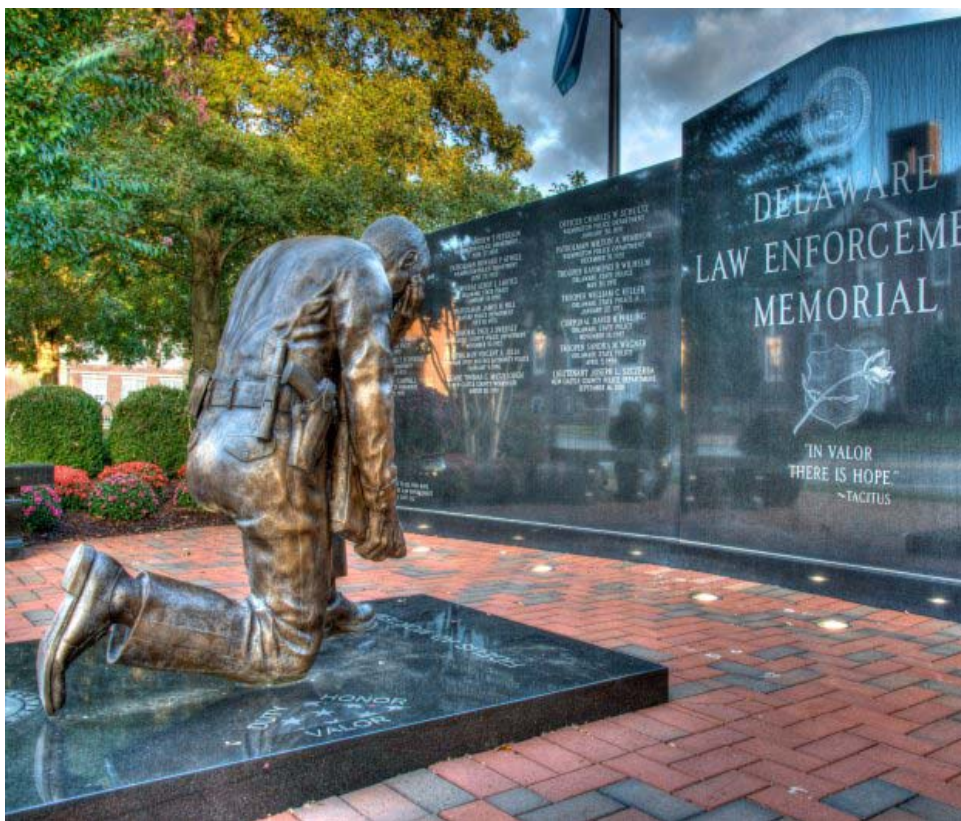


# Delaware Register of Regulations

Issue Date: May 1, 2014

Volume 17 - Issue 11, Pages 1001 - 1109



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Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices

Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before April 15, 2014.



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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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

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302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons.....	17 DE Reg. 339 (Final)

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100 Board of Accountancy.....	17 DE Reg. 707 (Prop.)
	17 DE Reg. 818 (Prop.)
200 Board of Landscape Architecture.....	17 DE Reg. 861 (Final)
300 Board of Architecture.....	17 DE Reg. 188 (Prop.)
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1000 Board of Pilot Commissioners.....	17 DE Reg. 967 (Prop.)
1100 Board of Dentistry and Dental Hygiene, Section 10.0, Eligibility to Take the Practical (Clinical) Examination.....	17 DE Reg. 905 (Prop.)
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2900 Real Estate Commission.....	17 DE Reg. 242 (Final)
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2930 Council on Real Estate Appraisers.....	17 DE Reg. 444 (Final)
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**Symbol Key**

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

**Proposed Regulations**

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

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

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

14 **DE Admin. Code** 106A

**Educational Impact Analysis Pursuant to 14 Del.C. Section 122(d)****106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

The Secretary of Education, with the consent of the State Board of Education, intends to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

The amendment: 1) provides that the proposed amended regulation will be in effect beginning with the 2014-15 school year; 2) provides that the DPAS-II appraisal process must be used by all districts and charter schools unless another teacher appraisal system has been state-approved under the applicable provisions of Delaware Code; 3) provides that an observation form may be utilized as part of an Announced or Unannounced observation; 4) clarifies the definition of Student Achievement and modifies the definitions of groups of educators as it pertains to Student Achievement; 5) states the Department of Education's intent to not incorporate its proposed new statewide English Language Arts and Mathematics assessment as part of Student Achievement in the 2014-2015 school year; 6) defines a summative rating of "Needs Improvement" to be considered an Unsatisfactory Evaluation; 7) defines, creates, and incorporates the concept of a Short Observation into the DPAS-II appraisal process; 8) provides the opportunity for districts and charter schools to substitute a local-developed Professional Responsibilities Appraisal Component, provided it has been state-approved, follows the guidelines set forth pursuant to a state-approval process, and is established no later than the last day of July of a given year.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 5, 2014 to Susan Haberstroh, Associate Secretary, Education Supports and Innovative Practices, Delaware Department of Education at 401 Federal Street, Dover, DE 19901. A copy of this regulation is available

from the above address or may be viewed at the Department of Education business office.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment will provide ongoing opportunities for teacher development and student achievement by strengthening and refining the teacher appraisal cycle.
2. Will the amended regulation help ensure that all students receive an equitable education? The amendments do not specifically address an equitable education for students; however, there is an expectation that the amendments will help provide for improved teacher appraisal and support across the state.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not specifically address student health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments do not explicitly address the legal rights of students.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the current authority and flexibility of decision making at the local board and school level, and provide increased flexibility in certain areas.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments do not create unnecessary reporting requirements, and provide additional flexibility in administrative requirements.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments do not change the entity with authority or accountability.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendments are consistent with current state educational policies, in particular state policies addressing core academic subjects such as language arts and mathematics.
9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments create additional flexibility in key areas and provide further consistency in other key areas in the implementation of the teacher appraisal system.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expectation of additional costs to the State or the local school boards as a result of these amendments to the regulation.

**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 2013-14 2014-15 school year, unless another teacher appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.

**2.0 Definitions**

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

**"Announced Observation"** shall consist of ~~the an~~ Pre-observation Form and conference with the Credentialed Observer, an observation by the Credentialed Observer 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 Observer"** shall mean an individual, not always the supervisor of the teacher, who has successfully completed DPAS II credentialing in accordance with 10.0. Credentialed Observer denotes any individual who may conduct observations as part of a teacher's appraisal process. The term Credentialed Observer encompasses those administrators who are Evaluators.



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

"Department" shall mean the Delaware Department of Education.

~~"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 403.~~

"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.

"Evaluator" shall mean a Credentialed Observer who is responsible for a teacher's Summative Evaluation. A teacher's required observations as part of the appraisal cycle shall generally be conducted by the assigned Evaluator; however, the assigned Evaluator may designate a school administrator who is also a Credentialed Observer to conduct the required observations.

"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.

"Group 1 Teacher" shall mean any Novice Teacher or Experienced Teacher providing instruction in reading and/or mathematics to a student enrolled in any grade three (3) through ten (10) as verified by the State's pupil accounting system.

"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 Group 1 Teacher"~~ shall mean any Novice Teacher or Experienced Teacher that does not meet the definition of ~~DCAS Group 1~~ Teacher as defined herein and explained in the Guide.

"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" or "Effective" or ~~"Needs Improvement"~~ rating on the Summative Evaluation and shall be used to qualify for a continuing license.

"Short Observation" shall consist of an observation by a Credentialed Observer, using the associated conferences and forms, at a date and time that has not been previously arranged. The observation shall be no less than ten (10) minutes, and be limited to specified criteria. Such observations shall not substitute for required observations under Section 3.0.

~~"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~~ Students scores on the DCAS state assessment system; 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~~ DSEA and DASA.

(c) For the 2014-15 school year only, student scores on statewide assessments in English Language Arts and Mathematics (i.e., Smarter ELA and Smarter Mathematics) shall not be incorporated into any teacher's performance appraisal.

"**Student Growth**" shall mean the change in Student 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 mean the comprehensive, end-of-cycle appraisal and shall incorporate the results of the minimum required observations, any additional observations, and required component-level data. At the discretion of the Evaluator, it may also include additional Announced, or Unannounced or Short observation data, beyond the required observation data, provided by other Credentialed Observers.

"**Unannounced Observation**" shall consist of an observation by a Credentialed Observer at a date and time that has not been previously arranged using the associated formative conferences and reports, and which may include the use of an observation form. 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 Needs Improvement or "Ineffective" rating on the Summative Evaluation as it pertains to educators seeking a continuing license.

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

### **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 or Unannounced 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 or Unannounced 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 one (1) Announced Observation and two (2) Unannounced Observations 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.

*(Break in Continuity of Sections)*

## 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 determined. In each academic year, for each of the first four (4) Appraisal Components, a school district or charter school may waive one (1) criterion identified as optional below. In addition, for the Professional Responsibilities Component (5.1.4), a school district or charter school may substitute a locally determined alternative Appraisal Component, which must be approved by the Department no later than the last day of July of each year. Final Notification of any such waiver or substitution shall be provided to all teachers in a school district or charter school and the Department of Education by the last day in August of each year:

*(Break in Continuity Within Section)*

*(Break in Continuity of Sections)*

## 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.

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

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

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### OFFICE OF THE SECRETARY

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

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

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

## A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

## B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education, with the consent of the State Board of Education, intends to amend 14 DE Admin. Code 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

The amendment: 1) provides that the proposed amended regulation will be in effect beginning with the 2014-15 school year; 2) provides that the DPAS-II appraisal process must be used by all districts and charter schools unless another specialist appraisal system has been state-approved under the applicable provisions of Delaware Code; 3) provides that an observation form may be utilized as part of an Announced or Unannounced observation; 4) clarifies the definition of Student Achievement beginning with the 2014-2015 school year; 5) states the Department of Education's intent to not incorporate its proposed new statewide English Language Arts and Mathematics assessment as part of Student Achievement in the 2014-2015 school year; 6) defines a summative rating of "Needs Improvement" to be considered an Unsatisfactory Evaluation; 7) clarifies that the annual evaluation of the DPAS-II process must include Specialists; 8) provides the opportunity for districts and charter schools to substitute a locally determined Professional Responsibilities Appraisal Component, provided it has been state-approved,

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follows the guidelines set forth pursuant to a state-approval process, and is established no later than the last day of July of a given year.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 5, 2014 to Susan Haberstroh, Associate Secretary, Education Supports and Innovative Practices, Delaware Department of Education at 401 Federal Street, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

### **C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment will provide ongoing opportunities for specialist development and student achievement by strengthening and refining the specialist appraisal cycle.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments do not specifically address an equitable education for students; however, there is an expectation that the amendments will help provide for improved specialist appraisal and support across the state.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not specifically address student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments do not explicitly address the legal rights of students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the current authority and flexibility of decision making at the local board and school level, and provide increased flexibility in certain areas.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments do not create unnecessary reporting requirements, and provide additional flexibility in administrative requirements.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments do not change the entity with authority or accountability.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments create additional flexibility in key areas and provide further consistency in other key areas in the implementation of the specialist appraisal system.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expectation of additional costs to the State or the local school boards as a result of these amendments to the regulation.

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

### **1.0 Effective Date**

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the ~~2013-14~~ 2014-15 school year, unless another specialist appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.

### **2.0 Definitions**

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

**“Announced Observation”** shall consist of the ~~Pre-observation Form~~ and conference with the Credentialed Observer, an observation by the Credentialed Observer at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation

of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

*(Break in Continuity Within Section)*

**"Department"** shall mean the Delaware Department of Education.

*(Break in Continuity Within Section)*

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

**"Specialist"** shall mean an educator other than a teacher or administrator and includes, but is not limited to, School Counselors, Library Media Specialists, School Psychologists, and School Nurses.

~~**"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~~ Students scores on the DCAS state assessment system; 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 assessment; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures shall be approved by the Department of Education and developed in partnership with input from the relevant specialist organizations or respective licensure body and the Delaware State Education Association (DSEA).
- (c) For the 2014-15 school year only, student scores on statewide assessments in English Language Arts and Mathematics (i.e., Smarter ELA and Smarter Mathematics) shall not be incorporated into any specialist's performance appraisal.

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

*(Break in Continuity Within Section)*

**"Unannounced Observation"** shall consist of an observation by a Credentialed Observer at a date and time that has not been previously arranged using the associated formative conferences and reports, and which may include the use of the observation form. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

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

**"Unsatisfactory Evaluation"** shall be the equivalent to the overall Needs Improvement or Ineffective rating on the Summative Evaluation as it pertains to educators seeking a continuing license.

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

### 3.0 Appraisal Cycles

- 3.1 Experienced ~~s~~Specialists who have earned a rating of Highly Effective on their most recent Summative Evaluation shall receive a minimum of (1) Announced or Unannounced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.

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

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

#### **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 specialist shall be determined. In each academic year, for each of the first four (4) Appraisal Components, a school district or charter school may waive one (1) criterion identified as optional below. In addition, for the Professional Responsibilities Component (5.1.4), a school district or charter school may substitute a locally determined alternative Appraisal Component, which must be approved by the Department no later than the last day of July of each year. Final Notification of any such waiver or substitution shall be provided to all specialists in a school district or charter school and the Department of Education by the last day in August of each year:

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

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

#### **11.0 Evaluation of Process**

The Department of Education shall conduct an annual evaluation of the ~~teacher~~ specialist appraisal process. The evaluation shall, at a minimum, include a survey of teachers, specialists and Evaluators and interviews with a sampling of teachers, specialists 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.

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

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

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

**A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

The Secretary of Education, with the consent of the State Board of Education, intends to amend 14 **DE Admin. Code 108A** Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

The amendments include but are not limited to provisions that: 1) provide that the proposed amended regulation will be in effect beginning with the 2014-15 school year; 2) provide that the Department will create up to four Guides differentiated by administrator role; 3) replace the formative process with the required components of the Annual Appraisal Cycle; 4) clarify that student achievement data from new state assessments in ELA and Mathematics will not be used as part of the Annual Appraisal Cycle during the 2014-15 school year; 5) replace appraisal cycles differentiated by administrator experience with an Annual Appraisal Cycle (new definition) for all administrators; 6) remove Appraisal Criteria from the regulation to allow for the development of Appraisal Criteria differentiated by administrator role in the relevant Guides; 7) amend the language of the Appraisal Components to include revised descriptions; 8) clarify that the differentiated Guides will include guidance on evidence collection, among other resources; 9) replace the binary summative evaluation rating system with a four-level rating system that mirrors the Appraisal Component and Appraisal Criteria rating system; and 10) simplify the description of the Improvement Plan and Challenge Process.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 5, 2014 to Susan Haberstroh, Associate Secretary, Education Supports and Innovative Practices, Delaware Department of Education at 401 Federal Street, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments will help improve student achievement as measured against the state standards by strengthening and refining the administrator appraisal cycle and process.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments do not specifically address an equitable education for students; however, there is an expectation that the amendments will help provide for improving administrator evaluation and support across the state.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not specifically address student health and safety, though the provisions of one of the Appraisal Components require that all administrators prioritize this issue within the scope of their evaluation.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments do not specifically address the legal rights of students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the current authority and flexibility of decision making at the local board and school level, and are designed to support and protect that authority.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments simplify and streamline requirements for decision-makers at the local board and school levels, and are not intended to place unnecessary reporting or administrative requirements or mandates on these decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments do not change the entity with authority or accountability.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments simplify the current regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not an expectation that there are additional costs to the State or the local school boards, although additional manuals and tools may need to be developed at the request of stakeholders.



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

### 1.0 Effective Date

- 1.1 ~~The Administrator 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 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).~~ This regulation shall be effective for all school districts and charter schools beginning with the 2014-15 school year, unless another administrator appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.
- 1.2 For purposes of this regulation, an administrator shall be a professional employee authorized by a board to serve in a supervisory capacity involving the oversight of an instructional program(s).

### 2.0 Definitions

The following definitions shall apply for purposes of this regulation:

**"Annual Appraisal Cycle"** means the administrator appraisal process that occurs within one school year.

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

**"Credentialed Evaluator"** shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 10.0. A superintendent shall be evaluated by member(s) of the local school board of education Board who shall also have 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.

**"Department"** shall mean the Delaware Department of Education.

**"DPAS II Revised Guides for Administrators"** shall mean the manuals that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that are used to implement the appraisal process. The Department shall create up to four (4) manuals differentiated by administrator role. The DPAS II Revised Guides for Administrators may also be referred to collectively as "Guides" or individually as "Guide."

**"DSBA"** shall mean the Delaware School Boards Association.

**"DSEA"** shall mean the Delaware State Education Association.

**"Experienced Administrator"** shall mean an administrator who has three (3) or more years of service as an administrator.

**"Formative Process"** shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences and reports as outlined in the DPAS II Guide for Administrators.

**"Goal-Setting Conference"** shall mean a meeting that occurs between the administrator and the Credentialed Evaluator at the beginning of the Annual Appraisal Cycle, which typically is in the summer or fall. The meeting shall include but not be limited to establishing goals for the year and discussing areas of support, as described in the DPAS II Revised Guides for Administrators.

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

**"Inexperienced Administrator"** shall mean an administrator who has less than three (3) years of service as an administrator.

**"Mid-Year Conference"** shall mean a meeting that occurs between the administrator and the Credentialed Evaluator as part of the Annual Appraisal Cycle, which typically occurs midway through the school year. The meeting shall include but not be limited to discussion of progress toward goals and areas of support, as described in the DPAS II Revised Guides for Administrators.

# PROPOSED REGULATIONS

~~"Satisfactory Component Rating" shall mean the administrator's performance demonstrates an understanding of the concepts of the component.~~

"Satisfactory Evaluation" shall be equivalent to the overall "Highly Effective" or "Effective" or "Needs Improvement" rating on the Summative Evaluation.

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

"Student Achievement" shall mean

(a) For tested grades and subjects:

(1) Students scores on the ~~DCAS~~ state assessment system; 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 measure of student achievement that are rigorous and comparable across classrooms.

Such alternative measures shall be approved by the Department and developed in partnership with the Delaware Association of School Administrators (DASA) and the Delaware School Boards Association (DSBA).

(c) For the 2014-15 school year only, student scores on statewide assessments in English Language Arts and Mathematics (i.e., Smarter ELA and Smarter Mathematics) shall not be incorporated into any administrator's performance appraisal.

"Student Growth" shall mean the change in Student 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 Annual Appraisal eCycle.

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

"Unsatisfactory Evaluation" shall be the equivalent to the overall "Needs Improvement" or "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.

## 3.0 Annual Appraisal Cycles

3.1 ~~Experienced All administrators who have earned a rating of "Highly Effective" on their most recent Summative Evaluation shall receive a yearly appraisal in all five (5) Appraisal Components, including Student Improvement, that includes a minimum of one (1) Formative Process Goal Setting Conference, one (1) Mid-Year Conference and one (1) Summative Evaluation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective administrators shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective administrator does not achieve a Satisfactory rating on the Student Improvement Component, the administrator shall receive a Summative Evaluation the following year, regardless of whether the administrator would otherwise be due for a Summative Evaluation pursuant to this section. The Annual Appraisal Cycle shall be led by the administrator's Credentialed Evaluator and may include other supports and opportunities for feedback from his or her Credentialed Evaluator or other Credentialed Evaluators, as outlined in the DPAS II Revised Guides for Administrators.~~

3.2 ~~Experienced administrators who have earned a rating of "Effective" and have earned Satisfactory ratings in four (4) of the Appraisal Components found in 5.0, including Student Improvement on his or her most recent Summative Evaluation shall receive a minimum of one (1) Formative Process each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Effective administrators shall be evaluated each year, regardless of whether or not a~~

~~Summative Evaluation is conducted. If an Effective administrator does not achieve a Satisfactory rating on the Student Improvement Component, the administrator shall receive a Summative Evaluation the following year, regardless of whether the administrator would otherwise be due for a Summative Evaluation pursuant to this section.~~

~~3.3 Experienced administrators who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Formative Process with a Summative Evaluation at the end of the one year period. These administrators shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the DPAS II Revised Guide for Administrators.~~

~~3.4 Inexperienced administrators shall have a minimum of one (1) Formative Process with a Summative Evaluation every year. Inexperienced administrators 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 Formative Process(es) or other types of monitoring as outlined in the DPAS II Revised Guide for Administrators.~~

## 4.0 DPAS II Revised Guides for Administrators

4.1 All districts and charter schools shall use the manuals entitled DPAS II Revised Guides for Administrators as developed and as may be amended by the Department of Education in collaboration with DSEA administrators, which shall include but not be limited to representatives from DSBA and DASA to implement the appraisal system. For any administrator role for which a Guide is not available, Credentialed Evaluators shall use the Appraisal Components in Section 5.0 of this regulation for the purpose of the Annual Appraisal Cycle until such time as a Guide becomes available.

4.1.1 The manual Guides shall contain at a minimum the following:

4.1.1.1 Specific details about each of the five (5) Appraisal Components pursuant to 5.1, including the Appraisal Criteria within each Component that form the basis for ratings.

4.1.1.2 All forms or documents needed to complete the requirements of the appraisal process Annual Appraisal Cycle.

4.1.1.3 Specific procedures to implement the appraisal system Annual Appraisal Cycle, including information on the required Goal-Setting Conference, Mid-Year Conference and Summative Evaluation as well as other recommended supports and opportunities for feedback.

4.1.1.4 Guidance related to evidence collection, including relevant definitions, samples of quality evidence and other resources.

## 5.0 Appraisal Components and Appraisal Criteria

5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each in the Guides, shall be the basis upon which the performance of an administrator shall be evaluated by a certified evaluator(s): his or her Credentialed Evaluator; Appraisal Criteria for each Appraisal Component, as appropriate, shall be differentiated by administrator role in the DPAS II Revised Guides for Administrators.

5.1.1 Vision and Goals: Focuses on the administrator's actions to establish, implement, promote and communicate the vision and goals of the school or district, including the use of data to establish goals aligned to the school or district success plan. The goals and strategies contained within the district or school success plan also align to an administrator's individual goals in Component Five.

5.1.1.1 Using Data: Administrator, in collaboration with others such as the school or district improvement team or board, uses multiple sources of information and assists in analyzing data to establish rigorous and concrete school or district improvement goals in the context of student achievement and instructional programs.

5.1.1.2 Implementing Vision and Goals: Administrator provides leadership for major initiatives and change efforts relative to the school or district improvement goals. Administrator is committed to doing the work required for continuous school and district improvement.

## PROPOSED REGULATIONS

- 5.1.1.3 ~~Promoting Vision and Goals: Administrator promotes high expectations for teaching and learning. Administrator is committed to ensuring that all students have the knowledge and skills necessary to become successful in future educational activities.~~
- 5.1.1.4 ~~Communicating the Vision and Goals: Administrator communicates effectively to appropriate stakeholders about progress towards meeting the school or district improvement plan goals. Administrator participates in a process to regularly monitor, evaluate and revise school or district improvement goals.~~
- 5.1.2 Culture of Learning Teaching and Learning: Focuses on the administrator's actions to implement rigorous curricula, assessments and high-quality instructional practices and to monitor student progress to inform instructional practices.
- 5.1.2.1 ~~Advocating a Culture of Learning: Administrator provides leadership for assessing, developing and improving the school or district culture and instructional program that is conducive to student learning. Administrator can articulate the desired school or district instructional program and shows evidence about how he or she reinforces the instructional program and culture.~~
- 5.1.2.2 ~~Monitoring the Culture of Learning: Administrator participates in monitoring and evaluating the effectiveness of the curriculum, instruction or assessment of students. Administrator evaluates staff and provides on-going coaching for improvement. Administrator uses a variety of sources of information to make decisions.~~
- 5.1.2.3 ~~Sustaining the Culture of Learning: Administrator helps to ensure that staff have professional development opportunities that enhance their performance and improve student learning. Administrator is accessible and approachable by staff, families, and community and is visible in the school or district community. Administrator supports the use of technology as appropriate in teaching and learning.~~
- 5.1.2.4 ~~Maintaining the Culture of Learning: Administrator systematically and fairly recognizes accomplishments of staff and students towards a positive school or district culture. Administrator uses and analyzes data to instill the importance of continually developing programs and strategies to enhance opportunities for learning.~~
- 5.1.3 Management People, Systems and Operations: Focuses on the administrator's actions to create and implement a strategic plan, manage resources and organize time, ensuring alignment with mandated policies and creating a safe, efficient and effective environment in the school or district that supports student learning. Also focuses on the administrator's actions to attract, support, develop, evaluate and retain educators based upon performance indicators.
- 5.1.3.1 ~~Solving Problems or Concerns: Administrator addresses and resolves issues as they arise in a timely manner and works to prevent potential problems. Operational procedures are designed and managed to maximize opportunities for learning for all students.~~
- 5.1.3.2 ~~Managing Resources: Administrator manages fiscal and physical resources responsibly, efficiently and effectively. Administrator protects instructional time by managing operational procedures in such a way as to maximize learning. Administrator efficiently manages his or her time so that teaching and learning are a high priority.~~
- 5.1.3.3 ~~Complying with Policies: Administrator complies with federal, state, and board policies. School or district contractual agreements are effectively managed. Administrator maintains confidentiality and privacy of school or district records, including student or staff information.~~
- 5.1.3.4 ~~Protecting the Welfare and Safety of Students and Staff: Administrator works to ensure a safe and secure school or district environment and a culture that is conducive to teaching and learning. Challenges that could potentially interrupt teaching and learning are addressed and resolved.~~
- 5.1.4 Professional Responsibilities: Focuses on the administrator's personal leadership actions, including building trusting relationships, engaging in self-reflection and ongoing learning, problem solving with a constant focus on student learning, constructively managing change and effectively communicating with and engaging families and other stakeholders.

