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# Delaware Register of Regulations

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Issue Date: May 1, 2012

Volume 15 - Issue 11, Pages 1518 - 1630

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before April 16, 2012.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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1519

## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

15 **DE Reg.** 24-47 (07/01/11)

Refers to Volume 15, pages 24-47 of the *Delaware Register* issued on July 1, 2011.

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 16	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 14	4:30 p.m.

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---

# TABLE OF CONTENTS

1521

---

Cumulative Tables.....	1523
------------------------	------

---

## PROPOSED

### DEPARTMENT OF AGRICULTURE

#### Harness Racing Commission

Harness Racing Rules and Regulations.....	1532
---	------

#### Plant Industries

801 Regulations for Noxious Weed Control.....	1533
---	------

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

294 Data Governance.....	1536
--------------------------	------

#### Professional Standards Board

1597 Delaware Professional Teaching Standards.....	1538
--	------

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan, Medicaid Eligibility Conditions and Requirements .....	1548
---	------

#### Division of Social Services

11002.9 Definitions and Explanation of Terms.....	1551
---	------

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Waste and Hazardous Substances

1375 Delaware Regulations Governing Hazardous Substance Cleanup.....	1559
--	------

### DEPARTMENT OF STATE

#### Division of Professional Regulation

1400 Board of Electrical Examiners.....	1560
---	------

2500 Board of Pharmacy.....	1570
-----------------------------	------

3900 Board of Clinical Social Work Examiners.....	1579
---	------

5300 Board of Massage and Bodywork.....	1581
---	------

---

## FINAL

### DEPARTMENT OF AGRICULTURE

#### Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations.....	1584
---	------

1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations.....	1585
--	------

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised .....	1586
--	------

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised ...	1595
---	------

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised	1596
--	------

247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars.....	1597
---	------

#### Professional Standards Board

1598 Delaware Professional Development Standards.....	1599
---	------

---

---

# TABLE OF CONTENTS

---

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****Division of Long Term Care Residents Protection**

3320 Intensive Behavioral Support and Educational Residence..... 1603

**Division of Medicaid and Medical Assistance**

Medicaid Provider Screening and Enrollment..... 1609

Medicaid State Plan Governing Payments for Disproportionate Share Hospital..... 1613

**Division of Social Services**

**DSSM: 2027 Disqualification of Individuals Convicted of Drug Related Offenses**..... 1616

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY****Division of State Police**

1300 Board of Examiners of Private Investigators & Private Security Agencies..... 1617

**DEPARTMENT OF STATE****Division of Professional Regulation**

101 Regulations Governing Bingo..... 1618

300 Board of Architecture..... 1620

1100 Board of Dentistry and Dental Hygiene..... 1621

1900 Board of Nursing..... 1622

**Public Service Commission**

1009 Regulations Implementing the Water Utility Distribution System Improvement Charge (“DSIC”) and the Utility Facility Relocation Charge (“UFRC”)..... 1623

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)..... 1625

---

## CALENDAR OF EVENTS/HEARING NOTICES

Delaware River Basin Commission, Notice of Public Hearing and Business Meeting..... 1627

Dept. of Agriculture, Harness Racing Commission; Plant Industries, Notices of Public Comment Periods... 1627

State Board of Education, Notice of Monthly Meeting..... 1627

Dept. of Health and Social Services, Div. of Medicaid; Div. of Social Services, Notices of Public Comment Periods..... 1628

Dept. of Natural Resources and Environmental Control, Div. of Waste and Hazardous Substances, Notice of Public Hearing..... 1628

Dept. of State, Div. of Professional Regulation, Notices of Public Hearings..... 1629 - 1630

---

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 NATIONAL GUARD**

Policies and Procedures Regarding FOIA Requests..... 15 DE Reg. 813 (Final)

**DELAWARE SOLID WASTE AUTHORITY**

501 Regulations of the Delaware Solid Waste Authority..... 15 DE Reg. 6 (Prop.)  
15 DE Reg. 637 (Final)

**DELAWARE STATE HOUSING AUTHORITY**

**Office of the Director**

Policies and Procedures Regarding FOIA Requests..... 15 DE Reg. 817 (Final)

**DEPARTMENT OF AGRICULTURE**

**Harness Racing Commission**

501 Harness Racing Rules and Regulations, Subsections 7.1.4 and 8.3.5.9.4  
Subsection 8.3.7 15 DE Reg. 956 (Prop.)  
15 DE Reg. 58 (Final)

502 Delaware Standardbred Breeders' Fund Regulations..... 15 DE Reg. 255 (Prop.)  
15 DE Reg. 1322(Final)  
15 DE Reg. 638 (Final)

**Office of the Secretary**

Policies and Procedures Regarding FOIA Requests..... 15 DE Reg. 822 (Final)

**Plant Industries Section**

803 Rules and Regulations for the Control and Suppression of the White Pine  
Blister Rust..... 15 DE Reg. 185 (Prop.)

**Thoroughbred Racing Commission**

1001 Thoroughbred Racing Rules and Regulations..... 15 DE Reg. 263 (Prop.)  
15 DE Reg. 520 (Final)  
15 DE Reg. 1239(Prop.)  
1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations..... 15 DE Reg. 60 (Final)  
15 DE Reg. 1107 (Prop.)  
15 DE Reg. 1243(Prop.)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

106A Teacher Appraisal Process Delaware Performance Appraisal System  
(DPAS II) Revised..... 15 DE Reg. 21 (Prop.)  
15 DE Reg. 124 (Prop.)  
15 DE Reg. 409 (Prop.)  
15 DE Reg. 833 (Final)  
15 DE Reg. 1245(Prop.)

107A Specialist Appraisal Process Delaware Performance Appraisal System  
(DPAS II) Revised..... 15 DE Reg. 29 (Prop.)  
15 DE Reg. 132 (Prop.)  
15 DE Reg. 417 (Prop.)  
15 DE Reg. 835 (Final)  
15 DE Reg. 1254(Prop.)

108A Administrator Appraisal Process Delaware Performance Appraisal  
System (DPAS II) Revised..... 15 DE Reg. 36 (Prop.)  
15 DE Reg. 139 (Prop.)  
15 DE Reg. 424 (Prop.)



# CUMULATIVE TABLES

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	15 DE Reg. 836 (Final)
	15 DE Reg. 1259(Prop.)
245 Michael C. Ferguson Achievement Awards Scholarship.....	15 DE Reg. 265 (Prop.)
	15 DE Reg. 639 (Final)
247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars.....	15 DE Reg. 1262(Prop.)
290 Approval of Educator Preparation Programs.....	15 DE Reg. 146 (Prop.)
	15 DE Reg. 642 (Final)
505 High School Graduation Requirements and Diplomas.....	15 DE Reg. 62 (Final)
525 Requirements for Career and Technical Education Programs.....	15 DE Reg. 188 (Final)
	15 DE Reg. 718 (Prop.)
	15 DE Reg. 1147(Final)
701 Unit Count.....	15 DE Reg. 68 (Final)
750 Support Personnel Salary Supplements for Additional Training.....	15 DE Reg. 1401(Prop.)
775 New Teacher Hiring Date Reporting.....	15 DE Reg. 43 (Prop.)
	15 DE Reg. 337 (Final)
815 Physical Examinations and Screening.....	15 DE Reg. 432 (Prop.)
	15 DE Reg. 838 (Final)
852 Child Nutrition.....	15 DE Reg. 958 (Prop.)
885 Safe Management and Disposal of Chemicals in the Delaware Public School System.....	15 DE Reg. 586 (Prop.)
	15 DE Reg. 1002 (Final)
910 Delaware General Educational Development (GED) Endorsement.....	15 DE Reg. 592 (Prop.)
	15 DE Reg. 1008 (Final)
922 Children With Disabilities Subpart A, Purposes and Definitions.....	15 DE Reg. 339 (Final)
923 Children With Disabilities Subpart B, General Duties and Eligibility of Agencies.....	15 DE Reg. 351 (Final)
925 Children With Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	15 DE Reg. 352 (Final)
926 Children With Disabilities Subpart E, Procedural Safeguards for Parents and Children.....	15 DE Reg. 354 (Final)
927 Children With Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information.....	15 DE Reg. 355 (Final)
928 Children With Disabilities Subpart G, Use and Administration of Funds.....	15 DE Reg. 356 (Final)
1001 Participation in Extra Curricular Activities.....	15 DE Reg. 1404(Prop.)
1004 Standards for School Buses Placed in Production on or After 1/1/2012..	15 DE Reg. 268 (Prop.)
1006 Delaware Interscholastic Athletic Association (DIAA).....	15 DE Reg. 69 (Final)
1007 DIAA Sportsmanship.....	15 DE Reg. 72 (Final)
1008 DIAA Junior High and Middle School Interscholastic Athletics.....	15 DE Reg. 74 (Final)
1009 DIAA High School Interscholastic Athletics.....	15 DE Reg. 75 (Final)
1104 Standards for School Buses Placed in Production on or After January 1, 2012.....	15 DE Reg. 650 (Final)
1505 Standard Certificate.....	15 DE Reg. 718 (Prop.)
	15 DE Reg. 1148(Final)
1506 Emergency Certificate.....	15 DE Reg. 728 (Prop.)
	15 DE Reg. 1150(Final)
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 826 (Final)
<b>Professional Standards Board</b>	
1598 Delaware Professional Development Standards.....	15 DE Reg. 77 (Final)
	15 DE Reg. 1109 (Prop.)
<b>DEPARTMENT OF FINANCE</b>	
<b>Division of Unclaimed Property</b>	
Practices and Procedures for Appeals of Determinations of the Audit Manager	15 DE Reg. 959 (Prop.)
	15 DE Reg. 1323(Final)

Practices and Procedures for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property.....	15 DE Reg. 965 (Prop.) 15 DE Reg. 1330(Final)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 841 (Final)
<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES</b>	
<b>Division of Long Term Care Residents Protection</b>	
3102 Long Term Care Discharge and Impartial Hearing Procedures.....	15 DE Reg. 1405(Prop.) 15 DE Reg. 79 (Final)
3201 Skilled and Intermediate Care Nursing Facilities.....	15 DE Reg. 192 (Final)
3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants.....	15 DE Reg. 192 (Final) 15 DE Reg. 269 (Prop.) 15 DE Reg. 1010 (Final) 15 DE Reg. 1264(Prop.)
3225 Assisted Living Facilities (Formerly Regulation No. 63).....	15 DE Reg. 81 (Final) 15 DE Reg. 192 (Final) 15 DE Reg. 594 (Prop.) 15 DE Reg. 1156(Final) 15 DE Reg. 192 (Final)
3230 Rest (Residential) Home Regulations.....	15 DE Reg. 192 (Final)
3301 Group Home Facilities for Persons with AIDS.....	15 DE Reg. 192 (Final)
3310 Neighborhood Homes for Persons with Developmental Disabilities.....	15 DE Reg. 968 (Prop.) 15 DE Reg. 1477(Final)
3315 Rest (Family) Care Homes.....	15 DE Reg. 192 (Final)
3320 Intensive Behavioral Support and Educational Residences (IBSER).....	15 DE Reg. 600 (Prop.)
<b>Division of Medicaid and Medical Assistance</b>	
Amendments relating to the use of respectful language as required by 78 Del. Laws, c. 180.....	15 DE Reg. 202 (Final)
Diamond State Health Plan Plus 1115 Demonstration Waiver Amendment .....	15 DE Reg. 45 (Prop.)
Diamond State Health Plan Plus - DSSM: 14920, 17913, 20100, 20100 and 25110.....	15 DE Reg. 1408(Prop.)
Reimbursement Methodology for Certain Medicaid Services.....	15 DE Reg. 734 (Prop.) 15 DE Reg. 1160(Final)
State Residency.....	15 DE Reg. 46 (Prop.) 15 DE Reg. 362 (Final)
Title XIX Medicaid State Plan:	
Attachment 3.1-A, Page 7, Concurrent Hospice Care for Children Under 21 Years.....	15 DE Reg. 661 (Final)
Comprehensive Medicaid Coverage of Tobacco Cessation Services for Pregnant Women and All Medicaid Beneficiaries.....	15 DE Reg. 656 (Final)
Concurrent Hospice Care for Children Under 21 Years.....	15 DE Reg. 272 (Prop.)
Diamond State Health Plan Plus 1115 Demonstration Waiver Amendment Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Dental Services.....	15 DE Reg. 666 (Final) 15 DE Reg. 968 (Prop.) 15 DE Reg. 1333(Final)
Estate Recovery and Managed Care.....	15 DE Reg. 1412(Prop.)
Freestanding Birth Center Services.....	15 DE Reg. 274 (Prop.) 15 DE Reg. 674 (Final)
Home and Community-Based Services Waiver Provisions: DSSM : 20700, 20700, 20710, 20720, 20740 and 20760	15 DE Reg. 1414(Prop.)
Medicaid Nonpayment and Reporting Requirements for Provider Preventable Conditions.....	15 DE Reg. 276 (Prop.) 15 DE Reg. 664 (Final)
Medicaid Provider Screening and Enrollment.....	15 DE Reg. 1273(Prop.)



Notice of Proposed Changes to the Medicaid State Plan Governing Payments for Disproportionate Share Hospital.....	15 DE Reg. 1265(Prop.)
Qualified Long-Term Care Insurance Partnership Program.....	15 DE Reg. 621 (Prop.)
	15 DE Reg. 1014 (Final)
Section 4.17 Adjustments or Recoveries.....	15 DE Reg. 84 (Final)
Section 4.44 Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States.....	15 DE Reg. 82 (Final)
Tobacco Cessation Services.....	15 DE Reg. 278 (Prop.)
Title XIX of the Social Security Act, Asset Verification System.....	15 DE Reg. 435 (Prop.)
	15 DE Reg. 845 (Final)
Program of All Inclusive Care for the Elderly (PACE).....	15 DE Reg. 437 (Prop.)
	15 DE Reg. 847 (Final)
Payment Error Rate Measurement (PERM).....	15 DE Reg. 448 (Prop.)
	15 DE Reg. 1020 (Final)
<b>DSSM</b> 14370 Coverage of Emergency Services and Labor and Delivery.....	15 DE Reg. 620 (Prop.)
	15 DE Reg. 1023 (Final)
14540 Estate Recovery Protections.....	15 DE Reg. 84 (Final)
<b>Division of Public Health</b>	
4202 Control of Communicable and Other Disease Conditions.....	15 DE Reg. 737 (Prop.)
	15 DE Reg. 1163(Final)
4304 Pre-Hospital Advanced Care Directive.....	15 DE Reg. 211 (Final)
4402 Regulations for Adult Day Care Facilities.....	15 DE Reg. 220 (Final)
4405 Free Standing Surgical Centers.....	15 DE Reg. 971 (Prop.)
4406 Home Health Agencies - Aide Only (Licensure).....	15 DE Reg. 220 (Final)
4410 Skilled Home Health Agencies (Licensure).....	15 DE Reg. 220 (Final)
4447 Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation (Hand Labor).....	15 DE Reg. 154 (Prop.)
	15 DE Reg. 521 (Final)
4451 Body Art Establishments.....	15 DE Reg. 282 (Prop.)
	15 DE Reg. 677 (Final)
4453 Cosmetology and Barbering.....	15 DE Reg. 155 (Prop.)
	15 DE Reg. 526 (Final)
4455 Delaware Regulations Governing a Detailed Plumbing Code.....	15 DE Reg. 1422(Prop.)
4457 Regulations Governing the Manufacture and Sale Of Ice .....	15 DE Reg. 156 (Prop.)
	15 DE Reg. 527 (Final)
4460 Mattresses, Pillows and Bedding.....	15 DE Reg. 156 (Prop.)
	15 DE Reg. 528 (Final)
4462 Public Drinking Water Systems.....	15 DE Reg. 1423(Prop.)
4469 Personal Assistance Services Agencies.....	15 DE Reg. 220 (Final)
State of Delaware Medical Marijuana Code.....	15 DE Reg. 1424(Prop.)
<b>Division of Social Services</b>	
Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal.....	15 DE Reg. 469 (Prop.)
	15 DE Reg. 1045(Final)
General Assistance, Refugee Cash Assistance Program Relating to Civil Unions.....	15 DE Reg. 1113(Prop.)
	15 DE Reg. 1498(Final)
<b>DSSM</b> 2011 Benefit Restorations for Cash Assistance and Food Stamps.....	15 DE Reg. 450 (Prop.)
	15 DE Reg. 1025 (Final)
2027 Disqualification of Individuals Convicted of Drug Related Offenses	15 DE Reg. 1277(Prop.)
5000 Fair Hearing Provisions.....	15 DE Reg. 973 (Prop.)
	15 DE Reg. 1343(Final)
5001 Fair Hearings; General Purpose.....	15 DE Reg. 86 (Final)
5100 Legal Base.....	15 DE Reg. 86 (Final)
5200 Statewide Fair Hearings.....	15 DE Reg. 86 (Final)
5311 Notifying Appellants and Others of Hearings.....	15 DE Reg. 971 (Prop.)

5311 Notifying Appellants and Others of Hearings.....	15 DE Reg. 1339(Final)
5312 Responding to Fair Hearing Requests.....	15 DE Reg. 971 (Prop.)
	15 DE Reg. 1339(Final)
5400 Fair Hearing Requirements.....	15 DE Reg. 86 (Final)
5500 Decisions by the Final Hearing Authority.....	15 DE Reg. 86 (Final)
5501 Corrective Payments.....	15 DE Reg. 973 (Prop.)
	15 DE Reg. 1343(Final)
5502 Public Access to Hearing Decisions.....	15 DE Reg. 973 (Prop.)
	15 DE Reg. 1343(Final)
5600 Admission of Hearsay Evidence.....	15 DE Reg. 973 (Prop.)
	15 DE Reg. 1343(Final)
5601 Rule of Legal Residuum.....	15 DE Reg. 973 (Prop.)
	15 DE Reg. 1343(Final)
5602 Exclusionary Rules of Evidence.....	15 DE Reg. 973 (Prop.)
	15 DE Reg. 1343(Final)
5603 Official Notice.....	15 DE Reg. 973 (Prop.)
	15 DE Reg. 1343(Final)
5604 Protocol.....	15 DE Reg. 973 (Prop.)
	15 DE Reg. 1343(Final)
5605 Requests for Continuance.....	15 DE Reg. 973 (Prop.)
	15 DE Reg. 1343(Final)
5606 Recusation.....	15 DE Reg. 973 (Prop.)
	15 DE Reg. 1343(Final)
5607 Demeanor of Evidence.....	15 DE Reg. 973 (Prop.)
	15 DE Reg. 1343(Final)
9076 Treatment of Income and Resources of Certain Non-Household .....Members.....	15 DE Reg. 451 (Prop.)
9093 Electronic Benefit Transfer (EBT).....	15 DE Reg. 454 (Prop.)
11002.9 Definitions and Explanation of Terms.....	15 DE Reg. 222 (Final)
11003.4 Cooperating with Child Support.....	15 DE Reg. 92 (Final)
11003.7 Child Care Subsidy Program Income Eligible Child Care.....	15 DE Reg. 1435(Prop.)
11006.5.1 Terminating Providers.....	15 DE Reg. 223 (Final)
<b>Division of Substance Abuse and Mental Health</b>	
6002 Mental Health Patients' Grievance Procedure.....	15 DE Reg. 283 (Prop.)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 849 (Final)
 <b>DEPARTMENT OF INSURANCE</b>	
1314 Health Premium Consumer Comparison.....	15 DE Reg. 164 (Prop.)
	15 DE Reg. 740 (Prop.)
	15 DE Reg. 1164(Final)
 <b>DEPARTMENT OF JUSTICE</b>	
<b>Division of Securities</b>	
Rules and Regulations Pursuant to the Delaware Securities Act.....	15 DE Reg. 529 (Final)
<b>Fraud and Consumer Protection Division</b>	
103 Consumer Protection Unit Administrative Enforcement Proceedings.....	15 DE Reg. 166 (Prop.)
<b>Victim's Compensation Assistance Program Advisory Council</b>	
301 Victims' Compensation Assistance Program Rules & Regulations.....	15 DE Reg. 175 (Prop.)
	15 DE Reg. 678 (Final)
 <b>DEPARTMENT OF LABOR</b>	
<b>Division of Industrial Affairs</b>	
1331 Industrial Accident Board Regulations.....	15 DE Reg. 287 (Prop.)
	15 DE Reg. 854 (Final)
1341 Workers' Compensation Regulations.....	15 DE Reg. 365 (Final)

1341 Workers' Compensation Regulations.....	15 DE Reg.1167(Final)
	15 DE Reg.1437(Prop.)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 856 (Final)
<b>DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL</b>	
<b>Division of Air and Waste Management</b>	
Proposed Revision to Delaware's 2008 State Implementation Plan For Attainment of the PM <sub>2.5</sub> Annual National Ambient Air Quality Standard - Attainment Demonstration.....	15 DE Reg. 742 (Prop.) 15 DE Reg.1171(Final)
1124 Control of Volatile Organic Compound Emissions, Sections 12.0, 19.0, 20.0 and 22.0.....	15 DE Reg. 532 (Final)
1125 Requirements for Preconstruction Review.....	15 DE Reg.1169(Final)
1131 Low Enhanced Inspection & Maintenance Program and Plan for Implementation.....	15 DE Reg. 1278(Prop.)
1138 Emission Standards for Hazardous Air Pollutants for Source Categories.	15 DE Reg. 176 (Prop.) 15 DE Reg. 861 (Final)
1144 Control of Stationary Generator Emissions.....	15 DE Reg. 303 (Prop.)
1302 Regulations Governing Hazardous Waste (RGHW).....	15 DE Reg. 471 (Prop.) 15 DE Reg. 864 (Final)
7201 Regulations Governing the Control of Water Pollution, Section 9.8 Regulations Governing the Discharges from the Application of Pesticides to Waters of the State.....	15 DE Reg.1216(Emer.)
<b>Division of Fish and Wildlife</b>	
3531 Tautog; Size Limits, Creel Limits and Seasons.....	15 DE Reg. 317 (Prop.) 15 DE Reg.1177(Final)
3536 Fish Pot Requirements.....	15 DE Reg. 533 (Final)
3552 Spanish Mackerel Size Limit and Creel Limit.....	15 DE Reg.1280(Prop.)
3553 River Herring Creel Limit.....	15 DE Reg. 627(Prop.) 15 DE Reg.1179(Final)
3900 Wildlife.....	15 DE Reg. 747 (Prop.) 15 DE Reg. 1505(Final)
<b>Division of Parks and Recreation</b>	
9202 Regulations Governing Natural Areas and Nature Preserves.....	15 DE Reg. 94 (Final)
<b>Division of Water Resources</b>	
7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.....	15 DE Reg.1439(Prop.)
7201 Regulations Governing the Control of Water Pollution, 9.5 The Concentrated Animal Feeding Operation (CAFO).....	15 DE Reg. 177 (Prop.) 15 DE Reg. 679 (Final)
<b>Division of Watershed Stewardship</b>	
5101 Sediment and Stormwater Regulations.....	15 DE Reg.1119 (Prop.)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 864 (Final)
<b>DEPARTMENT OF SAFETY AND HOMELAND SECURITY</b>	
<b>Division of State Police</b>	
1300 Board of Examiners of Private Investigators & Private Security Agencies	15 DE Reg. 484 (Prop.) 15 DE Reg. 766 (Prop.) 15 DE Reg. 875 (Final) 15 DE Reg.1181(Final) 15 DE Reg.1281(Prop.)
5500 Bail Enforcement Agents.....	15 DE Reg. 768 (Prop.) 15 DE Reg.1356(Final)
Regulations Governing Community Firearm Recovery Programs.....	15 DE Reg. 682 (Final)

**Office of the Secretary**

Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 877 (Final)
Regulations Governing Community Firearm Recovery Programs.....	15 DE Reg. 319 (Prop.)
Regulations Governing Security Systems and Protective Services: False Alarms	15 DE Reg. 1441(Prop.)
Regulations Governing Statewide Authorized Tamper Resistant Prescription	
Forms .....	15 DE Reg. 535 (Final)
	15 DE Reg.1357(Final)
Regulations Governing the Relief from Disabilities Board.....	15 DE Reg.1286(Prop.)

**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**

**Division of Management and Support Services**

501 Procedures for Drug Testing Certain Employees.....	15 DE Reg. 1047 (Final)
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**Office of the Secretary**

Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 881 (Final)
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**DEPARTMENT OF STATE**

**Division of Professional Regulation**

**Gaming Control Board**

101 Regulations Governing Bingo .....	15 DE Reg. 48 (Prop.)
	15 DE Reg. 367 (Final)
	15 DE Reg.1290(Prop.)
102 Regulations Governing Raffles.....	15 DE Reg. 50 (Prop.)
	15 DE Reg. 368 (Final)
103 Regulations Governing Charitable Gambling Other Than Raffles.....	15 DE Reg. 491 (Prop.)
	15 DE Reg. 886 (Final)
104 Regulations Governing Texas Hold 'Em Poker.....	15 DE Reg. 495 (Prop.)
	15 DE Reg. 886 (Final)
200 Board of Landscape Architecture.....	15 DE Reg. 774 (Prop.)
	15 DE Reg.1443(Prop.)
300 Board of Architecture.....	15 DE Reg. 1121(Prop.)
1100 Board of Dentistry and Dental Hygiene.....	15 DE Reg. 628 (Prop.)
	15 DE Reg. 777 (Prop.)
	15 DE Reg.1131(Prop.)
	15 DE Reg.1183(Final)
	15 DE Reg.1359(Final)
1400 Board of Electrical Examiners.....	15 DE Reg. 370 (Final)
1700 Board of Medical Licensure and Discipline.....	15 DE Reg. 498 (Prop.)
	15 DE Reg. 537 (Final)
	15 DE Reg.1184(Final)
	15 DE Reg.1293(Prop.)
1770 Respiratory Care Practice Advisory Council.....	15 DE Reg. 52 (Prop.)
	15 DE Reg. 543 (Final)
	15 DE Reg. 1132(Prop.)
1790 Acupuncture Advisory Council.....	15 DE Reg.1137(Prop.)
1799 Genetic Counselor Advisory Council.....	15 DE Reg. 180 (Prop.)
	15 DE Reg. 545 (Final)
1900 Board of Nursing, Sections 1.0, 2.0, 3.0, 4.0, 6.0, 7.0, 9.0, 10.0, 14.0 ....	15 DE Reg. 53 (Prop.)
	15 DE Reg. 685 (Final)
	15 DE Reg.1294(Prop.)
2500 Board of Pharmacy.....	15 DE Reg. 321 (Prop.)
	15 DE Reg. 1507(Final)
Subsection 5.1.13.....	15 DE Reg. 99 (Final)
	15 DE Reg. 887 (Final)
2600 Examining Board of Physical Therapists.....	15 DE Reg. 183 (Prop.)
	15 DE Reg.1054 (Final)
2700 Board of Registration for Professional Land Surveyors.....	15 DE Reg. 781 (Prop.)
	15 DE Reg.1361(Final)
2900 Real Estate Commission.....	15 DE Reg.1185(Final)

2900 Real Estate Commission.....	15 DE Reg.1449(Prop.)
2925 Real Estate Commission Education Committee.....	15 DE Reg. 1455(Prop.)
2930 Council on Real Estate Appraisers.....	15 DE Reg. 888 (Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	15 DE Reg. 322 (Prop.) 15 DE Reg.1055(Final) 15 DE Reg.1294(Prop.) 15 DE Reg. 1510(Final)
3100 Board of Funeral Services.....	15 DE Reg.1300(Prop.)
3300 Board of Veterinary Medicine.....	15 DE Reg. 793 (Prop.) 15 DE Reg.1362(Final)
3500 Board of Examiners of Psychologists.....	15 DE Reg. 371 (Final)
3600 Board of Registration of Geologists.....	15 DE Reg. 502 (Prop.) 15 DE Reg.1456(Prop.) 15 DE Reg. 53 (Prop.) 15 DE Reg. 373 (Final) 15 DE Reg. 374 (Final)
Hearing Aid Dispensers	
4400 Delaware Manufactured Home Installation Board.....	15 DE Reg. 224 (Final)
5100 Board of Cosmetology and Barbering.....	15 DE Reg. 983 (Prop.)
5200 Board of Examiners of Nursing Home Administrators.....	
8500 Rules and Regulations Regarding Mandatory Information to be Supplied to the State Bureau of Identification.....	15 DE Reg. 506 (Prop.) 15 DE Reg.1363(Final)
8800 Boxing and Combative Sports Entertainment Rules and Regulations.....	15 DE Reg. 986 (Prop.) 15 DE Reg.1366(Final)
Uniform Controlled Substances Act Regulations.....	15 DE Reg. 577 (Emer.) 15 DE Reg. 891 (Final)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 901 (Final)
<b>Office of the State Bank Commissioner</b>	
103 Freedom of Information Act Requests.....	15 DE Reg. 100 (Final)
1114 Alternative Franchise Tax.....	15 DE Reg.1187(Final)
1201 Policies and Procedures Regarding FOIA Requests.....	15 DE Reg.1056(Final)
<b>Public Service Commission</b>	
1009 Regulations Implementing the Water Utility Distribution System Improve- ment Charge (“DSIC”) & the Utility Facility Relocation Charge (“UFRC”)...	15 DE Reg.1301(Prop.)
1202 Policies and Procedures Regarding FOIA Requests.....	15 DE Reg.1063(Final)
3001 Rules for Certification and Regulation of Electric Suppliers.....	15 DE Reg. 102 (Final)
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standards Act.....	15 DE Reg. 508 (Prop.) 15 DE Reg. 1308(Prop.)
<b>DEPARTMENT OF TECHNOLOGY AND INFORMATION</b>	
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 906 (Final)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Motor Vehicles</b>	
2217 Driver License and Identification Card Application Procedures for Delaware Compliant & Delaware Non-Compliant Identification Documents	15 DE Reg. 322 (Prop.) 15 DE Reg. 687 (Final)
2287 Public Carrier Regulations.....	15 DE Reg. 55 (Prop.) 15 DE Reg. 550 (Final)
<b>Division of Planning and Policy</b>	
2306 Crash Data Release.....	15 DE Reg. 795 (Prop.) 15 DE Reg.1192(Final)

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2309 Standards and Regulations for Subdivision Streets and State Highway Access.....	15 DE Reg. 56 (Prop.) 15 DE Reg. 551 (Final)
<b>Division of Transportation Solutions</b>	
2402 Delaware Manual on Uniform Traffic Control Devices .....	15 DE Reg. 106 (Final)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 910 (Final)
<b>EXECUTIVE DEPARTMENT</b>	
<b>Delaware Economic Development Office</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 920 (Final)
<b>Office of Management and Budget</b>	
Disability Insurance Program Rules and Regulations.....	15 DE Reg. 799 (Prop.) 15 DE Reg.1367(Final)
Environmentally Preferred Purchasing Policy.....	15 DE Reg.1469(Prop.)
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 925 (Final)
Promoting, Maintaining and Controlling the Public Use of the Legislative Mall	15 DE Reg. 1474(Prop.)
<b>STATE EMPLOYEE BENEFIT COMMITTEE</b>	
2001 Group Health Care Insurance Eligibility and Coverage Rules.....	15 DE Reg. 225 (Final) 15 DE Reg.1071 (Final)

**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION**

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

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

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 3.5.1. The Commission will hold a public hearing on the proposed rule changes at Harrington Raceway on June 8, 2012 at 10:15 AM. Written comments should be sent to Hugh J. Gallagher, Executive Director of Delaware Harness Racing Commission, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on May 1, 2012.

