
Delaware Register of Regulations

Issue Date: June 1, 2014
Volume 17 - Issue 12, Pages 1110 - 1205



IN THIS ISSUE:

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 May 15, 2014.

Cover photo by Dr. Brian Kutner

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
July 1	June 16	4:30 p.m.
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.

DIVISION OF RESEARCH STAFF

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TABLE OF CONTENTS

1113

Cumulative Tables.....	1115
------------------------	------

EMERGENCY

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

Division of Family Services

101 Rules for Early Care and Education and School-Age Centers.....	1124
--	------

PROPOSED

DEPARTMENT OF EDUCATION

Office of the Secretary

505 High School Graduation Requirements and Diplomas.....	1127
610 Limitations on Use of Seclusion and Restraint.....	1133

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Social Services

DSSM 2000 Case Processing Procedures - Applications.....	1138
DSSM 2013 Verification; 9037 Use of Income and Eligibility Verification System (IEVS).....	1140
DSSM 9013.1 Food Supplement Program - Household Definition.....	1145

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

1300 Board of Examiners of Private Investigators & Private Security Agencies.....	1148
---	------

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

Division of Family Services

101 Rules for Early Care and Education and School-Age Centers.....	1155
--	------

DEPARTMENT OF STATE

Division of Professional Regulation

100 Board of Accountancy.....	1157
300 Board of Architects.....	1158
1100 Board of Dentistry and Dental Hygiene, Section 6.0 Continuing Professional Education....	1159
1700 Board of Medical Licensure and Discipline.....	1161
1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners.....	1161
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals...	1163
4400 Delaware Manufactured Home Installation Board.....	1164
5200 Board of Examiners of Nursing Home Administrators.....	1166

Office of the State Bank Commissioner

2207 Exemption of Licensed Lenders.....	1168
2302 Exemptions.....	1168
3401 Regulations Governing Revocable and Irrevocable Trust Agreements.....	1168
3402 Surety Bond or Irrevocable Letter of Credit.....	1168

DIVISION OF RESEARCH

Office of the Registrar of Regulations

Regulation Governing Administrative Rulemaking Procedures.....	1174
--	------

TABLE OF CONTENTS

FINAL

DEPARTMENT OF AGRICULTURE

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations, Section 8.0, Jockeys and Apprentice Jockeys... 1178

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

1915(i) Home and Community-Based Services Waiver Renewal Application..... 1179

Title XIX Medicaid State Plan, Medicaid Coverage for Prescribed Drugs: Attachment 3.1-A Page 5
Addendum; Attachment 3.1.A.1 Page 2a, and Attachment 3.1.A.1 Page 2b..... 1189

DEPARTMENT OF STATE

Division of Professional Regulation

1100 Board of Dentistry and Dental Hygiene, Section 10.0, Eligibility to Take the Practical
(Clinical) Examination..... 1191

1900 Board of Nursing, Sections 2.0, 6.0, 8.0 and 9.0..... 1193

2900 Real Estate Commission..... 1194

2925 Real Estate Commission Education Committee..... 1195

GENERAL NOTICE

DEPT. OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

Delaware 2011 Base Year State Implementation Plan (SIP) Emission Inventory under the 2008
Ozone National Ambient Air Quality Standard (NAAQS)..... 1197

CALENDAR OF EVENTS/HEARING NOTICES

Delaware River Basin Commission, Notice of Public Hearing..... 1198

Dept. of Education, Notice of Monthly Meeting..... 1198

Dept. of Health and Social Svcs., Div. of Social Svcs. - Notices of Public Comment Periods.....1198 - 1199

Dept. of Natural Resources and Environmental Control, Div. of Air Quality - Notice of Public Hearing..... 1199

Dept. of Safety and Homeland Security, Div. of State Police - Notice of Public Comment Period.... 1199

Dept. of Services for Children, Youth and Their Families, Div. of Family Services, Notice of
Public Hearings..... 1200

Dept. of State, Div. of Prof. Regulation; Office of the State Bank Commissioner - Notices of Public Hearings
and Comment Periods..... 1201 -1203

Dept. of Transportation, Div. of Planning and Policy, Notice of Public Hearings..... 1204

Div. of Research, Office of the Registrar of Regulations, Notice of Public Comment Period..... 1205

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

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

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY

201 Delaware Manufactured Home Relocation Trust Fund Regulations.....	17 DE Reg. 466 (Prop.)
	17 DE Reg. 678 (Prop.)
	17 DE Reg. 978 (Final)
202 Rent Increase Dispute Resolution Procedures.....	17 DE Reg. 267 (Emer.)
	17 DE Reg. 672 (Emer.)
	17 DE Reg. 804 (Prop.)
	17 DE Reg. 979 (Final)

DELAWARE RIVER BASIN COMMISSION

Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Revise the Human Health Water Quality Criteria for PCBs in Zones 2 through 6 of the Delaware Estuary and Bay	17 DE Reg. 1056 (Prop.)
Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for pH.....	17 DE Reg. 1058 (Prop.)
Revised Notice of Proposed Rulemaking and Public Hearing.....	17 DE Reg. 143 (Prop.)
Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for pH.....	17 DE Reg. 365 (Prop.)

DELAWARE SOLID WASTE AUTHORITY

501 Regulations of the Delaware Solid Waste Authority.....	17 DE Reg. 313 (Final)
502 Statewide Solid Waste Management Plan.....	17 DE Reg. 314 (Final)
503 Differential Disposal Fee Program, Repealed.....	17 DE Reg. 315 (Rep.)

DELAWARE STATE FIRE PREVENTION COMMISSION

710 Ambulance Service Regulations.....	17 DE Reg. 469 (Prop.)
	17 DE Reg. 982 (Final)

DEPARTMENT OF AGRICULTURE

Office of the Secretary

101 On-Farm Home Processing of Non-Potentially Hazardous Foods.....	17 DE Reg. 25 (Prop.)
	17 DE Reg. 316 (Final)
1201 Nutrient Management Certification Regulations.....	17 DE Reg. 28 (Prop.)
	17 DE Reg. 317 (Final)

Delaware Forest Service

401 Forest Service Erosion and Sedimentation Regulations.....	17 DE Reg. 145 (Prop.)
	17 DE Reg. 722 (Final)

Harness Racing Commission

501 Harness Racing Rules and Regulations, Section 3.0, 5.0, 7.0 & 8.0.....	17 DE Reg. 679 (Prop.)
	17 DE Reg. 1059 (Final)
Sections 6.0 and 7.0.....	17 DE Reg. 810 (Prop.)
	17 DE Reg. 1060 (Final)
502 Delaware Standardbred Breeders' Fund Regulations.....	17 DE Reg. 203 (Final)

Pesticides Section

601 Delaware Pesticide Rules and Regulations.....	17 DE Reg. 146 (Prop.)
	17 DE Reg. 723 (Final)

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations, Section 8.0, Jockeys and Apprentice Jockeys.....	17 DE Reg. 948 (Prop.)
1001 Thoroughbred Racing Rules and Regulations, Sections 9.0 and 15.0.....	17 DE Reg. 882 (Prop.) 17 DE Reg. 1061 (Final)

DEPARTMENT OF EDUCATION**Office of the Secretary**

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II), Repealed.....	17 DE Reg. 204 (Rep.)
106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	17 DE Reg. 205 (Final) 17 DE Reg. 1014(Prop.)
107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II), Repealed.....	17 DE Reg. 214 (Rep.)
107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	17 DE Reg. 216 (Final) 17 DE Reg. 1018(Prop.)
108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II), Repealed.....	17 DE Reg. 224 (Rep.)
108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	17 DE Reg. 1021(Prop.)
275 Charter Schools.....	17 DE Reg. 275 (Prop.) 17 DE Reg. 497 (Final) 17 DE Reg. 588 (Prop.) 17 DE Reg. 913 (Final)
290 Approval of Educator Preparation Programs.....	17 DE Reg. 1030(Prop.)
501 State Content Standards.....	17 DE Reg. 148 (Prop.) 17 DE Reg. 423 (Final)
502 Alignment of Local School District Curricula to the State Content Standards...	17 DE Reg. 679 (Prop.) 17 DE Reg. 916 (Final)
614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion.....	17 DE Reg. 367 (Prop.) 17 DE Reg. 835 (Final)
805 The School Health Tuberculosis (TB) Control Program.....	17 DE Reg. 361 (Emer.)
851 K to 12 Comprehensive Health Education Program.....	17 DE Reg. 150 (Prop.) 17 DE Reg. 425 (Final)
910 Delaware Requirements for Issuance of the GED® Test Credential.....	17 DE Reg. 469 (Prop.) 17 DE Reg. 724 (Final)
917 Accelerated Academic Programs.....	17 DE Reg. 152 (Prop.) 17 DE Reg. 427 (Final)

Professional Standards Board

1502 Professional Growth Salary Increments.....	17 DE Reg. 65 (Final)
1503 Educator Mentoring.....	17 DE Reg. 472 (Prop.) 17 DE Reg. 726 (Final)
1510 Issuance of Initial License.....	17 DE Reg. 372 (Prop.) 17 DE Reg. 610 (Final) 17 DE Reg. 1031(Prop.)
1517 Paraeducator Permit.....	17 DE Reg. 591 (Prop.) 17 DE Reg. 683 (Prop.) 17 DE Reg. 919 (Final)
1599 Delaware Educational Technology Standards.....	17 DE Reg. 1032 (Prop.)

DEPT. OF ELECTIONS FOR NEW CASTLE COUNTY

1600 Policies and Procedures Regarding FOIA Requests.....	17 DE Reg. 1062 (Final)
---	-------------------------

DEPARTMENT OF FINANCE

Office of the State Lottery

205 Charitable Video Lottery Rules and Regulations.....	17 DE Reg. 10 (Emer)
206 Internet Lottery Regulations.....	17 DE Reg. 29 (Prop.)
	17 DE Reg. 317 (Final)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

1915(c) Home and Community-Based Services Waiver.....	17 DE Reg. 156 (Prop.)
	17 DE Reg. 432 (Final)
1915(i) Home and Community-Based Services State Plan Option Amendment	17 DE Reg. 688 (Prop.)
	17 DE Reg. 1070 (Final)
1915(i) Home and Community-Based Services Waiver Renewal Application..	17 DE Reg. 950 (Prop.)
Affordable Care Act Section 4106 Preventive Services.....	17 DE Reg. 885 (Prop.)
	17 DE Reg. 1067 (Final)
Attachment 3.1-A Page 5 Addendum, Multi-State Purchasing Pool Supplemental Rebate Agreement.....	17 DE Reg. 285 (Prop.)
	17 DE Reg. 501 (Final)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Children’s Health Insurance Program (CHIP) MAGI Eligibility.....	17 DE Reg. 392 (Prop.)
	17 DE Reg. 631 (Final)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Citizenship and Immigration Status.....	17 DE Reg. 389 (Prop.)
	17 DE Reg. 628 (Final)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Eligibility Process.....	17 DE Reg. 377 (Prop.)
	17 DE Reg. 616 (Final)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - MAGI-Based Eligibility Groups.....	17 DE Reg. 374 (Prop.)
	17 DE Reg. 612 (Final)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - MAGI Income Methodology.....	17 DE Reg. 380 (Prop.)
	17 DE Reg. 619 (Final)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Residency.....	17 DE Reg. 386 (Prop.)
	17 DE Reg. 625 (Final)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Single State Agency.....	17 DE Reg. 383 (Prop.)
	17 DE Reg. 622 (Final)
Diamond State Health Plan Plus 1115 Demonstration Waiver.....	17 DE Reg. 225 (Final)
DSSM: 15200.4 Financial Eligibility.....	17 DE Reg. 584(Emer.)
	17 DE Reg. 597 (Prop.)
	17 DE Reg. 845 (Final)
15300.3 Financial Eligibility.....	17 DE Reg. 584(Emer.)
	17 DE Reg. 597 (Prop.)
	17 DE Reg. 845 (Final)
Federal Medical Assistance Percentage (FMAP) Claiming Methodology for the Adult Group.....	17 DE Reg. 887 (Prop.)
	17 DE Reg. 1077 (Final)
Medicaid Expansion under the Affordable Care Act of 2014 - Delaware Medicaid Program - Alternative Benefit Plan (ABP).....	17 DE Reg. 594 (Prop.)
	17 DE Reg. 841 (Final)
Medicaid Expansion under the Affordable Care Act of 2014 - DSSM 14000, 15000, 16000 and 18000.....	17 DE Reg. 126(Emer.)
	17 DE Reg. 162 (Prop.)
	17 DE Reg. 503 (Final)

CUMULATIVE TABLES

Medicaid Expansion under the Affordable Care Act of 2014 - Modified Adjusted Gross Income (MAGI) Methodology - Reasonable Classification of Individuals Under Age 21 and Household Composition.....	17 DE Reg. 477 (Prop.) 17 DE Reg. 731 (Final)
Medicaid Provider Screening Requirements and Provider Enrollment Fee and Program Integrity	17 DE Reg. 282 (Prop.) 17 DE Reg. 519 (Final)
Medicaid Reimbursement for Prescription Drugs - National Average Drug Acquisition Cost.....	17 DE Reg. 893 (Prop.) 17 DE Reg. 1080 (Final)
Pregnant Women and Infants Under Age 1 - 212% of the Federal Poverty Level	17 DE Reg. 584 (Emer.) 17 DE Reg. 597 (Prop.) 17 DE Reg. 845 (Final)
Title XIX Medicaid State Plan, Medicaid Coverage for Prescribed Drugs: Attachment 3.1-A Page 5 Addendum; Attachment 3.1.A.1 Page 2a, and Attachment 3.1.A.1 Page 2b.....	17 DE Reg. 951 (Prop.)
Title XIX Medicaid State Plan Regarding Medicaid Rehabilitative Services.....	17 DE Reg. 395 (Prop.) 17 DE Reg. 634 (Final) 17 DE Reg. 812 (Prop.)
Division of Public Health	
4104 Delaware Conrad State 30 / J-1 Visa Waiver Program.....	17 DE Reg. 233 (Final)
4201 Cancer Registry.....	17 DE Reg. 1035 (Prop.)
4202 Control of Communicable and Other Disease Conditions.....	17 DE Reg. 320 (Final)
4203 Cancer Treatment Program.....	17 DE Reg. 955 (Prop.)
4303 Delaware Early Defibrillation Program.....	17 DE Reg. 165 (Prop.) 17 DE Reg. 438 (Final)
4305 Trauma System Regulation.....	17 DE Reg. 288 (Prop.) 17 DE Reg. 523 (Final)
4408 Facilities that Perform Invasive Medical Procedures.....	17 DE Reg. 397 (Prop.) 17 DE Reg. 848 (Final)
4410 Skilled Home Health Agencies (Licensure).....	17 DE Reg. 1037 (Prop.)
4456 Hazardous Chemical Act, Repealed.....	17 DE Reg. 234 (Rep.)
4458 State of Delaware Food Code Regulations.....	17 DE Reg. 896 (Prop.) 17 DE Reg. 1084 (Final)
4459B Residential Property Renovation, Repair and Painting.....	17 DE Reg. 485 (Prop.) 17 DE Reg. 735 (Final)
4462 Public Drinking Water Systems.....	17 DE Reg. 30 (Prop.) 17 DE Reg. 439 (Final)
4463 Licensing and Registration of Operators of Public Water Supply Systems	17 DE Reg. 691 (Prop.) 17 DE Reg. 924 (Final)
4465 Delaware Radiation Control Regulations, Part A and Part B.....	17 DE Reg. 814 (Prop.) 17 DE Reg. 983 (Final)
4466 Radiation Technologists/Technicians (Certification).....	17 DE Reg. 814 (Prop.) 17 DE Reg. 983 (Final)
4468 Delivery of Hospice Services.....	17 DE Reg. 961 (Prop.)
4470 State of Delaware Medical Marijuana Code.....	17 DE Reg. 405 (Prop.) 17 DE Reg. 738 (Final)
Division of Social Services	
9018.2 Time Limit for Able-bodied Adults.....	17 DE Reg. 66 (Prop.)
11002.9 Definitions and Explanations of Terms.....	17 DE Reg. 289 (Prop.) 17 DE Reg. 526 (Final)
11003 Determining Technical Eligibility for Child Care.....	17 DE Reg. 1038 (Prop.)
11003.7.5 Income Eligible/Education and Post-Secondary Education (Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility Participation).....	17 DE Reg. 486 (Prop.) 17 DE Reg. 739 (Final)
Delaware's Temporary Assistance for Needy Families State Plan Amendment	17 DE Reg. 406 (Prop.)

Delaware's Temporary Assistance for Needy Families State Plan Amendment	17 DE Reg. 638 (Final)
Employment and Training Program Requirements.....	17 DE Reg. 897 (Prop.)
Division of Substance Abuse and Mental Health	
6002 Credentialing Mental Health Screeners & Payment for Vol. Admissions.	17 DE Reg. 72 (Prop.)
 DEPARTMENT OF INSURANCE	
Office of the Commissioner	
302 Captive Insurance Financial Regulation.....	17 DE Reg. 293 (Prop.)
	17 DE Reg. 532 (Final)
802 Delaware Workplace Safety Regulation.....	17 DE Reg. 166 (Prop.)
	17 DE Reg. 533 (Final)
804 Workers Compensation Ratepayer Advocate.....	17 DE Reg. 169 (Prop.)
	17 DE Reg. 534 (Final)
1003 Credit for Reinsurance.....	17 DE Reg. 235 (Final)
 DEPARTMENT OF LABOR	
Division of Industrial Affairs	
1341 Workers' Compensation Regulations.....	17 DE Reg. 34 (Prop.)
	17 DE Reg. 322 (Final)
	17 DE Reg. 488 (Prop.)
	17 DE Reg. 858 (Final)
	17 DE Reg. 1085 (Final)
1342 Health Care Practice Guidelines, PARTS A - G.....	17 DE Reg. 35 (Prop.)
	17 DE Reg. 322 (Final)
 Division of Unemployment Insurance	
1202 Unemployment Insurance Regulations.....	17 DE Reg. 36 (Prop.)
	17 DE Reg. 325 (Final)
 DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Office of the Secretary	
103 Chronic Violator Regulation.....	17 DE Reg. 693 (Prop.)
	17 DE Reg. 985 (Rep.)
 Division of Air Quality	
Amendment to the Inspection and Maintenance (I/M) State Implementation Plan (SIP) concerning Section 11(e) - Program Compliance.....	17 DE Reg. 342 (Gen.)
Dioxide (NO ₂) National Ambient Air Quality Standard (NAAQS).....	17 DE Reg. 96 (Gen.)
Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan.....	17 DE Reg. 565 (Gen.)
1101 Definitions and Administrative Principles	17 DE Reg. 36 (Prop.)
	17 DE Reg. 536 (Final)
1103 Ambient Air Quality Standards	17 DE Reg. 38 (Prop.)
	17 DE Reg. 741 (Final)
1104 Particulate Emissions from Fuel Burning Equipment.....	17 DE Reg. 44 (Prop.)
	17 DE Reg. 536 (Final)
1108 Sulfur Dioxide Emissions From Fuel Burning Equipment.....	17 DE Reg. 79 (Prop.)
1114 Visible Emissions	17 DE Reg. 45 (Prop.)
	17 DE Reg. 536 (Final)
1125 Requirements for Preconstruction Review, Section 1.9, Definitions	17 DE Reg. 6 (Errata)
	17 DE Reg. 408 (Prop.)
	17 DE Reg. 326 (Final)
	17 DE Reg. 744 (Final)
1138 Emission Standards for Hazardous Air Pollutants for Source Categories, Sections 6.0 & 10.0.....	17 DE Reg. 328 (Final)
1139 Nitrogen Oxides (NO _x) Budget Trading Program.....	17 DE Reg. 47 (Prop.)
	17 DE Reg. 538 (Final)
1140 Delaware Low Emission Vehicle Program.....	17 DE Reg. 295 (Prop.)

1140 Delaware Low Emission Vehicle Program.....	17 DE Reg. 640 (Final)
1143 Heavy Duty Diesel Engine Standards, Repealed.....	17 DE Reg. 48 (Prop.)
	17 DE Reg. 540 (Final)
1147 CO ₂ Budget Trading Program.....	17 DE Reg. 303 (Prop.)
	17 DE Reg. 644 (Final)
Division of Energy and Climate	
102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions.....	17 DE Reg. 600 (Prop.)
103 Regulations for State Energy Conservation Code.....	17 DE Reg. 604 (Prop.)
	17 DE Reg. 1086 (Final)
Division of Fish and Wildlife	
3200 Horseshoe Crabs.....	17 DE Reg. 49 (Prop.)
	17 DE Reg. 441 (Final)
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas (3.0, 5.0 & 6.0)	17 DE Reg. 50 (Prop.)
Section 12.0.....	17 DE Reg. 542 (Final)
	17 DE Reg. 172 (Prop.)
	17 DE Reg. 543 (Final)
	17 DE Reg. 901 (Prop.)
	17 DE Reg. 1090 (Final)
3511 Summer Flounder Size Limits; Possession Limits; Season.....	17 DE Reg. 904 (Prop.)
	17 DE Reg. 1091 (Final)
3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit.....	17 DE Reg. 304 (Prop.)
	17 DE Reg. 646 (Final)
3521 Weakfish Size Limits; Possession Limits; Seasons.....	17 DE Reg. 1040 (Prop.)
3545 Invasive Finfish.....	17 DE Reg. 7 (Errata)
3581 Spiny Dogfish.....	17 DE Reg. 236 (Final)
3588 Atlantic Menhaden.....	17 DE Reg. 305 (Prop.)
	17 DE Reg. 648 (Final)
3801 Shellfish Aquaculture.....	17 DE Reg. 1042 (Prop.)
3900 Wildlife, Sections 2.0, 5.0, 10.0, 14.0 and 16.0.....	17 DE Reg. 174 (Prop.)
	17 DE Reg. 238 (Final)
	17 DE Reg. 746 (Final)
Division of Waste and Hazardous Substances	
1301 Regulations Governing Solid Waste (DRGSW).....	17 DE Reg. 58 (Prop.)
	17 DE Reg. 545 (Final)
1302 Regulations Governing Hazardous Waste.....	17 DE Reg. 694 (Prop.)
	17 DE Reg. 986 (Final)
1352 Regulations Governing Aboveground Storage Tanks.....	17 DE Reg. 59 (Prop.)
	17 DE Reg. 750 (Final)
Division of Water	
7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.....	17 DE Reg. 488 (Prop.)
	17 DE Reg. 752 (Final)
7401 Surface Water Quality Standards.....	17 DE Reg. 696 (Prop.)
	17 DE Reg. 963 (Prop.)
7503 Oil Gas and Mineral Exploration Regulations, Repealed	17 DE Reg. 61 (Prop.)
	17 DE Reg. 547 (Final)
Division of Watershed Stewardship	
5101 Sediment and Stormwater Regulations.....	17 DE Reg. 240 (Final)
7402 Shellfish Sanitation Regulations	17 DE Reg. 53 (Prop.)
	17 DE Reg. 650 (Final)
7408 TMDLs for the Murderkill River Watershed.....	17 DE Reg. 703 (Prop.)
	17 DE Reg. 815 (Prop.)
	17 DE Reg. 964 (Prop.)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

1300 Board of Examiners of Private Investigators & Private Security Agencies	17 DE Reg. 607 (Prop.)
5500 Bail Enforcement Agents.....	17 DE Reg. 860 (Final) 17 DE Reg. 409 (Prop.) 17 DE Reg. 652 (Final)

Office of Highway Safety

1205 Electronic Red Light Safety Program (ERLSP).....	17 DE Reg. 182 (Prop.) 17 DE Reg. 549 (Final)
---	--

Office of the Secretary

1100 Delaware Sex Offender Management Board.....	17 DE Reg. 989 (Final)
--	------------------------

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

Division of Family Services

105 Residential Child Care Facilities and Day Treatment Programs.....	17 DE Reg. 182 (Prop.) 17 DE Reg. 706 (Prop.) 17 DE Reg. 1043 (Prop.) 17 DE Reg. 62 (Prop.) 17 DE Reg. 608 (Prop.) 17 DE Reg. 925 (Final) 17 DE Reg. 331 (Final)
201 Child Placing Agencies.....	17 DE Reg. 62 (Prop.) 17 DE Reg. 608 (Prop.) 17 DE Reg. 925 (Final) 17 DE Reg. 331 (Final)
301 Criminal History Record Checks for Child Care Persons.....	17 DE Reg. 331 (Final)
302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons.....	17 DE Reg. 339 (Final)

DEPARTMENT OF STATE

Division of Professional Regulation

Board of Charitable Gaming

101 Regulations Governing Bingo.....	17 DE Reg. 1093 (Final)
103 Regulations Governing Charitable Gambling Other Than Raffles.....	17 DE Reg. 1044 (Prop.) 17 DE Reg. 1094 (Final)
Uniform Controlled Substances Act Regulations, Section 2.0, Requirements..	17 DE Reg. 186 (Prop.) 17 DE Reg. 992 (Final)
100 Board of Accountancy.....	17 DE Reg. 707 (Prop.) 17 DE Reg. 818 (Prop.)
200 Board of Landscape Architecture.....	17 DE Reg. 861 (Final)
300 Board of Architecture.....	17 DE Reg. 188 (Prop.) 17 DE Reg. 550 (Final) 17 DE Reg. 967 (Prop.)
1000 Board of Pilot Commissioners.....	17 DE Reg. 967 (Prop.)
1100 Board of Dentistry and Dental Hygiene, Section 10.0, Eligibility to Take the Practical (Clinical) Examination.....	17 DE Reg. 905 (Prop.)
Section 12.0 Unprofessional Conduct Defined	17 DE Reg. 307 (Prop.) 17 DE Reg. 862 (Final)
1725 Polysomnography Advisory Council.....	17 DE Reg. 906 (Prop.) 17 DE Reg. 1094 (Final)
1900 Board of Nursing, Sections 2.0, 7.0, and 8.0.....	17 DE Reg. 708 (Prop.)
1900 Board of Nursing, Sections 2.0, 7.0, 8.0 and 9.0.....	17 DE Reg. 1095 (Final)
Sections 2.0, 6.0, 8.0 and 9.0.....	17 DE Reg. 819 (Prop.)
Section 6.0 Requirements and Procedures for Licensure.....	17 DE Reg. 85 (Final) 17 DE Reg. 1046 (Prop.) 17 DE Reg. 490 (Prop.)
Section 9.0 Regulations Pertaining to Mandatory Continuing Education...	17 DE Reg. 490 (Prop.)
Section 10.0 Disciplinary Proceedings.....	17 DE Reg. 86 (Final)
Section 14.0 Nurse Licensure Compact Rules & Regs.....	17 DE Reg. 83 (Final)
2500 Board of Pharmacy.....	17 DE Reg. 192 (Prop.) 17 DE Reg. 653 (Final) 17 DE Reg. 709 (Prop.) 17 DE Reg. 990 (Final)

2700 Board of Professional Land Surveyors.....	17 DE Reg. 821 (Prop.)
.....	17 DE Reg. 1098 (Final)
2900 Real Estate Commission.....	17 DE Reg. 242 (Final)
2925 Real Estate Commission Education Committee.....	17 DE Reg. 713 (Prop.)
.....	17 DE Reg. 443 (Final)
2930 Council on Real Estate Appraisers.....	17 DE Reg. 714 (Prop.)
.....	17 DE Reg. 444 (Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	17 DE Reg. 490 (Prop.)
.....	17 DE Reg. 927 (Final)
3300 Board of Veterinary Medicine.....	17 DE Reg. 410 (Prop.)
.....	17 DE Reg. 755 (Final)
.....	17 DE Reg. 445 (Final)
.....	17 DE Reg. 829 (Prop.)
.....	17 DE Reg. 1099 (Final)
3500 Board of Examiners of Psychologists.....	17 DE Reg. 89 (Final)
.....	17 DE Reg. 417 (Prop.)
.....	17 DE Reg. 609 (Prop.)
.....	17 DE Reg. 1047(Prop.)
.....	17 DE Reg. 1100 (Final)
3600 Board of Geologists.....	17 DE Reg. 494 (Prop.)
.....	17 DE Reg. 991 (Final)
4100 Board of Home Inspectors.....	17 DE Reg. 243 (Final)
.....	17 DE Reg. 309 (Prop.)
.....	17 DE Reg. 551 (Final)
4100 Board of Home Inspectors, Sections 4.0 and 18.0.....	17 DE Reg. 970 (Prop.)
5100 Board of Cosmetology and Barbering.....	17 DE Reg.1050 (Prop.)
5200 Board of Examiners of Nursing Home Administrators.....	17 DE Reg. 196 (Prop.)
.....	17 DE Reg. 552 (Final)
.....	17 DE Reg. 655 (Final)
Section 2.0, Application for Licensure by Examination.....	17 DE Reg. 976 (Prop.)
5300 Board of Massage and Bodywork.....	17 DE Reg. 342 (Final)
Office of the State Bank Commissioner	
Proposed Amendments to 16 Regulations of the State Bank Commissioner....	17 DE Reg. 832 (Prop.)
.....	17 DE Reg. 994 (Final)
905 Loan Limitations: Credit Exposure to Derivative Transactions.....	17 DE Reg. 418 (Prop.)
.....	17 DE Reg. 656 (Final)
Public Service Commission	
1001 Rules of Practice and Procedure of the DE Public Service Commission..	17 DE Reg. 554 (Final)
3001 Rules for Certification and Regulation of Electric Suppliers.....	17 DE Reg. 310 (Prop.)
.....	17 DE Reg.1052 (Prop.)
DEPARTMENT OF TRANSPORTATION	
Division of Motor Vehicles	
2202 Issuance of Duplicate Drivers' Licenses.....	17 DE Reg. 197 (Prop.)
2214 Waiver of Written Examinations for Certain New Residents.....	17 DE Reg. 197 (Prop.)
2251 Assessment of a Fee When Assigning a Special Serial Number on a Motor Vehicle.....	17 DE Reg. 197 (Prop.)
2264 Use of Dealer License Plates on Boat Trailers.....	17 DE Reg. 197 (Prop.)
2272 Authorization of Police Agencies to Issue Vehicle Inspection Notices.....	17 DE Reg. 197 (Prop.)
2274 Distribution of Literature Advertising Businesses.....	17 DE Reg. 197 (Prop.)
2275 Requirements for Licensing of Vehicle Dealers.....	17 DE Reg. 197 (Prop.)
Division of Planning and Policy	
2309 Standards and Regulations for Subdivision Streets and State Highway Access	17 DE Reg. 198 (Prop.)
.....	17 DE Reg.1059 (Prop.)