- 5.1.4.1 ~~Maintaining Professional Relationships: Administrator fosters and maintains positive professional relationships with staff. Administrator is respectful of other's opinions and demonstrates an appreciation for and sensitivity to diversity in the school or district community.~~
- 5.1.4.2 ~~Promoting Family and Community Involvement: Administrator collaboratively works to establish a culture that encourages and welcomes families and community members and seeks ways in which to engage them in student learning.~~
- 5.1.4.3 ~~Demonstrating Fairness: Administrator is fair and consistent when dealing with students and staff. Administrator demonstrates values, beliefs and attitudes that inspire all students and staff to higher levels of performance.~~
- 5.1.4.4 ~~Growing and Developing Professionally: Administrator chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school or district.~~
- 5.1.5 Student Improvement
  - 5.1.5.4 ~~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.~~

## 6.0 Summative Evaluation Ratings

- 6.1 Each ~~of the first four (4) Appraisal Components~~ shall be assigned a rating of ~~Satisfactory or Unsatisfactory~~ Highly Effective, Effective, Needs Improvement or Ineffective on the Summative Evaluation. The rating for the Student Improvement Component shall be assigned a rating of Exceeds, Satisfactory or Unsatisfactory on the Summative Evaluation. The rating for each of the five (5) Appraisal Components shall reflect the standards as described in the DPAS II Revised Guides for Administrators.
  - 6.1.1 ~~A satisfactory rating~~ Ratings for each of the first four (4) Appraisal Components shall mean ~~the administrator demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the components~~ be informed by Criteria-level ratings, as described in the DPAS II Revised Guides for Administrators. Each Appraisal Criterion shall be assigned a rating of Highly Effective, Effective, Needs Improvement or Ineffective on the Summative Evaluation.
  - 6.1.2 ~~A satisfactory rating for the Student Improvement component shall mean that the administrator 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 administrator has a ~~Satisfactory Component Rating~~ earned an Effective or Highly Effective rating in the first four (4) of the five (5) Appraisal Components in accordance with 5.0, including and 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 Administrators, as the same may be amended from time to time, developed pursuant to 4.0.
  - 6.2.2 "**Effective**" shall mean that: the administrator has earned an Effective or Highly Effective rating in at least three (3) of the first four (4) Appraisal Components with zero (0) Ineffective ratings and a Satisfactory rating in the Student Improvement Component.
    - 6.2.2.1 ~~The administrator 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 administrator does not meet the requirement for a "Highly Effective" rating found in 6.2.1.~~
  - 6.2.3 "**Needs Improvement**" shall mean that:

- 6.2.3.1 ~~The administrator has earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Effective or Highly Effective ratings in one (1) or two (2) of the first four (4) Appraisal Components in accordance with 5.0, including with zero (0), one (1) or two (2) Ineffective ratings and a Satisfactory or Exceeds rating in the Student Improvement Component, or~~
- 6.2.3.2 ~~The administrator has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Effective or Highly Effective ratings in three (3) or four (4) of the first four (4) Appraisal Components in accordance with 5.0 and the administrator has earned an Unsatisfactory rating in the Student Improvement Component.~~
- 6.2.4 **"Ineffective"** shall mean that:
  - 6.2.4.1 ~~The administrator has earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Effective or Highly Effective ratings in zero (0), one (1), or two (2) of the first four (4) Appraisal Components in accordance with 5.0, and an Unsatisfactory rating in the Student Improvement Component, or~~
  - 6.2.4.2 ~~The administrator has earned an Unsatisfactory Component Rating Effective or Highly Effective ratings in zero (0) of the first four (4) Appraisal Components and Satisfactory or Exceeds rating in the Student Improvement Component; or~~
  - 6.2.4.3 The administrator has earned Ineffective ratings in three (3) or four (4) of the first four (4) Appraisal Components.
- 6.2.5 ~~If an administrator's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the administrator's rating shall be re-categorized as "Ineffective".~~

**7.0 Pattern of Ineffective Administrative Performance**

7.1 A pattern of ineffective administrative performance shall be based on the most recent Summative Evaluation ratings of an administrator using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective administration. The following chart shows the consecutive Summative Evaluation ratings determined to be a pattern of ineffective administrative performance:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

**8.0 Improvement Plan**

- 8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of ~~Unsatisfactory~~ Needs Improvement or Ineffective on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.
  - 8.1.1 An Improvement Plan ~~shall~~ may also be developed if an administrator's ~~overall~~ performance during the ~~Formative Process Annual Appraisal Cycle~~ is unsatisfactory, ~~as outlined in the DPAS II Revised Guides for Administrators. This unsatisfactory performance shall be noted by the evaluator(s) on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.~~
- 8.2 The Improvement Plan shall contain the following:
  - 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

- ~~8.2.2~~ Measurable goals for improving the deficiencies to satisfactory levels;
  - ~~8.2.3~~ Specific professional development or activities to accomplish the goals;
  - ~~8.2.4~~ Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with curriculum specialist(s) or others with relevant experience;
  - ~~8.2.5~~ Procedures and evidence that must be collected to determine that the goals of the plan were met;
  - ~~8.2.6~~ Timeline for the plan, including intermediate check points to determine progress;
  - ~~8.2.7~~ Procedures for determining satisfactory improvement.
- ~~8.3~~ Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect shall be certified by the Department and shall be directly related to areas identified as needing improvement.
- 8.42 The Improvement Plan shall be developed cooperatively by the administrator and evaluator his or her Credentialed Evaluator. If the plan cannot be cooperatively developed, the evaluator administrator's Evaluator shall have the authority and responsibility to determine the plan as specified in ~~8.2~~ 8.1 above.
- 8.53 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.64 Upon completion of the Improvement Plan, the administrator and ~~evaluator(s)~~ his or her Credentialed Evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

## 9.0 Challenge Process

- 9.1 An administrator may challenge any rating on the Summative Evaluation, either a an Appraisal Component Rating or the Overall Rating, or an administrator may challenge ~~the conclusions of the Formative Process~~ if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on ~~the Formative Feedback form~~ unsatisfactory performance identified by his or her Credentialed Evaluator during the Annual Appraisal Cycle, pursuant to 8.1.1. To initiate a challenge, an administrator shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of administrator'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, if any.
- 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of all documents used in the appraisal and the written challenge, meet with the administrator, 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 shall be final.

## 10.0 Evaluator(s) 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 of DPAS II for Administrators.
- 10.2 The training shall occur no less than once every three (3) years and shall include techniques for observation and conferencing, content and relationships of ~~ISLLC~~ the state standards for administrators, and a thorough review of the DPAS II Revised Guides for Administrators. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.



## 11.0 Evaluation of Process

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

~~DPAS II Revised Guides for Teachers, Specialists, and Administrators~~

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 290

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

### 290 Approval of Educator Preparation Programs

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs. The amendment is to align the regulation to Senate Bill No. 51 as amended by Senate Amendment No. 1 of the 147th General Assembly and align to the changes in the national teacher education accrediting agency. For ease of reading, the regulation was stricken though in its entirety and the regulation will be represented as underlined. Some language, from the original regulation has been incorporated into the amendment.

The amendment includes but is not limited to: 1) inclusion of a Department-led educator preparation program approval and renewal process, replacing the prior process which relied heavily on a partner organization, National Council for Accreditation of Teacher Education (NCATE); 2) an update of the name of the partner which will contribute to the Department-led approval process to the Council for the Accreditation of Educator Preparation (CAEP) (formerly NCATE); 3) establishment of rigorous entry requirements as prerequisites for admission into an approved program; 4) the requirement that approved programs have a clinical residency component, supervised by high quality educators, consisting of at least ten weeks of full-time student teaching, with clinical experiences interwoven throughout; 5) the requirement that approved programs for early childhood and elementary school teachers include instruction using research-based strategies for teaching childhood literacy and age-appropriate mathematics content; 6) the requirement that programs conduct ongoing evaluation of their students, aligned to the state-wide educator evaluation system; 7) establishment of rigorous exit requirements for approved programs, including achievement of passing scores on a content-readiness exam and a performance assessment; 8) the requirement that approved programs collaborate with the Department to collect and report data, including data on performance and effectiveness of program graduates by student achievement; 9) the requirement that approved programs report on all aspects of program compliance and outcomes as a prerequisite for ongoing program approval; 10) establishment of a process for public reporting that provides and publishes ratings of programs based on outcomes; and 11) inclusion of definitions for all key terms in 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, 2014** to Susan Haberstroh, Associate Secretary, Education Supports and Innovative Practices Branch, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments will help improve student achievement as measured against the state standards by implementing additional rigorous program criteria for Delaware's teacher preparation programs.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments do not specifically address an equitable education for students; however, there is an expectation that

the amendments will help provide for improved consistency and quality in educators graduating from Delaware teacher preparation programs.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not specifically address student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments do not specifically address the legal rights of students; however, there is an expectation that the amendments will help provide for consistency across Delaware teacher preparation programs.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the authority and flexibility of decision making 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 amendments are not intended to place unnecessary reporting or administrative requirements 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? The amendments do not change the entity with authority or accountability.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments are aligned with Senate Bill No. 51 as amended by Senate Amendment No. 1.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not an expectation that there are additional costs to the State or to the local boards, although additional data will need to be gathered.

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

**290 Approval of Educator Preparation Programs**

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))  
14 **DE Admin. Code** 1510

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

**1510 Issuance of Initial License**

**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** 1510 Issuance of Initial License. The regulation applies to the issuance of an Initial License for educators, pursuant to 14 **Del.C.** §1210. It is necessary to amend this regulation in order to align licensure requirements and timelines to Amended 14 **Del.C.** §1210 effective July 1, 2014.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on the 31st day of May, 2014 to Donna Lee Mitchell, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

## C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of an initial license to educators who have acquired the prescribed general knowledge, skill and/or education to practice in a particular area, and have met the criteria to receive certification to teach a particular subject or to instruct a particular category of students in a content subject, 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 general 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 licensure, helping to ensure quality educators ensure the health and safety of their students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator licensure, helping to ensure all students' legal rights are met.

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. Data collection or reporting will come from the Department through systems of data collection already in place for the recruitment, hiring and induction of licensed educators.

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 1510? 14 Del.C. requires that we promulgate this regulation for educator licensure.

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.

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

**1510 Issuance of Initial License**

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### PROFESSIONAL STANDARDS BOARD

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

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

**1599 Delaware Educational Technology Standards**

## A. TYPE OF REGULATORY ACTION REQUESTED

New 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 adopt regulation 14 **DE Admin. Code** 1599 Delaware Educational Technology Standards shall serve as the foundation for professional development, instructional practice or leadership for all Delaware Educators and as indicators that guide learning, teaching and leading with technology in education. The standards make explicit the skills and knowledge needed in an increasingly connected global and digital society. The standards outline what educators should know and be able to do to ensure, establish and maintain an environment for learning, teaching, and leading in the digital age.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on the 31st day of May, 2014 to Donna Lee Mitchell, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards to ensure, establish and maintain an environment for learning, teaching, and leading in the digital age.

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 and all administrators hired to lead schools or districts, meet high standards for professional development, instructional practice or leadership for all Delaware Educators, and as indicators that guide learning, teaching and leading with technology in education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator educational technology standards, which include skills and knowledge around digital citizenship and responsibility.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator educational technology skills and knowledge, helping to ensure all students' legal rights are met.

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 high standards for educators.

9. Is there a less burdensome method for addressing the purpose of the new regulation 1599? 14 **Del.C.** §1201 requires that we promulgate rules and regulation to improve the quality of the Delaware educator workforce and to improve student performance.

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.

**1599 Delaware Educational Technology Standards**

Non-regulatory note: Approval of Teacher Education programs is governed by 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs. Teacher evaluations are governed by 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

**1.0 Content**

- 1.1 The International Society for Technology in Education (ISTE) developed The National Educational Technology Standards (NETS©) as standards for learning, teaching, and leading in the digital age.
- 1.2 In accordance with 14 Del.C. §1205(b), the NETS© are hereby incorporated by reference and adopted as Delaware's Educational Technology Standards. NETS© shall serve as the foundation for professional development, instructional practice or leadership, for all Delaware educators, and as indicators that guide the learning, teaching, and leading with technology in education. The standards make explicit the skills and knowledge needed in an increasingly connected global and digital society.
- 1.3 A summary of the standards is set forth within. In-depth descriptions, contextual explanations, examples and more specific criteria and guidance are provided in the complete set of standards as published in National Education Technology Standards© (iste.org/nets, 2012).

**2.0 Delaware Educational Technology Standards for Leaders**

- 2.1 The standards for evaluating the skills and knowledge school administrators and leaders need to support digital age learning, implement technology, and transform the instruction landscape.
- 2.2 Visionary Leadership
  - 2.2.1 Educational Administrators inspire and lead development and implementation of a shared vision for comprehensive integration of technology to promote excellence and support transformation throughout the organization.
    - 2.2.1.1 Inspire and facilitate among all stakeholders a shared vision of purposeful change that maximizes use of digital-age resources to meet and exceed learning goals, support effective instructional practice, and maximize performance of district and school leaders
    - 2.2.1.2 Engage in an ongoing process to develop, implement, and communicate technology-infused strategic plans aligned with a shared vision
    - 2.2.1.3 Advocate on local, state and national levels for policies, programs, and funding to support implementation of a technology-infused vision and strategic plan
- 2.3 Digital Age Learning Culture  
Educational Administrators create, promote, and sustain a dynamic, digital-age learning culture that provides a rigorous, relevant, and engaging education for all students.
- 2.4 Excellence in Professional Practice  
Educational Administrators promote an environment of professional learning and innovation that empowers educators to enhance student learning through the infusion of contemporary technologies and digital resources.
- 2.5 Systemic Improvement  
Educational Administrators provide digital age leadership and management to continuously improve the organization through the effective use of information and technology resources.
- 2.6 Digital Citizenship  
Educational Administrators model and facilitate understanding of social, ethical and legal issues and responsibilities related to an evolving digital culture.

**3.0 Delaware Educational Technology Standards for Teachers**

- 3.1 The standards define the skills and knowledge educators need to teach, work, and learn in an increasingly connected global and digital society. Effective teachers model and apply the NETS© as they design, implement, and assess learning experiences to engage students and improve learning; enrich professional practice; and provide positive models for students, colleagues, and the community. All teachers should meet the following standards and performance indicators.
- 3.2 Facilitate and Inspire Student Learning and Creativity  
Teachers use their knowledge of subject matter, teaching and learning, and technology to facilitate experiences that advance student learning, creativity, and innovation in both face-to-face and virtual environments.

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- 3.3 Design and Develop Digital Age Learning  
Experiences and Assessments-Teachers design, develop, and evaluate authentic learning experiences and assessment incorporating contemporary tools and resources to maximize content learning in context and to develop the knowledge, skills, and attitudes identified in the NETS®.
- 3.4 Model Digital Age Work and Learning  
Teachers exhibit knowledge, skills, and work processes representative of an innovative professional in a global and digital society.
- 3.5 Promote and Model Digital Citizenship and Responsibility  
Teachers understand local and global societal issues and responsibilities in an evolving digital culture and exhibit legal and ethical behavior in their professional practices.
- 3.6 Engage in Professional Growth and Leadership  
Teachers continuously improve their professional practice, model lifelong learning, and exhibit leadership in their school and professional community by promoting and demonstrating the effective use of digital tools and resources.
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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 3204 (16 **Del.C.** §3204)  
16 **DE Admin. Code** 4201

### PUBLIC NOTICE

#### 4201 Cancer Registry

Health Promotion & Disease Prevention, Division of Public Health, Department of Health and Social Services (Department), has proposed amendments to the 4201 State of Delaware Cancer Registry regulation.

The proposed regulation defines procedures to be used by health care providers to report cancer to Delaware Health and Social Service's Cancer Registry. Currently, a paper-based method (form) is used by health care providers to report all cancer cases. Amendments have been made to the existing regulation that require health care providers to report all cancer cases via an electronic reporting method; using the Centers for Disease Control and Prevention (CDC) Web Plus electronic reporting software.

On May 1, 2014, the Department plans to publish proposed amendments to the 4201 State of Delaware Cancer Registry regulation and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the May 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Comprehensive Cancer Control Program at 302-744-1032.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Friday, May 30, 2014 at:

Deborah Harvey, Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us), Phone: (302) 744-4700

#### 4201 Cancer Registry

##### 1.0 Purpose

These regulations are promulgated by the Department pursuant to Senate Bill 372 of the 141<sup>st</sup> General Assembly. These regulations are also independently authorized by 29 **Del.C.** §7903. The purpose of the regulations is to implement 16 **Del.C.** Ch. 32.

## 2.0 Definitions

“**Benign Tumor**” means any nonmalignant neoplasm, regardless of the tissue or origin, that appears on the American College of Surgeons most recently published list of reportable cancers and benign tumors.

“**Cancer**” means any malignant neoplasm, regardless of the tissue origin, that appears on the American College of Surgeons most recently published annual list of reportable cancers and benign tumors.

“**Clinical Laboratory**” means a facility in which tests are performed identifying findings of anatomical changes, and/or specimens are interpreted and pathological diagnoses are made.

“**The Department**” means the Department of Health and Social Services.

“**Health Care Provider**” means:

person, corporation, facility or institution licensed by this State pursuant to Titles 16 or 24 of the **Delaware Code** to perform any act to or on behalf of a patient during the patient's medical care, treatment, or confinement, or

a clinical laboratory. When a person acting as a health care provider is working for a corporation, facility, or institution, the corporation, facility, or institution shall be considered the health care provider for purposes of these regulations.

“**Non-hospital reporter**” means one that: is not located within a Delaware hospital and/or does not report cancer case data to such hospital's cancer registry.

## 3.0 Duty to Report

Each health care provider shall ~~complete and~~ submit cancer data to the Department ~~the forms electronically as~~ described in Section 4 with respect to (a) each patient whom it diagnoses with cancer or a benign tumor, and (b) each patient for whom it renders any care after the individual is diagnosed with cancer or a benign tumor. Compliance by one health care provider with this Section with respect to an individual patient shall not obviate compliance by other health care providers with respect to the same patient. Physician offices that are located in a hospital and have an electronic database accessible to the hospital cancer registry may be asked to submit to the Department an electronic data file listing of cancer cases for linkage prior to submission of case information. Once the linkage is made, any missing cases must be reported electronically as indicated in Section 4.0.

## 4.0 ~~Forms Supplied by Department~~ Process and Specifications of Reporting Data to the Department

Cancer data should be submitted in a secure, electronic method. Non-hospital providers should submit all cancer case data utilizing the CDC's Web Plus software. A non-hospital reporter is defined as one that: is not located within a Delaware hospital and/or does not report cancer case data to such hospital's cancer registry. If a non-hospital provider is unable to submit data electronically, the provider may contact the Department to inquire about an exemption. Upon approval of the exemption, the Department will provide data collection forms to the provider. To request an exemption, a provider must submit a letter stating reason why they are unable to report using the electronic method to the Delaware Cancer Registry. The address can be found at: <http://www.dhss.delaware.gov/dhss/main/maps/other/oxfordbd.htm>

~~Forms prepared by the Department for use by health care providers in complying with Section 3 shall request a~~All data required by the reporting requirements of the National Cancer Data Base established by the American College of Surgeons. Forms prepared Data submitted under this section shall also request disclosure of the ~~address at which the patient has lived for the longest period of time, the occupation at which the patient has worked for the longest period of time, and the name and address of the employer at the occupation where the patient has worked for the longest period of time,~~ length of residence in Delaware and the type of occupation(s) if such information is available to the health care provider. A health care provider shall make reasonable efforts to obtain all information requested by the form prepared under this Section as required on the electronic reporting system. However,



reasonable efforts by a clinical laboratory shall not include the interviewing of patients to obtain required information.

**5.0 Retention of Required Information**

A health care provider who is treating a patient who has been diagnosed with cancer or a benign tumor shall ask that patient to fill out a form requesting disclosure of ~~the address at which the patient has lived for the longest period of time in his or her life, the occupation at which the patient has worked for the longest period of time in his or her life, and the name and address of the employer at the occupation where the patient has worked for the longest period of time~~ length of residence in Delaware, and the type of occupation(s) at which the patient has worked. The health care provider shall retain the form required by this Section with the patient's medical records pursuant to generally accepted protocol for the retention of patient medical records. The health care provider shall include the information from the form required by this Section with information it submits pursuant to Section 3 of these regulations. The Department shall provide a form for use in complying with this Section.

**6.0 Deadlines for Submission**

A health care provider shall provide the information required by Section ~~3~~ 4.0 within 180 days of the initiation of treatment of a patient or diagnosis of that patient with a cancer or benign tumor, whichever is earlier.

**7.0 Failure to Submit Required Information**

A health care provider that fails to comply with Section ~~5~~ 3.0 shall permit the Department to audit its records and abstract information that should have been provided under Section ~~6~~ 4.0. The health care provider shall reimburse the Department for the cost of said audit. If the audit does not identify a compliance failure by the health care facility or provider, the cost of such audit shall not be assessed against the facility or provider.

**8.0 Voluntary Audit**

A health care provider may voluntarily request that an audit be performed if it does not intend to submit the information required by Section ~~6~~ 4.0. The Department shall determine if the request for an audit will be honored. The health care provider shall reimburse the Department for the cost of said audit if the Department honors the request. The Department shall determine whether said costs shall be prepaid, or paid upon completion of the audit.

**9.0 Fines**

Failure to comply with Sections ~~6~~ 3.0 and 6.0 of these regulations may result in a \$100 fine against the health care provider that has failed to comply. Each failure to comply shall constitute a separate violation and shall subject the health care provider to a separate \$100 fine.

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)(o) (16 **Del.C.** §122(3)(o))  
16 **DE Admin. Code** 4410

**PUBLIC NOTICE****4410 Skilled Home Health Agencies (Licensure)**

The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, has proposed amendments to the State of Delaware 4410 Skilled Home Health Agencies (Licensure) regulation.

Proposed amendments change the definition of "Director" in the 4410 Skilled Home Health Agencies (Licensure) regulation.



On May 1, 2014, the Department plans to publish proposed amendments to the 4410 Skilled Home Health Agencies (Licensure) regulation and hold them out for public comment per Delaware law.

Copies of the proposed regulation are available for review in the May 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation must submit same to Deborah Harvey by 4:30 p.m. on Friday, May 30, 2014 at:

Deborah Harvey, Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700

## 4410 Skilled Home Health Agencies (Licensure)

### 1.0 Definitions

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

“**Director**” means the individual appointed by the governing body to act on its behalf in the overall management of the home health agency. The director shall ~~have a Baccalaureate Degree in health or a related field.~~

- (1) Have a Baccalaureate Degree with five years healthcare experience and at least one year supervisory experience (full-time or equivalent) in home health care, or
- (2) Be a registered nurse with five years health care experience and at least one year of supervisory experience (full-time or equivalent) in home health care.

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

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

## 4410 Skilled Home Health Agencies (Licensure)

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 11003

### PUBLIC NOTICE

#### Child Care Subsidy Program: Determining Technical Eligibility for Child Care

In compliance with the State's Administrative Procedures Act (APA - 29 **Del.C.** Ch. 101) and under the authority of 31 **Del.C.** §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, *Determining Technical Eligibility for Child Care Assistance*.

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, 2014.

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

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## SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining Technical Eligibility for Child Care Assistance*.

### Statutory Authority

45 CFR §98.20, *A child's eligibility for child care services*

### Background

Delaware Health and Social Services ("DHSS")/Division of Social Services ("DSS") is designated as the lead agency with primary responsibilities for the planning and administration of child care subsidies funded with the Child Care Development Fund.

The Child Care and Development Fund ("CCDF") Block Grant Act of 1990, as amended, 42 USC § 9858b (b)(1)(A), (the "Act") requires the Lead Agency to "administer, directly, or through other governmental or non-governmental agencies" the funds received. The regulations at 45 CFR 98.11 provide that, in addition to retaining "overall responsibilities" for the administration of the program, the Lead Agency must also (among other things) promulgate all rules and regulations governing the overall administration of the CCDF program.

### Summary of Proposed Changes

**DSSM 11003**, *Determining Technical Eligibility for Child Care Assistance*, is amended to clarify eligibility for subsidized child care services. In order to qualify for child care services, the family must need care for certain reasons. The following reasons are being added to the list of reasons: teen parents enrolled in or attending middle school or high school or parent/caretakers enrolled in and participating in a General Education Diploma (GED) program.

### DSS PROPOSED REGULATION #14-09

#### REVISION:

#### **11003 Determining Technical Eligibility for Child Care Assistance**

45 CFR 98.20

PRWORA 401 and 402

This policy applies to applicants for and recipients of child care assistance.

1. Parents/Caretakers Must Meet Certain Eligibility Criteria

To be technically eligible parents/caretakers must have a need that requires them to be out of the home or reasonably unavailable to provide supervision (e.g., a medical condition, needing rest because of working a third shift, etc.).

A. Parents/Caretakers must be Delaware residents

B. Parents/Caretakers who need services ~~to~~ must meet one of the following:

1. Accept or keep a job
2. Participate in a DSS Employment and Training program
3. Participate in the Transitional Work Program
4. Participate in job search
5. Have a break in education/training
6. Prevent child abuse or neglect as referred by ~~DFS~~ Division of Family Services (DFS)
7. Provide care for the children) when the parents/caretakers have a special need
8. Enrolled and attending middle school or high school
9. Enrolled and participating in a General Education Diploma (GED) program.