The proposed changes are for the purpose of updating Rule 3.5.1 and to more accurately reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml)

A copy is also available for inspection at the Harness Racing Commission office.

**501 Harness Racing Rules and Regulations**

*(Break in Continuity of Sections)*

**3.0 Officials**

*(Break in Continuity within Sections)*

**3.5 Horse Identifier / Equipment Checker****3.5.1 General Authority**



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~~The Horse Identifier / Equipment Checker shall be present for each race.~~ The duties of the Horse Identifier / Equipment Checker are:

- 3.5.1.1 Maintain a listing of all equipment worn, including shoes, and the tattoo or freeze brand number for each horse racing at the meeting;
  - 3.5.1.2 Each time a horse races, identify the horse by checking the lip tattoo or freeze brand; and
  - 3.5.1.3 Compare the type and condition of equipment actually being used by each horse for each race with the approved equipment listed; and
  - 3.5.1.4 Perform any other duty as directed by the Presiding or Paddock Judge.
- 3.5.2 Report Violations
- The Horse Identifier / Equipment Checker shall report to the Paddock Judge immediately any discrepancies or faulty equipment discovered by the investigations specified in this Rule, which findings are to be reported immediately to the Presiding Judge. The Presiding Judge's ruling in these matters is final.

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

**501 Harness Racing Rules and Regulations**

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## PLANT INDUSTRIES

Statutory Authority: 3 Delaware Code, Section 2402(b) (24 Del.C. §2402(b))  
3 DE Admin. Code 801

### PUBLIC NOTICE

#### 801 Regulations for Noxious Weed Control

On March 29, 2012, the Noxious Weed Advisory Committee met to advise the Secretary of Agriculture on weed control. Membership of this Committee is detailed in 3 Del.C. §2402(f). A proposal was made by UD Plant and Soil Sciences Professor and Cooperative Extension Specialist, Mark van Gessel, to add two weeds to Delaware's Noxious Weed list. The motion was seconded by the Committee, and the vote for addition was unanimous.

The weeds being added and the justification for their addition are as follows. *Amaranthus palmeri* (Palmer Amaranth) has become an increasing problem in agricultural fields due to its high rate of seed production and development of resistance to herbicides used in corn and soybean production. *Uruchoa texana* (Texas Panicum) has become an increasing problem in agricultural fields due to the seeds' ability to germinate throughout the growing season. With this growth habit, an additional herbicide application or tillage is required for late season control.

The Department proposes to amend the Regulations for Noxious Weed Control by adding these two weeds to Section 2.0 Designation Of Species; Investigations; Control Programs; Grants; Weed Advisory Committee. The Department will take comments from the public until close of business on May 31, 2012. Questions and comments concerning this change, should be directed to and sent to Plant Industries Administrator Faith.Kuehn@state.de.us, 302-698-4587, or Noxious Weed Supervisor, Todd.Davis@state.de.us, 302-698-4581.

#### 801 Regulations for Noxious Weed Control

### 1.0 General Definitions

For the purpose of these Rules and Regulations

**"Noxious Weed"** means any species of plant or parts of plants, that have been designated by the Department, under 3 Del.C. Ch. 24, as having adverse effects or threaten agricultural production.

**"Persons"** mean any individual, partnership association, fiduciary, corporation or any organized group of persons whether incorporated or not.

**"Secretary"** means the Secretary of the Delaware Department of Agriculture

## **2.0 Designation Of Species; Investigations; Control Programs; Grants; Weed Advisory Committee.**

- 2.1 The Department of Agriculture designates the following species of weeds as Noxious Weeds in the State of Delaware:
  - 2.1.1 Sorghum halepense L., commonly known as "Johnsongrass"
  - 2.1.2 Cirsium arvense L., commonly known as "Canada Thistle"
  - 2.1.3 Sicyos angulatus L., commonly known as "Burdock"
  - 2.1.4 Ambrosia trifida L., commonly known as "Giant Ragweed"
  - 2.1.5 Amaranthus palmeri S. Watson, commonly known as "Palmer's Amaranth"
  - 2.1.6 Urochloa texana Buckl., commonly known as "Texas Panicum"
- 2.2 The State Department of Agriculture may make such investigations studies and determinations as it may deem advisable in order to ascertain the extent of growth and infestation of noxious weeds in this state, and the effect of such species on agricultural production.
- 2.3 The Department may institute programs of control and eradication.
- 2.4 Authority for Department to enter into agreements.
  - 2.4.1 The Department may enter into agreements with any county or subdivision of this State, with any adjoining state, or with agencies of the federal or state governments to affect a program of control and eradication.
  - 2.4.2 When such an agreement is executed and certified in writing to the Secretary of State, the Department and the county may conduct surveys to determine the location and amount of infestations of designated noxious weeds within that county, and may provide technical and financial assistance to landowners in a cooperative control or eradication program, and may affect a program of mowing, spraying, or other control or eradication practices on road right-of-ways, drainage ditch banks, parks, playgrounds, and other public or private lands.
  - 2.4.3 The agreement between the Department and county may be terminated by either party on 30 days written notice. (3 **Del.C.** 1953, §2403; 57 **Del. Laws**, c. 701).
- 2.5 The Department may accept, use or expend such aid, gift, grant, or loan as may from time to time be made available from any source, public or private, for the purpose of carrying out the provisions of this chapter.
- 2.6 The methods of operations by the Department shall not be limited to those specifically listed in this section.
- 2.7 A Weed Advisory Committee consisting of 5 persons shall serve in an advisory capacity to the Secretary on matters concerning noxious weed control in the State. The committee shall consist of a cooperative extension representative from the University of Delaware, chosen by the Director of Cooperative Extension Services; the Noxious Weed Specialist, State Department of Agriculture; and 1 person from each of the 3 counties to be chosen by the Governor's Council on Agriculture.

## **3.0 Importation; Transportation; Control And Elimination**

- 3.1 It shall be unlawful to import designated noxious weeds into this State, or to transport designated noxious weeds within this State, in any form capable of growth, except for purposes of research with the prior written approval of the State Department of Agriculture. It shall be unlawful to knowingly contaminate any uninfested land or roadway with designated noxious weeds through the movement of rootstocks, seed, soil, mulch, nursery stock, farm machinery, or other medium.
- 3.2 It shall be unlawful to knowingly allow designated noxious weeds to set seed on any land, or to allow any portion of a designated noxious weed plant to reach a height or vine length of 24 inches; and it shall be the duty of each landowner or person who has the present right to possess and/or use the land to mow, cultivate, treat with chemicals, or use such other practices as may be prescribed by the

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Department of Agriculture as effective in preventing seed set on designated noxious weed infestations or in elimination of the designated noxious weed plant.

## 4.0 Prosecution Of Violations

- 4.1 An exemption from prosecution is allowed by the Noxious Weed Law. To be exempt a landowner or person who possesses or has the use of that land must enter into a written agreement, commonly known as a compliance agreement, with the Department of Agriculture. The agreement must specify terms and conditions of a program for the control and eradication of designated noxious weeds and the land that is covered. So long as all the terms and conditions are being complied with, there is no violation of this chapter as to the land covered by the agreement.
- 4.2 Failure to comply with the provisions of this chapter may result in the assessment of a civil penalty. No civil penalty shall be imposed until an administrative hearing is held before the Secretary or his or her designee after due notice (20 days) has been given to the landowner or person who possesses or has use of the land in accordance with 29 **Del.C.**, Ch.101, §10122.

## 5.0 Hearing Procedure And Appeals

- 5.1 All hearings which are held to enforce the provisions of this chapter shall be conducted by the Secretary or his or her designee. The landowner or person who possesses or has use of the land shall have the right to appear personally, and to be represented by counsel, and to provide evidence and witnesses in his or her own behalf. The Department shall preserve a full record of the proceeding. A transcript of the record may be purchased by any person interested in such hearing on payment to the Department the cost of preparing such transcript.
- 5.2 The Department shall issue a decision in writing to the landowner or person who possesses or has use of the land within 30 days of the conclusion of the hearing.
- 5.3 Any individual who feels aggrieved by an action of the Department as a result of an action resulting from a hearing held under this chapter may make an appeal, within 30 days of such action, to the Superior Court, and after full hearing the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds thereof, shall be served upon the Secretary of the Department.

## 6.0 Penalties

- 6.1 Any person who interferes with the Department of Agriculture in the enforcement of this chapter as determined in an administrative hearing, shall be assessed a civil penalty of no less than \$50 nor more than \$500 on each count.
- 6.2 Any person who refuses to comply with the provisions of this chapter shall be assessed a civil penalty of a minimum of \$100 or \$25 per acre of land upon which noxious weeds have seed, whichever is greater.
- 6.3 The proceeds of any fines or penalties imposed under his chapter shall be deposited into an appropriated special fund account in the Department of Agriculture.
- 6.4 These funds shall be used to support the noxious weed eradication programs of the Department of Agriculture.

## 7.0 Cutting And Spraying Of Noxious Weeds By The Department Of Transportation

- 7.1 The Department of Transportation shall cut down, or cause to be cut down, noxious weeds growing in the rights-of-way over which it has charge or supervision, as often in each year as shall be sufficient to prevent them from going to seed. When particular problem areas have been identified, they shall be sprayed to eradicate the weed. (64 **Del. Laws**, c. 2851 §1).

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# PROPOSED REGULATIONS

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 294

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

#### 294 Data Governance

#### A. Type Of Regulatory Action Required

New Regulation

#### B. Synopsis Of Subject Matter Of The Regulation

The Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation 14 DE Admin. Code 294 Data Governance. This regulation was developed in consultation with a working group designated by the members of the P-20 which includes representatives of the Interagency Resource Management Committee. The regulation is adopted pursuant to legislation passed in the 146th General Assembly and specifically 14 Del.C. §122(b)(24). This regulation provides for the criteria and process for interagency data governance and the conduction of evaluations, audits and studies. The Delaware P-20 Council Data Governance Handbook, approved by the P-20 Council in January 2012 is a companion document to this regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 5, 2012 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation and/or Delaware P-20 Council Data Governance Handbook is available from the above address or may be viewed at the Department of Education business office.

#### C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? This new regulation will allow for the sharing of interagency data which may result in improved policies or interventions that support student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation does not specifically address ensuring all students receive an equitable education, but may assist to identify any issues with equity.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not specifically address ensuring all students' health and safety are adequately protected, but may assist to identify any issues with health and safety.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation does not specifically address ensuring all students' legal rights are respected, but may assist to identify any issues with legal rights.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation does preserve the necessary authority and flexibility at the local board and school level.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This is a new regulation. Data authority and accountability at the local or state level does not necessarily change because of this new regulation.

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

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

burdensome method for addressing the purpose of data governance.

10. What is the cost to the State and to the local school boards of compliance with the regulation? It is anticipated that there are no additional costs to the State or to the local school boards for compliance with this regulation.

## **294 Data Governance**

### **1.0 Purpose**

The purpose of this regulation is to outline the criteria and process for interagency data governance and the conduction of evaluation, audits and studies pursuant to 14 Del.C. §§121, 122 and 4111.

### **2.0 Definitions**

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

"Department" means the Delaware Department of Education.

"Educational Record" shall mean personally identifiable student information maintained by an education agency or institution as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) and its implementing regulations at 34 CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations, and other applicable federal and state privacy and confidentiality laws.

"Longitudinal Data System" means a structure and mechanism for the storage, description, management and reporting of discrete data elements and bodies of information over time.

"Personally Identifiable Information" refers to information which, alone or in combination with other information, can be used to distinguish or trace an individual's identity and shall include, but not be limited to, the names and addresses of students, parents or other family members, and personal identifiers such as social security or student numbers.

"P-20 Council" means the council established by 14 Del. C., §107 to coordinate educational efforts of publicly-funded programs from early care through higher education and to foster partnerships among groups concerned with public education.

"Research Agenda" means a roster of research questions that require shared data elements and subject to periodic review and revision. Research questions may reflect federal and state reporting requirements or may be discretionary.

### **3.0 Longitudinal Data System Governance**

The Longitudinal Data System developed and administered by the Department is governed by the Delaware P-20 Council Data Governance Handbook, initially approved by the P-20 Council on January 10, 2012, and as may be amended from time to time.

### **4.0 Acquisition, Use and Disposal of Data**

4.1 The Department shall collect and maintain data, including Personally Identifiable Information, in compliance with its rights and obligations under federal and state laws.

4.2 The Department shall provide data, including Personally Identifiable Information, to implement applicable Research Agendas established by the P-20 Council.

4.3 When a Research Agenda is established by the P-20 Council which requires the use of Personally Identifiable Information from data collected and maintained or to be collected and maintained by the Department, a written agreement in the form prescribed by the Department shall be entered into.

4.3.1 If the Research Agenda is to conduct a study for or on behalf of school, school district or postsecondary institutions it must be for the purpose of: improving instruction; developing, validating, or administering predictive tests; or administering student aid programs. In the case of such a study, the written agreement shall, at a minimum, do the following:

# PROPOSED REGULATIONS

- 4.3.1.1 Specify the purpose, scope and duration of the study and the information to be disclosed; and
- 4.3.1.2 Require the organization to: use Personally Identifiable Information only to meet the purpose(s) of the study; limit access to Personally Identifiable Information to those with legitimate interests; and destroy any Personally Identifiable Information upon completion of the study and specify the time period in which the information must be destroyed.
- 4.3.2 If the Research Agenda is to conduct an audit or evaluation of a Federal or State supported education program or to enforce or comply with Federal legal requirements that relate to those education programs, as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) and its implementing regulations at 34 CFR part 99, the written agreement shall, at a minimum, do the following:
- 4.3.2.1 Designate an authorized representative; and
- 4.3.2.2 Specify what Personally Identifiable Information will be disclosed and for what purpose, which purpose shall be one allowable under the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) and its implementing regulations at 34 CFR part 99; and
- 4.3.2.3 Describe the activity to make clear it falls within an allowable purpose; and
- 4.3.2.4 Require the authorized representative to destroy Personally Identifiable Information upon completion of the evaluation and specify the time period in which the information must be destroyed; and
- 4.3.2.5 Include policies and procedures to protect Personally Identifiable Information from further disclosure and unauthorized use.
- 4.4 Any written agreement entered into under this regulation shall prohibit modification or amendment except by written agreement duly executed by the parties to that agreement.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1597

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

#### 1597 Delaware Professional Teaching Standards

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1597 Delaware Professional Teaching Standards shall serve as the common principles and foundations of teaching practice for Delaware public school educators in accordance with 14 Del.C. §§1201 and 1205 (b). The standards outline what educators should know and be able to do to ensure every K-12 student reaches the goal of being ready to enter college or the workforce in today's world. Delaware Professional Teaching Standards would reflect the Council of Chief State School Officers' Interstate Teacher Assessment and Support Consortium Model Core Teaching Standards.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Thursday, May 31, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street Suite 2, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. Impact Criteria**

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

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

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

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

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

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

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

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

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

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

**1597 Delaware Professional Teaching Standards****1.0 Content**

~~The Delaware Professional Teaching Standards establish a common set of knowledge, skills, and attributes expected of Delaware's teachers. In accordance with 14 **Del.C.** §1205, this regulation shall be applied to all teachers employed within the public schools and charter schools of the State of Delaware.~~

~~7-DE Reg. 75 (7/1/03)~~

~~12-DE Reg. 1208 (03/01/09)~~

**2.0 Definitions**

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

~~**"Alignment of Assessment"** means the ability to determine what students know and are able to do with respect to the curriculum is dependent upon how well the assessment methods and tasks are aligned with, or in agreement with, the curriculum. Assessments should be aligned with the content of the curriculum, consistent with the instructional approaches, and address the range of topics as weighted in the curriculum.~~



**"Authentic Experiences"** means the use of performances, or "authentic activities", such as writing a letter, solving a real world mathematics problem, or investigating a question in science, as a way to teach and to assess student learning.

**"Culturally or Linguistically Diverse"** means students and families who come to schools with cultural and/or language backgrounds that differ from the predominant experience of monolingual English speakers. The term calls attention to the range of geographic background, cultural heritage, and level of English proficiency found among students in schools.

**"Codes of Conduct"** mean codes of conduct adopted by professional educational organizations that establish the ethical parameters that guide professional behavior. The codes range from general guides for teachers (NEA) to more specific guidelines for teachers of certain subject area.

**"Communication Theory"** means an understanding of the principles of communication theory (e.g., productive and receptive communication, cultural context of language, metacommunication) as they apply in practice in the classroom.

**"Community"** means the school community and includes teachers, administrators, students, parents, guardians and Relative Caregivers. However, the schools are a part of a larger community (i.e., neighborhood, town, city) that supports the school and the students will live.

**"Disciplines"** means academic disciplines which include the arts, humanities, languages, mathematics, and natural and social sciences that provide the basis of the subjects taught in schools.

**"Discourse"** means to both the writing and speaking in the classroom that teachers and students engage in as they seek ways to represent ideas, concepts and their thinking. It is the ways in which they discuss agree and disagree, and explore the discipline.

**"Diverse Learners"** means students are individuals who differ in the ways in which they learn. They have different learning styles, modalities, interests, talents and personalities, all of which affect the ways in which teachers design instruction.

**"Domains"** means the broad areas of human development, intellectual, social, emotional, and physical, that influence learning.

**"Educational Technology"** means the use of any technology (e.g., word processing, data retrieval, electronic mail) as a set of skills that can be learned and used to support learning in the classroom.

**"Habits of Mind"** mean mental habits influence what students do and how they learn. The development of habits of mind, like perseverance, confidence, a willingness to explore new ideas and experiment, seeking feedback from others, valuing accuracy and precision, avoiding impulsivity, are a part of the teaching and learning process.

**"Health"** means health issues that can affect learning range from cerebral palsy, Downs Syndrome, and other severe disabilities to less pronounced and not easily detected concerns such as diabetes or asthma or nutrition. An awareness of these conditions and how they affect learning furthers a teacher's ability to meet the needs of students.

**"Instructional Technology"** means the use of specific technologies that are integrated with content to enhance learning within the disciplines (e.g., graphing calculators in mathematics, accounting or tax software in business, editing software for writing).

**"Learning Theory"** means an understanding of the principles of learning theory (e.g., behaviorism, constructivism, transmission of knowledge) as they apply in practice in the classroom.

**"Meaningful (to students)"** means to convey a sense of purpose to students for their learning. The content takes on significance because of the connections that are made between the learning and students' lives. It helps students make sense out of what they are learning.

**"Measurement Theory"** means an understanding of the principles of measurement theory (e.g., validity, reliability, bias in testing, test construction, interpretation of tests) as they apply in practice in the classroom.

**"Media Communication"** means the use of technologies that document events (e.g., audiotape, videotape, electronic transfer of information through computer programs) as a means of communicating information.

**"Methods (Process) of Inquiry"** means the process through which students make new discoveries, extend their knowledge, or deepen their understandings of things they already know. Students need to be able to create, observe, compare, question, record and interpret data, evaluate and revise, search resources, and share information.

**"Multicultural"** means diverse cultural backgrounds of students and their families and school personnel, with an emphasis on their ethnicity, race, religion, gender, socio-economic status, and family structures. The term takes on importance in the development of teachers as they learn to recognize the importance of these factors in the education process.

**"Multiple Assessments"** means decisions about what students know and are able to do should be based on an analysis of information obtained from a variety of sources of evidence. Assessments should be conducted in a variety of formats (e.g., written and oral tests, observations, performances) and address the full range of content.

**"Multiple Intelligences"** means based on the writing of Howard Gardner, the identification of seven abilities (i.e., linguistic, logical, mathematical, spatial, musical, bodily kinesthetic, inter personal, intra-personal) that describe distinct aspects of "intelligent."

**"Nonverbal Communication"** means communication through means other than the use of words (e.g., facial expressions, body position, action).

**"Pedagogical Knowledge"** means the knowledge of how to teach the knowledge of instructional methods.

**"Performance"** means carrying out or completing an activity or production which displays a student's knowledge and ability through demonstration.

**"Performance Modes"** means the range of ways in which students can demonstrate what they know and are able to do (e.g., writing, speaking, visual works, videotapes, enacting).

**"Professional Growth"** means the process in which teachers examine the relationship between what they and their students are doing and what their students are learning. This process involves self reflection and feedback from students and colleagues and an exploration of the findings from research, as well as the use of this information as the basis for improving personal practice in the future.

**"Structures"** means the structures of disciplines which provide the overall framework which both connects and transcends the skills and content of the discipline. The big picture or outline of the discipline helps students understand the commonalities and the interrelationships of concepts within a discipline. An understanding of the structure of a discipline allows students to see connections as they acquire new knowledge.

**"Technology"** means the use of the word technology is meant to encompass both educational and instructional technology within this document unless one of these terms is used specifically.

**"Theory"** means the knowledge of the principles and methods of a science (e.g., learning, measurement) as contrasted with its application.

**7-DE Reg. 75 (7/1/03)**

**42-DE Reg. 1208 (03/01/09)**

### **3.0 Content Knowledge**

The teacher understands the core concepts and structure(s) of the discipline(s) and their related content standards and creates learning experiences that make the content meaningful to students.

#### **3.1 Knowledge Components**

- 3.1.1 Understands major concepts, principles, and theories that are central to the discipline
- 3.1.2 Understands the dynamic and complex nature of the content of the discipline
- 3.1.3 Understands the processes of inquiry central to the discipline

~~3.1.4 Understands the relationship of knowledge within the discipline to other content areas and to life applications~~

~~3.2 Performance Indicators~~

~~3.2.1 Uses a variety of explanations and multiple representations of concepts to help develop conceptual understanding~~

~~3.2.2 Anticipates and adjusts for common misunderstandings that impede learning within the discipline~~

~~3.2.3 Engages students in generating and testing knowledge according to the processes of inquiry of the discipline~~

~~3.2.4 Creates learning experiences that make connections to other content areas and to life experiences~~

~~7-DE Reg. 75 (7/1/03)~~

~~12-DE Reg. 1208 (03/01/09)~~

#### 4.0 Human Development and Learning

The teacher understands how children develop and learn and provides learning opportunities that support the intellectual, social, emotional and physical development of each learner.

~~4.1 Knowledge Components~~

~~4.1.1 Understands learning theory, including how students construct knowledge, acquire skills, and develop habits of mind~~

~~4.1.2 Understands human development, including the ranges of individual variation within each domain~~

~~4.1.3 Understands the interaction between student development and learning~~

~~4.2 Performance Indicators~~

~~4.2.1 Chooses developmentally appropriate instructional strategies that promote student learning~~

~~4.2.2 Develops concepts and principles at different levels of complexity so that they are meaningful to students at varying levels of development~~

~~7-DE Reg. 75 (7/1/03)~~

~~12-DE Reg. 1208 (03/01/09)~~

#### 5.0 Diverse Learners

The teacher understands how students differ and adapts instruction for diverse learners.

~~5.1 Knowledge Components~~

~~5.1.1 Understands how student learning is influenced by individual experiences, talents, and prior learning, as well as language, culture, gender, health, family, and community~~

~~5.1.2 Understands differences in approaches to learning and performance, including learning styles, multiple intelligences, and performance modes~~

~~5.1.3 Understands cultural diversity and how to incorporate multicultural experiences into instruction~~

~~5.1.4 Understands areas of exceptionality in learning, including talented and gifted and special needs, and how to access strategies to accommodate individual differences~~

~~5.1.5 Understands the process of second language acquisition and how to access strategies to support learning for students whose first language is not English~~

~~5.1.6 Understands the needs of culturally or linguistically diverse students~~

~~5.1.7 Understands when and how to access appropriate resources or services to meet special learning needs~~

~~5.1.8 Understands the major principles and parameters of federal and state disability legislation and regulation.~~

~~5.2 Performance Indicators~~

~~5.2.1 Accepts and values all students~~

~~5.2.2 Treats all students equitably~~

~~5.2.3 Respects students as individuals with differing experiences, skills, talents, and interests~~

- ~~5.2.4 Uses cultural diversity and individual student experiences to enrich instruction~~
- ~~5.2.5 Designs instructional activities that address the range of student learning styles, multiple intelligences and performance modes~~
- ~~5.2.6 Makes appropriate provisions for individual students who have particular learning differences or needs~~

~~7-DE Reg. 75 (7/1/03)~~

~~12-DE Reg. 1208 (03/01/09)~~

## **6.0 Communication**

~~The teacher understands and uses effective communication.~~

### ~~6.1 Knowledge Components~~

- ~~6.1.1 Understands the general types of communication strategies and appropriate assistive technology that can be incorporated as a regular part of their instruction.~~
- ~~6.1.2 Understands effective oral, written, nonverbal, and media communication techniques~~
- ~~6.1.3 Understands the importance of audience and purpose when selecting ways to communicate ideas~~
- ~~6.1.4 Understands potential positive and negative effects of their verbal and non-verbal messages on students with cultural, gender and ability differences.~~

### ~~6.2 Performance Indicators~~

- ~~6.2.1 Uses a variety of communication techniques~~
- ~~6.2.2 Communicates effectively with diverse populations~~
- ~~6.2.3 Models accurate and grammatically correct language~~
- ~~6.2.4 Creates opportunities for students to learn effective communication~~

~~7-DE Reg. 75 (7/1/03)~~

~~12-DE Reg. 1208 (03/01/09)~~

## **7.0 Learning Environment**

~~The teacher understands individual and group behavior and creates a learning environment that fosters active engagement, self motivation, and positive social interaction.~~

### ~~7.1 Knowledge Components~~

- ~~7.1.1 Understands principles of effective classroom management~~
- ~~7.1.2 understands factors that influence motivation and engagement and how to help students become self motivated~~
- ~~7.1.3 Understands individual behavior and how individuals behave in groups~~
- ~~7.1.4 Understands group dynamics and how groups function within a community~~
- ~~7.1.5 Understands how to help students learn to participate effectively in groups~~

### ~~7.2 Performance Indicators~~

- ~~7.2.1 Establishes and maintains a classroom environment with clear expectations and standards of behavior~~
- ~~7.2.2 Organizes, allocates, and manages time, materials, and physical space to support learning~~
- ~~7.2.3 Establishes classroom practices that promote a safe environment~~
- ~~7.2.4 Creates a learning community which respects individual differences~~
- ~~7.2.5 Establishes a classroom environment which promotes positive relationships, cooperation, and purposeful learning~~
- ~~7.2.6 Creates a classroom environment where student thoughts and ideas are a basis for exploring and developing understanding~~
- ~~7.2.7 Creates a learning community in which students work independently and collaboratively~~
- ~~7.2.8 Encourages students to assume responsibility for their own learning and behavior~~

~~7-DE Reg. 75 (7/1/03)~~

~~12-DE-Reg-1208 (03/01/09)~~**8.0 Planning for Instruction**

The teacher understands instructional planning and designs instruction based upon knowledge of the disciplines, students, the community, and Delaware's student content standards.