Division of Technology and Support Services

2501 External Equal Opportunity Complaint Procedure.....	17 DE Reg. 833 (Prop.)
.....	17 DE Reg. 1101 (Final)

Division of Transportation Solutions

2405 Oversize/Overweight Hauling Permit Policy and Procedures.....	17 DE Reg. 202 (Prop.)
	17 DE Reg. 756 (Final)

EXECUTIVE DEPARTMENT**Delaware Economic Development Authority**

401 Procedures Regarding Non-State Guaranteed Bonds.....	17 DE Reg. 90 (Final)
403 Administration and Operation of Council on Development Finance	17 DE Reg. 90 (Final)

Office of Management and Budget**Division of Facilities Management**

Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	17 DE Reg. 716 (Prop.)
Regulation Governing the State of Delaware Asbestos Certification and Training Program.....	17 DE Reg. 63 (Prop.)
	17 DE Reg. 446 (Final)

Statewide Benefits Office

2001 Group Health Care Insurance Eligibility and Coverage Rules.....	17 DE Reg. 91 (Final)
	17 DE Reg. 656 (Final)

STATE BOARD OF PENSION TRUSTEES**The Delaware Public Employees' Retirement System**

The Delaware Public Employees Pension System.....	17 DE Reg. 91 (Final)
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Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

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

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

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

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

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

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

Delaware Code, Title 31, Welfare, Part I, In General, Chapter 3, Child Welfare, Subchapter III, The Delaware Child Care Act, Subsections 341-345 and Title 29, State Government, Part VIII, Departments of Government, Chapter 90, Department Of Services For Children, Youth And Their Families, Subsection 9003 (7).

REASON FOR THE EMERGENCY ORDER

The Department of Services for Children, Youth and their Families (DSCYF) promulgates an emergency regulation pursuant to 29 **Del.C.** §10119. This emergency regulation is necessary to protect children in camps during the summer 2014 season. By Executive Order, Governor Markell established the Delaware Background Checks Task Force in January 2014 (Task Force). The Task Force is undergoing a comprehensive review of Delaware's background check laws for those who work with children and youth. This group will complete a report consisting of recommendations for improving the current system by the end of 2014. Until that time, children who attend these camps may be at risk because employees and volunteers at youth summer camps are not currently required to have background checks. DSCYF in partnership with the Delaware Justice Information System (DELJIS) has created a process for the 2014 summer camp season to check a potential camp employee's background for crimes and placement on the Child Placement Registry which would make them ineligible to work with children. This process will be of no cost to employers and potential employees and will be as efficient as

possible for all involved.

The current regulations for child care specifically exempt camps which are permitted by the Division of Public Health. These camps then undergo a limited inspection by the Division of Public Health. This inspection involves a review of the premises including general sanitation, general supervision and general health inspections. Presently there exists no law, rule or regulation that those who have access to children in youth camps must have background checks or submit to a check of the Child Protection Registry. Individuals with certain criminal convictions and/or placement on the Child Abuse Registry have been determined to be prohibited from working with children in other contexts (education and licensed child care, for example). There is no such prohibition for those who work with children in youth camps, though the contact with children is substantially similar between camp employees and school employees or child care employees.

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

EFFECTIVE DATE OF THE ORDER

This Emergency Order shall take effect at 8:00 a.m. **May 19, 2014** and shall remain in effect for 120 days.

ORDER

It is hereby ordered this **16th day of May, 2014** that the above referenced amendment to 9 DE Admin. Code 101 is adopted pursuant to 29 **Del.C.** §4819.

Jennifer B. Ranji, Department of Services for Children, Youth and Their Families

101 Day Care Centers

PART I. GENERAL PROVISIONS

(Break in Continuity of Sections)

3.0 Definition of Regulated Service

- 3.1 Early Care and Education and School-Age Centers provide care, education, protection, supervision or guidance for thirteen (13) or more children, including children who are related to the operator. Service is provided on a regular basis for periods of less than twenty-four (24) hours per day, unattended by parent or guardian, and for compensation. This definition shall include but is not limited to full and part time - day care, child care, early care, early care and education, early childhood education, preschool, nursery school, extended care, extended day care, extended child care, independently operated kindergartens, before and/or after school care, school-age center, school-age care, out of school care, school's out care, school vacation/holiday care and summer child care.
- 3.2 Early care and education and school-age Centers located at public or private schools that are operated by an agency or individual other than the public or private school entity shall be required to be licensed under these rules.
- 3.3 The following facilities that operate for less than twenty-four (24) hours per day shall be exempt from licensure under these rules:
 - 3.3.1 ~~Camps permitted or exempted~~ issued permits by the Division of Public Health; provided the following conditions are met, regardless of the number of children enrolled
 - 3.3.1.1 All employees, owners, operators or volunteers of said camps having regular direct access to children in camp are checked by the Delaware Justice Information System for criminal convictions which would make them ineligible to have regular direct access to children. No employee, owner, operator or volunteer may work or volunteer in a youth summer camp if convicted of a sexually related offense(s) or other offenses against children.

- 3.3.1.2 All employees, owners, operators or volunteers of said camps having regular direct access to children in camp are checked against the Department of Services for Children, Youth and Their Families Child Protection Registry such that no employee, owner, operator or volunteer may work or volunteer in such capacity if the person is currently on the Child Protection Registry at Child Protection Level III or IV as provided in subchapter II of Chapter 9 of Title 16 of the Delaware Code.
- 3.3.1.3 A person who is employed by or is a volunteer in such a camp, is required to inform and shall inform, that person's own employer of any criminal conviction or of any entry on the Child Protection Registry.
- 3.3.1.4 Forms consenting to the background checks must be submitted prior to beginning employment. The consent forms and information on how to submit them may be obtained from the Office of Child Care Licensing. Employees, owners, operators or volunteers may be conditionally employed until the background checks are completed.
- 3.3.1.5 Employees, owners, operators or volunteers who were hired prior to the effective date of this regulation have ten (10) days from the effective date of this regulation to submit the consent forms for background checks.
- 3.3.2 Summer schools or classes specifically for religious instruction conducted by religious institutions during summer months;
- 3.3.3 Programs established in connection with a religious institution, a business, or recreation center, in which children are provided care for brief periods of time, while parents/guardians are on the premises, are readily accessible at all times on an on-call basis and are able to resume control of the child immediately;
- 3.3.4 Programs that offer activities for children over the age of six (6) who attend at their own discretion on an "open door" basis, where there is no compensation, and where there is no agreement, written or implied, between the program and the parent(s)/guardian(s) for the program to assume responsibility for the care of the child;
- 3.3.5 Programs that offer care on an ad hoc, sporadic and isolated basis in order to meet an emergency or special need, or
- 3.3.6 Any public or private school that provides regular and thorough instruction through at least the sixth (6th) grade in the subjects prescribed for the schools of the State, in a manner suitable to children of the same age and stage of advancement, and that reports to the State Board of Education pursuant to Delaware Code, Title 14, Chapter 27, Subchapter I, Subsection 2704. This exclusion shall include all programs operated by such schools and shall also include preschool education programs for handicapped persons as defined by Delaware Code, Title 14, Chapter 31, Subchapter I, Subsection 3101 (4).
- 3.4 The rules are divided into three (3) parts:
 Part I - General Provisions;
 Part II - Night Care; and
 Part III - School-Age Center
- 3.5 To be licensed as an Early Care and Education and School-Age Center, the General Provisions of Part I shall be met. In addition, Centers shall also meet the following rules before providing Night Care or operating a School-Age Center:
- 3.5.1 To provide Night Care, an Early Care and Education Center shall also meet Part II rules;
- 3.5.2 To operate a School-Age Center, a Center shall also meet Part III rules.

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

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

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 505

PUBLIC NOTICE

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

505 High School Graduation Requirements and Diplomas

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. The amendments include, but not limited to: 1) requiring an advisement process to the student success planning; 2) modifications to definitions; 3) revising the date for which diplomas may be awarded to the previous graduating class; and 4) addressing students in the custody of the Department of Services for Children, Youth & Their Families ("DSCYF").

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 3, 2014 to Susan Haberstroh, Associate Secretary, Education Supports & Innovative Practices Branch, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to improve student achievement as measured against state achievement standards by improving the processes regarding student ownership of their program of study, advisement and addresses students under the custody of DSCYF.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments do not change decision making at the local or school levels.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers. The amendments do require an advisement process to be documented and implemented, if not already in place and documented at the school.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for high school diplomas and graduation requirements do not change because of the amendments.
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 amendments are consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing this subject matter.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not an expected cost to implementing this regulation with the amendments.

505 High School Graduation Requirements and Diplomas

1.0 Definitions:

"Advisement" means a documented process that engages students in ongoing discussion and planning with school staff to identify their personal talents and interests and plan their career goals accordingly.

"**Career Pathway**" means the three (3) credits of pre planned and sequential courses required for graduation designed to develop knowledge and skills in a particular career or academic area. The Career Pathway shall be included in the Student Success Plan.

"**Core Course Credit**" means a credit in an English Language Arts, Mathematics, Science or Social Studies course.

"**Credit**" means the acquisition of skills and knowledge at a satisfactory level as determined by the district and charter school boards through 135 hours (a Carnegie Unit) of actual classroom instruction, which may include various methods of delivery or through locally approved options contained in Section 8.0.

~~"**Credit for Computer Literacy**" means credit granted toward graduation at any point when the student can demonstrate competency in the required skill areas either through an integrated approach, a specific course, or a demonstration of accumulated knowledge over the student's educational career.~~

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

"**English Language Arts**" means those four components of reading, writing and oral communication, language, and speaking and listening that are included in the State Content Standards for high school English Language Arts as required in 14 **DE Admin. Code** 501.

"**Health Education**" means those components that are included in the State Content Standards for high school health education as required in 14 **DE Admin. Code** 501.

"**High School**" means grades 9 through 12.

"**Mathematics**" means those ~~components~~ conceptual categories of number sense and quantity, algebra, functions, geometry, statistics and probability combined with problem solving, modeling, reasoning, communicating, and making connections that are included in the State Content Standards

for high school mathematics as required in 14 **DE Admin. Code** 501 either through integrated courses or in courses titles such as Algebra I, Algebra II, Geometry, Trigonometry, Pre-Calculus, Calculus, Discrete Mathematics, Statistics, and Probability.

"Novice-high proficiency level" means the novice-high level of proficiency of certain skills and knowledge as defined by the American Council for the Teaching of Foreign Languages (ACTFL).

"Physical Education" means those components that are included in the State Content Standards for high school physical education as required in 14 **DE Admin. Code** 501.

"Program of Study" means an academic and career plan based on post-secondary goals and comprised of academic, career, and technical content that prepares students to make successful transitions to post-secondary education and the workplace.

"Science" means those components of the nature of science which include ~~inquiry, materials and their properties, energy and its effects, Earth in space, Earth's dynamic systems, life processes, diversity and continuity of living things, and ecology~~ science and engineering practices, matter and its interactions, motion and stability, energy and its effects, waves and their applications, Earth's place in the universe, Earth's systems, Earth and human activity, life structure and processes, ecosystems, heredity, diversity and continuity of living thing, engineering design, and the links among engineering, technology, science, and society that are included in the State Content Standards for high school science as required in 14 **DE Admin. Code** 501 either through integrated courses or in course titles such as Earth Science, Biology, Chemistry and Physics.

"Social Studies" means those components of civics, economics, geography, and history that are included in the State Content Standards for high school social studies as required in 14 **DE Admin. Code** 501 either through integrated courses or in course titles such as United States History, World History, Geography, Economics, and Civics.

~~**"Student Success Plan (SSP)"** means a plan encompassing a minimum of five years including one year beyond high school developed and updated at least annually by the student, the student's advisor, at least one other staff member and the student's parent(s) guardian(s) or relative caregiver. The student's plan includes courses needed in preparation for immediate entry into the work force or opportunities in post secondary education. The plan also includes the support services necessary for the student to graduate from high school. An additional year of high school may be an option for inclusion in the Student Success Plan.~~

"Student Success Plan (SSP)" means a plan encompassing a minimum of five years including one year beyond high school, which sets post-secondary goals for a student based on academic and career interests. The student's plan includes a program of study based on the academic courses, electives, and extracurricular opportunities needed in preparation for immediate entry into the work force and post-secondary education. The plan also includes the support services necessary for the student to graduate from high school.

"Support Services" means those educational interventions such as tutoring; extra time before school, in school, or after school; summer school, an extra year(s) of high school or any other strategy to provide student educational assistance.

"Student in DSCYF custody" means a student, who is or was in the custody of the Department of Services for Children, Youth & Their Families ("DSCYF"), pursuant to Chapter 25 of Title 13 of the Delaware Code, for any length of time, during his or her enrollment in high school.

"World Languages" means any language other than English that is used by peoples around the world for communicating information and ideas and transmitting its culture(s), including American Sign Language (ASL), Latin and Ancient Greek.

(Break in Continuity of Sections)

4.0 Credit Requirements Beginning with the Graduation Class of 2016 (Freshman Class of 2012-2013)

- 4.1 Beginning with the graduating class of 2016, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World

PROPOSED REGULATIONS

Language, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.

- 4.1.1 The student shall ~~complete~~ earn credit upon completion of mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses. The student shall complete an Algebra II or Integrated Mathematics III course as one of the Mathematics credits.
- 4.1.2 Scientific investigations related to the State Science Standards shall be included in all three science course requirements. The student shall complete a Biology course as one of the Science credits.
- 4.1.3 ~~The student shall complete an English II course as one of the English Language Arts credits.~~
- 4.1.43 The student shall complete a U. S. History course as one of the Social Studies credits.
- 4.1.54 During the senior year the student shall maintain a credit load each semester that earns the student at least a majority of credits that could be taken that semester. A credit in Mathematics shall be earned during the senior year. Further provided, a student participating in a dual enrollment course or dual credit course, as defined in 14 DE Admin. Code 506 Policies for Dual Enrollment and Awarding Dual Credit, shall be considered to be meeting the majority of credits, as long as a credit in Mathematics is earned during the senior year.
 - 4.1.54.1 Senior year credits shall include regular high school course offerings, the options available in 8.0, or a combination of both.
- 4.2 World Language: Students may fulfill the two (2) credit World language requirement by either:
 - 4.2.1 Earning a minimum of two (2) World Language credits in the same language or,
 - 4.2.2 Demonstrating Novice-high or higher proficiency level on a nationally recognized assessment of language proficiency, except English, in the skill areas of oral or signed expressive and receptive communication, reading and writing, that uses the levels of proficiency as identified by the American Council for the Teaching of Foreign Language, or as approved for use by the Delaware Department of Education.

5.0 ~~Monitoring Student Progress~~ Student Success Planning (Personalizing the High School Experience Through Advisement)

- 5.1 ~~Beginning with the 2007-2008 school year, e~~Every eighth and ninth through twelfth grade student shall have a Student Success Plan (SSP) developed by the student, the student's advisor, ~~at least one other school staff member~~ and the student's parent(s), guardian(s) or relative caregiver. ~~Each school year thereafter a grade shall be added so that by the 2011-2012 school year, every student in grades 8 through 12 shall have a Student Success Plan.~~ For a student with an Individualized Education Program (IEP) the Student Success Plan (SSP) shall also incorporate the other aspects of the transition plan required by 14 **DE Admin. Code** 925.
- 5.2 Each local school district and charter school shall establish a an advisement process for developing Student Success Plans ~~that includes~~ which includes the student, the student's advisor, and the student's parent(s), guardian(s) or relative caregiver. The advisement process shall include:
 - 5.2.1 Setting learning goals for the student based on academic and career interests and identifying required skills needed, as well as the student's program of study aligned to the student's secondary and post-secondary goals.
 - 5.2.42 Actively monitoring student progress; in the Student Success Plan through conferences held with the student and student's advisor to discuss educational progress and career planning toward life goals on an ongoing basis and, at a minimum, by the end of at least once in each marking period in those courses required for graduation,
 - 5.2.3 Annual updating review and update of the Student Success Plan by the student, the student's advisor, at least one other staff member and the student's parent(s) guardian(s) or relative caregiver and others as appropriate to assure alignment of educational progress and career planning toward life goals by the end of each school year.

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- 5.2.24 Providing support services if a student is ~~failing or~~ in danger of failing a courses required for graduation, or is not on track toward completing the entry requirements for his or her post-secondary goals as stated in the SSP, and
- 5.2.45 Following the guidelines for Career and Technical Education (CTE) programs of study outlined in the ~~CTE~~ State Plan for Career and Technical Education.
- 5.2.56 Reviewing each student's transcript at the end of the first and second year, and beginning in the 2014-15 school year, at the end of the first, second and third year of high school to determine if the student is on track to graduate based on the following criteria:
- 5.2.56.1 At the end of the first year of high school the student has earned at least ~~three (3)~~ four (4) core course credits and two (2) other course credits for a total of ~~five (5)~~ six (6) course credits; and
- 5.2.56.2 At the end of the second year of high school the student has earned at least ~~six (6)~~ eight (8) core course credits and four (4) other course credits for a total of ~~ten (10)~~ twelve (12) course credits; and
- 5.2.6.3 At the end of the third year of high school the student has earned at least eleven (11) core course credits and seven (7) other course credits for a total of eighteen (18) course credits.
- 5.2.56.34 For a student with an Individualized Education Program (IEP), on track to graduate shall be consistent with ~~5.2.5.1~~ 5.2.6.1, 5.2.6.2 and ~~5.2.5.2~~ 5.2.6.3 unless otherwise determined

(Break in Continuity of Sections)

8.0 Options for Awarding Credit Toward High School Graduation

- 8.1 District and charter school boards are authorized to award credit toward high school graduation for the following activities, on the condition that the activities incorporate any applicable state content standards. Before awarding credit for any of the following activities, the districts and charter school boards shall have adopted a policy approving the activity for credit and establishing any specific conditions for the award of credit for the activity. Such policy shall be applicable to each school within the district or each charter high school.
- 8.1.1 Courses taken at or through an accredited community college, two or four year college.
- 8.1.2 Voluntary community service as defined in 14 Del.C. §§8901A and 8902A.
- 8.1.3 Supervised work experience in the school and the community which meets the educational objectives or special career interest of the individual student.
- 8.1.4 Independent study.
- ~~8.1.5 Correspondence Courses.~~
- 8.1.65 Distance learning courses. These courses may be delivered by the teacher to the learner in real time, online or by video.
- 8.1.76 High school courses taken while in the middle school in conjunction with an articulated agreement between the district middle school and the district high school(s). Such credit shall also transfer to a high school in another district or to a charter school.
- 8.1.87 Course credit transferred from another high school.
- 8.1.98 Course credit earned through summer or evening school classes, as a member of the military service or as part of the James H. Groves Adult High School.
- 8.1.409 Tutoring programs taught by a teacher certified in the subject being taught.
- 8.1.140 Course credit awarded by agencies or instrumentalities of the state other than public schools which provide educational services to students. A description of the program provided to the student, grades given, and the number of clock hours of instruction or a demonstration of competency must be provided to the school district or charter school prior to receipt of credit.

9.0 High School Diplomas and the Certificate of Performance

- 9.1 A State sanctioned diploma shall be granted to students who meet the state and local district or charter school requirements for graduation pursuant to 14 **Del.C.** §152.
- 9.2 A State sanctioned Certificate of Performance shall be granted to students who meet the requirements of 14 **Del.C.** §152.
- 9.3 Diplomas from one school year shall not be issued after ~~December 31~~ September 15 of the next school year.
- 9.4 Duplicate diplomas or certificates of performance will not be issued, but legitimate requests for validation of the diploma or the certificate of performance will be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware high schools should be directed to the high school the student was attending at the time of graduation. If the school does not have the records then the student should contact the Department in Dover for a notarized letter of certification that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available).
- 9.5 State High School Diploma for World War II Veterans Pursuant to 14 **Del.C.** §159
- 9.5.1 "World War II Veteran" means any veteran who performed wartime service between December 7, 1941 and December 31, 1946. If the veteran was in the service on December 31, 1946, continuous service before July 16, 1947 is considered World War II.
- 9.5.2 The Department shall provide a high school diploma to any World War II veteran who:
- 9.5.2.1 Left a Delaware high school prior to graduation in order to serve in the armed forces of the United States.
- 9.5.2.2 Did not receive a high school diploma, or received a G.E.D., as a consequence of such service and,
- 9.5.2.3 Was discharged from the armed forces under honorable circumstances.
- 9.5.3 The diploma may also be awarded posthumously if the deceased veteran meets the qualifications in 9.5.2.1 through 9.5.2.3.
- 9.5.4 Applications for this high school diploma shall be made on forms designated by the Department and the Delaware Commission of Veterans Affairs and shall have a copy of the candidate's honorable discharge papers attached to the application.

10.0 Exceptions for Students in DSCYF Custody

- 10.1 A student in DSCYF custody who transfers into a district or charter school shall be permitted to graduate based on the successful completion of the Department's graduation requirements as defined in this regulation in lieu of the district's or charter school's specific requirements permitted by 7.1.
- 10.2 When a student in DSCYF custody transfers into a district or charter school, the district or charter school shall use policies developed pursuant to Section 8.1 to review the student's prior transcript and award values for credit earned through:
- 10.2.1 Distance learning courses. These courses may be delivered by the teacher to the learner in real time, online or by video;
- 10.2.2 Courses completed in mental health or rehabilitative facilities;
- 10.2.3 Courses completed in other districts or charter schools that use a different standard of awarding credits; or
- 10.2.4 Any other means as approved by the Chief School Officer of the district or charter school in accordance with policy and the law.

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

505 High School Graduation Requirements and Diplomas

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

610 Limitations on Use of Seclusion and Restraint

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend Title 14 of the Delaware Administrative Code by adding new regulation 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint. This regulation is required by Senate Bill 100 of the 147th General Assembly.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 3, 2014 to Susan Haberstroh, Associate Secretary, Education Supports & Innovative Practices Branch, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to improve the school climate thus resulting in helping to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The new regulation is intended to help ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The new regulation is intended to help ensure that all students' health and safety are adequately protected.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation is intended to preserve the necessary authority and flexibility of decision making at the local board and school level, but does provide for more specificity in the area of student restraint as it relates to the safety and welfare of all within the school environment.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This legislation and this subsequent regulation will not place unnecessary mandates upon decision makers at the local board and school levels. The legislation and subsequent regulation does impose new reporting requirements upon local school administrators.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing limitations on seclusion and restraints does not change because of this regulation.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation is aligned with the legislation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Local school boards will incur a training cost in order to be in compliance with the new legislation and resulting regulation.

610 Limitations on Use of Seclusion and Restraint**1.0 Purpose and Authority**

- 1.1 The purpose of these regulations is to establish standards and procedures for the use of physical restraint, mechanical restraint, and seclusion to provide safety for all individuals. The regulations set forth permitted and prohibited uses of restraint and seclusion, required training for public school, private program, or alternative program personnel, required documentation and reporting of incidents of restraint and seclusion, required notification to parents, and waiver procedures for individual students.
- 1.2 These regulations are promulgated in accordance with 14 Del.C. §4112F.

2.0 Definitions

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

“Alternative program” means a program established pursuant to 14 Del.C. Ch. 16.

“Chemical restraint” means a drug or medication used on a student to control behavior or restrict freedom of movement that is either not medically prescribed for the standard treatment of a student’s medical or psychiatric condition or not administered as prescribed. (Authority: 14 Del.C. §4112F(a)(1)).

“Mechanical restraint” means the application of any device or object that restricts a student’s freedom of movement or normal access to a portion of the body that the student cannot easily remove. “Mechanical restraint” does not include devices or objects used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which they were designed and, if applicable, prescribed, including the following:

- restraints for medical immobilization;
- adaptive devices or mechanical supports used to allow greater freedom of movement stability than would be possible without use of such devices or mechanical supports;
- vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- instruction and use of restraints as part of a criminal justice or other course; or
- notwithstanding their design for other purposes, adaptive use of benign devices or objects, including mittens and caps, to deter self-injury.

(Authority: 14 Del.C. §4112F(a)(2))

“Parent” means:

- a biological or adoptive parent of a child;
- a guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver’s School Authorization executed in compliance with 14 Del.C. §202(f)(1) is on file;
- an individual who is otherwise legally responsible for the child’s welfare; or
- a surrogate parent who has been appointed in accordance with 14 DE Admin. Code 926.19.0 or Section 639(a)(5) of the Act.

The biological or adoptive parent, when attempting to act as the parent under these regulations, and when more than one party is qualified under this definition to act as a parent, must be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person or persons to act as the “parent” of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this definition.