2. Children Must Meet Certain Criteria

Children may be eligible if they:

A. Live in the home and are under the age of 13

B. Live in the home and are age 13 to 18 and are physically or mentally incapable of caring for themselves

- C. Are active with and referred by the Division of Family Services
3. Non-Citizens May Qualify for Child Care Assistance  
Non-citizens may qualify if:
- A. At least one U.S. citizen or legal alien lives in the household
- B. Both parents/caretakers meet technical and financial eligibility criteria.
- C. The following aliens qualify for a period of five (5) years from the date of:
1. Obtaining status as a refugee or
  2. Obtaining status as an asylee or
  3. Their deportation is being withheld
- D. They are aliens admitted as permanent residents who have worked ~~40~~ forty (40) qualifying quarters
- E. They, their spouses or unmarried dependent children are honorably discharged veterans or on active military duty.

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d) and 903(e)(2)a;  
(7 **Del.C.** §§901(c & d) & 903(e)(2)a)  
7 **DE Admin. Code** 3521

REGISTER NOTICE #2014 - 03

### 3521 Weakfish Size Limits; Possession Limits; Seasons

**1. TITLE OF THE REGULATION:**

3521 Weakfish Size Limits; Possession Limits; Seasons

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

This action proposes to modify Delaware's commercial weakfish management approach of intermittent net closures from May 1 through June 30 to an uninterrupted closure (all gears) from May 1 through June 2. The amendment proposes a weakfish bycatch allowance during the closure of up to 100 pounds per day or trip for the commercial gill net fishery and accommodates commercial fishing for species other than weakfish (e.g., Atlantic menhaden and black drum). It should be noted that the proposed action will not impact the gill net restrictions established in 7 **Del.C.** §923 and it maintains existing recreational closures, as well as catch limits during the open season in all fisheries. Finally, the action proposes to eliminate mailed notices of net closure dates, as the dates are annually published in the Fishing Guide which is widely available in print and posted online.

The Atlantic States Marine Fisheries Commission (ASMFC) determined that the proposed net closure management strategy is consistent with Amendment III and Addendum IV to Amendment IV of the Interstate Fishery Management Plan for Weakfish. Further, the concept of the proposed action was endorsed by the Tidal Finfish Advisory Council at its January 15, 2014 meeting.

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

None.

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

7 **Del.C.** §901(c & d) and §903(e)(2)a

**5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:**

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to 3521 Weakfish Size Limits; Possession Limits; Seasons will be open May 1, 2014. Individuals may submit written comments regarding the proposed changes via e-mail to 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 22, 2014 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**7. PREPARED BY:**

Stewart Michels      Stewart.Michels@state.de.us      (302) 739-9914  
David E. Saveikis, Director

**3521 Weakfish Size Limits; Possession Limits; Seasons.**

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It ~~shall be~~ is unlawful for any person to possess weakfish, *Cynoscion regalis*, taken with a hook and line, that measure less than thirteen (13) inches, total length.
- 2.0 It ~~shall be~~ is unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than one (1) weakfish in possession during the period beginning at 12:01 AM on ~~May 4~~ June 3 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.
- 3.0 It ~~shall be~~ is unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for fishing equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.
  - 3.1 It ~~shall be~~ is unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit to possess more than one hundred pounds (100 lbs) of weakfish per vessel per day (a day being 24 hours) or trip, whichever is the longer period of time, during the periods January 1 through April 30 and June 3 through December 31.
- 4.0 It ~~shall be~~ is unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than one (1) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of one (1) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.
- 5.0 It is unlawful for any person issued a valid commercial food fishing license to take and reduce to possession any weakfish during the period May 1 through June 2, except a person issued a valid commercial food fishing license and a valid gill net food fishing permit by the Department may retain not more than 100 pounds of weakfish per day or trip (whichever is the longer period of time) as bycatch, provided that the combined weight of all other finfish retained per said day or trip is greater than the combined weight of weakfish retained. [Note: All provisions of 7 **Del.C.** §923 continue to apply.]
- 56.0 It ~~shall be~~ is unlawful for any person, except a person issued a commercial food fishing license and a gill net equipment permit, to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:  
Every weekend day (defined as 12:01 AM on Friday through midnight Sunday) in both May and June, plus contiguous weekdays (defined as 12:01 AM Monday through midnight Thursday) at the beginning of May and the end of June, such that the total number of closure days add up to thirty four (34) days. The exact dates of closures each year shall be ~~mailed in advance to the affected public and~~ published annually in the Delaware Fishing Guide.
- 67.0 The Department shall indicate on a person's food fishing equipment permit for hook and line four (4) specific days of the week during the period ~~May 4~~ June 3 through October 31, selected by said person

when applying for said permit, as to when said permit is valid to take in excess of one (1) weakfish but not more than 100 pounds per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

- 78.0 It shall be ~~is~~ unlawful for any person with a food fishing equipment permit for hook and line to possess more than weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of one (1) weakfish.

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 2002, 2005(a), 2006(d & e)  
(7 Del.C. §§2002, 2005(a), 2006(d & e))

### REGISTER NOTICE #2014 - 04

#### 3801 Shellfish Aquaculture

**1. TITLE OF THE REGULATION:**

3801 Shellfish Aquaculture

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

This action proposes the regulations necessary to provide for a shellfish aquaculture industry in Delaware's Inland Bays. Specifically, this action proposes a structured process and sets conditions for leasing of subaqueous bottom within Delaware's Inland Bays for the culture of bivalve shellfish. The proposed regulations include requirements for lease: application, locations, issuance, marking, renewal, transfer, expiration, termination, condemnation and emergency relocation. The action further proposes measures related to: shellfish aquaculture gear and marking, shellfish nursery permitting and structures, harvester license qualifications, bivalve species authorized for aquaculture, activities within subaqueous lease areas, shellfish aquaculture reporting requirements, and prohibited activities.

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

None.

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

7 Del.C. §§2002, 2005(a), 2006(d & e)

**5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:**

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed addition of a new §3801 Shellfish Aquaculture will be open May 1, 2014. Individuals may submit written comments regarding the proposed addition via e-mail to 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 addition will be held on May 21, 2014 beginning at 6:00 PM at the Watershed Stewardship Building, located at 901 Pilottown Road, Lewes, DE 19958.

**7. PREPARED BY:**

Stewart Michels      Stewart.Michels@state.de.us      (302) 739-9914  
David E. Saveikis, 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:**

**3801 Shellfish Aquaculture**

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

### DIVISION OF FAMILY SERVICES

#### OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code, Chapter 3 (31 Del.C. Ch. 3)  
9 DE Admin. Code 105

#### PUBLIC NOTICE

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

#### Summary

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Requirements for Residential Child Care Facilities and Day Treatment Programs in response to public comments received after the publication of revised regulations in the June 2013, August 2013, and January 2014 *Register of Regulations*.

#### Comments

Because of major revisions to the formatting of these regulations, the previous draft is being deleted and the new draft published here is offered for another period of public comment. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on May 30, 2014.

#### Adoption of Proposed Regulations

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

#### Changes

A summary of major changes include:

- Changes to definitions and terminology made to align these regulations with other OCCL regulations (such as "Working Day" changed to "Business Day"; "Informal Hearing" changed to "Administrative Hearing"; "Regular License" changed to "Annual License")
- Additional definitions added
- In many instances, "this regulation" changed to "these regulations" to reflect the need for a plural form
- Words changed to simply or clarify regulation meaning
- Nutrition guidelines added in an Appendix

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

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

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**PROPOSED REGULATIONS**

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****Board of Charitable Gaming**

Statutory Authority: 28 Delaware Code, Section 1508(a)(2) (28 **Del.C.** §1508(a)(2))  
10 **DE Admin. Code** 103

**PUBLIC NOTICE****103 Regulations Governing Charitable Gambling Other Than Raffles**

The Delaware Board of Charitable Gaming, pursuant to 28 **Del.C.** §1508(a)(2), proposes to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with operational procedures at the Division of Professional Regulation regarding license renewal and disposal of criminal background checks as well as to ensure that the regulations do not conflict with a recently enacted Gaming Statute regarding licensing of third party vendors. See 29 **Del.C.** §1529. Finally, the proposed regulations delete regulations which are redundant of or conflict with the Administrative Procedures Act, Title 29, Chapter 101.

The Board will hold a public hearing on the proposed rule change on June 5, 2014 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Charitable Gaming, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

**103 Regulations Governing Charitable Gambling Other Than Raffles**  
**(Break in Continuity of Sections)****5.0 Equipment and Premises**

- 5.1 Ownership of Equipment. The licensed organization shall conduct games only with equipment owned by it, borrowed from another qualified Sponsoring Organization or ~~which a lessor undertakes to provide by the terms of a written lease~~ leased or borrowed from a licensed third party vendor. The rental fee contained in such a lease shall be a sum certain and shall be commercially reasonable.
- 5.2 Equipment. Equipment used in the conduct of a charitable gaming event must be maintained in good repair and sound working condition. Equipment shall be used and operated so that each player is given an equal opportunity to win.
- 5.3 The function shall be held on premises owned or regularly leased by the applicant. If the applicant desires to hold the function at other premises, a separate written request therefor (together with supporting reasons), shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of a Function on specially leased or donated premises.

**(Break in Continuity of Sections)****13.0 Suspension and Revocation of Licenses**

- 13.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a charitable gaming function pending a hearing, in which case the hearing must be held within five (5) days after such action.
- 13.2 The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the function or to be sent by registered or certified mail to the licensee at the address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 **Del.C.** §10131.
- 13.3 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.

- 13.4 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.
- ~~13.5 Upon a finding of a violation of these rules or of the appropriate statute, a license or permit may be suspended or revoked by the Board. In addition to any other penalty imposed, the Board may declare the violator to be ineligible to apply for a license or permit for a period not to exceed thirty (30) months. Such decision may be extended to include the violator's parent organization, subsidiary organization or any organization having a common parent or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.~~

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

**15.0 Licensure**

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

- 15.6 The Board shall communicate the results of the determination of suitability in writing to the applicant within sixty (60) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If the Board determines that an applicant has satisfied the licensing requirements, the applicant will be issued a license. ~~If an applicant is denied a license, the applicant may appeal for reconsideration as set forth below. If the Board determines that an applicant is not suitable or has not satisfied the licensing requirements, the licensee shall be entitled to a hearing before the Board to be heard upon the qualifications of the applicant and the merits of the application. The burden of proof shall be on the applicant.~~
- ~~15.6.1 Appeal may be initiated by an applicant notified that the license was denied by submitting a request for a hearing to the Board of Charitable Gaming within ten (10) days of receipt of the notice of denial.~~
- ~~15.6.2 The appeal shall be reviewed by the Board and the person shall be given the opportunity to be heard by the Board within sixty (60) days of receipt of the letter of appeal, unless extenuating circumstances require a longer period. The hearing will be held in accordance with the Administrative Procedures Act, 29 Del.C., Ch. 101.~~
- ~~15.6.3 A written decision shall be rendered by the Board within sixty (60) days of the hearing, unless extenuating circumstances require a longer period. All decisions are final and may then be appealed to Superior Court under 29 Del.C. §10142.~~
- ~~15.7 An determined to be unsuitable for licensure pursuant to this procedure shall be prohibited from reapplying for licensure for a period of twelve (12) months.~~
- 15.87 All records pertaining to criminal background checks and suitability determinations shall be maintained in a confidential manner including, but not limited to, the following:
- 15.87.1 Access to criminal background check records, letters of reference accompanying out-of-state criminal background checks and determination of suitability of applicants shall be limited to the Board and designated personnel within the Division;
- 15.87.2 All such records shall be kept in locked cabinets or as digital files; and
- 15.87.3 No information from such records shall be released without the signed release of the individual applicant or officer.
- ~~15.9 All records pertaining to criminal background checks and suitability determinations of applicants for licensure and Board of Charitable Gaming meetings to make suitability determinations shall not be subject to the Delaware Freedom of Information Act, Title 29, Ch. 100.~~
- 15.108 The license shall expire and be renewable every three (3) years. ~~Ninety (90) days prior~~ Prior to expiration, each licensee shall contact the Division of Professional Regulation and submit a new and updated license application form and undergo an investigation as in the original licensing.
- 15.149 Officers of licensees shall notify the Division of Professional Regulation no later than three (3) days after an arrest for any crime, excluding minor traffic violations. The Division will forward this information to the Board and the Board may proceed to determine the person's continuing suitability as a licensee, and may suspend the license until the criminal charges have been resolved.



*(Break in Continuity of Sections)*

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

**103 Regulations Governing Charitable Gambling Other Than Raffles**

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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

**PUBLIC NOTICE**

**1900 Board of Nursing**

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulations 6.5.1.5; 6.5.6.4; 6.5.7.3; and 6.5.7.5 in order to bring the regulations affecting licensure by endorsement into line with Chapter 19, Title 24 as well as other recent changes to the Board's regulations concerning out of state nursing programs.

The Board will hold a public hearing on the proposed regulation change on June 11, 2014 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until June 26, 2014 pursuant to 29 **Del.C.** §10118(a).

**1900 Board of Nursing**

*(Break in Continuity of Sections)*

**6.0 Requirements and Procedures for Licensure**

*(Break in Continuity Within Section)*

**6.5 Licensure by Endorsement**

**6.5.1 All endorsement applicants shall:**

- 6.5.1.1 Submit a completed, signed, and notarized application on a form provided by the Board.
- 6.5.1.2 Remit the required non-refundable fee.
- 6.5.1.3 Attach to the application a photocopy of a current active or inactive license indicating date of expiration.
- 6.5.1.4 Provide official verification of original licensure in another jurisdiction on a form acceptable to the Board.
- 6.5.1.5 ~~Have completed high school or must have passed a nationally standardized test, and be otherwise qualified for licensure.~~
- 6.5.1.65 Request a reference on a form supplied by the Board from:
  - 6.5.1.65.1 the applicant's immediate past employer(s) in the past six months. Such reference(s) should be given by the nursing employer, or if the immediate past employer is not a nursing professional, by the applicant's immediate supervisor (e.g. physician, director, manager). In the case of someone engaged in solo practice or who is self-employed, the reference shall be provided by at least one professional colleague with whom the individual has most recently worked for at least six months in the past five years.
  - 6.5.1.65.2 in the event of no previous nursing employer, the Director of the applicant's approved nursing education program within two years of graduation. Any unsatisfactory reference shall be brought to the attention of the Board for review.

6.5.1.76 If the applicant has not been employed in nursing a minimum of 1000 hours in the past five years or a minimum of 400 hours of nursing practice within the previous two years, the applicant must give evidence of satisfactory completion of an approved refresher program within a two-year period before licensure by endorsement will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional/practical nursing.

6.5.1.87 Submit a completed report on a form provided by the Board office, listing and attesting to the completion of all continuing education requirements for the two years immediately preceding application, unless submitting a refresher course completion certificate.

*(Break in Continuity Within Section)*

6.5.6 Registered Nurses

*(Break in Continuity Within Section)*

6.5.6.4 An applicant for licensure by endorsement must be a graduate of a State Board of Nursing approved school of nursing, have passed the NCLEX-RN, and be otherwise qualified for licensure.

6.5.7 Licensed Practical Nurses

*(Break in Continuity Within Section)*

6.5.7.3 The applicant must be a graduate of a Board approved program for practical nursing.

6.5.7.43 A licensed practical nurse applicant for licensure by endorsement must have passed the NCLEX-PN.

6.5.7.5 An applicant for endorsement must be otherwise qualified for endorsement.

*(Break in Continuity Within Section)*

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

**1900 Board of Nursing**

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**DIVISION OF PROFESSIONAL REGULATION  
Board of Examiners of Psychologists**

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.C.** §3506(a)(1))  
24 **DE Admin. Code** 3500

**PUBLIC NOTICE**

**3500 Board of Examiners of Psychologists**

The Delaware Board of Examiners of Psychologists, pursuant to 24 **Del.C.** §3506(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with operational procedures at the Division of Professional Regulation regarding license renewal; clarify requirements for supervising psychologists to psychological assistants; and enhance continuing education requirements by ensuring that at least ten of the credits are earned in a live setting and clarifying the maximum number of credits which may be earned for alternative eligible credits.

The Board will hold a public hearing on the proposed rule change on June 2, 2014 at 9:00 a.m., in the 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 Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

**3500 Board of Examiners of Psychologists*****(Break in Continuity of Sections)*****2.0 Official Board Office**

The official office of the Board of Examiners shall be in Dover in the Division of Professional Regulation and all correspondence must be addressed to this office in written form (including, electronic form such as email) before official action can be taken. In addition, the Division of Professional Regulation will provide an Administrative Assistant Specialist who will take notes at Board meetings, keep the records for the Board, and serve as a liaison between the Board and members of the public who have questions for the Board. The Division of Professional Regulation will also set fees to defray the cost of regulation.

***(Break in Continuity of Sections)*****9.0 Psychological Assistants*****(Break in Continuity Within Section)***

9.6 Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist ~~should~~ must be familiar with each patient/ client seen by the psychological assistant and with the ongoing progress of treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of relicensure and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning.

9.6.1 The Board will consider requests to substitute group supervision for some portion of the one-to-one, face-to-face supervision requirement. A supervising psychologist must petition the Board and show good cause for this substitution. If the supervising psychologist's request is granted, no more than five (5) psychological assistants may meet with the supervising psychologist at one time and there must be two (2) hours of group supervision in place of every one (1) hour of individual supervision. All psychological assistants must have at least one (1) hour of individual supervision per week. The Board reserves the right to withdraw their permission for the substitution at any time.

9.7 Psychological Assistants are to work in the office of the licensed psychologist so as to have regular and continued supervision. When the licensed psychologist is not in the office, he or she ~~is expected to~~ must provide clear contingency plans for consultation for the psychological assistant. It is assumed that the psychologist will be available to the psychological assistant under most circumstances; therefore, arrangements in which the supervising psychologist is employed full time elsewhere will not be approved, unless it can be demonstrated that there will be adequate supervision and contingency coverage of the psychological assistant. Supervising psychologists ~~will be expected to~~ must describe in their application for the psychological assistant how much supervision they will provide and how that supervision will be provided.

***(Break in Continuity Within Section)*****10.0 Continuing Education**

10.1 Hours required.

- 10.1.1 The biennial licensing period begins August 1 of each odd-numbered year and ends July 31 of the next odd-numbered year.
- 10.1.2 Psychologists must obtain 40 hours of continuing education during each biennial licensing period in order to be eligible for renewal of license. A minimum of ten hours of continuing education credit must be obtained via face to face or live webinar. Effective as of the license renewal period beginning August 1, 2009, all psychologists must complete three hours of continuing education in ethics.
- 10.1.3 Psychological assistants must obtain 20 hours of continuing education during each biennial licensing period for re-registration. Effective as of the license renewal period beginning August 1, 2009, all psychological assistants must complete three hours of continuing education in ethics.
- 10.1.4 A “**continuing education hour**” is defined as one sixty-minute period, unless otherwise specified.

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

- 10.6 Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

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

- 10.6.5 Authorship, editing or reviewing of a publication. Credit may be earned only in the year of the publication and is limited to the following:
  - 10.6.5.1 Author of a book (maximum of 40 30 CE hours per renewal period)
  - 10.6.5.2 Author of a book chapter or journal article (maximum of 15 CE hours per renewal period)
  - 10.6.5.3 Editor of a book (maximum of 25 CE hours per renewal period)
  - 10.6.5.4 Editor of or reviewer for a scientific or professional journal recognized by the Board (maximum 25 CE hours per renewal period)
  - 10.6.5.5 Proof of the above (10.6.5.1 - 10.6.5.4) must include the submission of the work or documentation of authorship by copy of title pages.
- 10.6.6 Preparing and presenting a scientific or professional paper or poster at a meeting of a professional or scientific organization. Up to 2 hours may be claimed for a poster presentation. Up to 3 hours of credit may be claimed for each hour of paper presentation, with a maximum of 8 CE hours per paper. Listing within the program and certificate letters of attendance at the meeting is appropriate documentation for both a paper or poster presentation.
- 10.7 The Board reserves the right to reject any CE ~~program~~ credit, if it is outside the scope of the practice of psychology.
- 10.8 The following will not be considered for credit: service to organizations; attending business meetings of professional organizations; business management or office administration courses; group supervision; or case conferences.

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

### **13.0 License Renewal**

- 13.1 Renewal notices will be mailed to the current address on file in the Board's records in a timely fashion to all psychologists and psychological assistants who are currently licensed or registered. It shall be the responsibility of each psychologist and psychological assistant to advise the Board, in writing, of a change of name or address.
- 13.2 Continuing education requirements must be fulfilled as detailed in Section 10.0 of the Rules and Regulations ~~and submitted along with the established fee for renewal to be approved.~~ The Board may, in its discretion, grant a license renewal under the terms of a continuing education hardship extension pursuant to rule 10.3.
- 13.3 If a psychologist or a psychological assistant fails to renew or obtain a hardship exception by July 31, he or she may renew at any time until August 31 of that same year, upon payment of a late fee. In accord with Section 3507(b), whenever a license to practice or registration has expired, it is unlawful for the licensee/registration to practice while the license or registration is expired.

# PROPOSED REGULATIONS

- 13.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 10.0.
- 13.4.1 Attestation ~~may be~~ is completed electronically if the renewal is accomplished online. ~~In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~
- 13.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 7.4.
- 13.5 Random post-renewal audits will be performed by the Board to ensure compliance with the CE requirements.
- 13.5.1 The Board will notify licensees within sixty (60) days after the end of a license renewal period (July 31 of odd-numbered years) that they have been selected for audit.
- 13.5.2 Licensees selected for random audit shall be required to submit verification within ten ~~(10)~~ days of ~~receipt of the date on the~~ notification of selection for audit.
- 13.5.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Section 10.0, which may include, but is not limited to, the following information:
- 13.5.3.1 Appropriate documentation as outlined in Rule 10.6; and/or
- 13.5.3.2 Proof of attendance. While course brochures may be used to verify continuing education hours, they are not considered to be acceptable proof for use of verification of course attendance;
- 13.5.3.3 Date and location of CE course;
- 13.5.3.4 Instructor of CE course;
- 13.5.3.5 Sponsor of CE course;
- 13.5.3.6 Title of CE course; and
- 13.5.3.7 Number of hours of CE course.
- 13.5.4 The Board shall review all documentation submitted by licensees pursuant to the CE audit. If the Board determines that the licensee has met the CE requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the CE requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the CE requirements. Unjustified noncompliance with the CE requirements set forth in these rules and regulations may result in the licensee being subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §3516.
- 13.5.4.1 Make-Up of Disallowed Hours - In the event that the board disallows certain continuing education credits, the licensee shall have three months after the date of the Board's disallowance notice in order to complete the remaining required credits. These "make-up" credits may not be used toward the subsequent renewal period.

*(Break in Continuity of Sections)*

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

**3500 Board of Examiners of Psychologists**

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**DIVISION OF PROFESSIONAL REGULATION  
Board of Cosmetology and Barbering**

Statutory Authority: 24 Delaware Code, Section 5106(a)(1) (24 **Del.C.** §5106(a)(1))  
24 **DE Admin. Code** 5100

**PUBLIC NOTICE**

**5100 Board of Cosmetology and Barbering**

Pursuant to 24 **Del.C.** §5106(a)(1), the Board of Cosmetology and Barbering has proposed revisions to its rules and regulations.

A public hearing will be held on June 30, 2014 at 9:00 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 Cosmetology and Barbering, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be July 15, 2014, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting on July 28, 2014, at which time the Board will decide whether to adopt the revisions as proposed.

The proposed revisions address the licensing of mobile cosmetology shops or salons. The amendments permit the licensing of such establishments while implementing requirements to provide protection to the public.

**5100 Board of Cosmetology and Barbering**  
*(Break in Continuity of Sections)*

**8.0 Licensure of Cosmetology Shops and Schools [24 Del.C. §§5107(7), 5107(15), 5103(e), 5118, 5124(5)]**

- 8.1 "Cosmetology shop" means any place or part thereof wherein cosmetology, barbering, electrology, nail technology, aesthetics, or any part of their practices, are performed for compensation, whether or not the establishment holds itself out as a cosmetology shop.
- 8.2 "School of cosmetology," "school of barbering," "school of electrology," "school of nail technology," and "school of aesthetics" means any place or part thereof where such practices are taught, whether or not such place holds itself out as a school.
- 8.43 All cosmetology shops and schools shall be licensed by the Board.
- 8.24 Where the shop or school closes or has a change of name, address or ownership, the shop or school shall submit a new application to the Board.
- 8.35 A person licensed by the Board as a cosmetologist, master barber, barber, electrologist, nail technician, aesthetician or instructor shall not work in a cosmetology shop, barbershop, nail salon, electrology establishment, aesthetics shop, school of cosmetology, barbering, nail technology, electrology or aesthetics unless such establishment has been licensed by the Board.
- 8.6 **Mobile salons**
- 8.6.1 "Mobile salon" means a cosmetology shop in a self-contained facility that may be moved, towed or transported from one location to another and in which cosmetology, barbering, electrology, nail technology or aesthetics is practiced.
- 8.6.2 Mobile salons shall be subject to all requirements of the Board's licensing law, Chapter 51 of Title 24 of the Delaware Code, and the Board's rules and regulations.
- 8.6.3 In addition to any other information required in the application for licensure, a mobile salon applicant shall provide:
- 8.6.3.1 A permanent business address at which records of appointments, itineraries, license numbers of employees, and vehicle identification numbers shall be kept and made available for inspection by Division personnel, and at which correspondence from the Board may be received. A post office box is not acceptable.
- 8.6.3.2 In the event that the mobile unit(s) are not located at the permanent business address, a permanent physical address from which the mobile unit is dispatched and to which the mobile unit is returned when not in use. A post office box is not acceptable.
- 8.6.3.3 The mobile salon's telephone number, or other means of telecommunication, by which it can be contacted by Division personnel.
- 8.6.3.4 All motor vehicles' identification numbers.
- 8.6.4 Prior to the beginning of each month, each mobile salon license holder shall file with the Board a written monthly itinerary which lists the locations where and the dates and hours when the mobile

# PROPOSED REGULATIONS

- salon will be operating. The monthly itinerary shall include the vehicle's identification number and the mobile salon's telephone number. Any changes to the itinerary shall be submitted to the Board in the form of an amended itinerary at least 24 hours in advance of the scheduled appointment at which services will be provided. Each salon shall be operated only at the times and places specified in the monthly itinerary.
- 8.6.5 All mobile salons and associated business locations shall be subject to inspection by Division and Department of Public Health personnel.
- 8.6.6 The mobile salon's professional license shall be prominently displayed in the interior of the salon.
- 8.6.7 The salon name and license number shall be in lettering at least five inches in height and shall be visibly displayed and clearly legible on at least two exterior sides of each mobile salon.
- 8.6.8 No service may be performed on a client in a moving vehicle. Services shall be performed in a mobile salon that is parked in a safe, accessible, and legal parking spot.

