 The applicant shall be enrolled at a college or university that is located in Delaware and is accredited by an accrediting agency recognized by the U.S. Secretary of Education.

4.0 Application Requirements

4.1 The application acceptance and submission period for the Educator Support Scholarship Program shall be posted on the DHEO's website by December 1 of each calendar year.

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

4.1.2 Incomplete applications shall not be accepted or processed.

4.2 In order for an application to be considered complete, an applicant shall fulfill all of the requirements in subsections 4.2.1 and 4.2.2.

4.2.1 The applicant shall complete an online application through the Student Account Access Site by the last date of the application acceptance period.

4.2.1.1 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.

4.2.1.2 A first time applicant must establish an account and provide the applicant's valid email address and permanent mailing address before being permitted to submit the information required in subsection 4.2 of this regulation.

4.2.2 The applicant shall complete the FAFSA for the school year in which the scholarship is sought by the application deadline.

5.0 Awards

5.1 DHEO determines the amount of scholarships to be awarded annually. Contingent upon funding appropriated for the Educator Support Scholarship Program and based on the size of the applicant pool, at least 1 applicant in each Area of Need will be awarded a scholarship annually.

- 5.2 To determine an applicant's financial need for the purpose of the Educator Support Scholarship, DHEO will consider the applicant's EFC; the expense of attending the applicant's college or university; and the applicant's eligibility for Pell grants and other federal, state, or private grant assistance. For the purpose of this regulation, EFC means the Expected Family Contribution, which is the number that is calculated using the financial information an applicant provides on the applicant's Free Application for Federal Student Aid (FAFSA) to determine the applicant's eligibility for federal student aid.
- 5.3 An Award shall be used for, and not in excess of, tuition, mandatory fees, room, board, books, and other direct and indirect educational expenses.
- 5.4 An Award is renewable for up to 3 additional years.
- 5.5 To be eligible to renew an Award, a student shall update the student's enrollment information on the Student Account Access Site; continue to be enrolled in a program of study leading to a career as a teacher or specialist in an Area of Need; maintain satisfactory academic progress by successfully completing coursework according to the standards of the college or university in which the student is enrolled; and continue to be eligible to receive financial aid.
- 5.6 A student shall not receive more than 4 annual Awards.

6.0 Award Payment

- 6.1 Award payments shall be disbursed directly to the student's college or university only.
- 6.2 If a student withdraws from school or otherwise does not qualify for full payment at the end of the add/drop period for a semester, DHEO will apply the refund policies set forth in 14 Del.C. §3402(k). For the purpose of this regulation, semester means a half-year term in a school or college, typically lasting 15 to 18 weeks.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), and 3439(b)
(14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), & 3439(b))

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del.C. §122(d)****1218 Mental Health Services Student Loan Repayment Program****A. TYPE OF REGULATORY ACTION REQUESTED**

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), and 3439(b), the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14 DE Admin. Code 1218 Mental Health Services Student Loan Repayment Program. The Mental Health Services Student Loan Repayment Program is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the program. The proposed regulation is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022. In addition, the proposed definition of Qualified Educational Loan in Section 2.0 and the substantiation requirement in subsection 4.2.3 are consistent with 26 C.F.R. § 1.127-2, the Internal Revenue Service's regulation concerning qualified educational assistance programs.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before August 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain

a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns a student financial assistance for higher education program and is not designed to help improve student achievement as measured against state achievement standards.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns a student financial assistance for higher education program and is not designed to help ensure that all students receive an equitable education.
3. Will the new regulation help to ensure all students' health and safety are adequately protected? The new regulation concerns a student financial assistance for higher education program and is not designed to help to ensure all students' health and safety are adequately protected.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation concerns a student financial assistance for higher education program and is not designed to help to ensure that all students' legal rights are respected.
5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation concerns a student financial assistance for higher education program and does not change authority and flexibility of decision makers at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation concerns a student financial assistance for higher education program and does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department, through DHEO, implements the regulations promulgated and adopted relating to student financial assistance for higher education programs that are administered by DHEO.
8. Will the new 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 new regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.
9. Is there a less burdensome method for addressing the purpose of the new regulation? There is not a less burdensome method for addressing the purpose of this new regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state of complying with this new regulation. The regulation does not apply to local school boards.

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 21RFA 07-01-23.pdf>

1218 Mental Health Services Student Loan Repayment Program

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the Mental Health Services Student Loan Repayment Program pursuant to 14 Del.C. §3439(b).

2.0 Definitions

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

"Award" means the Delaware Higher Education Office's decision to make a loan payment on an applicant's behalf.

"Delaware Higher Education Office" or "DHEO" means the Department of Education's office which administers specific programs related to higher education, including student financial assistance programs.

"Qualified Educational Loan" means a government, commercial, or foundation loan for actual costs paid for tuition and reasonable educational expenses related to an applicant's undergraduate or graduate degree program. Reasonable educational expenses do not include tools or supplies (other than textbooks) that are retained by the recipient after the course of instruction; meals, lodging, or transportation; or education involving sports, games, or hobbies unless such education is required as part of a degree program.

3.0 Eligibility

3.1 In order to be eligible for an Award under the Mental Health Services Student Loan Repayment Program, an applicant shall meet the requirements of subsections 3.1.1 and 3.1.2.

3.1.1 The applicant shall be employed full-time as a school counselor, school psychologist, or school social worker in a Delaware public school for a minimum of 1 school year.

3.1.2 The applicant shall have secured a Qualified Educational Loan prior to submitting the application.

4.0 Application Requirements

4.1 The application acceptance and submission period for the Mental Health Services Student Loan Repayment Program shall be posted on the DHEO's website by December 1 of each calendar year.

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

4.1.2 Incomplete applications shall not be accepted or processed.

4.2 In order for an application to be considered complete, the applicant shall complete all of the requirements in subsections 4.2.1 through 4.2.3.

4.2.1 The applicant shall certify to DHEO that the applicant meets all of the eligibility requirements in Section 3.0.

4.2.2 The applicant shall provide the applicant's current employment information, lender, and loan amount to DHEO.

4.2.3 The applicant shall provide substantiation to DHEO that the Award will be used for a Qualified Educational Loan as defined in Section 2.0.

5.0 Awards

5.1 The ability to make Awards each year is contingent upon the availability of funds.

5.2 If possible, DHEO shall make an Award to every applicant who satisfies the requirements of this regulation, consistent with Section 6.0 of this regulation. Awards will be determined based on the pool of eligible applicants in the given year.

5.2.1 If there are insufficient funds to make a loan payment on behalf of every applicant who satisfies the requirements of this regulation, DHEO shall give priority to applicants who have the greatest financial need as determined by DHEO.

5.2.2 To determine an applicant's financial need, DHEO shall request the applicant provide the applicant's income and total amount of Qualified Educational Loans.

5.3 DHEO shall have the sole discretion to prioritize applications and determine Awards consistent with the requirements of the Program as noted in this regulation.

5.4 DHEO shall make a loan payment directly to the applicant's lending agency, on behalf of the applicant, to retire a portion of the applicant's Qualified Educational Loan.

5.5 An Award is not renewable.

5.6 To be considered for a second and third Award, an applicant shall submit a new, completed application and meet all of the requirements in Section 3.0 of this regulation each year.

5.7 An applicant may receive only 1 Award per year and may not receive more than 3 Awards in the applicant's lifetime.

6.0 Award Payment

6.1 An Award shall not exceed \$5,000 per year.

6.2 If an applicant knowingly submits false information or commits fraud in connection with the application process, DHEO may reevaluate the applicant's eligibility for a loan payment and may withdraw its decision to make a loan payment on the applicant's behalf.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)
14 DE Admin. Code 1571

PUBLIC NOTICE

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

1571 Special Education Teacher of Students with Disabilities

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1571 Special Education Teacher of Students with Disabilities. The regulation concerns the requirements for a Special Education Teacher of Students with Disabilities Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments to the regulation include revising the title of the Standard Certificate in Section 1.0; striking terms from Section 2.0 that have been embedded within the body of the regulation; revising the definition of "Valid and Current License or Certificate" in Section 2.0; clarifying the reference to license in subsection 3.1.2; adding the Praxis Special Education: Foundational Knowledge (ETS Test Code # 5355) as an option in subsection 4.1.2.2; adding subsection 5.2, which concerns disclosure of criminal conviction history; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before August 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The

amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change the authority or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Special Education Teacher of Students with Disabilities Standard Certificate but whose effectiveness is documented by the district or school. Section 6.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants. In addition, the requirements in Section 10.0 apply to individual applicants and Educators.

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

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

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

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

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 24RFA 07-01-23.pdf>

1571 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 Special Education Teacher of Students with Disabilities (Category)~~ Special Education Teacher of Students with Disabilities (Category) Standard Certificate pursuant to 14 **Del.C.** §1220(a).

1.1.1 ~~This Certification~~ The Special Education Teacher of Students with Disabilities Standard Certificate is required for an Educator whose primary assignment is teaching children with disabilities in grades K to 12 in Delaware public schools.

1.1.1.1 The Early Childhood Exceptional Children Special Education Teacher Standard Certificate may be used for grades K to 2 in lieu of Special Education Teacher of Students with Disabilities Standard Certificate.

1.1.1.2 The Teacher of Students with Autism or with Severe Intellectual Disabilities Standard Certificate, Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate, and Teacher of Students with Visual Impairments Standard Certificate shall be used when the teacher's primary assignment providing instruction to the category of students designated within those category certifications.

- 1.1.2 ~~This Certification~~ The Special Education Teacher of Students with Disabilities Standard Certificate is a category Standard Certificate and does not certify an Educator to practice in a particular area or teach a particular subject. A category Standard Certificate only establishes that an Educator has met the prescribed education, knowledge, or skill to instruct a particular category of students. ~~This Certification~~ The Special Education Teacher of Students with Disabilities Standard Certificate is limited to the category of teaching Students with Disabilities.
- 1.1.3 An Educator shall hold at least one content area Standard Certificate.

2.0 Definitions

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

~~“15 Credits or the Equivalent in Professional Development”~~ means college credits or an equivalent number of hours with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a Regionally Accredited college or university or other Department-approved provider.

~~“Certification”~~ means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.

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

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

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

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

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

~~“Major or Its Equivalent”~~ means a minimum of thirty (30) semester hours of coursework in a particular content area.

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

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

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

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

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

~~“Students with Disabilities”~~ means the same as "Child with a Disability" as provided in 14 Del.C. §3101(2).

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

3.0 Issuance of a Standard Certificate

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

4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 An applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 An applicant shall have satisfied ~~one~~ 1 of the following education requirements:
- 4.1.1.1 Obtained and currently maintain an Exceptional Needs Specialist certificate from the National Board for Professional Teaching Standards; or
- 4.1.1.2 Earned a bachelor's, master's, or doctoral degree from a Regionally Accredited college or university with a ~~Major or Its Equivalent~~ minimum of 30 semester hours of coursework in special education or teaching students with disabilities from an educator preparation program approved or recognized by the ~~National Council for the Accreditation of Teacher Education (NCATE)~~, the Council for the Accreditation of Educator Preparation (**CAEP**); (**CAEP**) or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach students with disabilities as provided in 14 **Del.C.** §§1260 – 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in special education; or
- 4.1.1.5 Earned a bachelor's degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 ~~Credits or the Equivalent in Professional Development~~ college credits with a focus in special education or in students with disabilities in the ~~following areas:~~ areas provided in subsection 4.1.1.5.3 or an equivalent number of hours in professional development with 1 credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department in the areas provided in subsection 4.1.1.5.3.
- 4.1.1.5.1 For the purpose of subsection 4.1.1.5, professional development means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants' attitudes, insights, and perspectives and ultimately results in improved professional practice.

PROPOSED REGULATIONS

- 4.1.1.5.2 Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:
- 4.1.1.5.2.1 Relevant courses from a Regionally Accredited college or university in special education are not available to the applicant online or in the applicant's county of residence; and
- 4.1.1.5.2.2 The activity is grounded in research and current best practices as judged by the Department's content specialist in special education; and
- 4.1.1.5.2.3 The activity is documented by the provider to provide knowledge and skills that are required for the special education certification; and
- 4.1.1.5.2.4 The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.
- 4.1.1.5.3 For the purpose of subsection 4.1.1.5, the areas are the areas specified in subsections 4.1.1.5.3.1 through 4.1.1.5.3.5.
- 4.1.1.5.3.1 Diagnosis and Instruction for Reading / Literacy (3 credits);
- 4.1.1.5.3.2 Education Evaluation and IEP Development (3 credits);
- 4.1.1.5.3.3 Curriculum and Instruction in Special Education (3 credits);
- 4.1.1.5.3.4 Applied Behavior Analysis (3 credits); and
- 4.1.1.5.3.5 One of the following areas:
- 4.1.1.5.3.5.1 Legislation, Policy & Procedures/ Special Issues in Special Education (3 credits);
- 4.1.1.5.3.5.2 Transitions from Secondary Special Education or Secondary Transition Planning (3 credits);
- 4.1.1.5.3.5.3 Collaborative Teaming in Special Education (3 credits); or
- 4.1.1.5.3.5.4 Assistive Technology (3 credits).
- 4.1.2 The applicant shall have achieved ~~on the Praxis Subject Assessment—Special Education: Core Knowledge and Applications (ETS Test Code # 5354) a Passing Score of 151. a minimum score on 1 of the following examinations:~~
- 4.1.2.1 A minimum score of 151 on the Praxis Subject Assessment - Special Education: Core Knowledge and Applications (ETS Test Code #5354); or
- 4.1.2.2 A minimum score of 145 on the Praxis Special Education: Foundational Knowledge (ETS Test Code # 5355).