(Authority: 20 U.S.C. 1401(23); 14 Del. C. §3110)

“Physical restraint” means a restriction imposed by a person that immobilizes or reduces the ability of a student to freely move arms, legs, body, or head. “Physical restraint” does not include physical contact that:

- helps a student respond or complete a task;
- is needed to administer an authorized health-related service or procedure; or
- is needed to physically escort a student when the student does not resist or the student’s resistance is minimal.

(Authority: 14 **Del.C.** §4112F(a)(3))

“Principal” means the building principal, or the equivalent of the building principal, of any public school or charter school, or the building principal’s designee.

“Private program” means a non-public school or program contracted by a school district or charter school.

“Public school personnel” means an employee or contractor of a public school district or charter school. “Public school personnel” does not include the following:

- a law enforcement officer as defined in § 9200(b) of Title 11; or
- an employee or contractor providing educational services within a Department of Correction or Division of Youth Rehabilitative Services facility.(Authority: 14 **Del.C.** §4112F(a)(4))

“Seclusion” means the involuntary confinement of a student alone in a room, enclosure, or space that is either locked or, while unlocked, physically disallows egress. The use of a “timeout” procedure during which a staff member remains accessible to the student shall not be considered “seclusion.”

(Authority: 14 **Del.C.** §4112F(a)(5))

“Student” means any individual enrolled in a Delaware public school or charter school, an alternative program pursuant to 14 **Del.C.** Ch. 16, or a private program pursuant to Title 14 **Del.C.**, Chapter 31, Section 3124.

“Timeout” means a behavior management technique in which, to provide a student with the opportunity to reflect or regain self-control, a student is separated from others for a limited period in a setting that is not locked and the exit is not physically blocked by furniture, closed door held shut from outside, or other inanimate object. (Authority: 14 **Del.C.** §4112F(a)(6))

“Written report” means printed paper filings and electronic filings that can be printed.

3.0 Use of Restraints

3.1 Public school personnel, private program personnel, and alternative program personnel are prohibited from imposing on any student:

3.1.1 Chemical restraint; and

3.1.2 Subject to waiver authorized by 14 **Del.C.** §4112F(c)(4) and Section 8.0, mechanical restraint and seclusion.

3.2 Such personnel may impose physical restraint only in conformity with all of the following standards:

3.2.1 The student’s behavior presents a significant and imminent risk of bodily harm to self or others;

3.2.2 The physical restraint does not interfere with the student’s ability to communicate in the student’s primary language or mode of communication;

3.2.3 The physical restraint does not interfere with the student’s ability to breathe or place weight or pressure on the student’s head, throat, or neck;

3.2.4 The physical restraint does not recklessly exacerbate a medical or physical condition of the student;

3.2.5 Less restrictive interventions have been ineffective in stopping the imminent risk of bodily harm to the student or others, except in case of a rare and clearly unavoidable emergency circumstance posing imminent risk of bodily harm, including, without limitation, intervening in a student initiated physical assault or altercation;

3.2.6 For a student with a disability as defined in Chapter 31 of Title 14 or 34 C.F.R. Part 104, the physical restraint does not contravene provisions in an individualized education program (IEP),

behavior intervention plan, accommodation plan, or any other planning document for the individual Student;

3.2.7 Personnel use only the amount of force necessary to protect the student or others from the threatened harm;

3.2.8 The physical restraint ends when a medical condition occurs putting the student at risk of harm or the student's behavior no longer presents an imminent risk of bodily harm to the student or others;

3.2.9 The physical restraint is within the scope of force authorized by §468 of Title 11; and

(Authority: 14 **Del.C.** §4112F(b))

4.0 Training of Personnel

4.1 Except as provided in 14 **Del.C.** §702(c), a student may be physically restrained only by public school personnel, private program personnel, or alternative program personnel who have received training in physical restraint procedures.

4.1.1 Such personnel shall receive annual training in the use of emergency safety interventions consistent with nationally-recognized training programs, which shall meet the following minimum requirements:

4.1.1.1 The training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies and supports;

4.1.1.2 The training shall be designed to meet the needs of such personnel consistent with their duties and the potential need for emergency safety interventions; and

4.1.2 Each public school, private program, and alternative program shall maintain written or electronic documentation of each training provided, which shall include a list of all personnel who participated in the training.

4.2 Any public school personnel responsible for reporting the physical restraint of a student to the Department shall complete training on the reporting process approved by the Department and any additional training that the Department may prescribe from time to time.

4.2.1 The approved training shall be provided using a web-based platform through the Department's Professional Development Management System (PDMS) or similar system. The training will be provided on an annual basis and made available throughout each school year.

4.2.2 Such personnel responsible for reporting the physical restraint of a student shall complete the approved training at least once every three (3) years and during any year in which reporting procedures were changed from the previous year as indicated by the Department.

5.0 Parental Notification of Use of Physical Restraint

5.1 Except as provided in Section 5.1.1, if a student is physically restrained, a reasonable attempt shall be made to notify the parent on the same day, but in no event later than twenty-four hours after, the physical restraint is used. Such notification shall be made in person, by phone or by voicemail, or by e-mail. The school shall maintain written documentation of successful and unsuccessful attempts to notify the parent.

5.1.1 Where physical restraint is included in the student's IEP or Section 504 Plan, the IEP Team or Section 504 Team, including the parent, shall determine a timeframe and manner of notification of each incident of physical restraint.

5.2 The parent shall be provided a copy of a final written report no later than the date on which such report is filed with the Department. The written report shall contain, at a minimum, the information required under Section 6.0.

6.0 Uniform Data Collection

6.1 When an incident of physical restraint of a student by school personnel occurs:

6.1.1 As soon as practicable thereafter, a reasonable attempt shall be made to interview the student regarding the incident; and

- 6.1.2 The school principal must provide a Written report, in a uniform format as determined by the Department, of the restraint to the Department within seventy-two (72) hours of the restraint, or within seventy-two (72) hours of the time in which the student's district or charter school of residence receives notice of the restraint from the contracted private program or alternative program, whichever the case may be; and
- 6.1.3 The written report shall include, at a minimum:
- 6.1.3.1 Details of the restraint incident, including, but not limited to, the student behavior and description of events leading to the use of physical restraint; de-escalation techniques utilized by school personnel prior to the restraint; a description of the student's behavior during the restraint; a summary of witness interviews, if applicable; any injury caused to the student, staff member(s), or other student(s); and any related treatment deemed necessary as a result of the restraint.
 - 6.1.3.2 Demographic information on affected students to include age, race, ethnicity, and disability category;
 - 6.1.3.3 A description of the interview conducted with the student, if applicable; and
 - 6.1.3.4 If applicable, a description of changes to any or all of the following that resulted from the restraint incident:
 - 6.1.3.4.1 For a student with a disability as defined in Chapter 31 of Title 14 or 34 C.F.R. Part 104, the student's IEP, behavioral support, crisis intervention plan, accommodation plan, or any other planning document for the individual student;
 - 6.1.3.4.2 School/LEA policy or procedure; or
 - 6.1.3.4.3 Additional staff training.

7.0 Annual Reporting Requirement

The Department shall issue an annual report on the use of physical restraint, which shall include rates of usage by school and by subcategories identified pursuant to Section 6.0, identify trends, and analyze significant results. The report shall be posted on the Department's website.

8.0 Waiver

- 8.1 Any public school, private program, or alternative program applicant for a waiver of the prohibition on the use of mechanical restraints or seclusion for an individual student must deliver the request in writing to the Secretary or Secretary's designee setting forth the grounds for the request.
- 8.1.1 The request shall be based on compelling justification supported by documentation, including, but not limited to, educational records, reporting of incidents, and the student's functional behavioral assessment and behavioral intervention plan, including implementation data, and medical documentation, if applicable.
- 8.1.2 The request shall contain a description of the conditions and safeguards that the applicant will utilize in connection with the waiver, including, but not limited to:
- 8.1.2.1 A detailed description of the proposed continual visual staff monitoring of student; and
 - 8.1.2.2 A requirement that the parent be notified of each use of mechanical restraint or seclusion which conforms to the procedure set forth in Section 5.0 for reporting physical restraint; and
 - 8.1.2.3 A detailed description of the physical space within which the seclusion(s) will occur, or of the type of mechanical restraint(s) to be utilized, whichever is applicable.
- 8.1.3 The request shall include a written authorization signed by the parent agreeing to the issuance of a waiver on the prohibition of the use of mechanical restraints or seclusion for that student and a signed written consent for release of information to the Department and the waiver review committee.
- 8.1.4 All privileged documentation shall be maintained confidentially by the Department and the waiver review committee to the extent permitted by law.

PROPOSED REGULATIONS

- 8.2 All requests shall be considered by a waiver review committee appointed by the Secretary. A decision by the waiver review committee shall be rendered within (60) sixty calendar days of receipt of the waiver request.
- 8.3 The committee shall make a written recommendation to the Secretary, which shall include:
- 8.3.1 A summary of the compelling justification based on the documentation submitted in support of the waiver requested;
- 8.3.2 Recommendations to include any specific conditions and safeguards, and a brief statement of the reasons therefore;
- 8.3.3 A requirement that, where a waiver is issued, there be continual visual monitoring, parental notice of each use of mechanical restraint or seclusion, and collection of data to include the number of times the student was subject to mechanical restraint or seclusion, the duration of each incident, and any other data as required by the Department;
- 8.3.4 A statement as to the duration of the waiver, not to exceed a period of one calendar year.
- 8.4 The Secretary shall consider the entire record of the case and the committee's recommendations in reaching a final decision. The Secretary's decision shall be issued in writing and mailed to the applicant and the parent by certified mail.
- 8.5 The Secretary's decision shall be final.
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DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 2000

PUBLIC NOTICE

Case Processing Procedures - Applications

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2014.

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

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Administrative Procedures, specifically, *Case Processing Procedures - Applications*.

Statutory Authority

42 CFR §435.907, *Application*

45 CFR §206.10, *Application, determination of eligibility and furnishing of assistance*

Background

The Department of Health and Social Services is the agency designated by the State as responsible for Delaware's public assistance programs. Within the Department, the Division of Social Services (DSS) and the Division of Medicaid and Medical Assistance are responsible for administering the various benefit programs listed here:

<http://dhss.delaware.gov/dss/>

<http://dhss.delaware.gov/dhss/dmma/>

The Division of Social Services Manual (DSSM) is an integrated eligibility manual that relates to the activities of each Division's staff engaged in the direct administration of the State's public assistance programs. The Manual contains eligibility and administrative policies based on State and Federal laws and regulations that govern the programs.

Summary of Proposed Changes

Case processing guidelines are provided to ensure maximum client service. To ensure basic efficiency and timeliness in case processing agency staff must adhere to standard times frames within which required case activities must be accomplished. Adherence to these standards allows for the provision of program services on a timely basis and assures that the agencies meet federally imposed audit criteria.

DSSM 2000, Applications, is amended to address case processing ambiguities. DSSM policy section 2000 defines an application as including a request for medical assistance. By referencing medical assistance in this section of policy, it could be assumed that all medical assistance applications are subject to the conditions established in the 2000 section of the DSSM policy. The requirements for Medical Assistance applications are addressed in DSSM policy section 14100. This policy change removes what could be interpreted as inconsistent policy for medical assistance applications.

Medicaid policy section at DSSM 14100.5.1 provides "90 day" and "45 day" time periods for processing Medicaid applications. However, Section 2000 references applications for "medical assistance" and Section 2000.5 establishes a "30 day" timeframe for processing the application. These sections are inconsistent.

DSS PROPOSED REGULATION #14-17 REVISION:

2000 Applications

An application is a request for ~~financial or medical~~ assistance made by an individual, agency, institution, guardian, or other individual acting for the applicant with his knowledge and consent. An application must be formalized in writing and applicants must be interviewed by an application worker before an eligibility decision can be made.

Any person interested in applying for benefits will receive a DSS application form. These forms are available at all DSS locations. A daily log to record the names of individuals who request application forms will be maintained at each DSS location. Applications for benefits cannot be processed until applicants submit a completed application and complete the filing procedures as specified in DSSM 2001.1.

The primary responsibility for establishing eligibility resides with the client, however, the Division will take necessary action to assist the applicant to establish his eligibility for assistance.

Each applicant will be informed of the programs for which he may be eligible, of his right to a decision on eligibility within a reasonable period of time, and will be informed of his right to appeal any Division decision on eligibility.

Each applicant will have his need for assistance determined in accordance with Division standards. The income of an applicant will be considered in relation to his needs during the calendar month in which the individual applies for assistance. Only such resources as an applicant has currently available will be used in determining eligibility

Policies specific to Medical Assistance applications are found in DSSM policy section 14100.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE**Food Supplement Program - Income and Eligibility Verification System**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Income and Eligibility Verification System - Exclude Unearned Income Data from IRS*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2014.

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

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Income Eligibility Verification System - Exclude Unearned Income Data from IRS*.

Statutory Authority

- 7 CFR §272.8(a), *State income and eligibility verification system (IEVS)*
- 7 CFR §273.2(f)(9), *Optional use of IEVS*
- 31 Del.C. §601, *Department of Health and Social Services responsible for the administration of [Food Supplement] program*

Background

Delaware's Food Supplement Program, formerly known as Food Stamps, is operated under the provisions of the Food and Nutrition Act of 2008, as amended, and is administered by the Food and Nutrition Service (FNS) under the United States Department of Agriculture (USDA). The Delaware Division of Social Services (DSS) is responsible for the administration of the Food Supplement Program (FSP), including, but not limited to certification of applicant households and issuance, control, and accountability of FSP benefits.

Income Eligibility Verification System

Section 1137 of the Social Security Act mandates that state agencies administering federally funded public assistance programs develop and implement an income and eligibility verification system (IEVS). The Income Eligibility Verification System (IEVS) is a federally operated income and eligibility information matching system that interfaces with other governmental agencies through which agencies request personal data, wage information and benefit information from other state and federal agencies on applicants and recipients.

Summary of Proposed Changes

Federal regulations give state agencies the option to use an Income and Eligibility Verification System (IEVS) to verify income when determining eligibility for and the amount of food benefits. IEVS provides earned and unearned income information through data matches with other state and federal agencies. The Division of Social Services (DSS) has opted to not request or use the unearned income data received from the Internal Revenue Service (IRS) to verify unearned income for the Food Supplement Program (FSP). DSS will continue to use alternative methods to document and verify unearned income.

The proposed changes affect the following policy sections in the Division of Social Services Manual (DSSM):
DSSM 2013.1, *Income and Eligibility Verification Systems (IEVS)*
DSSM 2013.3, *Requesting IEVS Information*
DSSM 2013.5, *IEVS Case Processing Instructions*.

The applicable federal citations are also added to the appropriate policy sections.

DSS PROPOSED REGULATION #14-19 REVISION:

2013 Verification

7 CFR 272.8(a), 7 CFR 273.2(f)(9)

In general all categorical eligibility factors must be verified before assistance can be authorized unless policy specific to that factor indicates that verification can be delayed.

When a redetermination is due, the recipient must complete a new DSS application form (Form 100). A redetermination is complete when all eligibility factors are examined and a decision regarding continuing eligibility is reached.

Close the assistance case of a recipient who fails, without good cause, to complete the redetermination review. Likewise, close the assistance case of a recipient who fails, without good cause, to provide requested information necessary to establish continued eligibility.

As part of the verification process for continuing eligibility, the person will provide verification that s/he has carried out the elements of the individual Contract of Mutual Responsibility. The penalties for non-cooperation in developing the Contract and/or following through with the required components of the Contract are also detailed.

Refer to DSSM 2001 for specific information regarding timeframes for returning verifications and noticing requirements.

Recipients are required to verify changes in circumstance within ten (10) days of the report of the change.

2013.1 Income and Eligibility Verification Systems (IEVS)

The purpose of the Income and Eligibility Verification Systems is to obtain and verify income information relevant to determining eligibility and benefit amounts in the TANF, FS, Child Care, and Medicaid programs through a series of computer matches and on-line interfaces. In IEVS, the Division will obtain:

- Unearned income data from the Internal Revenue Service (IRS).

Exception: The Food Supplement Program will not utilize unearned income data from the IRS.

- RSDI, SSI, pension, self-employment earnings, wage data and verification of Social Security Numbers from the Social Security Administration (SSA).
- Wage data and UC data from the Delaware Department of Labor (DOL).
- Licensed motor vehicle ownership data from the Delaware Division of Motor Vehicles (DMV). The address reported to DMV of each person holding a Delaware driver's license is also available through this system.

Information obtained through IEVS will enable the Division to:

- Identify unreported or discrepant income information.
- Discourage new applicants from attempting to receive benefits to which they are not entitled.

Except for IRS information, IEVS data is stored in DCIS and can be viewed by accessing the system (see the DCIS User Guide for instructions). IRS information is not stored in DCIS. It is available in hard copy only and is safeguarded according to IRS regulations.

(Break in Continuity of Sections)

2013.3 Requesting IEVS Information

Information will be requested from the IEVS income sources on all Cash Assistance, FS, and Medicaid applicants and recipients and on other individuals whose income is considered in determining eligibility for these

programs. Other individuals include step-parents, minor parents' parents, and disqualified and sanctioned individuals.

Exception: The Food Supplement Program will not request or utilize unearned income data from the IRS.

Information on persons who apply for benefits is requested from all IEVS income sources each month. For recipients and other individuals, information is requested as indicated below:

- DOL -Wage data is requested quarterly for recipients that were active during the most recent quarter for which DOL has information. For example, in April, DOL has complete wage information for the last quarter of the previous year. In April, DSS will request information on those active in October, November, and December of last year.
- Unemployment Compensation data is requested monthly.
- SSA - Initially, benefit and other income information on all currently active recipients is requested and received. Thereafter, SSA is notified on a monthly basis of additions and deletions to the active DSS file. SSA information is received by DSS when BENDEX (the SSA computer file) is updated with new income information.
- IRS -Income data is requested annually on currently active recipients.
- DMV - Information is screened (on- line) at recertification and redetermination of active recipients.

(Break in Continuity of Sections)

2013.5 IEVS Case Processing Instructions

DSS will request information from the IEVS participating information sources by sending a tape listing current DSS applicants and recipients to the sources in the timeframes indicated in DSSM 2013.3. Information available from the sources' files is matched with DSS clients using the clients' Social Security Numbers.

UC data received from DOL and SSI and RSDI information received from SSA is verified. The DCIS file will be automatically updated and benefits will be recalculated using SSI and UC information. In the instance of RSDI data, DSS workers must resolve discrepancies between SSA and State Agency data, as described later in this section.

Wage and other income and resource data obtained through IEVS is not verified. When received, this data will first be processed by DCIS to screen out irrelevant data and data already known to the DCIS system. Any remaining unresolved wage and income data will be forwarded to Audit and Recovery Management Services (ARMS) for resolution.

ARMS resolves the wage and income data affecting the cases and forwards the information to the appropriate DSS supervisor via a transmittal form which informs DSS of what action should take place. If there is no change, the ARMS worker will notate the case record to indicate IEVS data did not necessitate a case change.

If IEVS information received on applicants can be resolved within the 30-day application processing limit, the application cannot be approved until the IEVS information is documented.

Wage and income information can be resolved by contacting the applicant or recipient or by contacting a reliable third party source (i.e., the employer or the source of other income). It is not necessary to secure the client's permission prior to contacting the third party source because applicants and recipients are notified at application and at redetermination or recertification of DSS' intention to obtain and use IEVS information to establish eligibility.

NOTE:DCIS will use the appropriate reason codes that notify the recipients that the benefit change resulted from information obtained through IEVS. Use of these codes allows DSS to document eligibility and benefit determinations made on the basis of IEVS information.

Additionally, to process IEVS information the procedures outlined below specific to the income information source are followed.

DOL

At application and at recertification or redetermination, DSS screeners will screen each applicant or recipient aged 16 and older through the DOL on-line computer interface. Regardless of whether the individual is found in the DOL system, a minimum of one DOL screen will be printed and included in the case file as evidence that the screening was completed.

Wage information in the DOL system is not verified. If wage information in the previous two quarters is discovered, it must be resolved as part of the application or redetermination/ recertification process. UC information is verified and is used to determine eligibility and benefit amounts.

DMV

At application and at redetermination or recertification, DSS screeners will screen applicants and recipients aged 16 and older through the DMV on-line computer interface when the individual does not report motor vehicle ownership, the situation appears questionable, and further investigation is warranted in order to establish eligibility. Examples of questionable situations include, but are not limited to, persons who do not claim MV ownership and are: 1) employed, or 2) were recently employed, or 3) live in remote locations. Routine DMV screening of all applicants and recipients is not required. DMV vehicle information registration discovered in the system is not verified and must be documented independently as part of the application process.

In addition to vehicle registration information, the address reported to DMV of each person holding a Delaware driver's license is also on file in the system. Though there is no requirement to check this information regularly, workers should be aware that it is available. An example of its potential use is to check the address of an absent parent.

NOTE: If information obtained from the DOL or DMV on-line interface was not reported by the applicant or recipient and this information is relevant to the eligibility and benefit determination, DCIS will use an IEVS reason code. Use of these codes will enable DSS to document eligibility and benefit determinations made on the basis of obtaining and using IEVS information.

SSA

At application all applicants must furnish a SSN or provide proof that an application for a number has been filed with the Social Security Administration. Applicants who have a number will be asked to provide proof of the number. Acceptable documentation includes a Social Security card, a pay stub, a W-2 form or a UC claim card. If an applicant is unable to provide proof of his/her number but can furnish one, the application will be processed using the number the applicant furnished. All SSN's will be submitted to the SSA for verification through IEVS.

Numbers not verified by IEVS will be forwarded to Audit and Recovery Management Services (ARMS) for resolution. The procedure for handling unverified SSN's appears in DSSM 9032.5. If it is determined by ARMS that an applicant or recipient provided a false SSN in order to receive benefits for which he/she was not entitled, a claim or overpayment will be processed.

ARMS will notify DSS eligibility workers if it is unable to resolve an unverified Social Security Number. It is the responsibility of the eligibility worker to refer the recipient to the Social Security Administration to reapply for a Social Security Number. When this referral is made, the eligibility worker will note on the referral form (Form 122) the individual's unverified number so it can be investigated. These persons can continue to receive benefits as long as they provide proof that an application for a SSN has been filed at the Social Security Administration within ten (10) days of the referral.

At application, the intake worker will request verification of SSI and RSDI benefits listed on the application. Acceptable verification includes the recipient's award letter that verifies the current benefit or a response from the Third Party Query System (TPQY). If information on benefits has not been verified by the 30th day following the date the application was filed, determine eligibility using the applicant's statement regarding the SSI or RSDI amount. BENDEX information is used on a monthly basis to determine program benefits. DCIS produces a monthly report indicating the RSDI benefit amount shown on the BENDEX report from SSA as well as the RSDI amount currently displayed on the DCIS file for each RSDI recipient. When both amounts agree, no further action is necessary. Whenever there is a discrepancy between the two RSDI amounts shown, proceed as follows:

1. Investigate the discrepancy and attempt to determine which figure is accurate. SSA's Third Party Query System (TPQY) report and award letters should be useful resources.

2. If the discrepancy is resolved, notify the Information Systems Unit (ISU) DCIS, Biggs Building, Herman M. Holloway, Sr. Health and Social Services Campus, and provide them with copies of any documentation used in your investigation.
3. Make any necessary corrections to DCIS.
4. If the BENDEX data appears discrepant, notify ISU of the circumstances so that technical assistance from SSA can be sought.

IRS

DSS matches its active file with IRS files annually. Newly accredited cases are submitted for matching on a monthly basis. Unearned income sources revealed through this match process are considered unverified until independent third party documentation is obtained through either the household or appropriate income, resource or benefit source.

Exception: The Food Supplement Program will not request or utilize unearned income data from the IRS.

ARMS has exclusive access to the IRS match reports, which are maintained in accordance with IRS (Dept. of the Treasury) Publication 1075, as well as the DHSS IEVS Security Action Plan developed by ARMS. IRS information is not placed in casefiles. Every effort is made to protect the confidentiality of the information and prevent its unauthorized use.

(Break in Continuity of Sections)

9037 Use of Income and Eligibility Verification System (IEVS)

~~[273.2(f)(9)]~~ 7 CFR 273.2(f)(9)

Use information obtained through the IEVS to verify the eligibility and benefit level of applicant and participating households, in accordance with procedures specified in DSSM 2013.1. Disclosure safeguards must be satisfied, per DSSM 9003.

Take action, including proper notices to households, to terminate, deny, or reduce benefits based on information obtained through the IEVS which is considered verified upon receipt. This information is social security and SSI benefit information obtained from SSA and UIB information obtained from DOL. If DSS has information that the IEVS obtained information about a particular household is questionable, consider this information unverified. Unverified information is:

~~Unearned income information from IRS;~~

- Wage information from SSA and DOL;
- Any questionable IEVS information.

Prior to taking action to terminate, deny, or reduce benefits based on unverified information obtained through IEVS, independently verify the information. Independent verification includes verification of the amount of the asset or income involved, whether the household actually has or had access to such asset or income that it would be considered countable for food stamp benefit purposes, and the period during which such access occurred. ~~Except with respect to unearned income from IRS, if~~ When DSS has information indicating that independent verification is unnecessary, such verification is not required.

Obtain independent verification of unverified information from IEVS by contacting the household and/or the appropriate income, resource or benefit source. When contacting the household, do so in writing, informing the household of the information DSS has received, and requesting that the household respond within ten (10) days. If the household fails to respond in a timely manner, send a notice of adverse action.

Contact the appropriate source by the means best suited to the situation. When the household or appropriate source provides the independent verification, properly notify the household of the action DSS intends to take and provide the household with an opportunity to request a fair hearing prior to any adverse action.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 9013.1

PUBLIC NOTICE

Food Supplement Program - Household Definition

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2014.

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

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Household Definition*.

Statutory Authority

- 7 CFR §273.1, *Household concept*
- 13 **Del.C.** §101, *Void and voidable marriages*
- 13 **Del.C.** §129, *Equal treatment of marital relations*

Background

Delaware's Food Supplement Program, formerly known as food stamps, is operated under the provisions of the Food and Nutrition Act of 2008, as amended, and is administered by the Food and Nutrition Service (FNS) under the United States Department of Agriculture (USDA). The Delaware Division of Social Services (DSS) is responsible for the administration of the Food Supplement Program (FSP), including, but not limited to certification of applicant households and issuance, control, and accountability of FSP benefits.

Summary of Proposed Changes

In the Food Supplement Program (FSP), spouses living together are considered a food benefit household even if they do not purchase and prepare meals together. The current policy does not recognize same gender spouses. Delaware law requires polices be consistent for same gender spouses and non-same gender spouses. The policy is modified to be consistent for all spouses regardless of gender; all spouses who live together are considered as purchasing and preparing meals together even if they do not do so.

Therefore, policy at **DSSM 9013.1(B)(1)(b)**, *Household Definition* is amended by striking the language prohibiting same gender couples from being considered spouses. The applicable federal citation is also added to the policy section.

DSS PROPOSED REGULATION #14-18 REVISION:

9013.1 Household Definition

7 CFR 273.1

A) General Definition - a household is composed of one of the following individuals or groups of individuals, provided they are not residents of an institution (except as otherwise specified in DSSM 9015), or are not boarders (as specified in DSSM 9013.3).

1. An individual living alone

2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

This includes severely disabled individuals who have someone purchase and prepare their meals for them (regardless of whether or not they are paid for the service). The disabled individuals are considered separate food stamp households, even if they live in the same home as the individual purchasing and preparing the meals for them. This household does not have to meet the 165 percent rule.