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

**5100 Board of Cosmetology and Barbering**

## PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))  
26 DE Admin. Code 3001

### ORDER NO. 8545

IN THE MATTER OF THE ADOPTION OF RULES  
AND REGULATIONS TO IMPLEMENT THE PROVISIONS  
OF 26 DEL.C. CH. 10 RELATING TO THE CREATION OF  
A COMPETITIVE MARKET FOR RETAIL ELECTRIC  
SUPPLY SERVICE (OPENED APRIL 27, 1999;  
RE-OPENED JANUARY 7, 2003; RE-OPENED  
SEPTEMBER 22, 2009; RE-OPENED SEPTEMBER  
7, 2010; RE-OPENED JULY 17, 2012

PSC REGULATION DOCKET NO. 49

**AND NOW**, this 15<sup>th</sup> day of April 2014, the Delaware Public Service Commission (the "Commission") determines and orders the following:

**WHEREAS**, the Commission has promulgated certain regulations pertaining to certification of electric suppliers entitled "Rules for Certification and Regulation of Electric Suppliers." See 26 **DE Admin. Code**. §3001 (the "Supplier Rules"); and

**WHEREAS**, the Supplier Rules have been amended several times since their original passage in 1999. (PSC Order Nos. 538 (Oct. 1, 1999), 7023 (Sept. 5, 2006), 7078 (Jan. 1, 2007), 7435 (Sept. 2, 2008) and 7984 (June 7, 2011); and

**WHEREAS**, by Order No. 8187 dated July 17, 2012, the Commission re-opened PSC Regulation Docket 49 to consider further revisions to the existing Supplier Rules set for the in 26 **DE Admin. Code**. §3001; and

**WHEREAS**, by Order No. 8424 dated July 30, 2013, the Commission authorized the publication in the *Delaware Register of Regulations* of the proposed amendments to the Supplier Rules; and

**WHEREAS**, the Commission received several comments on the proposed amendments; and

**WHEREAS**, the Commission now proposes to modify the Supplier Rules to reflect the comments received; and

**WHEREAS**, the Commission believes that the proposed revised regulation should be published in the *Delaware Register of Regulations* to provide public notice of the rulemaking to develop final regulations;

**NOW, THEREFORE, IT IS HEREBY ORDERED** BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That, for the reasons set forth in PSC Order No. 8187 and the body of this Order, the Commission proposes to revise the Supplier Rules as set forth herein in Exhibit "A".

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the May 2014 Delaware *Register of Regulations* a copy of this Order; a copy of the Supplier Rules, showing the proposed changes (Exhibit "A"); and a copy of the Notice of Proposed Rulemaking attached hereto as Exhibit "B".

3. That the Secretary shall cause the Notice of Proposed Rulemaking attached as Exhibit "B" to be published in The News Journal and the Delaware State News newspapers on or before May 1, 2014. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; (e) the Retail Energy Supply Association; (f) NRG Energy, Inc.; (g) all members of the workgroup formed in accordance with PSC Order No. 8187; (h) Senator Harris B. McDowell, III; (i) Representative Melanie George-Smith and (j) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

4. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before June 1, 2014. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to the Supplier Rules on Thursday, June 26, 2014 beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 **Del.C.** §502 and 29 **Del.C.** §10116. Depending on the nature and extent of any comments received regarding the proposed revisions to the Supplier Rules, the Commission may then determine that it is necessary to appoint a Hearing Examiner.

6. That pursuant to 26 **Del.C.** §1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they will be charged the costs incurred in connection with this proceeding under the provisions of 26 **Del.C.** §114(b)(1).

7. 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:

Dallas Winslow, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

**NOTICE OF PROPOSED RULE-MAKING AMENDING "RULES FOR CERTIFICATION AND REGULATION OF ELECTRIC SUPPLIERS"**

**TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, RETAIL ELECTRIC CUSTOMERS AND OTHER INTERESTED PERSONS**

In 1999 the Delaware Public Service Commission ("PSC") has promulgated certain regulations (pertaining to certification of electric suppliers in 26 **DE Admin. Code.** §3001, now entitled "Rules for Certification and Regulation of Electric Suppliers ("Supplier Rules"). The PSC has revised the Supplier Rules several times since then.

The PSC now proposes to revise the Supplier Rules. The purpose of the proposed revisions are to ensure electric choice for customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket 10-2; to provide additional protection for customers; to require electric



suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to customers to provide electric supply services; to clarify sections of the Supplier Rules; and to make the certification process for electric suppliers more uniform. Pursuant to PSC Order No. 8187 a workgroup was formed and met several times to address the issues above.

The PSC is soliciting comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before June 1, 2014. You should file such materials with the PSC at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware, 19904  
Attn: Reg. Doc. 49

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-ROM or sent as an attachment to an e-mail addressed to [psc@state.de.us](mailto:psc@state.de.us), include "Reg. Doc. 49" as the subject of the email. The Commission encourages the public to submit written comments on or before June 1, 2014, but the last date to submit written comments will be on June 8, 2014.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on June 26, 2014 at 1:00 P.M. at the PSC's office at the address set forth above.

You may review PSC Order No. 8545 (April 15, 2014) (the "Order") and the proposed revised Supplier Rules in the May 2014 issue of the Delaware *Register of Regulations*. You may also review the Order and the proposed revised Supplier Rules at the PSC's website located at <http://depssc.delaware.gov/electric.shtml>.

Any materials submitted in connection with the proposed revised Supplier Rules will be available for public inspection and copying (to the extent they are "public records" under the Freedom of Information Act, 29 **Del.C.** §10002(g)) at the PSC's Dover office identified above during normal business hours. The fee for copying is \$.10 per page, with the first 20 pages being free of charge. If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the Freedom of Information Act Request Form on the PSC's website, <http://depssc.delaware.gov/default.shtml>. The PSC will respond to your request in accordance with the Freedom of Information Act, 29 **Del.C.** ch. 100. The Regulations may also be reviewed by appointment at the office of the Public Advocate, 820 N. French Street, 4th Floor, Carvel State Office Building, Wilmington, DE, 19801. The Regulations will also be available on the PSC's website: <http://depssc.delaware.gov/electric.shtml>.

Any individual with disabilities who wishes to review submissions or to participate in this docket should contact the PSC to discuss any auxiliary aids or services to facilitate such review or participation. Such contact may be in person, in writing, by telephone, e-mail, or by other means.

If you have questions about this matter, you may call the PSC at 1-800-282-8574 (toll-free in Delaware) or 302-736-7500 (voice and text telephone). You may also send questions regarding this matter by e-mail addressed to [psc@state.de.us](mailto:psc@state.de.us), please include "Reg. Doc. 49" as the subject of the email.

### **3001 Rules for Certification and Regulation of Electric Suppliers**

Effective: ~~July 10, 2014~~ August 1, 2014

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

**[3001 Rules for Certification and Regulation of Electric Suppliers](#)**

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## DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 132(e), 507, 508 and 29 Delaware Code, Section 8404(8) (17 **Del.C.** §§132(e), 507, 508; 29 **Del.C.** §8404(8))  
2 DE Admin. Code 2309

### PUBLIC NOTICE

#### **2309 Standards and Regulations for Subdivision Streets and State Highway Access**

##### **Background**

As authorized under 17 **Del.C.** §§132(e), 507, 508, and 29 **Del.C.** §8404(8), inter alia, the Delaware Department of Transportation, ("DelDOT"), through its Division of Planning and Public Policy, seeks to adopt significant general revisions to its existing regulations regarding subdivisions streets and state highway access, not least of which to broaden the title of the regulations to "Development Coordination Manual," among other changes.

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

Almost all of the new suggested text should be considered regulatory. Those portions of the revised Section 2309 that are intended to be relied upon as only guidance are clearly identified as such.

##### **Public Comment Period**

DelDOT will take written comments on these proposed general revisions to Section 2309 of title 2, Delaware Administrative Code, from May 1, 2014 through June 30, 2014. In addition, in the June 1 Delaware Register, and in other publications, DelDOT will announce the location, date, and time for a public workshop on the proposed revisions.

Any questions or comments regarding this document should be directed to:

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

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

- [\*\*2309 Subdivision Streets and State Highway Access Preface\*\*](#)
- [\*\*2309 Subdivision Streets and State Highway Access Chapter 1\*\*](#)
- [\*\*2309 Subdivision Streets and State Highway Access Chapter 2\*\*](#)
- [\*\*2309 Subdivision Streets and State Highway Access Chapter 3\*\*](#)
- [\*\*2309 Subdivision Streets and State Highway Access Chapter 4\*\*](#)
- [\*\*2309 Subdivision Streets and State Highway Access Chapter 5\*\*](#)
- [\*\*2309 Subdivision Streets and State Highway Access Chapter 6\*\*](#)
- [\*\*2309 Subdivision Streets and State Highway Access Chapter 7\*\*](#)
- [\*\*2309 Subdivision Streets and State Highway Access Chapter 8\*\*](#)

## 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.

## DELAWARE RIVER BASIN COMMISSION

## ORDER

**Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Revise the Human Health Water Quality Criteria for PCBs in Zones 2 through 6 of the Delaware Estuary and Bay**

**Proposed:** Delaware Register of Regulations (17 DE Reg. 143 (08/01/2013)) on August 1, 2013.

**Adopted:** December 4, 2013

**Authority:** 53 Delaware Laws, Chapter 71, Approved May 26, 1961 (*Delaware River Basin Compact*).

**Effective Date:** Thirty (30) days from publication of the corresponding notice of final rulemaking in the Federal Register.

**Expiration Date:** N/A

The Delaware River Basin Commission is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states – Delaware, New Jersey, New York and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. The DRBC is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the State of Delaware in accordance with Section 14.2 of the *Delaware River Basin Compact*.

**Summary:** By Resolution No. 2013-8 on December 4, 2013, the Delaware River Basin Commission approved amendments to the Commission's *Water Quality Regulations, Water Code and Comprehensive Plan* to establish a uniform water quality criterion of 16 picograms per liter for polychlorinated biphenyls (PCBs) in the Delaware Estuary and Bay, DRBC Water Quality Management Zones 2 through 6, for the protection of human health from carcinogenic effects.

**Supplementary Information:** Notice of the proposed amendments appeared in the *Delaware Register of Regulations* (17 DE Reg. 143) on August 1, 2013, as well as in the *Federal Register* (78 FR 47241) on August 5, 2013, the *New Jersey Register* (45 N.J.R. 1907) on August 5, 2013, the *New York State Register* (page 3) on August 14, 2013, and the *Pennsylvania Bulletin* (43 Pa.B. 4740) on August 17, 2013. Notice of the proposed

changes also was published on the Commission's web site on August 2, 2013. A public hearing was held on September 10, 2013 and written comments were accepted through September 20, 2013.

The uniform water quality criterion of 16 picograms per liter for polychlorinated biphenyls (PCBs) in the Delaware Estuary and Bay for the protection of human health from carcinogenic effects is the product of more than a decade of data-gathering, assessment, debate and consensus-building involving dischargers, regulators, scientists, policy-makers and other stakeholders from across the region. The criterion is the product of a rigorous application of the most current available data and methodology, including site-specific data on fish consumption, site-specific bioaccumulation factors, and the current U.S. Environmental Protection Agency (EPA) methodology for the development of human health criteria for toxic pollutants (see EPA-822-B-00-004, October 2000). The criterion replaces the Commission's current PCB criteria for the Estuary, which date from 1996. It supersedes less stringent state criteria in effect for Delaware Bay and eliminates the undue complexity associated with the application in tidal waters of criteria that vary by water quality zone.

In addition to proposing the new criterion, the Commission's notice of proposed rulemaking in August 2013 invited comment on a draft strategy for implementing the criterion for both point and non-point sources. Developed by the DRBC in partnership with the environmental agencies of the states of Delaware, New Jersey and Pennsylvania, EPA Regions II and III and EPA Headquarters (collectively, "the co-regulators"), the draft strategy sets forth detailed approaches for reducing PCB loadings from point and non-point sources over the coming decades. A key objective of the strategy is to provide uniformity and a degree of certainty to National Pollutant Discharge Elimination System (NPDES) permits that will be issued by the states bordering the Estuary and Bay. Notably, no Commission action on the draft implementation strategy was or is proposed. As DRBC's Notice of Proposed Rulemaking indicated, new total maximum daily loads ("Stage 2 TMDLs") for PCBs in the Delaware Estuary and Bay are expected to be established by EPA on behalf of the Estuary states following publication of this Final Rule. The strategy document will be included as an Appendix to the Stage 2 TMDL report when issued. Until Stage 2 TMDLs based upon the new criterion are established, the NPDES permitting authorities have indicated they intend to apply the existing permit approach, which was published as an appendix to the Stage 1 TMDLs for PCBs established by EPA Regions II and III for the Delaware Estuary in 2003 and for the Delaware Bay in 2006.

**Rule Text:** The affected section of the Commission's *Water Code and Water Quality Regulations* is Section 3.30, Table 6: Stream Quality Objectives for Carcinogens for the Delaware River Estuary and Bay. Specifically, in accordance with this Final Rule, for the parameter "PCBs (Total)", in the column headed "Freshwater Objectives (ug/l): Fish & Water Ingestion," the number "0.0000444" is replaced by "0.000016"; in the column headed "Freshwater Objectives (ug/l): Fish Ingestion Only," the number "0.0000448" is replaced by "0.000016"; and in the column headed "Marine Objectives (ug/l): Fish Ingestion Only," the number "0.0000079" is replaced by "0.000016".

**Related Materials, Contact:** The complete text of Resolution No. 2013-8, the *Water Code*, the *Administrative Manual Part III - Water Quality Regulations*, a basis and background document setting forth the technical basis for the new criterion, the response-to-comment document addressing comments received by DRBC on the proposed criterion and the draft implementation strategy, and additional documents concerning the control of PCBs in the Delaware Estuary all are available on the Commission's website, DRBC.net. Copies also may be obtained from the Commission's Secretary and Assistant General Counsel by phoning 609-883-9500, ext. 203 or 224. A charge for printing and mailing may apply.

Dated: April 8, 2014

Pamela M. Bush, Esq.  
Commission Secretary and Assistant General Counsel

Text of final amendments:

It is proposed to amend the Comprehensive Plan, Article 3 of the Water Quality Regulations (WQR) and Article 3 of the Water Code (WC) as set forth below. Editor's instructions are denoted by underscore thus. Added text is denoted by boldface **thus**.

Amend Table 6 of Section 3.30 of Article 3 of the WQR and WC as follows:

For the parameter "PCBs (Total)", in the column headed "Freshwater Objectives (ug/l): Fish & Water Ingestion,"

remove the number "0.0000444" and insert "**0.000016**"; in the column headed "Freshwater Objectives (ug/l): Fish Ingestion Only," remove the number "0.0000448" and insert "**0.000016**"; and in the column headed "Marine Objectives (ug/l): Fish Ingestion Only," remove the number "0.0000079" and insert "**0.000016**".

## DELAWARE RIVER BASIN COMMISSION

### ORDER

#### Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for pH

**Proposed:** Delaware *Register of Regulations (17 DE Reg. 365 (10/01/2013))* on October 1, 2013.

**Adopted:** December 4, 2013 by the Delaware River Basin Commission, Pamela M. Bush, Esq., Secretary and Assistant General Counsel

**Filed:** April 8, 2014.

**Authority:** 53 Delaware Laws, Chapter 71, Approved May 26, 1961 (*Delaware River Basin Compact*).

**Effective Date:** Thirty (30) days from publication of the corresponding notice of final rulemaking in the Federal Register.

**Expiration Date:** N/A

The Delaware River Basin Commission is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states – Delaware, New Jersey, New York and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. The DRBC is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the State of Delaware in accordance with Section 14.2 of the *Delaware River Basin Compact*.

**Summary:** By Resolution No. 2013-9 on December 4, 2013, the Delaware River Basin Commission ("DRBC" or "Commission") approved amendments to the Commission's *Water Quality Regulations, Water Code and Comprehensive Plan* to update the Commission's stream quality objectives for pH in interstate tidal and non-tidal reaches of the main stem Delaware River.

**Supplementary Information:** Notice of the proposed amendments appeared in the Delaware *Register of Regulations (17 DE Reg. 365)* on October 1, 2013, as well as the *Federal Register (78 FR 58985)* on September 25, 2013, the *New Jersey Register (45 N.J.R. 2201)* on October 7, 2013, the *New York State Register (page 13)* on October 9, 2013, and the *Pennsylvania Bulletin (43 Pa.B. 5995)* on October 12, 2013. Notice of the proposed changes also was published on the Commission's web site on September 20, 2013. A public hearing was held on October 24, 2013 and written comments were accepted through November 21, 2013. No written or oral comments were received.

The Commission's current criteria for pH in interstate streams were adopted in 1967. Today, these criteria are inconsistent with scientists' increased understanding of natural fluctuations in freshwater and saltwater pH levels and with modern applications of pH criteria. The amendments approved by the Commission on December 4, 2013 will minimize regulatory inconsistencies and better address natural pH cycles in the main stem Delaware River. First, they will increase from 6.0 to 6.5 the lower threshold of the range of acceptable pH conditions in non-tidal zones of the main stem – DRBC Water Quality Zones 1A through 1E. Second, they will add a clause to the pH criteria for all interstate tidal and non-tidal water quality zones, recognizing natural deviations outside the 6.5 to 8.5 pH range. In accordance with these changes, the pH criteria for Water Quality Zones 1A through 1E (the non-tidal main stem) and 2 through 6 (the tidal main stem and tidal portions of tributaries) will read, "Between 6.5 and 8.5 inclusive, unless outside this range due to natural conditions."

**Rule Text:** The affected sections of the Commission's *Water Code and Water Quality Regulations* consist of subsection C.3 of each of sections 3.20.2 through 3.20.6, respectively, for Water Quality Zones 1A through 1E (non-tidal main stem); and sections 3.30.2 through 3.30.6, respectively, for Water Quality Zones 2 through 6 (tidal main stem and tidal portions of tributaries). In each of these sections, the text shall be amended to read, "Between 6.5 and 8.5 inclusive, unless outside this range due to natural conditions."

(The affected sections relating to Water Quality Zones 1A through 1E were incorrectly identified in the Notice of Proposed Rulemaking as sections 2.20.2 through 2.20.6 of the *Water Code and Water Quality Regulations*. Sections 2.20.2 through 2.20.6 of the *Water Code* are part of an unrelated article; no sections numbered 2.20.2 through 2.20.6 exist in the *Water Quality Regulations*.)

**Related Materials, Contact:** The complete text of Resolution No. 2013-9, the *Water Code*, the *Administrative Manual Part III - Water Quality Regulations*, a basis and background document setting forth the technical basis for the amendments, and additional documents concerning pH criteria for interstate non-tidal and tidal reaches of the main stem Delaware River are available on the Commission's website, DRBC.net. Copies also may be obtained from the Commission's Secretary and Assistant General Counsel by phoning 609-883-9500, ext. 203 or 224. A charge for printing and mailing may apply.

Dated: April 8, 2014  
Pamela M. Bush, Esq.  
Commission Secretary and Assistant General Counsel

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## DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

### ORDER

#### 501 Harness Racing Rules and Regulations

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on February 11, 2014, the Commission makes the following findings and conclusions:

#### SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rules in Section 3 and Section 5; Rule 7.6.13.1.16 and 7.6.13.1.17. Rules in Section 8 including Rules 8.3.5.2, 8.5.5.17, 8.6.2.3 and 8.6.2.5 in the January 1, 2014 *Register of Regulations* (Volume 17, Issue 7) and for two consecutive weeks in January in *The News Journal* and *Delaware State News* 01/12/14 & 01/26/14. The Commission proposed to update DHRC Rules in Section 3 and Section 5. Rule 7.6.13.1.16 and 7.6.13.1.17. Rules in Section 8 including Rules 8.3.5.2, 8.5.5.17, 8.6.2.3 and 8.6.2.5 after Rules Committee review.

2. The Commission received no written comments. The Commission held a public hearing on February 11, 2014, in which no public comments were made.

#### FINDINGS OF FACT AND CONCLUSIONS

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

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

5. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on May 1, 2014.

**IT IS SO ORDERED** this 11th day of February 2014.

Beverly H. (Beth) Steele, Chairman  
Jack Berberian, Commissioner

George P. Staats, Commissioner  
Patt Wagner, Vice Chairman



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**FINAL REGULATIONS**

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Stephanie Liguori, Commissioner

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2014 issue of the *Register* at page 679 (17 DE Reg. 679). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**501 Harness Racing Rules and Regulations**

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**HARNES RACING COMMISSION**

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

**ORDER****501 Harness Racing Rules and Regulations**

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on March 11, 2014, the Commission makes the following findings and conclusions:

**SUMMARY OF THE EVIDENCE**

1. The Commission posted public notice of the proposed amendments to DHRC Rule 6.1.2.2, Section 7 including Rules 7.3.5, 7.6.13.14.1.1, 7.6.13.14.1.1.1, 7.6.13.14.1.3, 7.6.13.14.1.4 and 7.6.13.14.2.6 in the February 1, 2014 *Register of Regulations* (Volume 17, Issue 8) and for two consecutive weeks in February in *The News Journal* and *Delaware State News* 02/09/14 & 02/23/14. The Commission proposed to update DHRC Rule 6.1.2.2, Section 7 including Rules 7.3.5, 7.6.13.14.1.1, 7.6.13.14.1.1.1, 7.6.13.14.1.3, 7.6.13.14.1.4 and 7.6.13.14.2.6 after Rules Committee review.

2. The Commission received no written comments. The Commission held a public hearing on March 11, 2014, in which no public comments were made.

**FINDINGS OF FACT AND CONCLUSIONS**

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

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

5. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on May 1, 2014.

**IT IS SO ORDERED** this 11th day of March 2014

Beverly H. (Beth) Steele, Chairman

Jack Berberian, Commissioner

George P. Staats, Commissioner

Patt Wagner, Vice Chairman

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2014 issue of the *Register* at page 810 (17 DE Reg. 810). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**501 Harness Racing Rules and Regulations**

## THOROUGHBRED RACING COMMISSION

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

### ORDER

#### 1001 Thoroughbred Racing Rules and Regulations

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

1. Pursuant to its statutory authority, the Commission proposed for adoption revisions to the Commission's Regulations 9.2.2.3, 15.1.3.1.3, 15.17.1, 15.18, and 15.19. Other regulations issued by the Thoroughbred Racing Commission are not affected by this Order.

2. A copy of the proposed regulations was published in the March 1, 2014 edition of the Delaware *Register of Regulations* and has been available for inspection in the office of the Commission at 777 Delaware Park Boulevard, Wilmington, Delaware 19804 during regular office hours.

3. The Commission did not receive any written comments on the proposed regulations during the 30 day period following publication of the proposed regulations on March 1, 2014.

4. The Commission determined that certain non-substantive changes to the proposed regulations are appropriate to provide accurate references to incorporated rules of the Association of Racing Commissioners International and to provide for consistency among the regulatory sections being amended with such changes marked in bold brackets below.

5. THEREFORE, IT IS ORDERED, that the proposed regulations are adopted and shall become effective May 11, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

#### 1001 Thoroughbred Racing Rules and Regulations (Break in Continuity of Sections)

#### 15.0 Medication; Testing Procedures

15.1 Prohibition and Control of Medication:

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

15.1.3 Foreign Substances:

15.1.3.1 No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.1.3.1.3:

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

15.1.3.1.3 A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the ~~Veterinary Chemist Advisory Committee of the National Association of State Racing Commissioners~~ and approved by the Commission ~~[Racing Medication and Testing Consortium (RMTC) Association of Racing Commissioners International (ARCI)]~~. The Commission hereby adopts by reference the ~~[RMTC Thresholds for Environmental Contaminants as amended December 2013]~~ **ARCI Controlled Therapeutic Medication Schedule, Version 2.1**. If there is any inconsistency between the Commission's regulations and the **ARCI Controlled Therapeutic Medication Schedule**, the provisions of the Commission's regulations shall prevail.] Androgenic-Anabolic Steroids are subject to the provisions of Rule 15.17.

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

15.17 Androgenic-Anabolic Steroids

15.17.1 ~~No Androgenic-Anabolic Steroids shall be permitted in test samples collected from racing horses except for residues of the major metabolite of stanozolol, nandrolone, and the naturally occurring substances, boldenone and testosterone, at concentrations less than the indicated thresholds:~~



# FINAL REGULATIONS

The Commission hereby adopts by reference the Androgenic-Anabolic Steroids Rule, including the plasma thresholds, of the ~~[Racing Medication and Testing Consortium (RMTC) as amended December 2013]~~ Association of Racing Commissioners International (ARCI) (ARCI-011-020, Part I, December 2013). If there is any inconsistency between the Commission's regulations and the ARCI Androgenic-Anabolic Steroids Rule, the provisions of the Commission's regulations shall prevail.]