~~8.1 Knowledge Components~~

- ~~8.1.1 Understands how to incorporate learning theory, content, curriculum development, and assessment, and student development when planning~~
- ~~8.1.2 Understands that effective instructional planning includes the alignment of assessment and instruction prior to implementation~~
- ~~8.1.3 Understands how to develop short and long range plans consistent with curriculum goals, learner diversity, and learning theory~~
- ~~8.1.4 Understands how to make connections between student experiences and education goals~~
- ~~8.1.5 Understands how to maximize the participation and engagement of students with disabilities in a general or expanded curriculum.~~

~~8.2 Performance Indicators~~

- ~~8.2.1 Evaluates teaching resources and materials for accuracy and usefulness~~
- ~~8.2.2 Applies principles of scope and sequence when planning instruction~~
- ~~8.2.3 Creates approaches to learning that are interdisciplinary and that integrate multiple content areas~~
- ~~8.2.4 Creates and selects learning materials and learning experiences appropriate for the discipline and curriculum goals~~
- ~~8.2.5 Uses student prior knowledge and principles of effective instruction to plan learning activities relevant to students~~
- ~~8.2.6 Incorporates authentic experiences into instructional planning~~
- ~~8.2.7 Creates multiple learning activities that allow for student choice~~
- ~~8.2.8 Establishes and communicates expectations for student learning~~
- ~~8.2.9 Creates and adapts short and long range plans to achieve the expectations for student learning~~
- ~~8.2.10 Incorporates assessment components into instructional planning~~

~~7-DE-Reg-75 (7/1/03)~~~~12-DE-Reg-1208 (03/01/09)~~**9.0 Instructional Strategies**

The teacher understands a variety of instructional approaches and uses them to promote student thinking, understanding, and application of knowledge.

~~9.1 Knowledge Components~~

- ~~9.1.1 Understands principles and techniques of a broad range of instructional approaches, including questioning, problem solving, discourse, activation of prior knowledge, and student reflection on learning~~
- ~~9.1.2 Understands the relationship between instructional approaches, assessment, and the types of learning promoted~~
- ~~9.1.3 Understands how instructional materials and educational technologies enhance learning~~

~~9.2 Performance Indicators~~

- ~~9.2.1 Uses a range of instructional approaches that allows students to explore concepts and develop an in depth understanding of content~~
- ~~9.2.2 Designs lessons that routinely engage students in activities that develop problem solving and critical thinking skills~~
- ~~9.2.3 Designs instructional activities that provide opportunities for students to apply knowledge~~
- ~~9.2.4 Uses a variety of materials and educational technologies to enhance student thinking and further conceptual understanding~~

- ~~9.2.5 Assumes different roles in the instructional process based on the content and purposes of instruction~~
- ~~9.2.6 Uses a range of questioning techniques to promote different levels of understanding~~
- ~~9.2.7 Emphasizes communication as a vehicle for learning, through the use of discussion, listening, collaboration, and responding to the ideas of others~~
- ~~9.2.8 Links new concepts to student prior knowledge~~
- ~~9.2.9 Promotes student awareness of their own thought processes and how to use reflection to build new understandings~~
- ~~9.2.10 Incorporates assessment components into instructional delivery~~

~~7-DE Reg. 75 (7/1/03)~~

~~12-DE Reg. 1208 (03/01/09)~~

#### **40.0 Assessment**

The teacher understands multiple assessment strategies and uses them for the continuous development of students.

##### **40.1 Knowledge Components**

- ~~40.1.1 Understands measurement theory, including principles of testing and assessment (e.g., design, validity, reliability, and bias)~~
- ~~40.1.2 Understands assessment as a means of collecting information about student progress~~
- ~~40.1.3 Understands the purposes and characteristics of different kinds of assessments~~
- ~~40.1.4 Understands how to select, construct, and use assessment strategies and instruments for diagnosis and evaluation of learning~~
- ~~40.1.5 Understands how to use the results of assessment to reflect on and modify teaching~~

##### **40.2 Performance Indicators**

- ~~40.2.1 Uses assessment to diagnose student learning needs as a basis for designing instruction~~
- ~~40.2.2 Uses a variety of assessment modes and multiple measures to evaluate student learning~~
- ~~40.2.3 Uses both formal and informal assessment strategies to monitor and evaluate student understanding, progress, and performance~~
- ~~40.2.4 Aligns assessment with instruction~~
- ~~40.2.5 Maintains accurate records and communicates student progress~~
- ~~40.2.6 Involves students in self-assessment to help them become aware of their strengths and needs~~
- ~~40.2.7 Encourages students to establish personal goals for learning based on self-assessment and assessment results~~
- ~~40.2.8 Modifies instruction based on assessment results~~

~~7-DE Reg. 75 (7/1/03)~~

~~12-DE Reg. 1208 (03/01/09)~~

#### **41.0 Professional Growth**

The teacher understands the importance of continuous learning and pursues opportunities to improve teaching.

##### **41.1 Knowledge Components**

- ~~41.1.1 Understands that reflection on teaching is an integral part of professional growth~~
- ~~41.1.2 Understands the implications of educational research for teaching~~
- ~~41.1.3 Understands methods of inquiry that provide for a variety of self-assessment and problem-solving strategies for reflecting on practice~~

##### **41.2 Performance Indicators**

- ~~41.2.1 Engages in continuous learning~~
- ~~41.2.2 Participates in professional discourse about educational issues~~

- ~~11.2.3 Uses classroom observation, information about students, pedagogical knowledge, and research as sources for active reflection, evaluation, and revision of practice~~
- ~~11.2.4 Collaborates with other professionals as resources for problem solving, generating new ideas, sharing experiences, and seeking and giving feedback~~

~~7-DE Reg. 75 (7/1/03)~~

~~12-DE Reg. 1208 (03/01/09)~~

## **42.0 Professional Relationships**

The teacher understands the role of the school in the community and collaborates with colleagues, parents, guardians or Relative Caregivers, and other members of the community to support student learning and well being.

### ~~12.1 Knowledge Components~~

- ~~12.1.1 Understands how schools are organized and operate~~
- ~~12.1.2 Understands schools as organizations within the larger community context~~
- ~~12.1.3 Understands the importance of community school interaction~~
- ~~12.1.4 Understands the importance of collaboration in education~~

### ~~12.2 Performance Indicators~~

- ~~12.2.1 Cooperates with colleagues to develop an effective learning climate within the school~~
- ~~12.2.2 Collaborates with other professionals to solve problems and make decisions to promote student success~~
- ~~12.2.3 Develops relationships with parents, guardians and Relative Caregivers to acquire an understanding of the students' lives outside of the school~~
- ~~12.2.4 Works effectively with parents, guardians, Relative Caregivers and other members of the community to advocate for student need and to promote learning~~
- ~~12.2.5 Identifies and uses community resources to enhance student learning and to provide opportunities for students to explore career opportunities~~

~~12-DE Reg. 1208 (03/01/09)~~

## **43.0 Educational Technology**

The teacher understands the role of educational technology in learning and uses educational technology as an instructional and management tool.

### ~~13.1 Knowledge Components~~

- ~~13.1.1 Understands how to use various educational technological tools to access and manage information~~
- ~~13.1.2 Understands how to integrate educational technology into classroom instruction~~
- ~~13.1.3 Understands how to review and evaluate educational technologies to determine instructional value~~
- ~~13.1.4 Understands the uses of instructional technology to address student needs~~

### ~~13.2 Performance Indicators~~

- ~~13.2.1 Designs instruction to promote student skills in the use of educational technologies to access and manage information~~
- ~~13.2.2 Uses a wide range of instructional technologies to enhance student learning and problem solving~~
- ~~13.2.3 Uses technological advances in communication to enrich discourse in the classroom~~
- ~~13.2.4 Uses appropriate educational technology to create and maintain data bases for monitoring student progress~~

~~12-DE Reg. 1208 (03/01/09)~~

## **44.0 Professional Conduct**



The teacher understands and maintains standards of professional conduct guided by legal and ethical principles.

## 44.1 Knowledge Components

44.1.1 Understands school policies and procedures

44.1.2 Understands legal issues in education

44.1.3 Understands the codes of conduct of professional education organizations

## 44.2 Performance Indicators

44.2.1 Acts in the best interests of students

44.2.2 Follows school policies and procedures, respecting the boundaries of professional responsibilities, when working with students, colleagues, and families

44.2.3 Follows local, state, and federal law pertaining to educational and instructional issues, including regulations related to student rights and teacher responsibilities

44.2.4 Interacts with students, colleagues, parents, and others in a professional manner

44.2.5 Follows codes of professional conduct adopted by the Delaware Professional Standards Board.

~~7-DE Reg. 75 (7/1/03)~~

~~Renumbered effective 6/1/07 (see Conversion Table)~~

~~42-DE Reg. 1208 (03/01/09)~~

## **1.0** Content

1.1 The Delaware Professional Teaching Standards shall serve as the common principles and foundations of teaching practice for Delaware public school educators in accordance with 14 Del.C. §§1201 and 1205 (b).

1.2 The Council of Chief State School Officers' (CCSSO) Interstate Teacher Assessment and Support Consortium (InTASC) *Model Core Teaching Standards* outline what educators should know and be able to do to ensure every K-12 student reaches the goal of being ready to enter college or the workforce in today's world.

1.3 In accordance with 14 Del.C. §§1201 and 1205 (b), the InTASC *Model Core Teaching Standards* (CCSSO, 2011) are hereby incorporated by reference and adopted as Delaware's Professional Teaching Standards. InTASC *Model Core Teaching Standards* outline the common principles and foundations of teaching practice that cut across all subject areas and grade levels and that are necessary to improve student achievement.

1.4 An overview of the Standards are set forth within. In-depth descriptions, contextual explanations, examples and more specific criteria and guidance is provided in the complete set of standards as published in the *InTASC Model Core Teaching Standards* (CCSSO, 2011).

## **2.0** Learner Development

The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences.

## **3.0** Learning Differences

The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards.

## **4.0** Learning Environments

The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self motivation.

**5.0 Content Knowledge**

The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches and creates learning experiences that make the discipline accessible and meaningful for learners to assure mastery of the content.

**6.0 Application of Content**

The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

**7.0 Assessment**

The teacher understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making.

**8.0 Planning for Instruction**

The teacher plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross disciplinary skills, and pedagogy, as well as knowledge of learners and the community context.

**9.0 Instructional Strategies**

The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways.

**10.0 Professional Learning and Ethical Practice**

The teacher engages in ongoing professional learning and uses evidence to continually evaluate his/her practice, particularly the effects of his/her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner.

**11.0 Leadership and Collaboration**

The teacher seeks appropriate leadership roles and opportunities to take responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession.

7 DE Reg. 75 (7/1/03)

Renumbered effective 6/1/07 (see Conversion Table)

12 DE Reg. 1208 (03/01/09)

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

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

**PUBLIC NOTICE****Title XIX Medicaid State Plan, Medicaid Eligibility Conditions and Requirements**

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

Delaware Medicaid State Plan to align Medicaid eligibility conditions and requirements with current practice.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2012.

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

## SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan to align Medicaid eligibility conditions and requirements with current practice.

### Statutory Authority

- Social Security Act §1115, *Demonstration Projects*
- Social Security Act §1931, *Assuring Coverage for Certain Low-Income Families*
- 42 CFR §435.222, *Individuals under age 21 who meet the income and resource requirements of AFDC*

### Background

In determining eligibility for Medicaid, the Agency's rules and regulations are governed by the Social Security Act, applicable sections of the Code of Federal Regulations and, the Title XIX Medicaid State Plan.

Section 1902(r)(2) of the Social Security Act permits states to have more liberal policies than those of the old AFDC program for resources and income allowances. Under the more liberal policies permitted by section 1902(r)(2), states may modify their Medicaid eligibility process to make more liberal the review of certain resource and income elements in determining financial eligibility.

### Summary of Proposal

The Centers for Medicare and Medicaid Services (CMS) reviewed the recently approved waiver amendment request submitted under the authority of Section 1115 of the Social Security Act to include additional populations in a mandatory managed care program. During the waiver review process, CMS noted that certain pages in the Title XIX Medicaid State Plan required updates.

The proposed modifications are intended to update the income standard used in eligibility determinations for low income families with children under Section 1931 of the Social Security Act, and for children under age 21 under 42 CFR §435.222 for whom public agencies are assuming full or partial financial responsibility (e.g. foster children). The income standard used in the eligibility determination is 75% of the Federal poverty level (FPL).

The rule has long been in practice but has not heretofore been expressly set forth in the Medicaid State plan in *Supplement 8a to Attachment 2.6-A, Page 1* and *Supplement 12 to Attachment 2.6-A, Page 2*. This amendment clarifies requirements already in effect operationally.

No one will lose eligibility as a result of this amendment. There is no change to the eligibility determination process for these populations. Individuals who were qualifying for Medicaid before this amendment takes effect will continue to qualify for Medicaid after this amendment takes effect.

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

### Fiscal Impact Statement

Other than conforming state plan to current practice, this plan amendment imposes no increase in cost on the General Fund.

### DMMA PROPOSED REGULATION #12-14

#### REVISION:

Revision:                    HCFA-PM-91-4                    (BPD)                    Supplement                    8a                    to

**PROPOSED REGULATIONS**

ATTACHMENT 2.6-A

AUGUST 1991

Page 1

OMB No.:0938-

## STATE PLAN UNDER TITLE OF THE SOCIAL SECURITY ACT

State: DELAWAREMORE LIBERAL METHODS OF TREATING INCOMEUNDER SECTION 1902 (r) (2) OF THE ACT

/ / Section 1902(f) State

/X/ Non-Section 1902 (f) State

For children covered under Section 1902 (a) (10) (A) (I) (III) and 1905 (n) of the Social Security Act, the State of Delaware will disregard an equal amount to the difference between 100% of the AFDC payment standard for the same family size and 100% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.

Interest and dividend income are excluded for QMB, SLMB, QDWI and QI-1 cases.

A standard deduction will be applied to the gross income from self employment for poverty level pregnant women, infants and children; QMB, SLMB, and QI-1 cases. The standard deduction for self employment income is considered the cost to produce income. The standard deduction for self employment is a percentage determined annually and announced each October.

When the application of the standard deduction results in a finding of ineligibility, the applicant will be given an opportunity to show that actual self employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self employment.

For the TWWIIA Basic Coverage Group, unearned income is excluded up to \$956.00 per month for the individual. There is no \$956.00 per month unearned income exclusion for a spouse who is not applying for the TWWIIA Basic Coverage Group Medicaid. This unearned income exclusion will be increased annually by the Cost of Living Adjustment (COLA) announced by the Social Security Administration (SSA) in the Federal Register.

For individuals whose eligibility is determined under 42 CFR 435.222, income is disregarded in an amount equal to the difference between the State's AFDC payment standard (see Supplement 1 to Attachment 2.6-A Page 1) and 75% of the Federal Poverty Level updated annually in the Federal Register for the same family size.

\*More liberal methods may not result in exceeding gross income limitations under Section 1903(f)

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

Supplement 12 to ATTACHMENT 2.6-A

Page 2

## STATE PLAN UNDER TITLE OF THE SOCIAL SECURITY ACT

State: DELAWAREELIGIBILITY CONDITIONS AND REQUIREMENTS

## ELIGIBILITY UNDER SECTION 1931 OF THE ACT (Cont.)

\_\_\_\_\_ The agency applies higher resource standards than those in effect as of July 16, 1996, increased by no more than the percentage increases in the CPI-U since July 16, 1996, as follows:

\_\_\_\_\_ X

The agency uses less restrictive income and/or resource methodologies than those in effect as of July 16, 1996, as follows:

1. The 30 and 1/3 disregard will be applied without regard to prior receipt of Medicaid, if otherwise applicable.

The income and/or resource methodologies that the less restrictive methodologies replace are as follows:

Prior to 10/1/99, the net income test does not include the 30 and 1/3 disregard for applicant families.

2. ~~For applicant families, income will be disregarded in an amount equal to the difference between 100% of the AFDC/TANF payment standard for the same family size and 400% of the AFDC/TANF standard of need for the same family size.~~

For both applicant and recipient families, income is disregarded in an amount equal to the difference between the State's AFDC payment standard (see Supplement 1 to Attachment 2.6-A Page 1) and 75% of the Federal Poverty Level updated annually in the Federal Register for the same family size.

All earned income will be disregarded for the second and third months of eligibility.

The income and/or resources methodologies that the less restrictive methodologies replace are as follows:

Prior to 10/1/99, the net income test for applicant and recipient families includes all countable earned and unearned income.

3. For both applicant and recipient families, all resources are excluded.

The income and/or resource methodologies that the less restrictive methodologies replace are as follows:

Prior to 10/1/99, available resources cannot exceed \$1,000 for both applicant and recipient families.

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 11002.9

### PUBLIC NOTICE

#### **DSSM: 11002.9 Child Care Subsidy Program Definitions and Explanation of Terms**

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

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 May 31, 2012.

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

## SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Definitions and Explanation of Terms*.

### Statutory Authority

45 CFR Part 98, *Child Care and Development Fund*

### Background

The Child Care and Development Fund (CCDF) program is authorized by the Child Care and Development Block Grant Act and Section 418 of the Social Security Act and assists low-income families in obtaining child care so that they can work or attend training and/or education activities. The program also improves the quality of child care and promotes coordination among early childhood development and afterschool programs.

Every two years, states and territories receiving CCDF funds must prepare and submit to the federal government a CCDF state plan detailing how these funds will be allocated and expended (45 CFR Part 98).

### Summary of Proposed Changes

Federal regulation at 45 CFR §98.44 provides that states must give priority for child care services to children from very low income families. States have the flexibility to define "children in families with very low income".

As a result of recent federal guidance, **DSSM 11002.9**, *Definition and Explanation of Terms*, is amended to add a definition of "children from low income families" as required by the Administration of Children and Families (ACF). During preparation of Delaware's Child Care and Development Fund State Plan for 2012 - 2013, ACF required the definition be placed in the State's policy manual.

DSSM 11002.9 is also being reformatted to alphabetize the definitions for clarity and ease of readability.

## DSS PROPOSED REGULATION #12-15 REVISION

### 11002.9 Definitions and Explanation of Terms

~~The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings:~~

~~A. TANF—Temporary Assistance for Needy Families, a program established by Title IV A of the Social Security Act and authorized by Title 31 of the **Delaware Code** to provide benefits to needy children who are deprived of parental support and care. While on TANF, families are eligible for child care only as long as they are working or participating in a TANF Employment and Training activity (Categories 11 and 12).~~

~~B. Authorization—Form 618d is the parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what parents/caretakers must pay as part of their fee.~~

~~C. Caregiver/Provider—The person(s), other than the parent/caretaker, whom DSS approves to provide child care services or the approved place where care is provided.~~

~~D. Caretaker—The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.~~

~~E. GCDBG—Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without State match to:~~

1. provide child care to low income families,
2. enhance the quality and increase the supply of child care,
3. provide parents the ability to choose their provider, and
4. increase the availability of early childhood programs and before and after school services.

Under the Division's DCIS II Child Care Sub-system, CGDBG is part of Categories 31 and 41.

F. CFR—Code of Federal Regulations.—These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.

G. CCMIS—Child Care Management Information System, the name used to describe the Division's payment system for child care.

H. Child—A person under the age of 13, or children 13 through 18 years of age if they are physically or mentally incapable of caring for themselves or in need of protective services.

I. Child Care Category—The DCIS II Child Care Sub-system code for the child care funding source. Case Managers choose category codes based on the parents/caretaker's technical eligibility for service. The codes are:

11—Participants receiving TANF and not working, but participating in TANF E&T;

12—Participants receiving TANF and working;

21—Participants receiving Food Benefits who are mandatory or voluntary participants in E&T and not receiving TANF;

31—SSBG, CCDBG, and State funds: Income eligible participants. Participants who receive FS and are not E&T mandatory or voluntary;

41—A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or nonqualified alien to receive child care services. (Example: One child is a citizen and one is not. The citizen child is a 41.)

51—A participant is coded category 51 when s/ he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41.

J. Child Care Certificate—A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but a parent who wishes to select a non contracted provider of their choice cannot get care unless the provider completes one.

K. Child Care Parent Fee—The amount the parent/ caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type of care requested.

L. Child Care Services—Those activities that assist eligible families in the arrangement of child care for their children.

M. Child Care Centers—A place where licensed or license exempt child care is provided on a regular basis for periods of less than 24 hours a day to 12 or more children, who are unattended by a parent or guardian.

N. Child Care Type—Refers to the setting or place where child care is provided. The four types of care are:

1. Center based (under DCIS II Child Care Sub-system Site #17 or 18),

2. Large Family Home (under DCIS II Child Care Sub-system Site #16),

3. Family Home (under DCIS II Child Care Sub-system Site #15), and

4. In Home (under DCIS II Child Care Sub-system Site #19).

O. DCIS II—Delaware Client Information System, the automated client information system for the Department of Health and Social Services.

P. Educational Program—A program of instruction to achieve:

1. a basic literacy level of 8.9;

2. instruction in English as a second language;



3. a GED, Adult Basic Education (ABE), or High School Diploma;
4. completion of approved special training or certificate courses; or
5. a post-secondary degree where the degree is part of an approved DSS Employment and Training program.

The above definition excludes the pursuit of a graduate degree or second four year college degree. A second associate's degree may be attained if it leads to a bachelor's degree. The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.

**Q. Employment**—Either part-time or full-time work for which the parent/caretaker receives wages equal to the federal minimum wage or an equivalent. It also includes periods of up to three months of continued child care services when parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.

**R. Family Size**—The total number of persons whose needs and income are considered together. This will always include the parent(s) (natural, legal, adoptive, step, and unmarried partners with a child in common) and all their dependent children under 18 living in the home.

**S. Family Child Care Home**—A private residence other than the child's residence, where licensed care is provided for one to six children who are not related to the caregiver.

**T. TANF Child Care**—The name of the child care program for TANF recipients who work or who are participating in a TANF Employment and Training program. Under the DCIS II Child Care Sub-system, this is Category 11 and 12.

**U. Food Benefit Employment and Training**—The program by which certain unemployed mandatory and/or voluntary Food Benefit recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food Benefit Employment & Training (FS E&T). Under the Division's DCIS II Child Care Sub-system, this is Category 21.

**V. In Home Care**—Care provided for a child in the child's own home by either a relative or non relative, other than the parent/caretaker, where such care is exempt from licensing requirements. Care is limited to the child(ren) residing in the household. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements and is also limited to the children of one household.

It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements.

**W. Income**—Any type of money payment that is of gain or benefit to a family. Examples of income include wages, social security pensions, public assistance payments, child support, etc.

**X. Income Eligible**—A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.

**Y. Income Limit**—The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.

**Z. Job Training/Training**—A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Benefit Employment & Training (FB E&T) contracted programs, WIA sponsored training programs, recognized school vocational programs, and on-the-job training programs.

**AA. Large Family Child Care Home**—A private residence other than the child's residence, where licensed care is provided for more than six but less than twelve children who are not related to the caregiver.

**BB. Legal Care**—Care which is either licensed or exempt from licensing requirements.

**CC. Parent**—The child's natural mother, natural legal father, adoptive mother or father, or step parent.

**DD. Parental Choice**—The right of parents/caretakers to choose from a broad range of child care providers, the type and location of child care.

~~EE. Protective Services—The supervision/ placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.~~

~~FF. Physical or Mental Incapacity—A dysfunctional condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.~~

~~GG.Reimbursement Rates—The maximum dollar amount the State will pay for child care services.~~

~~HH.Relative—Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.~~

~~II. Residing With—Living in the home of the parent or caretaker.~~

~~JJ. SSBG—Social Services Block Grant. Under the DCIS II Child Care Sub system, this is Category 31 child care.~~

~~KK. Seamless Services—To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.~~

~~LL. Self Arranged Care—Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.~~

~~MM.Self Initiated—Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Benefit Employment & Training (FB E&T) TANF education or training component. Self initiated clients must receive child care services if there is a child care need.~~

~~NN.Special Needs Child—A child under 19 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the authority to do so.~~

~~OO.Special Needs Parent/Caretaker—An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the competence to do so.~~

~~PP. Technical Eligibility—Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.~~

~~QQ.Verification—Written or oral documentation, demonstrating either need for service or sources of income.~~

~~RR.Purchase of Care Plus (POC+)—Care option that allows providers to charge most DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined child care parent fee if applicable, and any additional provider determined co pay.~~

~~SS. Work Force Investment Act (WIA)—Federal Legislation that consolidates Employment and Training programs and funding streams. This legislation embodies the One Stop Employment and Training Service system under DOL.~~

The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings.

Authorization                      Form 618d or 626 is the parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what parents/caretakers must pay as part of their fee.

Caregiver/Provider                The person(s), other than the parent/caretaker, whom DSS approves to provide child care services or the approved place where care is provided.

# PROPOSED REGULATIONS

<u>Caretaker</u>	<u>The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.</u>
<u>CCDBG</u>	<u>Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without state match to:</u> <ol style="list-style-type: none"> <li><u>1. Provide child care to low income families</u></li> <li><u>2. Enhance the quality and increase the supply of child care</u></li> <li><u>3. Provide parents the ability to choose their provider</u></li> <li><u>4. Increase the availability of early childhood programs and before and after school services. Under the Division's DCIS II Child Care Sub system, CCDBG is part of Categories 31 and 41</u></li> </ol>
<u>CFR</u>	<u>Code of Federal <i>Regulations</i>. These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.</u>
<u>CCMIS</u>	<u>Child Care Management Information System, the name used to describe the Division's payment system for child care.</u>
<u>Child</u>	<u>A person under the age of 13, or children 13 through 18 years of age if they are physically or mentally incapable of caring for themselves or in need of protective services.</u>
<u>Child Care Category</u>	<u>The DCIS II Child Care Sub system code for the child care funding source. Case Managers choose category codes based on the parents/caretaker's technical eligibility for service. The codes are:</u> <ol style="list-style-type: none"> <li><u>11 - Participants receiving TANF and not working, but participating in TANF E&amp;T</u></li> <li><u>12 - Participants receiving TANF and working</u></li> <li><u>21 - Participants receiving Food Stamps Benefits who are mandatory or voluntary participants in E&amp;T and not receiving TANF</u></li> <li><u>31 - SSBG, CCDBG, and State funds: Income eligible participants. Participants who receive FS and are not E&amp;T mandatory or voluntary</u></li> <li><u>41 - A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or non-qualified alien to receive child care services. (Example: One child is a citizen and one is not a citizen child is a 41)</u></li> <li><u>51 - A participant is coded category 51 when s/he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41</u></li> </ol>
<u>Child Care Centers</u>	<u>A place where licensed or license-exempt child care is provided on a regular basis for periods of less than 24 hours a day to 12 or more children, who are unattended by a parent or guardian.</u>
<u>Child Care Certificate</u>	<u>A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but a parent who wishes to select a non-contracted provider of their choice cannot get care unless the provider completes one.</u>
<u>Child Care Parent Fee</u>	<u>The amount the parent/caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type of care requested.</u>

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<u>Child Care Services</u>	<u>Those activities that assist eligible families in the arrangement of child care for their children.</u>
<u>Child Care Type</u>	<u>Refers to the setting or place where child care is provided. The four types of care are:</u> <ol style="list-style-type: none"><li><u>1. Center based (under DCIS II Child Care Sub system Site #17 or 18)</u></li><li><u>2. Large Family Home (under DCIS II Child Care Sub system Site #16)</u></li><li><u>3. Family Home (under DCIS II Child Care Sub system Site #15)</u></li><li><u>4. In-Home (under DCIS II Child Care Sub system Site #19)</u></li></ol>
<u>Children From Low Income Families</u>	<u>Children in families whose income is less than 200% of the Federal Poverty Limit (FPL).</u>
<u>DCIS II</u>	<u>Delaware Client Information System, the automated client eligibility system for the Department of Health and Social Services.</u>
<u>Educational Program</u>	<u>Educational Program - A program of instruction to achieve:</u> <ol style="list-style-type: none"><li><u>1. A basic literacy level of 8.9</u></li><li><u>2. Instruction in English as a second language</u></li><li><u>3. A GED, Adult Basic Education (ABE), or High School Diploma</u></li><li><u>4. Completion of approved special training or certificate courses</u></li><li><u>5. A post-secondary degree where the degree is part of an approved DSS Employment and Training program.</u></li></ol> <p><u>The above definition excludes the pursuit of a graduate degree or second four-year college degree. A second associate's degree may be attained if it leads to a bachelor's degree. The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.</u></p>
<u>Employment</u>	<u>Employment - Either part-time or full time work for which the parent/caretaker receives wages equal to minimum wage or an equivalent. It also includes periods of up to three months of continued child care services when parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.</u>
<u>Family Child Care Home</u>	<u>A private residence other than the child's residence, where licensed care is provided for one to six children who are not related to the caregiver.</u>
<u>Family Size</u>	<u>The total number of persons whose needs and income are considered together. This will always include the parent(s) (natural, legal, adoptive, step, and unmarried partners with a child in common) and all their dependent children under 18 living in the home.</u>
<u>Food Benefit Employment and Training</u>	<u>The program by which certain unemployed mandatory and/or voluntary Food Benefit recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food Benefit Employment &amp; Training. Under the Division's DCIS II Child Care Sub system, this is Category 21.</u>
<u>Income</u>	<u>Any type of money payment that is of gain or benefit to a family. Examples of income include wages, social security pensions, public assistance payments, child support, etc.</u>
<u>Income Eligible</u>	<u>A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.</u>
<u>Income Limit</u>	<u>The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.</u>

## PROPOSED REGULATIONS

<u>In-Home Care</u>	<u>Care provided for a child in the child's own home by either a relative or non-relative, other than the parent/caretaker, where such care is exempt from licensing requirements. Care is limited to the child(ren) residing in the household. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements and is also limited to the children of one household.</u>
<u>Job Training/Training</u>	<u>A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Benefit Employment &amp; Training (FB E&amp;T) contracted programs; WIA sponsored training programs, recognized school vocational programs, and on-the-job training programs.</u>
<u>Large Family Child Care Home</u>	<u>A private residence other than the child's residence, where licensed care is provided for more than six but less than twelve children who are not related to the caregiver.</u>
<u>Legal Care</u>	<u>Care which is either licensed or exempt from licensing requirements.</u>
<u>Parent</u>	<u>The child's natural mother, natural legal father, adoptive mother or father, or step-parent.</u>
<u>Parental Choice</u>	<u>The right of parents/caretakers to choose from a broad range of child care providers, the type and location of child care.</u>
<u>Physical or Mental Incapacity</u>	<u>A condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.</u>
<u>Protective Services</u>	<u>The supervision/placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.</u>
<u>Purchase of Care Plus (POC+)</u>	<u>Care option that allows providers to charge most DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined child care parent fee, if applicable, and any additional provider-determined co-pay.</u>
<u>Reimbursement Rates</u>	<u>The maximum dollar amount the State will pay for child care services.</u>
<u>Relative</u>	<u>Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.</u>
<u>Residing With</u>	<u>Living in the home of the parent or caretaker.</u>
<u>Seamless Services</u>	<u>To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.</u>
<u>Self-Arranged Care</u>	<u>Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.</u>
<u>Self-Initiated</u>	<u>Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Benefit Employment &amp; Training (FB E&amp;T) - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.</u>
<u>Special Needs Child</u>	<u>A child under 19 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the authority to do so.</u>

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<u>Special Needs Parent/Caretaker</u>	<u>An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the authority to do so.</u>
<u>SSBG</u>	<u>Social Services Block Grant. Under the DCIS II Child Care Sub system, this is Category 31 child care.</u>
<u>TANF</u>	<u>Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to needy children who are deprived of parental support and care. While on TANF, families are eligible for child care only as long as they are working or participating in a TANF Employment and Training activity (Categories 11 and 12).</u>
<u>TANF Child Care</u>	<u>The name of the child care program for TANF recipients who work or who are participating in a TANF Employment and Training program. Under the DCIS II Child Care Sub system, this is Category 11 and 12.</u>
<u>Technical Eligibility</u>	<u>Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.</u>
<u>Verification</u>	<u>Written or oral documentation, demonstrating either need for service or sources of income.</u>
<u>Work Force Investment Act (WIA)</u>	<u>Federal Legislation that consolidates Employment and Training programs and funding streams. This legislation embodies the One Stop Employment and Training Service system under DOL.</u>

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: Title 7 Delaware Code, Chapter 91  
7 DE Admin. Code 1375

#### REGISTER NOTICE SAN # 2008-26

**1. TITLE OF THE REGULATIONS:**

1375 Delaware Regulations Governing Hazardous Substance Cleanup

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

The Hazardous Substance Cleanup Act was enacted in 1990, and the Regulations implementing the Act were completed in 1996. There was a revision in 2002 that established criteria for designating a Brownfield property. Since 1996, new protocols, investigatory techniques, legal requirements and the enactment of the Brownfields Development Program have occurred. These changes in the last sixteen years have mandated reviews and changes to meet current practices. Major issues include, but are not limited to, participation in the new brownfields program, consultant certifications, notification requirements, investigation procedures, long term stewardship, facility closure, and natural resource damage assessment.