3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

B) Special Definition - the following individuals living with others or groups of individuals living together must be considered as customarily purchasing food and preparing meals together, even if they do not do so*.

1. Spouses who live together. Spouse refers to either of two individuals:

a. Who would be defined as married to each other under applicable State law; or

b. Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

* ~~Same sex couples, for food stamp purposes, are not considered spouses and the presumption of purchasing food and preparing meals together would not apply to them.~~

2. Children 21 years of age and younger living with their parents. [Parents are defined as natural parent(s), adoptive parent(s), or step-parent(s)]

Children (other than foster care children) who are under 18 and live under the parental control of a non-parent, adult household member cannot be separate households.

Adult children (22 years of age and older) who live with their parents can be separate households if they purchase and prepare food separately.

3. Child(ren) living with a non-parent who has legal custody of the child(ren) will continue to be a member of the household for food stamp purposes even if a natural parent moves into the home. The non-parent must provide proof of legal custody. If the adult who has legal custody of the child chooses to let the child and natural parent purchase and prepare meals together, the child can become a member of the natural parent's food stamp household.

4. Joint custody – Children who live with parents in a joint custody situation can get food stamps with the parent who is the first to apply for food stamps. This also covers shared custody situations. If both parents are applying for the same child(ren), the parent who provides the majority of the meals (21 meals a week) will include the child as part of his/her food stamp household.

When the parent who provides the majority of the meals applies for food stamps after the other parent is already getting food stamps for children, he/she can include the children in their food stamp after they are removed from the other parent's case. The children are removed from the first parent's case and opened in the second parent's case no later than the second month after the month the second parent requests food stamps for the children.

5. When an individual resides a portion of the month with a food stamp household, the household can choose to include or exclude the individual from the food stamp household. If included, the income of the individual must be included and the individual cannot get benefits in another household or state.

Examples:

A son works out of state but comes home every weekend. His mom can include or exclude him.

A child lives in PA with her father. She comes to DE to live with her mom on weekends. Her mother can include her in her food stamp household as long as the child is not getting food stamps in PA.

A child goes to a residential school and comes home every other weekend and holidays. The parents can include the child in their food stamp household.

6. Although a group of individuals living together and purchasing and preparing meals together constitutes a single household under the provisions of the above general definition, an otherwise eligible member

of such a household who is 60 years of age or older and who is unable to purchase and prepare meals because (s)he suffers from a disability considered permanent under the Social Security Act, or suffers from a non-disease-related, severe, permanent disability, may be a separate household from the others based on the provisions of this section provided that the income (all income under DSSM 9055) of the others with whom the individual resides (excluding the income of the spouse of the elderly and disabled individual) does not exceed 165% of the poverty line. Only the spouse of the elderly and disabled individual is required to be included in the same household with the individual.

"Elderly or disabled member" means a member of a household who:

- a. is 60 years of age or older;
- b. receives Supplemental Security Income (SSI) benefits under Title XVI of Social Security Act or disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act;
- c. receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive benefits is based upon the disability or blindness criteria used under Title XVI of the Social Security Act;
- d. receives federally or State-administered supplemental benefits under section 212(a) of Public Law 93- 66;
- e. receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act;
- f. is a veteran with a service-connected or non-service connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under Title 38 of the United States Code;
- g. is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;
- h. is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38 of the United States Code; or
- i. is a surviving spouse or surviving child of a veteran and is considered by the VA to be entitled to compensation for service-connected death or pension benefits for a non- service connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act;
- j. received an annuity payment under Section 2(a)(l)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board, or Section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under Title XVI of the Social Security Act.
- k. is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income, disability related medical assistance under Title XIX of the Social Security Act, or disability-based State general assistance benefits provided that the eligibility to receive those benefits is based upon disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act.

"Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them.

Note: Some disabled persons optionally receive Federal Employee Compensation Act (FECA) payments in lieu of Civil Service Disability payments. Such persons are considered to meet the disability definition under this section. Some persons, however, receive FECA payments on a temporary basis while recovering from an on-the-job injury. Receipt of these temporary payments does not satisfy the disability definition. Therefore, verify which type of FECA payment a client receives.

VERIFICATION OF DISABILITY

DISABILITY BASIS	VERIFICATION METHOD
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b, c, d	Household must provide proof of benefit receipt.
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- f Household must present a statement from the Veterans Administration which clearly indicates (1) that the disabled individual is receiving VA disability benefits for a service-connected disability, and (2) that the disability is rated as total or paid at the total rate.
- g, h Household must prove that the disabled individual is receiving VA disability benefits. Use SSA's most current list of disabilities considered permanent. If it is obvious that one individual has one of the listed disabilities, the item is considered verified. If disability is not obvious, the household must provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the non-obvious disabilities listed.
- e, i Household must provide proof that individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board and has been determined to qualify for Medicare.
- j Household must provide proof of receipt of interim benefits pending receipt of SSI; or disability-related medical assistance under Title XIX of the SSA. Verify that the eligibility to receive these benefits is based upon disability or blindness criteria that are at least as stringent as those used under title XVI of the Social Security Act.
- k

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

1300 Board of Examiners of Private Investigators & Private Security Agencies Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304) 24 DE Admin. Code 1300

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 Del.C. Ch. 13 proposes to amend Rule 1.0 – Firearms Policy – placing the approval of instructors on Professional Licensing Section; Rule 2.0 – Use of Rifle and Shotgun – general housekeeping; Rule 3.0 – Nightstick, PR24, Mace, Peppergas and Handcuffs – requiring all certifications be on file with Professional Licensing and the instructors are approved by Professional Licensing; Rule 7.0 – Employment Notification – general housekeeping; Rule 9.0 – Security Guards/Armored Car Guards – by deleting entire rule; Rule 12.0 – Personnel Rosters and Job Assignments – general housekeeping; Rule 13.0 – Record Book; Right of Inspection – allowing Professional Licensing to inspect guards and agency offices; Rule 14.0 – Agency Licensing Fees/Structure – giving Professional Licensing authority to renew agencies with no changes. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by June 30, 2014, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903.

1300 Board of Examiners of Private Investigators & Private Security Agencies

1.0 Firearm's Policy

- 1.1 No person licensed under 24 Del.C. §§1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course of instruction and an initial qualification administered by a ~~Board~~ an approved certified firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement).

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- 1.2 Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per calendar year, scheduled on at least two (2) separate days, with a minimum 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. The initial qualification shoot may be used to fulfill one day and one low light requirement during the first year.
 - 1.2.1 An individual not meeting the minimum qualifications set forth in 1.2. may have their firearms license suspended until such time that they meet the minimum three (3) qualifying shoots within the calendar year.
 - 1.3 Firearms - approved type of weapons
 - 1.3.1 9mm
 - 1.3.2 .357
 - 1.3.3 .38
 - 1.3.4 .40
 - 1.3.5 .45
 - 1.4 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
 - 1.5 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
 - 1.6 All individuals must qualify with the same make/model/caliber of weapon that he/she will carry.
 - 1.7 All ammunition will be factory fresh (no re-loads).
 - 1.8 The minimum passing score is 80%.
 - 1.9 All licenses are valid for a period of five (5) years, subject to proof of compliance of Rule 1.0 by submission of shoot certification or re-certification forms by January 31st of each year for the previous calendar year.
 - 1.10 Firearms Instructors
 - 1.10.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), and/or another professional firearms training institution as a "certified firearms instructor".
 - 1.10.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified shotgun instructor may only instruct and qualify individual with the shotgun.)
 - 1.10.3 All firearms instructors must be approved by the ~~Board~~ Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 24 **Del.C.** Ch. 13.

2.0 Use of Rifle and Shotgun

- 2.1 Whereas there exists a need for private security ~~officers~~ guards in the State of Delaware to be equipped to handle situations where the risk of terrorist activity is high, or at special events where there is a high risk of violent activity or attack, the following rules are established to regulate the use of rifles and shotguns by security services contractors in the State.
- 2.2 The Governor of the State of Delaware, or designee, or the Superintendent of State Police, or designee, may authorize specified security services contractors to deploy security guards with rifles and/or shotguns, as appropriate to the defense of critical infrastructure facilities, or private business facilities and operations reasonably believed to be at risk of violent activity or attack likely to result in injury or significant damage to or loss of property. The situations where such protection would be required would include, but not be limited to:
 - 2.2.1 An increase in the threat level from the Department of Homeland Security to "Imminent Threat Alert", or higher;
 - 2.2.2 Special circumstances where additional protection would be deemed appropriate, including but not limited to:
 - 2.2.2.1 Credible threats to local facilities or operations;

- 2.2.2.2 Response to natural disasters;
- 2.2.2.3 Response to biological or chemical threats;
- 2.2.2.4 Civil unrest.
- 2.2.3 Any situation where additional trained responders are required to assist in the protection of life and property in the State of Delaware;
- 2.2.4 An armored car company or agency, as defined by 24 **Del.C.** §1302(1), dealing with a credible threat or genuine risk to life or to property.
- 2.3 Security Guards who would be deployed and authorized to use such additional weaponry would be required to:
- 2.3.1 Be trained by certified firearms instructors pursuant to State of Delaware standards;
- 2.3.2 Be required to re-qualify with the weapons on a three times per year basis;
- 2.3.3 Maintain a handgun firearms license through the State;
- 2.3.4 Be listed by name on a roster of authorized individuals; and
- 2.3.5 Maintain employment in good standing with their security services contractor employer at all times for inclusion on the list.
- 2.4 Security Guards using such firearms would be required to maintain strict compliance with the provisions of 24 **Del.C.** §1321.
- 2.5 Rifles deemed appropriate for use in the State would be .30 caliber weapons, .223 caliber weapons, 9mm rifle type weapons, and other weapons approved by the Superintendent, or designee, as need and technology dictate. Shotguns would be of the 12 gauge law enforcement/military style weapons. All firearms would be subject to the approval of the Superintendent or designee.
- 3.0 Nightstick, Pr24, Mace, Peppergas and Handcuffs**
- 3.1 To carry the above weapons/items a security guard must have completed a training program on each and every weapon/item carried, ~~taught by a certified instructor representing the manufacturer of the weapon/item and all certifications must be on file in the Professional Licensing Section to be valid to carry/use.~~ Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director of the Professional Licensing Section.
- 3.2 Weapon/Item Instructors
- 3.2.1 All weapon/item instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 24 **Del.C.** Ch. 13.
- 4.0 Training Requirements**
- 4.1 Each person licensed as a security guard under 24 **Del.C.** Ch. 13 shall undertake a total of sixteen (16) hours of training through a program approved by the Board, and any such additional training as the Board deems appropriate. Satisfactory completion of the sixteen (16) hours of training shall be certified by mandatory testing with a passing grade of 75%. The test will be administered by Delaware Technical Community College (DTCC).
- 4.2 The required training shall include instruction in legal requirements and limitations, use of force, ethics, emergency services, diversity, communication, asset protection, and terrorism. The Board, in its discretion, may require such additional topics as it finds necessary.
- 4.3 The Professional Licensing Section shall have the authority to require regular reports on training from licensees and employers, and shall report to the Board on compliance with this regulation.
- 4.4 Training certifications shall be submitted with each new application or re-application and the training shall be completed no more than one year prior to submission of the application.
- 5.0 Use Of Animals**
- The use of animals is prohibited.

6.0 Criminal Offenses

- 6.1 In addition to those qualifications set forth in 24 **Del.C.** Ch. 13, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III within the last three (3) years.
- 6.2 For the purposes of 24 **Del.C.** Ch. 13, the Board may deny an application for a license or suspend or revoke a license if the applicant or licensee has been convicted of a misdemeanor crime involving moral turpitude. A misdemeanor crime involving moral turpitude includes, but is not limited to, the following crimes in the Delaware Code (or similar crimes under the laws of other jurisdictions):
- 6.2.1 Title 11:
- 6.2.1.1 §763 Sexual harassment;
 - 6.2.1.2 §764 Indecent exposure in the second degree;
 - 6.2.1.3 §765 Indecent exposure in the first degree;
 - 6.2.1.4 §766 Incest;
 - 6.2.1.5 §767 Unlawful sexual contact in the third degree;
 - 6.2.1.6 §781 Unlawful imprisonment in the second degree;
 - 6.2.1.7 §840 Shoplifting;
 - 6.2.1.8 §861 Forgery;
 - 6.2.1.9 §871 Falsifying Business Records
 - 6.2.1.10 §881 Bribery
 - 6.2.1.11 §907 Criminal Impersonation
 - 6.2.1.12 §1101 Abandonment of a Child;
 - 6.2.1.13 §1102 Endangering the Welfare of a Child;
 - 6.2.1.14 §1105 Endangering the Welfare of an Incompetent Person;
 - 6.2.1.15 §1106 Unlawfully Dealing with a Child;
 - 6.2.1.16 §1107 Endangering Children;
 - 6.2.1.17 §1245 Falsely Reporting an Incident;
 - 6.2.1.18 §1341 Lewdness;
 - 6.2.1.19 §1342 Prostitution;
 - 6.2.1.20 §1343 Patronizing a Prostitute; and
 - 6.2.1.21 §1355 Permitting Prostitution
- 6.2.2 Title 16
- 6.2.2.1 §1166 Patient Neglect or Abuse
- 6.2.3 Title 31
- 6.2.3.1 §3913 Abuse/Neglect/Exploitation/Mistreatment of an Infirm Adult.
- 6.3 Anyone applying for licensure under 24 **Del.C.** Ch. 13 shall not be issued a license if they have any pending criminal charge(s) for any crimes listed in this Chapter.
- 6.4 The Professional Licensing Section may suspend anyone licensed under 24 **Del.C.** Ch. 13 who has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in this Chapter.

7.0 Employment Notification

- 7.1 Anyone applying for licensure under this chapter may be rejected without refund, or have their license revoked, for knowingly omitting any criminal history, other material information or to make a false statement on their application.
- 7.2 Employers Responsibility
- 7.2.1 A licensed private security agency, after investigation, shall notify the Professional Licensing Section, in writing, of any terminated employees. This information is to be included in the next monthly roster report following the termination.

7.2.2 A licensed private security agency shall report to the Professional Licensing Section, in writing, the following:

7.2.2.1 The name of any employee arrested;

7.2.2.2 The name of any employee admitted to any mental hospital ward, mental institution or sanitarium; or

7.2.2.3 The name of any employee disabled from carrying, owning, or possession a gun by action of federal or state statute and/or court order, including bond orders and protection from abuse orders.

8.0 Private Investigators

8.1 A Private Investigator shall not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other state of federal jurisdiction.

8.2 The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be re-licensed with the new employer and a new identification card will be issued as in the previous procedure.

8.3 A licensed Private Investigator may only be employed by one licensed private investigative agency at a time.

9.0 Security Guards/Armored Car Guards

~~Under no circumstances will a security guard/armored car guard be permitted to be employed by more than two agencies at a time. It is also the responsibility for each licensed security guard/armored car guard to advise his/her employer(s) of whom he/she is employed with (i.e. if a security guard/armored car guard is employed with two security guard/armored car guard agencies, both employers must be made aware of this fact.)~~

409.0 Qualified Manager/License Holder

409.1 A qualified manager cannot be employed by more than one company at the same time. For example; a person cannot serve as a qualified manager for two separate private security agencies and/or private investigative agencies.

409.2 A qualified license holder must be an owner/partner/corporate officer of the agency requesting licensure.

140.0 Uniforms, Patches, Badges, Seals, Vehicular Markings

140.1 No person licensed under 24 **Del.C.** Ch. 13 shall wear or display any uniform, patch, or badge unless first approved by the Board of Examiners. The use of "patrol" and/or "officer" on any type of uniform, patch, badge, seal, vehicular marking or any type of advertisement shall first be proceeded by the word "security". Under no circumstances shall a uniform, patch, badge, seal, vehicular marking, letterhead, business card or any type of advertisement contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

140.2 Advertisement and other forms of publications:

140.2.1 No letterhead, business card, advertisement, or other form of publication including but not limited to uniforms, patches, badges, seals, vehicular markings and similar items may be used or displayed unless first approved by the Board of Examiners. No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.

140.2.2 All uniforms displaying a patch must contain an approved patch that is not generic in nature. The patch must have the name of the agency printed on it.

140.3 Vehicle Identification

- 140.3.1 No person or entity licensed under 24 **Del.C.** Ch. 13 shall utilize any vehicle in the course of activities covered by said Chapter 13, unless the appearance of the vehicle, including any identifying marking, shall have been first approved by the Board of Examiners using the standards and criteria set forth in this Rule.
- 140.3.2 The content of any vehicle marking shall be governed by the standards and criteria set forth in Rule 5.1 above.
- 140.3.3 No vehicle utilized for purposes covered by 24 **Del.C.** Ch. 13 shall have an appearance that creates a reasonable likelihood of confusion with a police vehicle used by the Delaware State Police or a law enforcement agency of any state or governmental subdivision. The Board of Examiners shall have discretion to review the appearance of vehicles, and to make comparisons with known law enforcement vehicles, in order to enforce this Rule.
- 140.3.4 In the event that a vehicle is not approved by the Board of Examiners pursuant to this Rule, the Board may indicate what changes to the vehicle appearance would be sufficient to satisfy the standard and criteria set forth above.
- 140.3.5 Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

121.0 Personnel Rosters and Job Assignments

- 121.1 Anyone licensed under 24 **Del.C.** Ch. 13 shall submit an alphabetical personnel roster and a job site list to the ~~Director~~ of Professional Licensing Section by the tenth of every month. Alphabetical personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual in your employ. For example:

Mark A. Smith	01/25/60	W	M	01/25/99	FA
Helen E. White	03/17/71	B	F	03/17/00	FA
John F. Henry	05/23/43	B	M	05/23/00	PI
James D. Williams	12/03/40	W	M	06/30/99	MG
Frank G. Montgomery	07/24/55	B	M	06/30/99	LH
Anne L. Murray	10/20/40	W	F	06/30/99	CO

SG	Security Guard
FA	Firearm's
PI	Private Investigator
MG	Delaware Manager
LH	License Holder
CO	Corporate Officer

- 121.2 Job site lists shall include the name, address, location, and hours of coverage. For example:

The DuPont Industry
Barley Mill Road
2200 - 0600 Hours, Monday, Wednesday, and Friday

132.0 Record Book; Right of Inspection

- 12.1 All persons licensed under 24 **Del.C.** Ch.13 shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include a copy of the current ID card, the list of weapons/items each employee is qualified to carry, the certification/expiration dates, scores and the serial number of

the weapon/item, if applicable, and a current copy of the mandatory 16 hours security guard training and test certification.

12.2 The Professional Licensing Section has the right to inspect any security guard at any time they are on their respective post. The office of any private investigative agency, private security agency, or

143.0 Licensing Fees**143.1 Class A License - Private Investigative Agency****143.1.1 In-State License Holder****143.1.1.1 Individual - No Employees - Not Corporation**

143.1.1.1.1 \$230

143.1.1.1.2 \$5,000 Bond

143.1.1.1.3 \$1,000,000 Liability Insurance per occurrence

143.1.1.2 Corporation - Has Employees

143.1.1.2.1 \$345

143.1.1.2.2 \$10,000 Bond

143.1.1.2.3 \$1,000,000 Liability Insurance per occurrence

143.1.2 Out-of-State**143.1.2.1 License Holder - Individual and Corporation**

143.1.2.1.1 \$345

143.1.2.1.2 \$10,000 Bond

143.1.2.1.3 \$1,000,000 Liability Insurance per occurrence

143.1.2.2 Delaware Manager

143.1.2.2.1 \$230

143.1.2.2.2 \$5,000 Bond

143.2 Class B License - Private Security Agency**143.2.1 In-State License Holder****143.2.1.1 Individual - No Employees - Not Corporation**

143.2.1.1.1 \$230

143.2.1.1.2 \$5,000 Bond

143.2.1.1.3 \$1,000,000 Liability Insurance per occurrence

143.2.1.2 Corporation - Has Employees

143.2.1.2.1 \$345

143.2.1.2.2 \$10,000 Bond

143.2.1.2.3 \$1,000,000 Liability Insurance per occurrence

143.2.2 Out-of-State**143.2.2.1 License Holder - Individual and Corporation**

143.2.2.1.1 \$345

143.2.2.1.2 \$10,000 Bond

143.2.2.1.3 \$1,000,000 Liability Insurance per occurrence

143.2.2.2 Delaware Manager

143.2.2.2.1 \$230

143.2.2.2.2 \$5000 Bond

143.3 Class C License - Private Investigative & Private Security Agency**143.3.1 In-State License Holder****143.3.1.1 Individual - No Employees - Not Corporation**

143.3.1.1.1 \$345

- 143.3.1.1.2 \$10,000 Bond
- 143.3.1.1.3 \$1,000,000 Liability Insurance per occurrence
- 143.3.1.2 Corporation - Has Employees
 - 143.3.1.2.1 \$520
 - 143.3.1.2.2 \$15,000 Bond
 - 143.3.1.2.3 \$1,000,000 Liability Insurance per occurrence
- 143.3.2 Out-of-State
 - 143.3.2.1 Individual and Corporation
 - 143.3.2.1.1 License Holder
 - 143.3.2.1.1.1 \$520
 - 143.3.2.1.1.2 \$15,000 Bond
 - 143.3.2.1.1.3 \$1,000,000 Liability Insurance per occurrence
 - 143.3.2.1.2 Delaware Manager
 - 143.3.2.1.2.1 \$345
 - 143.3.2.1.2.2 \$10,000 Bond
- 143.4 Class D License - Armored Car Agency License
 - 143.4.1 License Holder
 - 143.4.1.1 \$345
 - 143.4.1.2 Banking Commissioner License as required by 5 Del.C. §3203
 - 143.4.1.3 \$10,000 Bond
 - 143.4.1.4 \$1,000,000 Liability Insurance per occurrence.
 - 143.4.2 Delaware Manager
 - 143.4.2.1 \$230
 - 143.4.2.2 \$5000 Bond
- 143.5 All licenses will expire 2 years from the last day of the month they are approved for licensure.
- 13.6 All new agency licensures must be approved by the Board. Standard renewals, with no changes, may be approved by the Professional Licensing Section. Any agency having a change in License Holder and/or Delaware Manager must be approved by the Board.

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

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

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

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE Rules for Early Care and Education and School-Age Centers. A comprehensive review process was held in which all providers were asked to participate as part of the public hearing process for Executive Order 36 and a preliminary draft was created. The

preliminary draft was posted on the OCCL website and comments were invited and received. Additional public comments were received from the Provider Advisory Board, from providers and stakeholders during a series of Task Force meetings, as well as written comments from other providers and stakeholders.

The proposed changes provide clarity, reflect changes in laws, align with current best practices, and improve standards of care. The revisions represent a consensus of participants including licensed providers and subject experts, and are based on best practice, a review of regulations promulgated by other States, research on subjects related to early care and education and school-age center care, internal OCCL review and discussion, and identified issues and services within existing programs within Delaware.

COMMENTS

Regulations published here are numbered in administrative code format. To facilitate the comparison of this new document to the current regulations and the location of information in the current regulations, in many instances a current rule number still appears in this document in parentheses regardless of whether the text has been edited or remains the same. (Example: Rules 102-104). Some current regulations have been eliminated and new information and regulations added. These referencing rule numbers will be eliminated in the next publication of these regulations in the *Register*.

Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on July 31, 2014. Comments may also be offered at public meetings to be held in each county. Participants may attend any meeting. While the meetings begin at 6:00 p.m., participants may arrive at any time prior to the close of the meetings at 7:45 p.m. Time allotted to each speaker will be limited. The meetings will be held as follows:

New Castle County: **Tuesday, June 24, 2014, 6:00 – 7:45 p.m.**
Paul J. Sweeney Public Safety Building
(also known as New Castle County Public Safety Building)
3601 N. DuPont Highway, New Castle, DE 19720

Sussex County: **Wednesday, July 9, 2014, 6:00 – 7:45 p.m.**
Thurman Adams State Service Center
(also known as Georgetown State Service Center)
546 South Bedford Street, Georgetown, DE 19947

Kent County: **Wednesday, July 16, 2014, 6:00 – 7:45 p.m.**
DeIDOT Administration Building, Farmington Room
800 Bay Road, Dover, DE 19903

ADOPTION OF PROPOSED REGULATIONS

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

SUMMARY OF PROPOSED CHANGES

This listing of proposed changes to the regulations is intended as a guide and is not an all-inclusive listing of the changes made throughout the document.

- The words “requirement” or “rule” have been changed to “regulation,” the terminology used in Administrative Code;

- Regulations have been reorganized;
- Wording has been simplified;
- Redundant regulations have been eliminated;
- Definitions have been expanded;
- Informational regulations have been removed (and will be placed in a separate Guidance Manual);
- Charts suitable for posting by the provider have been created for simplicity and clarity of information;
- Licensees are not required to supplement meals and snacks provided by families;
- Staff qualifications: acceptable education requirements and definition of qualifying experience have been broadened;
- For several positions, the amount of experience required has been decreased; and
- A qualified intern may be alone with children in specific named situations.

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

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

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 BOARD OF ACCOUNTANCY

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

PUBLIC NOTICE

100 Board of Accountancy

Pursuant to 24 **Del.C.** §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The rules pertaining to renewal and audit are amended to provide that renewal must be accomplished electronically and that continuing education summaries shall be submitted within 30 days of the date of the notification of selection for audit.

A public hearing will be held on July 16, 2014 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be July 31, 2014 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on August 20, 2014 at 9:00 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

100 Board of Accountancy
(Break in Continuity of Sections)

11.0 Continuing Education

(Break in Continuity Within Section)

PROPOSED REGULATIONS

- 11.2 Reporting Requirements: License renewal may be accomplished online at www.dpr.delaware.gov. Each permit holder shall attest as to whether the continuing professional education was completed as required by Rule 11.0.
- 11.2.1 Attestation ~~may shall~~ be completed electronically ~~if the renewal is accomplished online. In an alternative, paper renewal documentation that contains attestation of completion can be submitted.~~
- 11.2.2 Audits will be performed by the Board to ensure compliance with the continuing professional education requirements.
- 11.2.2.1 The Board will notify permit holders within sixty (60) days of June 30 of each biennial renewal period that they have been selected for audit.
- 11.2.2.2 Permit holders selected for random audit shall be required to submit a summary of their continuing professional education attendance on a Board approved log with verification within thirty (30) days of ~~receipt~~ the date of notification of selection for audit.

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

100 Board of Accountancy

DIVISION OF PROFESSIONAL REGULATION

300 BOARD OF ARCHITECTS

Statutory Authority: 24 Delaware Code, Section 306(a)(1) (24 **Del.C.** §306(a)(1))
24 **DE Admin. Code** 300

PUBLIC NOTICE

300 Board of Architects

The Delaware Board of Architects, pursuant to 24 **Del.C.** §306(a)(1), proposes to add regulation 7.6.1.1 and amend regulation 7.6.2. The proposed addition at 7.6.1.1 seeks to grant authority to licensees to utilize electronic seals whenever the use of an architect's seal is permitted. The amendment at 7.6.2 seeks to allow architects to utilize an electronic signature when signed and sealed submissions are published and/or submitted under the current requirements of regulation 7.6.2.

The Board will hold a public hearing on the proposed regulation change on July 2, 2014 at 1:30 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meaghan Jerman, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 17, 2014 pursuant to 29 **Del.C.** §10118(a).