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 If the applicant is also applying for the issuance or renewal of an educator's license or paraeducator's permit, the applicant must disclose the applicant's criminal conviction history upon application. Failure to disclose a criminal conviction history is grounds for denial of the license or permit application as specified in 14 Del.C. §1219 and it could delay the processing or result in the denial of the application for a Special Education Teacher of Students with Disabilities Standard Certificate.
- ~~5.2~~ 5.3 The following documentation is required with the application for a Special Education Teacher of Students with Disabilities Standard Certificate:
- ~~5.2.4~~ 5.3.1 Evidence of obtaining an Exceptional Needs Specialist certificate from the National Board for Professional Teaching Standards, if ~~applicable~~: applicable; and
- ~~5.2.2~~ 5.3.2 Official transcript from the applicant's Regionally Accredited college or university.
- ~~5.2.2.4~~ 5.3.2.1 Electronic transcripts may be submitted by the applicant's Employing Authority or Regionally Accredited college or university.

~~5.2.2.2~~ 5.3.2.2 Sealed paper transcripts may be submitted by the applicant, the applicant's Employing Authority, or the applicant's Regionally Accredited college or university.

~~5.2.2.3~~ 5.3.2.3 The Department will not accept copies of ~~transcripts~~; transcripts; and

~~5.2.3~~ 5.3.3 Evidence of completing the equivalent of 15 Credits or the Equivalent in Professional Development, as provided in subsection 4.1.1.5, if applicable. Documents verifying successful completion of Department-approved professional development, if applicable; and

~~5.2.4~~ 5.3.4 Official score on the *Praxis* Subject Assessment as provided in subsection 4.1.2.

~~5.2.5~~ 5.3.5 Additional documentation as required by the Department.

~~5.3~~ 5.4 For applicants who have met the requirements for licensure as an educator in Delaware and hold a Valid and Current License or Certificate in special education or teaching students with disabilities from another state or jurisdiction, the following documentation is required in the application for a Special Education Teacher of Students with Disabilities Standard Certificate:

~~5.3.1~~ 5.4.1 An official copy of the educator license or certificate from another state or jurisdiction.

~~5.3.2~~ 5.4.2 Additional documentation as required by the Department.

6.0 Secretary of Education Review

~~6.1~~ 6.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Special Education Teacher of Students with Disabilities Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Special Education Teacher of Students with Disabilities Standard Certificate but whose effectiveness is documented by the local school district or charter school.

~~6.1.1~~ 6.1.1 For school districts, requests shall be approved by the superintendent of the school district.

~~6.1.2~~ 6.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

6.0 7.0 Validity of a Standard Certificate

~~6.1~~ 7.1 A Special Education Teacher of Students with Disabilities Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

~~6.2~~ 7.2 A Special Education Teacher of Students with Disabilities Standard Certificate is not subject to renewal.

7.0 8.0 Disciplinary Action

~~7.1~~ 8.1 An Educator's Special Education Teacher of Students with Disabilities Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.

~~7.2~~ 8.2 An Educator's Special Education Teacher of Students with Disabilities Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.

~~7.3~~ 8.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

~~The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Special Education Teacher of Students with Disabilities Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not~~

PROPOSED REGULATIONS

~~meet the requirements for a Special Education Teacher of Students with Disabilities Standard Certificate but whose effectiveness is documented by the local school district or charter school.~~

9.0 Past Certificate Recognized

The Department shall recognize a Special Education Teacher of Students with Disabilities Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to instruct Students with Disabilities.

10.0 Contact Information and Change of Name or Address

- 10.1 All applicants and Educators are required to update their contact information in DEEDS if their contact information changes.
- 10.2 An Educator who legally changes the Educator's name and wishes to change the name on the Special Education Teacher of Students with Disabilities Standard Certificate shall provide a notarized copy of evidence of the name change such as a marriage license or court action.
- 10.3 An applicant or Educator whose mailing address, email address, or phone number changes shall provide the Department with the new mailing address, email address, or phone number within 14 calendar days of the change.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

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

PUBLIC NOTICE

4458A Cottage Food Regulations

Pursuant to 16 Del.C. §122(3)u.1., the Health Systems Protection section within the Division of Public Health, Department of Health and Social Services, is proposing revisions to the Cottage Food Regulations. The revisions include:

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

Copies of the proposed regulations are available for review in the July 1, 2023 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4700.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Tuesday, August 1, 2023, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4700

***Please Note:**

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 30RFA 07-01-23.pdf>

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 30 07-01-23.htm>

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Board of Geologists

Statutory Authority: 24 Delaware Code, Section 3606(a)(1) (24 Del.C. §3606(a)(1))
24 DE Admin. Code 3600

PUBLIC NOTICE

3600 Board of Geologists

Pursuant to 24 Del.C. §3606(a)(1), the Delaware Board of Geologists ("Board") has proposed revisions to its Rules and Regulations. The proposed revisions amend the standards for continuing education. Specifically, the subsection pertaining to credit for specialty certification is amended to provide that credit may be obtained for specialty training or certification classes, such as OSHA, MSHA and HAZWOPER classes. In addition, a subsection is added to set forth the process whereby course providers may renew course approval.

A public hearing will be held on August 11, 2023 at 10:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Geologists, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at michelle.loper@delaware.gov.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be August 28, 2023. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 31RFA 07-01-23.pdf>

3600 Board of Geologists (Break in Continuity of Sections)

6.0 Continuing Education

6.1 Preamble

6.1.1 In order to protect the general public and ensure a high standard of integrity, skills and knowledge in the practice of geology, the following continuing education requirements are established by the Board in accordance with 24 Del.C. §3606(a)(8).

6.1.2 Regular participation in technical, professional and ethical training, and participation in professional and technical organizations assures that professional geologists are exposed to new ideas and keep their skills current. The overriding consideration in determining if a specific

PROPOSED REGULATIONS

program or activity qualifies as continuing education shall be that it is a means to update and/or expand the professional's knowledge and skills in the practice of geology beyond their normal job-related activities. The requirement that all professional geologists must participate in such activities is meant to further safeguard the health, safety and welfare of the public.

- 6.2 The Board will require continuing education as a condition of license renewal.
- 6.2.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Section 6.0.
- 6.2.2 Renewal and attestation shall be completed electronically.
- 6.2.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to subsection 6.4.
- 6.3 Licenses are renewed biennially (every two years on the even year) on September 30 (e.g. September 30, 2006, 2008). Continuing education (CE) reporting periods run concurrently with the biennial licensing period.
- 6.4 Each licensed geologist shall complete, biennially, 24 units of continuing education as a condition of license renewal. The licensee is responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the Board for random post renewal audit and verification purposes. A continuing education unit is equivalent to one contact hour (60 minutes), subject to the Board's review. The preparing of original lectures, seminars, or workshops in geology or related subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.
- 6.5 A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. "Hardship" may include, but is not limited to, disability; illness; extended absence from the jurisdiction; or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.
- 6.6 Continuing education shall be prorated for new licensees in the following manner:
- 6.6.1 If at the time of renewal, a licensee has been licensed for less than one (1) year, no continuing education is required; if he/she has been licensed for more than one (1) year, but less than two (2) years, twelve (12) of the twenty-four (24) hours will be required; if he/she has been licensed for two (2) years or more the full twenty-four (24) hours is required.
- 6.7 In his/her personal records, each licensee must keep proof of attendance for each activity for which the licensee is requesting credit. If the Board conducts an audit of a licensee's CE records, the Board will require the licensee to complete a CE log provided by the Board and submit the licensee's documentation of attendance to the CE event listed on the CE log. Failure to submit proof of attendance during an audit will result in loss of CE credit for that event.
- 6.8 Continuing education must be in a field related to Geology. Approval will be at the discretion of the Board. CEUs earned in excess of the required credits for the two- (2) year period may not be carried over to the next biennial period.
- 6.9 Categories of Continuing Education & Maximum Credit Allowed:
- 6.9.1 Geologic courses – 24 CEUs Total
Academic – 24 CEUs
Documentation – Proof of Completion
- 6.9.2 Professional Development in the Application of Practice of Geologic Sciences – 24 CEUs Total
Meetings – 12 CEUs (excluding job related meetings such as department meetings, supervision of students and business meetings within the work setting)
Workshops - 12 CEUs
Field Trips – 12 CEUs
Seminars - 12 CEUs
Documentation – Proof of Attendance and Duration

-
- 6.9.3 Peer Reviewed Publications– 12 CEUs Total
 - Composition – 12 CEUs
 - Review – 12 CEUs
 - Documentation – Proof of Participation
 - 6.9.4 Research/Grants – 12 CEUs Total
 - Documentation – Proof of Submission
 - 6.9.5 Specialty Training or Certifications – 12 CEUs Total
 - 6.9.5.1 Specialty Training or Certification includes, but is not limited to, OSHA, MSHA and HAZWOPER classes.
 - 6.9.5.2 Documentation – Proof of Completion
 - 6.9.6 Online courses and Web seminars – 12 CEUs Total
 - Documentation – Proof of Completion
 - 6.9.7 Teaching/Presentations – 12 CEUs Total
 - Presentation - 12 CEUs (1 hour prep time per hour presented of original presentation)
 - Documentation – Verification from Sponsoring Institution
 - 6.9.8 Service on a Geological Professional Society, Geological Institution Board/Committee or Geological State Board – 6 CEUs Total
 - Documentation – Proof of Appointment
 - 6.9.9 Regulatory Based Activities – 12 CEUs Total
 - Certifications/Training – 12 CEUs Total
 - Documentation – Proof of Completion
 - 6.9.10 For any of the above activities, when it is possible to claim credit in more than one category, the licensee may claim credit for the same time period in only one category.
 - 6.10 Automatic Approval for course work sponsored by the following Professional Societies:
 - 6.10.1 American Association of Petroleum Geologists (AAPG)
 - 6.10.2 American Association of Stratigraphic Palynologists (AASP)
 - 6.10.3 American Geosciences Institute (AGI)
 - 6.10.4 American Geophysical Union (AGU)
 - 6.10.5 American Institute of Hydrology (AIH)
 - 6.10.6 American Institute of Professional Geologists (AIPG)
 - 6.10.7 American Rock Mechanics Association (AMRA)
 - 6.10.8 American Water Resources Association (AWRA)
 - 6.10.9 Association for the Sciences of Limnology and Oceanography (ASLO)
 - 6.10.10 Association of American Geographers (AAG)
 - 6.10.11 Association of American State Geologists (AASG)
 - 6.10.12 Association of Earth Science Editors (AESE)
 - 6.10.13 Association of Environmental and Engineering Geologists (AEG)
 - 6.10.14 Association of Ground Water Scientists & Engineers (AGWSE)
 - 6.10.15 Association of Women Geoscientists (AWG)
 - 6.10.16 Clay Mineral Society (CMS)
 - 6.10.17 Council on Undergraduate Research-Geosciences Div. (CUR)
 - 6.10.18 Environmental and Engineering Geophysical Society (EEGS)
 - 6.10.19 Friends of Mineralogy (FOM)
 - 6.10.20 Geochemical Society (GS)
 - 6.10.21 Geo-Institute of the American Society of Civil Engineers (GI)
 - 6.10.22 Geologic Society of America (GSA)
 - 6.10.23 Geological Society of London (GSL)