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

N/A

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

Title 7 Delaware Code, Chapter 91

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

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to the Regulations Governing Hazardous Substance Cleanup will be open May 1, 2012. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302)739-9042. A public hearing on the proposed amendment will be held on May 31, 2012 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**7. PREPARED BY:**

Kathryn Durant / [kathryn.durant@state.de.us](mailto:kathryn.durant@state.de.us) / 302-395-2600

Marjorie Crofts, Director

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

**1375 Regulations Governing Hazardous Substance Cleanup**

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION**

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

**PUBLIC NOTICE****1400 Board of Electrical Examiners**

The Delaware Board of Electrical Examiners pursuant to 24 **Del.C.** §1406(a)(1) proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt define electrical work more broadly to include any work covered by the National Electrical Code and specifically adding solar, generators and windmills to the list of work that is considered electrical services or electrical work. This rule change will also add the continuing education credits required for licensed Journeyman and Apprentices and except Journeyman and Apprentices from rules that do not apply to them.

The Board will hold a public hearing on the proposed rule change on June 6, 2012 at 9:00 am., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written Comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Electrical Examiners, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904.

**1400 Board of Electrical Examiners****1.0 License Required**

- 1.1 To perform "electrical services" or "electrical work" means to ~~plan, estimate, layout,~~ perform, maintain, troubleshoot or supervise any electrical work covered by the National Electrical Code (NEC) as adopted by the Delaware State Fire Commission which may include but is not limited to the installation, erection, or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device, or fixture for the purpose of lighting, heating, or power in or on any structure or for elevators, swimming pools, hot tubs, electric signs, air conditioning, heating, refrigeration, oil burners, solar electrical work, generators, windmills and overhead and underground primary distribution systems.
- 1.2 A licensee under this chapter shall perform all electrical services or electrical work in accordance with the standards established in the National Electric Code (NEC) as adopted by the Delaware Fire

Commission and in any applicable local building code. The version of the NEC applicable to a particular project is determined by the Delaware Fire Commission.

- 1.3 Every individual who receives a license with the exception of Journeyman and Apprentices shall prominently display the words "Licensed Electrician" and the license number on the exterior of all vehicles used for work in not less than three inch letters and numbers. This section is satisfied by any abbreviation readily understood to mean "Licensed Electrician" such as "Lic. Elec." along with the license number.
- 1.4 Solar Electrical Services means to install, erect, repair any electrical conductor, duct, conduit, solar panel, array, mounting brackets which is used for grounding and bonding of the array or any part thereof, which generate, transmit, transform, disconnect, or utilize electrical energy in any form or for any purpose.
- 1.45 Licensees shall notify the Board of a change of address. Change of address notifications shall be sent by certified mail within 60 days of date the address change.

**7 DE Reg. 1167 (3/1/04)**

**9 DE Reg. 260 (8/1/05)**

**12 DE Reg. 73 (7/1/08)**

## 2.0 Applications

- 2.1 Applications may be obtained in person during regular business hours or by mail from the Division of Professional Regulation ("Division"). Applications must be made in the name of the individual, not a company. The Board shall approve the application form to insure that it contains all of the information necessary to satisfy the statutory requirements for licensure.
- 2.2 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 resubmit a new application with the appropriate fee.
- 2.3 Applications approved for testing will be valid for two years. If the test is not taken, the application is destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

**12 DE Reg. 73 (7/1/08)**

## 3.0 Qualifications

- 3.1 An applicant shall submit proof of qualifications verified by affidavit on a form approved by the Board. Proof of experience requires an affidavit from the supervising licensed electrician describing the nature of the experience. If an applicant cannot obtain the required affidavit from the supervising licensed electrician, W-2 tax forms showing full-time employment may be substituted at the discretion of the Board. The required experience and training must be completed prior to taking the licensure exam.
- 3.2 Applicants relying on military training and experience must submit official documentation from the supervising officials showing type and approximate hours of work experience. Other official military documentation that reliably verifies military training and experience may be accepted when supervisory officials are not available or cannot be located.
- 3.3 The requirement of two years of technical training under 24 **Del.C.** §1408 (a)(1)(c) can be met by successful completion of two years of technical training related to electrical technology in a vocational/technical high school or by completion of 48 credit hours in technical training related to electrical technology at an accredited post-secondary school.
- 3.4 The experience necessary under 24 **Del.C.** §1408 to qualify for a particular license must relate to the activity authorized by such a license as defined in 24 **Del.C.** §1402(10) - (13).

**4 DE Reg. 1788 (5/1/01)**

**6 DE Reg. 1495 (5/1/01)**

**12 DE Reg. 73 (7/1/08)**



**4.0 Examinations**

- 4.1 As a condition of licensure, applicants shall obtain a grade of 75% on the Division-approved test. Only the National Electrical Code Book can be used during the test as a reference. Applicants should submit a completed application with all necessary credentials for Board approval at least 45 days before the test is given. As long as the credentials have been approved, a license may issue from the Division of Professional Regulation upon proof of obtaining a passing score on the test, proof of insurance, and payment of the fee as provided herein. A member of the State Board of Electrical Examiners may attend the examination. All scores will be presented to the Board at the first meeting after the examination results are available. The roster of persons qualified for licensure will appear in the minutes.
- 4.2 Applicants who fail two consecutive times with a grade of less than 50% each time must wait one year before retesting.

**4 DE Reg. 1788 (5/1/01)**

**5.0 [Reserved]****6.0 License and Insurance**

- 6.1 Licensees with the exception of Journeyman and Apprentices shall maintain general liability insurance of at least \$300,000.00. Master Special Elevator Licensees do not need general liability insurance if the contractor has general liability insurance. Proof of insurance must be submitted with licensure applications and maintenance of the required insurance shall be attested to in the course of each licensure renewal.
- 6.2 The insurance requirement is satisfied for a licensee who is performing work as an employee as long as the employer is insured for the risk on the work performed as required under these regulations. A licensee who also works independently from his employer must maintain separate insurance for that risk as provided under these regulations.

**4 DE Reg. 1788 (05/01/01)**

**10 DE Reg. 1329 (02/01/07)**

**12 DE Reg. 73 (7/1/08)**

**7.0 Expiration and Renewal**

- 7.1 The licenses granted by the Board must be renewed by June 30th of each even numbered year, otherwise, they expire as of July 1<sup>st</sup>.
- 7.2 Renewal. It is the responsibility of the licensee to file a renewal application with the Board. The Board is not required to notify licensees of expiration dates. Renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov).
- 7.2.1 Renewal applications will be randomly audited by the Board to ensure their accuracy. Licensees selected for random audit will be notified of that selection within 60 days after the renewal deadline. Licensees must then submit verification of their receipt of the notification of audit within 10 days.
- 7.2.2 As a condition of renewal, applicants must attest to completion of continuing education (CE) as required by Regulation 8.0 and list all CE course names and approval numbers. Applicants must also attest to maintenance of the liability insurance required by Regulation 6.0 and indicate the name of their insurer and their policy number. Attestation may be completed electronically if renewal is accomplished online. Alternatively, paper renewal documents containing the CE and insurance attestations may be submitted. Licensees selected for random audit will be required to supplement their attestations with documentation of CE attendance and maintenance of insurance coverage.
- 7.3 A licensee may renew an expired license within one year after the renewal deadline by meeting all requirements and paying a late fee set by the Division. All late renewals will be audited for compliance with the CE and insurance renewal requirements.

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- 7.4 A licensee with a valid license may request in writing to be placed on inactive status. Inactive status can be renewed biennially by application to the Division upon proof of 10 hours of CE. Inactive licenses may be reactivated by the Board upon written request with proof of insurance and payment of a prorated fee set by the Division.
- 7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of inactive status.
- 7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience can be used to satisfy the requirements under 24 **Del.C.** §1408(a). However, the applicant must take the examination required by §1408(5) and achieve a passing score unless he or she previously passed an approved licensure test that covered the National Electric Code that is the standard in Delaware at the time of the new application.

**4 DE Reg. 1788 (05/01/01)**

**9 DE Reg. 260 (08/01/05)**

**10 DE Reg. 1329 (02/01/07)**

**11 DE Reg. 812 (12/01/07)**

**12 DE Reg. 73 (7/1/08)**

## **8.0 Continuing Education**

- 8.1 Continuing education (CE) is required of all licensees and shall be completed by June 30 of any year in which a license is to be renewed. 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.
- 8.2 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](http://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.
- 8.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing electrical services.
- 8.2.2 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.
- 8.2.3 Sponsors or licensees seeking pre-approval should submit the request as provided in 8.1.2 at least 60 days before the CE course is being offered.
- 8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for approval as provided in 8.2.2.
- 8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, 5 of the 10 CE hours required for renewal must be related to the National Electrical Code.
- 8.4 Journeyman and Apprentice licensees shall complete 5 hours of approved CE during each renewal period with the following exceptions – a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 2 CE hours at the first renewal. Apprentice training will count towards CE hours during that licensure period.
- 8.45 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.

**4 DE Reg. 1788 (05/01/01)**

**9 DE Reg. 1252 (02/01/06)**

**10 DE Reg. 1329 (02/01/07)**

**9.0 Loss Of License Holder**

- 9.1 A procedure permitting temporary practice after loss of a licensee to avoid business interruption is provided in 24 **Del.C.** §1418 and is necessary only where there is no currently employed licensee to assume the duties of the former license holder.
- 9.2 The notification must include documentation of the business relationship with the former license holder.

**10.0 Exceptions.**

- 10.1 No license is required for performing electrical work by the following persons or entities:
- ~~10.1.1 persons working under the supervision of a Delaware licensed master or limited electrician;~~
  - ~~10.1.2 persons under the supervision of a licensed electrician who is the owner or full time employee of a company performing electrical work;~~
  - 10.1.31 a professional electrical engineer in a manufacturing or industrial plant having six years experience in electrical planning and design who is registered with the Board and who is licensed and listed on the Delaware Association of Professional Engineers as the person responsible for the plant repairs, maintenance, and electrical additions;
  - 10.1.42 the Department of Transportation, or a contractor, for work performed by or under the supervision of the Department for the installation erection, construction, reconstruction and/or maintenance of drawbridges and traffic control devices and roadway lighting
  - 10.1.53 persons working beyond the main breaker or fuse of 200 amps or less in a structure used exclusively for agriculture;
  - 10.1.64 persons performing the work of any light or power company, electric or steam railway company, telegraph, high voltage certified testing agency or telephone company when the work is part of the plant or service used in rendering authorized service to the public such as power delivery by an electric company. This exception ends at the point of service, termination box, or demarcation point.
  - 10.1.75 a homeowner who has obtained a homeowner's permit provided by law.
  - 10.1.6 A communication and low voltage contractor that installs, services and maintains all types of communication and low voltage systems which are energy limited. These systems include, but are not limited to telephone systems, sound systems, cable television systems, closed circuit video systems, satellite dish antennas, instrumentation and temperature controls, and low voltage landscape lighting, directional boring, networking systems, communication systems, security and burglar systems. Low voltage fire alarm systems are specifically not included in this section.
  - 10.1.7 Fire Alarm Signaling Licensees issued by the Office of the State Fire Marshal.
  - 10.1.8 Persons working for the organization Habitat for Humanity. The work still needs to be inspected by a licensed electrician.
  - 10.1.9 Faculty trained and authorized Representatives.

**11.0 Reciprocity**

- 11.1 An applicant for licensure by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure under this provision must submit to the Board a copy of reciprocal state's current licensure requirements.
- 11.2 If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least five years after licensure. Proof of practice requires an employer's affidavit describing the nature of the applicant's experience. If an applicant cannot obtain an affidavit from the employer, tax W-2 forms showing full-time employment may be substituted at the discretion of the Board. A self-employed applicant may submit tax form Schedule C as proof of practice.

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**6 DE Reg. 1495 (5/1/03)****12.0 Required Inspection.**

- 12.1 Every licensee, with the exception of Journeyman and Apprentices, shall file an application for an inspection by a licensed inspection agency no later than five working days after the commencement of electrical work. The inspection agency shall perform an inspection no later than five working days after the inspection has been requested. It shall be beyond the scope of a Journeyman or Apprentice license to file for an inspection for electrical work.
- 12.2 An application for an inspection shall be filed with the inspection agency on a form, signed by the licensee, or person authorized under Rules 12.7, 12.8, or 12.9, containing at least the following information:
- 12.2.1 Full names of the licensee and any job foreman
  - 12.2.2 License number, type (T-1, T-2, or Specialty) and expiration date
  - 12.2.3 Date inspection requested
  - 12.2.3 Location of work to be inspected
  - 12.2.4 Permit numbers, if applicable
  - 12.2.5 Applicant's name and contact information, if other than the licensee
  - 12.2.6 A detailed description of the work to be inspected including any devices or equipment
  - 12.2.7 Signature of the licensee
- 12.3 A licensee who signs an application for inspection form is deemed to have authorized and shall be responsible for the work described in the form.
- 12.4 An inspection agency shall not conduct an inspection of work performed until it has received a request made in compliance with Rule 12.2.
- 12.5 An inspection agency is responsible to ensure that the standards for its inspection are those established in the National Electric Code as adopted by the Delaware Fire Commission and in any applicable local building code. The version of the Code applicable to a particular project is determined by the Delaware Fire Commission.
- 12.6 An inspection report shall be recorded legibly on a form containing at least the following information:
- 12.6.1 Full name of the licensee
  - 12.6.2 License number, type (T-1, T-2, or Specialty) and expiration date
  - 12.6.3 Location of work to be inspected
  - 12.6.4 Permit numbers
  - 12.6.5 Inspector's full name
  - 12.6.6 A detailed description of the work inspected
  - 12.6.7 Deficiencies noted, any applicable NEC section, and inspection dates
  - 12.6.8 Signature of inspector
  - 12.6.9 Date inspection completed.
- 12.7 Any professional engineer excepted from licensure shall at least annually file with the Board a certificate of inspection by a licensed inspection agency and a letter stating that all repairs, maintenance, and additions to a manufacturing or industrial plant meet the Standards of the National Electrical Code. The annual inspection should include a representative sampling of the work performed by the authority of the responsible professional engineer.
- 12.8 Any person performing electrical work on agricultural structures excepted from licensure shall nevertheless obtain a certificate of inspection from a licensed inspection agency for new installations.
- 12.9 Any person authorized to perform work by a homeowner's permit shall obtain a final inspection as provided in Rule 12.0 by an inspection agency licensed by the Board.
- 12.10 Fire Alarm Signaling Licensee installing conductors covered under the licensing requirements of the Office of the State Fire Marshal shall nevertheless obtain a certificate of inspection from a licensed

inspection agency for new installations prior to filing for a final inspection from the Office of the State Fire Marshal. This rule will be effective 12/31/2012.

- 12.11 Any person installing "network or Communication systems in commercial or industrial structures exempted from licensure shall nevertheless obtain a certificate of inspection from a licensed inspection agency for new installations. This rule will be effective 12/31/2012.

**7 DE Reg. 1167 (3/1/04)**

**13.0 Organization of the Board**

13.1 Election of Officers

Annually during the July meeting, the Board shall elect officers to serve for a one year term from September 1- August 31.

13.2 Duties of the Officers

13.2.1 President - The president shall preside at all meetings, designate subordinates when provided by law, sign correspondence on behalf of the Board, and perform other functions inherent in the position. In conducting meetings or hearings, the President may limit or exclude evidence as provided under the Administrative Procedures Act unless overruled by a majority of the Board.

13.2.2 Vice President - The Vice President assumes the duties and powers of the President when the President is unavailable.

13.2.3 Secretary - The Secretary assumes the duties and powers of the President when neither the President nor the Vice President is available.

13.2.4 Complaint officer - The complaint officer shall be a member who works with the investigator of the Division of Professional Regulation when complaints are investigated pursuant to 29 Del.C. §8807. The complaint officer shall report to the Board when complaints are closed and recuse himself or herself from participating in disciplinary hearings involving matters that have been reviewed in his or her capacity as complaint officer.

13.2.5 Education officer - The education officer may review courses submitted for continuing education approval and makes recommendations to the Board.

13.3 Meeting Minutes

The minutes of each meeting are taken by the Administrative Assistant from the Division of Professional Regulation and approved by the Board.

**4 DE Reg. 1788 (5/1/01)**

**14.0 Homeowners Permits**

14.1 The Division of Professional Regulation is authorized to issue homeowners' permits pursuant to an application process approved by the Board. Only owner-occupants who perform the work themselves qualify for homeowners' permits.

14.2 Homeowners' permits are required for new construction, renovation, and any work that requires a building permit. Generally, homeowners' permits are not required for replacement in kind.

14.3 A homeowner shall not be permitted to install his or her own internal wiring, electrical work or equipment associated with a hot tub or a swimming pool.

14.4 A homeowner's permit issued for a mobile home on a leased lot authorizes feeder installation for the mobile home itself and it does not include the installation or repair of service equipment.

14.5 A homeowner's permit is not authorized until a dwelling is on the site or under construction.

14.6 For the purposes of this section, evidence of homeownership can be a:

14.6.1 deed to the property;

14.6.2 a long term lease, e.g. 99 years, if the site of the dwelling is part of a community where title to the land is not conveyed by deed to the homeowner.

14.6.3 the title to a mobile home;

14.6.4 a written contract of sale, signed by the parties, for a mobile home that includes the names of the buyer, seller, contract price, date of sale, and identification number of the mobile home.

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- 14.7 If a homeowner's permit is approved for a dwelling on a lot, other structures on the same lot, such as a non-commercial garage, are also covered unless otherwise prohibited under this section.

**4 DE Reg. 1788 (5/1/01)**

**9 DE Reg. 260 (8/1/05)**

### **15.0 Inspection agencies**

- 15.1 Inspection agencies shall be licensed in accord with the provisions of 24 **Del.C.** §1421 in order to operate in Delaware. An application on a form approved by the Board must be filed at the Division of Professional Regulation. Licenses must be renewed annually on June 30 by completing the renewal form and paying the fee determined by the Division.
- 15.2 No inspection agency will be approved until it produces proof of general liability insurance in the amount of at least \$1,000,000.00 and errors and omissions insurance in the amount of at least \$1,000,000.00.
- 15.3 Inspection agencies must submit, to the Division of Professional Regulation, the names of its employees who are inspectors and proof of compliance with the statutory requirements for inspectors. Inspectors must have seven years of experience in residential, commercial, or industrial wiring. Proof of experience shall be submitted by affidavit of the named employer, a tax form W-2, or tax Schedule C. The experience requirement for an inspector employed by an approved inspection agency on July 20, 1999 is satisfied with seven years of inspection experience. Each inspector shall also submit a passing score for the Electrical one and two family dwelling and the Electrical General examinations within 18 months of employment and the Electrical Plan Review examination within 24 months of employment. For inspectors employed by the inspection agency on July 20, 1999, the time for taking said examinations shall run from the date these regulations become effective and not the date first employed.
- 15.4 An employee of an inspection agency shall confirm that the person who has filed for an inspection is a licensee under this chapter, a homeowner having a permit, or a person who has performed work allowed under an exception to licensure. Licensure verification is available online, free of charge at [www.dpr.delaware.gov](http://www.dpr.delaware.gov).
- 15.5 If a violation found in an inspection is not corrected within 15 days as provided in 24 **Del.C.** §1421(g), the inspection agency shall notify the Board in writing and include a copy of the notice of violation. The Division of Professional Regulation will send, on behalf of the Board, the notice of violation to the other inspection agencies and to any local building inspector having jurisdiction over the structure.
- 15.6 An inspection agency shall notify the Board in writing within 10 days when an employee leaves the agency or when a new employee is hired by the agency. This notification shall include the full name and address of the inspector. The date a new employee is hired by an inspection agency marks the beginning of the period in which the inspection examinations in Rule 15.3 must be successfully completed.
- 15.7 As used in 24 **Del.C.** §1421(j), "**salary**" means compensation of employees at a set figure with installments paid weekly, monthly, or other fixed period or compensation based on time worked, i.e. paid by the hour. "**Salary**" does not include compensation based on the number of inspections performed. Inspectors may not be compensated based on the number of inspections performed or given any other incentive to increase the speed at which they perform inspections.

**4 DE Reg. 1788 (05/01/01)**

**6 DE Reg. 1495 (05/01/03)**

**7 DE Reg. 1167 (03/01/04)**

**10 DE Reg. 1329 (02/01/07)**

**12 DE Reg. 73 (07/01/08)**

### **16.0 Voluntary Treatment Option For Chemically Dependent Or Impaired Professionals.**

A voluntary treatment option is available for chemically dependent or impaired professionals as provided in 29 **Del.C.** §8807(n) who are reported to the Board or Division using the following procedures:

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- 16.1 If the report is received by the president of the Board, that president shall immediately notify the Director of Professional regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the president of the Board, or that president's designate or designates.
- 16.2 The president of the Board or that president's designate or designates shall, within seven (7) days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 16.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within thirty (30) days following notification to the professional by the participating Board president or that president's designate(s).
- 16.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board president or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the president of the Board or that president's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the President of the Board.
- 16.5 Failure to cooperate fully with the Board president or that president's designate or designates or the Director of the Division of Professional Regulation or his/ her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option and the Board president or that president's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in 29 **Del.C.** §8807(h).
- 16.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to the following provisions:
- 16.6.1 Entry of the regulated professional into a treatment program approved by the Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- 16.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the president of the Board or to that president's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the president of the Board or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
- 16.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 16.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this paragraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

- 16.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the Board's president, or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- 16.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 16.8 The Board's president, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 16.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 16.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 16.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a non-disciplinary matter.
- 16.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected.

**17.0 Crimes substantially related to work of an Electrician.**

- 17.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the work of an electrician in the State of Delaware without regard to the place of conviction:
- 17.1.1 Reckless endangering in the first degree. 11 **Del.C.** §604
- 17.1.2 Assault in the second degree. 11 **Del.C.** §612
- 17.1.3 Assault in the first degree. 11 **Del.C.** §613
- 17.1.4 Manslaughter. 11 **Del.C.** §632
- 17.1.5 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
- 17.1.6 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634
- 17.1.7 Murder in the second degree. 11 **Del.C.** §635
- 17.1.8 Murder in the first degree. 11 **Del.C.** §636
- 17.1.9 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
- 17.1.10 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
- 17.1.11 Rape in the fourth degree. 11 **Del.C.** §770
- 17.1.12 Rape in the third degree. 11 **Del.C.** §771
- 17.1.13 Rape in the second degree. 11 **Del.C.** §772
- 17.1.14 Rape in the first degree. 11 **Del.C.** §773
- 17.1.15 Sexual extortion. 11 **Del.C.** §776
- 17.1.16 Continuous sexual abuse of a child. 11 **Del.C.** §778
- 17.1.17 Dangerous crimes against a child. 11 **Del.C.** §779
- 17.1.18 Kidnapping in the second degree. 11 **Del.C.** §783
- 17.1.19 Kidnapping in the first degree. 11 **Del.C.** §783A
- 17.1.20 Arson in the second degree. 11 **Del.C.** §802
- 17.1.21 Arson in the first degree. 11 **Del.C.** §803



- 17.1.22 Criminal mischief. 11 **Del.C.** §811
- 17.1.23 Burglary in the third degree. 11 **Del.C.** §824
- 17.1.24 Burglary in the second degree. 11 **Del.C.** §825
- 17.1.25 Burglary in the first degree. 11 **Del.C.** §826
- 17.1.26 Robbery in the second degree. 11 **Del.C.** §831
- 17.1.27 Robbery in the first degree. 11 **Del.C.** §832
- 17.1.28 Theft of services. 11 **Del.C.** §845
- 17.1.29 Extortion. 11 **Del.C.** §846
- 17.1.30 Identity theft. 11 **Del.C.** §854
- 17.1.31 Forgery. 11 **Del.C.** §861
- 17.1.32 Unlawful use of credit card. 11 **Del.C.** §903
- 17.1.33 Criminal impersonation of a police officer. 11 **Del.C.** §907B
- 17.1.34 Insurance fraud. 11 **Del.C.** §913
- 17.1.34 Home improvement fraud. 11 **Del.C.** §916
- 17.1.36 New home construction fraud. 11 **Del.C.** §917
- 17.1.37 Dealing in children. 11 **Del.C.** §1100
- 17.1.38 Sexual exploitation of a child. 11 **Del.C.** §1108
- 17.1.39 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- 17.1.40 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 17.1.41 Perjury in the second degree. 11 **Del.C.** §1222
- 17.1.42 Perjury in the first degree. 11 **Del.C.** §1223
- 17.1.43 Aggravated harassment. 11 **Del.C.** §1312
- 17.1.44 Adulteration. 11 **Del.C.** §1339
- 17.1.45 Possession of a firearm during a felony. 11 **Del.C.** §1447
- 17.1.46 Theft of a firearm. 11 **Del.C.** §1451
- 17.1.47 Organized crime and racketeering. 11 **Del.C.** §1503
- 17.1.48 Breaking and entering, etc. to place or remove equipment. 11 **Del.C.** §2410
- 17.1.49 Unlicensed practice as an Electrician 24 **Del.C.** §§1407, 1422
- 17.2 Crimes substantially related to the work of an electrician shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**8 DE Reg. 998 (1/1/05)**

**12 DE Reg. 73 (7/1/08)**

**14 DE Reg. 1208 (05/01/11)**

**15 DE Reg. 370 (09/01/11)**

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**DIVISION OF PROFESSIONAL REGULATION**

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

**PUBLIC NOTICE**

**2500 Board of Pharmacy**

The Delaware Board of Pharmacy, pursuant to 24 **Del.C.** §2506(a)(1), proposes to revise its rules and regulations. The proposed changes create a requirement that Pharmacists in Charge complete annual self-inspections; clarifies that a cabinet is not an acceptable storage location for controlled substances; removes the

requirement that the Office of Narcotics and Dangerous Drugs be notified in the event of pharmacy construction; makes a nonsubstantive change to 5.1.13.5; and adds a list of crimes to those defined as substantially related to the practice of pharmacy.

The Board will hold a public hearing on the proposed rule change on June 20, 2012 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Catherine Simon, Administrator of the Delaware Board of Pharmacy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

## 2500 Board of Pharmacy

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

### 3.0 Pharmacy Requirements

#### 3.1 Pharmacist in Charge

3.1.1 Application for permit to operate a pharmacy in the State of Delaware must be on a form approved by the Board. The form shall include the statement to be signed by the pharmacist in charge, "I understand that I am responsible for conducting and managing the prescription department in compliance with applicable State and Federal laws."