300 Board of Architects (Break in Continuity of Sections)

7.0 Rules of Professional Conduct - All architects shall abide by these Rules of Professional Conduct. (Break in Continuity Within Section)

7.6 Design and Use of Architect's Seal

- 7.6.1 Pursuant to 24 **Del.C.** §313, and subject to 6.7 and 7.5, each architect shall procure a seal, which shall contain the name of the architect; his/her registration number and the phrase REGISTERED ARCHITECT--STATE OF DELAWARE. This seal shall comply in all respects, including size and

format, with the specimen shown below. The architect shall use his/her legal name on the Certificate of Registration, the seal and the license.



7.6.1.1 An electronic seal and signature are permitted to be used in lieu of a stamped impression of the architect's seal and original signature, 24 **Del.C.** §313, when the following conditions are met:

7.6.1.1.1 It is a unique identification of the professional;

7.6.1.1.2 It is verifiable;

7.6.1.1.3 It is under the professional's direct and sole control;

7.6.1.1.4 It is linked to a document in such a manner that the electronic seal and signature are invalidated if any data in the document are changed;

7.6.1.1.5 The graphic image of the electronic seal shall have the same graphic appearance in all respects as 7.6.1 above.

7.6.2 Pursuant to 24 **Del.C.** §313, all technical submissions which are published and/or are submitted to public authorities for building permits or regulatory approvals shall be sealed by the architect. Each design, each drawing, each set of specifications, all addenda and the cover of all other technical submissions shall be sealed. Other technical submissions include designs and drawings of a preliminary nature which are submitted to any public and/or the reviewing agency. When technical submissions are submitted for any permit, at each place where the seal is imprinted, there shall be an original or electronic signature, date of the signature, and the date of expiration of the architect's Delaware registration all located in close proximity to the seal in a format substantially similar to the following:

Signature: _____

Date of signature: _____

Date of registration expiration: _____

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

300 Board of Architects

DIVISION OF PROFESSIONAL REGULATION

1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

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

24 DE Admin. Code 1100

PUBLIC NOTICE

1100 Board of Dentistry and Dental Hygiene

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to amend its regulations. The proposed changes to regulation 6 set forth guidelines for application renewal and late renewal.

The Board will hold a public hearing on the proposed rule change August 21, 2014 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, Suite 203, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 5, 2014.

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

6.0 Continuing Professional Education (CPE) –~~Dentists [24 Del. C. §1106(a)(1) and (7)]~~ and Renewal

~~All persons licensed to practice dentistry in the State of Delaware shall be required to acquire fifty (50) hours of continuing professional education (CPE) credit every two (2) years. Two (2) of the 50 credit hours shall be obtained in courses covering infection control. In addition to the CPE, licensees must provide evidence that they have successfully completed a current course in cardiopulmonary resuscitation (CPR) every two (2) years. The CPR course must encompass hands on clinical participation. On-line courses will not be accepted to satisfy the CPR requirement. Examples of acceptable courses include, but are not limited to, courses offered by the American Red Cross and the American Heart Association and courses offered or approved by any of the organizations listed in 6.5.1.1 through 6.5.1.4 of these regulations. All dentists, upon initial licensure in Delaware and prior to registration renewal, shall be given a written notice of these CPE requirements.~~

~~6.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of Rule 6.0.~~

~~6.1 Renewal. Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her license expiration date and subsequent renewal does not, in any way, relieve the licensee of the requirement to renew his/her license pursuant to the Board's regulations and 24 Del.C. Ch. 11.~~

~~6.1.1 License renewal is accomplished online at the Division of Professional Regulation's website. Licensees must submit an online application along with payment of the renewal fee prescribed by the Division of Professional Regulation and an attestation of completion of the continuing education requirements.~~

~~6.1.1.1 Attestation must be completed electronically at the time of renewal. Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Section 6.8.~~

~~6.2 Attestation must be completed electronically at the time of renewal.~~

~~6.2 Any licensee who fails to renew his/her license by the renewal date may reactivate his/her license during the one year period immediately following the license expiration date provided the licensee pays a late fee in addition to the prescribed renewal fee, and provides proof that he/she completed the required continuing education.~~

~~6.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.8.~~

~~6.3 Continuing Education. All persons licensed to practice dentistry in the State of Delaware shall be required to acquire fifty (50) hours of continuing professional education (CPE) credit every two (2) years. Two (2) of the 50 credit hours shall be obtained in courses covering infection control. In addition to the CPE, licensees must provide evidence that they have successfully completed a current course in cardiopulmonary resuscitation (CPR) every two (2) years. The CPR course must encompass hands on clinical participation. On-line courses will not be accepted to satisfy the CPR requirement. Examples of acceptable courses include, but are not limited to, courses offered by the American Red Cross and the American Heart Association and courses offered or approved by any of the organizations listed in 6.5.1.1 through 6.5.1.4 of these regulations. All dentists, upon initial licensure in Delaware and prior to registration renewal, shall be given a written notice of these CPE requirements.~~

(Break in Continuity Within Section)

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

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION

1700 Board of Medical Licensure and Discipline

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 **Del.C.** §1713(a)(12))
24 **DE Admin. Code** 1700

PUBLIC NOTICE

1700 Board of Medical Licensure and Discipline

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 **Del.C.** §1713(a)(12), proposes to revise regulation 6.0 to remove surplusage. Specifically, the proposal removes the words "less than once a quarter" from the regulation as it is unnecessary and renders the regulation's intent unclear. The Board will hold a public hearing on the proposed regulation change on July 22, 2014 at 3:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Shauna Slaughter, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until August 6, 2014 pursuant to 29 **Del.C.** §10118(a).

1700 Board of Medical Licensure and Discipline

(Break in Continuity of Sections)

6.0 Consulting Physician

Consultation may be done telephonically, electronically or in person. Consultation shall ordinarily consist of a history and physical examination, review of records and imaging pathology or similar studies. Consultation includes providing opinions and recommendations. An active Delaware certificate is required of any out of state physician who comes into Delaware to perform a consultation more than twelve (12) times per year. A physician who comes into Delaware to perform consultations ~~less than once a quarter~~ must be actively licensed in another State or country on a full and unrestricted basis. Any consultations done for teaching and/or training purposes may include active participation in procedures and treatment, whether surgical or otherwise, provided a Delaware licensed physician remains responsible as the physician of record, and provided the patient is not charged a fee by the consultant.

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

1700 Board of Medical Licensure and Discipline

DIVISION OF PROFESSIONAL REGULATION

1800 BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING AND REFRIGERATION EXAMINERS

Statutory Authority: 24 Delaware Code, Section 1806(a)(2) (24 **Del.C.** §1806(a)(2))
24 **DE Admin. Code** 1800

PUBLIC NOTICE

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

Pursuant to 24 **Del.C.** §1806(a)(2), the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners has proposed revisions to its rules and regulations. The rules are amended to provide a continuing education requirement.

A public hearing will be held on July 8, 2014 at 8:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be July 23, 2014 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on September 9, 2014 at 8:30 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners (Break in Continuity of Sections)

9.0 Continuing Education

9.1 Requirement

9.1.1 Continuing education (CE) is required of all licensees and shall be completed during the two year licensure period prior to the time of license renewal beginning with the 2016 renewal. Extra continuing education hours do not carry over to the next licensing period. Licensees will only get CE credit for their first attendance of CE courses during each licensing period. Licensees may retake a CE course in the same licensing period but will not receive additional CE credit.

9.2 Continuing Education Program Approval

9.2.1 Courses must be approved by the Board in order to qualify as CE. Approved courses appear on the website of the Division of Professional Regulation at www.dpr.delaware.gov. Licensees may also contact the Administrative Assistant of the Board at the Division of Professional Regulation to determine whether particular courses have been approved.

9.2.2 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing of plumbing or heating, ventilation, air-conditioning or refrigeration services.

9.2.3 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours and the curriculum vitae or resume of the instructor. The course is approved only for the instructor or instructors included in the request for approval. Approval of courses is in the discretion of the Board.

9.2.4 The following topics are appropriate but not exclusive:

Plumbing

- * Definitions
- * General Regulations
- * Fixtures and Faucets
- * Water Heaters
- * Water Supply and Distribution
- * Sanitary Drainage
- * Indirect / Special Waste
- * Vents
- * Traps, Interceptors and Separators

Heating

- * Definitions
- * General Regulations
- * Ventilation
- * Exhaust Systems
- * Duct Systems
- * Combustion Air
- * Chimneys & Vents
- * Special Appliances
- Fireplaces & Solid Fuel Burning Equipment

-
- | | |
|---|--|
| * <u>Storm Drainage</u> | * <u>Boilers, Water Heaters and Pressure Vessels</u> |
| * <u>Special Piping and Storage Systems</u> | * <u>Refrigeration</u> |
| * <u>Plumbing Permits & Local Regulations</u> | * <u>Hydronic Piping</u> |
| * <u>Gray Water Recycling Systems</u> | * <u>Fuel Oil Piping & Storage</u> |
| * <u>Structural Safety</u> | * <u>Solar Systems</u> |
| * <u>Vacuum Drainage Systems</u> | * <u>HVAC Permits and Local Regulations</u> |
| * <u>International Fuel Gas Code</u> | * <u>International Fuel Gas Code</u> |
| * <u>OSHA Compliance</u> | * <u>OSHA Compliance</u> |
| * <u>Back flow</u> | * <u>Business Practices and Ethics</u> |
| * <u>Business Practices and Ethics</u> | |

9.2.5 Sponsors or licensees seeking pre-approval should submit the request as at least 60 days before the CE course is being offered.

9.3 Hours Required

9.3.1 Licensees shall complete 6 hours of approved CE during each renewal period with the following exceptions:

- 9.3.1.1 A person licensed less than one year does not need to complete CE at the first renewal:
- 9.3.1.2 A person licensed one year but less than two years must submit 3 CE hours at the first renewal.
- 9.3.1.3 For plumbing licensees - 3 of the 6 CE hours required for renewal must be related to the International Plumbing and Fuel Gas Code. For HVAC&R licensees - 3 of the 6 CE hours required for renewal must be related to the International Mechanical and Fuel Gas Code. All licensees must complete an additional 3 CE hours related to safety, ethics or business practices.

9.4 Waiver of the CE Requirement

9.4.1 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship. A request for waiver must be submitted at least sixty days prior to the license renewal date.

9.5 Audit

- 9.5.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of this Regulation.
- 9.5.2 Attestation may be completed electronically at the time of online renewal.
- 9.5.3 The licensee shall retain all certificates and other documented evidence of attendance at an approved continuing education program for a period of at least three years. Upon request, such documentation shall be made available to the Board for random audit and verification purposes.

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

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

DIVISION OF PROFESSIONAL REGULATION

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 Del.C. §3006(a)(1))
24 DE Admin. Code 3000

PUBLIC NOTICE

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with the statutory provisions which govern the Board; eliminate regulatory references to the "Academy of Clinical Mental Health Counselors," a non-existent organization; and eliminate regulations stating that professional counselors must obtain licensure by first becoming assistant counselors.

The Board will hold a public hearing on the proposed rule change on June 25, 2014 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until July 10, 2014.

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

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

DIVISION OF PROFESSIONAL REGULATION

4400 DELAWARE MANUFACTURED HOME INSTALLATION BOARD

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 **Del.C.** §4416(b)(1))
24 **DE Admin. Code** 4400

PUBLIC NOTICE

4400 Delaware Manufactured Home Installation Board

The Delaware Board of Manufactured Home Installation, pursuant to 24 **Del.C.** §4416 (b)(1), proposes to revise its regulations. The proposed revisions to the regulations are administrative in nature.

The Board will hold a public hearing on the rule change on July 14, 2014 at 9:00 a.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Sandra Wagner, Administrator of the Delaware Board of Manufactured Home Installation, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, DE 19904.

4400 Delaware Manufactured Home Installation Board

(Break in Continuity of Sections)

2.0 Applications

- 2.1 All applications for licenses, certificates and renewal of licenses and certificates shall be submitted on forms approved by the Board.
 - 2.1.1 Applications may be obtained over the Internet at the Division of Professional Regulation's website. Applications may also be obtained in person during regular business hours or by mail from the Division of Professional Regulation.
 - 2.1.2 Renewal applications ~~may~~ shall be submitted in electronic form over the Internet. ~~A licensee or certificate holder who does not have Internet access or otherwise wishes to renew in paper form must contact the Division to request a paper renewal application, and submit the renewal~~

~~application sufficiently in advance of the renewal deadline to ensure that the license or certificate does not lapse.~~

- 2.2 The Board may require additional information or explanation when it has questions about an applicant's qualifications or application materials. An application is not complete until the Board has received all required and requested documents, materials, information and fees.
 - 2.2.1 Applications which are incomplete shall be retained for one year to allow an applicant the opportunity to supplement the application. After one year, incomplete applications are destroyed. Thereafter, an applicant must submit a new application with the appropriate fee.
 - 2.2.2 Applicants must meet the requirements for license or certification at the time their applications are complete.

(Break in Continuity of Sections)

6.0 Lapse and Renewal of Licenses and Certificates

- 6.1 The biennial licenses and certificates granted by the Board shall lapse on September 30th of each even numbered year beginning in 2008, or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee or certificate holder of the expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. License and certificate renewal ~~may~~ shall be accomplished online at the Division of Professional Regulation's website.
- 6.2 Each applicant for renewal must retain proof of completing the continuing education requirements. Extra continuing education hours do not carry over to the next licensing or certification period. Renewal applications will be audited by the Board for compliance with the continuing education requirements.
- 6.3 A license or certificate is lapsed when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status. A licensee or certificate holder may activate a lapsed license or certificate within one year of the date the renewal application was due by meeting all renewal requirements and paying an additional fee set by the Division of Professional Regulation.
- 6.4 An individual whose license or certificate has lapsed for more than one year must reapply as a new applicant. The applicant must take the examination required by §4416(b)(3) and achieve a passing score unless he or she previously passed an approved licensure test that covered the applicable law and standards in effect at the time of the new application.

7.0 Inactive License or Certificate; Expiration; Reactivation

- 7.1 A licensee or certificate holder with a valid license may request in writing to be placed on inactive status. Inactive status can be effective for up to two years.
- 7.2 Each inactive license and certificate shall expire at the end of the biennial licensing and certificate period applicable to active licensees, which is September 30 of even-numbered years beginning in 2008. An inactive license or certificate may be renewed for two years by application to the Division upon ~~proof~~ attestation of completion of 10 hours of continuing education in the past two years.
- 7.3 An inactive license may be reactivated by the Board upon written request on a form designated by the Board, proof of insurance and bond, proof that the licensee has completed the requisite continuing education, and payment of a prorated fee to be computed by the Division of Professional Regulation.
- 7.4 An inactive certificate may be reactivated by the Board upon written request on a form designated by the Board, proof of completion of the requisite continuing education, and payment of a prorated fee to be computed by the Division of Professional Regulation.
- 7.5 A licensee or certificate holder is not authorized to work as a licensed manufactured home installer or certified manufactured home installation inspector, respectively, in this State during the period of inactive status.

8.0 Continuing Education ("CE")

(Break in Continuity Within Section)

- 8.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 8.0.
- 8.4.1 Attestation ~~may~~ shall be completed electronically ~~if the renewal is accomplished online. Alternatively, licensees and certificate holders may submit the attestation in paper form on forms approved by the Board.~~
- 8.4.2 Licensees and certificate holders selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 8.5.
- 8.4.3 Approval of CE automatically expires on September 30, 2008 and every two years thereafter on each September 30. A sponsor must reapply for approval as provided in Rule 8.3.
- 8.5 Random audits will be performed by the Board to ensure compliance with the license and certificate requirements. Licensees and certificate holders selected for the random audit shall submit verification that they maintain the required bond and liability insurance, verification of required employment status, and the completion of the required CE, as applicable and any other information required by the Board to confirm their continued eligibility for the license or certificate.
- 8.5.1 In a renewal year, the Board will notify licensees and certificate holders within sixty (60) days after September 30 that they have been selected for audit.
- 8.5.2 Licensees selected for random audit are required to submit verification within twenty (20) days of ~~receipt~~ the date of the notification of selection for audit.
- 8.5.3 The Board shall review all documentation submitted by licensees pursuant to the CE audit. If the Board determines that the licensee has met the CE requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the CE requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the CE requirements. Unjustified noncompliance with the CE requirements set forth in these rules and regulations shall constitute a violation of 24 **Del.C.** §4441(a) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §4441.

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

4400 Delaware Manufactured Home Installation Board

DIVISION OF PROFESSIONAL REGULATION

5200 Board of Examiners of Nursing Home Administrators

Statutory Authority: 24 Delaware Code, Section 5206(1) (24 **Del.C.** §5206(1))
24 **DE Admin. Code** 5200

PUBLIC NOTICE

5200 Board of Examiners of Nursing Home Administrators

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 **Del.C.** §5206(1), proposes to revise its regulations. The proposed revisions to the regulations would mandate that AIT registrants take additional training in preparation for the National Association of Long Term Care Administrator Boards and the practice of nursing home administration. The Board has always strongly recommended that applicants take the course and now recommends that the course become mandatory pursuant to 24 **Del.C.** §5209(a)(1).

The Board will hold a public hearing on the proposed rule change on July 8, 2014 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Sheryl Paquette, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

5200 Board of Examiners of Nursing Home Administrators
(Break in Continuity of Sections)

2.0 Application for Licensure by Examination

- 2.1 Applications shall be made in writing on forms provided by the Board.
- 2.2 To obtain licensure, applicants must meet the educational and experience requirements ~~and~~ including completion of a program that the National Association of Long Term Care Administrator Boards (NAB) has approved, such as the Institute for Continuing Education & Research 120 hour program, University of North Carolina at Chapel Hill, long term care education, St. Joseph's College of Maine Nursing Home and Assisted Living Administration or York College of Pennsylvania 120 hour program.
 - 2.2.1 Applicants who have completed a baccalaureate or graduate degree from an accredited college or university with a major in long term care administration or the equivalent thereof are not required to complete the NAB program set forth in regulation 2.2.
- 2.3 Applicants must pass the National Association of Boards ("NAB") examination.
- ~~2.34~~ Applicants must obtain Board approval before they may take the NAB examination. To obtain Board approval, applicants must:
 - ~~2.34.1~~ Submit satisfactory evidence of having met one of the educational requirements under Section 5209(a)(1) of Title 24 of the **Delaware Code**, and
 - ~~2.34.2~~ Submit a plan to complete the Administrator-In-Training ("AIT") program that corresponds with their education in accordance with regulation section 3.0, and
 - ~~2.34.3~~ Identify the applicant's preferred Preceptors.
- 2.45 If the Board is satisfied that the applicant has completed the requisite education and approves the applicant's AIT plan and preferred Preceptors, the applicant shall be approved to begin their AIT program under the direct supervision of the approved Preceptors.
 - 2.45.1 Approved applicants shall begin their AIT program immediately.
 - 2.45.2 Applicants not approved by the Board may be given the opportunity to rectify deficiencies in their applications before denial of their application is proposed.
- 2.56 Applicants approved to take the examination will be granted licensure once the Board receives confirmation that the applicant has achieved a passing score of 75% or more on the National Association of Boards ("NAB") examination.
 - 2.56.1 Applicants who do not pass the first examination may retake the examination within the following three months after the date of the exam without further Board approval.
 - 2.56.2 Applicants who do not pass the second examination may retake the examination within the following six months after the date of the exam without further Board approval.
 - 2.56.3 Applicants who do not pass the third examination must obtain Board approval each time they wish to retake the examination. The Board will approve these applicants to retake the examination only after they complete 40 additional hours working under the direct supervision of a Delaware-licensed nursing home administrator in a skilled nursing facility previously approved by the Board.

(Break in Continuity of Sections)

9.0 Crimes substantially related to the practice of nursing home administration:

- 9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of nursing home administration in the State of Delaware without regard to the place of conviction:

PROPOSED REGULATIONS

(Break in Continuity Within Section)

9.1.229 Authorizing or permitting the operation of a motor ~~ny~~ vehicle by another. 21 **Del.C.** §2754.

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

5200 Board of Examiners of Nursing Home Administrators

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2202(b), 2304(c), and 3409
(5 **Del.C.** §§121(b), 2202(b), 2304(c), and 3409)
5 **DE Admin. Code** 2207, 2302, 3401 and 3402

PUBLIC NOTICE

2207 Exemption of Licensed Lenders

2302 Exemptions

3401 Regulations Governing Revocable and Irrevocable Trust Agreements

3402 Surety Bond or Irrevocable Letter of Credit

Summary

The State Bank Commissioner proposes to amend four Regulations adopted in accordance with Title 5 of the Delaware Code. Regarding Title 5, Chapter 22 (Licensed Lenders), the proposed amendment to Regulation 2207 (Exemption of Licensed Lenders) deletes certain outdated provisions and specifies that all exemptions issued pursuant to 5 **Del.C.** §2202(b) shall expire on December 31 of each year. Regarding Title 5, Chapter 23 (Sale of Checks and Transmission of Money), the proposed amendment to Regulation 2302 (Exemptions) specifies that all exemptions issued pursuant to 5 **Del.C.** §2304(c) shall expire on December 31 of each year. Regarding Title 5, Chapter 34 (Preneed Funeral Contracts), the proposed amendments to Regulation 3401 (Operating Regulation) and Regulation 3402 (Surety Bond or Irrevocable Letter of Credit) clarify, streamline and update the existing regulations for ease of understanding and increased relevance to current licensee operations. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed amended regulations in accordance with Title 5 of the Delaware Code. This notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, and Chapter 101, Subchapter II.

Comments

A copy of the proposed amended regulations is being published in the June 1, 2014 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether these proposed amended regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before July 3, 2014. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Amended Regulations

On or after July 3, 2014, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulations 2207, 2302, 3401, and 3402, or make additional changes because of the public comments received.

2207 Exemption of Licensed Lenders

5 Del.C. §2202(b)

Formerly Regulation No.: 5.2202(b)-0007

Effective Date: ~~June 11, 2004~~ Proposed

1.0 Purpose

- 4.4 This regulation governs the procedures and requirements for exemptions pursuant to 5 **Del.C. §2202(b)**.

2.0 Definitions

For the purpose of this regulation, the following definitions apply:

“**Commissioner**” means the State Bank Commissioner.

“**Exempt Person**” means a person that has been granted an exemption from the Statute pursuant to 5 **Del.C. §2202(b)** and this regulation.

~~“**Existing Exemption**” means an exemption from the Statute granted before the effective date of this regulation.~~

“**Person**” means an individual, corporation, partnership, or any other business entity or group or combination of individuals however organized.

“**Statute**” means 5 **Del.C. Ch. 22**.

(Break in Continuity of Sections)

4.0 Qualifications

- 4.4 An exempt person shall at all times maintain such financial responsibility, experience, character, and general fitness as to command the confidence of the community and to warrant belief that its business will be operated honestly, fairly, and efficiently within the purposes of the Statute.

(Break in Continuity of Sections)

7.0 Application of the Statute to Exempt Persons

- 7.4 Unless the Commissioner specifies otherwise, Subchapter II and Subchapter III of the Statute shall apply to all exempt persons as if they were licensees.

8.0 Expiration

- 8.4 Except as otherwise provided in this regulation, exemptions shall expire ~~one year from the date granted on~~ December 31 of each year.

9.0 Application and Renewals

- 9.1 Any person who desires an exemption from the Statute shall apply to the Commissioner on such forms as the Commissioner may designate.
- 9.2 An exempt person shall apply for a renewal of the exemption at least 30 days before the expiration of the exemption on such forms as the Commissioner may designate.

10.0 Changed Information

- ~~4.4~~ Exempt persons shall notify the Commissioner within 30 days of any changes in the information contained in the application for its exemption or the renewal thereof.

11.0 Extensions on License Applications

- 11.1 An exempt person who applies for a license under the Statute before the expiration or revocation of its exemption shall have the exemption automatically extended until a final decision is made on the license application.

12.0 Existing Exemptions

- ~~12.1 Existing exemptions shall expire on July 1, 2002.~~
- ~~12.2 Persons with existing exemptions may apply for a renewal of their exemption pursuant to this regulation at any time before June 30, 2002.~~
- ~~12.3 The provisions of all existing exemptions shall remain in effect until the exemption expires pursuant to subsection 12.1 of this regulation.~~

132.0 Suspension or Revocation

- 132.1 The Commissioner may suspend or revoke any exemption upon a finding that:
- 132.1.1 The exempt person has violated any statute, judicial order, administrative order, rule, regulation or other law of the State of Delaware, any other state or the United States of America;
- 132.1.2 Any fact or condition exists which if it had existed at the time of the application or renewal for the exemption, would have warranted the Commissioner in refusing to issue the exemption or its renewal;
- 132.1.3 The exempt person has engaged in unfair or deceptive business activities or practices in connection with extensions of credit to consumers. Unfair or deceptive activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer; or
- 132.1.4 The exempt person does not meet the qualifications specified in Section 4 of this regulation.
- 132.2 No exemption shall be suspended or revoked except in accordance with the procedures for suspending or revoking a license that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.
- 132.3 No suspension or revocation of an exemption shall impair or affect the obligation of any preexisting lawful contract between the exempt person and any other person.

143.0 Exemption Denials

- 143.1 If the Commissioner denies an exemption or the renewal of an exemption, the Commissioner shall promptly send the applicant or exempt person a written order to that effect which states the grounds for the denial. The applicant or exempt person may request that the Commissioner hold a hearing to reconsider that denial, in accordance with the procedures for requesting a hearing on the denial of a license application that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101. The Commissioner may extend the term of any exemption whose renewal has been denied until the final resolution of that hearing.

154.0 Fees

- 154.1 The investigation fee for an application for an exemption shall be \$250.00 and shall be submitted with the application.
- 154.2 The investigation fee for renewal of an exemption shall be \$100.00. A renewal application must be submitted more than 30 days in advance of the exemption's expiration.
- 154.3 A renewal application submitted less than 30 days in advance of the exemption's expiration shall be treated as a new application for an exemption and shall be subject to the investigation fee of \$250.

2302 Exemptions

5 Del.C. ~~§2318~~ §2304(c)

Effective Date: ~~November 11, 2007~~ Proposed

(Break in Continuity of Sections)

7.0 Expiration

Except as otherwise provided in this regulation, exemptions shall expire ~~one year from the date granted~~ on December 31 of each year.

(Break in Continuity of Sections)

13.0 Fees

- 13.1 The investigation fee for an initial application for an exemption shall be \$250.00 and shall be submitted with the application.
- 13.2 The investigation fee for renewal of an exemption shall be \$100.00. A renewal application must be submitted more than 30 days in advance of the exemption's expiration.
- 13.3 A renewal application submitted less than 30 days in advance of the exemption's expiration shall be treated as a new application for an exemption and shall be subject to the investigation fee of \$250.

3401 ~~Regulations Governing Revocable and Irrevocable Trust Agreements~~ Operating Regulation

5 Del.C. §§3404 and 3409

Formerly Regulation No.: ~~5.3404/3409.0001~~

Effective Date: ~~November 12, 1999~~ Proposed

1.0 Expiration and Renewal

All licenses under 5 Del.C. Ch. 34 shall expire on December 31 of each year. A renewal application must be submitted to the Commissioner before that date for a license to remain in effect.

2.0 Compliance with Applicable Laws

- 2.1 All licensees shall comply with 5 Del.C. Ch. 34, all regulations issued thereunder, and all other applicable State and federal statutes and regulations relating to preneed funeral contracts.
- 2.2 The manager and appropriate staff of each licensee shall familiarize themselves with all such statutes and regulations.
- 2.3 Each licensee shall maintain, either by paper copy or through electronic access, 5 Del.C. Ch. 34 and the following regulations:
 - 2.3.1 Regulation 101, Retention of Financial Institution Records;
 - 2.3.2 Regulation 3401, Operating Regulation; and
 - 2.3.3 Regulation 3402, Surety Bond or Irrevocable Letter of Credit.