- 6.10.24 Geoscience Information Society (GIS)
 - 6.10.25 History of Earth Sciences Society (HESS)
 - 6.10.26 International Medical Geology Association (IMGA)
 - 6.10.27 International Association of Hydrogeologists/US National Committee (IAH)
 - 6.10.28 Karst Waters Institute (KWI)
 - 6.10.29 Mineralogical Society of America (MSA)
 - 6.10.30 National Association of Black Geologists and Geophysicists (NABGG)
 - 6.10.31 National Association of Geoscience Teachers (NAGT)
 - 6.10.32 National Association of State Boards of Geology (ASBOG)
 - 6.10.33 National Cave and Karst Research Institute (NCKRI)
 - 6.10.34 National Earth Science Teachers Association (NESTA)
 - 6.10.35 National Ground Water Association (NGWA)
 - 6.10.36 National Speleological Society (NSS)
 - 6.10.37 North American Commission on Stratigraphic Nomenclature (NACSN)
 - 6.10.38 Paleobotanical Section of the Botanical Society of America (PSBSA)
 - 6.10.39 Paleontological Research Institution (PRI)
 - 6.10.40 Paleontological Society (PS)
 - 6.10.41 Palynological Society (AASP)
 - 6.10.42 Pennsylvania Council of Professional Geologists (PCPG)
 - 6.10.43 Petroleum History Institute (PHI)
 - 6.10.44 Seismological Society of America (SSA)
 - 6.10.45 Society of Economic Geologists (SEG)
 - 6.10.46 Society of Exploration Geophysicists (SEG)
 - 6.10.47 Society of Independent Professional Earth Scientists (SIPES)
 - 6.10.48 Society of Mineral Museum Professionals (SMMP)
 - 6.10.49 Society for Mining, Metallurgy, and Exploration, Inc. (SME)
 - 6.10.50 Society for Organic Petrology (TSOP)
 - 6.10.51 Society for Sedimentary Geology (SEPM)
 - 6.10.52 Society of Vertebrate Paleontology (SVP)
 - 6.10.53 Soil Science Society of America (SSSA)
 - 6.10.54 United States Permafrost Association (USPA)
- 6.11 Courses not pre-approved by the Board may be submitted for review and approval throughout the biennial licensing period.
- Note:** 6.11.1 Since subsection 6.10 provides the list of sponsors that are automatically approved by the Board for any course work used for Continuing Education units (CEU) towards the total of 24 CEUs in the biennial license period, please note that subsection 6.11, allowing for pre-approval of courses for CEUs, only pertains to courses NOT offered by a sponsor listed in the list provided in subsection 6.10. Furthermore, one CEU = one Contact Hour.
- 6.11.2 A course may be approved for a period of not more than 2 calendar years, provided the course is conducted by the sponsor or provider making application and the curriculum and course length are consistent with what was approved. All course approvals expire on the deadline for licensure renewal, which is September 30 of even years. A course cannot be automatically renewed. A sponsor or provider will need to reapply for approval no later than 60 days prior to the end of the renewal period before conducting the course or advertising the course to Delaware licensees.
- 6.12 **Audit.** Each biennium, the Division of Professional Regulation shall select from the list of potential renewal licensees a percentage, determined by the Board, which shall be selected by random method. The Board may also audit based on complaints or charges against an individual license, relative to

- compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 6.13 Documentation and Audit by the Board. When a licensee whose name or number appears on the audit list applies for renewal, the Board shall obtain documentation from the licensee showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with attendance verification. The Board shall attempt to verify the CEUs shown on the documentation provided by the licensee. The Board shall then review the documentation and verification. Upon completion of the review, the Board shall decide whether the licensee's CEU's meet the requirements of these rules and regulations. The licensee shall sign and seal all verification documentation with a Board approved seal.
- 6.14 Board Review. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered misconduct in the practice of geology, pursuant to 24 **Del.C.** §3612(a)(7). The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 monetary penalty; however, the Board may impose any of the additional penalties specified in 24 **Del.C.** §3612.
- 6.15 Noncompliance - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEUs. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board.
- 6.16 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

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

[https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 31 07-01-23.htm](https://regulations.delaware.gov/register/july2023/proposed/27%20DE%20Reg%2031%2007-01-23.htm)

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Driver Services

Statutory Authority: 21 Delaware Code, Sections 302, 304, and 2608(a) (21 **Del.C.** §§302, 304 & 2608(a))

PUBLIC NOTICE

2226 Third Party Commercial Driver License Skills Testing

Pursuant to the authority provided by 21 **Del.C.** §302, 21 **Del.C.** §304, and 21 **Del.C.** §2608(a), the Delaware Division of Motor Vehicles (DMV) promulgates this regulation establishing its Third Party Commercial Driver

License Skills Testing program.

The DMV seeks to develop policies, procedures, and licensing requirements to establish the working and operational instructions for the performance and conduct of certified commercial driver license testers.

This regulation will furnish guidelines as necessary for certified commercial driver license testers to remain current with changing laws and new programs promoting the safety and welfare of the citizens of Delaware and to aid in the prevention and detection of fraudulent activities. This regulation will also promote an expedient method for Delaware drivers with Commercial Learner's Permits to complete skills tests for a timely attainment of their Commercial Driver's License.

Public Comment Period

The DMV will take written comments on these proposed general revisions to Section 2226 of Title 2, Delaware Administrative Code, from July 1, 2023 through July 31, 2023. The public may submit their comments to:

Caleb Vicks, Motor Vehicle Services Program Manager, Division of Motor Vehicles
(caleb.vicks@delaware.gov) or in writing to their attention,
Delaware Department of Transportation (DelDOT)
Division of Motor Vehicles
PO BOX 698
Dover, DE 19903

***Please Note:**

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 35RFA 07-01-23.pdf>

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

<https://regulations.delaware.gov/register/july2023/proposed/27 DE Reg 35 07-01-23.htm>

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1519

ORDER

1519 Multiple Measures for Demonstrating Content Knowledge

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge. The regulation sets forth alternative means of demonstrating content knowledge for applicants of certain content area Standard Certificates who do not achieve the minimum score specified in the regulation for the Standard Certificate sought. The proposed amendments include adding 14 **Del. Admin. Code** 1596 Charter School Leader to subsection 1.3; adding subsection 3.4, which concerns applicants who do not complete an educator preparation program and are applying for the Elementary Teacher Standard Certificate; correcting the numbering in subsection 4.4; and clarifying subsections 5.1.3.1, 5.1.3.2, and 5.1.3.3.

Notice of the proposed regulation was published in the *Register of Regulations* on April 1, 2023. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On May 11, 2023, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.**

Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge subject to the State Board of Education's approval. On May 18, 2023, the State Board of Education approved amending 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 18th day of May, 2023.

Department of Education

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

Approved this 18th day of May, 2023.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

Candice Fifer (Absent)

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

/s/ Rev. Provey Powell, Jr.

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens

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

***Please note that no changes were made to the regulation as originally proposed and published in the April 2023 issue of the *Register* at page 803 (26 DE Reg. 803). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/july2023/final/27 DE Reg 37 07-01-23.htm>

PROFESSIONAL STANDARDS BOARD

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

ORDER

1596 Charter School Leader

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed 14 **DE Admin. Code** 1596 Charter School Leader. The proposed regulation concerns the requirements for a Charter School Leader Standard Certificate in accordance with 14 Del.C. §1220. Section 1.0 provides who would be required to hold the Charter School Leader Standard Certificate; Section 2.0 provides definitions for the proposed regulation; Section 3.0 concerns the issuance of a Charter School Leader Standard Certificate; Section 4.0 provides the prescribed education, knowledge, and skill requirements for the issuance of a Charter School Leader Standard Certificate; Section 5.0 provides the application requirements; Section 6.0 concerns Secretary of Education review; Section 7.0 concerns the validity of a Charter School Leader Standard Certificate; Section 8.0 concerns disciplinary actions; and Section 9.0 concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Notice of the proposed regulation was published in the *Register of Regulations* on April 1, 2023. The Professional Standards Board received 95 written submittals.

Derrell Bradford, Executive Vice President of 50CAN, commented that the proposed regulation does not meet the standard of data-driven results and "there is no credible research that shows a correlation between leadership licensure and certification and improved student outcomes." Linda Zankowsky, of Montessori Works, commented that the proposed regulation "will impede the ability for Montessori schools to compete nationally for qualified leaders." Todd Ziebarth, of the National Alliance for Public Charter Schools, commented that the National Alliance for Public Charter Schools opposes the proposed regulation because it "would remove critical charter school autonomy."

Charles Taylor, President of the Delaware Charter School Network ("DCSN") Board of Directors, commented that "[c]harter schools are Corporations, not Traditional School Districts" and they "have the right to hire whom they want to fit the mission and carry on the mission of the school." Kendall Massett requested the Professional Standards Board table the proposed regulation and create a "distinct path for Charter School Leadership Licensure and Certification" and commented that "[b]y denying a certification path specific to charter school leadership, you are denying us the ability to hire leaders that may not fit the district mold, but are exactly the right person for our schools and to meet the needs of the students we serve" and "[d]etermining that charter school leaders should be like traditional district school leaders is exactly the opposite of the intent of the charter school law." In addition, Ms. Massett submitted an April 19, 2023 letter addressed to Governor Carney, Senator Sokola, and Representative Schwartzkopf from her and an April 19, 2023 letter addressed to Governor Carney, Senator Sokola, and Representative Schwartzkopf from the Delaware Charter School Board Chairs and the DCSN Governing Board.

Of the individuals affiliated with Academia Antonia Alonso Charter School, Maria Alonso, Board President, commented that the proposed regulation is "completely unnecessary" because current school leadership regulations provide Secretary of Education review. Nora Lewis, who is the Chair of La Academia Antonia Alonso Board of Directors, commented that the proposed regulation does not take into consideration the nature of charter schools and why they exist in Delaware. Ms. Lewis further commented that the proposed regulation runs counter to the vision of innovation and flexibility and it "will be extremely detrimental not only to La Academia, but to all public charters' ability to recruit and retain effective leaders who understand and serve their unique missions and approaches. In addition, Ms. Lewis commented that the portfolio requirement in subsection 4.1.2 "seems unnecessarily burdensome." Celeste Payne commented that the proposed regulation is unnecessary and that there are concerns about resources, including time and money, and representation. Mercedes Sofia Alonso also submitted a comment in opposition to the proposed regulation.

LaRetha Odumosu, who is also affiliated with Charter School of New Castle and Great Oaks Charter School, commented that she is "opposed to any regulation that makes decisions about a community without authentically consulting the actual members of that community first."

Of the individuals affiliated with Charter School of Wilmington, Logan Sturgill, a board member, commented that "the proposed regulation could limit the pool of qualified candidates, and hamper the innovation and creativity of Charter schools." Melissa Miller, who is also a board member, provided a link to a website that compares states' requirements for school leaders and commented that "[w]hat we really need to understand is the implications of each change and if that is really for the better of the students/community." Brandon Hoffmann also submitted a comment in opposition to the proposed regulation.

Of the individuals affiliated with EastSide Charter School, Charles McDowell, who is also affiliated with Early College School at DSU, commented that he has found it is more important for school leaders to have certain business and management skills rather than academic experience. Aaron Bass and Jocelyn Stewart also submitted comments in opposition to the proposed regulation.

Ryan Payus, who is affiliated with First State Military Academy, commented that the proposed regulation is unnecessary because the current school leadership regulations allow for Secretary of Education review.

Of the individuals affiliated with First State Montessori Academy, Courtney Fox commented that "[c]harter schools should be able to select leaders that meet their criteria and charter school boards should have oversight of that person." Stephany Pachowka commented that charter schools "should be able to maintain the liberty intended at the development of DE Public Charter Schools" and that the proposed regulation is unnecessary.

Clinton Walker, Board President of Freire Charter School of Wilmington, commented that "charter schools not be limited in who they can hire; rather that they be allowed to hire whomever they think is the best possible leader for their school - whatever the background of that individual."

Of the individuals affiliated with Gateway Charter School, Pam Draper, lead founder, commented that the proposed regulation is unnecessary and the "process needs to be less cumbersome than the regulation as written." Catherine Dolan, Tia Hargrove, Mike Purcell, and Shannon Staab each submitted comments in opposition to the proposed regulation.

Of the individuals affiliated with Las Américas ASPIRA Academy, Guillermina Gonzalez, Board President, commented that the "traditional path of five years of teaching experience and a Master's degree in School Leadership does not automatically guarantee success in leadership roles, particularly in charter schools." Lina Haycurrie commented that the proposed regulation is unnecessary because the Secretary of Education can review a person for certification under the current school leadership regulations. Eli Oriol, Director of Operations, commented that charter schools do not get the same funding as school districts and charter leaders do not have the same level of support as their district counterparts and that the proposed regulation is unnecessary because the current school leadership regulations provide for Secretary of Education review. Greg Panchisin, Chief Operating Officer, commented that "[c]harter leaders do not have the same level of support as their district counterparts, and many [charter] leaders wear many hats due to funding constraints of operating a charter school." Board Member Rebecca Penix-Tadsen, who is also a teacher at Freire Charter School, commented that the proposed regulation is unnecessary and the process "needs to be less cumbersome than the regulation as written." Margie López Waite, Chief Executive Officer, commented that "[b]eing a teacher for 5 years and earning a Master's in School Leadership does not equip an individual to become a successful school leader" and that "[i]f we continue to have this elitist attitude in education, believing that education leaders can only be grown within education, then we are going to deprive our students of the innovation, diverse perspectives, passion and compassion that exists all around us." In addition, Kathleen Chappel-Corea, Karen Contreras, Kristen Egan, Lyn Henshaw, Wanda Lopez, Lilia Meredith, Deborah Panchisin, Michael Reitemeyer, and Kim Whyte also submitted comments in opposition to the proposed regulation.

Of the individuals affiliated with MOT Charter School, Jennifer Taylor, a founding board member and the current Chair, commented that "[c]harter schools were established to be creative incubators" and asked "Why would we add yet another impediment to working within Delaware's schools?" Steve Doan, Louis Savino, Samuel Sullivan, Kelly Swab, and Donald Whitaker each submitted comments in opposition to the proposed regulation.

Of the individuals affiliated with Newark Charter School, James DeChene, Board of Directors Vice Chair, commented there is a difference between "standards and experience versus licensure and certification." Jennifer Brown also submitted a comment in opposition to the proposed regulation.