*(Break in Continuity Within Section)*

**15.18 ~~[Association of Racing Commissioners International Model Rules for Uniform Medication and Drug Testing~~ ARCI Uniform Classification Guidelines for Foreign Substances]**

**15.18.1** ~~The Commission hereby adopts by reference the [Association of Racing Commissioners International (ARCI) Model Rules for Uniform Medication and Drug Testing as amended December 2013]~~ ARCI Uniform Classification Guidelines for Foreign Substances, Version 7.0, January 2014]. If there is any inconsistency between the Commission's regulations and the ~~[ARCI Model Rules for Uniform Medication and Drug Testing~~ ARCI Uniform Classification Guidelines for Foreign Substances], the provisions of the Commission's regulations shall prevail.

**15.19 ARCI Multiple Medications Violations Penalties**

**15.19.1** The Commission hereby adopts by reference the Association of Racing Commissioners International (ARCI-011-020, [Part B.(13), December 2013]) Multiple Medications Violations Penalties ~~[as amended December 2013]~~. If there is any inconsistency between the Commission's regulations and the ARCI Multiple Medications Violations Penalties, the provisions of the Commission's regulations shall prevail].

\*Please note that no additional changes were made to the regulation as originally proposed and published in the March 2014 issue of the *Register* at page 882 (17 DE Reg. 882). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1001 Thoroughbred Racing Rules and Regulations**

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## DEPARTMENT OF ELECTIONS FOR NEW CASTLE COUNTY

Statutory Authority: 29 Delaware Code, Section 10003(b) (29 Del.C. §10003(b))

### ORDER

**1600 Policies and Procedures Regarding FOIA Requests**

AND NOW, this 21st day of April, 2014 in accordance with 29 Del.C. §10003(b) for the reasons stated below, this ORDER is adopted promulgating regulations setting forth the Policies and Procedures of the Delaware Department of Elections for New Castle County regarding Freedom of Information Act ("FOIA") requests.

### NATURE OF PROCEEDINGS

The Department of Elections for New Castle County has adopted final regulations governing its Policies and Procedures regarding FOIA requests.

The purpose of these regulations is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Elections for New Castle County pursuant to 29 Del.C. Ch. 100, the FOIA. The regulations establish a reasonable fee structure for copying, printing or electronically delivering public records as well as streamlining the procedures used to disseminate the information.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Department of Elections for New Castle County has developed procedures for responding to requests

from the public for information as set forth in 29 **Del.C.** Ch. 100. These regulations are in substantial compliance with, and necessary to, effectuate 29 **Del.C.** Ch. 100.

2. The Delaware Department of Elections for New Castle County has statutory authority to promulgate these Policies and Procedures pursuant to 29 **Del.C.** §10003(b).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing a Department's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

## DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director and Deputy Director of the Department of Elections for New Castle County do hereby ORDER that the Policies and Procedures be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Anthony J. Albence, Director & Howard G. Sholl, Jr. Deputy Director

### 1600 Policies and Procedures Regarding FOIA Requests

#### **1.0 Purpose**

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records in accordance with 29 **Del.C.** Ch. 100.

Department employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Department and to comply with the policy that the public shall have reasonable access to Public Records.

#### **2.0 Definitions**

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

"**Department**" means the Department of Elections for New Castle County

"**Deputy Director**" means the Deputy Director, Department of Elections for New Castle County.

"**Director**" means the Director, Department of Elections for New Castle County.

"**FOIA**" means the Freedom of Information Act as established pursuant to 29 **Del.C.** Ch. 100.

"**FOIA Coordinator**" shall mean the person designated by the Director and/or Deputy Director to receive and process FOIA Requests.

"**FOIA Request**" or "**Request**" means a request to inspect Public Records pursuant to 29 **Del.C.** §10003 of the Delaware Code and in accordance with the policy hereunder.

"**FOIA Request Form**" means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

"**Non-Custodial Records**" shall have the meaning set forth in Section 3.6.

"**Public Record**" shall have the meaning set forth in 29 **Del.C.** §10002.

"**Requesting Party**" shall mean the party filing a FOIA Request.

#### **3.0 Records Request, Response Procedures and Access**

##### **3.1 Form of Request**

**3.1.1** All FOIA Requests shall be made in writing to the Department in person, by mail, email or online in accordance with Section 3.2. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that

otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the proper form. Copies of the FOIA Request Form may be obtained from the Department, the Department's website, or from the office or website of any state Agency.

3.1.2 All requests shall describe the records sought in sufficient detail to enable the Department to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Department in locating the requested records, the Department may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.

### 3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at the Department's office, by email to [votencc@state.de.us](mailto:votencc@state.de.us), or via online request form, which can be found at: <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request>. The Department's address is as follows:  
Department of Elections for New Castle County  
820 N. French Street, Suite 400  
Wilmington, DE 19801  
Phone: 302.577.3464  
FAX: 302.577.6545  
Email: [mailto:votencc@state.de.us](mailto:mailto:votencc@state.de.us)  
Web Site: <http://electionsncc.delaware.gov/>

### 3.3 FOIA Coordinator

3.3.1 The Director and Deputy Director shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and shall coordinate the Department's responses thereto. The FOIA Coordinator shall be identified on the Department's website. The FOIA Coordinator may designate other Department employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Department in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Department and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another Agency, the FOIA Coordinator shall promptly forward such request to that Agency and promptly notify the Requesting Party that the request has been forwarded. The Department may close the initial request upon receipt of a written confirmation from the FOIA coordinator of the relevant Agency has received the request. The Department shall provide the Requesting Party with the name and phone number of the FOIA coordinator of the relevant Agency and confirmed that it had received the request.

3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Department received the Request; the Department's response deadline pursuant to Section 3.4; the date of the Department's response pursuant to Section 3.4 (including the reasons for any extension pursuant to Section 3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to Sections 3.3.2, 3.5 and 3.6; the dates of review by the Department pursuant to Section 3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

### 3.4 Department Response to Requests

3.4.1 The Department shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in

storage or archived. If access cannot be provided within fifteen (15) business days, the Department shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Department denies a request in whole or in part, the Department's response shall indicate the reasons for the denial. The Department shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

### 3.5 Requests for Email

3.5.1 Requests for email records may be fulfilled by the Department from its own records, if doing so can be accomplished by the Department with reasonable effort. If the Department determines that it cannot with reasonable effort fulfill all or any portion of such request, the Department shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Department. Upon receipt from DTI, the Department may review the email records in accordance with 3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Department shall forward a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving the records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

### 3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Department but that are either not within its possession or cannot otherwise be fulfilled by the Department with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Department shall promptly request that the relevant public body provide the Non-Custodial Records to the Department. Prior to disclosure, records may be reviewed in accordance with Section 3.7 hereunder by the Department, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Department.

3.6.2 Before requesting any Non-Custodial Records, the Department shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

3.7 Review by Department. Prior to disclosure, records may be reviewed by the Department to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 Del.C. §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 Del.C. §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Department from disclosing or permitting access to Public Records if the Department determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.

3.8 Hours of Review. The Department shall provide reasonable access for reviewing Public Records during regular business hours from 8 a.m. to 4:30 p.m. Monday through Friday.

## 4.0 Fees

### 4.1 Photocopying, printing and other associated Fees:

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying and printing fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying or printing oversized Public Records shall be as follows:

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18" x 22": \$2.00 per sheet

24" x 36": \$3.00 per sheet

Larger than 24" x 36": \$3.00 plus \$1.00 per square foot above the first 6 square feet

Note: The fees in section 4.1 do not apply to Legislative District maps. The Department has a fee schedule for Legislative District maps.

4.1.1.3 Color Copies/Printouts: An additional charge of \$.50 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.00 per sheet for larger copies.

4.1.1.4 Electronic Media fees: The cost of providing records on a CD or DVD is \$10.00 in addition to any Administrative or copying fees.

4.1.1.5 There shall be no charge for delivering records electronically, however there may be a copying fee if portions of a record or records have to be redacted in addition to an Administrative fee in accordance with section 4.2.

## 4.2 Administrative Fees:

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying responsive records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Department's legal review of whether any portion of the requested records are exempt from FOIA. The Department shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Department shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible. Administrative fees shall be charged at the rate of \$14 per hour.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Department shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Department may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

4.5 Payment: The Department requires payment of fees in U. S. currency by cash or check (payable to the "State of Delaware") before fulfilling a request for records.

4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Department in preparing the requested records. The Department shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

## 5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

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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)

### ORDER

#### Affordable Care Act Section 4106 Preventive Services

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings regarding the provision of *preventive services described in section 4106 of the Affordable Care Act*. 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 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding the provision of *preventive services described in section 4106 of the Affordable Care Act*.

#### 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*
- Section 1905(a)(13) of the Social Security Act, *Other diagnostic, screening, preventive, and rehabilitative services*
- 45 CFR 440.130(c), *Preventive services*

#### Background

Section 4106 amends Section 1905(a)(13) of the Social Security Act to enable states to provide clinical preventive services and adult vaccines in accordance with the United States Preventive Services Task Force (USPSTF) recommendations and the Advisory Committee on Immunization Practices (ACIP) recommendations, respectively.

Section 4106(b) of the Affordable Care Act (ACA) establishes a one percentage point increase in the Federal Medical Assistance Percentage (FMAP) applied to expenditures for adult vaccines and clinical preventive services to states that cover, without cost-sharing, a full list of specified preventive services and adult vaccines. The increase would apply to such expenditures whether the services are provided on a fee-for-service (FFS) or managed care basis, or as an alternative benefit plan.

States seeking to claim the one percentage point FMAP increase must amend their state plans to reflect that they cover and reimburse all USPSTF grade A and B preventive services and approved vaccines recommended by ACIP, and their administration, without cost-sharing. The State must maintain documentation supporting expenditures claimed for these preventive services and must ensure that coverage and billings codes comply with any changes made to the USPSTF or ACIP recommendations.

States should provide an assurance in the state plan indicating that they have documentation available to support the claiming of federal match for such services. States should provide an additional assurance stating that they have a method to ensure that, as changes are made to USPSTF or ACIP recommendations, they will update their coverage and billing codes to comply with those revisions.

**Summary of Proposal**

DHSS/DMMA will seek approval from the Centers for Medicare and Medicaid Services (CMS) for a state plan amendment: 1) to recognize that Delaware Medicaid covers and reimburses all United States Preventive Services Task Force (USPSTF) grade A and B clinical preventive services and approved adult vaccines and their administration recommended by the Advisory Committee on Immunization Practices (ACIP), without cost-sharing; and, 2) to establish a one percentage point increase in federal medical assistance percentage (FMAP) for expenditures whether the services are provided on a fee-for-service (FFS) or managed care basis, or as an alternative benefit plan.

The preventive services specified in section 4106 of the Affordable Care Act are currently available under Attachment 3.1-A of Delaware's Medicaid state plan and covered under the physician, clinics, and other licensed practitioner service benefits and are reimbursed according to the methodologies provided in Attachment 4.19-B of the state plan for such services.

**Assurances**

The State will maintain documentation supporting expenditures claimed for these preventive services and will ensure that coverage and billing codes comply with any changes made to the USPSTF and ACIP recommendations.

The proposed plan amendment will be effective on April 1, 2014, and will apply to claims with dates of service on or after that date.

The provisions of the preventive services state plan amendment are subject to approval by the CMS.

**Fiscal Impact Statement**

As section 4106 establishes a one percentage point increase in the Federal Medical Assistance Percentage applied to a specified preventive services and adult vaccines, the State expects to realize savings of one percentage (1%) for these services State Fiscal Years 2014 and 2015.

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The American Heart Association and American Stroke Association, 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.

**American Heart Association and American Stroke Association**

On behalf of the American Heart Association, we are writing in regards to clinical preventive services such as screenings, counseling services, and preventive medications for the Medicaid expansion population and traditional Medicaid populations. The ACA will require the Medicaid expansion population to be covered, without cost-sharing, for the list of preventive services that have a rating of A or B as assigned by the U.S. Preventive Services Task Force; however, the traditional Medicaid population was not specifically addressed by these provisions of the new law. We strongly support the Delaware Medicaid program's proposed regulation to offer the same expanded preventive coverage to all of Delaware's Medicaid clients.

Making this change is not merely permissible but is encouraged by the Centers for Medicare and Medicaid Services in the form of a 1% FMAP "bonus" for states who offer this expanded preventive services coverage to all of their Medicaid clients. The American Heart Association and American Stroke Association is eager to work together with the State of Delaware to ensure all Delawareans have access to high quality health insurance coverage and care as we reform our health care system. And providing preventive benefits to this vulnerable population will not only result in improved health but also cost savings for the Medicaid program.

**Agency Response:** DMMA appreciates the support for the state plan amendment from the American Heart and Stroke Associations.

**Governor's Advisory Council for Exceptional Citizens (GACEC) and State Council for Persons with Disabilities (SCPD)**

As background, Section 4106 of the Affordable Care Act authorizes states to adopt a Medicaid State Plan amendment in the context of preventive services. In a nutshell, a State can secure an additional 1% federal Medicaid match for specified preventive services if it agrees to cover the following: preventive services assigned a

grade of A or B by the U.S. Preventive Services Task Force (USPSTF) and approved vaccines and their administration recommended by the Advisory Committee on Immunization Practices (ACIP). CMS guidance was provided in a State Medicaid Director Letter, SMD#13-002 (February 1, 2013) and Q&A document.

Delaware DMMA proposes to adopt a State Plan amendment to qualify for the additional match effective April 1, 2014. The actual amendment is brief and appears to conform to the CMS guidance.

GACEC and SCPD endorse the proposed regulation since it will result in confirmation of Delaware Medicaid coverage of specified preventive services and increase federal funding.

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

## FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Medicaid state plan regarding the provision of *preventive services described in section 4106 of the Affordable Care Act* is adopted and shall be final effective May 10, 2014.

Rita M. Landgraf, Secretary, DHSS

## DMMA FINAL ORDER REGULATION #14-12

### REVISION:

Attachment 3.1-A

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Delaware

### LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

#### 13.c. Preventive Services

In accordance with section 4106 of the Affordable Care Act, Delaware Medicaid covers and reimburses all preventive services assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF) and all approved vaccines and their administration, recommended by the Advisory Committee on Immunization Practices (ACIP), without cost-sharing.

Preventive Services are any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts acting within the scope of their practice under State law and are reimbursed according to the methodologies for services described in Attachment 4.19-B, *Methods and Standards for Establishing Payment Rates – Other Types of Care*, of the state plan.

The State assures the availability of documentation to support the claiming of federal reimbursement for these preventive services.

The State assures that the benefit package will be updated to reflect the changes that are made to USPSTF and ACIP recommendations, and that the State will update the coverage and billings codes to comply with these revisions.



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# FINAL REGULATIONS

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

#### 1915(i) Home and Community-Based Services State Plan Option Amendment

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) / initiated proceedings to notify the public that a 1915(i) Home and Community-Based Services (HCBS) state plan amendment (SPA) was submitted to the Centers for Medicare and Medicaid Services (CMS) to offer HCBS as an optional Medicaid state plan benefit. 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 January 1, 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Services (DMMA) submitted a 1915(i) Home and Community-Based Services (HCBS) state plan amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS) to offer HCBS as an optional Medicaid state plan benefit. The purpose of this SPA is to provide services to support individuals with disabilities in attaining and sustaining competitive employment.

#### 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*
- Social Security Act §1915(i), *State Plan Amendment Option to Provide Home and Community-Based Services for Elderly and Disabled Individuals*
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*

#### Background

Section 6086 of the Deficit Reduction Act of 2007 (DRA) and the Affordable Care Act (ACA) of 2010 established and amended section 1915(i) of the Social Security Act to add an optional State Plan service that has many of the features of a Home and Community Based (HCBS) Waiver. Like an HCBS waiver, states can target services to persons based on age, diagnosis and condition, and also apply functional criteria such as limitations caused by disability. States can also provide community based services that would not otherwise be able to be covered under the Medicaid State Plan to allow persons to live independently in the community. Two notable differences from HCBS waivers are that a 1915(i) State Plan Amendment does not require individuals to meet an institutional level of care in order to qualify for HCBS and states are not permitted to limit participation in the program once an individual meets established eligibility criteria.

#### Purpose and Rationale

The Department proposes to provide a set of services and supports to enable individuals with physical disabilities, intellectual disabilities, autism spectrum disorder, Aspergers Syndrome and visual impairment to seek and maintain competitive employment. The program is called Pathways to Employment (Pathways). The benefit is targeted to transition-age individuals, ages fourteen (14) to twenty-five (25), across the spectrum of disabilities to put into practice the State's Employment First Act. The Pathways program will expand choices and opportunities in Delaware for individuals seeking to enter the job market while ensuring investments made by the public education system are not lost. Using the 1915(i) HCBS SPA presents a unique opportunity in Medicaid to serve individuals in

identified target groups and to structure a cross-disability, employment-focused benefit based on work-related, needs-based criteria.

The Pathways to Employment program will be jointly administered by the Division of Developmental Disabilities Services (DDDS), Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) and Division for the Visually Impaired (DVI). The Division of Medicaid and Medical Assistance (DMMA) will provide oversight. While the goal of competitive employment crosses all of the partnering Divisions, the supports needed to effectively meet the needs of the target groups require disability-specific expertise and knowledge. Pathways is designed to establish common goals, expectations, and opportunities for individuals with disabilities, while providing individually tailored supports, reflective of population-specific considerations, to meet the specific needs of the persons served.

#### *Goals and Objectives of Pathways to Employment*

Pathways will expand the choices available within Delaware for individuals ages fourteen (14) to twenty-five (25) who seek employment opportunities for individualized, competitive jobs. Ensuring seamless transitions from school (high school and post-secondary) to work, and across the array of employment options and supports, Pathways will enable individuals to gain skills needed to obtain and maintain employment, and continue to build their careers.

The Pathways program:

- Serves low income individuals, across disabilities, who have a desire to work in a competitive work environment;
- Provides individually tailored services for individuals with visual impairments, physical disabilities, intellectual disabilities, autism spectrum disorder and Aspergers to help them obtain or sustain competitive employment;
- Offers an array of services that will support individuals to explore and plan career paths and build career readiness. Pathways will include important services such as on-the-job supports, transportation, personal care, orientation and mobility training, assistive technology and employment navigation to help individuals maintain employment based on their specific needs;
- Stretches limited state dollars by partnering with the Federal government in the provision of these services – thereby, increasing individual independence and strengthening the State's workforce; and
- Provides a strong foundation for Delaware's ongoing efforts to ensure that individuals with disabilities have a clear path to employment now and into the future.

#### *Proposed 1915(i) HCBS State Plan Amendment*

Pathways will increase the options available to support Medicaid individuals aged fourteen (14) to twenty-five (25) with disabilities who wish to work. Income eligibility will generally be the same for most individuals, however individuals participating through certain income groups that allow for higher income levels will be able to have incomes at or below 150% of the Federal Poverty Level (FPL). The 1915(i) HCBS SPA will provide an unprecedented opportunity within Medicaid to serve individuals based on need rather than on diagnosis alone.

Pathways will target the following groups:

- Individuals with visual impairments
- Individuals with physical disabilities, which may include individuals with brain injury
- Individuals with intellectual disabilities, individuals with autism spectrum disorder and individuals with Aspergers.

Using needs-based criteria that must be less stringent than institutional level of care criteria, per the 1915(i) requirements, Delaware will make the benefit available to anyone in the target groups who has a desire to work in a competitive work environment and for whom the services provided through the benefit are not otherwise available to the individual under either special education and related services as defined in section 602(16) and (17) of the Education of the Handicapped Act (20 U.S.C. 1401(16) and (17)) or vocational rehabilitation services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730). This is a federal requirement.

Pathways will offer a rich continuum of services to assist individuals to build skills needed and to obtain and

maintain individualized, competitive employment. The service array provided through Pathways recognizes that each individual may need specific and individualized supports to better position them for ongoing employment. Delaware has specially designed service packages for the target groups to ensure that the right services are available based on population needs.

The following array of services will be offered to prepare individuals for competitive work environments as well as providing the employment supports for individuals to be successful:

- Career exploration and assessment
- Supported employment (small group)
- Supported employment (individual)
- Employment Navigators
- Benefits Counseling
- Financial Coaching
- Non-Medical Transportation
- Personal Care (including a self-directed care option)
- Orientation, mobility, assistive technology

Pathways will be operated as a fee-for-service program administered by the DHSS, the Single State Medicaid Agency. The Divisions noted above will jointly administer the program. Using a standard evaluation, enrollment and assessment process, with tailoring for each of the target groups, to determine eligibility and to inform a person-centered care planning approach, DHSS will ensure consistency in operations for each of the target groups, while still maintaining the key expertise needed to effectively meet their needs. The Divisions will ensure standards and quality for the administration of the Pathways to Employment program through the newly-established cross-division workgroup, which will provide ongoing oversight for the benefit. These entities will also ensure ongoing quality improvement, measuring the efficacy of the overall systems and the effectiveness of individually tailored service strategies.

Pursuant to the notice requirements of 42 CFR §447.205, Delaware Health and Social Services/Division of Medicaid and Medical Assistance hereby affords the public notice of the intent to solicit public comment on the Department's proposal to request a 1915(i) Home and Community-Based Services (HCBS) State Plan amendment to offer HCBS as an optional state plan benefit to support Medicaid-covered individuals aged fourteen (14) to twenty-five (25) with disabilities who wish to seek competitive employment. The effective date for statewide implementation of the 1915(i) HCBS State Plan Amendment is July 1, 2014, subject to approval by the Centers for Medicare and Medicaid Services.

#### *Draft of Proposed 1915(i) HCBS State Plan Amendment and Concept Paper*

A copy of Delaware's proposed 1915(i) HCBS Concept Paper and a copy of the proposed 1915(i) HCBS State Plan Amendment is accessible on the Division of Medicaid and Medical Assistance website at:

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

#### **Fiscal Impact Statement**

With the availability of these services through the 1915(i) HCBS State Plan Option, Delaware expects that there will be a reduction in federal claims for services currently provided under the State Plan Rehabilitative benefit.

Through the identification of existing resources, the expectation is that there will be no net new General Fund cost to the State of Delaware in State Fiscal Year 2014 and the net new funds needed in State Fiscal Year 2015 will be approximately \$380,000.00.

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

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

#### **GACEC and SCPD – March 12, 2014 Comments**

GACEC and SCPD commented on this initiative originally published in the January 2014 *Register of Regulations*. A copy of the January 30, 2014 memo is attached for facilitated reference. However, since a concept

paper and draft Plan amendment were not included in a DMMA link until January 17<sup>th</sup>, DMMA is extending the opportunity to comment until March 31, 2014. Since the only document which the Councils lacked when compiling the previous analysis of the regulation in January was the 55-page Plan amendment, Council is providing a supplemental analysis focusing on that document.

**Agency Response:** With regard to your specific comments, responses are provided below. Your comments provided on March 12, 2014 are included verbatim first, followed by comments (paraphrased) from Mr. Kyle Hodges from January 30, 2014 that were not otherwise addressed.

1. P. 1. The Council questions why individuals with visual impairments are eligible for only 5 services while individuals with all other qualifying impairments are eligible for 9 services. Individuals with visual impairments would be categorically barred from receiving the following Pathways services available to individuals with other qualifying impairments: 1) Career Exploration and Assessment; 2) Small Group supported Employment; 3) Individual supported Employment; and 4) Personal Care. The Council recommends uniformity in the services menu.

**Agency Response:** Career Exploration and Assessment, Small Group supported Employment, Individual supported Employment, and Personal Care are services that Delaware anticipates will be utilized by individuals who have not had or are not eligible for vocational rehabilitation and/or who require ongoing support due to the nature of their disability. For individuals with visual impairments, Career Exploration and Assessment is widely available through the Division for the Visually Impaired's (DVI) vocational rehabilitation program. Small Group supported Employment, Individual supported Employment, and Personal Care are ongoing supports for individuals who require longer-term support services for successful employment. Based on historical data and information, Delaware does not expect that individuals with a sole diagnosis of visual impairment will present a need for such supports. In the event that such a need is present, Delaware expects that the individual would likely be eligible in one of the remaining, broad-based target groups and therefore would have access to the needed service.

2. P. 4. The Division envisions the establishment of "a consumer council within the organization to monitor issues of choice." The Council did not identify any other references to the council. It could be useful to include the council in the quality improvement section (pp. 40 et seq) and otherwise clarify the structure and role of the council.

**Agency Response:** DVI is exploring how the engagement of an existing council in this critical role of monitoring will ensure that individuals receiving services through Pathways are assured independence in both their choice of service providers and services.

3. P. 4. In its January commentary, the Council recommended an explicit recital that the fair hearing process applies to disputes. This is clarified at p. 4 (Par. 5) and p. 13.

**Agency Response:** Delaware affirms that all applicable Medicaid due process requirements apply for the Pathways program.

4. P. 4. On p. 4, Par. 7, as well as on p. 8, the Division of Medicaid & Medical Assistance (DMMA) represents that the program will not cover services otherwise available to an individual under the Individuals with Disabilities Education Act (IDEA). There is some "tension" between such an approach and Federal law, which generally bars Medicaid programs from refusing to cover services available to a student under the IDEA. See attached materials. The NHLP memo (pp 2 and 3) offers the following guidance:

Some related services can be paid for by Medicaid. In fact, the Medicaid statute specifically forbids the Federal government from refusing to pay for Medicaid services that are provided to a child with a disability as part of the child's IEP. 42 USC §1396b(c). In addition, 34 CFR §300.501 provides that "Part B of the [IDEA] may not be construed to permit a state to reduce medical or other assistance available to children with disabilities or to alter the eligibility of a child with a disability, under title V (Maternal and Child Health) or title XIX (Medicaid) of the Social Security Act, to receive services that are also part of FAPE."