3.0 Minimum Required Records

- 3.1 Each licensee shall maintain any records necessary to verify the licensee's compliance with 5 Del.C. Ch. 34, all regulations issued thereunder, and all other applicable State and federal statutes and regulations relating to preneed funeral contracts.
- 3.2 All such records shall be made available to the Commissioner's staff when requested.
- 3.3 Records may be maintained at any suitable location, but must be available within a reasonable period of time upon request.
- 3.4 All such records may be maintained by paper copy or in an electronic format.

- 3.5 All records shall be maintained in accordance with the time periods specified in Regulation 101, Retention of Financial Institution Records.
- 3.6 The Commissioner may grant written approval for variations from this section to accommodate specific record keeping systems. Requests for such approvals must be in writing and provide sufficient information concerning the system to ensure that the requirements of this section are satisfied and that the records will be readily available when requested.

4.0 Display of License

Each licensee shall prominently display its license issued under 5 **Del.C.** Ch. 34 in clear view of all customers.

45.0 Annual Statements to Preneed Contract Beneficiaries

- 45.1 At least once, annually, a each licensee shall ~~mail or~~ deliver, to each party for whom such licensee holds a beneficiary of its preneed funeral contracts, or an appropriate representative of the beneficiary, a statement containing, ~~at a minimum,~~ the following information:
- 5.1.1 the name and address of the financial institution where the trust account for the contract is held;
- ~~4.1.4~~ 5.1.2 the ~~previous balance in the total amount held in that~~ trust account ~~or at the beginning balance for~~ of the statement period;
- ~~4.1.2~~ 5.1.3 the number and amounts of payments received ~~for~~ during the statement period;
- ~~4.1.3~~ 5.1.4 the amount of interest accrued ~~interest for~~ during the statement period; and
- ~~4.1.4~~ 5.1.5 the ~~“ending” or total account balance for~~ amount held in the trust account at the end of the statement period; and,
- ~~4.1.5~~ the name and address of the financial institutions where the trust deposit is held.

6.0 Annual Statement to the Commissioner

- 6.1 Each licensee shall submit to the Commissioner on July 31st of each year a statement containing the following information for each of its preneed funeral contracts:
- 6.1.1 the name and address of the contract beneficiary and any appropriate representative of the beneficiary;
- 6.1.2 the name and address of the financial institution where the trust account for the contract is held;
- 6.1.3 the name and address of the trustee for the trust account;
- 6.1.4 the total amount held in the trust account as of June 30th; and
- 6.1.5 a certification from the financial institution that the information contained in the statement is true and accurate.

27.0 Disclosure Requirements for the Irrevocable Trust Documents

- 27.1 The trust document establishing ~~the an~~ irrevocable trust permitted by Section 3404 of Title 5 of the **Delaware Code** shall contain, ~~at a minimum,~~ the following mandatory provisions:
- 27.1.1 A provision ~~which~~ expressly identifies stating that the trust as is irrevocable ~~for the lifetime of the beneficiary;~~
- 27.1.2 A provision ~~for the disposition of trust funds to an alternate trustee that~~ upon the discontinuation of business or the inability to provide the contracted goods or services by the original trustee ~~in accordance with the terms of the trust or a provision for the transfer of trust funds, to a new trustee, at the consumer's election,~~ the funds held in the trust shall be transferred to either a specified successor trustee or a successor trustee selected by either the contract beneficiary, or an appropriate representative of the beneficiary;
- 27.1.3 A provision that ~~in the event funds paid into if funds held by~~ the trust are inadequate, at the time of the death of the contract beneficiary, to cover anticipated the beneficiary's funeral expenses, the trustee shall contribute all trust funds toward payment of ~~the actual funeral expenses for the funeral of the beneficiary~~ those expenses;

- ~~27.1.4~~ A provision that ~~in the event the sum of the funds held by the trust exceeds the total actual costs of the goods and services for the funeral of the beneficiary~~ the beneficiary's funeral expenses, the excess funds shall be paid to the ~~beneficiary's estate of the beneficiary~~;
- ~~27.1.5~~ A provision that the trustee may, from time to time, accept ~~periodic~~ monetary contributions to the trust, ~~provided that the principal sum contributed, exclusive of interest earned, shall not exceed \$10,000; and~~
- ~~27.1.6~~ A provision ~~which shall state~~ stating "In no event shall the principal amount of the trust exceed \$10,000 ~~plus~~ \$15,000, excluding accrued interest."

8.0 Examination Fees and Supervisory Assessments

- 8.1 The Commissioner may examine licensees pursuant to Section 122 of Title 5 of the Delaware Code. The costs of such examination are assessed in accordance with Section 127(a) of Title 5. A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 8.2 The Commissioner shall assess each licensee a supervisory assessment, which is due and payable on August 1 each year, in accordance with Section 127(b) of Title 5 of the Delaware Code.
- 8.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with Sections 127(a) and 127(b) of Title 5 of the Delaware Code.

9.0 Examination Responses

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

3402 Surety Bond or Irrevocable Letter of Credit

5 Del.C. §§3409 and 3411

Effective Date: ~~November 11, 2007~~ Proposed

1.0 Bond or Irrevocable Letter of Credit Required

A Each licensee shall file with the State Bank Commissioner (the "Commissioner") an original corporate surety bond or an irrevocable letter of credit in a form satisfactory to the Commissioner in accordance with 5 Del.C. §3411. The minimum amount of the surety bond or irrevocable letter of credit is based on the factors identified in that section.

2.0 Amount of Bond or Irrevocable Letter of Credit

- 2.1 A Each licensee shall obtain a surety bond or irrevocable letter of credit in a minimum amount in accordance with the following table based upon the maximum dollar value of the trust funds it held as a trustee during the twelve month period ending October 31 that precedes the calendar year for which the bond or irrevocable letter of credit is effective. A licensee who obtains a surety bond that is effective for more than one year or an irrevocable letter of credit shall annually review the amount of the surety bond or letter of credit, to ensure that the minimum required amount is maintained. The minimum required amount of the surety bond or irrevocable letter of credit shall be maintained according to the following table:

Maximum Dollar Value of Trust Funds Held by Licensee	Minimum Required Amount of Surety Bond or Irrevocable Letter of Credit
not more than \$50,000	\$50,000
\$50,001 - \$75,000	\$75,000
\$75,001 - \$100,000	\$100,000

PROPOSED REGULATIONS

\$100,001 - \$125,000	\$125,000
\$125,001 - \$150,000	\$150,000
\$150,001 - \$175,000	\$175,000
\$175,001 and over	\$200,000

~~3.0~~ 2.2 Subject to the \$200,000 cap, the Commissioner may require a licensee to obtain a larger surety bond or irrevocable letter of credit based upon the licensee's individual circumstances.

~~4.0~~ A licensee that obtains a surety bond or irrevocable letter of credit that is effective for more than one year shall review on November 1 of each year the dollar value of the trust funds it held during the previous twelve month period to ensure that the minimum required amount for its surety bond or irrevocable letter of credit is maintained for the following calendar year.

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

Banking Regulations 2207, 2302, 3401, and 3402

DIVISION OF RESEARCH

OFFICE OF THE REGISTRAR OF REGULATIONS

Statutory Authority: 29 Delaware Code, Section 1134(a)(4) (29 Del.C. §1134(a)(4))

PUBLIC NOTICE

Regulation Governing Administrative Rulemaking Procedures

The Registrar of Regulations of the Division of Research of the Legislative Council, pursuant to 29 Del.C. §1134(a)(4), proposes to adopt Regulation Governing Administrative Rulemaking Procedures. The purpose of the regulation is to provide procedures for the filing of regulations under the Administrative Procedures Act, 29 Del.C. Ch. 101, and for publication in the Delaware *Register of Regulations* and the *Administrative Code*. The regulation was presented at the April 30, 2014 meeting of the Legislative Council.

Persons wishing to present their views regarding the proposed new regulation must do so in writing by 4:30 pm on July 1, 2014 to Vicki Schultes, Office of the Registrar of Regulations, Division of Research, 411 Legislative Avenue, Dover, DE 19901 or by email to Vicki.Schultes@state.de.us. Copies of the regulation are available for review in the June 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> and are available from the above address.

Regulation Governing Administrative Rulemaking Procedures

1.0 Authority and Purpose

- 1.1 This regulation establishes procedures for filing and publication of agency regulations under 29 Del.C. Ch. 101.
- 1.2 The procedures of this regulation constitute minimum requirements for regulation filing and publication. Other governing statutes, federal laws, or federal regulations may require additional regulation filing and publication procedures, including the Regulatory Flexibility Act, 29 Del.C. Ch. 104.

2.0 Definitions

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

"Agency" means agency as defined in 29 **Del.C.** §10102.

"Codify" means the process of collecting, arranging, and publishing administrative regulations systematically in the *Delaware Administrative Code*, and includes the process of verifying that each amendment was marked as required in Section 6.0 of this regulation.

"Division" means the Division of Research of Legislative Council as established pursuant to 29 **Del.C.** Ch. 11.

"File" means an agency's electronic submission of regulatory documents to the Registrar of Regulations for publication.

"Official regulation" means a regulation in its final form as adopted by an order as defined in 29 **Del.C.** §10118 and filed with the Registrar of Regulations.

"Publish" means to compile and make regulations available to the public by full text or summary and includes availability in an electronic format.

"Register" means the *Delaware Register of Regulations*, a publication authorized and recognized by law published for public information purposes, providing public notice of changes in agency regulations, whether new, modified or repealed, together with supplemental information as deemed appropriate by the Registrar, as outlined in 29 **Del.C.** §1134.

"Registrar" means the Registrar of Regulations, an employee of the Division charged with the responsibility of compiling, maintaining, and publishing the *Register of Regulations*.

"Regulation" means regulation as defined in 29 **Del.C.** §10102.

"Regulation Drafting Manual" means the *Delaware Administrative Code Drafting and Style Manual*, a manual of composition and style guidelines and requirements for drafting documents to be published in the *Delaware Register of Regulations* and the *Delaware Administrative Code*.

3.0 Publication Dates and Deadlines

3.1 Pursuant to 29 **Del.C.** §§10115 and 10118, an agency shall file its regulation and its public notice or final order by 4:30 p.m. on the fifteenth day of the month for publication in the *Register* issued on the first of the next month.

3.2 If the fifteenth day is a Saturday, Sunday, or holiday, the agency shall file the regulation and public notice or final order by 4:30 p.m. on the next regular business day.

3.3 Any regulation received after the deadlines provided in subsections 3.1 and 3.2 for publication in the next calendar month shall be held for publication in the *Register* for the calendar month that follows the missed publication date.

3.4 The official date of publication for the *Register* is the first day of each calendar month as required by 29 **Del.C.** §1136.

4.0 Public Comment Period for a Proposed Regulation

4.1 For the purposes of 29 **Del.C.** §10118, "30 days" is computed by:

4.1.1 Counting the day after publication of the regulation as the first day; and

4.1.2 Counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless

4.1.3 The thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the thirtieth day is the next regular business day.

4.2 The extended "15 days" of public written comment under 29 **Del.C.** §10118 is computed by:

4.2.1 Counting the day after the final public hearing on the proposed regulation, if applicable, as the first day; and

4.2.2 Counting the fifteenth consecutive day after the day of the public hearing as the fifteenth day, unless

4.2.3 The fifteenth consecutive day is a Saturday, Sunday, or holiday, in which event the fifteenth day is the next regular business day.

5.0 Final Order and Effective Date for a Final Regulation

- 5.1 Pursuant to 29 Del.C. §10118, upon expiration of the public comment period designated in the regulation analysis and filed with the regulation, and before expiration of 12 months after the end of the public comment period for the regulation or the last public hearing, whichever is later, the agency proposing the regulation shall notify the Registrar of the date the regulation is to become effective and enforceable by filing an order with the Registrar as specified in 29 Del.C. §10118.
- 5.2 The agency shall notify the Registrar after determining that the proposed regulation, in the form published, shall be the final form of the regulation, and after informing the Registrar of any nonsubstantive changes in the regulation as provided for in 29 Del.C. §10118 and marked as described in the *Regulation Drafting Manual*.
- 5.3 The agency shall file with the Registrar a final order and copy of the regulation, which shall clearly identify the proposed regulation, state the date the proposed regulation was published in the *Register*, and state its effective date.
- 5.4 The date designated as the effective date shall be at least 10 days after the date the final regulation is to be published in the *Register*. The earliest effective date is the 11th of the month of publication of the final regulation.
- 5.5 The Registrar shall publish the final order, effective date, and the final regulation, in full or as a summary, in the next issue of the *Register*, subject to section 3.0 of this regulation.

6.0 Regulation Drafting Manual: Underscoring and Striking Out

- 6.1 Drafting Manual
- 6.1.1 An agency shall follow the guidelines for drafting regulations set out in the *Regulation Drafting Manual*.
- 6.1.2 The *Regulation Drafting Manual* is available in hardcopy from the Division and can be found online at: http://regulations.delaware.gov/services/style_manual.shtml.
- 6.2 An agency shall request the official regulation text from the Registrar prior to drafting and filing regulation changes.
- 6.3 Underscoring and Striking Out
- 6.3.1 An agency shall underscore language to be added and strike out language to be deleted in changes in proposed regulations, emergency regulations, and nonsubstantive changes.
- 6.3.2 When an agency proposes to make a new regulation or section, the entire proposed text shall be underscored.
- 6.3.3 Repealing a Regulation
- 6.3.3.1 When an agency proposes to repeal a complete regulation, it shall include as part of the information provided in the regulation public notice or final order a brief summary of the deleted language and a brief explanation of why the regulation is being repealed.
- 6.3.3.2 The agency shall file with the regulation public notice or final order a copy of the text to be deleted in one of the following formats:
- 6.3.3.2.1 Each page annotated "repealed in its entirety"; or
- 6.3.3.2.2 The entire text struck out in its entirety.
- 6.3.3.3 The Registrar may refuse to publish the full text of repealed regulations unless space is available within the page limits of the *Register*.
- 6.4 When an agency fails to mark a change as described in this section, the Registrar may refuse to codify the change. When determining whether or not to codify an unmarked change, the Registrar shall consider:
- 6.4.1 Whether the unmarked change is substantive or nonsubstantive; and
- 6.4.2 If the purpose of public notification has been adequately served.

6.5 The Registrar's refusal to codify an unmarked change means that the change is not operative for the purposes of 29 Del.C. Ch. 101 and that the agency must comply with regular administrative rulemaking procedures to make the change.

7.0 Refusal to Publish or Codify a Regulation or Regulation Change

7.1 The Registrar may not publish a proposed regulation or regulation change when the Registrar determines the agency has not met the requirements of 29 Del.C. Ch. 101 and Ch. 104 and this regulation.

7.2 The Registrar may not publish an agency's final order and effective date, nor codify the regulation or regulation change in the *Delaware Administrative Code*, if the agency exceeds the 12-month limit required by 29 Del.C. §10118(f).

7.3 The Registrar shall notify the agency of a refusal to publish or codify a regulation or regulation change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

8.0 Use of Incorporation by Reference in Regulations

8.1 An agency incorporating materials by reference shall comply with the following standards:

8.1.1 The regulation shall state specifically that the cited material is "incorporated by reference."

8.1.2 If the material contains options, or is modified in its application, the options selected and modifications made shall be stated in the regulation.

8.1.3 If the incorporated material is substantively changed at a later time, and the agency intends to enforce the revised material, the agency shall amend its regulation through administrative rulemaking procedures to incorporate by reference any applicable changes as soon as practicable.

8.1.4 An agency shall describe substantive changes that appear in the materials incorporated by reference as part of the public notice or final order filed with the regulation.

8.2 An agency shall comply with copyright requirements when it provides the Registrar a copy of material incorporated by reference.

9.0 Agency Contact

9.1 An agency shall submit the name and contact information of the contact person responsible for filing the agency's regulations with the Office of the Registrar.

9.2 The agency shall update the contact information with the Office of the Registrar within 15 days after a change in the contact person for the agency.

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 AGRICULTURE
THOROUGHBRED RACING COMMISSION**

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

ORDER

1001 Thoroughbred Racing Rules and Regulations

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

1. Pursuant to its statutory authority, the Commission proposed for adoption revisions to the Commission's Regulation 8.8.3. Other regulations issued by the Thoroughbred Racing Commission are not affected by this Order.
2. A copy of the proposed regulations was published in the April 1, 2014 edition of the Delaware *Register of Regulations* and has been available for inspection in the office of the Commission at 777 Delaware Park Boulevard, Wilmington, Delaware 19804 during regular office hours.
3. The Commission did not receive any written comments on the proposed regulations during the 30 day period following publication of the proposed regulations on April 1, 2014.
4. THEREFORE, IT IS ORDERED, that the proposed regulation is adopted and shall become effective ten days after publication of the final regulation in the Delaware *Register of Regulations*.

***Please note that no changes were made to the regulation as originally proposed and published in the April 2014 issue of the Register at page 948 (17 DE Reg. 948). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1001 Thoroughbred Racing Rules and Regulations

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

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

ORDER

1915(i) Home and Community-Based Services Waiver Renewal Application

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) / Division of Developmental Disabilities Services (DDDS) initiated proceedings to notify the public that a 1915(c) Home and Community-Based Services Waiver (HCBS) waiver renewal application has been submitted to the Centers for Medicare and Medicaid Services (CMS). The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the April 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Services (DMMA)/Division of Developmental Disabilities Services (DDDS) has submitted a 1915(c) Home and Community-Based Services (HCBS) Waiver renewal application to the Centers for Medicare and Medicaid Services (CMS).

Statutory Authority

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*

Background

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The waiver to provide home and community-based services to developmentally disabled adults was developed by the Division of Developmental Disabilities Services (DDDS) and the Division of Social Services (DSS) in 1982, received approval from the Center for Medicare and Medicaid Services (CMS), and became effective on July 1, 1983. The waiver includes support services necessary to maintain individuals in the community as an alternative to institutionalization. The cost of the Home and Community-Based Services Waiver for the Developmentally Disabled (HCBS/DD) shall not exceed the cost of care of the Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

DDDS is the agency that has primary responsibility for administering the HCBS/DD waiver as well as providing, or contracting for the provision of, most of the services. Providers of Pre-Vocational Training, Supported Employment and Residential Habilitation services are certified by DDDS and contract directly with the Delaware Medical Assistance Program (DMAP).

Summary of Proposal

Pursuant to the public notice requirements of section 1902(a)(13)(A) of the Social Security Act, 42 CFR 447.205, 42 CFR 441.304 and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Medicaid and Medical Assistance/Division of Developmental Disabilities Services (DHSS/DMMA/DDDS) is seeking public comments on the 1915(c) Home and Community-Based Services (HCBS) Waiver renewal application. The current waiver expires on June 30, 2014 and must be renewed every five (5) years.

Draft of Proposed Waiver Renewal Application

A draft of Delaware's waiver renewal application and a summary of proposed changes are currently available for review on the Division of Developmental Disabilities Services website at

<http://www.dhss.delaware.gov/ddds/>.

The provisions of this waiver renewal application are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

There is no increase in cost on the General Fund. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

DDDC - March 10, 2014 Letter and GACEC and SCPD - March 12, 2014 Memorandum

The Delaware Developmental Disabilities Council (DDDC) and the State Council for Persons with Disabilities (SCPD) have reviewed the Department of Health and Social Services/Division of Developmental Disabilities Services' (DDDS) application to CMS for a §1915(c) Home and Community-Based Services Waiver.

On February 28, 2014, the Division of Developmental Disabilities Services forwarded a notice to the DD Council and other agencies that its draft waiver renewal was available for review on its website. We are providing the following analysis of the document. Given time constraints, this critique should be considered preliminary and non-exhaustive. Parenthetically, since the notice recites that DDDS intends to submit its application to CMS "not later than the end of the week of March 10th", the DD Council is sending these comments for consideration.

Agency Response Note: Thank you for your thoughtful comments on the renewal application for the DDDS HCBS Medicaid Waiver on behalf of DDC and SCPD (The Council). With regard to your specific comments, please note that each "Agency Response" provided below was developed and prepared by the Division of Developmental Disabilities Services (DDDS).

1. Preliminarily, the Council would like to express concern with the truncated opportunity for comment. The "Public Input" section (p. 8) recites that DDDS will publish notice of the renewal in the Register of Regulations and establish a 30-day comment period. In contrast, no notice has appeared in the Register of Regulations and the February 28 notice emailed to the DD Council offers only a 2-week comment period since DDDS plans to submit its application during the week of March 10. In practice, DHSS submits its proposed waivers to the Register with at least a 30-day comment period. Compare 17 Del. Reg. 156 (August 1, 2013); 17 DE Reg 688 (January 1, 2014); and 17 DE Reg. 930 (March 1, 2014).

Agency Response: The public will have additional opportunities to comment before the waiver renewal is finalized. Notice regarding the waiver renewal appeared in the April 1, 2014 issue of the Delaware Register of Regulations and allows for the full thirty (30) day comment period. The completion of the waiver renewal document was delayed and in order to allow sufficient time for the Centers for Medicare and Medicaid Services (CMS) review and for public comment; those processes are running concurrently.

2. Delaware DHSS has included participant direction into its recent waiver initiatives, including personal care/ attendant services in both the "Pathways to Employment" waiver [17 DE Reg. 688 (January 1, 2014) and the

Diamond State Health Plan Plus waiver [16 DE Reg. 1140 (May 1, 2013)]. CMS explicitly encourages states to include participant direction in their waivers:

CMS urges states to afford all waiver participants the opportunity to direct their services. Participant direction of services includes the participant exercising decision-making authority over workers who provide services, a participant-managed budget or both. CMS will confer the Independence Plus designation when the waiver evidences a strong commitment to participant direction.

At 91. The first explicit objective for the DDDS waiver is to "(p)romote independence for individuals enrolled in the waiver...". At 4.

In contrast, DHSS certifies (p. 90) that "(t)his waiver does not provide participant direction opportunities." This rejection of participant direction opportunities is reiterated throughout the document. See, e.g., pp. 5, 41, and 43.

The rejection of participant direction opportunities is an anachronism.

Agency Response: At the present time, DDDS does not have the infrastructure to support participant directed services.

3. The DDDS eligibility regulation [16 DE Admin Code 2100] includes individuals with brain injury. In contrast, the waiver contains zero (0) references to brain injury. It explicitly covers (p. 20) persons with intellectual developmental disability, autism spectrum disorder, and Prader Willi Syndrome. This may be cause for alarm, particularly among proponents of services for individuals with brain injury who are being manifestly omitted from waiver coverage.

Agency Response: The criteria in the waiver renewal application do not specifically reference individuals with brain injury, but they are nevertheless included in the waiver target group. The waiver application references the DDDS eligibility criteria as one of the criteria for waiver eligibility. The current DDDS eligibility criteria refer to "mental retardation" and "brain injury". DDDS is in the process of revising its division eligibility to replace the term "mental retardation" with "intellectual disability". The proposed terminology in the proposed DDDS eligibility criteria of "intellectual disability" encompasses individuals with brain injury (if it occurred within the developmental period) if they also meet functional limitations as specified in the DDDS criteria. It is our hope that the proposed DDDS eligibility criteria will be in effect before the effective date of the waiver renewal on July 1, 2014 so that the language will be consistent. Because several other groups and individuals raised this same concern, DDDS will ask CMS to add the term "brain injury" to the waiver application to make it clear that this population is included.

4. DDDS proposes (p. 20) no upper or maximum age limit for participants. However, although the current waiver covers children ages 4 and up, DDDS proposes (pp. 1 and 20) to restrict eligibility to children age 12 and older. This is objectionable and short-sighted for several reasons.

A. Historically, DDDS has offered shared living/foster care for children with families with special interest and expertise in caring for individuals with developmental disabilities. If approved, DDDS could no longer pay for this service on behalf of children under age 12 with the federally subsidized waiver funds.

B. The attached DDDS enabling statute [Title 29 Del.C. §7909A] imposes a "duty" to provide "foster care placements", "neighborhood homes", and "supported living" without any exclusions based on age. In the absence of a statutory authorization to discriminate based on age, DDDS cannot limit its services to certain age groups without violating the Age Discrimination Act and its implementing regulations. When the Division adopted a policy of excluding minors from its group home system in the past, it was "prompted" to settle an HHS OCR complaint by rescinding the policy. See attachments. Cf. attached OCR directive to Division of Public Health that presumptive age limit for nursing home admission violates Age Discrimination Act and attached DSAAPD letter to DFS successfully challenging age limit on foster parents based on Age Discrimination Act. If CMS approves the age restriction in the waiver, DDDS will still have to provide residential and other waiver services to children under age 12. It will simply have to do so with no federal Medicaid match.

C. The DDDS enabling statute [§7909(c)(4)] requires DDDS to provide early intervention services to children ages 0-3. Early intervention services under the DHSS implementation of IDEA-Part C include a lengthy list of supports and services. See, e.g. Title 16 Del.C. §212. Moreover, some children with developmental disabilities are eligible for IDEA-Part B at birth. The Interagency Collaborative Team (ICT) [Title 14 Del.C. §3124] could prompt DDDS to provide residential programming to such children. If the children are ineligible for the waiver based on age, DDDS will have to provide residential services solely with state funds.

D. In the past, DDDS investigated systemic neglect of young children with developmental disabilities in a nursing facility (Harbor Health). See attached News Journal articles. The availability of waiver-funded residential options on an emergency basis would be an important resource if such a situation recurred. If the Division "ties its

hands" by excluding pre-teens from the waiver, it loses capacity to address this type of situation.

Agency Response: As referenced in the waiver application, DDDS has used Medicaid claims data to verify that no one under the age of twelve (12) has ever received a DDDS waiver service. Based on the services included in the waiver benefit package, it is not designed for children. The DDDS eligibility criteria still allow the division to serve individuals age four (4) and above as part of its state mandate if they otherwise meet the DDDS eligibility criteria. The citation from the Delaware Code referenced by the Council only relates to services provided by the Division using state funds and does not govern services provided under a federal Medicaid waiver. So-called "Comprehensive" Medicaid HCBS waivers, such as the DDDS Waiver, are commonly limited by age. The early intervention services referred to by the Council are provided by the Division of Public Health (DPH) and the Birth to Three programs in the Division of Management Services (DMS) and not by DDDS. The department is in the process of requesting an amendment to the statute to correct the operating responsibility for this program.

5. Although the waiver document (p. 69) generally suggests that the "State does not impose a limit on the amount of waiver services", the State imposes (pp. 55-56) an absolute weekly cap of forty (40) hours on supported living. The effect will be "creaming", i.e., only individuals with modest to mild needs will be able to live in supported apartments or their own homes since support services are capped. Perhaps this is why DDDS projects 825 waiver participants in group homes and only thirty (30) participants in supported living in the first year of implementation. See pp. 148-149. The absolute cap on supported living undermines "choice" and the recently published CMS policy preference for provision of waiver services in integrated settings [79 Fed. Reg. 2948 (January 16, 2014)]. The revised CMS regulation [42 C.F.R. 441.745; 79 Fed Reg at 3038] recites that "a State may not limit access to services based upon....the cost of services."

Agency Response: The response to the waiver section indicating whether the State proposes to place additional limits on waiver services, except as provided in Appendix C, is correct. There are no proposed limits other than those imposed in Appendix C. Supported Living is the only service for which a limit in the number of units a member can receive is specified. Limits on individual services are allowed by CMS. The limit proposed for Supported Living is based on the amount of support currently received by individuals paid for by DDDS with State funds. No individual currently receives more than thirty-five (35) hours per week and the majority of the individuals receive fifteen (15) hours. The number of projected waiver members receiving this service is also based on the individuals currently receiving this service and how many of them are likely to meet waiver eligibility rules.