3.1.2 The Board interprets the responsibilities of the Pharmacist-in-Charge to include, but not be limited to the following:

3.1.2.1 Maintain necessary pharmaceutical equipment and reference texts in accordance with the State Board of Pharmacy requirements.

3.1.2.2 Maintain records required by the Uniform Controlled Substances Act and other relevant State and Federal regulations.

3.1.2.3 Maintain proper security of particular pharmacy operation during and after normal business hours.

3.1.2.4 Establish procedures within operation that maintain standard of practice as it relates to the dispensing of pharmaceuticals and refusal to dispense pharmaceuticals based on the religious, moral, or ethical beliefs of the dispensing pharmacist. These procedures shall include proper supervision of supportive personnel and delegation of authority to another pharmacist when not on duty.

3.1.2.5 The pharmacist on duty is directly responsible for his own actions.

3.1.2.6 Notify the Board of Pharmacy in writing within 10 days of termination as pharmacist-in-charge.

3.1.2.7 Conducting an annual inspection of the pharmacy using the Board approved "pharmacist-in-charge self-inspection report" by February 1st of each year. The completed self-inspection report must be signed and dated by the pharmacist-in-charge and maintained on premises for three years in a form readily retrievable and available to Board inspectors.

3.1.2.7.1 A new or incoming pharmacist-in-charge must complete the "pharmacist-in-charge self-inspection report" within thirty days of assuming the duties of pharmacist-in-charge and annually thereafter by February 1st.

3.2 Owner's Affidavit. The owner or owners and, in the case of a corporation, an authorized official of the corporation must present an affidavit properly notarized containing the statement, "I hereby swear or affirm that the foregoing statements are correct and do hereby agree to abide by the pharmacy laws of the State of Delaware and to all rules and regulations of the Delaware State Board of Pharmacy." The Board must be notified within 10 days of change of ownership.

#### 3.3 Equipment and Reference Materials.

3.3.1 Equipment: Each pharmacy shall have all equipment appropriate to the individual pharmacy practice and to the care of the patients served.

3.3.1.1 All equipment must be clean and must be maintained in such a manner that allows the pharmacist to accurately weigh, measure and compound ingredients.

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**PROPOSED REGULATIONS**

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- 3.3.1.2 Equipment may include such things as prescription scale, metric graduates, mortars and pestles, filter paper, spatulas, funnel, stirring rod, ointment slab or papers, distilled water, and prescription/physician order files.
- 3.3.2 References: Each pharmacy shall maintain a library of the latest edition and supplements of current reference sources, either hard copy or electronically accessible, appropriate to the individual pharmacy practice and to the care of the patients served. References must:
  - 3.3.2.1 Provide information on the therapeutic use, dosing, pharmacology, adverse effects, and interactions of drugs dispensed.
  - 3.3.2.2 Provide information helpful in the counseling of patients on the use of drugs dispensed.
  - 3.3.2.3 Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.
  - 3.3.2.4 Include a listing of therapeutic equivalents for drugs dispensed.
  - 3.3.2.5 Include current Delaware and Federal laws and regulations governing pharmacy and controlled substances.
  - 3.3.2.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.
- 3.4 Physical Facilities. Have sufficient size, space, sanitation, and environmental control for adequate distribution, dispensing and storage of drugs and devices. Such facilities shall include:
  - 3.4.1 A dispensing area of adequate size and space for proper compounding, dispensing and storage of drugs and devices, to ensure the safety and well being of the public and pharmacy personnel.
  - 3.4.2 Sufficient environmental control, i.e. lighting, ventilation, heating and cooling to maintain the integrity of drugs and devices. The area in which drugs and devices are stored shall be accurately monitored using control devices to maintain room temperature between 59 degrees and 86 degrees Fahrenheit.
  - 3.4.3 The pharmacy department or prescription area must contain a sink with hot and cold running water. It must be large enough to accommodate the equipment appropriate to the individual pharmacy practice.
  - 3.4.4 Suitable refrigeration with appropriate monitoring device. Refrigerators and freezers (where required) will be maintained within the USP/NF range:
    - Refrigerator - 36 degrees to 46 degrees Fahrenheit
    - Freezer - Minus 13 degrees to plus 14 degrees Fahrenheit.
- 3.5 Building Standards. An application to operate a new pharmacy must include (3) copies of floor plans drawn to scale of the proposed prescription department. The floor plans must include the following:
  - 3.5.1 The requirements listed in §2533(e).
  - 3.5.2 An area which assures patient privacy will be provided to facilitate counseling. This area must afford the patient privacy from auditory detection by any unauthorized person or persons. An area partitioned by a 5 foot divider on 2 sides with a minimum of 9 square feet would satisfy this requirement in most settings.
  - 3.5.3 The floor plans shall include the location of the sink, all doors, storage room, approved Schedule II controlled substance safe or cabinet, and the method of securing the prescription department from floor to ceiling, when the prescription department is closed and the remainder of the store is open.
  - 3.5.4 The floor plans must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of Controlled Substances.
  - 3.5.5 The above requirements shall also apply for any remodeling or change of location of the prescription department. The pharmacist-in-charge or applicant for permit must submit the floor plans requirements to the Delaware Board of Pharmacy ~~and the Office of Narcotics and Dangerous Drugs~~ prior to any construction and at least 15 days prior to the next scheduled Board

~~of Pharmacy meeting for its review. The pharmacist-in-charge shall notify the Board within fifteen days after the completion of any remodeling.~~

- 3.6 Security. When the pharmacist is not physically present and the operation is open for business, the pharmacy department shall be physically or electronically secured from floor to ceiling. The partitioned off section required by 24 Del.C. §2533 must be five feet high measured from the floor. A conspicuous sign with letters not less than three inches in height, reading "PRESCRIPTION LABORATORY TEMPORARILY CLOSED, NO PROFESSIONAL SERVICES RENDERED," or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned off section where it can be seen by the public.
- 3.7 Board Interview. Applicants for permit to operate a pharmacy in the State of Delaware must appear before the Board for an interview. The owner or authorized official must be present in addition to the pharmacist-in-charge. Whenever there is a change of pharmacist-in-charge, if that person has never held that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming the position.
- 3.8 Technician Support. At all times that the pharmacy department is open for business, there shall be at least one technician immediately available in the facility to assist in the pharmacy at the pharmacist's request. A schedule of technician support shall be readily available to the pharmacists at all times.
- 3.9 A conspicuous sign with letters not less than three-quarter inches in height, reading "patients may request the lot numbers and expiration dating for their dispensed medication at the time of prescription drop-off" or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned-off section where it can be seen by the public.

*(Break in Continuity of Sections)*

**5.0 Dispensing**

- 5.1 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist.
- 5.1.1 Receive oral prescriptions and reduce them immediately to writing.
- 5.1.2 Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)
- 5.1.3 The pharmacist, intern or student who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable.
- 5.1.4 Prior to dispensing a prescription to the patient or agent of the patient the pharmacist must verify that the medication in the container is as labeled. Pharmacies must include a description of their verification process in their policy and procedures manual.
- 5.1.5 Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of the pharmacist, shall conduct a prospective drug review. A prospective drug review may be conducted before refilling a prescription to the extent deemed appropriate. A prospective drug review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.
- 5.1.6 Compounding is the responsibility of the pharmacist. All compounding must be in compliance with FFDCA Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of a certified pharmacy technician under the direct supervision of a pharmacist if:
- 5.1.6.1 The formulation is developed by a pharmacist before proceeding with the compounding.

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## PROPOSED REGULATIONS

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- 5.1.6.2 The compounding ingredients are checked by the pharmacist before proceeding with the compounding.
- 5.1.6.3 Every weight and measurement is checked by the pharmacist before proceeding with the compounding.
- 5.1.6.4 The finished product is checked by the pharmacist before dispensing.
- 5.1.6.5 A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.
- 5.1.7 Compounded medications for office use.
  - 5.1.7.1 On the order of a practitioner, compounded products may be sold to the practitioner for use in his or her office to administer to individual patients, but not for resale.
- 5.1.8 Automatic Dispensing Devices. If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number unless the information is stored electronically and readily retrievable. No drug can be added to the cell until the present supply is depleted unless the drug is of the same lot number and expiration date.
- 5.1.9 Authorization for renewal of prescriptions. A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.
- 5.1.10 Mandatory Patient Profile Record System
  - 5.1.10.1 A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.
  - 5.1.10.2 The following information shall be recorded by a pharmacist or designee:
    - 5.1.10.2.1 The family name and first name of the person for whom the medication is intended (the patient);
    - 5.1.10.2.2 The address of the patient and phone number;
    - 5.1.10.2.3 The patient's age, or date of birth, and gender;
    - 5.1.10.2.4 The original date the medication is dispensed pursuant to the receipt of a prescriber's prescription;
    - 5.1.10.2.5 The number or designation identifying the prescription;
    - 5.1.10.2.6 The prescriber's name;
    - 5.1.10.2.7 The name, strength, quantity, directions and refill information of the drug dispensed;
    - 5.1.10.2.8 The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;
    - 5.1.10.2.9 If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.
    - 5.1.10.2.10 Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.
  - 5.1.10.3 The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as

- communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.
- 5.1.10.4 Upon receipt of a new prescription, a pharmacist, pharmacy intern, or student participating in a College of Pharmacy practical experience program under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem and shall, if necessary, consult with the prescriber.
- 5.1.10.5 A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.
- 5.1.11 Exchange of Valid Non-Controlled Prescriptions Between Pharmacies
- 5.1.11.1 Verbal Exchange of Prescriptions - When a pharmacy receives a verbal request for a prescription transfer, it may be honored provided that:
- 5.1.11.1.1 The request comes from a registered pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program under the direct supervision of a pharmacist.
- 5.1.11.1.2 The copy is immediately reduced to writing and contains the information required on a written prescription as listed in Regulation 5.0, and includes the first and last name of the pharmacist transmitting the information.
- 5.1.11.1.3 The prescription used for refills must be clearly identified as a copy.
- 5.1.11.1.4 The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.
- 5.1.11.1.5 The copy shows the last date of dispensing.
- 5.1.11.1.6 Only the actual number of refills remaining are indicated.
- 5.1.11.1.7 A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.
- 5.1.11.2 A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.
- 5.1.11.3 Written copies of prescriptions are for information only and are not valid for refilling.
- 5.1.12 Automated Data Processing Systems (ADPS)
- 5.1.12.1 Profiles. When ADP'S are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation 5.0 must be met. In addition, there must be readily retrievable records that identify the responsible pharmacist(s) for each step in the dispensing and counseling processes; and a mechanism for tracking the prescription drug order during each step in the dispensing process and to identify all pharmacies involved in the dispensing of the and/or processing of the medication. The system must be adequately secured in order to protect the confidentiality and integrity of patient information.
- 5.1.12.2 Prescription (Drug Order) Information. Prescription information (drug order) shall include, but not be limited to:
- 5.1.12.2.1 Original dispensing date.
- 5.1.12.2.2 Name and address of patient (patient location if in an institution).
- 5.1.12.2.3 Name of prescriber.
- 5.1.12.2.4 DEA number of prescriber in the case of a controlled substance.
- 5.1.12.2.5 Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed.
- 5.1.12.2.6 Renewals authorized.
- 5.1.12.2.7 Directions of use for patient.

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## PROPOSED REGULATIONS

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- 5.1.12.3 Records of Dispensing. Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The information shall include, but not be limited to:
- 5.1.12.3.1 Quantity dispensed.
  - 5.1.12.3.2 Date of dispensing.
  - 5.1.12.3.3 Serial Number (or equivalent if an institution).
  - 5.1.12.3.4 The identification of the pharmacist responsible for dispensing.
  - 5.1.12.3.5 Record of renewals to date.
  - 5.1.12.3.6 Name and strength of medicine.
  - 5.1.12.3.7 Records kept pursuant to this section may be maintained in an alternative data retention system, such as a direct digital imaging system, provided that: the records maintained in the alternative data retention system contain all of the information required in a manual record; the data processing system is capable of producing a hard copy of the electronic record on the request of the Board, its representative, or any law enforcement agency; and the digital images are recorded and stored only by means of a technology that does not allow subsequent revision or replacement of the images.
- 5.1.12.4 Record Retrieval (Documentation of Activity). Any such ADPS must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:
- 5.1.12.4.1 Serial number of prescription (equivalent if an institution).
  - 5.1.12.4.2 Date of processing.
  - 5.1.12.4.3 Quantity dispensed.
  - 5.1.12.4.4 The identification of the pharmacist responsible for dispensing.
  - 5.1.12.4.5 Medication dispensed.
- 5.1.12.5 Auxiliary Recordkeeping System. An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADPS is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals is not exceeded. When the ADPS is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.
- 5.1.12.6 Common Data Base. Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation 5.0 for non-controlled substances.
- 5.1.12.7 Transfer of Prescriptions via Automated Data Processing (ADP). A pharmacist may transfer a prescription electronically (ADP) for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section 1306. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.
- 5.1.12.7.1 Any pharmacy using ADP must comply with all applicable State and Federal regulations.

- 5.1.12.7.2 A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.
  - 5.1.12.7.3 The computer record shall reflect the fact that the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.
  - 5.1.12.7.4 The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:
    - 5.1.12.7.4.1 Write the word "TRANSFER" on the face of the transferred prescription unless the prescription is electronically transferred.
    - 5.1.12.7.4.2 Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.
  - 5.1.12.7.5 To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.
- 5.1.13 Electronic Transmission of Prescriptions
- 5.1.13.1 All Prescription Drug Orders communicated by way of Electronic Transmission shall:
    - 5.1.13.1.1 be transmitted directly to a Pharmacist in a licensed Pharmacy of the patient's choice with no intervening Person having access to the Prescription Drug Order;
    - 5.1.13.1.2 identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by Federal or State law;
    - 5.1.13.1.3 be transmitted by an authorized Practitioner or his designated agent; and
    - 5.1.13.1.4 be deemed the original Prescription Drug Order provided it meets the requirements of this subsection.
  - 5.1.13.2 The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.
  - 5.1.13.3 The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.
  - 5.1.13.4 All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.
  - 5.1.13.5 Persons other than those bound by a confidentiality agreement pursuant to Section 2-A-(2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy's patients.
  - 5.1.13.6 Controlled substance prescriptions may be electronically transmitted.
  - 5.1.13.7 Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.
    - 5.1.13.7.1 The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and fax number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.
    - 5.1.13.7.2 Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.
    - 5.1.13.7.3 A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.



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## PROPOSED REGULATIONS

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- 5.1.13.7.4 The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.
- 5.1.13.7.5 Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.
- 5.1.14 Return of Medications and Supply
  - 5.1.14.1 Except as provided in Regulation 5.1.14.2, non-controlled substance prescriptions may not be returned to the pharmacy except for disposal.
  - 5.1.14.2 Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, and which have been stored under USPNF (United States Pharmacopeia/National Formulary) conditions, may be redispensed in accordance with expiration dating. The pharmacist must examine the medication prior to re-dispensing for obvious signs of misbranding or adulteration. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.
- 5.1.15 Centralized Prescription Processing
  - 5.1.15.1 A pharmacy may perform or outsource centralized prescription processing, services provided the parties:
    - 5.1.15.1.1 have the same owner; or
    - 5.1.15.1.2 have a written contract outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of said contract in compliance with federal and state laws and regulations; and
    - 5.1.15.1.3 share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to fill or refill a prescription drug order.
  - 5.1.15.2 The parties performing or contracting for centralized prescription processing services shall maintain a policy and procedures manual and documentation that implementation is occurring in a manner that shall be made available to the Board for review upon request and that includes, but is not limited to, the following:
    - 5.1.15.2.1 A description of how the parties will comply with federal and state laws and regulations;
    - 5.1.15.2.2 The maintenance of appropriate records to identify the responsible pharmacist(s) in each step of the dispensing and counseling processes;
    - 5.1.15.2.3 The maintenance of a mechanism for tracking the prescription drug order during each step in the dispensing process;
    - 5.1.15.2.4 The maintenance of a mechanism to identify on the prescription label all pharmacies involved in dispensing the prescription drug, order;
    - 5.1.15.2.5 The provision of adequate security to protect the confidentiality and integrity of patient information;
    - 5.1.15.2.6 The maintenance of a quality assurance program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.
  - 5.1.15.3 In addition to the requirements of 24 **Del.C.** §2536, all drugs dispensed to a patient that have been filled via a centralized prescription processing system shall bear a label containing an identifiable code that provides a complete audit trail of the dispensing of the drug and pharmaceutical care activities.
  - 5.1.15.4 Any pharmacy where prescriptions are processed and/or dispensed via central fill must notify their patients using signage clearly visible to patients in the pharmacy department that part or parts of their prescription may be processed at a location other than where it is dispensed.

5.1.15.5 In addition to a QA program any pharmacy where prescriptions are processed and/or dispensed via central fill must record and track medication errors and potential errors and identify the system breakdown responsible for the errors and potential errors. Such records must be readily available for inspection.

## 5.2 Patient Counseling

5.2.1 A pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist shall, with each new medication dispensed, provide verbal counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

5.2.1.1 the name and description of the prescribed drug;

5.2.1.2 the dosage and the dosage form;

5.2.1.3 the method and route of administration;

5.2.1.4 the duration of the prescribed drug therapy;

5.2.1.5 any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;

5.2.1.6 common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;

5.2.1.7 patient techniques for self-monitoring of the drug therapy;

5.2.1.8 proper storage and appropriate disposal methods for unwanted or unused medications;

5.2.1.9 prescription refill information;

5.2.1.10 the action to be taken in the event of a missed dose; and

5.2.1.11 current over-the-counter medication use.

5.2.2 This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.

5.2.3 Nothing in this section requires a pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling.

5.2.4 If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

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

**2500 Board of Pharmacy**

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## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 3906(a)(1), (24 Del.C. §3906(a)(1))  
24 DE Admin. Code 3900

## PUBLIC NOTICE

**3900 Board of Clinical Social Work Examiners**

Pursuant to 24 Del.C. §3906(a)(1), the Board of Clinical Social Work Examiners has proposed revisions to its rules and regulations.

A public hearing will be held on June 18, 2012 at 9:15 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Clinical Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

Specifically, the Board proposes revisions to Rule 4.0, which sets forth the requirements for professional supervision pursuant to 24 Del.C. §3907(a)(1). Rule 4.3 is amended to require that the 1,600 hours of supervision shall occur in not less than one year, and must include at least 100 hours of one-to-one, face-to-face supervision. This revision shall apply to supervision commencing after the effective date of the rule. The new rule will ensure that applicants have received adequate supervision and training with the goal of licensing competent professionals who will be able to protect the interests of the public.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

### **3900 Board of Clinical Social Work Examiners**

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

#### **4.0 Professional Supervision**

- 4.1 Professional supervision that is acceptable to the Board means a formalized, interactional, professional relationship between a supervisor and a social worker that provides evaluation and direction over the supervisee's practice of clinical social work and promotes continued development of the social worker's knowledge, skills, and abilities to engage in the practice of clinical social work in an ethical and competent manner.
  - 4.1.1 When professional supervision by a licensed clinical social worker is not available, the applicant may be supervised by a master's level degree social worker, a licensed psychologist, or a licensed psychiatrist. ~~Effective June 1, 2009, to~~ To establish that a licensed clinical social worker is or was not available to provide supervision, the applicant shall submit a notarized statement, on a form provided by the Board, explaining the efforts made to obtain such supervision. The Board has the discretion to accept or reject the applicant's statement that supervision by a licensed clinical social worker is or was not available.
- 4.2 Professional supervision is not acceptable to the Board where applicants for licensure have simultaneously supervised one another.
- 4.3 The amount of supervisory contact shall be at least one hour per week during the supervised period. The applicant shall obtain at least 1,600 hours of supervised experience under an approved supervisor, pursuant to the requirements of Board Rule 4.1.1. For any supervision commencing after the effective date of this Rule, the supervision shall take place in not less than one year, and, within the required 1,600 hours, at least 100 hours shall be one-to-one, face-to-face supervision provided by an approved supervisor, pursuant to the requirements of Board Rule 4.1.1. For supervision commencing prior to the effective date of this Rule, the supervisory This contact may be on a one-to-one face-to-face basis or by live video conferencing; provided, however, that supervision by live video conferencing shall not exceed fifty percent (50%) of the total supervision in any month. Supervision by telephone or e-mail is expressly not permitted.
- 4.4 The Board shall require submission of the following information from the supervisor(s): supervisor's name; business address; license number, professional field and State in which the license was granted during the period of supervision; agency in which the supervision took place (if applicable); the number of qualifying practice hours toward the statutory requirement; the number of one-to-one face-to-face supervisory hours; and the number of live video conferencing supervisory hours (if applicable).

- 4.5 A licensed Psychiatrist shall be defined as a licensed Medical Doctor with a specialty in psychiatry or a licensed Doctor of Osteopathic Medicine with a specialty in psychiatry.

**5 DE Reg. 1072 (11/1/01)**

**12 DE Reg. 1435 (05/01/09)**

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

**3900 Board of Clinical Social Work Examiners**

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## DIVISION OF PROFESSIONAL REGULATION

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

**5300 Board of Massage and Bodywork**

### PUBLIC NOTICE

Pursuant to 24 Del.C. §5306(a)(1), the Delaware Board of Massage and Bodywork has proposed revisions to its rules and regulations.

A public hearing will be held on June 21, 2012 at 1:45 p.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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Massage and Bodywork, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed revisions to Rule 3.0, pertaining to the examination required for licensure as a massage therapist. Currently, an applicant is required to take and pass the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB"). The proposed revision will permit an applicant to take either the NCBTMB examination, or The MBLEx examination administered by the Federation of State Massage Therapy Boards. This revision will give applicants two methods to achieve licensure.

In addition, the Board has proposed a new Rule 7.9, which will permit professional Board members to use Board meeting attendance towards CE requirements, pursuant to the limitations of Rule 7.3.2.

The Board will consider promulgating the proposed rules and regulations at its regularly scheduled meeting following the public hearing.

**5300 Board of Massage and Bodywork**

*(Break in Continuity of Sections)*

### 3.0 Examination

~~The Board designates the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") as the written examination to be taken by all persons applying for licensure as a massage/bodywork therapist. The Board will accept as a passing score on the exam the passing score established by the NCBTMB.~~

A person applying for licensure as a massage and bodywork therapist shall take one of the following written examinations:

- 3.1 The National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB"). The Board will accept as a passing score on the exam the passing score established by the NCBTMB.

- 3.2 The MBLEx examination administered by the Federation of State Massage Therapy Boards ("FSMTB"). The Board will accept as a passing score on the exam the passing score established by the FSMTB.

*(Break in Continuity of Sections)*

**7.0 Continuing Education (CE)**

- 7.1 Renewal Requirements. Massage/bodywork therapists shall complete 24 hours of approved CE during each biennial licensing period, except as otherwise provided in these regulations. Massage technician shall complete 12 hours of approved CE during each biennial licensing period, except as otherwise provided in these regulations. Completion of the required CE hours is a prerequisite for renewing a license or certificate. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.
- 7.1.1 Calculation of Hours. For academic course work, correspondence courses, or seminar/workshop instruction, one hour of acceptable CE shall mean 50 minutes of actual instruction. One academic semester hour shall be equivalent to 15 CE hours; one academic quarter hour shall be equivalent to 10 CE hours.
- 7.1.2 If, during a licensing period, an individual certified by the Board as a massage technician is issued a license as a massage/bodywork therapist, the CE requirement for that licensing period is as follows:
- 7.1.2.1 If the license is issued more than 12 months prior to the next renewal date, the licensee shall complete 24 hours of acceptable CE during the licensing period.
- 7.1.2.2 If the license is issued less than 12 months prior to the next renewal date, the licensee shall complete 12 hours of acceptable CE during the licensing period.
- 7.2 Candidates for renewal who were first licensed or certified 12 months or less before the date of renewal are exempt from the CE requirement for the period in which they were first licensed or certified.
- 7.3 Content. Therapists and technicians may:
- 7.3.1 Fulfill all of their CE requirements with approved Core courses.
- 7.3.2 Fulfill 25% of their CE requirements with approved Elective courses.
- 7.3.3 Fulfill 50% of their CE requirements with Board-approved courses conducted online, by video replay, video- or tele-conference, correspondence, or mail. This allowance is subject to the limitation of Elective courses in regulation 7.3.2.
- 7.4 Board approval.
- 7.4.1 NCBTMB- and AMTA-approved CE courses are automatically approved for content. This provision is subject to the requirements and limitations under regulation 7.3.
- 7.4.2 To obtain credit for CE courses not approved by NCBTMB or AMTA, those courses must be approved by the Board before submission of a renewal application. CE course participants or providers may apply for pre-approval of courses by submitting a written request to the Board that must include a program agenda, a syllabus indicating the time spent on each topic, the names and resumes of the presenters, and the number of CE hours and category requested. The Board reserves the right to approve less than the number of hours requested or to approve a course in a different category than requested.
- 7.4.3 Self-directed activity. The Board may approve credit for self-directed activities, including, but not limited to teaching, research, and preparation or presentation of professional papers and articles. Licensees may apply for pre-approval of self-directed activities by submitting a written request for pre-approval that must include an outline of the scope of the activity, the number of CE hours and category requested, the anticipated completion date, the role of the licensee in the case of multiple participants (e.g. research), and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

- 7.4.4 Course preparation and instruction. The Board may approve up to six additional CE credits, on an hour for hour basis, to instructors for their initial preparation and presentation of an approved CE course (e.g. an instructor preparing and presenting an eight hour course for the first time may receive up to six additional credit hours.) This provision remains subject to the limitations of regulation 7.3.2.
- 7.4.5 Board approval of a licensee's CE hours in a modality is not a Board endorsement of the licensee's competence to practice that modality.
- 7.5 Verification.
- 7.5.1 Verification of CE hours shall be by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of completion may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.
- 7.5.2 Post-Renewal Audit. The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the renewal requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate of attendance or completion that must be signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period and for at least one year after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license suspended or revoked. Licensees renewing during the late renewal period pursuant to regulation 5.0 shall be audited.
- 7.6 Hardship. A candidate for renewal may be granted an extension of time in which to complete CE hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction, and exceptional family responsibilities. Requests for hardship extensions must be submitted to the Board in writing prior to the end of the licensing or certification period for which the request is being made.
- 7.7 Requirements for Late Renewal. Unless extended by the Board for hardship as defined in regulation 7.6, and subject to the one-year limitation set forth in regulation 5.0, massage/bodywork therapists and massage technicians applying for late renewal must provide proof of completion of the required CE for the immediately preceding licensure period.
- 7.8 Requirements for Return to Active Status. Unless extended by the Board for hardship as defined in regulation 7.6, massage/bodywork therapists and massage technicians returning from inactive status must provide notice to the Board as set forth in regulation 6.2 and must provide adequate proof of the satisfactory completion of 24 hours of Board approved CE within the immediately preceding two-year period prior to the date of the notice to return to active. A massage technician returning from inactive status must provide notice to the Board as set forth in regulation 6.2 and must provide adequate proof of the satisfactory completion of 12 hours of Board approved CE within the immediately preceding two year period prior to the date of the notice to return to active status. CE hours required to return to active status may not be credited towards the hours required for renewal in any other licensing period.
- 7.9 Professional members of the Board may receive one hour of elective CE for each Board meeting attended, subject to the requirements of Rule 7.3.2. Such hours may be applied to CE required for licensure renewal.

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

**5300 Board of Massage and Bodywork**

## 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**

Pursuant to 29 **Del.C.** §10108(c) and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed amendments to its rules and regulations to conform to recently revised national standards for the administration of Salix (furosemide) on race days by regulatory veterinarians and the elimination of all race day adjunct medications, including Aminocaproic Acid (Amicar) in Thoroughbred and Arabian race horses.

## SUMMARY OF THE EVIDENCE

1. The Commission published public notice of the proposed rules March 1, 2012 in the *Register of Regulations* and for two consecutive weeks in *The News Journal* and the *Delaware State News*.
2. The Commission received no written comments and the Commission held a public hearing on April 11, 2012, during which no written or oral comments were received.

## FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony prior to and during the April 11, 2012 public hearing.
4. The Commission concludes that the changes to its rules should be adopted as proposed.
5. The effective date of this Order shall be ten (10) days from publication of this Order in the May 1, 2012

*Register of Regulations.*

**IT IS SO ORDERED** this 11<sup>th</sup> day of April 2012.

Bernard J. Daney, Chairman

W. Duncan Patterson, Secretary/Commissioner

Henry James Decker, Commissioner

Debbie Killeen, Commissioner

Edward Stegemeier, Commissioner

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1239 (15 DE Reg. 1239). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1001 Thoroughbred Racing Rules and Regulations**

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**DELAWARE JOCKEY'S HEALTH AND WELFARE BOARD**

Statutory Authority: 3 Delaware Code, Section 10171(c), and 29 Delaware Code, Section 4815(b)3(c) (3 **Del.C.** §10171(c); 29 **Del.C.** §4815(b)3(c))  
**3 DE Admin. Code 1002**

**ORDER**

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

The Delaware Jockey's Health and Welfare Board in accordance with 3 **Del.C.** §10171(c) and 29 **Del.C.** §4815(b)3(c), issues this Order adopting proposed amendments to the Board's rules and regulations. The proposal amends the rules and regulations regarding criteria for an active Delaware Jockey to be eligible for health insurance under the Delaware Jockey's Health and Welfare Fund by increasing the minimum number of mounts from 25 to 50. Following notice and a public hearing on April 12, 2012, the Board makes the following findings and conclusions:

**SUMMARY OF THE EVIDENCE**

1. The Commission published public notice of the proposed rules March 1, 2012 in the *Register of Regulations* and for two consecutive weeks in *The News Journal* and the *Delaware State News*.
2. The Commission received no written comments and the Commission held a public hearing on April 11, 2012, during which no written or oral comments were received.