For example, if a student could receive habilitation services through the special education system, DMMA could not deny Medicaid funded habilitation simply because it is available through the student's special education program. Between Medicaid and the IDEA, Medicaid is generally the payer of first resort.

**Agency Response:** Delaware intends to operate the Pathways program in full compliance with all applicable Federal statutes. We would note, however, that not all Medicaid services are treated similarly with regard to IDEA. In fact, regulations at 42 CFR 441.720 specifically note that in applying the requirements of section 1915(i)(1)(F) of the Act, the State must:

...(7) Include in the assessment, for individuals receiving habilitation services, documentation that no Medicaid services are provided which would otherwise be available to the individual, specifically including, but not limited to services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973, or the IDEA.

(8) Include in the assessment and subsequent service plan, for individuals receiving Secretary approved services under the authority of §440.182 of this chapter, documentation that no State Plan home and community based services (HCBS) are provided which would otherwise be available to the individual through other Medicaid services or other Federally funded programs.

With these provisions in mind, however, DHSS is committed to working with our partners at the Department of Education and the Division of Vocational Rehabilitation to ensure that individuals receive the services they need to be successful in employment.

5. P. 5. DMMA identifies an income cap, but does not address whether any resource cap applies. Consistent with the Council's January commentary, "First" paragraph, it would be preferable to clarify that there is no resource cap.

**Agency Response:** Delaware appreciates this comment. While the SPA does not directly address the issue of a resource cap, by checking Box #1 on page 5 of the application, Delaware is indicating that in order to be eligible for the Pathways benefit, a person must be eligible for Medicaid based on the eligibility criteria for one of the categorical groups. The Delaware Medicaid State Plan does not indicate a resource test for any of the categorical groups.

6. P. 7. The standard defining the credentials of persons conducting reevaluations is rather meager: For all target groups, reevaluations are conducted by individuals holding an associate's degree or higher in a behavioral, social sciences, or a related field or experience in health or human services support which includes interviewing individuals and assessing personal, health, employment, social, or financial needs in accordance with program requirements.

This standard is reiterated on pp. 11, 12, and 15. An Employment Navigator preparing a plan of care does not even need a high school diploma. A telephone receptionist for a non-profit or public agency will generally meet the standard of "experience in health or human services support which includes interviewing individuals and assessing needs in accordance with program requirements." Moreover, an individual with only geriatric experience would qualify under the above standard despite no familiarity with services for teens and young adults. This represents a major weakness in the proposal, especially for low-incidence populations (e.g., – [traumatic brain injury] TBI) who have very specialized needs.

**Agency Response:** These functions will be conducted by Delaware state staff, and the qualifications articulated there are reflective of state classifications. Delaware is committed to ensure that the individuals performing these tasks are of the highest caliber and are prepared to effectively carry out these responsibilities and support individuals in gaining and maintaining employment. These individuals will be individually trained, initially and ongoing, on the specific requirements of the program, the use of established tools for determining whether individuals continue to meet targeting and needs based criteria, and who will receive tailored disability-specific training.

We draw your attention to the provider qualifications for Employment Navigators as contained on p. 15 that stipulate that Employment Navigators must:

- "Complete Department required training, including training on the participant's service plan and the participant's unique and/or disability specific needs, which may include, but is not limited to, communication, mobility, and behavioral needs. "and
- "Comport with other requirements as determined by the Department."

7. P. 7. There are no timelines for screening and processing of applications. Timelines would be useful.

**Agency Response:** Delaware is committed to getting people into service at the earliest possible date, and will ensure that all timelines comport with reasonable promptness requirements. Once timeframes have been established, this will become part of the routine performance monitoring.

8. P. 10. The table on p. 10 does not match the DDDS eligibility standards. See attached 16 DE Admin Code Part 2100. Under DDDS standards, some conditions require low I.Q. scores while others (e.g., autism) do not. The table would literally permit Pathways eligibility of individuals with brain injury without low I.Q. scores. We would strongly favor this approach. However, as the Councils stressed in its January 30 memo, the absence of an explicit reference to brain injury under the “physical disabilities” is very troublesome. This concern could be addressed by amending the reference to Group B on p. 10 as follows: “Individuals age 14 to 25 with a physical disability (including brain injury); whose physical condition is anticipated to last 12 months or more.”
- Agency Response:** Delaware will add parenthetical as suggested. The chart on p. 10 is intentionally structured. All clients eligible for Pathways services served by DDDS must have a functional limitation in addition to the diagnostic criteria indicated on page 10 of the application. CMS describes eligibility for HCBS services by defining both target criteria (age, diagnosis or condition) and “needs based” or functional criteria. Target criteria (page 10) and the functional criteria (page 8) are separated into two separate sections in the SPA application. The current DDDS eligibility criteria includes both target and needs based criteria.
9. P. 14. In its January 30 commentary, Tenth Paragraph, the Council supported inclusion of references to “self-employment.” The Plan amendment includes such references at pp. 14, 16, and 18.
- Agency Response:** Yes. The Pathways program will provide support to individuals in gaining competitive or self-employment.
10. P. 19. For individuals receiving Individual supported Employment services, job placement support appears to be capped at 6 months in a benefit year. The same cap is applied to persons receiving Group supported Employment services (p. 22). No rationale is provided. DMMA may wish to reconsider the merits of such a cap.
- Agency Response:** This limitation is proposed to ensure that providers supporting individuals, even those with complex needs, are incented toward successful employment outcomes and not toward perpetual job search activities, an issue that other states have encountered. We will add in the SPA, however, that exceptions to this limitation may be considered, requiring strong justification and explicit Department approval.
11. Individuals receiving Group supported Employment are subject to a presumptive (but not absolute) cap of 12 continuous months. There is no comparable cap for Individual supported Employment (p. 19). This may be a deterrent to successful outcomes for persons with the most severe disabilities who may need more time to prove successful.
- Agency Response:** You correctly note that the 12 continuous months limitation is not absolute. Delaware believes that all individuals with the proper support can successfully engage in individualized employment, and have designed the benefit package of Pathways to continue offering such opportunities to individuals.
12. P. 26. The standards for financial coaches appear to be very generic, that is, persons with some financial planning experience may serve as financial coaches despite little experience with disability based planning. The Council suspects that few financial planners are familiar with Miller Trusts, the Delaware CarePlan Trust, the Social Security PASS program, housing assistance programs, and the Social Security Administration’s Ticket to Work Program. Perhaps this level of sophistication with disability-related financial planning is achieved through the training identified on p. 27. If that training does not address programs such as the Delaware CarePlan Trust, PASS program, and Ticket to Work, this section should be revised to require background at least equivalent to DVR’s benefits planners.
- Agency Response:** The Financial Coaching service, modeled after the successful \$tand by Me program in Delaware, is aimed at helping individuals identify and achieve financial goals, and to provide key, basic financial education. This service is intended to complement and refer individuals to, rather than duplicate the functions of, the Benefit Counseling service, which requires specific Social Security Administration’s certification and knowledge of programs you indicate.
13. P. 29. DMMA recites that the non-medical transportation service “does not provide for mileage reimbursement for a person to drive himself to work.” This is objectionable and unrealistic. The transportation broker should be allowed to pay the participant to drive himself/herself to an

employment or training site. This is the approach adopted by DVR. See Delaware DVR Casework manual Section 9.3. As a practical matter, if someone lives in Sussex County, use of a personal vehicle may be the only realistic and affordable option. There is negligible taxi service and no accessible taxi service. Paratransit is limited and often results in lengthy delays in reaching destinations. Finally, it is possible that the assistive technology benefit could be used to retrofit a vehicle (e.g., with hand controls). It makes no sense to facilitate a participant's driving capacity and then categorically exclude mileage reimbursement as an option.

**Agency Response:** During the initial period of implementation, we will monitor this service carefully to ascertain the demand for this mode of transportation. As with other Medicaid benefits, we can adjust the parameters for allowable reimbursement within Federal guidelines as deemed appropriate.

14. P. 34. There are several references to the "Department of Vocational Rehabilitation" rather than the Division of Vocational Rehabilitation.

**Agency Response:** Thank you for pointing this out. We will make all necessary corrections.

15. P. 35. It is somewhat "odd" to solely authorize spouses (among all relatives) to provide personal care services. Many individuals between 14 and 25 will not be married. It would be preferable to authorize siblings and other relatives to provide personal care service. See attached September 29, 2008 CMS Press Release and DSAAPD PAS Services Specifications, Section 6.2.2.2.

**Agency Response:** We will add that a non-legally responsible relative (e.g. parent of an adult child, adult sibling, aunt, uncle, cousin) may render Personal Care services pursuant to the same circumstances when individuals are exercising employer authority. We will monitor the demand for the provision of services by relatives and/or other legally responsible relatives to determine whether further adjustment is needed.

16. P. 40 et seq. The number and disposition of fair hearing requests could be incorporated into the quality improvement standards. The emphasis on "safety," "abuse/neglect," and "incidents of emergency restrictive intervention strategies" (pp. 46 to 48) are not intuitively core benchmarks of successful employment outcomes and should be reconsidered.

**Agency Response:** We will review the performance measures that are to be reported to CMS in light of your comments. However, we expect that CMS will require Delaware to meet minimum thresholds around health and welfare. We also note that Delaware will institute a method of continuous quality improvement, so we will continually evaluate elements that will inform our oversight processes.

#### **GACEC and SCPD – January 30, 2014 Comments**

**Agency Note:** In addition to our responses above to your comments submitted on March 12, 2014, DMMA offers these additional responses to your organization's previously submitted comments (paraphrased below) on January 30, 2014 that have not been addressed above.

1. DMMA should address the interplay between Medicaid beneficiaries who enroll in both the Ticket to Work program and the Pathways program.

**Agency Response:** As noted in number 4 above, 1915(i) regulations require that other Federal programs be leveraged before HCBS services, but we expect that Pathways services can be well coordinated with any such services available to the individual through other funding sources to ensure that the individual obtains support key to successful employment outcomes.

2. DMMA could consider adding legal advocacy to the menu of services in the Pathways program.

**Agency Response:** DMMA will monitor the implementation of Pathways to determine whether different services would be warranted to achieve the goals of the program.

3. There will obviously be overlap between participants in the Pathways program and the Diamond State Health Plan Plus (DSHP+) program. DMMA should adopt disincentives and deterrents to such practices that the managed care organizations (MCOs) may employ to deflect costs to Pathways.

**Agency Response:** DMMA is developing strategies to ensure that the MCOs are covering all services that they are contractually obligated to provide, with close coordination with Pathways Employment Navigators to ensure that Pathways services are only provided over and above that which the MCO must provide.

4. Pathways may present a Catch 22 to participants in light of the income limitation.

**Agency Response:** The 150% Federal Poverty Level (FPL) income limitation is a statutory requirement of 1915(i). That said, Delaware expects that individuals will be able to utilize financial coaching and benefits counseling to help devise individualized strategies to achieve financial independence.

5. 14 to 17 year olds with covered disabilities may be financially ineligible due to parental income. DMMA may wish to consider an exception to parental deeming for the Pathways program.

**Agency Response:** Individuals eligible for Medicaid under the TEFRA authority in the State Plan (called the Delaware Children's Community Alternative Disability Program or CCADP) already have their parents' income disregarded in the financial eligibility determination. The Pathways program will serve individuals, including these children, who are otherwise Medicaid eligible, and meet the statutory requirements. Per the regulations at 42 CFR 440.182(b), HCBS can be made available to individuals who are eligible under the SPA and have income, calculated using the otherwise applicable rules, including any less restrictive income disregards used by the State for that group under section 1902(r)(2) of the Act, that does not exceed 150% of the FPL.

6. The Council recommends consideration of draft legislation to authorize a tax credit for hiring Pathways participants.

**Agency Response:** Thank you for your recommendation. The Department is not currently contemplating any legislation related to the implementation of this program.

7. The Council has requested membership on the cross-division workgroup.

**Agency Response:** The workgroup referenced refers to the Department workgroup that is charged with operating and overseeing Pathways as a Medicaid program with functions delegated to divisions who will be instrumental in implementation and ongoing operations. As needed, the Department will reach out to other departments and stakeholders, and, as such, will certainly engage the Council as the program progresses.

8. The Council recommends inclusion of services specific to individuals with brain injury.

**Agency Response:** The service package is designed to meet the support needs of persons with disabilities seeking employment. DMMA will monitor the implementation of Pathways to determine whether different services would be warranted to achieve the goals of the program.

#### **FINDINGS OF FACT:**

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

THEREFORE, IT IS ORDERED, that the proposed regulation regarding the *1915(i) Home and Community-Based Services State Plan Option Amendment*, is adopted and shall be final effective May 10, 2014.

Rita M. Landgraf, Secretary, DHSS

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#### **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

#### **ORDER**

#### **Federal Medical Assistance Percentage Claiming Methodology for the Adult Group**

#### **NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Medicaid State Plan regarding the Federal Medical Assistance Percentage (FMAP) specifically, *the FMAP claiming methodology for the adult group*. The increased FMAP rates will be applicable beginning January 1, 2014. 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 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) has submitted a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) relating to the availability of increased Federal Medical Assistance Percentage (FMAP) rates for certain adult populations under the Delaware Medicaid Program, specifically, *adult group FMAP claiming methodology*.

#### Statutory Authority

- Patient Protection and Affordable Care Act, P.L. 111-148, enacted March 23, 2010 and the Health Care and Education Reconciliation Act of 2010, P.L. 111-152, enacted March 30, 2010 (collectively referred to as the Affordable Care Act)
- 42 CFR 433.206, *Threshold Methodology*

#### Background

On March 29, 2013, the Centers for Medicare and Medicaid Services (CMS) issued a final rule with request for comment to implement provisions of the Affordable Care Act on increased Federal Medical Assistance Percentage (FMAP), or matching, rates for certain Medicaid beneficiaries in states. This rule codifies the increased FMAP rates that will be applicable beginning January 1, 2014 and outlines a simplified methodology states will use to claim the appropriate matching rates.

#### Overview

An increased FMAP rate is available for medical services provided to people defined as “newly eligible” who are enrolled in the new eligibility group for adults up to 133 percent of poverty. In general, individuals are “newly eligible” if they are enrolled in the new adult group and would not have been eligible for full benefits, benchmark benefits, or benchmark-equivalent benefits under the eligibility rules in that state in effect in December 2009. The rule also describes the increased FMAP available under the Affordable Care Act in a defined “expansion state” if the state had expanded coverage to the adult group prior to enactment of the Affordable Care Act.

Based on public comments on the proposed rule and additional CMS analysis, the final rule selects the threshold methodology, one of the three methodologies described in the proposed rule, as the methodology that states will use to determine the appropriate FMAP related to “newly eligible” Medicaid beneficiaries in the new eligibility group for adults. Supported by states and other commenters, the threshold methodology is designed to provide for a simplified, individualized methodology for determining the appropriate FMAP that does not require states to maintain two sets of eligibility rules or to solicit information from applicants that is not necessary to determine eligibility.

#### Provisions of the Final Rule

The final rule implements the increased FMAP rates provided by the Affordable Care Act. It establishes a structure and process for their application, setting out applicable definitions and describing the threshold methodology that states will use to claim the new FMAP rates.

#### *Increased FMAP rates through the Affordable Care Act (ACA)*

The final rule establishes the following increased FMAP rates:

- *Newly Eligible FMAP* – The rule describes the increased FMAP available to states that expand to 133 percent of the federal poverty level under the Affordable Care Act for the expenditures of the “newly eligible” individuals enrolled in the new adult group created by the Affordable Care Act. The newly eligible FMAP is 100 percent in calendar years 2014-2016, 95 percent in calendar year 2017, 94 percent in calendar year 2018, 93 percent in calendar year 2019, and 90 percent in calendar years 2020 and beyond.

- *Expansion State FMAP* – The rule describes an increased FMAP for expenditures for nonpregnant, childless individuals in the new adult eligibility group in a defined “expansion state.” The expansion state FMAP is the regular FMAP rate increased by the number of percentage points equal to a “transition percentage” (that ranges from 50-100 percent) of the gap between the regular Medicaid FMAP and the increased “newly eligible” FMAP. In 2019 and beyond, the expansion state FMAP will be equal to the newly eligible FMAP, which means it will be 93 percent in 2019 and 90 percent in 2020 and thereafter.

### *Threshold Methodology*

The final rule also describes the threshold methodology, which states will use to claim expenditures at the appropriate FMAP. The threshold methodology begins with a simplified method for determining the individuals who are and are not newly eligible, comparing their modified adjusted gross income (MAGI) based income (as calculated for purposes of eligibility determination) to converted modified MAGI-based income thresholds for relevant eligibility categories in effect in December 2009. It then describes, and in some cases, offers states options, regarding the treatment of other factors that may be relevant for purposes of claiming the appropriate FMAP. This final rule reaffirms CMS’ overall policy interest in promoting simplicity as states implement the Affordable Care Act.

The final threshold methodology rule:

- Clarifies that only an actual disability determination will establish whether an individual is disabled, allowing states to treat individuals who are enrolled in the new adult group as newly eligible for FMAP purposes during the period that a disability determination is pending. Once the determination is made, states will adjust claiming prospectively.
- Describes states’ options for how they will address other factors that may be relevant such as resource criteria, section 1115 demonstration enrollment caps, and spend-down requirements.
- Recognizes special circumstances may require additional adjustments, subject to CMS approval, to provide a basis for states to claim federal funding for expenditures of individuals enrolled in the adult group at the appropriate FMAP.
- Directs states to submit a threshold methodology state plan amendment for CMS approval prior to claiming the increased FMAP rates.

### **Summary of Proposal**

Pursuant to the public notice requirements of section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205, DHSS/DMMA notifies the public that on January 17, 2014 a state plan amendment was submitted to CMS to modify the methodology and standards that it uses to reimburse for services delivered to eligible individuals under the Delaware Medicaid Program. Upon CMS approval, the proposed changes will update Attachment 2.6-A with new Supplement 18, *Methodology for Identification of Applicable Federal Medical Assistance Percentage (FMAP) Rates*. This plan page describes how the State will claim the appropriate FMAP for expenditures for the new adult group. The proposed effective date for this SPA is January 1, 2014.

**NOTE:** Consistent with federal law and the Medicaid State Plan, DMMA provided notice to the public regarding the proposed FMAP rates state plan amendment in the December 19, 2013 issue of the *News Journal* and the *Delaware State News*, respectively.

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

### **Fiscal Impact Statement**

Increased FMAP rates through the Affordable Care Act (ACA):

- *Newly Eligible FMAP* - The newly eligible FMAP is 100 percent in calendar years 2014-2016, 95 percent in calendar year 2017, 94 percent in calendar year 2018, 93 percent in calendar year 2019, and 90 percent in calendar years 2020 and beyond.
- *Expansion State FMAP* - The expansion state FMAP is the regular FMAP rate increased by the number of percentage points equal to a “transition percentage” (that ranges from 50-100 percent) of the gap between the regular Medicaid FMAP and the increased “newly eligible” FMAP. In 2019 and beyond, the expansion state FMAP will be equal to the newly eligible FMAP, which means it will be 93 percent in 2019 and 90 percent in 2020 and thereafter.

Based upon preliminary estimates, it is anticipated that the federal fiscal impact will be as follows:

	Federal Fiscal Year 2014	Federal Fiscal Year 2015
Federal Funds	\$78,254,636	\$137,495,659

### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

#### GACEC and SCPD

As background, the Affordable Care Act (ACA) contemplates State Medicaid programs covering individuals with countable income up to 133 percent of the poverty level. Delaware Medicaid already covered this population and Delaware therefore qualifies as an "expansion state". In order to qualify for an enhanced federal Medicaid match for covering this group of individuals, the State must adopt a Medicaid Plan amendment based on a CMS template. The federal Medicaid match for expansion states is described at the top of p. 889. DMMA envisions the receipt of the following federal funds based on the initiative: \$78,254,636 in FFY 14 and \$137,495,659 in FFY15.

GACEC and SCPD endorse the proposed regulation since the Plan amendment is designed to achieve conformity with CMS guidance under the ACA.

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

#### FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation regarding the Federal Medical Assistance Percentage (FMAP) specifically, *the FMAP claiming methodology for the adult group*, is adopted and shall be final effective May 10, 2014.

Rita M. Landgraf, Secretary, DHSS

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2014 issue of the *Register* at page 887 (17 DE Reg. 887). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[Federal Medical Assistance Percentage Claiming Methodology for the Adult Group](#)**

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### ORDER

### Medicaid Reimbursement for Prescription Drugs

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan regarding the drug pricing reimbursement methodology for pharmaceutical products, specifically, implementation of the pricing benchmark, *National Average Drug Acquisition Cost (NADAC)*, as published by the Centers for Medicare and Medicaid Services (CMS). The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section

10115 in the March 1, 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

## SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of its intention to amend the Title XIX Medicaid State Plan regarding the drug pricing reimbursement methodology for pharmaceutical products, specifically, implementation of the pricing benchmark, *National Average Drug Acquisition Cost (NADAC)*, as published by the Centers for Medicare and Medicaid Services (CMS).

### Statutory Authority

- 1902(a)(19) of the Social Security Act, *Care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- 1927 of the Social Security Act, *Payment for Covered Outpatient Drugs*
- 42 CFR §440.120, *Prescribed drugs*
- 42 CFR §447.201, *State plan requirements*
- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

### Background

Section 1927(f) of the Social Security Act provides, in part, that the Centers for Medicare and Medicaid Services (CMS) may contract with a vendor to conduct monthly surveys with respect to prices for covered outpatient drugs dispensed by retail community pharmacies. In addition, section 1927(i) also provides in part that CMS complete an annual report to Congress that includes ingredient costs paid for single source, multiple source, and non-prescription covered outpatient drugs.

Monthly surveys focus on the drug prices that retail community pharmacies pay to acquire drugs. Specifically, the vendor surveys these acquisition costs of covered outpatient drugs purchased by independent and chain retail community pharmacies.

State Medicaid agencies reimburse participating pharmacy providers for covered outpatient drugs that are prescribed and dispensed to Medicaid beneficiaries. The payment consists of two parts: 1) reimbursement for drug ingredient costs, and 2) reimbursement for the cost of dispensing. In general, federal regulations require that Medicaid programs reimburse for drug ingredient costs at no more than the agency's best estimate of the acquisition cost for a drug. As defined in federal regulations at §42 CFR 447.502, estimated acquisition cost (EAC) is the state's best estimate of the prices generally and currently paid by providers for a drug marketed or sold by manufacturers or labelers in the package size of the drug most frequently purchased by providers.

Many Medicaid agencies currently utilize published drug pricing benchmarks to determine the EAC for drug ingredient costs. The Average Wholesale Price (AWP) was a primary drug pricing benchmark utilized in pharmaceutical reimbursement by state Medicaid agencies. Through numerous investigations, the Office of Inspector General found that AWP-based reimbursement was "fundamentally flawed" and caused Medicaid to pay too much for certain drugs.

In late 2009, a working group within the National Association of State Medicaid Directors (NASMD) convened to discuss various alternatives to AWP. The working group authored a white paper in June 2010 entitled "Post AWP Pricing and Reimbursement" that evaluated and developed options for the replacement of AWP in Medicaid reimbursement methodologies. Among the recommendations presented in the white paper was the establishment of a single national pricing benchmark based on average drug acquisition costs. Such a benchmark would provide state Medicaid agencies with a better estimate of prices paid by pharmacies for drugs because it would be based upon actual drug purchases. This approach to drug ingredient price determination provides greater accuracy and transparency in how drug prices are established and is generally more resistant to manipulation. The NASMD requested that CMS coordinate, develop, and support this benchmark.

CMS contracted with Myers and Stauffer LC, a national certified public accounting firm, to conduct surveys of retail community pharmacy prices, including drug ingredient costs, and to develop the National Average Drug Acquisition Cost (NADAC) pricing benchmark.

*Purpose of NADAC*

The purpose of the NADAC is to create a new national price benchmark that is more reflective of the prices that pharmacies pay to acquire prescription and over-the-counter drugs. The statute provides that such prices represent a nationwide average of consumer purchase prices, net of discounts and rebates. The survey data will provide information which CMS expects to use to assure compliance with Federal requirements. A monthly nationwide survey of licensed retail community pharmacies, which will include independent pharmacies and chain pharmacies in the United States, will be performed to collect drug acquisition cost information. To ensure that NADACs are accurate, timely, and robust, the NADACs will be reviewed and updated on a weekly basis.

The NADAC is available for consideration by the States to assist with their individual pharmacy reimbursement policies. CMS has contracted with Myers and Stauffer LC, a national certified public accounting firm, to conduct the surveys of drug ingredient costs from pharmacy entities, such as independent pharmacies and chain pharmacies in the United States, and to develop and maintain the NADAC pricing benchmark.

States have the option to use the NADAC as a reference price when setting their reimbursement methodology. To do so, states must submit a State Plan Amendment (SPA) to CMS in accordance with state plan requirements if they decide to use NADAC as a basis for payment.

**Summary of Proposal**

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is implementing a new drug pricing methodology to reimburse pharmacies that dispense pharmaceutical products to Medicaid recipients. Effective April 1, 2014, DHSS/DMMA will start reimbursing pharmacies using the average acquisition cost (ACC) of a given pharmaceutical product using National Average Drug Acquisition Cost (NADAC) files that gives state Medicaid agencies covered outpatient drug information regarding retail prices for prescription drugs. The NADAC, as published by CMS, is a more accurate reflection of the ingredient cost of the medications covered by the DMMA drug benefit program.