Ananaria Anagnostou, President of Odyssey Charter School, commented that "[w]e need this flexibility in the selection of the charter leadership to maintain that innovation."

Rachael Straightiff, Human Resources Coordinator at Providence Creek Academy, commented that "[b]y creating additional requirements for school administration, [she is] concerned that our employees who want to grow and advance will be concerned about the additional requirements that are proposed." Ms. Straightiff also commented that the proposed regulation is unnecessary because the current school leadership regulations provide for Secretary of Education review.

Lisa Coldiron, of Sussex Montessori School, requested that "charter school boards continue to be permitted to have the flexibility to hire the leader they need to support the creation of, and on-going support of, the charter school in their purview."

Marsha Horton, of Delaware State University, commented that "[c]harter schools have proven that administrative licensure is not something that is required for excellent student outcomes" and "[t]here is no correlation between leadership licensure and certification and excellent student outcomes." Laurisa Schutt, of First State Educate, commented that "[a]dding this requirement for leaders amid unspent ESSER funds, national and local teacher and leader shortage, lost learning, sinking scores, and lead-infused water may further challenge our competitiveness to attract and retain top talent with the flexibility in conditions that excellence needs." Britney Mumford, of DelawareCAN, commented that the proposed regulation is a "direct threat" to charter schools' mission that new learning models are tested and new programs piloted. In addition, Jessica Bradley, Rebecca Collins, Lauren Connelly, Jerry Corradin, Kellie Cruz, Deborah Curry, Patti Damiri, Linda Fitzgerald, Donna Johnson, Mir Sadiq Ali Khan, Monica Lee, Carolin Lion, Joseph Menna, Andrew Moore, Keith Mumford, Jerry Nordman, Angela Perry, Penny Short, Ryan Russ, Roger Seedorf, Sean Steward, Rachel Valentin, and Lisa White each submitted comments in opposition to the proposed regulation.

Karen Gray requested the Professional Standards Board "require all administrators at charter schools be held accountable to the same set of rules and certifications required of all other public-school administrators."

Jackie Wilson, of the National Policy Board for Educational Administration, commented in support of the proposed regulation, stating that "[i]t is important that schools be led by an effective principal, prepared by a university or professional organization where the program content and clinical experiences are aligned to national standards for leader preparation (NELP) and meets the state departments requirements for a license and certification."

On behalf of the Delaware State Education Association ("DSEA"), Stephanie Ingram commented that DSEA supports the proposed regulation because it "established a fair and equitable process that is not overly burdensome to either charter school leaders serving their communities or to future charter school leaders." Jayshree Taylor commented that "[w]hen Delaware parents send their children to Charter Schools there is an assumption that: 1) the leaders at those schools meet the baseline level of requirements as other district leaders, and 2) that the Charter leaders would have additional qualifications on top of that baseline which then set them apart." In addition, Sharon Brittingham, Chester Cox, Sue Dutton, Donna Hall, Leslie Hayes, Jacqueline Lee, John McGowan, Susan Nancarrow, Emily Poag, Jenn Ruebush, Michael Ryan, Stephanie Smith, Michelle Webb, and two other individuals who did not provide their full names submitted comments in support of the proposed regulation.

II. FINDINGS OF FACTS

On May 11, 2023, the Professional Standards Board considered the written submittals. The Professional Standards Board found that its role is to work with Department to get individuals licensed and certified and to uphold licensure and certification requirements for all public school educators. The Professional Standards Board further found that it addresses matters related to licensure and certification at all public schools. It found that the process of developing the regulation on the public record and being presented with necessary information made the board informed. The Professional Standards Board also found that by statute, all educators must be licensed and certified in accordance with Chapter 12 and that the definition of educator for the purpose of Chapter 12 specifically includes charter schools. The Professional Standards Board further found that by adopting the new regulation, it would allow a license disciplinary action for misconduct under Chapter 12 and ensure that such misconduct could be reported to NASDTEC. Regarding Secretary of Education review, the Professional Standards Board found that such review is available for all certification areas by statute. The Professional Standards Board

also found that charter school leaders are not being asked to do more, there are no financial costs for reviewing the portfolio, and professional learning will be provided to help charter school leaders successfully complete the portfolio.

The Professional Standards Board voted not to make any changes as result of the written submittals and to propose 14 **DE Admin. Code** 1596 Charter School Leader, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1596 Charter School Leader.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1596 Charter School Leader subject to the State Board of Education's approval. On May 18, 2023, the State Board of Education approved adopting 14 **DE Admin. Code** 1596 Charter School Leader. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1596 Charter School Leader, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1596 Charter School Leader adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1596 Charter School Leader in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 18th day of May, 2023.

Department of Education

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

Approved this 18th day of May, 2023.

State Board of Education

/s/ Shawn Brittingham, President

Rev. Provey Powell, Jr. (Voted No)

/s/ Vincent Lofink, Vice President

/s/ Wali W. Rushdan, II

Candice Fifer (Absent)

/s/ Deborah Stevens

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

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

***Please note that no changes were made to the regulation as originally proposed and published in the April 2023 issue of the *Register* at page 807 (26 DE Reg. 807). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/july2023/final/27 DE Reg 39 07-01-23.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 122(3)x (16 Del.C. §122(3)x)
16 DE Admin. Code 3345

ORDER

3345 Personal Assistance Services Agencies

Nature of The Proceedings

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt revised Regulations Governing Personal Assistance Services Agencies. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122 (3)(x).

On April 1, 2023 (Volume 26, Issue 10), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 Del.C. § 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by May 1, 2023, after which time the DHSS would review information, factual evidence and public comment to the proposed regulations. In addition, on May 1, 2023 (Volume 26, Issue 11) DHSS published emergency regulations containing the same regulatory revisions.

No written comments were received during the public comment period.

Summary of Proposal

On July 1, 2023, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Personal Assistance Services Agencies. The emergency regulations will expire on July 11, 2023, when the final regulations become effective.

Background

As more services are being provided in the home and community setting, it is necessary to ensure adequate oversight of the home care agency's workers providing in-home services. The COVID-19 pandemic has greatly impacted the workforce providing these in-home services. A number of flexibilities were implemented during the course of the pandemic and were found to have addressed staffing issues and allowed agencies to expand to provide services to more individuals in their homes while still ensuring safe and effective care.

Statutory Authority

16 Del.C. §122(3)(x)

Purpose

The purpose of the amendments is to allow agencies to expand to provide services to more individuals in their homes while still ensuring safe and effective care.

Fiscal Impact

N/A

Findings of Fact:

The Department finds that the proposed regulation, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulation Governing Personal Assistance Services Agencies are adopted and shall become effective July 11, 2023, after publication of the final regulations in the Delaware Register of Regulations.

6/13/23

Date

Molly Magarik, Secretary, DHSS

*Please note that no changes were made to the regulation as originally proposed and published in the April 2023 issue of the *Register* at page 811 (26 DE Reg. 811). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/july2023/final/27 DE Reg 43 07-01-23.htm>

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 122(3)o (16 **Del.C.** §122(3)o)
16 **DE Admin. Code** 3350

ORDER**3350 Skilled Home Health Agencies (Licensure)****Nature of The Proceedings**

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt revised Regulations Governing Skilled Home Health Agencies (Licensure). The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122 (3)(o).

On April 1, 2023 (Volume 26, Issue 10), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** § 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by May 1, 2023, after which time the DHSS would review information, factual evidence and public comment to the proposed regulations. In addition, on May 1, 2023 (Volume 26, Issue 11) DHSS published emergency regulations containing the same regulatory revisions.

No written comments were received during the public comment period.

Summary of Proposal

On July 1, 2023, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Skilled Home Health Agencies. The emergency regulations will expire on July 11, 2023, when the final regulations become effective.

Background

As more services are being provided in the home and community setting, it is necessary to ensure adequate oversight of the home care agency's workers providing in-home services. The COVID-19 pandemic has greatly impacted the workforce providing these in-home services. A number of flexibilities were implemented during the course of the pandemic and were found to have addressed staffing issues and allowed agencies to expand to provide services to more individuals in their homes while still ensuring safe and effective care.

Statutory Authority

16 **Del.C.** §122(3)(o)

Purpose

The purpose of the amendments is to allow agencies to expand to provide services to more individuals in their homes while still ensuring safe and effective care.

Fiscal Impact

N/A

Findings of Fact:

The Department finds that the proposed regulation, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulation Governing Skilled Home Health Agencies (Licensure) are adopted and shall become effective July 11, 2023, after publication of the final regulations in the *Delaware Register of Regulations*.

6/15/23

Date

Molly Magarik, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the April 2023 issue of the *Register* at page 814 (26 DE Reg. 814). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/july2023/final/27 DE Reg 44 07-01-23.htm>

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 122(3)o (16 Del.C. §122(3)o)
16 DE Admin. Code 3351

ORDER

3351 Home Health Agencies--Aide Only (Licensure)

Nature of The Proceedings

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt revised Regulations Governing Home Health Agencies - Aide only. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122 (3)(o).

On April 1, 2023 (Volume 26, Issue 10), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** § 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by May 1, 2023, after which time the DHSS would review information, factual evidence and public comment to the proposed regulations. In addition, on May 1, 2023 (Volume 26, Issue 11) DHSS published emergency regulations containing the same regulatory revisions.

No written comments were received during the public comment period.

Summary of Proposal

On July 1, 2023, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Home Health Agencies - Aide Only. The emergency regulations will expire on July 11, 2023, when the final regulations become effective.

Background

As more services are being provided in the home and community setting, it is necessary to ensure adequate oversight of the home care agency's workers providing in-home services. The COVID-19 pandemic has greatly impacted the workforce providing these in-home services. A number of flexibilities were implemented during the course of the pandemic and were found to have addressed staffing issues and allowed agencies to expand to provide services to more individuals in their homes while still ensuring safe and effective care.

Statutory Authority

16 Del.C. §122(3)(o)

Purpose

The purpose of the amendments is to allow agencies to expand to provide services to more individuals in their homes while still ensuring safe and effective care.

Fiscal Impact

N/A

Findings of Fact:

The Department finds that the proposed regulation, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulation Governing Home Health Agencies - Aide Only are adopted and shall become effective July 11, 2023, after publication of the final regulations in the *Delaware Register of Regulations*.

6/14/23

Date

Molly Magarik, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the April 2023 issue of the *Register* at page 817 (26 DE Reg. 817). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/july2023/final/27 DE Reg 45 07-01-23.htm>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 20330

ORDER**US Savings Bonds****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding US Savings Bonds, specifically, to clarify internal policy and procedures. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the May 2023 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2023, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this proposed regulation is to amend the Division of Social Services Manual (DSSM) regarding US Savings Bonds, specifically, to clarify internal policy and procedures.

Background

The Division of Medicaid and Medical Assistance (DMMA) would like to update the contact information including name, address, phone number, and website for US Savings Bonds. In Addition, H and HH Bonds are no longer being issued. The 6-month retention period for all remaining H and HH Bonds no longer applies.

Statutory Authority

31 CFR 352

Purpose

The purpose of this proposed regulation is to amend the Division of Social Services Manual (DSSM) regarding US Savings Bonds, specifically, to clarify internal policy and procedures.

Summary of Proposed Changes

Effective for services provided on and after May 1, 2023, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) is to amend the Delaware Social Services Manual (DSSM) to clarify internal policy and procedures regarding US Savings Bonds.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on May 31, 2022.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

There were no public comments received.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May 2023 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding US Savings Bonds is adopted, specifically, to clarify internal policy and procedures and shall be final effective July 11, 2023.

6/13/23

Date of Signature

Molly Magarik, Secretary, DHSS

20000 Medicaid Long Term Care

20330 Countable Resources Computation**20330.7 U.S. Savings Bonds**

U.S. Savings Bonds are obligations of the Federal Government. They are not transferable and can only be sold back to the Federal Government. Normally, they cannot be redeemed for six months after the issue date specified on the face of the bond. For Series EE, and I Savings Bonds, the redemption period has been extended to 12 months. They become resources (not income) as of the 7th or 13th month. A bond may not roll over or renew in order to prolong the minimum retention period. Actual redemption (converting to cash) of one bond is required before purchasing a new bond. However, the U.S. Treasury regulation authorizes the Commission of Public Debt to waive the regulatory provisions pertaining to U.S. Savings bonds including the redemption period in order to “relieve any person or persons of unnecessary hardship”. A request for a refund because the person now requires Nursing Home care and so needs the funds used to purchase the bonds may constitute hardship. A written request to the Commissioner of Public Debt requesting a waiver to the redemption period is all that is required. The bondholder may simultaneously tender the bond(s) for redemption. If the Treasury receives the bond(s) and grants the waiver, it will issue the individual a check. Since bonds are redeemable due to hardship, the redemption value is treated as an available resource.

The individual in whose name a U.S. Savings Bond is registered owns it. The Social Security Number shown on a bond is not proof of ownership. The co-owners of a bond (bond titled AND/OR) own equal (50%) shares of the redemption value of the bond. The bond may show an owner followed by POD (proof of death) and another name. This is a survivorship type of bond. The name of the first individual owns 100% of the bond. The second individual will own 100% of the bond upon the death of the first individual.