**FINDINGS OF FACT AND CONCLUSIONS**

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony prior to and during the April 11, 2012 public hearing.
4. The Commission concludes that the changes to its rules should be adopted as proposed.
5. The effective date of this Order shall be ten (10) days from publication of this Order in the May 1, 2012 *Register of Regulations*.

**IT IS SO ORDERED** this 11<sup>th</sup> day of April 2012.

Edward Stegemeier, Chairman

John Mooney, Commissioner

Esteban Unsihuay

Bessie Gruwell, Commissioner

Heberto Rivera, Commissioner



\*Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1243 (15 DE Reg. 1243). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

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

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

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

**REGULATORY IMPLEMENTING ORDER**

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

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include adding definitions for a "DCAS Teacher" and "Non-DCAS Teacher". The amendments are addressing policy changes for the 2011-2012 school year, including provisions related to the summative rating determination, pattern of ineffective teaching, and improvement plans.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **March 2, 2012**, in the form hereto attached as *Exhibit "A"*. The Department amended the form of the regulation for purposes of clarification by adding 6.2.1.2.1 and 6.3.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to add definitions for a "DCAS Teacher" and "Non-DCAS Teacher" and to address policy changes for the 2011-2012 school year, including provisions related to the summative rating determination, pattern of ineffective teaching, and improvement plans.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 19, 2012. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19th day of April 2012.

**Department of Education**

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 19th day of April 2012

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

**106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****1.0 Effective Date**

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the 2011-12 school year, and shall, at such time, replace the current 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).

**15 DE Reg. 833 (12/01/11)**

**2.0 Definitions**

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

**"Announced Observation"** shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

**"Board"** shall mean a local board of education or charter school board of directors.

**"Credentialed Evaluator"** shall mean the individual, usually the supervisor of the teacher, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

**"DASA"** shall mean the Delaware Association of School Administrators.

**"DCAS Teacher"** shall mean any Novice Teacher or Experienced Teacher providing instruction in reading and/or mathematics to a student that meets the following criteria;

(a) The student is enrolled in any grade three (3) through ten(10) for either reading and/or mathematics instruction as verified by the state's pupil accounting system; and

(b) The student has valid Delaware Comprehensive Assessment System (DCAS) score(s) and the student was not subject to an invalidation or special exemption as provided in 14 DE Admin. Code 103.

**"DPAS II Revised Guide for Teachers"** shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

"DSEA" shall mean the Delaware State Education Association.

"**Experienced Teacher**" shall mean a teacher who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the **Delaware Code**; or Standard or Professional Status Certificate issued prior to August 1, 2003.

"**Improvement Plan**" shall be the plan that a teacher and evaluator mutually develop in accordance with 8.0.

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

"**Non-DCAS Teacher**" shall mean any Novice Teacher or Experienced Teacher that does not meet the definition of DCAS Teacher as defined herein.

"**Novice Teacher**" shall mean a teacher who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the **Delaware Code**.

"**Satisfactory Component Rating**" shall mean the teacher's performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the **Delaware Code**.

"**Satisfactory Evaluation**" shall be equivalent to the overall "Highly Effective", "Effective" or "Needs Improvement" rating on the Summative Evaluation and shall be used to qualify for a continuing license.

"**State Assessment**" shall mean the Delaware Comprehensive Assessment System (DCAS).

"**Student Achievement**" shall mean

(a) For tested grades and subjects:

(1) A student's score on the DCAS; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures must be approved by the Department and developed in partnership with the local collective bargaining representatives.

"**Student Growth**" shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

"**Summative Evaluation**" shall be the final evaluation at the conclusion of the appraisal cycle.

"**Unannounced Observation**" shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"**Unsatisfactory Component Rating**" shall mean the teacher's performance does not demonstrate an understanding of the concepts of the component.

"**Unsatisfactory Evaluation**" shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

"**Working Day**" shall mean a day when the employee would normally be working in that district or charter school.

### 15 DE Reg. 833 (12/01/11)

## 3.0 Appraisal Cycles

- 3.1 Experienced teachers who have earned a rating of "Highly Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective

teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.

- 3.2 Experienced teachers who have earned a rating of "Effective" and have earned "Satisfactory" ratings on at least four (4) of the components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Effective teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.3 Experienced teachers who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one (1) year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.
- 3.4 Novice teachers shall receive a minimum of two (2) Announced Observations and one (1) Unannounced Observation with a Summative Evaluation every year. Novice teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.

**15 DE Reg. 833 (12/01/11)**

**4.0 DPAS II Guide for Teachers**

- 4.1 All school districts and charter schools shall use the manual entitled DPAS II Guide Revised for Teachers as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.
- 4.2 The manual shall contain, at a minimum, the following:
  - 4.2.1 Specific details about each of the five (5) components listed in 5.1.
  - 4.2.2 All forms or documents needed to complete the requirements of the appraisal process.
  - 4.2.3 Specific procedures to implement the appraisal system.

**5.0 Appraisal Components and Appraisal Criteria**

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by a credentialed evaluator:
  - 5.1.1 Planning and Preparation
    - 5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable.
    - 5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the instructional goals and support student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the district or charter school's curricula.
    - 5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his or her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula.

- 5.1.1.4 Demonstrating Knowledge of Students: Teacher shows his or her knowledge of student developmental characteristics; approaches to learning, knowledge, and skills; interests; cultural heritage; and, where applicable, State Assessment performance levels.
- 5.1.1.5 Designing Student Assessments: Teacher creates and or selects assessments that are congruent with instructional goals, criteria and standards. The teacher plans for the use of formative and summative assessments of the teacher's students.
- 5.1.2 Classroom Environment
  - 5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routines that maximize learning time.
  - 5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.
  - 5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-to-student and student-to-student interactions show rapport that is grounded in mutual respect.
  - 5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and makes resources accessible to all students.
- 5.1.3 Instruction
  - 5.1.3.1 Engaging Students in Learning: Content is appropriate, clear, and linked to student knowledge and experience. Content is aligned with the district or charter school's curricula. Activities and assignments engage all students. Instructional materials are suitable to the instructional goals. The instruction is coherent and paced appropriately for all students.
  - 5.1.3.2 Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes use of them to make modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and achievement data.
  - 5.1.3.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' ages, backgrounds, and levels of understanding.
  - 5.1.3.4 Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student led discussions.
  - 5.1.3.5 Using Assessment in Instruction: Teacher makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.
- 5.1.4 Professional Responsibilities
  - 5.1.4.1 Communicating with Families: Teacher shares information about the school's educational program and expectations for student performance. Teacher develops a mechanism for two way communication with families about student progress, behavior, and personal needs or concerns.
  - 5.1.4.2 Recording student data in a Student Record System: Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.
  - 5.1.4.3 Growing and Developing Professionally: Teacher chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or charter school, or students.
  - 5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.

**5.1.5 Student Improvement**

5.1.5.1 Measuring Student Improvement: Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

5.2 Notwithstanding 5.1, for the 2011-2012 school year the first four (4) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by a credentialed evaluator. Appraisal Component 5.1.5 may, however, be used to determine whether a DCAS Teacher shall receive a "Highly Effective" rating.

**15 DE Reg. 833 (12/01/11)**

**6.0 Summative Evaluation Ratings**

6.1 Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the teacher has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components.

6.1.2 A satisfactory rating for the Student Improvement component shall mean that the teacher has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.

6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement", or "Ineffective".

6.2.1 "Highly Effective" shall mean that the teacher has earned a Satisfactory Component rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth as defined in the *DPAS II Revised Guide for Teachers*, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.

6.2.1.1 Notwithstanding 6.2.1, for the 2011-2012 school year, for a Non-DCAS Teacher the Summative Evaluation Rating "Highly Effective" shall not be applicable.

6.2.1.2 Notwithstanding 6.2.1, for the 2011-2012 school year, for a DCAS Teacher "Highly Effective" shall mean that the teacher has earned a Satisfactory Component rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth as defined in the *DPAS II Revised Guide for Teachers*, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.

**[6.2.1.2.1 For the 2011-2012 school year, once the Student Improvement Component calculation for DCAS teachers is complete, the summative rating for DCAS teachers who earn an "Effective" rating and who earn an "Exceeds" rating on the Student Improvement Component shall indicate that the teacher earned an "Effective" summative rating based on the first four Appraisal Components and a "Highly Effective" summative rating based on all five Appraisal Components. The rating for a teacher earning the "Highly Effective" rating as noted herein shall also include the following language: "The Component V rating is based on student performance on DCAS only, during this pilot year. Note that only DCAS subject teachers are eligible for the Highly Effective summative rating during the 2011-12 school year."]**

6.2.2 "Effective" shall mean that:

6.2.2.1 The teacher has earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and

6.2.2.2 The teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.

- 6.2.2.3 Notwithstanding 6.2.2.1 and 6.2.2.2, for the 2011-2012 school year, for a Non-DCAS teacher "Effective" shall mean the teacher has earned a Satisfactory Component Rating [in] three (3) or four (4) of the first four (4) Appraisal Components.
- 6.2.2.4 Notwithstanding 6.2.2.1 and 6.2.2.2, for the 2011-2012 school year, for a DCAS Teacher "Effective" shall mean that the teacher has earned a Satisfactory Component Rating in three (3) or four (4) of the first four (4) Appraisal Components, and
- 6.2.2.5 The DCAS Teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.2.
- 6.2.3 "Needs Improvement" shall mean that:
- 6.2.3.1 The teacher has earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
- 6.2.3.2 The teacher has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the teacher has earned an Unsatisfactory rating in the Student Improvement Component.
- 6.2.3.3 Notwithstanding 6.2.3.1 and 6.2.3.2, for the 2011-2012 school year, "Needs Improvement" shall mean the teacher has earned a Satisfactory Component Rating in two (2) of the first four (4) Appraisal Components.
- 6.2.4 "Ineffective" shall mean that:
- 6.2.4.1 The teacher has earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
- 6.2.4.2 The teacher earned an Unsatisfactory Component Rating in the Student Improvement Component.
- 6.2.4.3 Notwithstanding 6.2.4.1 and 6.2.4.1, for the 2011-2012 school year, "Ineffective" shall mean the teacher has earned a Satisfactory Component Rating in zero (0) or one (1) of the first four (4) Appraisal Components.
- 6.2.5 If a teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the teacher's rating shall be re-categorized as "Ineffective."
- [6.3 For the 2011-2012 school year, DCAS teachers shall be given a summative rating based on the first four Appraisal Components prior to completion of the Student Improvement Component calculation. In those instances, the summative rating for teachers earning an "Effective" summative rating based on the first four Appraisal Components shall also indicate that the teacher's summative rating may be expanded to include the outcome of the Student Improvement Component calculation.]**

15 DE Reg. 833 (12/01/11)

## 7.0 Pattern of Ineffective Teaching Defined

- 7.1 A pattern of ineffective teaching shall be based on the most recent Summative Evaluation ratings of a teacher using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective teaching. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective teaching:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

- 7.2 ~~Notwithstanding the chart above, for the 2011-2012 school year a teacher with an overall Summative Rating of "Needs Improvement" or "Ineffective" that is based on the following component rating results shall not have that year's summative rating used for any purpose in the determination of a pattern of ineffective teaching:~~
- ~~7.2.1 Satisfactory Component ratings in the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.~~
  - ~~7.2.2 Satisfactory Component ratings in three (3) of the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.~~
  - ~~7.2.3 Satisfactory Component ratings in two (2) of the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.~~

**15 DE Reg. 833 (12/01/11)**

## **8.0 Improvement Plan**

- 8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of Unsatisfactory on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.
- 8.1.1 An Improvement Plan shall also be developed if a teacher's overall performance during an observed lesson is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
- 8.2 ~~Notwithstanding 8.1, for the 2011-2012 school year, an Improvement Plan shall not be developed related to Appraisal Component 5.1.5. nor shall an Improvement Plan be developed for a teacher with an overall Summative Rating of "Needs Improvement" that is based on the following component rating results:~~
- ~~8.2.1 Satisfactory Component ratings in the first four (4) components pursuant to 5.1, with an Unsatisfactory Component rating in 5.1.5 Student Improvement.~~
- 8.3 The Improvement Plan shall contain the following:
- 8.3.1 Identification of the specific deficiencies and recommended area(s) for growth;
  - 8.3.2 Measurable goals for improving the deficiencies to satisfactory levels;
  - 8.3.3 Specific professional development or activities to accomplish the goals;
  - 8.3.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
  - 8.3.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
  - 8.3.6 Timeline for the plan, including intermediate check points to determine progress;
  - 8.3.7 Procedures for determining satisfactory improvement;
  - 8.3.8 Multiple observations and opportunity for feedback provided by a trained evaluator, a mentor, a lead teacher, or an instructional coach.
- 8.4 Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect must be certified by the Department and must directly relate to areas identified as needing improvement.
- 8.5 The Improvement Plan shall be developed cooperatively by the teacher and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.6 The teacher shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.7 Upon completion of the Improvement Plan, the teacher and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

**15 DE Reg. 833 (12/01/11)**



**9.0 Challenge Process**

- 9.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form. To initiate a challenge, a teacher shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator unless the supervisor of the evaluator is also in the same building as the teacher. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level credentialed evaluator.
- 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, meet with the teacher, and issue a written decision.
- 9.1.2 If the challenge is denied, the written decision shall state the reasons for denial.
- 9.1.3 The decision of the supervisor of the evaluator or the designated district or charter school's level credentialed evaluator shall be final.

**15 DE Reg. 833 (12/01/11)**

**10.0 Evaluator Credentials**

- 10.1 Evaluators shall have successfully completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.1.1 The Department of Education shall annually monitor evaluation implementation.
- 10.2 The training shall occur no less than once every three (3) years and shall include techniques of observation and conferencing, content and relationships of frameworks for teaching, and a thorough review of the DPAS II Revised Guide for Teachers. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

**15 DE Reg. 833 (12/01/11)**

**11.0 Evaluation of Process**

The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the DPAS II Revised Guide for Teachers shall be presented to the State Board of Education for review on an annual basis.

**12.0 Procedures for the Termination of Services of Professional Employees**

For purposes of 14 Del.C., Chapter 14 Procedures for the Termination of Services of Professional Employees only, the Appraisal Component 5.1.5 Student Improvement shall be considered "Satisfactory" for a teacher for the 2011-2012 school year.

**13 DE Reg. 1067 (02/01/10)**

**OFFICE OF THE SECRETARY**

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

**REGULATORY IMPLEMENTING ORDER****107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments are addressing policy changes for the 2011-2012 school year, including provisions related to the summative rating determination, pattern of ineffective teaching, and improvement plans.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 2, 2012, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the regulation while indicating that the categories "seem overly generous and euphemistic" with regard to "needs improvement" and "ineffective."

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to address policy changes for the 2011-2012 school year, including provisions related to the summative rating determination, pattern of ineffective teaching, and improvement plans.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 19, 2012. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of April 2012.

**Department of Education**

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 19<sup>th</sup> day of April 2012

**State Board of Education**

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

Gregory Coverdale  
Terry M. Whittaker, Ed.D.  
James L. Wilson, Ed.D.

\*Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1254 (15 DE Reg. 1254). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

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

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**OFFICE OF THE SECRETARY**

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

**REGULATORY IMPLEMENTING ORDER****108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments are related to improvement plans and "Pattern of Ineffective Administrative Performance." There is also a clarification in section 6.2.1.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 2, 2012, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the amendments.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to amend improvement plans and "Pattern of Ineffective Administrative Performance."

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 19, 2012. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19th day of April 2012.

**Department of Education**

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 19th day of April 2012

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1259 (15 DE Reg. 1259). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 247

**REGULATORY IMPLEMENTING ORDER****247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to reauthorize 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internship and Academic Seminars. This regulation was reviewed as part of the five year review cycle. It was determined that amendments were not needed.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 2, 2012, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments upon publication.

**II. Findings of Facts**

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internship and Academic Seminars upon reviewing this regulation as part of the five year review cycle and determining that amendments were not needed.

**III. Decision to Reauthorize the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internship and Academic Seminars. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internship and Academic Seminars attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internship and Academic Seminars hereby reauthorized shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internship and Academic Seminars reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internship and Academic Seminars in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 19, 2012. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19th day of April 2012.

**Department of Education**

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 19th day of April 2012

\*Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1262 (15 DE Reg. 1262). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars**

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1598

### REGULATORY IMPLEMENTING ORDER

#### 1598 Delaware Professional Development Standards

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

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1598 Delaware Professional Development Standards. This regulation sets forth the standards for Delaware educators' professional development. Delaware professional development standards would reflect Learning Forward's recently adopted professional learning standards.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on February 1, 2012. The notice invited written comments. Comments were received from The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Several grammatical edits were noted and subsequently made. Additional grammatical suggestions were made, but as these were within sections of the regulation that were direct quotes from Learning Forward's Standards for Professional Learning, it would be inappropriate to alter the content.

#### II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

#### III. DECISION TO AMEND THE REGULATION

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

#### IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1598 of the *Administrative Code of Regulations* of the Department of Education.

#### V. EFFECTIVE DATE OF ORDER

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

#### APPROVED BY THE PROFESSIONAL STANDARDS BOARD

THE 3<sup>rd</sup> DAY OF APRIL, 2012

Kathleen Thomas, Chair

Michael Casson

Joanne Christian

Samtra Devard

Stephanie DeWitt

Marilyn Dollard

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IT IS SO ORDERED the 19<sup>th</sup> day of April, 2012.

**Department of Education**

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 19<sup>th</sup> day of April, 2012

**State Board of Education**

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

Gregory Coverdale  
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**1598 Delaware Professional Development Standards**

**1.0 Content**

- 1.1 Learning Forward, formerly known as the National Staff Development Council (NSDC, 2001), adopted updated Standards for Staff Development Professional Learning that connect professional development learning and student learning. and The standards acknowledge that all educators have a responsibility to learn in order to improve student performance.
- 1.2 In accordance with 14 Del.C. §1205(b), the NSDC 2001 Standards For Professional Learning (Learning Forward, 2011) are hereby incorporated by reference and adopted as Delaware's Professional Development Standards. The NSDC Learning Forward's Standards shall serve as the foundation for professional development for all Delaware educators, and as indicators that guide the learning, facilitation, implementation, and evaluation of professional learning. The standards make explicit that the purpose of professional development is for educators to develop the knowledge, skills, practices, and dispositions they need to help students perform at higher levels.
- 1.3 A summary of the Standards [are is] set forth within. In-depth descriptions, contextual explanations, examples and more specific criteria and guidance [is are] provided in the complete set of standards as published in Standards For Professional Learning (Learning Forward, 2011).

**2.0 Context Standards Prerequisites for Professional Learning**

- 2.1 Professional Development that improves the learning of all students:
- 2.1.1 Organizes adults into learning communities whose goals are aligned with those of the school and district.
- 2.1.2 Requires skillful school and district leaders who guide continuous instructional improvement.
- 2.1.3 Requires resources to support adult learning and collaboration.
- 2.1 The following prerequisites are fundamental, necessary for effective learning, and reside where professional learning intersects with professional ethics:
- 2.2 An Educator's commitment to all students is the foundation of effective professional learning.
- 2.3 Each educator involved in professional learning comes to the experience ready to learn.
- 2.4 Because there are disparate experience levels and use of practice among educators, professional learning can foster collaborative inquiry and learning that enhances individual and collective performance.
- 2.5 Like all learners, educators learn in different ways and at different rates.

## 3.0 ~~Process Standards~~ Learning Communities

- 3.1 Professional Development that improves the learning of all students:
  - ~~3.1.1 Uses disaggregated student data to determine adult learning priorities, monitor progress, and help sustain continuous improvement.~~
  - ~~3.1.2 Uses multiple sources of information to guide improvement and demonstrate its impacts.~~
  - ~~3.1.3 Prepares educators to apply research to decision making.~~
  - ~~3.1.4 Uses learning strategies appropriate to the intended goal.~~
  - ~~3.1.5 Applies knowledge about human learning and change.~~
  - ~~3.1.6 Provides educators with the knowledge and skills to collaborate.~~
- 3.1 Professional learning that increases educator effectiveness and results for all students occurs within learning communities committed to continuous improvement, collective responsibility, and goal alignment.
- 3.2 Professional learning within communities requires continuous improvement, promotes collective responsibility, and supports alignment of individual, team, school, and school system goals.
- 3.3 Learning communities convene regularly and frequently during the workday to engage in collaborative professional learning to strengthen their practice and increase student results.
- 3.4 Learning community members are accountable to one another to achieve the shared goals of the school and school system and work in transparent, authentic settings that support their improvement.

## 4.0 ~~Content Standards~~ Leadership

- 4.1 Professional Development that improves the learning of all students:
  - ~~4.1.1 Prepares educators to understand and appreciate all students, create safe, orderly, and supportive learning environments, and hold high expectations for their academic achievement.~~
  - ~~4.1.2 Deepens educators' content knowledge, provides them with research-based instructional strategies to assist students in meeting rigorous academic standards, and prepares them to use various types of classroom assessments appropriately.~~
  - ~~4.1.3 Provides educators with knowledge and skills to involve families and other stakeholders appropriately.~~
- 4.1 Professional learning that increases educator effectiveness and results for all students requires skillful leaders who develop capacity, advocate, and create support systems for professional learning.
- 4.2 Leaders throughout the pre-K-12 education community recognize effective professional learning as a key strategy for supporting significant school and school system improvements to increase results for all students.
- 4.3 Whether they lead from classrooms, schools, school systems, technical assistance agencies, professional associations, universities, or public agencies, leaders develop their own and others' capacity to learn and lead professional learning, advocate for professional learning, provide support systems, and distribute leadership and responsibility for professional learning effectiveness and results.

## 5.0 Resources

- 5.1 Professional learning that increases educator effectiveness and results for all students requires prioritizing, monitoring, and coordinating resources for educator learning.
- 5.2 Effective professional learning requires human, fiscal, material, technology, and time resources to achieve student learning goals.
- 5.3 How resources are allocated for professional learning can overcome inequities and achieve results for educators and students. The availability and allocation of resources for professional learning affect its quality and results.



5.4 Understanding the resources associated with professional learning and actively and accurately tracking them facilitates better decisions about and increased quality and results of professional learning.

## **6.0 Data**

6.1 Professional learning that increases educator effectiveness and results for all students uses a variety of sources and types of student, educator, and system data to plan, assess, and evaluate professional learning.

6.2 Data from multiple sources enrich decisions about professional learning that leads to increased results for every student. Multiple sources include both quantitative and qualitative data, such as common formative and summative assessments, performance assessments, observations, work samples, performance metrics, portfolios, and self-reports.

6.3 The use of multiple sources of data offers a balanced and more comprehensive analysis of student, educator, and system performance than any single type or source of data can.

6.4 Thorough analysis and ongoing use are essential for data to inform decisions about professional learning, as is support in the effective analysis and use of data.

## **7.0 Learning Designs**

7.1 Professional learning that increases educator effectiveness and results for all students integrates theories, research, and models of human learning to achieve its intended outcomes.

7.2 Integrating theories, research, and models of human learning into the planning and design of professional learning contributes to its effectiveness.

7.3 Several factors influence decisions about learning designs, including the goals of the learning, characteristics of the learners, their comfort with the learning process and one another, their familiarity with the content, the magnitude of the expected change, educators' work environment, and resources available to support learning.

7.4 The design of professional learning affects its quality and effectiveness.

## **8.0 Implementation**

8.1 Professional learning that increases educator effectiveness and results for all students applies research on change and sustains support for implementation of professional learning for long-term change.

8.2 The primary goals for professional learning are changes in educator practice and increases in student learning. The process occurs over time and requires support for implementation to embed the new learning into practices.

8.3 Effective professional learning is achieved by applying findings from change process research to support long-term change in practice by extending learning over time.

8.4 Effective professional learning integrates a variety of supports for individuals, teams, and schools.

8.5 Constructive feedback and reflection should be integrated in implementation to support continuous improvement in practice that allows educators to move along a continuum from novice to expert through application of their professional learning.

## **9.0 Outcomes**

9.1 Professional learning that increases educator effectiveness and results for all students aligns its outcomes with educator performance and student curriculum standards.

9.2 For all students to learn, educators and professional learning must be held to high standards.

9.3 Professional learning that increases results for all students addresses the learning outcomes and performance expectations education systems designate for students and educators.

- 9.4 When the content of professional learning integrates student curriculum and educator performance standards, the link between educator learning and student learning becomes explicit, increasing the likelihood that professional learning contributes to increased student learning.
- 9.5 When systems increase the stakes for students by demanding high, equitable outcomes, the stakes for professional learning increase as well.

15 DE Reg. 77 (07/01/11)

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

Statutory Authority: 16 Delaware Code, Section 1101(a) (16 Del.C. §1101(a))

### ORDER

#### 3320 Intensive Behavioral Support and Educational Residence

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to establish regulations regarding Intensive Behavioral Support and Educational Residences (IBSER). The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code**, Section 10114, with authority prescribed by 29 **Delaware Code**, Section 7971.

The Department published its notice of proposed regulatory change pursuant to 29 **Delaware Code** Section 10115 in the March 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2012, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSED CHANGES

This regulatory proposal creates regulations for various aspects and business practices of these facilities as listed below:

- Definition
- Authority
- Glossary
- Licensing requirements and procedures
- General requirements
- Physical Plant
- Kitchen and food storage
- Emergencies and disasters
- Administration
- Description of services
- Maintenance of records
- Insurance
- Personnel policies and procedures
- Orientation and training of employees and volunteers
- Personnel records
- Use of volunteers
- Human rights
- Abuse and neglect
- Use of restraints
- Health
- Administration or Assistance with Self-Administration of Medication

- Universal Precautions
- Incident reports
- Facility closure
- Waivers and severability

### Statutory Authority

29 Del.C. §7971, Division of Long Term Care Residents Protection

### Background

DLTCRP and DDDS identified the need to establish regulations regarding the operation of Intensive Behavioral Support and Educational Residences (IBSER).

### Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC), the State Council for Persons with Disabilities (SCPD) commented on the proposed revisions.

1. The revised regulation incorporates many of the Councils' recommendations, including the following: inclusion of "purposes" and "authority" sections (§§1.0 and 2.0); improving the definition of "legal representative" (§3.0); clarifying the application of the regulation to day program participants (§3.0); including an accessibility reference in §6.1.2; authorizing non-glass shower doors (§6.5.3); disallowing children sharing rooms with adults (§6.6.15); requiring notice near phones of the DLTCRP telephone number (§6.12.3); requiring carbon monoxide detectors (§8.3); requiring certain information be included in agency website (§10.2); adding a general 5 year retention of records standard (§11.1.3); requiring maintenance of fire and comprehensive general liability insurance (§12.0); eliminating "criminal justice" as a relevant background degree (§13.2.4); requiring training in safe and effective behavior management techniques (§14.3.3); requiring monthly HRC meetings (§17.1.1.3); and requiring retention of incident reports for four years (§24.2). SCPD certainly appreciates that the Division incorporated Council's recommendations in these contexts.

*Response: No comment required.*

2. The title to §1.0 is "Purpose Definition". This makes no sense. Moreover, there is still no "operational" language reciting that the standards apply to IBSEs and no "purposes" language despite the title. Compare the neighborhood home regulation, 15 DE Reg. 968 (January 1, 2012), §1.0:

The purpose of these regulations is to provide a sequence of expectations for services rendered by the Neighborhood Home provider and a system for Neighborhood Home providers to be accountable to the Division of Long Term Care Residents Protection (DLTCRP) and the Division of Developmental Disabilities Services (DDDS).

[emphasis supplied] There is no analog in the IBSER regulation.

SCPD recommends changing the heading to "Purpose" (deleting "Definition") and adding the following sentence:

The purpose of these regulations is to provide a set of expectations for the operation of IBSEs and ensure accountability to the Division of Long Term Care Residents Protection (DLTCRP).

*Response: The recommendation has been adopted. The regulation is amended as follows:*

#### **1.0 Purpose [Definition]**

**[An Intensive Behavioral Support and Educational Residence (IBSER) is a residential facility which provides services to residents with autism, and/or developmental disabilities, and/or severe mental or emotional disturbances and who also have specialized behavioral needs.]**

**[The purpose of these regulations is to provide minimum standards for the operation of Intensive Behavioral Support and Educational Residence (IBSER) and ensure accountability to DHSS.]**

\* \* \* \* \*

**["Intensive Behavioral Support Residence" (IBSER) means a residential facility which provides services to residents with autism, and/or developmental disabilities, and/or severe mental or emotional disturbances and who also have specialized behavioral needs.]**

3. The definition of "mechanical restraint" ostensibly seeks to exempt equipment and devices with a medical basis (e.g. prone stander; bed siderails). However, the definition would literally authorize a non-medical, undefined mental health "therapist" to authorize any form of mechanical restraint to prevent SIBS. At a minimum, the

reference should be changed to occupational or physical therapist.