Instead of the Average Wholesale Price (AWP), DMMA will reimburse pharmacy providers based on the NADAC for the ingredient cost and a dispensing fee more in line with the true cost of dispensing. The change will also reflect a more accurate definition of "Usual & Customary" for these providers.

*Professional Dispensing Fee*

Currently, the dispensing fee is set at three dollars and sixty-five cents (\$3.65). DMMA will also revise its dispensing fee from \$3.65 to ten dollars (\$10.00) for each prescription.

In a proposed rule published in the Federal Register on February 2, 2012 regarding covered outpatient drugs at <http://www.gpo.gov/fdsys/pkg/FR-2012-02-02/pdf/2012-2014.pdf>, CMS proposes to replace the term "dispensing fee" with "professional dispensing fee". In the proposed rule, CMS retains the current definition of "dispensing fee," but proposes to replace the term with "professional dispensing fee" to reinforce the agency's position that once the reimbursement for a drug is properly determined, the dispensing fee should reflect the pharmacist's professional services and costs. DMMA agrees and has replaced the term "dispensing fee" with "professional dispensing fee".

The provisions of this state plan amendment are subject to approval by CMS.

**Fiscal Impact Statement**

It is estimated that the fiscal impact will result in savings in state and federal expenditures as follows:

	Federal Fiscal Year 2014	Federal Fiscal Year 2015
General (State) Funds	\$604,000.00	\$1,340,000.00
Federal Funds	\$747,000.00	\$1,660,000.00

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

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

**GACEC and SCPD**

As background, DMMA notes that federal law requires Medicaid agencies to reimburse pharmacies for outpatient drugs based on two (2) components: 1) drug ingredient/acquisition cost; and 2) dispensing cost. The first component has historically been based on an "Average Wholesale Price" (AWP) benchmark. However, the federal Office of Inspector General determined that the AWP was flawed and resulted in excess payments to pharmacies. CMS has now contracted with a CPA firm to develop a new "National Average Drug Acquisition Cost" (NADAC) pricing benchmark. Any state wishing to adopt the NADAC must submit a Medicaid State Plan amendment to CMS.

DMMA proposes to adopt a Plan amendment incorporating the NADAC measure of acquisition cost. At the same time, it is increasing its reimbursement for dispensing cost from \$3.65 to \$10.00 per prescription. DMMA projects the following savings to State General Funds based on the new reimbursement standards: \$604,000 (October 1, 2014- September 30, 2015); \$1,340,000 (October 1, 2015 - September 30, 2016). Since the payment for dispensing a prescription is almost tripling (increasing from \$3.65 to \$10.00), these cost savings could only occur if the NADAC benchmark is much lower than the AWP benchmark.

After review of the proposed regulation, the Councils wanted to note that pharmacies have balked at low drug reimbursement rates in the past. See attached 8 DE Reg. 961-962 (February 1, 2003). Cf. attached "How Medicaid Is Squeezing Specialty Pharmacy Profits" (February 18, 2014). However, Council is unable to adopt a position on the proposed regulation given lack of information on whether the rates fairly compensate pharmacies. The effective date of the Plan amendment is April 1, 2014. Therefore, DMMA envisions adopting the new methodology without time to even consider comments which can be submitted until March 31 and this could have a significant impact on pharmacies.

**Agency Response:** DMMA thanks the GACEC and SCPD for their comments on the proposed Medicaid Prescription Drug Reimbursement Regulation published in the Delaware Register on March 1, 2014. DMMA believes that using the CMS-supported National Average Drug Acquisition Cost (NADAC) as the best available source for accurate information regarding the ingredient cost assures that pharmacies will receive proper compensation for drugs provided to Delaware Medicaid beneficiaries and that access to pharmacy services will not be compromised. Similarly, the new dispensing fee of ten dollars (\$10.00) updates the current fee of three dollars and sixty-five cents (\$3.65) which has been in place for at least twenty-five (25) years, and reflects the actual costs to dispense individual drugs as confirmed in various recent state surveys. DMMA has been in contact with its participating pharmacy providers via facsimile transaction, electronic listservs, and through pharmacy association conference calls to share the new reimbursement methodology and to respond to all related questions. As a result, DMMA does believe access to pharmacy services will continue as usual.

There is no change to the regulation as a result of this comment.

**FINDINGS OF FACT:**

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan regarding the reimbursement methodology for pharmaceutical products, specifically, implementation of the pricing benchmark, *National Average Drug Acquisition Cost (NADAC)*, is adopted and shall be final effective May 10, 2014.

Rita M. Landgraf, Secretary, DHSS

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2014 issue of the *Register* at page 893 (17 DE Reg. 893). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Medicaid Reimbursement for Prescription Drugs**

## DIVISION OF PUBLIC HEALTH

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

## ORDER

## 4458 State of Delaware Food Code Regulations

## NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Food Code. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, §122 (3) u.1. (e).

On March 1, 2014 (Volume 17, Issue 9), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by March 31, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

## FINDINGS OF FACT:

Non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed 4458 State of Delaware Food Code is adopted and shall become effective May 11, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

## SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing the State of Delaware Food Code were published in the *Delaware State News*, the *News Journal* and the Delaware *Register of Regulations*.

Entities offering written comments include:

Vicky Fountain

Public comments and the DHSS (Agency) response are as follows:

**Vicky Fountain:**

Regarding the “Person in charge certification requirement” (copied below)

*Person in charge certification requirement – The Delaware Food Code will now require that the person in charge of a food establishment be certified through an accredited food protection manager certification program. DPH is considering offering Delaware establishments a grace period beyond the implementation of the new code for this requirement.*

1. How are we defining the “person in charge”? Is it the manager on duty? The business owner? The property owner?
2. I can't help feeling concerned that this requirement is both an additional step towards government interference in citizens' everyday lives, as well as an additional avenue to create revenue for the State via whatever costs are associated with obtaining this certification. Business owners – and restaurant owners especially – are already over-burdened with regulations and fees. I can say from personal experience, that my husband and I were considering opening a bakery, until we actually began the process and were promptly discouraged by the amount of hoops the government would have required us to jump through, and the astronomical cost of opening a new food establishment. We felt so

unsupported by the local and State government, that we gave up completely, even though our community, friends, and neighbors all wanted us to open a bakery, and it would have been an excellent source of commerce in our town.

3. If the State is truly concerned about the education of the “people in charge” of restaurants, then this certification program should be offered *free of charge*, on the State’s dime. And yes, a grace period should be offered, that is the only decent thing to do.

**Agency Response:** The Agency appreciates and acknowledges these comments. *Person in charge* is defined in the regulations as “the individual present at a FOOD ESTABLISHMENT who is responsible for the operation at the time of inspection.” While DPH understands that the training requirement for the Person in charge is an additional step that business owners face, the requirement will standardize the knowledge required to oversee safe food establishment operations.

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) State of Delaware Food Code were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

The public comment period was open from March 1, 2014 through March 31, 2014. Written comments were received on the proposed regulations during the public comment period. Non-substantive changes were made to the proposed regulations.

The regulation has been approved by the Delaware Attorney General’s office and the Cabinet Secretary of DHSS.

**Please Note: Due to the size of the final regulation it is not being published here. The following url’s are provided for those that wish to obtain the final Food Code.**

[Delaware Food Code Regulations Table of Contents](#)

[Delaware Food Code Regulations Chapter 1](#)

[Delaware Food Code Regulations Chapter 2](#)

[Delaware Food Code Regulations Chapter 3](#)

[Delaware Food Code Regulations Chapter 4](#)

[Delaware Food Code Regulations Chapter 5](#)

[Delaware Food Code Regulations Chapter 6](#)

[Delaware Food Code Regulations Chapter 7](#)

[Delaware Food Code Regulations Chapter 8](#)

[Delaware Food Code Regulations Index](#)

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## DEPARTMENT OF LABOR

### DIVISION OF INDUSTRIAL AFFAIRS

#### Office of Workers’ Compensation

Statutory Authority: 19 Delaware Code, Section 2322 F(j) (19 **Del.C.** §§2322F(j))  
19 **DE Admin. Code** 1341

#### ORDER

#### 1341 Workers’ Compensation Regulations

Pursuant to 29 **Del.C.** §10113, the Secretary of the Department of Labor (DOL) issues this Order adopting amendments to the Fee Schedule Instructions and Guidelines for Pharmacy proposed by the members of the Health Care Advisory Panel.

Effective May 12, 2014, the Department of Labor (DOL) will put in place changes to subsection 4.13.1 of 19 **DE Admin. Code** 1341 (Pharmacy) to align the regulatory language with the statute - 19 **Del.C.** §2322B(4) - regarding payments when a contract prevails. This change will correct a technical error.

Pursuant to 29 **Del.C.** §10113(b)(4),



(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally:

(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors;

**DEPARTMENT OF LABOR**

John McMahon, Secretary of Labor

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

**1341 Workers' Compensation Regulations**

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL**  
**DIVISION OF ENERGY AND CLIMATE**

Statutory Authority: 16 Delaware Code, Section 7602 (16 **Del.C.** §7602)

**Secretary's Order No.: 2014-EC-0008**

**Date of Issuance: April 15, 2014**

**Effective Date of the Amendment: May 11, 2014**

**103 Regulations for State Energy Conservation Code**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

**Background and Procedural History**

This Order considers a proposed new regulation to adopt the most recent and/or highest available version of the International Energy Conservation Code and the latest ASHRAE/IESNA energy standard as required by 16 **Del.C.** §7602, as well as 29 **Del.C.** §8058. The proposed new regulation will hereinafter be known as 7 **DE Admin. Code** 103: State Energy Conservation Code.

Delaware's Energy Conservation Code Act (16 **Del.C.** §7602) requires DNREC to adopt the most recent and/or highest available version of the International Energy Conservation Code ("IECC"), and the latest ASHRAE/IESNA energy standard. Such regulation must also set forth procedures for certification of compliance with these codes and standards to be utilized by the respective local governments.

On January 1, 2010, the 2009 IECC was adopted by the State of Delaware as a result of Delaware's Energy Conservation Code Act. In January 2012, the most recent IECC and ASHRAE/IESNA energy standards were published. The Department's Division of Energy & Climate ("DEC"), along with the Delaware Energy Codes Coalition and the Home Builders Association of DE, have reviewed these new codes extensively over the last year, and propose this new regulation to adopt the 2012 IECC and 2010 ASHRAE standards with amendments.

The Department's Division of Energy & Climate commenced the regulatory development process with Start Action Notice 2013-27. The Department published its initial proposed regulation in the December 1, 2013 Delaware *Register of Regulations*. The Department then held a public hearing on January 6, 2014. The public hearing record remained open at that time for public comment through January 22, 2014.

The proposed new regulation seeks to enable the Department to (1) formally adopt the 2012 IECC and 2010 ASHRAE standards with amendments; and (2) set forth procedures for certification of compliance with these codes and standards to be utilized by respective local governments. The proposed new regulation was thoroughly vetted by the Department at the public hearing on January 6, 2014.

Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. Of the comment received, three voiced support for the Department's proposed regulation as proposed, and applauded Delaware's efforts to create a better energy future for its citizens. Four other organizations, while voicing support for the Department's efforts in this

matter, suggested various modifications to the proposed regulations, in order to provide a greater clarity and understanding to the regulated community. The Department's DEC agreed with all such suggested changes, and amended the initial proposed regulations to reflect the same.

Comment was also received from the Homebuilders Association of Delaware ("HBADE"), which requested further changes to the proposed regulation. It should be noted that the Department had been working with HBADE for approximately nine months leading up to the drafting of these regulations, and both parties had come to agreement of the tiered thresholds as outlined in the proposed draft regulation. Subsequently, HBADE's comment asked for further weakening of the proposed regulation by increasing the square footage thresholds, which would reduce the energy savings to be achieved by the new code. The Department notes that the U.S. Department of Energy has ensured the cost-effectiveness of the new building air leakage requirements for all building sizes through rigorous analysis. Therefore, although the Department has carefully considered this proposal, DEC will not be implementing the additional changes proposed by HBADE.

It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 2, 2014 (Report). The Report recommends certain findings and the adoption of the proposed new Regulation, as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the proposed new Regulation is well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed new Regulation. As previously noted, comment voicing support of this proposed action was received from the public that attended the hearing held on January 6, 2014.

I find that the Department's experts in the Division of Energy & Climate fully developed the record to support adoption of this new Regulation. The adoption of this Order will allow Delaware to (1) formally adopt the 2012 IECC and 2010 ASHRAE standards with amendments; and (2) set forth procedures for certification of compliance with these codes and standards to be utilized by respective local governments.

In conclusion, the following findings and conclusions are entered:

1. The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed new Regulation as final;
2. The Department provided adequate public notice of the proposed new Regulation, and provided the public with an adequate opportunity to comment on the proposed new Regulation, including at the public hearing held on January 6, 2014;
3. The Department held a public hearing on January 6, 2014 in order to consider public comment before making any final decision;
4. The Department's Hearing Officer's Report, including its recommended record and the recommended new Regulation as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
5. The adoption of this Order will enable Delaware to adopt the most recent and/or highest available version of the International Energy Conservation Code ("IECC") and the latest ASHRAE/IESNA energy standard, as required by Delaware's Energy Conservation Code Act (16 **Del.C.** §7602);
6. The recommended new regulation should be adopted as a final regulation because Delaware will be enabled to (1) adopt the 2012 IECC and 2010 ASHRAE standards with amendments; (2) formally set forth procedures for certification of compliance with these codes and standards to be utilized by respective local governments; and lastly, because (3) the proposed regulation is well supported by documents in the record;
7. The Department shall submit this Order approving the final regulation to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

**103 Regulations for State Energy Conservation Code****1.0 Purpose and Statutory Authority**

- 1.1 The purpose of these regulations is to provide the Department of Natural Resources and Environmental Control's determination of the most recent and/or highest available version of the International Energy Conservation Code and the latest ASHRAE/IESNA standard. The goal of establishing these regulations is to provide a statewide building energy conservation code.
- 1.2 These regulations provide rules of practice and procedures for certification of compliance with these codes and standards to be utilized by the respective local governments.
- 1.3 Delaware Code Title 16 Section 7602 provides the authority for adopting Delaware Energy Conservation Code. These regulations are promulgated under the authority of 16 Del.C. §7602.

**2.0 Definitions**

For purposes of these regulations, the following words and phrases shall have the meanings set forth below.

**"ASHRAE"** means the ANSI/ASHRAE/IES Standard 90.1: Energy Standard for Buildings except Low-Rise Residential Buildings published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

**"Department"** means the Department of Natural Resources and Environmental Control, the Division of Energy and Climate or the Delaware Energy Office.

**"DET verifier"** means a certified Duct and Envelope Tightness verifier. A certified DET verifier shall be a certified Home Energy Rating Systems (HERS) rater, or be a certified Home Performance with ENERGY STAR contractor, or be a Building Performance Institute (BPI) **[Analyst Heating Professional to perform duct tightness testing or a BPI Building Analyst or Envelope Professional to perform building tightness testing]**, or successfully complete a course that is approved by the Department of Natural Resources and Environmental Control.

**"IECC"** means the International Energy Conservation Code published by the International Code Council, Inc.

**3.0 Incorporation by Reference**

- 3.1 The 2012 International Energy Conservation Code (IECC), published by the International Code Council, Inc., is hereby adopted and incorporated by reference with revisions as the Delaware Residential Building Energy Code and is an enforceable part of the Delaware Building Codes. The revisions to the 2012 IECC code are stated in Section 4.0 of these regulations.
- 3.2 The American Society of Heating, Refrigerating and Air-Conditioning Engineers Standards (ASHRAE) 90.1-2010: Energy Standard for Buildings except Low-Rise Residential Buildings and Commercial Provisions of the 2012 International Energy Conservation Code are hereby adopted and incorporated by reference in their entirety as the Delaware Commercial Building Energy Code and is an enforceable part of the Delaware Building Codes.

**4.0 Revisions to the 2012 IECC**

- 4.1 The following additions, insertions, deletions, and other changes are hereby made to the 2012 International Energy Conservation Code.
  - 4.1.1 R403.2.2 amend to add: Supply duct tightness shall be verified by either of the following:
    1. Post-construction test: Total leakage less than or equal to 6 cfm (169.9/min) per square feet (9.29 m<sup>2</sup>) of conditioned floor area when tested at the pressure differential of 0.1 inches w.g. (25 Pa)....
    2. Rough-in test: Total leakage less than or equal to 6 cfm (169.9/min) per square feet (9.29 m<sup>2</sup>) of conditioned floor area when tested at the pressure differential of 0.1 inches w.g. (25 Pa) (remainder unchanged – If the air handler is not installed.... ≤ 4 cfm...)

## 4.1.2 R403.4.2: amend *list* to:

1. Piping larger than 3/4 inch nominal diameter.
2. Piping serving more than one dwelling unit.
3. ~~Piping from the water heater to kitchen outlets.~~
4. Piping located outside the conditioned space.
5. Piping from the water heater to a distribution manifold.
6. Piping located under a floor slab.
7. Buried piping.
8. ~~Supply and return piping in recirculation systems other than demand recirculation systems.~~
9. ~~Piping with run lengths greater than the maximum run lengths for the nominal pipe diameter given in Table R403.4.2.~~

All remaining piping shall be insulated to at least R-3 or meet the run-length requirements of Table R403.4.2. Delete Table R403.4.2 without substitution.

## 4.1.3 R402.4.1.2:

**Exception:** *A building or dwelling unit with 2,000 ft<sup>2</sup> or less of conditioned floor area (CFA) may satisfy R402.4.1.2 if it:*

**~~[(1) attains a HERS Score of 69, using ResNET appliance and plugload defaults;~~**

**AND]**

**[(2)(1)] is tested to have an air leakage rate no greater than:**

*5 ACH-50 for homes with < 1,500 ft<sup>2</sup> of CFA, or*

*4 ACH-50 for homes with 1,500 – 2,000 ft<sup>2</sup> of CFA.)*

## 4.1.4 R403.2.3 Building framing cavities shall not be used as ducts or plenums.

**Exception:** *Returns run exclusively through conditioned space.*

## 4.1.5 R403.5 The building shall be provided with ventilation that meets the requirements of the International Residential Code (IRC) or International Mechanical Code (IMC), as applicable, or with other approved means of ventilation. Outdoor air intakes shall have automatic or gravity dampers that close when the ventilation system is not operating. Required ventilation rates shall also include adequate provisions for fuel-fired appliance, stove and fireplace makeup air supply; kitchen, bath, clothes dryer, and central vacuum exhausts; and other makeup air system supplies and/or exhausts as required in either the IRC or IMC.

*(remainder of section unchanged)*

## **5.0 Implementation and Enforcement**

- 5.1 All buildings must meet all requirements of the applicable referenced code six months after date of promulgation.
- 5.2 All projects may utilize the new applicable reference codes at any time after the date of promulgation, provided such choice is stated on the construction documents.

## **6.0 Certified duct and envelope tightness (DET) verifier.**

Testing for duct and building envelope tightness shall be conducted by a certified DET verifier.

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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901(c) and (d), 903(e)(2)a and (e)(3);  
(7 Del.C. §§901(c) and (d), 903(e)(2)a and (e)(3))  
7 DE Admin. Code 3507

Secretary's Order No.: 2014-F-0007

**3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas**

Date of Issuance: April 15, 2014

Effective Date of the Amendment: May 11, 2014

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

**Background and Procedural History**

This Order considers proposed regulations to amend 7 DE Admin. Code 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2014-01. The Department published its initial proposed regulation amendments in the March 1, 2014 Delaware *Register of Regulations*. The Department then held a public hearing on March 26, 2014. The public hearing record remained open at that time for public comment through April 10, 2014.

The purpose of the Department's proposed promulgation is to adopt provisions consistent with the proposed federal rules for the recreational black sea bass fishery and remain compliant with Addendum XXV to the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass by amending Tidal Finfish Regulation 3507, Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas (12.0 and 12.1).

Black sea bass are managed cooperatively by the ASMFC, the Mid-Atlantic Fishery Management Council ("MAFMC"), and the National Marine Fisheries Service ("NMFS") through the joint Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coastwide recreational black sea bass harvest limit for 2014 of 2.26 million pounds (1,189,474 fish) at their December 11, 2013 meeting. The ASMFC approved the continuation of ad hoc regional management measures under Addendum XXV at their February 4, 2014 meeting.

Addendum XXV to the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass requires the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for black sea bass consistent with those measures required for federal waters. The National Oceanic and Atmospheric Administration (NOAA) recommended federal recreational black sea bass measures for 2014 include a 12.5 inch minimum size limit, a 15 fish possession limit, and open seasons from May 19 through September 18, and October 18 through December 31. These measures, when combined with measures being implemented in the northern region (Massachusetts through New Jersey) will achieve the 2014 coastwide recreational harvest limit.

The proposed amendments were thoroughly vetted by the Department at the public hearing on March 26, 2014. Members of the public attended said hearing, however, no comment was received at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No negative public comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 11, 2014 (Report). The Report recommends certain findings and the adoption of the proposed amendments as attached to the Report as Appendix A.

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## Findings and Discussion

I find that the proposed amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed amendments. As previously noted, members of the public did attend the hearing held on March 26, 2014, and no negative public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these amendments. The adoption of this Order will allow Delaware to remain in compliance with the ASMFC's Addendum XXV to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) a 15 fish possession limit; and (3) open seasons from May 19 through September 18, and then from October 18 through December 31.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed amendments as final;

2.) The Department provided adequate public notice of the proposed amendments, and provided the public with an adequate opportunity to comment on both the initial proposed amendments, as well as the proposed amendments, including at the public hearing held on March 26, 2014;

3.) The Department held a public hearing on March 26, 2014 in order to consider public comment before making any final decision;

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

5.) The adoption of this Order will allow Delaware to remain in compliance with the ASMFC's Addendum XXV to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) a 15 fish possession limit; and (3) open seasons from May 19 through September 18, and then from October 18 through December 31.

6.) The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) mirror its black sea bass management measures with those of surrounding states, as well as those likely to be in place in federal waters; (2) remain in compliance with the aforementioned Fishery Management Plan for this species, as implemented by both the NMFS and the ASMFC; and lastly, because (3) the amendments are well supported by documents in the record;

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

Collin P. O'Mara, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2014 issue of the *Register* at page 901 (17 DE Reg. 901). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas**

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### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) and (d), 903(e)(2)a and (e)(3);  
(7 Del.C. §§901(c) and (d), 903(e)(2)a and (e)(3))  
7 DE Admin. Code 3511

**Secretary's Order No.: 2014-F-0006**

**3511 Summer Flounder Size Limits; Possession Limits; Season**

**Date of Issuance: April 15, 2014**

**Effective Date of the Amendment: May 11, 2014**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

### Background and Procedural History

This Order considers proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 regarding Summer Flounder. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2014-02. The Department published the proposed amendments in the March 1, 2014 Delaware *Register of Regulations* and held a public hearing on March 26, 2014. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 11, 2014 (Report). The Report recommends certain findings and the adoption of the proposed regulation amendment as attached to the Report as Appendix A.

### Findings and Discussion

I find that the proposed new regulation is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation. As a result of the regulatory development process, the Department received public comments supporting this proposed regulation, as thoroughly discussed in the Report.

Summer flounder are managed cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council ("MAFMC"), and the National Marine Fisheries Service ("NMFS") through Amendment 13 to the joint Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. The ASMFC and MAFMC jointly approved a coastwide recreational summer flounder harvest limit for 2014 of 7.01 million pounds (2,421,720 fish) at their December 11, 2013 meeting. The ASMFC approved a regional management approach for states under Addendum XXV at its February 4, 2014 meeting.

Under the regional management approach, states within a region are required to establish the same size and possession limits. Delaware is in a region with Maryland and Virginia. Delaware is required to change its existing recreational 17-inch minimum size limit to a 16-inch recreational minimal size limit. Further, there will be no change in Delaware's present four fish recreational possession limit or year-round recreational summer flounder season.

With the adoption of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 as final, Delaware will be able to remain in compliance with the federal guidelines for the management of summer flounder, to wit: (1) establish the size limit at 16.0 inches; (2) maintain the current creel limit at four (i.e., four fish per day); and (3) maintain a no-closure season for 2014.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;

2.) The Department provided adequate public notice of the proposed regulatory amendments to this regulation, and provided the public with an adequate opportunity to comment on the proposed amendments, including at a public hearing;

3.) The Department held a public hearing on March 26, 2014 on the proposed amendments to this regulation in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments to this regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended amendments to this regulation satisfy the aforementioned federal mandates with regard to Delaware's management of summer flounder, and are not changed from the proposed amendments as originally published in the March 1, 2014, Delaware *Register of Regulations*;

6.) The recommended amendments should be adopted as final because Delaware will be enabled to remain in compliance with the federal guidelines for the management of summer flounder, as set forth cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC), and the National Marine Fisheries Service through Amendment 13 to the Summer Flounder, Scup and Black Sea

Bass Fishery Management Plan and its subsequent addenda. Furthermore, it will not deprive fishermen of the enjoyment of summer flounder, nor will it cause Delaware to suffer a marked decrease in tourism (and potential correlating economic downturn) as a result of any fishery closure in 2014; and

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

Collin P. O'Mara, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2014 issue of the Register at page 904 (17 DE Reg. 904). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3511 Summer Flounder Size Limits; Possession Limits; Season**

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**Board of Charitable Gaming**

Statutory Authority: 28 Delaware Code, Section 1508(a)(2) (28 **Del.C.** §1508(a)(2))  
10 **DE Admin. Code** 101

**ORDER**

**101 Regulations Governing Bingo**

Pursuant to 29 **Del.C.** §10113(b)(5) and 28 **Del.C.** §1508(a)(2), the Delaware Board of Charitable Gaming issues this Order adopting the below amendments to the Board's regulations governing Bingo. Specifically, pursuant to 29 **Del.C.** §10113(b)(5), Bingo Regulations 4.2 and 4.6 of the Board of Charitable Gaming must be changed to make them consistent with newly adopted statutory changes in Title 28, Chapter 15 of the Delaware Code. These changes do not otherwise alter the substance of the regulations.