6. The waiver document recites that shared living providers offer residential habilitation services and "are paid at the Medicaid rate for the hours of support they provide up to a maximum of the support hours indicated by the member's ICAP score." At p. 139. It is unclear if there is an absolute cap on payment under the ICAP system. If there is a cap, this may limit "choice" and the ability of high-need individuals to avoid institutional placement.

Agency Response: The Inventory for Client and Agency Planning (ICAP) is an assessment instrument that assists agencies such as DDDS in determining the support needs of individuals with intellectual developmental disabilities. The assessment scores are translated into a recommended number of support hours per day for each client. The number of support hours is then multiplied by the hourly rate that is applicable to each waiver service. For residential habilitation providers, this computation results in a per diem payment arrangement (ICAP hours x hourly rate). The limit of ICAP hours per day is twenty-four (24) if the client is supported in a 1:1 arrangement. The hourly rates for residential habilitation were developed independent of the ICAP assessments. States use different assessment tools to determine the level of direct support needed for each client.

7. The waiver document (p. 59) contains the following description of neighborhood group homes: "Each resident must have their own bedroom unless they express a preference to share a room". This is of questionable accuracy. The DDDS neighborhood regulation [16 DE Admin Code 3310, §8.0] does not contain such a standard. Parenthetically, private rooms must be an available option in waivers based on a participant's choice. See 79 Fed Reg at 2964.

Agency Response: DDDS does not believe that there is a conflict. This language in the waiver application communicates DDDS's expectations for waiver recipients who reside in Neighborhood Group Homes. The Division of Long Term Care Residents Protection (DLTCRP) regulations govern all facilities in Delaware that are licensed as Neighborhood Homes for Persons with Developmental Disabilities. Not all residents of neighborhood homes are enrolled in the DDDS HCBS waiver. The statement in the waiver only applies to waiver members.

8. The waiver document authorizes relatives to serve as providers of both "shared living" and "supported living" services. See pp. 2, 55-56 and 61. The CMS templates allows the State to authorize "guardians" to serve as providers as well. Id. However, DHSS has rejected this option. Id. This is unfortunate for several reasons.

A. Other DHSS programs do not bar provision of services by guardians. DDDS has suggested that, in the

common situation in which parents are co-guardians of an adult child, a Chancery Court petition could be filed to remove one parent as guardian so the "removed" parent could qualify as a waiver service provider. This is a rather byzantine approach.

B. DDDS has experienced great difficulty in promoting relatives to petition for guardianship when necessary. The exclusion of guardians from serving as waiver providers will simply provide an additional disincentive to relatives considering pursuit of guardianship.

C. One of the purposes of the waiver is to "promote the engagement of family ...supports whenever possible." At p. 4. This objective is undermined by the ban on guardian providers.

Agency Response: By making this change, DDDS is opening the opportunity for family members to become Shared Living Providers for the first time in this waiver. The CMS Technical Guide, states "*When payments are to be made to a legal guardian, the waiver should include safeguards for determining that the provision of services by a legal guardian are in the best interest of the waiver participant, especially when the legal guardian exercises decision making authority on behalf of the participant in the selection of waiver providers*". DDDS believes that it does not have sufficient infrastructure to guarantee sufficient safeguards for the waiver participant at this time. Once this current change has been approved by CMS, DDDS is willing to work with family members who are guardians and would like to become Share Living Providers to create safeguards to comply with CMS expectations and amend the waiver in the future.

9. It is our belief that DDDS has approved a parent to serve as a prevocational service provider. The waiver document would apparently disallow any relative from serving as a prevocational provider since the "check-off" for relatives is blank. See p. 43. Likewise, a relative could not provide individual supported employment. See p. 49.

Agency Response: For each waiver service, DDDS must indicate whether the service is "provider managed" or "participant directed". For the Pre-vocational Service, DDDS has indicated that the service will be provider managed. Agencies that provide this service may hire any individual to provide the direct support as long as they meet the hiring qualifications, such as training or education, possession of a valid driver's license and the criminal background check, etc. Agencies are not prohibited from hiring relatives of waiver members if they otherwise meet all applicable qualifications. Under the arrangement described above, the box for "Relatives" should not be checked for Prevocational Service in the waiver application.

10. The qualifications for a DDDS case manager are "meager". See p. 70. A high school diploma is not even necessary.

Agency Response: The qualifications for the DDDS case managers are the qualifications for the State of Delaware Merit System classification of Senior Social Worker/Case Manager. Qualifications for all State Merit classifications are developed by the Delaware Office of Management and Budget. In addition to the minimum qualifications, case managers must receive a core curriculum of training as specified in DDDS policy after they are hired.

11. Although there is one outlier reference to diversion from a nursing facility, the waiver generally adopts an ICF/IID level of care standard. See pp. 3, 20, 31, and 147. Since some waiver participants could lack an intellectual disability (e.g. DDDS autism eligibility regulation does not require intellectual deficit), the State could consider multiple level of care settings for inclusion in the waiver. For example, the attached December, 2013 DDDS census report lists 37 DDDS clients in nursing homes.

Agency Response: This waiver is designed to meet the needs of individuals with an intellectual developmental disability. Therefore, the institutional standard for which the home and community based services offered under this waiver are provided "in lieu of" is the ICF/IID level of care and not a nursing facility level of care. The thirty-seven (37) individuals listed on the DDDS census report that are indicated as residing in nursing facilities are individuals that have been determined to have an intellectual disability as a result of a pre-admission screen (a PASRR Pre-Admission Screening and Resident Review Level 2 screen) and have been determined to need "specialized services" to address their disability. Per OBRA 1987, DDDS is the designated DD authority and is required to provide the specialized services these individuals need. These individuals are eligible for nursing facility services which are provided by a managed care organization under the 1115 waiver in Delaware. Per the terms and conditions of the 1115 waiver, individuals cannot be simultaneously enrolled in the 1115 waiver (which includes the Diamond State Health Plan Plus Long Term Care benefits) and the DDDS waiver. Furthermore, states are prohibited from providing waiver services to a person who resides in an institution per 42 CFR 441.301(b)(1)(i) (see citation below)

(b) If the agency furnishes home and community-based services, as defined in §440.180 of this subchapter,

under a waiver granted under this subpart, the waiver request must-

- (1) Provide that the services are furnished-
- (ii) Only to beneficiaries who are not inpatients of a hospital, NF, or ICF/IID;

12. The waiver document contains multiple recitals that the waiver will limit services to participants to those "not otherwise available to the individual through a local educational agency under the Individuals with Disabilities Education Act (IDEA)...". See pp. 7, 47, and 49. This may contravene federal law. See attachments. See also 34 C.F.R. §303.222.

Agency Response: Per the CMS technical assistance guide, states are required to include the language in question in HCBS waiver applications that include certain statutory services. Language at 42 CFR 440.180 (a)(3)(i) and (ii) contain this prohibition against covering services under a waiver that could otherwise be covered via IDEA or the Rehabilitation Act. The waiver language does not contravene federal law but is instead in compliance with the law as it applies to all HCBS waivers under Section 1915(c). The regulatory language is excerpted below:

(3) *Services not included. The following services may not be included as habilitation services:*

(i) *Special education and related services (as defined in sections 602(16) and (17) of the Education of the Handicapped Act) (20 U.S.C.1401 (16) and (17)) that are otherwise available to the individual through a local educational agency.*

(ii) *Vocational rehabilitation services that are otherwise available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).*

13. The section on restraints (pp. 100 and 103) is not entirely accurate. It recites that the sole standard applied by providers is "Mandt" protocols which limit personal restraints to "the one and two person side body hug and the one and two arm supporting technique." In practice, DDDS has recently authorized some providers (e.g. AdvoServ) to use non-Mandt approved "supine" restraint.

Agency Response: Appendix G-2 b. i. of the waiver application indicates that "All contracted providers are required to participate in the Mandt system crisis intervention training or a DDDS approved equivalent." The language referenced by The Council in Appendix G-2 a. i. "Permitted planned personal restraints are limited to the one and two person side body hug and the one and two are supporting technique as described in the Mandt protocol" should have included the additional statement, "or other equivalent procedures and protocols approved by the Division." DDDS will ask CMS for permission to revise this language in the waiver application.

14. The description of case manager activities in connection with ELP development (pp. 71-72) appears to be either inflated or hortatory. The document describes robust pre-planning activities beginning months prior to the actual ELP meeting.

Agency Response: The process described in the waiver renewal application is one that has been under development in the Essential Lifestyle Plan (ELP) Committee for several months and is in the process of being tested. The plan is to implement the new process in July 2014, concurrent with the effective date of the renewal application.

15. The waiver previously included reporting to CMS on the offer of choice between institutional and waiver services. DDDS proposes to delete the reporting while continuing to "track" data. See pp. 2 and 6. This is unfortunate since the election is "key" to a central purpose of the waiver, i.e., to divert individuals from institutions. It would be preferable to maintain data reporting to CMS in this context.

Agency Response: The requirement for states to offer choice between an institutional or community setting for waiver enrollees is still a requirement under CFR 441.302(d)(2). New guidance issued by CMS in July 2013 regarding quality performance measures that must be reported to CMS on the annual "372" report has removed this measure. DDDS will continue to document that this choice is offered to all waiver applicants.

16. CMS requires the State to project the number of participants in the waiver. See 42 C.F.R. 441.745 amended by 79 Fed Reg. 2948, 3038 (January 16, 2014). The reported authorized number of participants in the waiver may be too low. In year 1, DDDS envisions 1,000 participants. See pp. 22-23 and 147. We assume this covers the period from July 1, 2014 to June 30, 2015. In contrast, the attached DDDS December, 2013 monthly census report lists 992 clients already receiving community-based residential services. I suspect this number will exceed 1,000 prior to the inception of the waiver.

Agency Response: The counts of individuals reported on the DDDS monthly census report as residing in a DDDS community residential placement includes individuals that are not enrolled in the DDDS waiver for which

DDDS pays for their care with 100% state general funds. All individuals in the Emergency and High Risk categories on the DDDS Registry who apply for the waiver are screened against the waiver financial eligibility criteria. There is both an income and a resource limit. Some individuals do not meet the waiver income or resource limits, most often because they are receiving Social Security survivor's benefits in excess of the waiver income limit. The Governor and the Legislature have been most generous in appropriating funds each year that enable DDDS to serve these individuals in addition to those individuals who are eligible for the DDDS HCBS waiver. As of January 2014, there were 941 individuals receiving services under the DDDS waiver.

17. The waiver contains "quality" measures which focus on "safety" and absence of abuse/neglect. See pp. 112-119. The waiver would benefit from some measures assessing satisfaction with services and quality of life.

Agency Response: After several years of not participating, DDDS has resumed its participation in the National Core Indicators (NCI) project. The annual surveys have been sent to waiver members and the responses are beginning to be received. It is DDDS's plan to include measures from NCI in the waiver in the future, after benchmarks can be established for the measures.

18. DHSS may need to amend its HCBS waiver standards to include safeguards related to leases and protection from eviction. See 42 C.F.R. §441.530 [revised by 79 Fed. Reg. 3032 (January 16, 2014)] and commentary at 79 Fed Reg 2960-61.

Agency Response: The new rules become effective March 17, 2014 and apply to new waivers, amendments and renewals which are submitted after that date. The DDDS waiver renewal was submitted to CMS on March 12, 2014 and will not initially be subject to the rule but will be given the opportunity to come into compliance in the future. DDDS will need to undergo a complete assessment of its service system in order to develop a plan to come into compliance with the new rule that will address this in addition to the other requirements.

19. The waiver document (p. 25) contains a countable income cap of 250% of the SSI Federal Benefit Rate (FBR). The State could have elected a "300%" standard. The Council may wish to encourage adoption of the higher benchmark.

Agency Response: Delaware has chosen to use the same income standard for all of its long term services and supports to facilitate client movement between settings as their needs change. The current standard is the nursing facility standard of 250% FBR. If the state wishes to raise the income standard, a fiscal note for all HCBS services, including those provided under 1915(c) waivers and also the 1115 waiver that subsumed the former Elderly and Disabled and AIDS waivers, and for all nursing facility services would have to be developed and funded in the state's annual operating budget.

GACEC - April 28, 2014 Letter

The GACEC and other councils commented on the draft renewal application in March. Since the content of the waiver renewal has not changed, the GACEC would like to reiterate our earlier comments and add a few additional comments. We would also like to note that although many of our observations are similar to the comments submitted by the other councils, such as the State Council for Persons with Disabilities (SCPD), there are differences so we ask that you take that into consideration as you review our commentary.

In Paragraph 3 of our earlier comments, the GACEC objected to changing the minimum age of eligibility from four to 12 for a number of reasons. We would like to reiterate our objection and remind DHSS that it was prompted to terminate the license and contract of a major DDDS provider on an expedited basis when an investigation team issued a report documenting numerous violations of standards. See *Growth Horizons v. Nazario*, No. 1:94-cv-00132-RRM (D. Del. August 9 1994) (Stipulation). The rushed termination of a DHSS or Interagency Collaborative Treatment Team (ICT)-funded pediatric provider could be repeated, resulting in the need to provide alternative residential services quickly. If children under 12 are ineligible for the waiver, DHSS would have no available waiver-funded placement options, including shared living, group homes, and emergency temporary living arrangements (ETLAs). Eliminating the waiver eligibility of children between age four and 12 would also undermine the implementation of the DDDS-Division of Services for Children, Youth and their Families (DSCY&F) Memorandum of Understanding (MOU). For example, Section II.B.2 contemplates the availability of DDDS foster home/shared living placements for eligible children requiring residential services due to abuse, neglect or dependency. Licensed foster home/shared living arrangements are covered by the DDDS waiver.

In Paragraph 10, the GACEC suggested that DHSS consider adding levels of care apart from ICF/IID (Intermediate Care Facility for Individuals with Intellectual Disabilities). Council observed that the DDDS census listed 37 DDDS clients in nursing homes. In addition to our earlier comment, Council would also like to note that DHSS, while funding pediatric nursing home care, has historically confirmed its commitment to "make every effort

to support a child's needs in a community setting if they can be met". See DHSS commentary at 11 DE Reg. 312 (9/1/07):

The placing of children in any nursing facility needs to be an option for Medicaid eligible children in Delaware. Some children have needs that must be addressed in an inpatient nursing care facility. Medicaid will make every effort to support the client's needs in a community setting if they can be met. Delaware is fortunate to be able to offer inpatient nursing care facility services to its citizens within Delaware. Previously, Delaware children who required these services had to be placed out-of-state.

It would enable diversion from pediatric nursing facility placement and transition from nursing facility placements, if pediatric waiver-funded residential options were available. DHSS could consider listing both ICF/IID and nursing level of care in the waiver.

Agency Response: Thank you for your additional comments from April 28th on the renewal application for the DDDS HCBS Medicaid Waiver on behalf of the Governor's Advisory Council for Exceptional Citizens. DMMA offers the following additional information provided by DDDS to address your additional comments.

You should be aware that in its response to CMS's informal questions, Delaware has asked CMS for permission to revise the waiver application to make the following changes:

- Add the phrase "including brain injury" where the target group for the waiver is described as individuals with an "intellectual disability".
- Increase the number of waiver slots by adding 50 slots to each demonstration year above what is currently in the application to ensure that any legislatively funded growth is accommodated. The new slot numbers would be as follows:
 - Year 1: 1100
 - Year 2: 1150
 - Year 3: 1200
 - Year 4: 1250
 - Year 5: 1300
- Insert the phrase "other equivalent procedures and protocols approved by the Division" into the sentence in Appendix G-2 a. i. that reads, "Permitted planned personal restraints are limited to the one and two person side body hug and the one and two are supporting technique as described in the Mandt protocol".

GACEC Issue #1: Despite DDDS's assurance that no one under age 12 will be denied a needed service just because they will not be served under the DDDS waiver, the Council continues to be concerned about the division's proposal to raise the minimum waiver age from 4 to 12. It cites the DDDS enabling statute, the Age Discrimination Act and subsequent HHS OCR complaint and the MOU with DSCYF as compelling reasons for not making this change to the DDDS Medicaid waiver.

Agency Response: As referenced in the waiver application, DDDS has used Medicaid claims data to verify that no one under the age of 12 has ever received a DDDS waiver service, including shared living, formerly called Adult Foster Care. DDDS continues to contend that based on the services included in the waiver benefit package, it is not designed for children. No one under the age of 12 will be denied a service that is required under the DDDS enabling statute. DDDS will continue to provide services to individuals under age 12 who meet the DDDS eligibility criteria, including the provision of foster care/shared living when necessary. DDDS will also continue to honor the MOU with DSCYF which requires it to participate in "residential placement of DFS children in DDDS homes and respite care." DDDS believes that the rare occasions when specialized foster care may need to be provided to individuals under age 12 is best addressed using state funds under the DDDS state mandate to allow for flexibility that may not be available under the structure of a waiver service.

Since the Harbor Healthcare settlement, a new nursing facility specializing in pediatric care, Exceptional Care for Children, has opened in Delaware to provide specialized care for children who meet a nursing facility level of care. To address the needs of medically fragile children who are eligible for DDDS services, DDDS works in collaboration with DMMA to ensure that Private Duty Nursing, and other services available under the Medicaid State Plan, are provided to these clients in the child's home or other appropriate home setting. There are currently no direct nursing services covered under the DDDS Waiver.

While Medicaid State Plan services cannot be restricted to particular age groups, Medicaid HCBS waivers can be, and often are, limited by age. This is considered part of the HCBS waiver "target" criteria of age, diagnosis or condition. Appendix B-1 "Specification of the Waiver Target Group(s)" of the HCBS waiver pre-print instructs states to "select one waiver target group, check each of the subgroups in the selected target group that may receive

services under the waiver, and specify the minimum and maximum (if any) age of the individuals served in each subgroup."

GACEC Issue #2: The Council continues to recommend that DDDS should add a nursing facility level of care to the waiver application in addition to the current designation of ICF/IID.

Agency Response: Per CMS regulations at 42 CFR 441.301(b)(1)(iii) states must indicate that waiver services will only be provided to recipients who, in the absence of waiver services would require the Medicaid covered level of care in a hospital, nursing facility, or ICF/IID. States may only select a single institutional level of care for the target group for which the cost of waiver services will be compared to the cost of institutional services. Nursing facility costs are significantly less than ICF/IID costs. If DDDS was able to include such a level of care under the DDDS waiver, it would have the effect of lowering the projection of "without waiver" spending that is compared to "with waiver" spending to demonstrate budget neutrality as required under 42 CFR 441.302(e). This waiver is designed to meet the needs of individuals with an intellectual developmental disability. Therefore, the ICF/IID institutional level of care standard is the appropriate standard for this target group.

The 37 individuals listed on the DDDS census report that are indicated as residing in nursing facilities are tracked by DDDS because DDDS is responsible for providing the specialized services these individuals need to address their intellectual developmental disability as required under OBRA 1987. These individuals are covered under the Diamond State Health Plan Plus Long Term Care benefit which uses a nursing facility level of care to determine eligibility for long term care services. The specialized services provided to nursing facility residents with an intellectual developmental disability, including children residing at the Exceptional Care for Children nursing facility, can be paid for under the Medicaid State Plan or by DDDS with state funds for services that are not covered under the State Plan. Per 42 CFR 441.301(b)(1)(iii) individuals that reside in a hospital, nursing facility or ICF/IID are not eligible to receive HCBS waiver services.

DMMA hopes these responses are helpful.

SCPD - April 30, 2014 Memorandum

As background, on February 28, 2014, the Division of Developmental Disabilities Services (DDDS) forwarded a notice to the SCPD and other agencies that its draft waiver renewal was available for review on its website. The renewal document noted that DDDS intended to submit the renewal application to CMS during the week of March 10. Given the short timetable, SCPD submitted comments on an expedited basis. The Department has now published the waiver renewal as a proposed regulation with a 30-day comment period. Since the content of the waiver renewal has not changed, SCPD is providing the attached March 12th memorandum supplemented by the following observations. Please review these documents carefully since the attached April 17th response from DHSS/DMMA is confusing as it attempts to address SCPDs previous March 12th comments even though it specifically references "the DD Council". The Division appears to have "mixed-up" its responses with the intended councils and, in any event, does not address the following observations.

In Par. 4, SCPD objected to changing the minimum age of eligibility from 4 to 12 for a variety of reasons. As a supplement, SCPD is reminding DHSS that it was prompted to terminate the license and contract of a major DDDS provider on an expedited basis when an investigation team issued a report documenting numerous violations of standards. See *Growth Horizons v. Nazario*, No. 1:94-cv-00132-RRM (D. Del. August 9 1994) (Stipulation). Expedited termination of a DHSS or ICT-funded pediatric provider could recur, resulting in the need to provide alternative residential services quickly. If children under 12 are ineligible for the waiver, DHSS would have no available waiver-funded placement options, including shared living, group homes, and emergency temporary living arrangements (ETLAs). Eliminating waiver eligibility of children between age 4 and 12 would also undermine implementation of the attached DDDS-DSCY&F MOU. For example, Section II.B.2 contemplates the availability of DDDS foster home/shared living placements for eligible children requiring residential services due to abuse, neglect or dependency. Licensed foster home/shared living arrangements are covered by the DDDS waiver.

In Par. 11, SCPD suggested that DHSS consider adding levels of care apart from ICF/IID. The Council observed that the DDDS census listed 37 DDDS clients in nursing homes. As a supplement, SCPD notes that DHSS, while funding pediatric nursing home care, has historically confirmed its commitment to "make every effort to support a child's needs in a community setting if they can be met". See DHSS commentary at 11 DE Reg. 312 (9/1/07):

The placing of children in any nursing facility needs to be an option for Medicaid eligible children in Delaware. Some children have needs that must be addressed in an inpatient nursing care facility. Medicaid will make every effort to support the client's needs in a community setting if they can be met. Delaware is fortunate to be able to

offer inpatient nursing care facility services to its citizens within Delaware. Previously, Delaware children who required these services had to be placed out-of-state.

It would facilitate diversion from pediatric nursing facility placement, and transition from nursing facility placements, if pediatric waiver-funded residential options were available. DHSS could therefore consider listing both ICF/IID and nursing level of care in the waiver.

In summary, SCPD is resubmitting its earlier commentary plus the above supplemental remarks.

Agency Response: Thank you for your additional comments from April 30th on the renewal application for the DDDS HCBS Medicaid Waiver on behalf of the State Council for Persons with Disabilities (The Council). DMMA offers the following additional information provided by DDDS to address your additional comments.

You should be aware that in its response to CMS's informal questions, Delaware has asked CMS for permission to revise the waiver application to make the following changes:

- Add the phrase "including brain injury" where the target group for the waiver is described as individuals with an "intellectual disability".
- Increase the number of waiver slots by adding 50 slots to each demonstration year above what is currently in the application to ensure that any legislatively funded growth is accommodated. The new slot numbers would be as follows:
 - Year 1: 1100
 - Year 2: 1150
 - Year 3: 1200
 - Year 4: 1250
 - Year 5: 1300
- Insert the phrase "other equivalent procedures and protocols approved by the Division" into the sentence in Appendix G-2 a. i. that reads, "Permitted planned personal restraints are limited to the one and two person side body hug and the one and two are supporting technique as described in the Mandt protocol".

SCPD Issue #1: Despite DDDS's assurance that no one under age 12 will be denied a needed service just because they will not be served under the DDDS waiver, the Council continues to be concerned about the division's proposal to raise the minimum waiver age from 4 to 12. It cites the DDDS enabling statute, the Age Discrimination Act and subsequent HHS OCR complaint and the MOU with DSCYF as compelling reasons for not making this change to the DDDS Medicaid waiver.

Agency Response: As referenced in the waiver application, DDDS has used Medicaid claims data to verify that no one under the age of 12 has ever received a DDDS waiver service, including shared living, formerly called Adult Foster Care. DDDS continues to contend that based on the services included in the waiver benefit package, it is not designed for children. No one under the age of 12 will be denied a service that is required under the DDDS enabling statute. DDDS will continue to provide services to individuals under age 12 who meet the DDDS eligibility criteria, including the provision of foster care/shared living when necessary. DDDS will also continue to honor the MOU with DSCYF which requires it to participate in "residential placement of DFS children in DDDS homes and respite care." DDDS believes that the rare occasions when specialized foster care may need to be provided to individuals under age 12 is best addressed using state funds under the DDDS state mandate to allow for flexibility that may not be available under the structure of a waiver service.

Since the Harbor Healthcare settlement, a new nursing facility specializing in pediatric care, Exceptional Care for Children, has opened in Delaware to provide specialized care for children who meet a nursing facility level of care. To address the needs of medically fragile children who are eligible for DDDS services, DDDS works in collaboration with DMMA to ensure that Private Duty Nursing, and other services available under the Medicaid State Plan, are provided to these clients in the child's home or other appropriate home setting. There are currently no direct nursing services covered under the DDDS Waiver.

While Medicaid State Plan services cannot be restricted to particular age groups, Medicaid HCBS waivers can be, and often are, limited by age. This is considered part of the HCBS waiver "target" criteria of age, diagnosis or condition. Appendix B-1 "Specification of the Waiver Target Group(s)" of the HCBS waiver pre-print instructs states to "select one waiver target group, check each of the subgroups in the selected target group that may receive services under the waiver, and specify the minimum and maximum (if any) age of the individuals served in each subgroup."

SCPD Issue #2: The Council continues to recommend that DDDS should add a nursing facility level of care to the waiver application in addition to the current designation of ICF/IID.

Agency Response: Per CMS regulations at 42 CFR 441.301(b)(1)(iii) states must indicate that waiver

services will only be provided to recipients who, in the absence of waiver services would require the Medicaid covered level of care in a hospital, nursing facility, or ICF/IID. States may only select a single institutional level of care for the target group for which the cost of waiver services will be compared to the cost of institutional services. Nursing facility costs are significantly less than ICF/IID costs. If DDDS was able to include such a level of care under the DDDS waiver, it would have the effect of lowering the projection of "without waiver" spending that is compared to "with waiver" spending to demonstrate budget neutrality as required under 42 CFR 441.302(e). This waiver is designed to meet the needs of individuals with an intellectual developmental disability. Therefore, the ICF/IID institutional level of care standard is the appropriate standard for this target group.

The 37 individuals listed on the DDDS census report that are indicated as residing in nursing facilities are tracked by DDDS because DDDS is responsible for providing the specialized services these individuals need to address their intellectual developmental disability as required under OBRA 1987. These individuals are covered under the Diamond State Health Plan Plus Long Term Care benefit which uses a nursing facility level of care to determine eligibility for long term care services. The specialized services provided to nursing facility residents with an intellectual developmental disability, including children residing at the Exceptional Care for Children nursing facility, can be paid for under the Medicaid State Plan or by DDDS with state funds for services that are not covered under the State Plan. Per 42 CFR 441.301(b)(1)(iii) individuals that reside in a hospital, nursing facility or ICF/IID are not eligible to receive HCBS waiver services.

DMMA hopes these responses are helpful.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to publish for public comment a draft of the Division of Developmental Disabilities Services (DDDS) 1915(c) Home and Community-Based Services Waiver (HCBS) waiver renewal application is adopted and shall be final effective June 10, 2014.