*Response: The recommendation has been adopted. The regulation is amended as follows:*

**“Restraint”** includes both **[mechanical devices and physical procedures.]** ~~[of the following:]~~ **[A]** Mechanical restraint **[is]** a mechanical device, material, or equipment attached or adjacent to a client’s body that he or she cannot easily remove or that restricts freedom of movement or normal access to one’s body. Mechanical restraint does not include adaptive or protective devices recommended by a physician **[or by a physical or occupational]** therapist when used as recommended by the physician or **[by a physical or occupational]** therapist to promote normative body position and physical functioning, and/or to prevent self-injurious behavior. The term also does not include seat belts and other safety equipment when used to secure clients during transportation. ~~and.~~ **[A]** Physical restraint **[procedure]** ~~[physically]~~ restrict**[s]** ~~[ngs]~~ a resident’s freedom of movement or normal access to his or her body, including the forcible moving of a resident against the person’s will. No physical restraint shall be used that restricts the free movement of the resident’s diaphragm or chest or that restricts the airway so as to interrupt normal breathing or speech.

4. The definition of “mechanical restraint” is otherwise problematic. Literally, any equipment used to deter SIBS is per se not a “restraint”. As a consequence, it would be exempt from inclusion in the SBS plan (§20.2.2), review by the Behavior Management Committee (§§18.2 and 18.3), and review by the HRC (§§17.1.2 and 18.3). Thus, use of a helmet, mittens, or other AT would be exempt from many procedural safeguards. This is not “best practice” and is inconsistent with DDS policy (e.g. DDS HRCs review use of helmets, mittens, and AT used for SIBS prevention).

*Response: See above.*

5. In the definition of “physical restraint, it would be more logical to transfer the second sentence (barring certain forms of restraint) to §20.11 (containing list of 12 forms of prohibited restraint). Moreover, the reference to “free movement of the resident’s diaphragm or chest that restricts the airway” could be improved. Some states have focused on pressure on certain body parts as more instructive. Consider the following prohibition: “Restraint that interferes with the resident’s ability to breathe or places weight or pressure on the resident’s throat, neck, lungs, chest, sternum, diaphragm, or back.”

*Response: The proposed language is too specific. Certain acceptable physical restraints will place some level of pressure specifically on a person’s chest or back. The broader language of the existing proposal emphasizes the critical concern not to obstruct the airway or speech functions.*

6. There is a definition of “seclusion” but no regulation which addresses it. The November version of the regulation explicitly barred use of seclusion. The Bill of Rights Act explicitly bars “involuntary seclusion” without exception [Title 16 Del.C. §1121(24)]. Therefore, the IBSER regulation must conform to the statute and the ban should be reinstated. Parenthetically, this is consistent with “best practice”. See Section 4 of attached S. 2020 introduced by Sen. Harkins in December, 2011.

*Response: The definition of seclusion is intended to capture the prohibition against isolating an individual. Defining seclusion as the involuntary confinement of a resident alone in an area from which the resident is physically prevented from leaving is consistent with the Bill of Rights prohibition against involuntary seclusion. This definition is more restrictive than 42 CFR §482.13 (e)(1)(ii).*

7. The definition of “Specialized Behavior Support Plan” is defective. Literally, the plan is expected to include a restraint to a resident to protect the resident from others. Why would an agency use a restraint on an individual to prevent his/her victimization from others? Immobilizing the victim will only exacerbate the victimization.

*Response: The definition has been amended to clarify the objective.*

**Specialized Behavior Support Plan** (SBS Plan) is a written document which describes the resident’s care plan. It also identifies the types of restraints which may be employed if necessary to protect the resident from self or **[to protect]** others.

8. In §5.5, delete the comma.

*Response: The sentence has been amended.*

9. The DLTCRP Neighborhood Home regulation imposes the following obligation:

4.2.7.2. The Policy Memorandum 46 (PM 46) policy for reporting abuse, assault, attempted suicide, mistreatment, neglect, financial exploitation and significant injury is followed.

15 DE Admin Code 968, §4.2.7.2 (January 1, 2012) (proposed). There is no analog in the IBSER regulation. The DLTCRP could consider inserting a similar recital as a new §5.10 or within §19.0.

*Response: PM 46 investigations are limited to individuals living in state operated facilities or individuals living in*

private facilities subject to a contract with DHSS. Delaware residents residing at an IBSER will be subject to PM 46 investigations when the resident is placed at the IBSER pursuant to a contract with DHSS. All IBSER residents are afforded the protections of 16 Del.C. §1131 - 1140.

10. In the commentary on the November version of the regulations, SCPD provided a multi-pronged critique of allowing a 16-bed facility. See, e.g., Par. 11 of attached SCPD comments. The new regulation reflects a compromise in which 16-bed facilities are “grandfathered” and new facilities must have no more than 10 residents. Segregated residential settings with 10 or 16 individuals per unit are not consistent with best practice and may violate the ADA. Consider the DHSS-DOJ DPC Settlement Agreement signed in July, 2011. That Agreement, which is based on the DOJ’s interpretation of the ADA, does not contemplate large congregate living arrangements. Rather it restricts supported housing to 2 individuals per unit with a separate bedroom for each resident (§II.E.). A 10 or 16-bed facility in which adult residents are “squeezed” into tiny rooms (§6.6.1) with age-inappropriate bunk beds (§6.6.11) smacks of “warehousing”.

*Response: While we recognize the benefits of moving toward smaller residential arrangements, and that is the objective going forward, the decision to grandfather existing facilities is a compromise which enables the viability of the current operation.*

10.A In Section 6.2.1., SCPD recommends inserting “related to living unit space” after “DelaCare regulations” to clarify that the DelaCare regulations only apply to this section for facilities that may be grandfathered. In addition, since the facilities are grandfathered, SCPD recommends the Division clarify that additional capacity should not be allowed if the Office of Child Care Licensing issues a temporary waiver of the living unit space standard.

*Response: The recommended text was inserted. The postulated temporary waiver of living unit space standard is unlikely. The objective here is merely to capture the existing regulations currently applicable.*

6.2.1 IBSER facilities operating prior to the adoption of these regulations may continue to operate based on the DelaCare regulations **[related to living unit space]** then applicable. IBSER facilities licensed subsequent to the adoption of these regulations may house no more than 10 residents—regardless of whether the residents are subject to IBSER or DelaCare regulations.

11. Section 6.2.2 should be amended to include a reference to “legal representative” since the list of authorized visitors entitled to meet in private is literally limited to four types. Compare Title 16 **Del.C.** §1121(11).

*Response: The recommendation has been adopted. The regulation is amended as follows:*

6.2.2 A facility must ensure that the living unit(s) have designated space for daily living activities, including dining, recreation, indoor activities and areas where residents may visit privately with their parent(s), legal **[guardian]** **[representative]**, relatives and friends.

12. SCPD previously objected to 200 square foot bedrooms with 4 individuals. See attached SCPD letter, Par. 14. New §6.6 contains a “grandfather” provision for bedroom occupancy. New facilities will require 80 square feet for single occupancy and 130 square feet for double occupancy. This is still less floor space than required in group homes for double occupancy for persons with mental illness. See 16 DE Admin Code 3305, §12.2.2 (requiring 160 square feet for double occupancy). Likewise, the latter regulation disallows counting areas with lockers, wardrobes, vestibules, and alcoves. This limit is absent from the IBSER regulation. At a minimum, double occupancy standards should be no less than mental health group home standards (160 square feet exclusive of closets, lockers, wardrobes, vestibules and alcoves).

*Response: While we recognize the benefits of moving toward more spacious residential arrangements, and that is the objective going forward, the decision to grandfather existing facilities is a compromise which enables the viability of the current operation.*

12.A In Section 6.6.1.2, SCPD recommends inserting “related to bedroom accommodations” after “DelaCare regulations” to clarify that the DelaCare regulations only apply to this section for facilities that may be grandfathered.

*Response: The recommendation has been adopted. The regulation is amended as follows:*

6.6.1.2 IBSER facilities operating prior to the adoption of these regulations may continue to operate based on the DelaCare regulations **[related to bedroom accommodations]** then applicable.

13. In §6.6.11, the authorization for adults to sleep in bunk beds is not age-appropriate.

*Response: While we recognize the benefits of moving toward more spacious residential arrangements, and that is the objective going forward, the decision to grandfather existing facilities is a compromise which enables the viability of the current operation.*

14. In §6.5 or 6.7, the Division may wish to consult a dental expert. It may be appropriate to require a facility

using well water to offer a fluoride rinse to some residents. Medicaid does not cover adult dental care and DDDS struggles with dental remediation which could be reduced through access to fluoride rinse in the absence of fluoridated water.

*Response: Three of the 13 residential IBSER sites are on well water, the rest are on public water. DDDS requires annual dental examinations for its residents and will follow the recommendations from the dentist for fluoride treatment. Other residents are subject to care plans negotiated by their funding agency.*

15. The DLTCRP Neighborhood Home regulations [15 DE Reg. 968, §4.6.6.7 (January 1, 2012) (proposed)] contain the following requirement: "(n)on-perishable food and capacity to store 1 gallon of potable water per person per day for at least a 72-hour period is present". The Division could consider adding a similar water storage capacity standard to §7.10.

*Response: Best practices governing disaster preparedness are currently under consideration for all licensed facilities.*

16. In §13.2.3.1, a direct care worker is required to be 21 years of age and possess a high school diploma. The Division may wish to consider the merits of substituting "18" for "21". The change would allow college students (e.g. in human service fields such as psychology) to work part-time as direct care workers. Alternatively, the regulation could allow individuals to be employed as direct care workers between the ages of 18-20 only if they are college students in a human services field (defined in §§13.2.1.1, 13.2.4.1 and 13.2.5.1). In addition, the Division may want to assess whether the requirement of a high school diploma or equivalent is sufficiently job related to include in the regulations as a standard for direct care workers.

*Response: The Departments deems that imposing a 21 year age requirement is reasonable.*

17. In §14.5.2, substitute "resident" for "patient".

*Response: The recommendation has been adopted. The regulation is amended as follows:*

**14.5.2 Have education, training, and demonstrated knowledge based on the specific needs of the ~~[patient]~~ [resident] population in techniques to identify staff and resident behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint in order to diffuse, prevent or reduce a problem before it evolves into a significant event that places the resident or others at risk.**

18. Section 17.0 merits reconsideration. The only agency to which the IBSER regulation applies presented its first of many cases to the DDDS HRC on February 29, 2012. The DDDS HRC does not include individuals with the qualifications listed in §17.1.1.2, including a licensed physician and licensed psychologist. On the other hand, the standards for the "internal" HRC are weak in the context of impartiality. DDDS amended its policy many years ago to require 100% membership by individuals external to DDDS. The IBSER regulation only requires a majority of external members and the "spirit" of this regulation may be undermined in practice by including a recent agency retiree as an "external" HRC member.

*Response: The higher HRC standards are reasonable given the nature of the people served. It is correct that the majority of the membership is must be external to the licensee. A recent agency retiree is not external.*

19. Section 18.1 refers to "the licensee's clinical director". There is no requirement that an agency have a "clinical director" and no definition of a "clinical director" in §13.0.

*Response: We have amended the sentence to reflect the recommendation.*

**18.1 The BMC must be comprised of ~~the licensee's clinical director and~~ all ~~on-staff~~ clinicians ~~whose expertise meets the needs of the resident~~. It must establish a SBS Plan upon admission of a resident and must conduct SBS Plan reviews on each resident on at least a monthly basis.**

20. Although §20.7 contains a reference to data collection, it would be preferable to explicitly include a reference to presentation of data to the BMC in §18.2.1.

*Response: The recommendation has been adopted. The regulation is amended as follows:*

**18.2.1.8 A summary statement as to the general effectiveness of the SBS Plan[, including presentation of the data to the BMC] and a recommendation for future use.**

21. In §19.2, it would be preferable to include a reference to "contractor". The only agency currently subject to the IBSER regulation uses physician contractors.

*Response: The recommendation has been adopted. The regulation is amended as follows:*

**19.2 A licensee must not discourage, inhibit, penalize or otherwise impede any employee, volunteer[, contractor] or resident reporting any suspected or alleged incident of abuse, neglect, mistreatment or financial exploitation.**

22. Section 20.2.1 may be the most problematic standard in the regulations. It authorizes restraint based on the following benchmark:

The resident is exhibiting a problem behavior that is so severe that it poses a risk to the safety and wellbeing of the resident or others;

Authorizing the use of restraint based on the “safety and wellbeing” of the resident or others is amorphous and an invitation to overuse of restraint. If restraint is authorized by government, it is commonly restricted to an imminent risk of serious bodily injury to self or others. *See, e.g.*, attached S.2020, Section 4. The concept of “imminency” is incorporated into §20.8.3 as material to termination of restraint but is absent from the standards for initiation of restraint. Moreover, if government does authorize use of restraint, it is also common to ban use of mechanical restraint. *See* S. 2020, Section 4. Use of straight jackets, wrap mats, rope and tape to restrict access to body parts is viewed as inherently intrusive. *Cf.* the attached February 12, 2012 News Journal article describing prosecution of a teacher for false imprisonment and endangering the welfare of a child based on tying the hands of a child with autism.

*Response: The recommendation has been adopted. The regulation is amended as follows:*

**20.2.1 The resident is exhibiting a problem behavior that is so severe that it poses [a] [an imminent] risk [of serious bodily injury] to [self or others.] [~~the safety and wellbeing of the resident or others~~];**

23. Section 20.3 refers to an undefined “SPTeam” which includes an undefined “properly credentialed professional”. It would be preferable to add “, licensed or certified” after “credentialed” since agencies may otherwise use marginally qualified “behavior analysts” without an advanced degree to develop an SBS Plan.

*Response: The language, “properly credentialed professional” is broader and requires consideration of the special needs of the resident. The reference to the SPTeam has been removed.*

24. The only agency to which the regulation will apply uses video cameras throughout its buildings. It would be preferable to amend §20.9 to require maintenance of any recorded episode of restraint. Such a recording would be of diagnostic and training value for the SBTeam, HRC, and administration. It may also be of value to the DLTCRP.

*Response: DHSS is developing a policy which will govern the use of video monitoring in all licensed facilities.*

25. Section 20.9.1 contemplates “clinical review and approval for interventions longer than 15 minutes”. Who has the authority to issue the approval? Is a “direct care worker” with high school diploma (§13.2.3.1) a “clinician” who can approve extended restraint? Within the DDDS HRC, it is common to require approval by the agency’s clinical director or alternate. The IBSER regulation refers to a clinical director in §18.1 but does not require a clinical director (§13.0) and does not define a “clinical director”.

*Response: The section has been amended to require approval by the Director, defined as the facility CEO, or her designee.*

**20.9.1 Date and time, staff involved, location, activity, antecedent conditions, specific behaviors observed, interventions implemented, duration of intervention, well being checks, clinical review and approval [by the Director or designee] for interventions longer than 15 minutes, physical examination for possible injury after the termination of the restraint utilization, treatment provided, supervisor signature....**

26. Section 20.9.2 requires “(a)pproval by a clinician within one business day of an intervention when a restraint utilization event is less than 15 minutes.” There are two concerns with this provision. First, there is no definition of a “clinician”. Second, it is somewhat odd to retroactively “approve” an intervention a day after it was employed unless the intent is to prompt review to deter misuse.

*Response: The section has been amended to require review by the Director, defined as the facility CEO, or his/her designee.*

**20.9.2 [Approval] [Review] by [the Director or designee] [~~a clinician~~] within one business day of an intervention when a restraint utilization event is less than 15 minutes.**

27. It would be preferable to include a new §20.11.13 to read as follows: “Consistent with 34 C.F.R. §§300.2 (c) and 300.146, use of restraint or forms of aversive techniques on adult IDEA-funded residents or students which violate applicable law or regulation of the public IDEA funding agency.

*Response: The recommendation has been adopted. The regulation is amended as follows:*

**[20.11.13 Consistent with 34 C.F.R. §§300.2 (c) and 300.146, use of restraint or forms of aversive techniques on adult IDEA-funded residents or students that violate applicable law or regulation of the public IDEA funding agency.]**

28. Since the regulation covers adults, the reference to “parents” in §22.6 is inapposite. It would be preferable to refer to the consent of “the resident or legal representative” rather than “parents or legal guardian”.

*Response: The recommendation has been adopted. The regulation is amended as follows:.*

**22.6 Psychotropic medications are prohibited for disciplinary purposes, for the convenience of staff or as a substitute for appropriate treatment service. An informed, written consent of the [~~parents or~~] legal**

*[representative] [guardian]* is secured and maintained in the resident's file prior to the administration of any psychotropic medication.

29. Although there is a short "universal precautions" section (§23.0), there is no section which addresses laundry. In practice, the facility could commingle the laundry of 16 individuals in cold water and spread disease. Compare 16 DE Admin Code 3201, §7.6.

*Response: The recommendation has been adopted. The regulation is amended as follows:*

**[6.13. Laundry:**

**6.13.1. For on-site laundry processing, the facility shall:**

**6.13.1.1. If hot water is used for destroying micro-organisms, washers must be supplied with water heated to a minimum of 160° F.**

**6.13.1.2. If low temperature laundry cycles are used, a total available chlorine residual of 50-150 ppm must be present and monitored during the wash cycle.]**

30. Section 24.1 could be improved by including the following after "witnesses;": "the existence of any video record of the incident".

*Response: DHSS is developing a policy which will govern the use of video monitoring in all licensed facilities.*

31. In §§24.4.2 and 24.4.4, it is inconsistent to require reporting of resident - resident emotional abuse while exempting reporting of resident - resident physical abuse in the absence of injury.

*Response: Given the dangerous implications of emotional abuse and the great difficulty proving injury, the injury element is not necessary to require a report of emotional abuse.*

32. Section 24.4.11 only requires reporting of medication errors unless the error causes discomfort, jeopardizes health/safety, or requires 48 hours of monitoring. The exceptions provide subjective bases to withhold reporting to the Division.

*Response: The exceptions become objective based on the enumerated consequences.*

## FINDINGS OF FACT:

The Department finds that the proposed changes set forth in the March 2012 *Register of Regulations* should be adopted, subject to the withdrawal and the modification set forth above which are not substantive.

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3320 Intensive Behavioral Support and Educational Residences (IBSER), with the withdrawal and the modification indicated herein, is adopted and shall be final effective May 1, 2012.

Rita Landgraf, Cabinet Secretary  
Dept. of Health and Social Services

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

**3320 Intensive Behavioral Support and Educational Residence**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

### Medicaid Provider Screening and Enrollment

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Title XIX Medicaid State Plan regarding *Medicaid Provider*



*Screening and Enrollment.* 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 March 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2012 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 the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan regarding *Medicaid Provider Screening and Enrollment*.

#### Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act. Specifically, Section 6401, Provider Screening and Other Enrollment Requirements Under Medicare, Medicaid, and CHIP;
- 42 CFR Part 455 Subpart E

#### Background

Section 6401(a) of the Affordable Care Act, as amended by section 10603 of the Affordable Care Act, establishes procedures under which screening is conducted with respect to providers of medical or other items or services and suppliers under Medicare, Medicaid, and CHIP. Section 1866(j)(2)(B) of the Act requires the Secretary to determine the level of screening to be conducted according to the risk of fraud, waste, and abuse with respect to the category of provider or supplier. Section 1866(j)(2)(C) of the Act requires the Secretary to impose a fee on each institutional provider of medical or other items or services or supplier, to be used by the Secretary for program integrity efforts. Section 6401(b) of the Affordable Care Act includes requirements for States to comply with the process of screening providers and suppliers and imposing temporary enrollment moratoria for the Medicaid program as established by the Secretary. The Centers for Medicare and Medicaid Services (CMS) implemented these requirements with Federal regulations at 42 CFR Part 455 Subpart E. These regulations were published in the Federal Register, Volume 76, February 2, 2011, and were effective March 25, 2011.

#### Summary of Proposal

CMS recently issued a State plan preprint to assure compliance with and implementation of Section 6401.

The Division of Medicaid and Medical Assistance (DMMA) intends to make the appropriate changes to the Medicaid State Plan pertaining to the federally required changes in Medicaid provider enrollment processes pursuant to the Affordable Care Act of 2010. As such, the Medicaid state plan will be amended at General Program Administration, 4.46 - Provider Screening and Enrollment.

Initiated to combat fraud and abuse, these directives apply to newly enrolling providers and currently enrolled providers. As implementation of this mandate moves forward, DMMA will notify providers via provider alerts, provider newsletters, remittance advice banners and the Delaware Medical Assistance Program (DMAP) website.

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

#### Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

The costs for system changes are already budgeted in the General Fund.

There will be additional costs for some providers associated with the enrollment/revalidation fee, criminal background checks and fingerprinting.

### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of

Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

As background, CMS issued regulations in February, 2012 which are effective March 25, 2012 implementing changes in the U.S. Code. CMS provided states with a template for certifying compliance within the respective state plans. Delaware is now providing the assurances contained in the template.

GACEC and SCPD endorse the proposed regulation since DMMA is essentially adopting a mandatory change in its State Medicaid Plan prompted by CMS.

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

Further analysis by Division staff resulted in a change to the proposed State plan page. The provision to assure compliance with 42 CFR §455.460, *Application Fees*, was inadvertently omitted. The inclusion of this citation is indicated by bold, bracketed type.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding *Medicaid Provider and Enrollment* is adopted and shall be final effective May 10, 2012.

Rita M. Landgraf, Secretary, DHSS

## DMMA FINAL ORDER REGULATION #12-17 REVISION:

79aa

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: **DELAWARE**

### **4.46 Provider Screening and Enrollment**

#### Citation

1902(a)(77)  
1902(a)(39) of  
the Act adds  
1902(kk);  
P.L. 111-148 and  
P.L. 111-152

The State Medicaid agency gives the following assurances:

42 CFR 455

PROVIDER SCREENING

Subpart E

  X   Assures that the State Medicaid agency complies with the process for screening providers under section 1902(a)(39), 1902(a)(77) and 1902(kk) of the Act.

42 CFR 455.410

ENROLLMENT AND SCREENING OF PROVIDERS

  X   Assures enrolled providers will be screened in accordance with 42 CFR 455.400 et seq.

  X   Assures that the State Medicaid agency requires all ordering or referring physicians or other professionals, who are not enrolled in Medicare, to be enrolled under the State plan or under a waiver of the Plan as participating providers.

42 CFR 455.412

VERIFICATION OF PROVIDER LICENSES

  X   Assures that the State Medicaid agency has a method for verifying providers licensed by a State and that such providers' licenses have not expired or have no current limitations at the time of enrollment or recertification.

42 CFR 455.414 REVALIDATION OF ENROLLMENT  
 Assures that providers will be revalidated regardless of provider type at least every 5 years.

79ab

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: **DELAWARE**

**4.46 Provider Screening and Enrollment Continued**

42 CFR 455.416 TERMINATION OR DENIAL OF ENROLLMENT  
 Assures that the State Medicaid agency will comply with 1902(a)(39) of the Act and with the requirements outlined in 42 CFR 455.416 for all terminations or denials of provider enrollment.

42 CFR 455.420 REACTIVATION OF PROVIDER ENROLLMENT  
 Assures that any reactivation of a provider will include re-screening and payment of application fees as required by 42 CFR 455.460.

42 CFR 455.422 APPEAL RIGHTS  
 Assures that all terminated providers and providers denied enrollment as a result of the requirements of 42 CFR 455.416 will have appeal rights available under procedures established by State law or regulation.

42 CFR 455.432 SITE VISITS  
 Assures that pre-enrollment and post enrollment site visits of providers who are in “moderate” or “high risk” categories will occur

42 CFR 455.434 CRIMINAL BACKGROUND CHECKS  
 Assures that providers as a condition of enrollment will be required to consent to criminal background checks including fingerprints if required to do so under State law or by the level of screening based on risk of fraud, waste or abuse for that category of provider.

42 CFR 455.436 FEDERAL DATABASE CHECKS  
 Assures that the State Medicaid agency will perform Federal database checks on all providers or any person with an ownership or controlling interest or who is an agent or managing employee of the provider.

42 CFR 455.440 NATIONAL PROVIDER IDENTIFIER  
 Assures that the State Medicaid agency requires the National Provider Identifier of any ordering or referring physician or other professional to be specified on any claim for payment that is based on an order or referral of the physician or other professional.

79ac

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: **DELAWARE**

**4.46 Provider Screening and Enrollment Continued**

- 42 CFR 455.450            SCREENING LEVELS FOR MEDICAID PROVIDERS  
\_\_X\_\_ Assures that the State Medicaid agency complies with 1902(a)(77) and 1902(kk) of the Act and with the requirements outlined in 42 CFR 455.450 for screening levels based upon the categorical risk level determined for a provider.
- [42 CFR 455.460            APPLICATION FEE**  
**\_\_X\_\_ Assures that the State Medicaid agency complies with the requirements for collection of the application fee set forth in section 1866(j)(2)(C) of the Act and 42 CFR 455.460.]**
- 42 CFR 455.470            TEMPORARY MORATORIUM ON ENROLLMENT OF NEW PROVIDERS OR SUPPLIERS  
  
\_\_X\_\_ Assures that the State Medicaid agency complies with any temporary moratorium on the enrollment of new providers or provider types imposed by the Secretary under section 1866(j)(7) and 1902(kk)(4) of the Act, subject to any determination by the State and written notice to the Secretary that such a temporary moratorium would not adversely impact beneficiaries' access to medical assistance.
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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

### Medicaid State Plan Governing Payments for Disproportionate Share Hospital

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Title XIX Medicaid State Plan regarding *Disproportionate Share Hospital*. 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 March 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

Pursuant to the public notice requirements of Social Security Act §1902(a)(13)(A) and 42 CFR §447.205, the Division of Medicaid and Medical Assistance (DMMA) provides notice to the public that the agency intends to amend the Title XIX Medicaid State Plan related to hospital payments under the *Disproportionate Share Hospital* program.

#### Statutory Authority

- Social Security Act §1923(j), *Annual Reports and Other Requirements Regarding Payment Adjustments*;
- Social Security Act §1902(a)(13)(A), *Public process for determination of rates of payment*;
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*;
- 42 CFR §447, *Payments for Services*; and,

- 42 CFR §455, Subpart D, *Independent Certified Audit of State Disproportionate Share Hospital Payment Adjustments*

### Background

Federal law requires that state Medicaid programs make Disproportionate Share Hospital (DSH) payments to qualifying hospitals that serve a large number of Medicaid and uninsured individuals.

Federal law establishes an annual DSH allotment for each state that limits Federal Financial Participation (FFP) for total statewide DSH payments made to hospitals. Federal law also limits FFP for DSH through the hospital-specific DSH limit.

Under the hospital-specific DSH limit, FFP is not available for state DSH payments that are more than the hospital's eligible uncompensated care cost, which is the cost of providing inpatient hospital and outpatient hospital services to Medicaid patients and the uninsured, minus payments received by the hospital on or on the behalf of those patients.

#### *DSH Audit and Reporting Requirements*

For states to receive FFP for DSH payments, federal law requires states to submit an independent certified audit and an annual report to the Secretary describing DSH payments made to each DSH hospital.

The report must identify each disproportionate share hospital that got a DSH payment adjustment, and provide any other information the Secretary needs to ensure the appropriateness of the payment amount. The annual certified independent audit includes specific verifications to make sure all DSH payments are appropriate.

### Summary of Proposal

The Disproportionate Share Hospital (DSH) program was created by Congress to enable qualifying hospitals which serve a "disproportionate share" of low income individuals, such as people with Medicaid and who are uninsured, to receive supplemental payments to address uncompensated care. The Medicaid State Plan must include a description of the criteria used to designate hospitals as DSH hospitals and a definition of the formulas used to calculate the DSH payments.

Under the existing disproportionate share criteria in the Delaware Medicaid State Plan, only the Delaware Psychiatric Center (DPC) has qualified for Medicaid DSH payments. Although hospitals in the private sector could potentially qualify for DSH payments under the current rules, no private hospital has met the criteria thus far. Under the proposed amendment, the new policy will increase the likelihood that additional private hospitals in Delaware may qualify for DSH payments. The new policy also sets forth a process and a timeline for hospitals to apply and be determined eligible for DSH payments. The policy further establishes a methodology for calculating the amount of DSH payments a hospital can receive. DSH payments are funded from a combination of Federal and State funds.

The proposed amendment will become effective May 1, 2012.

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

### Fiscal Impact Statement

Funds have been appropriated in the FY12 state budget to make payments to hospitals that meet the new criteria. The Governor's Recommended Budget for FY13 includes ongoing funding to make DSH payments under the new regulations.

	Fiscal Year 2012	Fiscal Year 2013
General (State) funds	\$4.0 million	\$4.0 million
Federal funds	\$4.5 million	\$4.9 million

### 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 comments summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

As background, the regulation notes that federal law requires states to offer disproportionate share hospital (DSH) payments to qualifying hospitals serving a large number of Medicaid and uninsured patients. There is both an overall state cap on funds and a per-hospital cap on funds. Delaware's eligibility criteria have been somewhat restrictive. As a result, only the Delaware Psychiatric Center has applied and qualified for DSH funds. DMMA hopes the new eligibility standards will allow other hospitals to qualify for funds. State matching funds are included in both the FY12 budget and proposed FY13 budget. GACEC and SCPD have the following observations.

First, the regulation prioritizes payments to DPC in the event of insufficient funds to distribute to qualifying applicants. This is understandable, especially given the costs to implement the DOJ-DHSS settlement agreement.