Physical possession of a U.S. Savings Bond is a requirement for redeeming it. This is true for sole or joint ownership. If an individual alleges that he or she cannot submit a bond because a co-owner or other individual will not relinquish physical possession of the bond, obtain a signed statement from the co-owner or the other individual that he or she: has physical possession of the bond; will not allow the applicant to cash the bond; and if co-owner, will not cash the bond and give the applicant his or her share.

The Table of Redemption Values for U.S. Savings Bonds is used to determine the value of a bond. These are available from a local bank. The bank will need the series, denomination, date of purchase or issue date. ~~After the mandatory 6-month retention period, the~~ The value of a series H or HH bond is its face value.

~~Office of Public Debt
Buffalo Branch, FRB of NY
Fiscal Services Division
P.O. Box 961
Buffalo, NY 14240-0961
www.publicdebt.reas.gov~~

Treasury Retail Securities Services

P.O. Box 9150

Minneapolis, MN 55480-9150

(844) 284-2676

www.treasurydirect.gov/savings-bonds/cashing-a-bond/affected-by-a-disaster

See 20330.7 U.S. Savings Bonds - History

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 11006

ORDER

Determining Relative Child Care

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Determining Relative Child Care, specifically, to define and explain the requirements for a relative to provide child care services in the child's home. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the May 2023 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2023, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after July 11, 2023 the Delaware Health and Social Services (DHSS)/ Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) section 11006.7 regarding Determining Relative Child Care.

Statutory Authority

45 CFR 98.2
45 CFR 98.41

Background

DSS is revising DSSM 11006.7 to provide instruction for DSS staff and the public on the requirements and limitations for an individual to provide relative child care services in a child's home. DSSM 11006.7 includes the requirements for families who request Purchase of Care funding for a relative to provide child care. DSS received public comments about relative care services for children with special needs. As a result, DSS is amending policy 11006.7 to exempt children with special needs and newborns on a case-by-case basis from the non-traditional hours requirement. DSS is also changing the minimum number of children cared for from four children to one child when a relative provides care in the child's home. These changes will help to eliminate barriers to child care services.

Purpose

The purpose of this proposed regulation is to change the Delaware Social Services Manual (DSSM) 11006.7 to define and explain the requirements for a relative to child care services in the child's home.

Public Notice

In accordance with the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/ DSS gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on May 31, 2023.

Fiscal Impact Statement

DSS is adding the regulation to provide clear and accurate directions on identifying an individual who provides relative in-home child care. This procedure is currently in place and there are no new financial responsibilities associated with the regulation.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: The State Council for Persons with Disabilities (SCPD) appreciates DSS for adopting the proposed changes made by the SCPD.

Agency Response: DSS thanks you for your support.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May 2023 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend DSSM 11006.7 regarding Determining Relative Child Care specifically, to define and explain the requirements for a relative to provide child care services in a child's home, is adopted and shall be final effective July 11, 2023.

6/13/23

Date of Signature

Molly Magarik, Secretary, DHSS

11000 Child Care Subsidy Program**11006.7 Determining Relative Child Care**

Statutory Authority

45 CFR 98.2, 98.41

This policy applies to families who request Purchase of Care funding for a relative to provide child care.

1. The relative providing child care must be related to the child by:

- Marriage,
- Blood relationship, or
- Court decree.

2. The relative providing child care must be related to the child in one of the following relationships:

- Great-Grandparent,
- Grandparent,
- Adult Sibling,
- Aunt, or
- Uncle.

3. The relative provider shall:

- Be 21 years of age or older;
- Only provide care for the children of one family member;
- Not reside in the same home as the children needing care; and
- Only provide care during non-traditional hours that are not normally offered through a licensed child care provider. Relative child care is limited to evening and weekend shift work hours only. Children with "special needs" as defined in DSSM 11003.7.8 and newborns will be reviewed on a case-by-case basis for exemption to the non-traditional hours requirement.

4. The relative provider must successfully complete:

- The "Criminal History, Child Abuse, and Neglect Background Check Request Form". This form must be completed for the relative provider and each individual 18 years of age or older who is living in the relative provider's home;
- The orientation class on relative child care rules and regulations;
- 28 hours of approved training within 12 months of completing the relative child care orientation class;
- Three hours of health and safety training annually; and
- CPR and first aid courses. The relative provider's certifications must be current and re-certifications must be completed every two years.

5. In the children's home, the relative provider shall:

- Care for a minimum of ~~four children~~ one child in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
- Care for no more than two children under two years of age.
- Care for the children of one family member. The children must be related as siblings.

6. In the relative provider's home, the relative provider shall:

- Care for a minimum of one child in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
- Care for no more than two children under two years of age.
- Care for the children of one family member. The children must be related as siblings.

Note: Parents and caretakers who need child care during non-traditional hours shall be referred to Delaware's statewide Resource and Referral Agency for assistance in finding a provider.

DEPARTMENT OF LABOR DIVISION OF PAID LEAVE

Statutory Authority: 19 Delaware Code, Sections 105 and 3720 (19 **Del.C.** §§105 and 3720)

ORDER

1401 Rules Defining and Regulating the Healthy Delaware Families Act, Family and Medical Leave Insurance Program and the Division of Paid Leave

SUMMARY OF THE EVIDENCE

1. Title 19, Sections 105 and 3720 of the Delaware Code authorize the Department of Labor ("Department") to establish, amend and repeal regulations necessary for the internal administration of the Department, and for the proper conduct of any necessary hearings before the Department or its authorized agents and in relation to the administration and enforcement of the Healthy Delaware Families Act ("Act") and the Division of Paid Leave ("Division").

2. The Department's purpose in proposing these regulations was to set forth definitions, guidance, procedures, and standards for the implementation of the Act and its Family Medical Leave Insurance Program ("PFML" or "Program"). The Division will administer the Act and this Program in accordance with these regulations.

3. Notice of the proposed regulation was published in the May 1, 2023 edition of the *Delaware Register of Regulations*.

4. The Department invited a period of 30 days, until June 1, 2023, for written comment from the public.

5. The Department received 35 written submittals regarding the proposed regulations. There were a wide

range of comments from individuals, businesses, industries, and organizations. Many comments sought guidance on how the program will work with respect to a specific employer or industry. In response, the Division will be providing various resources prior to the implementation of each phase of the Act and Program to assist employers, employees, insurance carriers and third party administrators. In addition, some comments dealt with concerns about how the Act will affect small businesses. Several commentators questioned the coordination of benefits process. Other comments requested statutory changes to the Act. Some commentators offered support for several rules, including those regarding employee threshold count, temporarily reducing parental leave duration for small business, and self-certification of family relationships. Several comments stated concern about the use of an electronic portal. None of the comments received require any substantive changes to the proposed regulations.

6. On further review of the published proposed regulations and in light of the public comments received, the Department determined that several non-substantive edits to the proposed rules were needed simply to clarify based upon questions raised by some of the commentators. Non-substantive changes made are summarized as follows:

- Section 1 ("Employee" and "Qualifying Exigency") to clarify these definitions;
- Section 1 ("Line of Coverage") and subsections 4.1, 14.2, 17.4.1, 17.4.5.9, and 18.1 were modified to reflect language specified and consistent in the Act ("covered individual") rather than "eligible employee" simply to avoid any possibility of confusion;
- A sentence was added to subsection 2.1 to clarify any change made to the application year must be done in accordance with 29 CFR §825.200 to be consistent with the Act;
- A sentence was added to subsection 3.2.1 to clarify what period of time an employer should start with when determining the employer's employee threshold count;
- Subsections 3.6, 4.1.2, 5.1.3, 12.5.5, 17.1.3, 17.2.1, 17.4.2, 17.4.5.10, 19.5, and 21.1 clarify by when and to whom notice should be provided and applicable time periods for a party to complete a particular task;
- Subsections 3.4.6 and 3.8.9.3 further clarify how changes in the threshold count and second opinions affect approved leave;
- Subsection 3.9.4 clarifies the timing of recertification requests;
- Subsection 4.1 was also edited to clarify that it only applies to covered individuals in the public plan who return to work early;
- Several subsections, being 4.3.1, 4.3.3, 4.3.8.3, 7.3, and 12.5.4, were clarified to remove any question that they apply to employers and their designees;
- Subsections 4.2. and 4.2.2 were edited to clarify leave restrictions when leave is taken by parents or multiple family members working for the same employer;
- As the Department seeks to automate as many processes as possible, subsections 4.3.5 and 4.3.8.1 were revised to reflect communications will be through electronic mail systems;
- To avoid the possibility of confusion, the term "benefit payment" was added to clarify the word "instrument" in subsections 4.3.7.2, 4.3.7.3, and 4.3.7.4;
- Subsection 5.1.2.2 was edited to state the "current maximum benefit" rather than a specific dollar amount to avoid unnecessary regulatory changes and reflects the intent of this provision;
- Subsection 6.4 was clarified to reflect tracking for all lines of coverage for reporting purposes, as consistent with the Act and to remove any question;
- Subsections 6.8, 6.9, and 6.10 were omitted to clarify and ensure consistency with the Act and Program, as an employer utilizing a private plan to provide leave benefits is not required to contribute to the public plan;
- Subsection 6.16 was updated to clarify when an employer would be obligated to pay back contributions for employees on waivers;
- Subsection 6.19 was included to clarify that when on leave, no contribution requirements are required under the public plan;
- Section 10, regarding coordination of benefits, is being omitted and now marked as "reserved" as there were numerous comments regarding the practical application of this Section. The Department believes it is in the best interest of all stakeholders to review and discuss the coordination of benefits further at a future time. As deletion of this section does not substantially change any other provisions of these regulations, this deletion is deemed non-substantive;
- Subsection 12.1 was updated to clarify the claim process for covered individuals in the public plan;
- Subsection 13.1 was updated to clarify that the appeals process also applies to private plans to be consistent with the Act and is now cross-referenced in subsection 17.3;

- A sentence in subsection 17.1 was deleted at the request of the Department of Insurance;
- Subsections 17.1.1, 17.1.2, 17.1.3, 17.4.3, 17.4.5.9, 17.4.6.5.4, 17.5.5, 19.2 and 19.6 were edited to use terms consistent with those utilized by the Department of Insurance, including "approved" instead of "certified" and "private" rather than "voluntary" and to clarify the Department of Insurance's role in the Program;
- Subsection 17.4.5.2 was revised to clarify that the bond form used by a self-insured employer must be approved by the Division of Paid Leave; and
- Finally, subsection 17.5.1 was edited to reflect only the Division will determine if a private plan is comparable to the public plan for grandfathering purposes.

The changes from the proposed rules are in bold bracketed text:

1.0 Definitions

"Employee" means an individual employed by an employer. For purposes of the Act, individuals primarily reporting for work at a worksite in this State are employees unless otherwise excluded. "Primarily" is defined as working at least 60% of an employee's work hours physically in Delaware [each calendar quarter]. Individuals primarily reporting for work at a worksite or telecommuting outside of this State are not considered employees under the Act unless the employer and employee elect in writing to reclassify them as such. Employee does not include those in business for themselves in a non-corporate form who offer services to the public as a sole proprietor or partner in a partnership. Notwithstanding, these individuals may "reclassify" to be considered employees to participate in the Paid Family and Medical Leave Insurance Program 19 Del.C. Ch. 37 ("PFML"). An "employee" under PFML does not include the following types of individuals:

- Federal government workers, railroad workers, and employees of Tribal Governments;
- State of Delaware employees in a casual/seasonal position covered under §5903(17)a. of Title 29; and
- Department of Education employees who are in a casual/seasonal position that would be covered under §5903(17)a. of Title 29, or in an equivalent casual/seasonal position with an entity covered by State employee benefits.

"Line of coverage" means the different coverages for the 4 different types of leave that are authorized under the Act:

- Parental leave: Leave authorized which offers [covered individuals ~~eligible employees~~] time off in the event of the birth, adoption, or fostering of a child.
- Family caregiving leave: Leave authorized which offers [covered individuals ~~eligible employees~~] time off in the event of a serious health condition (illness or accident) of a child, spouse, or parent.
- Medical leave: Leave authorized which offers [covered individuals ~~eligible employees~~] time off in the event of a serious health condition (illness or accident) of the employee themselves.
- Qualified Exigencies: Leave authorized which offers [covered individuals ~~eligible employees~~] time off for qualified issues that arise in connection with a military deployment.

"Qualifying exigency" means as defined under the FMLA[, 29 CFR §825.126].

2.1 Application year under FMLA. The employer has the right to choose which method of counting the 12-month period works best for its business. Whichever method is chosen by the employer must be uniformly applied to all employees. [Any change to an employer's selected application year must be made in accordance with 29 CFR 825.200.] FMLA provides the 12-month period can be established in any of the following ways:

3.2.1 To be eligible under the Act, an employer must first employ the minimum number of employees who are subject to the provisions of the Act (the "threshold number") during the previous 12-month period. [As contributions begin on January 1, 2025, the initial 12-month period to determine the employer's employee threshold number will be the 12-month period prior to the start of contributions.] For parental leave, that threshold number is 10 employees. For family caregiving and medical leave, that threshold number is 25 employees. Employees subject to the provisions of the Act are those who meet or are reasonably expected to meet the requirements of a covered individual under the Act, being the 12-month employment period requirement and the 1,250 hours of service requirement during the previous 12-month period.