Rita M. Landgraf, Secretary, DHSS

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

1915(i) Home and Community-Based Services Waiver Renewal Application

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Medicaid Coverage of Prescribed Drugs

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding prescribed drug coverage, specifically, *changes to the coverage of barbiturates, benzodiazepines and agents used to promote smoking cessation*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the April 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding prescribed drug coverage, specifically, *changes to the coverage of barbiturates, benzodiazepines and agents used to promote smoking cessation.*

Statutory Authority

- Patient Protection and Affordable Care Act, P.L. 111-148, enacted March 23, 2010 and the Health Care and Education Reconciliation Act of 2010, P.L. 111-152, enacted March 30, 2010 (collectively referred to as the Affordable Care Act)
- 1927(d)(7) of the Social Security Act, *Non-Excludable Drugs*
- 42 CFR §440.120, *Prescribed drugs*
- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

Background

Effective January 1, 2014, section 2502 of the Affordable Care Act amends section 1927(d)(2) of the Social Security Act (the Act) by removing barbiturates, benzodiazepines and agents used to promote smoking cessation from the list of drugs a state Medicaid program may exclude from coverage or otherwise restrict. It also added section 1927(d)(7) of the Act which explicitly prohibits states from excluding the following drugs, or their medical uses, from coverage: barbiturates, benzodiazepines and agents used to promote smoking cessation, including agents approved by the Food and Drug Administration (FDA) under the over-the-counter (OTC) monograph process for purposes of promoting, and when used to promote, tobacco cessation.

State Plan Amendment

In light of the statute, states will need to remove from the state plan any indication that the following drugs are restricted or otherwise excluded: barbiturates, benzodiazepines and agents used to promote smoking cessation. To the extent that the state needs to change its state plan to be consistent with these Medicaid coverage requirements, the state will need to submit a state plan amendment (SPA) to be effective January 1, 2014.

Summary of Proposal

Pursuant to 42 CFR 447.205 and the Delaware Administrative Procedures Act, public notice is hereby given that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) in accordance with 42 CFR 430.12. Upon CMS approval, the proposed changes will update Attachment 3.1-A of the Medicaid State Plan regarding the coverage of barbiturates, benzodiazepines and agents used to promote smoking cessation.

Delaware Medicaid did not take an 'exclusion' approach and currently provides coverage for these excludable drugs. Delaware treats these drugs as any other medically necessary therapeutic class. However, there are quantity limits in place to ensure appropriate use.

States were instructed by CMS to submit a state plan amendment (SPA) to remove benzodiazepines, barbiturates, and smoking cessation drugs from the list of drugs a state can exclude from coverage or restrict. If the language appears on the state plan page, the state cannot just uncheck the box, the language on the state plan page(s) needs to be removed, and also, revise the assigned numbering and/or lettering on the plan page(s).

Fiscal Impact Statement

This is a technical change to the Medicaid State Plan with no financial impact as Delaware Medicaid has been covering these drugs.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

GACEC

Effective January 1, 2014 the Affordable Care Act (ACA) disallows restricting access to barbiturates, benzodiazepines, and agents used to promote smoking cessation. Therefore, the DMMA is proposing a technical amendment to conform to the ACA. The GACEC **endorses** the proposed regulation and has the following observations:

Agency Response: DMMA thanks the Council for its endorsement.

SCPD

SCPD endorses the proposed regulation and has the following observations:

Effective January 1, 2014 the Affordable Care Act (ACA) disallows restricting access to barbiturates, benzodiazepines, and agents used to promote smoking cessation. DMMA is therefore proposing a technical amendment to conform to the ACA. The anomaly is that the current restrictions were just added last year. See 16 DE Reg. 1028 (4/1/13) (proposed); 16 DE Reg. 1270 (6/1/13) (final)]. Consistent with the attached March 30, 2014 article, Medicaid beneficiaries are more likely to smoke than the general population and the CDC recommends Medicaid coverage of all proven cessation treatments.

Agency Response: DMMA thanks the Council for its endorsement.

There is no change to the regulation as a result of these comments.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation regarding prescribed drug coverage, specifically, *to remove benzodiazepines, barbiturates, and smoking cessation drugs from the list of drugs a state can exclude from coverage or restrict* is adopted and shall be final effective June 10, 2014.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the April 2014 issue of the *Register* at page 951 (17 DE Reg. 951). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Medicaid Coverage of Prescribed Drugs

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

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

24 DE Admin. Code 1100

ORDER

1100 Board of Dentistry and Dental Hygiene

On March 1, 2014, the Delaware Board of Dentistry and Dental Hygiene published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 17, Issue 9. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 7, 2014 at a regularly scheduled meeting of the Delaware Board of Dentistry and Dental Hygiene to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on April 7, 2014. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §1106(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes amend Board's regulations, at 10.0, *et. seq.* by creating a time limit for dental and dental hygiene candidates to successfully apply for licensure subsequent to passing the applicable clinical examination. If such candidates do not apply within five years of passing the exam, they will have to re-take it.
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. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §1106(a)(1) and for the reasons set forth above, the Board of Dentistry and Dental Hygiene does hereby ORDER that the regulations be, adopted and promulgated as set forth in the *Delaware Register of Regulations* on June 1, 2014.

The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, pursuant to 29 **Del.C.** §10118(g). The new regulations are attached hereto as Exhibit A.

SO ORDERED this 15th day of May, 2014.

BOARD OF DENTISTRY AND DENTAL HYGIENE

John Lenz, DDS, President	June Ewing, Public Member
Brian McAllister, DDS, Secretary	Nathaniel Gibbs, Public Member
Carol Argo, RDH	Thomas A. Mercer, DMD
Debra Bruhl, RDH, Hygiene Advisory	Mary Trinkle, RDH, Hygiene Advisory
Lucinda Bunting, DMD	Sharon Welsh, DDS
Buffy Parker, RDH, Hygiene Advisory	

***Please note that no changes were made to the regulation as originally proposed and published in the March 2014 issue of the *Register* at page 905 (17 DE Reg. 905). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION

1900 BOARD OF NURSING

Statutory Authority: 24 Delaware Code, Section 1904(c) (24 **Del.C.** §1904(c))
24 **DE Admin. Code** 1900

ORDER

1900 Board of Nursing

The Delaware Board of Nursing pursuant to 24 **Del.C.** §1904(c), proposed to revise Regulations 6.6.1.5, 6.8.5, 6.9.2, 8.11.4, 9.6.1, and 2.4.1.5. The proposed changes clarify the process for renewing licenses in light of the sole option for renewal, the online renewal, and eradication of the paper renewal. The changes to 2.4.1.5 are nonsubstantive and are merely an attempt to clarify a prior change that did not include appropriate renumbering and retitling of the regulations.

Following publication in the Delaware *Register of Regulations* on February 1, 2014 a public hearing was held on March 19, 2014. 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 Exhibit 1 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. During the written public comment period, no public comment was received. Further, no public comment was received by the Board during either public hearing.

Summary of the Findings of Fact

Pursuant to discussions held at open public Board meetings, the Board proposed to amend Regulations 6.6.1.5, 6.8.5, 6.9.2, 8.11.4, 9.6.1, and 2.4.1.5 in order to clarify the process for renewing licenses in light of the sole option for renewal, the online renewal, and eradication of the paper renewal. The changes to 2.4.1.5 are nonsubstantive and are merely an attempt to clarify a prior change that did not include appropriate renumbering and retitling of the regulations.

Decision of the Board

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* on June 1, 2014.

IT IS SO ORDERED this 9th day of April, 2014 by the Delaware Board of Nursing

Robert Contino, RN, Nurse Educator, President

Pam Tyranski, RN, Vice-President

Kathy L. Bradley, LPN

Lyron Deputy, RN

Dianne Halpern, RN

Mary Lomax, Public Member

Madelyn Nellius, Public Member

Delphos Price, RN, CRNA, Advanced Practice
Nurse Member

David Salati, RN

Harland Sanders Jr., Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the February 2014 issue of the *Register* at page 819 (17 DE Reg. 819). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1900 Board of Nursing

FINAL REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))
24 **DE Admin. Code** 2900

ORDER

2900 Real Estate Commission

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on April 10, 2014 at a scheduled meeting of the Delaware Real Estate Commission (“the Commission”) to receive comments regarding proposed amendments to the Commission’s rules and regulations. The Commission has proposed a new Rule 13.1.3 to state that Modules 1 – 6 automatically qualify for Module 7 credit. The Commission has also proposed an amendment to Rule 13.0 to add a new Rule 13.2.1.4 to clarify the CE hours required where an individual has been licensed for at least eighteen months but less than twenty-four months.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 17, Issue 7, on January 1, 2014. Notice of the rescheduled hearing was published in the *Register of Regulations*, Volume 17, Issue 9, on March 1, 2014. Notice of the April 10, 2014 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 April 25, 2014, 15 days following the public hearing. The Commission deliberated on the proposed revisions at its regularly scheduled meeting on May 8, 2014.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

The Commission received no verbal or written comment.

Findings of Fact and Conclusions

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

Pursuant to 24 **Del.C.** §2906(a)(1), the Commission has the statutory authority to promulgate rules and regulations. The proposed revisions will facilitate licensee compliance with the Commission’s continuing education standards. The Commission concludes that adoption of the Guidelines as amended advances professional standards and is in the best interest of the public.

Decision and Effective Date

The Commission hereby adopts the proposed amendments to the rules and regulations as effective 10 days following publication of this Order in the *Delaware Register of Regulations*.

Text and Citation

The text of the revised Guidelines remains as published in the *Delaware Register of Regulations*, Volume 17, Issue 7, on January 1, 2014.

SO ORDERED this 8th day of May, 2014.

DELAWARE REAL ESTATE COMMISSION

Michael Harrington, Sr., Professional Member,
Chairperson

Justin Healy, Professional Member

Andrew Staton, Professional Member,
Vice-Chairperson

Ricky H. Allamong, Professional Member, Secretary

James C. Brannon, Jr., Public Member

Gilbert Emory, Public Member

Joseph F. McCann, Public Member

Lynn Rogers, Public Member

Christopher J. Whitfield, Professional Member

***Please note that no changes were made to the regulation as originally proposed and published in the January 2014 issue of the *Register* at page 713 (17 DE Reg. 713). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2900 Real Estate Commission

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))
24 **DE Admin. Code** 2925

ORDER

2925 Real Estate Commission Education Committee

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on April 10, 2014 at a scheduled meeting of the Delaware Real Estate Commission (“the Commission”) to receive comments regarding proposed amendments to the Commission’s Education Guidelines (“Guidelines”). The Commission has proposed revisions to Rule 7.0 to specify that, where a student requests approval for a continuing education course, an instructor resume is not required for a Commission or ARELLO approved instructor. Rule 7.0 is further amended to state that Modules 1 – 6 automatically qualify for Module 7 credit. Rule 8.4 is revised to state that the course provider shall determine whether electronic devices may be used during the course.

The proposed changes to the Guidelines were published in the *Register of Regulations*, Volume 17, Issue 7, on January 1, 2014. Notice of the rescheduled hearing was published in the *Register of Regulations*, Volume 17, Issue 9, on March 1, 2014. Notice of the April 10, 2014 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 April 25, 2014, 15 days following the public hearing. The Commission deliberated on the proposed revisions at its regularly scheduled meeting on May 8, 2014.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

The Commission received no verbal or written comment.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony on the proposed amendments to the Commission’s Guidelines.

Pursuant to 24 **Del.C.** §2906(a)(1), the Commission has the statutory authority to promulgate rules and regulations. The proposed revisions will facilitate licensee compliance with the Commission’s continuing education standards. The Commission concludes that adoption of the Guidelines as amended advances professional standards and is in the best interest of the public.

Decision and Effective Date

The Commission hereby adopts the proposed amendments to the Guidelines as effective 10 days following publication of this Order in the *Delaware Register of Regulations*.

Text and Citation

The text of the revised Guidelines remains as published in the *Delaware Register of Regulations*, Volume 17, Issue 7, on January 1, 2014.

SO ORDERED this 8th day of May, 2014.

DELAWARE REAL ESTATE COMMISSION

Michael Harrington, Sr., Professional Member,
Chairperson

Andrew Staton, Professional Member,
Vice-Chairperson

Ricky H. Allamong, Professional Member, Secretary

James C. Brannon, Jr., Public Member

Gilbert Emory, Public Member

Justin Healy, Professional Member

Joseph F. McCann, Public Member

Lynn Rogers, Public Member

Christopher J. Whitfield, Professional Member

***Please note that no changes were made to the regulation as originally proposed and published in the January 2014 issue of the *Register* at page 714 (17 DE Reg. 714). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2925 Real Estate Commission Education Committee

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

REGISTER NOTICE

1. TITLE OF STATE IMPLEMENTATION PLAN REVISION:

Delaware 2011 Base Year State Implementation Plan (SIP) Emission Inventory under the 2008 Ozone National Ambient Air Quality Standard (NAAQS).

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

This document contains Delaware's State Implementation Plan (SIP) revision for meeting the Clean Air Act (CAA) requirements for the 8-hour ozone National Ambient Air Quality Standard (NAAQS) set forth by US Environmental Protection Agency (EPA) in 2008.

According to Section 182(a)(1) of CAA and EPA's implementation rule for the 2008 ozone standard (Proposed Rule, June 6, 2013, 78 FR 34178), Delaware is required to submit to EPA in July 2014 a SIP revision which compiles Delaware 2011 emissions of volatile organic compounds (VOC), oxides of nitrogen (NOx), and carbon monoxide (CO) from five source sectors: stationary point sources, stationary non-point sources, on-road mobile sources, non-road mobile sources, and natural sources. The subject document contains Delaware's base year emission inventory State Implementation Plan (SIP) revision under the 8-hour ozone National Ambient Air Quality Standard (NAAQS) set forth by US Environmental Protection Agency (EPA) in 2008.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Interested parties may submit comments in writing to David Fees, Division of Air Quality, 655 South Bay Road, Dover, DE 19901.

Statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, June 26, 2014, beginning at 6:00 p.m. in the auditorium, Richardson & Robbins Building, 89 Kings Hwy, Dover, 19901.

7. PREPARED BY:

David Fees Phone: (302) 739-9402 May 16, 2014

Email address: David.Fees@state.de.us

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

[Delaware 2011 Base Year State Implementation Plan \(SIP\) Emission Inventory](#)

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Tuesday, June 10, 2014 beginning at 1:30 p.m. A business meeting will be held on the following day, Wednesday, June 11, 2014 beginning at 12:15 p.m. The hearing and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, June 19, 2014 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE**Case Processing Procedures - Applications**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2014.

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

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE**Food Supplement Program - Income and Eligibility Verification System**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Income and Eligibility Verification System - Exclude Unearned Income Data from IRS*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2014.

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

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****Food Supplement Program - Household Definition**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by June 30, 2014.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR QUALITY****PUBLIC NOTICE****Delaware 2011 Base Year State Implementation Plan (SIP) Emission Inventory under the 2008 Ozone National Ambient Air Quality Standard (NAAQS)**

This document contains Delaware's State Implementation Plan (SIP) revision for meeting the Clean Air Act (CAA) requirements for the 8-hour ozone National Ambient Air Quality Standard (NAAQS) set forth by US Environmental Protection Agency (EPA) in 2008.

According to Section 182(a)(1) of CAA and EPA's implementation rule for the 2008 ozone standard (Proposed Rule, June 6, 2013, 78 FR 34178), Delaware is required to submit to EPA in July 2014 a SIP revision which compiles Delaware 2011 emissions of volatile organic compounds (VOC), oxides of nitrogen (NOx), and carbon monoxide (CO) from five source sectors: stationary point sources, stationary non-point sources, on-road mobile sources, non-road mobile sources, and natural sources. The subject document contains Delaware's base year emission inventory State Implementation Plan (SIP) revision under the 8-hour ozone National Ambient Air Quality Standard (NAAQS) set forth by US Environmental Protection Agency (EPA) in 2008.

Interested parties may submit comments in writing to David Fees, Division of Air Quality, 655 South Bay Road, Dover, DE 19901.

Statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, June 26, 2014, beginning at 6:00 p.m. in the auditorium, Richardson & Robbins Building, 89 Kings Hwy, Dover, 19901.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**DIVISION OF STATE POLICE****1300 Board of Examiners of Private Investigators & Private Security Agencies****PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Rule 1.0 – Firearms Policy – placing the approval of instructors on Professional Licensing Section; Rule 2.0 – Use of Rifle and Shotgun – general house-keeping; Rule 3.0 – Nightstick, PR24, Mace, Peppergas and Handcuffs – requiring all certifications be on file with Professional Licensing and the instructors are approved by Professional Licensing; Rule 7.0 – Employment Notifi-

cation – general housekeeping; Rule 9.0 – Security Guards/Armored Car Guards – by deleting entire rule; Rule 12.0 – Personnel Rosters and Job Assignments – general housekeeping; Rule 13.0 – Record Book; Right of Inspection – allowing Professional Licensing to inspect guards and agency offices; Rule 14.0 – Agency Licensing Fees/Structure – giving Professional Licensing authority to renew agencies with not changes. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by June 30, 2014, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

Office of Child Care Licensing

PUBLIC NOTICE

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

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE Rules for Early Care and Education and School-Age Centers. A comprehensive review process was held in which all providers were asked to participate as part of the public hearing process for Executive Order 36 and a preliminary draft was created. The preliminary draft was posted on the OCCL website and comments were invited and received. Additional public comments were received from the Provider Advisory Board, from providers and stakeholders during a series of Task Force meetings, as well as written comments from other providers and stakeholders.

The proposed changes provide clarity, reflect changes in laws, align with current best practices, and improve standards of care. The revisions represent a consensus of participants including licensed providers and subject experts, and are based on best practice, a review of regulations promulgated by other States, research on subjects related to early care and education and school-age center care, internal OCCL review and discussion, and identified issues and services within existing programs within Delaware.

Regulations published here are numbered in administrative code format. To facilitate the comparison of this new document to the current regulations and the location of information in the current regulations, in many instances a current rule number still appears in this document in parentheses regardless of whether the text has been edited or remains the same. (Example: Rules 102-104). Some current regulations have been eliminated and new information and regulations added. These referencing rule numbers will be eliminated in the next publication of these regulations in the *Register*.

Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on July 31, 2014. Comments may also be offered at public meetings to be held in each county. Participants may attend any meeting. While the meetings begin at 6:00 p.m., participants may arrive at any time prior to the close of the meetings at 7:45 p.m. Time allotted to each speaker will be limited. The meetings will be held as follows:

New Castle County: Tuesday, June 24, 2014, 6:00 – 7:45 p.m.

Paul J. Sweeney Public Safety Building
(also known as New Castle County Public Safety Building)
3601 N. DuPont Highway, New Castle, DE 19720

Sussex County: Wednesday, July 9, 2014, 6:00 – 7:45 p.m.

Thurman Adams State Service Center
(also known as Georgetown State Service Center)
546 South Bedford Street, Georgetown, DE 19947

Kent County: **Wednesday, July 16, 2014, 6:00 – 7:45 p.m.**
DelDOT Administration Building, Farmington Room
800 Bay Road, Dover, DE 19903

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 BOARD OF ACCOUNTANCY
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The rules pertaining to renewal and audit are amended to provide that renewal must be accomplished electronically and that continuing education summaries shall be submitted within 30 days of the date of the notification of selection for audit.

A public hearing will be held on July 16, 2014 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be July 31, 2014 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on August 20, 2014 at 9:00 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

DIVISION OF PROFESSIONAL REGULATION
300 BOARD OF ARCHITECTS
PUBLIC NOTICE

The Delaware Board of Architects, pursuant to 24 **Del.C.** §306(a)(1), proposes to add regulation 7.6.1.1 and amend regulation 7.6.2. The proposed addition at 7.6.1.1 seeks to grant authority to licensees to utilize electronic seals whenever the use of an architect's seal is permitted. The amendment at 7.6.2 seeks to allow architects to utilize an electronic signature when signed and sealed submissions are published and/or submitted under the current requirements of regulation 7.6.2.

The Board will hold a public hearing on the proposed regulation change on July 2, 2014 at 1:30 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meaghan Jerman, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 17, 2014 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
1100 BOARD OF DENTISTRY AND DENTAL HYGIENE
PUBLIC NOTICE

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to amend its regulations. The proposed changes to regulation 6 set forth guidelines for application renewal and late renewal.

The Board will hold a public hearing on the proposed rule change August 21, 2014 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, Suite 203, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 5, 2014.

DIVISION OF PROFESSIONAL REGULATION
1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE
PUBLIC NOTICE

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 **Del.C.** §1713(a)(12), proposes to revise regulation 6.0 to remove surplusage. Specifically, the proposal removes the words "less than once a quarter" from the regulation as it is unnecessary and renders the regulation's intent unclear. The Board will hold a public hearing on the proposed regulation change on July 22, 2014 at 3:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Shauna Slaughter, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until August 6, 2014 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
1800 BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING AND REFRIGERATION
EXAMINERS
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §1806(a)(2), the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners has proposed revisions to its rules and regulations. The rules are amended to provide a continuing education requirement.

A public hearing will be held on July 8, 2014 at 8:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be July 23, 2014 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on September 9, 2014 at 8:30 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

DIVISION OF PROFESSIONAL REGULATION
3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY
PROFESSIONALS
PUBLIC NOTICE

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with the statutory provisions which govern the Board; eliminate regulatory references to the "Academy of Clinical Mental Health Counselors," a non-existent organization; and eliminate regulations stating that professional counselors must obtain licensure by first becoming assistant counselors.

The Board will hold a public hearing on the proposed rule change on June 25, 2014 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until July 10, 2014.

DIVISION OF PROFESSIONAL REGULATION
4400 DELAWARE MANUFACTURED HOME INSTALLATION BOARD
PUBLIC NOTICE

The Delaware Board of Manufactured Home Installation, pursuant to 24 **Del.C.** §4416 (b)(1), proposes to revise its regulations. The proposed revisions to the regulations are administrative in nature.

The Board will hold a public hearing on the rule change on July 14, 2014 at 9:00 a.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Sandra Wagner, Administrator of the Delaware Board of Manufactured Home Installation, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION
5200 Board of Examiners of Nursing Home Administrators
PUBLIC NOTICE

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 **Del.C.** §5206(1), proposes to revise its regulations. The proposed revisions to the regulations would mandate that AIT registrants take additional training in preparation for the National Association of Long Term Care Administrator Boards and the practice of nursing home administration. The Board has always strongly recommended that applicants take the course and now recommends that the course become mandatory pursuant to 24 **Del.C.** §5209(a)(1).

The Board will hold a public hearing on the proposed rule change on July 8, 2014 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Sheryl Paquette, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

OFFICE OF THE STATE BANK COMMISSIONER
PUBLIC NOTICE
2207 Exemption of Licensed Lenders
2302 Exemptions
3401 Regulations Governing Revocable and Irrevocable Trust Agreements
3402 Surety Bond or Irrevocable Letter of Credit

The State Bank Commissioner proposes to amend four Regulations adopted in accordance with Title 5 of the Delaware Code. Regarding Title 5, Chapter 22 (Licensed Lenders), the proposed amendment to Regulation 2207 (Exemption of Licensed Lenders) deletes certain outdated provisions and specifies that all exemptions issued pursuant to 5 **Del.C.** §2202(b) shall expire on December 31 of each year. Regarding Title 5, Chapter 23 (Sale of Checks and Transmission of Money), the proposed amendment to Regulation 2302 (Exemptions) specifies that all exemptions issued pursuant to 5 **Del.C.** §2304(c) shall expire on December 31 of each year. Regarding Title 5, Chapter 34 (Preneed Funeral Contracts), the proposed amendments to Regulation 3401 (Operating Regulation) and Regulation 3402 (Surety Bond or Irrevocable Letter of Credit) clarify, streamline and update the existing regulations for ease of understanding and increased relevance to current licensee operations. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed amended regulations in accordance with Title 5 of the Delaware Code. This notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, and Chapter 101, Subchapter II.

A copy of the proposed amended regulations is being published in the June 1, 2014 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether these proposed amended regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before July 3, 2014. Written materials submitted will be available for

inspection at the above address.

On or after July 3, 2014, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulations 2207, 2302, 3401, and 3402, or make additional changes because of the public comments received.

DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

PUBLIC NOTICE

2309 Standards and Regulations for Subdivision Streets and State Highway Access

Background

The Delaware Department of Transportation (DelDOT), through its Division of Planning, seeks to adopt significant general revisions to its existing regulations regarding subdivisions streets and state highway access, not least of which to broaden the title of the regulations to "Development Coordination Manual," among other changes.

The current regulations were generally enacted in 2007, and were revised in partial form in 2010. The proposed regulations are a comprehensive re-write of the entire Section 2309 of title 2 of the Delaware Administrative Code. The changes take into account the issues and concerns identified and addressed as needing amendment by not only DelDOT staff, but also the end users of the current regulations.

The draft regulations were published at 17 DE Reg. 1055 (05/01/14), and written comments are also being sought. Access to the draft can be obtained by following this link:

<http://regulations.delaware.gov/register/may2014/proposed/17%20DE%20Reg%201054%2005-01-14.htm>.

Public hearings will be held at the following locations:

Kent County	Delaware Department of Transportation Administration Building 800 Bay Road Dover DE 19901	Monday, June 9, 2014 Felton/Farmington Room 4-7 PM
Sussex County	Delaware Department of Transportation South District 23697 DuPont Highway Georgetown, DE 19947	Monday, June 16, 2014 Conference Room 4-7 PM
New Castle County	Delaware State Police, Troop 2 100 Lagrange Ave Newark, DE 19702	Monday, June 23, 2014 Conference /Training Room 4-7 PM

The intent of the hearings is to inform the public about the changes and to solicit input prior to finalizing the regulations. The hearings will consist of a presentation on the regulatory changes and a question and answer session with DelDOT staff. Interested citizens are encouraged to contribute written questions or comments in advance of the hearing by sending them via email to Marc Coté at Marc.Cote@state.de.us. Audience members may provide written questions or comments at the time of the hearing for the discussion or may provide verbal comments privately to a court reporter who will be present at each location. The number of questions addressed will be subject to the time available at the hearing. You may review the proposed changes on www.deldot.gov. The Department will take comments on the Regulations through June 30, 2014. The public may submit their comments to Marc Coté, P.E., Assistant Director for Development Coordination, via email (Marc.Cote@state.de.us) or in writing to his attention, Division of Planning, DelDOT, P.O. Box 778, Dover, DE 19903.

These locations are accessible to persons with disabilities. Any person having special needs or requiring special aid, such as an interpreter for the hearing impaired, is requested to contact DelDOT by phone or mail one week in advance. For further information contact the Office of Public Relations at 1-800-652-5600 (in DE) or 302-760-2080 or write to the address above.

Marc Cote, P.E., Assistant Director, Planning Development Coordination
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760 -2122 (phone) (302) 739-2251 (fax)
Marc.cote@state.de.us

DIVISION OF RESEARCH
OFFICE OF THE REGISTRAR OF REGULATIONS

PUBLIC NOTICE

Regulation Governing Administrative Rulemaking Procedures

The Registrar of Regulations of the Division of Research of the Legislative Council, pursuant to 29 **Del.C.** §1134(a)(4), proposes to adopt Regulation Governing Administrative Rulemaking Procedures. The purpose of the regulation is to provide procedures for the filing of regulations under the Administrative Procedures Act, 29 **Del.C.** Ch. 101, and for publication in the Delaware *Register of Regulations* and the *Administrative Code*. The regulation was presented at the April 30, 2014 meeting of the Legislative Council.

Persons wishing to present their views regarding the proposed new regulation must do so in writing by 4:30 pm on July 1, 2014 to Vicki Schultes, Office of the Registrar of Regulations, Division of Research, 411 Legislative Avenue, Dover, DE 19901 or by email to Vicki.Schultes@state.de.us. Copies of the regulation are available for review in the June 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> and are available from the above address.