Second, there is some "tension" between the authorization for a "psychiatric hospital" to qualify for DSH funds (p. 1271, bottom) and the categorical requirement that the psychiatric hospital "be a public psychiatric hospital (owned or operated by an agency of Delaware State government)" (p. 1270, Section (d)). Thus, the latter section would bar Rockford or MeadowWood from qualifying for DSH payments as a psychiatric hospital. The only exception is eligibility for a modest \$10,000 if the psychiatric hospital is a Medicaid MCO provider (p. 1272, Section 4). It's unclear why private psychiatric hospitals should be treated differently than acute care hospitals. Perhaps the State prefers payments to non-profit providers (p. 1270, top) and psychiatric hospitals may be predominantly "for profit" providers.

GACEC and SCPD endorse the concept of the proposed regulation since it may prompt hospitals to be more likely to treat Medicaid patients and offer uncompensated care. However, the qualifying criteria are complex.

**Agency Response:** The Disproportionate Share Hospital (DSH) program was designed by Congress to provide an additional source of funds for hospitals that serve a "disproportionate share" of patients. As you point out, all of the private psychiatric hospitals located in Delaware were established as for-profit entities. DMMA believes that individuals who have insurance or other means to pay, generally prefer to receive inpatient psychiatric services from one of the private psychiatric hospitals as opposed to the Delaware Psychiatric Center (DPC). Individuals who have insurance or other means to pay, generally prefer to receive inpatient psychiatric services from one of the private psychiatric hospitals as opposed to the Delaware Psychiatric Center (DPC). One would expect that the proportion of uncompensated care related to Medicaid and the uninsured for these for-profit psychiatric hospitals would be much less than a public psychiatric hospital or Delaware's private non-profit acute care hospitals which are also eligible to receive DSH payments. As such, DPC serves a much greater proportion of clients who have no coverage or other means to pay. DMMA believes that the process established under this State Plan Amendment is consistent with the intent of the federal DSH program. In addition, Federal DSH funds have been used by the state as major source of funding to offset the operational costs of DPC for over 20 years. At this point, any reduction or redistribution of these funds would create a substantial financial burden for the state budget.

DMMA thanks the Councils for their endorsement.

No change to the regulation was made as a result of this comment.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the March 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for *Disproportionate Share Hospital* is adopted and shall be final effective May 10, 2012.

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:**

**Medicaid State Plan Governing Payments for Disproportionate Share Hospital**

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# FINAL REGULATIONS

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## DIVISION OF SOCIAL SERVICES

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

### ORDER

#### Food Supplement Program: 2027 Disqualification of Individuals Convicted of Drug Related Offenses

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Disqualification of Individuals Convicted of Drug Related Offenses*. 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 March 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2012 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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Disqualification of Individuals Convicted of Drug Related Offenses*.

#### Statutory Authority

- 146<sup>th</sup> General Assembly, Senate Bill #12, *An Act to Amend Title 31 of the Delaware Code Relating to the Food Stamp Program*
- 7 CFR §273.11(m), *Individuals Convicted of Drug-Related Felonies*

#### Background

Signed into law by the Governor on July 22, 2011, Senate Bill #12 (SB 12) removes the prohibition against persons convicted of any drug felony from receiving federal food benefit assistance.

#### Summary of Proposed Change

**DSSM 2027**, *Disqualification of Individuals Convicted of Drug Related Offenses*: SB 12 eliminated the bar to receipt of food benefits for those convicted of a felony drug conviction. This policy change removes text from the policy manual that says individuals convicted of a felony drug conviction are ineligible for food benefits. DSSM 2027 was inadvertently omitted when other related sections were removed from the manual.

SB 12 was effective upon the Governor’s signature. The rule affected benefits beginning July 1, 2011.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor’s Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

As background, the Governor signed S.B. 12 on June 22, 2011 which removed a bar on Food Supplement Program eligibility of convicted drug felons. GACEC and SCPD supported that legislation given the correlation between drug usage and mental health conditions. In October 2011, DSS issued a proposed regulation implementing the new law. In commentary on that regulation, the Councils noted that DSS had overlooked 16 **DE Admin. Code** 2027 which retained the drug felon disqualification. In adopting a final regulation, the Division agreed to issue a new regulation to cover the oversight. [15 DE Reg. 451 (October 1, 2011) (proposed); 15 DE Reg. 1027, 1028 (January 1, 2012) (final)].

GACEC and SCPD endorse the proposed regulation since the Division is now issuing a proposed regulation

eliminating the drug felon disqualification from 16 **DE Admin. Code** 2027.

**Agency Response:** DSS thanks the Councils for their endorsement.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP), specifically, *Disqualification of Individuals Convicted of Drug Related Offenses* is adopted and shall be final effective May 10, 2012.

Rita M. Landgraf, Secretary, DHSS

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1277 (15 DE Reg. 1277). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Food Supplement Program: 2027 Disqualification of Individuals Convicted of Drug Related Offenses**

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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

Statutory Authority: 24 Delaware Code, Section 1304 (24 **Del.C.** §1304)  
24 **DE Admin. Code** 1300

### ORDER

Pursuant to the Guidelines in 29 **Del.C.** Section 10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule 1.0 – Firearms' Policy and adopt rule 9.0 – Security Guards/Armored Car Guards, the Board makes the following Findings and Conclusions:

#### Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendments to Rule 1.0 to require all individuals to qualify with the same make/model/caliber of weapon they will carry and to Rule 9.0 to allow security guards/armored car guards to work for no more than two agencies at the same time.

#### Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.

4. The Board finds that the adoption of these rules will require all individuals to qualify with the same make/model/caliber of weapon they will carry and to allow security guards/armored car guards to work for no more than two agencies at the same time.

5. The Board finds that the adoption will have no adverse impact on the public.

6. The Board finds that the amendment/adoption is well written and describes its intent to adopt the rules to require all individuals to qualify with the same make/model/caliber of weapon they will carry and to allow security guards/armored car guards to work for no more than two agencies at the same time.



## Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** Section 1304 et seq. and, in particular, 24 **Del.C.** Section 1304(b)(3).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** Section 1304 et. seq.

9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** Section 1304(b)(3) and guidelines of 29 **Del.C.** Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be May 11, 2012.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 18<sup>th</sup> day of April, 2012.

Lt. Colonel James Page, Chairman  
William G. Bush, IV, Esquire  
Mr. Michael D. Connelly  
Ms. Kelly R. Jansen  
Mr. Kline G. Kemp, Jr.

Timothy P. Mullaney, Sr., Esquire  
Mrs. Heather M. Shupe  
Mrs. Sandra C. Taylor  
Mr. Harvey A. Woods, III

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1281 (15 DE Reg. 1281). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1300 Board of Examiners of Private Investigators & Private Security Agencies**

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**Gaming Control Board**

Statutory Authority: 28 Delaware Code, Section 1122 (28 **Del.C.** §1122)  
10 **DE Admin. Code** 101

## ORDER

**101 Regulations Governing Bingo**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on Thursday, April 5, 2012, at a scheduled meeting of the Delaware Board of Charitable Gaming, to receive comments and to review written comments submitted by the public, if any, regarding proposed amendments to the Board's Rules.

There are several proposed amendments. The first would amend 10 **DE Admin. Code** 101, Rule 4.1 and would provide that neither the member in charge, nor any other member of the sponsoring organization who is assisting in conducting the event or otherwise working at the event may actually play in the event.

The next would amend 10 **DE Admin. Code** 101, Rule 4.6, and provide that the amount of the prize in each bingo game be announced at the start of the game, and there will be an announcement at the end of each game of

the total number of winners and the amount paid to each. The same rule would be amended to state that the term "holiday dates" as it appears in the rule means those dates officially recognized by the State of Delaware as holidays. The same rule would also be amended to exclude cookie jar bingo games from the permitted inducements that may be offered that are limited to 15% of the total amount of all prizes offered, to make it clear that cookie jar bingo games are separate from such other inducements and are not so limited.

The proposed amendments were published in the *Register of Regulations*, Volume 15, Issue 9, on March 1, 2012.

## SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No written comments were received by the Board. No member of the public appeared to testify at the hearing.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The public was given notice and an opportunity to provide written comments and testimony on the proposed amendments.

The Board finds that the proposed amendments are necessary and in the public interest.

Pursuant to 28 **Del.C.** §1122, the Board has statutory authority to promulgate regulations governing charitable gaming, including bingo and raffles.

## DECISION AND EFFECTIVE DATE

The Board hereby adopts the proposed amendments to its rules in the manner to be published in the *Register of Regulations* in May, 2012, to be effective ten days after publication of the Order in the *Register of Regulations*.

## TEXT AND CITATION

The text of the revised rules shall be as published in the *Register of Regulations* in May, 2012, as attached hereto as Exhibit A.

**SO ORDERED** this 5th day of April, 2011.

### DELAWARE BOARD OF CHARITABLE GAMING

James Greene, Chair

Scott Angelucci, Member

Sharon McDowell, Member

Deborah Messina, Member

Janet Williams-Coger, Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1290 (15 DE Reg. 1290). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**101 Regulations Governing Bingo**

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**FINAL REGULATIONS**

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**DIVISION OF PROFESSIONAL REGULATION**

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

**ORDER****300 Board of Architects**

After due notice in the *Register of Regulations* and two Delaware Newspapers, a public hearing was held on March 7, 2012 to consider public comment on the Board's Draft Regulations, 24 **DE Admin. Code** 300.

The Board received two written comments from Paul Guggenberger and Charles Weymouth. Members of the Board discussed the written comments and the proposed regulation, and voted to adopt the proposed regulation with a non-substantive change to Section 3.4.2.

This regulation shall go into effect as provided in the applicable provisions of the Administrative Procedures Act, 29 **Del.C.** Chapter 100.

SO ORDERED THIS 7<sup>TH</sup> DAY OF MARCH, 2012.

Peter H. Jennings, RA, Professional Member

Joseph Schorah, Public Member, Secretary

Prameela Kaza, Public Member

Richard Wertz, RA, Professional Member

Brian Lewis, Public Member

Kevin Wilson, RA, Professional Member

Approved as to form: Andrew Kerber, Deputy Attorney General

**300 Board of Architects*****(Break in Continuity of Sections)*****3.0 Application for Registration:**

- 3.1 Submission of Application fee: Every individual seeking registration shall submit an application to the Board, accompanied by the filing fee established above. Such filing fee shall be determined in accordance with statutory criteria.
  - 3.1.1 References from employers listed on an application for registration must be provided to substantiate the minimum experience required in support of education and training standards. It is the applicant's responsibility to see that fees references are submitted to the Board. Such reference information shall be submitted on forms furnished by the Board.
  - 3.1.2 Proof of self-employment must be substantiated with the following:
    - 3.1.2.1 a copy of business license(s) for those duration's claimed as part of the application or a letter from your accountant or local building official substantiating experience, or similar objective proof of self-employment.
- 3.2 Applicants; General:
  - 3.2.1 Applicants needing additional practical experience reference forms may use photostatic copies.
  - 3.2.2 The Board will take no action to review an application until all references, transcripts and fees are received.
  - 3.2.3 An applicant is not registered until so notified in writing by the Board.
  - 3.2.4 Filing of an application, fees, etc., shall not be construed as completing the registration process; the board will register applicants at regular Board meetings only.
  - 3.2.5 A license issued by the Division of Professional Regulation certifies that the individual named has met the qualifications of the Board to engage in practice.
- 3.3 Requirements of All Applicants. Applicants Must:
  - 3.3.1 submit the required fees

- 3.3.2 answer all questions on the application form completely and legibly.
- 3.3.3 obtain the notarization of the application in the space provided. Applications shall contain a current affidavit that has been signed and notarized within the twelve (12) months immediately preceding presentation of the application to the Board.
- 3.4 Applicants for Registration by Examination (A.R.E.):
  - 3.4.1 Must have filed a completed application with the Board, including the NCARB record[. ~~showing completion of IDP training requirements. Eligibility for admission to examination shall be determined by NCARB.~~
  - 3.4.2 **An applicant who has met the education requirements as set forth in the NCARB Education Guidelines and has enrolled in the NCARB Intern Development Program by establishing an NCARB Record shall be eligible for admission to examination.]**
- 3.5 An applicant re-applying with a lapsed registration shall submit evidence of Continuing Education compliance for the preceding two (2) year period.

**\*Please Note: As the rest of the sections were not amended since the proposal in the February 2012 Register, they are not being published here. A complete copy of the final regulation is available at:**

**300 Board of Architects**

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## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1106 (24 Del.C. §1106)  
24 DE Admin. Code 1100

### ORDER

#### 1100 Board of Dentistry and Dental Hygiene

Pursuant to 29 Del.C. §10118 and 24 Del.C. §1106(a)(1), the Delaware Board of Dentistry and Dental Hygiene issues this Order adopting proposed amendments to the Board's Rules published in the *Register of Regulations* in the state of Delaware on February 1, 2012. Following notice and a public hearing on March 22, 2012 the Board makes the following findings and conclusions:

#### SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the February 1, 2012 *Register of Regulations* and for two consecutive weeks in the *Delaware News Journal* and *Delaware State News*. The Board proposed to change rule 5 to require that a dentist must perform a clinical exam of a patient at least once within a 12 month period to be in compliance with the requirements of general supervision and make a technical correction to a statutory reference that has changed as a result of revisions to the Board's statute.

2. The Board received no written comments during February or March 2012. The Board held a public hearing on March 22, 2012 and received no public comments at that time either.

#### FINDINGS OF FACT AND CONCLUSIONS

3. 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 Rules.

4. Having received no public comment, the Board finds that no further revisions of the proposed rules are necessary and the Board adopts the rules as proposed.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on May 1, 2012.

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# FINAL REGULATIONS

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IT IS SO ORDERED this \_\_\_ day of March, 2012.

## DELAWARE BOARD OF DENTISTRY AND DENTAL HYGIENE

Blair Jones, DMD, President

John Lenz, DDE, Secretary

Cheryl Calicott-Trawick, Public Member

Thomas Cox, DDS

Robert C. Director, DDS

Bernadette Evans, Public Member

Nathaniel Gibbs, Public Member

Joan Madden, RDH

Neil G. McAneny, DDS

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2012 issue of the *Register* at page 1131 (15 DE Reg. 1131). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1100 Board of Dentistry and Dental Hygiene**

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## DIVISION OF PROFESSIONAL REGULATION

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

### ORDER

#### 1900 Board of Nursing

Pursuant to 29 Del.C. §10118 and 24 Del.C. §1904(c), the Delaware Board of Nursing issues this Order adopting proposed amendments to the Board's Rules.

Following notice and a public hearing on April 11, 2012 the Board makes the following findings and conclusions:

### SUMMARY OF THE EVIDENCE

1. The Board posted public notice of the proposed amendments in the March 1, 2012 *Register of Regulations* and for two consecutive weeks in the *Delaware News Journal* and *Delaware State News*. The affidavits of publication from these two periodicals were marked collectively as Board's Exhibit 1.

2. The proposed revisions to the regulations are an attempt to: restate the statutory requirement for late renewal; clarify that nursing specialty organization position statements may be used for professional accountability; clarify the role of the RN to manage care for patients receiving analgesia by catheter techniques by the perineural route; clarify the role of the RN and LPN to manage care for patients receiving subcutaneous infusions; clarify that RNs may collect data from electronic communication; clarify that specially trained PICC nurses may determine the placement of the distal tip of peripherally inserted central catheters by radiograph study; restate the statutory bar on licensing persons convicted of felony sexual offenses; restate the statutory duty to report; and correct typographical errors.

3. The Board received no written comment during the public comment period. The Board also received no public comment during the public hearing on April 11, 2012.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. 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 Rules.

5. Having received no public comment, and after reviewing again the regulations as proposed, the Board finds no reason to further amend the regulations at this time and finds further the regulations should be adopted as

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published in the March 1, 2012 *Register of Regulations* pursuant 29 Del.C. §10118.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on May 1, 2012.

IT IS SO ORDERED this ~day of April, 2012.

**BY THE BOARD OF NURSING:**

Evelyn Nicholson, Public Member, President

Kathy L. Bradley, LPN

Robert Contino, RN, Nurse Educator, Vice President

Lyron Deputy, RN

Diane Halpern, RN

Tracy D. Littleton, LPN

Robert Maddex, Public Member

Karen Murphy, LPH

Madelyn Nellius, Public Member

Delphos Price, RN, CRNA, Adv. Practice Nurse Member

David Salati, RN

Harland Sanders Jr., Public Member

Pam Tyranski, RN

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1294 (15 DE Reg. 1294). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1900 Board of Nursing**

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## PUBLIC SERVICE COMMISSION

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

IN THE MATTER OF THE ADOPTION OF  
REGULATIONS GOVERNING  
ADMINISTRATION OF THE DISTRIBUTION  
SYSTEM IMPROVEMENT CHARGE  
AND THE UTILITY FACILITY RELOCATION  
CHARGE PROVIDED FOR IN 26 DEL.C.  
§§314 AND 315  
(OPENED JANUARY 31, 2012)

PSC REGULATION DOCKET NO. 63

### ORDER NO. 8138

**AND NOW**, this 31st day of January, 2012:

**WHEREAS**, the General Assembly has enacted statutes creating a Water Utility Distribution System Improvement Charge ("DSIC") and a Utility Facility Relocation Charge ("UFRC") (26 Del.C. §§314 and 315); and

**WHEREAS**, 26 Del.C. §314(d) provides that the Delaware Public Service Commission (the "Commission") may adopt rules and regulations to administer the DSIC that are not inconsistent with the Public Utilities Act of 1974 (the "Act"); and

**WHEREAS**, 26 Del.C. §315(f) similarly provides that the Commission may adopt rules and regulations to administer the UFRC that are not inconsistent with the Act; and

**WHEREAS**, in Order No. 8011 dated August 9, 2011, the Commission directed its Staff to prepare proposed regulations to govern the administration and operation of the DSIC and UFRC; and

**WHEREAS**, in November 2011 Staff convened a workshop to which the Division of the Public Advocate and all utilities were invited to review proposed draft DSIC and UFRC regulations; and

**WHEREAS**, the Division of the Public Advocate and all utilities have had the opportunity to comment on the proposed regulations; and

**WHEREAS**, Staff has presented the Commission with proposed regulations; and

**WHEREAS**, the Commission has considered Staff's proposed regulations and objections thereto and finds that the proposed regulations should be proposed for public comment;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 *et seq.*, the Commission promulgates the proposed Regulations Governing Administration of the Distribution System Improvement Charge and the Utility Facility Relocation Charge (the "Regulations").

2. The Commission Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register* this Order, the Notice of the proposed Regulations attached hereto as Exhibit A and the proposed Regulations attached hereto as Exhibit B.

3. The Commission Secretary shall cause the Notice attached hereto as Exhibit A to be published in *The News Journal* and the *Delaware State News* newspapers on or before February 24, 2012.

4. The Commission Secretary shall cause the Notice attached hereto as Exhibit A to be sent by United States mail, first class postage prepaid, to all persons who have made written requests for advance notice of the Commission's regulation-making proceedings and to the following utilities:

- Artesian Water Company, Inc.
- Broadkilm Beach Water Co.
- Cantwell Water Co.
- Chesapeake Utilities Corporation
- Delmarva Power & Light Company
- Long Neck Water Co.
- Pickering Beach Water Co.
- Prime Hook Water Co.
- Slaughter Beach Water Co.
- Southern Shores Water Co.
- Sussex Shores Water Co.
- Tidewater Utilities, Inc.
- United Water Delaware Inc.
- Wilkerson Water Co.

Additionally, the Commission Secretary shall also send the Notice and the Regulations to the Division of the Public Advocate.

5. The public utilities identified in Paragraph 4 of this Order are hereby placed on notice that the costs of the proceedings will be charged to them under the provisions of 26 **Del.C.** §§114(b) (1) and (b) (4).

6. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary



\*Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1301 (15 DE Reg. 1301). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1009 Regulations Implementing the Water Utility Distribution System Improvement Charge ("DSIC") and the Utility Facility Relocation Charge ("UFRC")**

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**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))  
26 DE Admin. Code 3008

IN THE MATTER OF THE ADOPTION OF  
RULES AND PROCEDURES TO IMPLEMENT THE  
RENEWABLE ENERGY PORTFOLIO STANDARDS  
ACT, 26 DEL.C. §§351-363, AS APPLIED TO  
RETAIL ELECTRICITY SUPPLIERS  
(OPENED AUGUST 23, 2005; REOPENED  
SEPTEMBER 4, 2007; AUGUST 5, 2008,  
SEPTEMBER 22, 2009; AUGUST 17, 2010;  
SEPTEMBER 20, 2011

PSC REGULATION DOCKET NO. 56

**ORDER NO. 8139**

**AND NOW**, this 17th day of April, 2012:

**WHEREAS**, in 2005 the General Assembly enacted, and the Governor signed into law, the "Renewable Energy Portfolio Standards Act," 26 Del.C. §§351-364 (the "RPS Act"), which, beginning in 2007, required every retail electric supplier to annually accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its retail electric supply sales in Delaware; and

**WHEREAS**, in 2006 the Delaware Public Service Commission (the "Commission") promulgated "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "RPS Rules") (Order No. 6931 dated June 6, 2006); and

**WHEREAS** the Commission has revised the RPS Rules from time to time to reflect amendments to the RPS Act (PSC Order No. 7377, dated Apr. 17, 2008; PSC Order No. 7494, dated Dec. 16, 2008; PSC Order No. 7653, dated Sep. 22, 2009; and PSC Order No. 7933 dated March 22, 2011); and

**WHEREAS**, on July 7, 2011, the Governor signed into law Senate Bill No. 124 as amended by Senate Amendment No. 1 (78 Del. Laws ch. 99) (July 7, 2011), which, among other things, amended various sections of the RPS Act; and

**WHEREAS**, by Order No. 8026 dated September 6, 2011, the Commission authorized the publication in the Delaware Register of Regulations of proposed amendments to the RPS Rules; and

**WHEREAS**, the Commission received several comments on the proposed amended RPS Rules; and

**WHEREAS**, Commission Staff convened several workshops to address commenters' concerns with the proposed RPS Rules; and

**WHEREAS**, the Commission Staff proposes to modify the RPS Rules to reflect the agreed-upon RPS Act amendments; and

**WHEREAS**, by Order No. 8102 dated January 31, 2012 we ordered that the proposed revised RPS Rules be published in the Delaware Register of Regulations and that notice of the rulemaking to develop final RPS Rules be published, with comments due on or before April 2, 2012; and

**WHEREAS**, the Commission scheduled a public hearing on the proposed RPS Rules for April 17, 2012; and

**WHEREAS**, the proposed amended RPS Rules were published in the March 2012 issue of the Delaware



*Register of Regulations* and the ordered notice was published in the News Journal and the Delaware State News newspapers; and

**WHEREAS**, the Commission received comments from Gary Myers, Esq. and Washington Gas Energy Services, Inc. ("WGES") on or before April 2, 2012; and

**WHEREAS**, on April 12, 2012 Staff filed a written response to the comments submitted by Mr. Myers and WGES; and

**WHEREAS**, the Commission met at its regularly-scheduled meeting on April 17, 2012 and, pursuant to the public notice, heard from interested persons regarding the proposed RPS Rules;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. That the proposed RPS Rules attached hereto as Exhibit "A" (the "Final RPS Rules") are approved as final. The Commission will issue a further written order at a later date explaining the reasons for this decision.
2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the June 2012 Delaware *Register of Regulations* a copy of this Order and the attached Final RPS Rules.
3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2012 issue of the *Register* at page 1308 (15 DE Reg. 1308). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard**

**DELAWARE RIVER BASIN COMMISSION**

The Delaware River Basin Commission will hold a public hearing and business meeting on Thursday, May 10, 2012 beginning at 10:30 a.m. at the Commission's office building, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

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

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 3.5.1. The Commission will hold a public hearing on the proposed rule changes at Harrington Raceway on June 8, 2012 at 10:15 AM. Written comments should be sent to Hugh J. Gallagher, Executive Director of Delaware Harness Racing Commission, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on May 1, 2012.

The proposed changes are for the purpose of updating Rule 3.5.1 and to more accurately reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml)

A copy is also available for inspection at the Harness Racing Commission office.

**PLANT INDUSTRIES****801 Regulations for Noxious Weed Control****PUBLIC NOTICE**

On March 29, 2012, the Noxious Weed Advisory Committee met to advise the Secretary of Agriculture on weed control. Membership of this Committee is detailed in 3 **Del.C.** §2402(f). A proposal was made by UD Plant and Soil Sciences Professor and Cooperative Extension Specialist, Mark van Gessel, to add two weeds to Delaware's Noxious Weed list. The motion was seconded by the Committee, and the vote for addition was unanimous.

The weeds being added and the justification for their addition are as follows. *Amaranthus palmeri* (Palmer Amaranth) has become an increasing problem in agricultural fields due to its high rate of seed production and development of resistance to herbicides used in corn and soybean production. *Uruchola texana* (Texas Panicum) has become an increasing problem in agricultural fields due to the seeds' ability to germinate throughout the growing season. With this growth habit, an additional herbicide application or tillage is required for late season control.

The Department proposes to amend the Regulations for Noxious Weed Control by adding these two weeds to Section 2.0 Designation Of Species; Investigations; Control Programs; Grants; Weed Advisory Committee. The Department will take comments from the public until close of business on May 31, 2012. Questions and comments concerning this change, should be directed to and sent to Plant Industries Administrator Faith.Kuehn@state.de.us, 302-698-4587, or Noxious Weed Supervisor, Todd.Davis@state.de.us, 302-698-4581.

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

The State Board of Education will hold its monthly meeting on Thursday, May 17, 2012 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****Medicaid Eligibility Conditions and Requirements****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Delaware Medicaid State Plan to align Medicaid eligibility conditions and requirements with current practice.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2012.

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****11002.9 Definitions and Explanation of Terms****PUBLIC NOTICE**

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

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 May 31, 2012.

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 WASTE AND HAZARDOUS SUBSTANCES****1375 Delaware Regulations Governing Hazardous Substance Cleanup****PUBLIC NOTICE**

The Hazardous Substance Cleanup Act was enacted in 1990, and the Regulations implementing the Act were completed in 1996. There was a revision in 2002 that established criteria for designating a Brownfield property. Since 1996, new protocols, investigatory techniques, legal requirements and the enactment of the Brownfields Development Program have occurred. These changes in the last sixteen years have mandated reviews and changes to meet current practices. Major issues include, but are not limited to, participation in the new brownfields program, consultant certifications, notification requirements, investigation procedures, long term stewardship, facility closure, and natural resource damage assessment.

The hearing record on the proposed changes to the Regulations Governing Hazardous Substance Cleanup will be open May 1, 2012. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302)739-9042. A public hearing on the proposed amendment will be held on May 31, 2012 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1400 Board of Electrical Examiners**  
**PUBLIC NOTICE**

The Delaware Board of Electrical Examiners pursuant to 24 **Del.C.** §1406(a)(1) proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt define electrical work more broadly to include any work covered by the National Electrical Code and specifically adding solar, generators and windmills to the list of work that is considered electrical services or electrical work. This rule change will also add the continuing education credits required for licensed Journeyman and Apprentices and except Journeyman and Apprentices from rules that do not apply to them.

The Board will hold a public hearing on the proposed rule change on June 6, 2012 at 9:00 am., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written Comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Electrical Examiners, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904.

**DIVISION OF PROFESSIONAL REGULATION**  
**2500 Board of Pharmacy**  
**PUBLIC NOTICE**

The Delaware Board of Pharmacy, pursuant to 24 **Del.C.** §2506(a)(1), proposes to revise its rules and regulations. The proposed changes create a requirement that Pharmacists in Charge complete annual self-inspections; clarifies that a cabinet is not an acceptable storage location for controlled substances; removes the requirement that the Office of Narcotics and Dangerous Drugs be notified in the event of pharmacy construction; makes a nonsubstantive change to 5.1.13.5; and adds a list of crimes to those defined as substantially related to the practice of pharmacy.

The Board will hold a public hearing on the proposed rule change on June 20, 2012 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Catherine Simon, Administrator of the Delaware Board of Pharmacy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

**DIVISION OF PROFESSIONAL REGULATION**  
**3900 Board of Clinical Social Work Examiners**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3906(a)(1), the Board of Clinical Social Work Examiners has proposed revisions to its rules and regulations.

A public hearing will be held on June 18, 2012 at 9:15 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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Clinical Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

Specifically, the Board proposes revisions to Rule 4.0, which sets forth the requirements for professional supervision pursuant to 24 **Del.C.** §3907(a)(1). Rule 4.3 is amended to require that the 1,600 hours of supervision shall occur in not less than one year, and must include at least 100 hours of one-to-one, face-to-face supervision. This revision shall apply to supervision commencing after the effective date of the rule. The new rule will ensure that applicants have received adequate supervision and training with the goal of licensing competent professionals who will be able to protect the interests of the public.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION****5300 Board of Massage and Bodywork****PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §5306(a)(1), the Delaware Board of Massage and Bodywork has proposed revisions to its rules and regulations.

A public hearing will be held on June 21, 2012 at 1:45 p.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. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Massage and Bodywork, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed revisions to Rule 3.0, pertaining to the examination required for licensure as a massage therapist. Currently, an applicant is required to take and pass the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB"). The proposed revision will permit an applicant to take either the NCBTMB examination, or The MBLEx examination administered by the Federation of State Massage Therapy Boards. This revision will give applicants two methods to achieve licensure.

In addition, the Board has proposed a new Rule 7.9, which will permit professional Board members to use Board meeting attendance towards CE requirements, pursuant to the limitations of Rule 7.3.2.

The Board will consider promulgating the proposed rules and regulations at its regularly scheduled meeting following the public hearing.