[3.4.6 If an employee is on leave, that leave will continue as approved, even if an employer's employee threshold count has decreased and ended an employer's obligation to provide a particular line of coverage. This applies to both continuous and reduced or intermittent leave approved prior to the change in the employee threshold count.]

3.6 Employee notice. Whenever an employee gains or loses any coverage provided under the Act due to a change in the number of employees in the employer, the employer must provide notice to its employees [within 30 days of the date of the change in coverage.]

[3.8.9.3 Provisional leave when obtaining second or third opinion. Once a claim has been approved, leave and benefit payments will begin and will continue while any second or third opinion is being obtained.]

[3.9.4. It is unreasonable for an employer to request a recertification prior to the expiration of the leave period set forth in the initial medical certification, unless the employer has a reasonable basis to do so, based upon objective, specific evidence of an event that brings the seriousness of the health issue into doubt.]

4.1 Maximum allowable benefit period. Depending on the type of leave, [covered individuals ~~eligible employees~~] can only take a maximum of 12 weeks of PFML in any application year. If a covered individual [in the public plan] should elect to return to work earlier than the date provided for in the approved leave schedule, the covered individual's benefit payments will end 1 week after the payment period in which they returned.

4.1.2 Family caregiving leave. If the covered individual is on approved family caregiving leave and that person dies, the reason for that leave has ended. For the public plan, the Division may continue paying the benefit to the covered individual until 7 days after the death of the family member or the previously approved end date for the leave. The covered individual must notify the employer and the Division via the Division's online portal of the date of death of this family member for whom the covered individual was caring within [72 48] hours of the person's passing. The job protection provisions of the Act also remain in effect as they would during any other period of approved leave.

4.2 Parent or multiple family members. The Division may limit aggregate family caregiving leave requested when multiple employees [who are family members] work for the same employer and are requesting leave for the same qualifying event. The Division hereby determines those limits are that both employees [who are family members] may take the full amount of leave that they would otherwise be allowed, but the employees may not take leave concurrently, unless the employer decides that all similarly situated covered individuals shall be allowed to take leave concurrently. If an employer decides that one set of covered individuals in the same or an equivalent situation can take leave concurrently, then all similar requests for that employer thereafter shall be allowed to be done concurrently.

4.2.2 When 2 ~~[parents employees]~~ working for the same employer are both entitled to parental, family caregiving or qualified exigency leave for the same qualifying event, the employer may limit the aggregate number of weeks of leave to which they may be entitled to 12 weeks during any 12-month period.

4.3.1 The date of an ~~[employer, insurance carrier, or third party administrator's employer's]~~ receipt of the completed application is not counted. The 5 business day time period does not begin until an employer~~[], insurance carrier, or third party administrator]~~ is in receipt of all necessary documentation, including the required documentation from the relevant healthcare provider. **[Upon review of the claim, if the employer, insurance carrier, or third party administrator finds the information required to make a decision is missing or materially incorrect, then the employer, insurance carrier, or third party administrator will notify the employee that the claim is incomplete and additional information is needed. The 5 business day time frame will again begin upon receipt of an updated claim application from the employee.]**

4.3.3 The final decision to approve or deny a claim, however, will be made by an employer~~[], insurance carrier, or third party administrator]~~ based on the totality of the circumstances known to the employer~~[], insurance carrier, or third party administrator]~~.

4.3.5 Upon approving an application, the employer, insurance carrier or third-party administrator, shall provide the claimant with written notice of this determination. If approval was for public plan benefits done within the Division's online portal, the covered individual will automatically receive the required notification ~~[through the covered individual's preferred method of communication, either]~~ electronically through an electronic mail system to the email address provided. ~~[or by regular mail.]~~

4.3.7.2 The party or parties to whom the ~~[benefit payment]~~ instrument is made payable:

4.3.7.3 The party to whom the ~~[benefit payment]~~ instrument was forwarded:

4.3.7.4 The address of the party to whom the ~~[benefit payment]~~ instrument was forwarded: and

4.3.8.1 If the denial was for public plan benefits submitted through the Division's online portal, the covered individual will automatically receive the required notification ~~[through the covered individual's preferred method of communication, either]~~ electronically through an electronic mail system to the email address provided by the employee ~~[or via regular mail].~~

4.3.8.3 The employer must ensure that all documents relating to the claim application and decision have been uploaded into the online portal. **[This requirement applies to all employers, regardless of whether they are utilizing a private insurance plan, self-insure, or third party administrator, to meet the requirement under the Act.]**

5.1.2.2 If the result of the benefit calculation is above ~~[the current maximum benefit \$900]~~, the weekly benefit amount shall be limited to ~~[the current maximum benefit \$900]~~.

5.1.3 Preservation of the Fund balance. At the Secretary of Labor's discretion, the benefit percentage may be reduced to a level sufficient to maintain the solvency of the Fund on the effective date specified by the Secretary of Labor. The reduced benefit percentage will then stay in effect for the next 12-months. This will only be done to protect the integrity of the Fund. Notice will be provided by the Division **[to all employers in the Fund]** at least 90 days before any change in the benefit percentage occurs. **[Employers shall provide notice to their employees within 30 days from the date the employers were notified by the Division of this change.]**

6.4 The contribution rates for medical~~[], parental, and family caregiving]~~ leave benefits for the years 2025, 2026, and 2027 and each ~~[rating period calendar year]~~ thereafter shall be tracked separately by the Division.

~~[6.8 Unless otherwise provided by the Act, the Division has the discretion to require or not require an approved private plan to remit contributions for medical leave benefits as required.]~~

~~[6.9 Unless otherwise provided by the Act, the Division has the discretion to require or not require an approved private plan to remit contributions for family caregiving leave benefits as required.]~~

~~[6.10 Unless otherwise provided by the Act, the Division has the discretion to require or not require an approved private plan to remit contributions for parental leave benefits as required.]~~

6.16 ~~[Voluntary return to plan after Revocation of-]~~ waiver. After an employer [voluntarily] submits to the Division a form [cancelling an employee's waiver and reinstating an employee's eligibility for the public plan, revoking a waiver as required,] deductions from wages will begin. Upon submitting a [voluntary return to plan after revocation of-] waiver [status] form, the employee will thereafter be subject to the payroll contribution [if the contribution is being shared by the employer and employee.]

[6.19 While an employee is on leave, no contribution payments are required under the public plan.]

7.3 Prior notice. An employee should provide the employer with at least 30 days advance notice of a need for leave under the PFML program. If 30 days' notice is not practicable, because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. "As soon as practicable" means as soon as both possible and practical, considering all the facts and circumstances in the individual case. When an employee becomes aware of a need for Delaware PFML leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day the employee knows they need leave or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must consider the employee's individual facts and circumstances. When the need for leave is foreseeable at least 30 days in advance and an employee fails to give timely advance notice with no reasonable excuse, the employer[, insurance carrier, or third party administrator] may delay coverage until 30 days after the date the employee provides notice. For the employer[, insurance carrier, or third party administrator] to delay the start of leave, the need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave.

10.0 Coordination of benefits [Reserved.]

~~[10.1 The phrase "or otherwise coordinated" means claims which can be justifiably made under this PFML insurance program and other income replacement plans for which the employee may qualify, including Workers' Compensation. Section 10.0 of this regulation does not apply to employer provided paid time off plans that have been "grandfathered" as set forth in subsection 47.5.]~~

~~[10.2 Employer requirements for coordination of benefit notice. If an employer requires that payments made under the PFML program be made concurrently or otherwise coordinated with payments made or leave allowed under terms of disability or family care leave under a collective bargaining agreement or employer policy, an employer shall give employees written notice of employer's requirements which shall include, at a minimum, the following:]~~

~~[10.2.1 Whether "paid time off" includes accrued vacation and sick leave;]~~

~~[10.2.2 Whether the use of unused accrued paid time off, as well as how much of the unused accrued paid time off is required to be used before accessing PFML benefits;]~~

~~[10.2.3 Whether the use of accrued paid time off counts towards the total length of leave provided; and]~~

~~[10.2.4 Any additional requirements as per the Division's discretion.]~~

~~[10.3 The employee cannot be required to exhaust all of the employee's accrued paid time off. If the employer requires the employee to use employer paid paid time off before taking PFML benefits,~~

~~the employer can only require the employee to use up to 75% (rounded to the next whole number of days) of the remaining applicable employer provided paid time off for that benefit period before they can access benefits under the Act.]~~

~~[10.4 Claims paid under the Act that are eligible to be coordinated with other income replacement or paid time off plans shall be paid out on the following schedule, with the employee being required to submit information about any possible coordinating claim:]~~

~~[10.4.1 Mandatory benefits under State or Federal Law. When coordinating monetary benefits with plans that are required under federal or state law (such as workers' compensation) PFML insurance claims will be the primary payer. The Division will pay the full benefit for which the covered individual is eligible. The mandatory benefit program that pays out the claim second or thereafter shall be entrusted to limit the combined benefit payments so that the total combined payments do not exceed the employee's average weekly earnings prior to the qualifying event.]~~

~~[10.4.2 Voluntary insurance plan or employer paid programs. When a qualifying event that may trigger a PFML insurance claim may also be a qualifying event according to the provisions of a voluntary insurance plan or other type of employer provided paid time off including vacation days, sick days, floating holidays, personal days (but excluding any "donated" leave in which additional leave is not automatically granted to employees) or income replacement program including short term disability insurance or the personal injury protection provisions of an automobile insurance policy in which the employee is enrolled, the PFML public plan will pay second.]~~

~~[10.5 Section 10.0 also applies to PFML leave that is taken on a reduced or intermittent schedule.]~~

~~[10.6 The term "wages" has the same meaning as defined in the Act, which follows the regulations defining the Federal Insurance Contributions Act, 26 USC Chapter 21, ("FICA") wages.]~~

12.1 Employee claims process. If an employee [in the public plan] wishes to make a claim, they must use the claims application form provided on the Division's online portal. The claim form will include the following information:

12.5.4 Employers are required to provide reasonable assistance to their employees or the employee's designated assistants to properly complete all the online forms created by this Division [or a private plan administrator] for this insurance program, including claims forms and claims review forms. This requirement for employers to assist in the completion of these online forms is subject to the anti-retaliation provisions of the Act.

12.5.5 If the health care provider does not return a completed certification of serious health condition within 20 days, the system will notify the employer and employee that the certification is still outstanding. The employee has the responsibility of following up with the health care provider. If, after 30 days from the day the claim form was submitted, the health care provider has still not returned a completed certification via the online portal, the system will mark the claim as "Denied Due to Lack of Certification". This claim shall automatically be revived if the certification is received [within 60 days] after it has been marked "Denied Due to Lack of Certification" without requiring the submission of a new claims form.

13.1 A covered individual or employer may appeal to the Board within 30 days from the date of the Division's [or the private plan's internal review] determination. At all times, a covered individual, employer, or witness are required to keep all information related to the claim or appeal confidential and take reasonable steps to ensure confidentiality.

14.2 The Division shall provide employers and employees with online tools, exportable reports, and forms to submit applications for leave, whether full-time, reduced, or intermittent, and to track the amount of leave taken and still available to be taken under the rules of the PFML insurance program. The Division

shall provide all ~~[covered individuals eligible employees]~~ or the ~~[covered individuals' employees]~~ designated assistants and employers with any necessary assistance completing all the Division's online forms.

17.1 An employer that elects to provide benefits through a private plan issued and administered by an admitted insurance carrier must ensure that the private plan being purchased has been filed with and approved by the Delaware Department of Insurance (the "DOI"). ~~The DOI has agreed to administer the requirements under the Act to certify that these insurance plans have either met or exceeded the requirements for 1 or more of the lines of coverage, including requiring that family caregiving insurance plans also provide qualified exigency leave.~~ The Division will provide additional approvals that employers who "opt-out" (in whole or in part, as a hybrid plan) will need to meet in order to satisfy their obligations through a private plan.

17.1.1 Insured private plans. An employer must notify the Division through its online portal of employer's decision to opt-out of the state's public plan. Employers must indicate that they intend to purchase a DOI-~~[approved certify]~~ PFML insurance plan, which may include coverage through a captive insurance plan approved by the Delaware DOI, for 1 or all of the required lines of coverage. As part of the process to provide notice to the Division of a decision to opt-out of the public plan, employers must submit proof via the online portal of the ~~[declaration page Declaration of Insurance]~~ from a DOI-approved insurance plan as well as a copy of the policy ~~[insurance contract]~~.

17.1.2 For employers seeking approval for 2025, the opt-out form will be available on the Division's online portal from September 1, 2024 through December 1, 2024, at which point the opt-out window will close. Failure to obtain coverage or to provide a copy of the required documents via the online portal or both will mean that employer cannot opt-out and must, instead, enroll in the public plan and remain in that until an approved ~~[private voluntary]~~ or self-insured plan, if any, is in place.

17.1.3 For all subsequent years, employers may seek to opt-out of the public plan or renew the approved ~~[private]~~ plan from October 1 through December ~~[1 31]~~, to be effective January 1 of the following calendar year, subject to ~~[plan the]~~ approval ~~[by of]~~ DOI and submission of the required documentation noted above via the Division's online portal by December ~~[1 31]~~. Failure to do so will, by default, deny approval of the plan and trigger enrollment in the public plan, which shall remain in effect until an approved ~~[private voluntary]~~ or self-insured plan, if any, is in place.

17.2.1 Required data. ~~[Within 30 days after the end of each Each]~~ quarter, employers will be required to send the Division updated weekly enrollment, wages, and hours information for each employee covered under the plan.

17.3 The requirements for the private plan and internal administrative review process when a final determination is issued are subject to the appeal process consistent with the Act. ~~[That process is set forth in section 13.0.]~~

17.4.1 Self-Insured groups must have at least 100 covered ~~[individuals employees]~~ in the plan at all times. Applicant groups with fewer than 100 ~~[covered individuals eligible employees]~~ will have their applications declined. In addition, any employer seeking to self-insure must provide a surety bond.

17.4.2 For 2025 only, the opt-out form will be available on the Division's online portal from September 1, 2024 through December 1, 2024, at which point the opt-out window will close. By ~~[December 1, 2024 January 1, 2025]~~, the employer must submit via the Division's online portal, the required surety bond in addition to any other required documentation. For all subsequent years, employers may seek approval to opt-out of the public plan or seek renewal of the self-insured plan during the period of October 1 to

December 1, to be effective January 1 of the following calendar year. The employer must also submit the required bond by December 1 if not already on file with the Division.

17.4.3 If any self-insured employer falls below 100 employees at the time of the annual renewal, they will be decertified, will be required to enroll in the public plan immediately and remain in that plan until an approved **[private voluntary]** plan, if any, is in place. In addition, the employer must pay to the Fund, within 30 days from the date of decertification, an amount equal to the contributions that would have been due for the previous 12-months had the employer been a participant in the public plan.

17.4.5.2 This bond shall be in the "continuous until canceled" bond **[on a]** form **[approved by the Division]**.

17.4.5.9 In addition to the bond review documents, the employer will provide the Division with any changes to the plan's Schedule of Benefits and report the current number of **[eligible employees]** covered **[individuals]** under employer's self-insured plan. If the plan no longer "meets or exceeds" the provisions of the Act or if there are less than 100 eligible employees covered under the plan, the self-insured plan will not be allowed to renew for the next calendar year. Upon decertification of a self-insured plan, an employer must pay to the Fund, within 30 days from the date of decertification, an amount equal to the contributions that would have been due for the previous year had the employer been a participant in the public plan. The employer is then required to join the public plan beginning January 1 and remain in that plan until an approved **[private voluntary]** plan, if any, is in place.

17.4.5.10 The Division may execute on and collect the bond amount if the employer's self-insured plan approval is terminated, decertified, or withdrawn, voluntarily or involuntarily **[and the employer fails to pay, within the subsequent 30 day period, an amount equal to the contributions that would have been due for the previous year had the employer been a participant in the public plan]**. Upon execution, the amount to be collected by the Division will be the entire bond amount, less any funds received from the employer within the 30 day period after the effective date of the termination of the self-insured plan approval. Funds so received by the Division from the employer or surety or both will be deposited into the Fund and, if applicable, will be credited toward the employer's contribution obligation per this section.

17.4.6.5.4 The employer will also be immediately added to the public plan with no lapse in coverage for the employers or employees and will remain on the public plan until an approved **[private voluntary]** plan, if any, is in place.

17.5.1 Private paid time off benefit plans that employers had in place before May 10, 2022, the enactment date of the Act, and that are deemed by **[DOI or]** the Division to be comparable to the state's public plan, will be allowed to continue until December 31, 2029, 5 years from the start of contributions being collected under PFML. Employer paid time off benefit plans that are deemed comparable will qualify regardless of the risk transference provisions including any of the following arrangements:

17.5.5 An employer's paid time off benefit plan must be within 10% of all 3 of these plan components for the employer's grandfathering application to be accepted by the Division. If the application is not accepted, the employer must enroll in the state's public plan and remain in that plan until an approved **[private voluntary]** or self-insured plan, if any, is in place.

18.1 Voluntary. For all small businesses, the ability to opt-in to provide parental leave benefits, medical leave benefits, or family caregiving leave benefits, any or all of them, is voluntary. However, once an

employer opts-in, compliance with the terms of the program is mandatory and applies to all [covered individuals eligible employees].

19.2 Audit. In addition to those powers stated in the Act, the Division may audit employers for compliance with the Act, as the Division determines. The Division reserves the right to examine any adjudicated claims application, whether they have been approved or denied, on a random basis. Admitted private insurers with [approved certified] PFML coverage plans shall provide the Division access to their records systems, along with the training and assistance necessary to understand the materials therein, so that the Division may audit claims adjudicated by those [insurers carriers]. The records and systems of self-insured private plans shall likewise be made available to and intelligible by the Division for auditing purposes.

19.5 Appeal to the Board. A covered individual or employer must file an appeal, if any, to the Board within [30 45] days from the date of the Division's claim review determination. Within 5 days of receipt of the appeal, the Board shall provide the parties with a hearing date.

19.6 [Nothing in these regulations limits Notwithstanding any other provision in the Act or this regulation,] the Department of [Insurance's Insurance shall have primary] jurisdiction [over an insurer issuing an approved private plan in certain issues] and the Division shall have authority to pursue any issues in its jurisdiction that the Department of Insurance declines to pursue.

21.1 Penalty. If the Division deems an employer in violation of the Act[, the employer will receive one written warning of this violation and will be given 30 days to correct the violation. If the violation is not corrected within 30 days or this is a subsequent violation, then the employer may be and is] subject to a civil penalty [,-] [This the] penalty shall not be less than \$1,000 nor more than \$5,000 for each violation. The Division has determined that "each violation" means each alleged action against each employee.

7. A copy of the published regulation formatted to show the above non-substantive changes is attached hereto as Exhibit A.
8. Having solicited and requested public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., and determining that no substantive changes are required to the proposed regulations, this is the Department's Decision and Order adopting the proposed regulations with the proposed non-substantive edits set forth herein and with the rest of the proposed rules as published remaining unchanged.

FINDINGS OF FACT AND CONCLUSIONS

The Department reviewed and considered the written submittals and in response to the comments received, the Department clarified some language by editing subsections 1.0, 2.1, 3.2.1, 3.6, 4.1, 4.1.2, 4.2, 4.2.2, 4.3.1, 4.3.3, 4.3.5, 4.3.7.2, 4.3.7.3, 4.3.7.4, 4.3.8.1, 4.3.8.3, 5.1.2.2, 5.1.3, 6.4, 6.16, 7.3, 12.1, 12.5.4, 12.5.5, 13.1, 14.2, 17.1, 17.1.1, 17.1.2, 17.1.3, 17.2.1, 17.3, 17.4.1, 17.4.2, 17.4.3, 17.4.5.2, 17.4.5.9, 17.4.5.10, 17.4.6.5.4, 17.5.1, 17.5.5, 18.1, 19.2, 19.5, 19.6, and 21.1. Also in response to comments received, the Department added subsections 3.4.6, 3.8.9.3, 3.9.4 and 6.19 to further clarify these sections and deleted subsection 6.8, 6.9, 6.10 and deleted and reserved section 10.0. In accordance with 29 Del. C. §10118(c), the Department determines that the edits described herein are not substantive, and as a result, is not required to repropose the changes. Accordingly, the Department finds that it is appropriate to adopt the proposed regulations, 19 DE Admin. Code 1401, pursuant to 19 Del.C. § 3720. The text of 19 DE Admin. Code 1401 shall be in the form attached hereto as Exhibit A and said

regulation shall be cited as 19 DE Admin. Code 1401 Healthy Delaware Families Act in the Administrative Code of Regulations for the Division.

ORDER

AND NOW this 13th day of June, 2023, it is hereby ordered that:

1. The proposed regulations, with the non-substantiative changes, are hereby adopted;
2. 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(e); and
3. The Department reserves to itself the authority to issue such order and further orders concerning its Regulations as it deems appropriate.

IT IS SO ORDERED.

**Department of Labor
Karryl Hubbard, Secretary of Labor**

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

<https://regulations.delaware.gov/register/july2023/final/27 DE Reg 51 07-01-23.htm>

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION Board of Nursing

Statutory Authority: 24 Delaware Code, Section 1906(a)(1) (24 Del.C. §1906(a)(1))
24 DE Admin. Code 1900

ORDER

1900 Board of Nursing

FINAL ORDER ADOPTING REGULATION CHANGES

The Delaware Board of Nursing pursuant to 24 *Del. C.* § 1906(a)(1), proposed to revise its regulations. The proposed amendments seek to remove obsolete or inconsistent regulations, clarify the process for review of nursing schools under conditional approval, add regulations pertaining to allowing nursing schools to add innovative approaches to their curriculum, clarify when a supervised practice plan can be used in lieu of a refresher course, clarify that all applicants must have graduated from Board approved nursing schools, incorporate a list of tasks RN, LPNs, and unlicensed assistive personnel may perform, clarify the process for an APRN to obtain a temporary permit, clarify how continuing education units are measured, clarify the process for appointing members of committees, and add crimes relating to sexual assault, trafficking, and illegal gun possession to the list of crimes related to the practice of nursing.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware Register of Regulations on April 1, 2023, a public hearing was held on May 10, 2023. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2, documentation of publication of the notice of the public hearing in the News Journal and the Delaware State News.

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;

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the Delaware State News; and

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 initial written public comment period, public hearing or fifteen-day period following the public hearing.
3. Pursuant to 24 *Del. C.* § 1906(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed amendments seek to remove obsolete or inconsistent regulations, clarify the process for review of nursing schools under conditional approval, add regulations pertaining to allowing nursing schools to add innovative approaches to their curriculum, clarify when a supervised practice plan can be used in lieu of a refresher course, clarify that all applicants must have graduated from Board approved nursing schools, incorporate a list of tasks RN, LPNs, and unlicensed assistive personnel may perform, clarify the process for an APRN to obtain a temporary permit, clarify how continuing education units are measured, clarify the process for appointing members of advisory committees, and add crimes relating to sexual assault, trafficking, and illegal gun possession to the list of crimes related to the practice of nursing.⁷
5. 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 changes to the Board's rules and regulations.
6. For the reasons stated above, the Board finds no reason to substantively amend the regulations.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware Register of Regulations.

IT IS SO ORDERED this 14th day of June 2023 by the Delaware Board of Nursing.

Kimberly Hopkins, RN, President (Absent)
 Jacqui Mainwaring, CRNA
 Pamela James, RN (Absent)
 Stephanie Mitchell, FNP, PMH, NP
 Sandra Glenn-Vernon, RN (Absent)
 Michael Brothers, Public Member (Absent)
 Prameela Kaza, Public Member
 Gayle Melvin, Public Member

Kenyette Walters, LPN, Vice-President
 Tiarra Davis, Public Member
 Carol Abdill, RN
 William Hare, Public Member
 Marlo Metz, RN
 Danielle Lowe, RN (Absent)
 Christina Hushen, RN

***Please note that no changes were made to the regulation as originally proposed and published in the April 2023 issue of the *Register* at page 824 (26 DE Reg. 824). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/july2023/final/27 DE Reg 61 07-01-23.htm>

DIVISION OF PROFESSIONAL REGULATION

Board of Massage and Bodywork

Statutory Authority: 24 Delaware Code, Section 5306(a)(1) (24 **Del.C.** §5306(a)(1))
24 **DE Admin. Code** 5300

ORDER

5300 Board of Massage and Bodywork

After due notice in the Delaware Register of Regulations and two Delaware newspapers, a public hearing was held on May 18, 2023 at a scheduled meeting of the Delaware Board of Massage and Bodywork ("Board") to receive comments regarding proposed amendments to the Board's rules and regulations. The proposed amendment to subsection 12.9.1 specifies that all massage establishments, not just licensed establishments, are subject to inspection by an agent of the Division of Professional Regulation. This change will make the regulation consistent with 24 **Del.C.** §5321(a) which authorizes inspection of "any" massage establishment.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 26, Issue 10, on April 1, 2023. Notice of the May 18, 2023 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** § 10118(a), the date to receive final written comments was June 2, 2023, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on June 15, 2023.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

There were no comments presented by testimony at the public hearing on May 18, 2023. Further, no written comments were submitted.

Findings of Fact and Conclusions

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

Pursuant to 24 **Del.C.** § 5306(a)(1), the Board has the statutory authority to promulgate rules and regulations. Having received no comments, either by testimony or in writing, the Board finds no reason to amend the regulations as proposed.

Decision and Effective Date

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

IT IS SO ORDERED this 15th day of June 2023.

DELAWARE BOARD OF MASSAGE AND BODYWORK

/s/ Kathy Sherwin, President

/s/ Valerie Lacey

/s/ Elvis Amadi, Vice President

Rebecca Enrico (ABSENT)

/s/ Ethel Loesche

/s/ Sandra Jachimowski

/s/ Jermaine Cannon

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

***Please note that no changes were made to the regulation as originally proposed and published in the April 2023 issue of the *Register* at page 827 (26 DE Reg. 827). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/july2023/final/27 DE Reg 63 07-01-23.htm>

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

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

NOTICE

Delaware Erosion and Sediment Control Handbook for 5101 Sediment and Stormwater Regulations

Secretary's Order No.: 2023-WS-0012

RE: Approving Final Revisions to the Delaware Erosion and Sediment Control Handbook, in support of 7 DE Admin. Code 5101, *Delaware Sediment and Stormwater Regulations*, as set forth at 7 *Del.C.* §4006 (h) and (i)

Date of Issuance: June 5, 2023

Effective Date: June 5, 2023

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 7 *Del.C.* §4006 (h) and (i), as well as 7 *Del.C.* §6010(a) and (c), and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed revisions to selected sections of the Delaware Erosion and Sediment Control Handbook ("Delaware ESC Handbook" or "Handbook"). The Handbook is not a State of Delaware regulation, but rather is a regulatory guidance document in support of 7 **DE Admin. Code** 5101, *Delaware Sediment and Stormwater Regulations*, as set forth at 7 *Del.C.* §4006(h) and (i). The current version of the Delaware ESC Handbook was adopted in February 2019, along with the Department's most recent amendments to 7 **DE Admin. Code** 5101. The Handbook provides background information on erosion and sedimentation, and information on Delaware's regulatory program to manage erosion and sediment from construction sites in Delaware. The Handbook also contains standards and specifications for a long list of best management practices ("BMPs") that may be employed during construction to prevent polluted discharges. The Department has the statutory basis and legal authority to develop and periodically revise the Delaware ESC Handbook, pursuant to 7 *Del.C.* §4006(h) & (i), and as provided for under 7 *Del.C.* Ch.60.

The proposed revisions to the Delaware ESC Handbook are limited to the following six (6) sections of the Delaware ESC Handbook:

1. **Section 3.1.4: Temporary Sediment Basin** - Corrected the anti-seep collar equation on p. 3.1.4-5.
2. **Section 3.4.3: Vegetative Stabilization** - Updated to remove invasive or undesirable species.
3. **Section 3.4.5: Mulching** - Clarified that synthetic netting is not acceptable.
4. **Section 3.6.1: Pollution Prevention** - Modification of the section title from "Construction Site Waste Management and Spill Control" to "Construction Site Pollution Prevention." Additionally, the "Fueling and Spill Control" information has been moved into its own standard and specification and has been replaced with additional information concerning pollution prevention and Delaware Construction General Permit ("CPG") signage recommendations.
5. **Section 3.6.4: Fueling and Spill Control** - Creation of new specification (as noted above), with expanded guidance from Section 3.6.1.
6. **Appendix A-3: Geotextile Application Guide** - Updated material specification and example products.

As noted above, the Delaware ESC Handbook itself is not a regulation, but rather a regulatory guidance

document in support of 7 DE Admin. Code 5101. As such, there is no legal requirement for the Department to follow the standard regulatory promulgation process as provided under current Delaware law. However, for the purposes of transparency, and to provide additional information, clarity and guidance to the regulated community, the Department published General Notice in the December 1, 2022, edition of the *Delaware Register of Regulations*, as well as Legal Notice in both the *News Journal* and the *Delaware State News* on December 1, 2022. These Notices announced the proposed revisions to selected sections of the Handbook, provided hyperlinks within those documents that directed the public to the actual proposed revisions for further review, and specified the time period in which the public could request a public hearing, should they wish to do so. Thereafter, the Department received four (4) requests for a public hearing.

The Department subsequently published General Notice in the March 1, 2023, edition of the *Delaware Register of Regulations*, as well as Legal Notice in both the *News Journal* and the *Delaware State News* on March 1, 2023, announcing that the Department would hold a public hearing on March 22, 2023, to receive comment on the proposed revisions to the Delaware ESC Handbook. Thereafter, the Department held the public hearing concerning this matter as noticed. Department staff and members of the public attended the public hearing held in this matter on March 22, 2023.

It should be noted that only one comment was received from the public regarding the aforementioned proposed revisions to the Handbook. That comment was received verbally at the time of the public hearing held on March 22, 2023. The hearing record ("Record") remained open for receipt of public comment through April 19, 2023, however, no additional comment was received by the Department during the post-hearing phase of this matter. Proper notice of the hearing was provided as required by law.

In response to the one comment that was received at the time of the public hearing, Bonnie Arvay, Program Manager II, from the Sediment and Stormwater Program of the Department's Division of Watershed Stewardship, provided a brief Response Memorandum to Hearing Officer Lisa A. Vest for the benefit of the Record being compiled in this matter. In that Memorandum, dated May 1, 2023, Ms. Arvay acknowledged the Department's receipt of the comment, and noted that the same was specific to two topics that are not part of the Handbook revisions currently being proposed by the Department. Ms. Arvay further noted in the Memorandum that, while the comment presented was not germane to the subject matter of the public hearing of March 22, 2023, the Department was appreciative of the comment, and will take the same into consideration when the Department seeks to modify the relevant authority and supporting section of programmatic guidance documents in the future.

It should be noted that all of the public hearing requests that were received by the Department in this matter referenced concerns to the waste management portion of the Delaware ESC Handbook. The Department is not currently proposing revisions to that section, and therefore those concerns are not germane to the subject matter of the public hearing. Nevertheless, the Department decided to honor the public's request for a public hearing in this matter in the event additional comments regarding the sections of the Handbook that were part of the proposed revisions would be received. As noted above, no such comments were submitted by the public in this matter. It should also be noted that the Department has discussed the concerns raised by those members of the public that had requested this public hearing. As a result of those discussions, DNREC has a proposed path forward to address those concerns outside of the current revisions being proposed for the Handbook.

I find that Ms. Arvay's Response Memorandum, as provided by the Department's experts in the Division of Watershed Stewardship, fully addresses the sole comment received by the Department at the time of the public hearing and provides clarity for the benefit of the Record being generated in this present matter. I further find that no changes to the proposed revisions to the Delaware ESC Handbook have been made by the Department subsequent to the initial publication of the proposed revisions in the *Register of Regulations* on March 1, 2023.

Following her review of the Record, Hearing Officer Vest prepared her Hearing Officer's Report, dated May 30, 2023 ("Report"), which expressly incorporated into the Record the above-referenced Response Memorandum regarding the sole comment received from the public in this matter, attached thereto as Appendix "A." The Report documents the proper development of the aforementioned proposed revisions, establishes the Record, and recommends the adoption of the Department's proposed revisions to the Delaware ESC Handbook, as referenced

above.

Reasons and Conclusions

Currently pending before the Department is the proposed adoption of the aforementioned revisions to selected sections of the Delaware ESC Handbook. As noted above, the Handbook is a regulatory guidance document in support of 7 **DE Admin. Code** 5101, *Delaware Sediment and Stormwater Regulations*, as set forth at 7 *Del.C.* §4006(h) and (i).

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department has fully developed the Record to support the proposed revisions to the Delaware ESC Handbook, and that the same is well-supported. Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed revisions to the Delaware ESC Handbook be adopted as final, in the customary manner provided by law.

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

1. The Department has the statutory basis and legal authority to act with regard to the proposed revisions to selected sections of the Delaware ESC Handbook, pursuant to 7 *Del.C.* §4006(h) and (i), and as provided for under 7 *Del.C.* Ch.60.
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting the aforementioned proposed revisions as final;
3. The Department provided adequate public notice of the proposed revisions, and all proceedings associated with the same, in a manner required by law and regulations, and provided the public with an adequate opportunity to comment on the same, both at the time of the public hearing held on March 22, 2023, and subsequent to the time of the public hearing (through April 19, 2023), in order to consider all public comment on the same before making any final decision;
4. The adoption of the proposed revisions to the Delaware ESC Handbook will enable the Department to update this regulatory guidance document, in support of 7 **DE Admin. Code** 5101, as referenced above, and provide additional information, understanding and clarity to the regulated community with regard to the six areas that are being updated with these revisions, namely: (1) temporary sediment basin; (2) vegetative stabilization; (3) mulching; (4) construction site pollution prevention; (5) fueling and spill control; and (6) the geotextile application guide;
5. The Department's proposed revisions to the Delaware ESC Handbook, as initially noticed in the General Notices section of the March 1, 2023, *Delaware Register of Regulations*, and then fully vetted to the public at the aforementioned public hearing held on March 22, 2023, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final revisions to the Delaware ESC Handbook, which shall become effective immediately upon the signing of the Secretary's Order regarding the same;
6. The Hearing Officer's Report, including its established Record and the Department's Response Memorandum dated May 1, 2023, as set forth therein in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
8. The Department shall submit this Order approving as final the proposed revisions to the Delaware ESC Handbook to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, as the Department determines is appropriate.

Lisa Borin Ogden, Deputy Secretary for
Shawn M. Garvin
Secretary

GENERAL NOTICES

DIVISION OF WATERSHED STEWARDSHIP

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

GENERAL NOTICE

NOTICE

Watershed Stewardship Sediment and Stormwater Program

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

The new and revised forms and a description of the forms and changes include:

- Application for Fee-in-lieu to accompany fees submitted in accordance with DSSR §13.2
- Third Party Certified Construction Reviewer (CCR) Application revised to include CCR Performance Standards in accordance with DSSR §6.0
- Construction Site Stormwater Management Review Report revised to satisfy EPA State Review Framework reporting requirements

The DNREC Sediment and Stormwater Program hereby provides notice of these regulatory guidance documents, pursuant to 7 *Del.C.* §4006(i), which incorporates the provisions of 7 *Del.C.* §6004. A public hearing will NOT be held unless the Secretary receives a meritorious request for a hearing within 15 days of date of this notice, ending July 16, 2023. A request for a public hearing shall be in writing and show familiarity with the regulatory guidance document and provide a reasoned statement of the regulatory guidance document's probable impact.

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

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

PREPARED BY:

Elaine Z. Webb

(302) 739-9921

elaine.webb@delaware.gov

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION
PUBLIC NOTICE**1001 Thoroughbred Racing Rules and Regulations****Summary**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the proposed regulations is to amend the definitions of "horse" in Section 1.0 to include Quarter Horses. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the July 1, 2023 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the Register of Regulations website: https://regulations.delaware.gov/register/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** § 10118(a), public comments must be received on or before August 1, 2023. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after August 1, 2023, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Thoroughbred Racing Commission, the amendments shall take effect ten days after being published as final in the Delaware Register of Regulations.

Delaware Thoroughbred Racing Commission
Sarah A. Crane, Executive Director

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

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

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

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

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

PUBLIC NOTICE

4458A Cottage Food Regulations

Pursuant to 16 **Del.C.** §122(3)u.1., the Health Systems Protection section within the Division of Public Health, Department of Health and Social Services, is proposing revisions to the Cottage Food Regulations. The revisions include:

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

Copies of the proposed regulations are available for review in the July 1, 2023 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4700.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Tuesday, August 1, 2023, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4700

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

PUBLIC NOTICE

3600 Board of Geologists

Pursuant to 24 **Del.C.** §3606(a)(1), the Delaware Board of Geologists ("Board") has proposed revisions to its Rules and Regulations. The proposed revisions amend the standards for continuing education. Specifically, the subsection pertaining to credit for specialty certification is amended to provide that credit may be obtained for specialty training or certification classes, such as OSHA, MSHA and HAZWOPER classes. In addition, a subsection is added to set forth the process whereby course providers may renew course approval.

A public hearing will be held on August 11, 2023 at 10:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Geologists, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at michelle.loper@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be August 28, 2023. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES**Driver Services****PUBLIC NOTICE****2226 Third Party Commercial Driver License Skills Testing**

Pursuant to the authority provided by 21 **Del.C.** §302, 21 **Del.C.** §304, and 21 **Del.C.** §2608(a), the Delaware Division of Motor Vehicles (DMV) promulgates this regulation establishing its Third Party Commercial Driver License Skills Testing program.

The DMV seeks to develop policies, procedures, and licensing requirements to establish the working and operational instructions for the performance and conduct of certified commercial driver license testers.

This regulation will furnish guidelines as necessary for certified commercial driver license testers to remain current with changing laws and new programs promoting the safety and welfare of the citizens of Delaware and to aid in the prevention and detection of fraudulent activities. This regulation will also promote an expedient method for Delaware drivers with Commercial Learner's Permits to complete skills tests for a timely attainment of their Commercial Driver's License.

Public Comment Period

The DMV will take written comments on these proposed general revisions to Section 2226 of Title 2, Delaware Administrative Code, from July 1, 2023 through July 31, 2023. The public may submit their comments to:

Caleb Vicks, Motor Vehicle Services Program Manager, Division of Motor Vehicles
(caleb.vicks@delaware.gov) or in writing to their attention,
Delaware Department of Transportation (DelDOT)
Division of Motor Vehicles
PO BOX 698
Dover, DE 19903