**SUMMARY OF THE EVIDENCE**

1. Rule 4.2 now states: "Bingo games shall not be commenced prior to *1:30 p.m.* and the operation of a function shall be limited to six hours." (Emphasis added).

2. Rule 4.6 now states: "No prize in an amount or value greater than \$250 shall be offered or given in any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,250."

3. The Board makes the following change to its regulations (additions are underlined, removals are stricken through):

4.2 "Bingo games shall not be commenced prior to ~~4:30~~ 12:00 p.m. and the operation of a function shall be limited to six hours."

4.6 "No prize in an amount or value greater than ~~\$250~~ \$350 shall be offered or given in any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed ~~\$1,250~~ \$3,000."

4. 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, 2014.

IT IS SO ORDERED this 3<sup>rd</sup> day of April, 2014.

**BY THE BOARD OF CHARITABLE GAMING:**

W. Scott Angelucci, Chairperson

Janet Williams-Coger, Vice Chairperson

Francis Gant, Member

Tim Winstead, Member



# FINAL REGULATIONS

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

**101 Regulations Governing Bingo**

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**DIVISION OF PROFESSIONAL REGULATION  
Board of Charitable Gaming**

Statutory Authority: 28 Delaware Code, Section 1508(a)(2) (28 **Del.C.** §1508(a)(2))  
10 **DE Admin. Code** 103

**ORDER**

**103 Regulations Governing Charitable Gambling Other Than Raffles**

Pursuant to 29 **Del.C.** §10113(b)(5) and 28 **Del.C.** §1508(a)(2), the Delaware Board of Charitable Gaming issues this Order adopting the below amendment to the Board's regulations governing Charitable Gaming. Specifically, pursuant to 29 **Del.C.** §10113(b)(5), Charitable Gaming Regulation 8.1 of the Board of Charitable Gaming must be changed to make it consistent with newly adopted statutory changes in Title 28, Chapter 15 of the Delaware Code. This change does not otherwise alter the substance of the regulations.

**SUMMARY OF THE EVIDENCE**

1. Rule 8.1 now states: "No Sponsoring Organization shall conduct more than one Function in any single calendar month. Charitable games shall not commence prior to 1:30 p.m."
2. The Board makes the following change to its regulations (additions are underlined, removals are stricken through):
  - 8.1 "No Sponsoring Organization shall conduct more than one Function in any single calendar month. Charitable games shall not commence prior to ~~4:30~~ 12:00 p.m."
3. 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, 2014.

IT IS SO ORDERED this 3<sup>rd</sup> day of April, 2014.

**BY THE BOARD OF CHARITABLE GAMING:**

W. Scott Angelucci, Chairperson  
Francis Gant, Member

Janet Williams-Coger, Vice Chairperson  
Tim Winstead, Member

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

**103 Regulations Governing Charitable Gambling Other Than Raffles**

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**DIVISION OF PROFESSIONAL REGULATION  
Polysomnography Advisory Council**

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

**ORDER**

**1725 Polysomnography Advisory Council**

The Delaware Polysomnography Advisory Council, pursuant to 24 **Del.C.** §1799W(c), proposed to adopt regulations governing the practice of polysomnography in the State of Delaware. As a newly created Council,

regulating a profession that first required licensure by virtue of legislation enacted September 12, 2012, these regulations are comprehensive, and all newly created.

Following publication in the Delaware *Register of Regulations* on March 1, 2014 a public hearing was held on March 28, 2014. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing.

## SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on March 28, 2014. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

## FINDINGS OF FACT AND CONCLUSIONS

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

2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.

3. Pursuant to 24 **Del.C.** §1799W(c), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The proposed regulations seek to adopt regulations governing the practice of polysomnography in the State of Delaware. As a newly created Council, regulating a profession that first required licensure by virtue of legislation enacted September 12, 2012, these regulations are comprehensive, and all newly created.

5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

## DECISION AND EFFECTIVE DATE

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

IT IS SO ORDERED this 14th day of April, 2014, by the Delaware Polysomnography Advisory Council.

Steven D. Conley, President  
Grace R. Denault  
Paul Walker

Stephen G. Cooper, MD  
Theodore S. Kruppa, III

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2014 issue of the *Register* at page 906 (17 DE Reg. 906). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1725 Polysomnography Advisory Council**

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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**

The Delaware Board of Nursing pursuant to 24 **Del.C.** §1904(c), proposed to revise Regulations 2.4.1.7.4, 7.2.3, and 8.0 et seq. The proposed change to Regulation 2.4.1.7.4 clarifies that LPN practice does not equate to RN practice for purposes of nursing educational programs, and the proposed change at 7.2.3 clarifies that the practice of nursing occurs at the location of the patient regardless of the location of the nurse. The proposed changes to Regulation 8.0 et seq. create four types of APN licenses with specific population foci, update the national certification bodies recognized by the Board, and update the entire regulation regarding advance practice nursing licensure requirements.

The Delaware Board of Nursing also proposed to revise Regulations 9.2.1.1.1 and 9.2.2.3.1. The proposed changes to Regulations 9.2.1.1.1 and 9.2.2.3.1 add the requirement that at least 3 contact hours of the requisite continuing education needed for renewal or reinstatement must be in the area of substance abuse.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication of the proposed amendments to Section 9.0 in the Delaware *Register of Regulations* on November 1, 2013 a public hearing was held on January 8, 2014. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News* (Board Exhibit 1). At the hearing, the Board Liaison confirmed on the record that no written public comment was received during the initial 30 day public comment period. No public comment was received by the Board during the public hearing and no public comment was received during the additional fifteen day comment period.

Following publication of the proposed amendments to Sections 2.0, 7.0 and 8.0 in the Delaware *Register of Regulations* on January 1, 2014 a public hearing was held on February 12, 2014. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibit 1 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. During the written public comment period, a comment was received from Jana Conover, Assistant Director of State Government Affairs. Ms. Conover's comment was marked as Board's Exhibit 2. Ms. Conover had a question regarding the proposed changes to 8.11.2 and whether applicants for licensure by endorsement will be granted licensure if they can demonstrate either a master's degree or a postbasic program certificate or whether applicants will be limited to a graduate or post-graduate degree. In addition, Ms. Conover questioned the requirement for completion of three separate courses in "advanced physiology and pathophysiology, advanced health assessment, advanced pharmacokinetics and pharmacotherapeutics" as this was not made part of the APRN consensus model until 2008. Prior to that time, many CRNAs would have completed coursework that included this subject content, but this would not necessarily have occurred in three separate courses with these titles. While Ms. Conover has no issue with including these requirements in Regulation 8.9 "Application for Initial Licensure to Practice as an Advanced Practice Nurse," for new applicants for initial licensure. She believes these proposed endorsement requirements seem to be problematic, however, for CRNAs who graduated prior to 1999 (for the graduate degree requirement) and those who graduated prior to the consensus model (for the three separate course requirement). No public comment was received by the Board during either public hearing.

### SUMMARY OF THE FINDINGS OF FACT

Pursuant to discussions held at open public Board meetings, the Board proposed to amend Regulations 9.2.1.1.1 and 9.2.2.3.1 to add the requirement that at least three contact hours of the requisite continuing education needed for renewal or reinstatement must be in the area of substance abuse. The Board finds that these changes are required due to the frequent disciplinary actions involving nurses with substance abuse problems. The Board finds that it is in the public interest to require education of this type to assist nurses in self-identifying if they have a problem, but also to train nurses to identify other health care professionals in the workplace who may have a problem.

Pursuant to discussions held at open public Board meetings, the Board proposed to amend Regulation 2.4.1.7.4 to clarify that LPN practice does not equate to RN practice for purposes of nursing educational programs. This clarification is needed as the scope of practice of an RN is different and distinct from the scope of practice of an LPN, and a question was raised as to whether a RN candidate for licensure could rely on clinical experience

received previously while pursuing her LPN education and forgo obtaining any RN clinical experience during her pursuit of a RN education.

Pursuant to discussions held at open public Board meetings, the Board proposed to amend Regulation 7.2.3 to clarify that the practice of nursing occurs at the location of the patient regardless of the location of the nurse. This clarification is needed due to the development of telehealth services, with many health professionals treating patients remotely using advanced technologies. The Board is aware that the national model regulations contemplate that, with regard to remote treatment, the practice of nursing is defined by the location of the nurse and not the patient. However, the Board finds as a matter of fact that its primary purpose, to which all others are secondary, is to protect the health and safety of the people of Delaware. Thus, defining the practice of nursing as occurring where the patient is located is the only way to ensure that the practice of nursing, as it impacts the people of Delaware, remains within the jurisdiction of this Board.

Pursuant to discussions held at open public Board meetings, the Board proposed to amend Regulation 8.0 et seq. to create four types of APN licenses with specific population foci, update the national certification bodies recognized by the Board, and update the entire regulation regarding advance practice nursing licensure requirements. The Board finds that these changes are necessary as, during the last substantial revitalization of the Board's regulations, Regulation 8.0 was not addressed. The Board finds that these changes are necessary to update its regulations to reflect the current practice of advance practice nurses, reflect many of the national model regulations, and make the regulations pertaining to advance practice nurses consistent with the regulations pertaining to registered and practical nurses since the regulations were revitalized for those two practice groups.

Pursuant to discussions held at open public Board meetings, the Board proposed to amend Regulations 9.2.1.1.1 and 9.2.2.3.1 to add the requirement that at least three contact hours of the requisite continuing education needed for renewal or reinstatement must be in the area of substance abuse. The Board finds that these changes are required due to the frequent disciplinary actions involving nurses with substance abuse problems. The Board finds that it is in the public interest to require education of this type to assist nurses in self-identifying if they have a problem, but also to train nurses to identify other health care professionals in the workplace who may have a problem.

## DECISION OF THE BOARD

The proposed changes to Sections 2.0, 7.0, 8.0 and 9.0 of the regulation have been found to be necessary as outlined herein. The Board received no public comment regarding Section 9.0 as proposed. The Board finds that this regulation shall be adopted as final in the form as proposed. The exact text of this regulation, as amended, is attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* on May 1, 2014.

IT IS SO ORDERED this 19th day of March, 2014 by the Delaware Board of Nursing.

Robert Contino, RN, Nurse Educator, President

Pam Tyranski, RN, Vice-President

Kathy L. Bradley, LPN

Dianne Halpern, RN

Mary Lomax, Public Member

Madelyn Nellius, Public Member

Delphos Price, RN, CRNA, Advanced Practice Nurse Member

David Salati, RN

Harland Sanders Jr., Public Member

Victoria Udealer, RN Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2013 issue of the *Register* at page 490 (17 DE Reg. 490), and the January 2014 issue of the *Register* at page 708 (17 DE Reg. 708). 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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**FINAL REGULATIONS**

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**DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 **Del.C.** §2706(a)(1))  
24 **DE Admin. Code** 2700

**ORDER****2700 Board of Registration for Professional Land Surveyors**

On February 1, 2014, the Board of Professional Land Surveyors of the State of Delaware published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 17, Issue 8. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 20, 2014, at a regularly scheduled meeting of the Board of Professional Land Surveyors of the State of Delaware to receive verbal comments regarding the Board's proposed amendments to its regulations.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

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

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

There was no verbal testimony given at the public hearing on March 20, 2014. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

**FINDINGS OF FACT AND CONCLUSIONS**

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §2706(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The majority of the proposed changes are changes of an administrative nature.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

**DECISION AND ORDER CONCERNING THE REGULATIONS**

NOW THEREFORE, pursuant to 24 **Del.C.** §2706(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on February 1, 2014. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 17th day of April, 2014.

**BOARD OF PROFESSIONAL LAND SURVEYORS OF THE STATE OF DELAWARE**

James Bielicki, PLS

Franco R. Bellafante, PLS

Thomas Plummer, PLS

Charles Adams, PLS

Rhonda West

\*Please note that no changes were made to the regulation as originally proposed and published in the February 2014 issue of the *Register* at page 821 (17 DE Reg. 821). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**2700 Board of Registration for Professional Land Surveyors**

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## **DIVISION OF PROFESSIONAL REGULATION**

### **Board of Veterinary Medicine**

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 **Del.C.** §3306(a)(1))  
24 **DE Admin. Code** 3300

### **ORDER**

#### **3300 Board of Veterinary Medicine**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 11, 2014 at a scheduled meeting of the Delaware Board of Veterinary Medicine ("the Board") to receive comments regarding the Board's proposed revisions to its rules and regulations.

The Board proposes amendments to Rule 11.0, addressing licensure of veterinary technicians. The revisions strike all references to licensure by educational and/or experiential alternatives. Pursuant to 24 **Del.C.** §3319(a)(1), these alternative methods of licensure expired effective October 1, 2013. As of October 1, 2013, all applicants for licensure as a veterinary technician must show a degree from a veterinary technician program accredited by the AVMA or from a foreign veterinary program approved by the AVMA. Other changes are needed to be consistent with Division of Professional Regulation procedures. Specifically, license renewal is accomplished online and the licensee attests to completion of the required continuing education.

A public hearing was held on March 11, 2014, with deliberations conducted on April 8, 2014. The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 17, Issue 8 on February 1, 2014. Notice of the March 11, 2014 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was March 26, 2014, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on April 8, 2014.

#### **Summary of the Evidence and Information Submitted**

The following exhibits were made a part of the record:

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

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

The Board received public comment from Colleen Kirby, who indicated that she is an unlicensed veterinary assistant, as are all of the assistants who work with her. She questioned whether the veterinary assistants in her practice would need to obtain licensure as a result of the regulation changes. Dr. Roberta Jackson, Board President, advised that the regulations clearly establish what tasks may be performed by a veterinarian, a veterinarian technician, and a lay person. Ms. Kirby was referred to the current Board regulations.

#### **Findings of Fact and Conclusions**

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

While the Board received public comment, in the form of a question from Ms. Kirby, the comment did not implicate the appropriateness of the proposed regulatory changes.

Pursuant to 24 **Del.C.** §3306(a)(1), the Board has the statutory authority to promulgate rules and regulations. The proposed revisions will clearly advise the public and applicants that the alternative methods of licensure for veterinary technicians expired effective October 1, 2013. As of October 1, 2013, all applicants for licensure as a veterinary technician must show a degree from a veterinary technician program accredited by the AVMA or from a



foreign veterinary program approved by the AVMA. The other revisions are needed to make the rules and regulations consistent with Division of Professional Regulation procedures. The Board concludes that adoption of the rules and regulations as amended advances professional practice standards and is in the best interest of the public.

### Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

### Text and Citation

The text of the revised rules and regulations remains as published in the *Register of Regulations*, Volume 17, Issue 8 on February 1, 2014.

**IT IS SO ORDERED** this 8th day of April, 2014 by the Delaware Board of Veterinary Medicine.

Roberta Jackson, V.M.D., President

Ann Sellers

Lynn Nellius, L.V.T., Vice-President

Natalie Titus, D.V.M

Patricia Ennis

Erin Whaley, D.V.M.

Rachel Longfellow, L.V.T., Vice-President

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2014 issue of the *Register* at page 829 (17 DE Reg. 829). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3300 Board of Veterinary Medicine**

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### DIVISION OF PROFESSIONAL REGULATION

#### 3500 Board of Examiners of Psychologists

Statutory Authority: 24 Delaware Code, Section 3506 (24 Del.C. §3506)

24 DE Admin. Code 3500

### ORDER

#### 3500 Board of Examiners of Psychologists

### NATURE AND STAGE OF THE PROCEEDINGS

On December 1, 2013, the Delaware Board of Examiners of Psychologists published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 17, Issue 6. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 6, 2014 at a regularly scheduled meeting of the Delaware Board of Examiners of Psychologists to receive verbal comments regarding the Board's proposed amendments to its regulations.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on January 6, 2014. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received

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after the public hearing during the fifteen day 29 Del.C. §10118(a) second public comment period.

## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 Del.C. §3506(a)(l), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed addition to Rule 5.0 seeks to implement regulations pertaining to licensees who elect change the status of the license to inactive. The proposed regulation sets forth the amount of time that a license may remain inactive and establishes the procedure a licensee must follow to reactivate the license.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

## DECISION AND EFFECTIVE DATE

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

**SO ORDERED** this 31st day of March, 2014.

### BY THE DELAWARE BOARD OF EXAMINERS OF PSYCHOLOGISTS

Dr. Richard Brokaw, President	Dr. Wesley R. Bowman, Vice President,
Victor Kennedy, Public Member, Secretary	Dr. Marcia S. Halperin
Eleanor Allione, Public Member	Dr. Joseph Zingaro
Dr. Rachel A. Brandenburg	Rosa Robinson, Public Member
Ronise Ball, Public Member	

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2013 issue of the *Register* at page 609 (17 DE Reg. 609). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3500 Board of Examiners of Psychologists**

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## DEPARTMENT OF TRANSPORTATION DIVISION OF TECHNOLOGY AND SUPPORT SERVICES

Statutory Authority: 17 Delaware Code, Section 132(e) and 29 Delaware Code, Section 8404(8)  
(17 Del.C. §132(e) and 29 Del.C. §8404(8))  
2 DE Admin. Code 2501

### ORDER

### 2501 External Equal Opportunity Complaint Procedure

#### Summary of the Evidence and Information Submitted

The Department of Transportation sought to update its existing regulations regarding procedures for addressing, investigating, and responding to complaints of discrimination on the grounds of race, color, religion, sex, age, national origin, or disability with respect to its External EEO programs.

Notice for public comment was properly noticed in 17 DE Reg. 833, February 1, 2014.

The Department received comments from different sources, including additional review by its own staff. The



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# FINAL REGULATIONS

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comments received led to several non-substantive changes in the proposed regulations, detailed in the accompanying matrix, incorporated by reference into this Order.

## Findings of Fact

The Secretary finds that it is appropriate to amend the existing External Equal Opportunity Complaint Procedures as proposed and slightly amended as discussed in the accompanying matrix, to incorporate appropriate changes to the Procedures since the original regulations were adopted.

## Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the Existing External Equal Opportunity Complaint Procedures as described herein.

## Text and Citation

The text of 2 **DE Admin. Code** 2501 shall be in the form attached as Exhibit "A".

## 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*.

IT IS SO ORDERED THIS 15th DAY OF APRIL, 2014.

Shailen Bhatt, Secretary

Department of Transportation

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

**2501 External Equal Opportunity Complaint Procedure**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

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

#### PUBLIC NOTICE

**1. TITLE OF STATE IMPLEMENTATION PLAN REVISION:**

Delaware Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Under the 2008 Ozone National Ambient Air Quality Standard (NAAQS)

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

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

According to Section 182(b)(2) of CAA, Delaware is required to submit to EPA in July 2014 a SIP revision to demonstrate that Delaware has implemented necessary RACT control measures for stationary emission sources of volatile organic compounds (VOC) and oxides of nitrogen (NOx) in Delaware for implementation, maintenance, and enforcement of the 2008 ozone NAAQS. In this document, Delaware 1) establishes RACT NOx emission limits for two units at Delaware City refinery, and 2) demonstrates that its ozone-related SIP control measures meet the CAA's RACT requirements for the 50 ton-per-year (TPY) major VOC sources and for the 100 TPY major NOx sources.

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

None

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

7 Delaware Code, Chapter 60, Environmental Control

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

None

**6. NOTICE OF PUBLIC COMMENT:**

Interested parties may submit comments in writing to Frank Gao, Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720.

Statements and testimony may be presented either orally or in writing at the public hearing to be held on Monday, June 2, 2014, beginning at 6:00 p.m. in the auditorium, Richardson & Robbins Building, 89 Kings Hwy, Dover, 19901.

**7. PREPARED BY:**

Frank Gao Phone: (302) 323-4542 Date: May 14, 2014 Email address [Frank.gao@state.de.us](mailto:Frank.gao@state.de.us)

**Proposal**

**Delaware Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Under the  
2008 Ozone National Ambient Air Quality Standard (NAAQS)  
Submission To U.S. Environmental Protection Agency**

**Submitted By Delaware Department of Natural Resources and Environmental Control  
May 2014**

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

**Delaware Reasonably Available Control Technology (RACT) State Implementation Plan (SIP)**

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

The State Board of Education will hold its monthly meeting on Thursday, May 15, 2014 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****4201 State of Delaware Cancer Registry**

Health Promotion & Disease Prevention, Division of Public Health, Department of Health and Social Services (Department), has proposed amendments to the 4201 State of Delaware Cancer Registry regulation.

The proposed regulation defines procedures to be used by health care providers to report cancer to Delaware Health and Social Service's Cancer Registry. Currently, a paper-based method (form) is used by health care providers to report all cancer cases. Amendments have been made to the existing regulation that require health care providers to report all cancer cases via an electronic reporting method; using the Centers for Disease Control and Prevention (CDC) Web Plus electronic reporting software.

On May 1, 2014, the Department plans to publish proposed amendments to the 4201 State of Delaware Cancer Registry regulation and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the May 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Comprehensive Cancer Control Program at 302-744-1032.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Friday, May 30, 2014 at:

Deborah Harvey, Division of Public Health

417 Federal Street

Dover, DE 19901

Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us) Phone: (302) 744-4700

**DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****4410 Skilled Home Health Agencies (Licensure)**

The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, has proposed amendments to the State of Delaware 4410 Skilled Home Health Agencies (Licensure) regulation.

Proposed amendments change the definition of "Director" in the 4410 Skilled Home Health Agencies (Licensure) regulation.

On May 1, 2014, the Department plans to publish proposed amendments to the 4410 Skilled Home Health Agencies (Licensure) regulation and hold them out for public comment per Delaware law.

Copies of the proposed regulation are available for review in the May 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation must submit same to Deborah Harvey by 4:30 p.m. on Friday, May 30, 2014 at:

Deborah Harvey, Division of Public Health

417 Federal Street

Dover, DE 19901

Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us) Phone: (302) 744-4700

**DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****Child Care Subsidy Program: Determining Technical Eligibility for Child Care**

In compliance with the State's Administrative Procedures Act (APA - 29 **Del.C.**, Ch. 101) and under the authority of 31 **Del.C.**, §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, *Determining Technical Eligibility for Child Care Assistance*.

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, 2014.

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

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE****PUBLIC NOTICE****3521 Weakfish Size Limits; Possession Limits; Seasons**

This action proposes to modify Delaware's commercial weakfish management approach of intermittent net closures from May 1 through June 30 to an uninterrupted closure (all gears) from May 1 through June 2. The amendment proposes a weakfish bycatch allowance during the closure of up to 100 pounds per day or trip for the commercial gill net fishery and accommodates commercial fishing for species other than weakfish (e.g., Atlantic menhaden and black drum). It should be noted that the proposed action will not impact the gill net restrictions established in 7 **Del.C.** §923 and it maintains existing recreational closures, as well as catch limits during the open season in all fisheries. Finally, the action proposes to eliminate mailed notices of net closure dates, as the dates are annually published in the Fishing Guide which is widely available in print and posted online.

The Atlantic States Marine Fisheries Commission (ASMFC) determined that the proposed net closure management strategy is consistent with Amendment III and Addendum IV to Amendment IV of the Interstate Fishery Management Plan for Weakfish. Further, the concept of the proposed action was endorsed by the Tidal Finfish Advisory Council at its January 15, 2014 meeting.

The hearing record on the proposed changes to 3521 Weakfish Size Limits; Possession Limits; Seasons will be open May 1, 2014. Individuals may submit written comments regarding the proposed changes via e-mail to 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 22, 2014 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**DIVISION OF FISH AND WILDLIFE****REGISTER NOTICE #2014 - 04****3801 Shellfish Aquaculture**

This action proposes the regulations necessary to provide for a shellfish aquaculture industry in Delaware's Inland Bays. Specifically, this action proposes a structured process and sets conditions for leasing of subaqueous bottom within Delaware's Inland Bays for the culture of bivalve shellfish. The proposed regulations include requirements for lease: application, locations, issuance, marking, renewal, transfer, expiration, termination, condemnation and emergency relocation. The action further proposes measures related to: shellfish aquaculture gear and marking, shellfish nursery permitting and structures, harvester license qualifications, bivalve species authorized for aquaculture, activities within subaqueous lease areas, shellfish aquaculture reporting requirements, and prohibited activities.

The hearing record on the proposed addition of a new 3801 Shellfish Aquaculture will be open May 1, 2014. Individuals may submit written comments regarding the proposed addition via e-mail to 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 addition will be held on May 21, 2014 beginning at 6:00 PM at the Watershed Stewardship Building, located at 901 Pilottown Road, Lewes, DE 19958.

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

**DIVISION OF FAMILY SERVICES**

**OFFICE OF CHILD CARE LICENSING**

**PUBLIC NOTICE**

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

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Requirements for Residential Child Care Facilities and Day Treatment Programs in response to public comments received after the publication of revised regulations in the June 2013, August 2013, and January 2014 *Register of Regulations*.

Because of major revisions to the formatting of these regulations, the previous draft is being deleted and the new draft published here is offered for another period of public comment. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on May 30, 2014.

**DEPARTMENT OF STATE**

**DIVISION OF PROFESSIONAL REGULATION**

**Gaming Control Board**

**PUBLIC NOTICE**

**103 Regulations Governing Charitable Gambling Other Than Raffles**

The Delaware Board of Charitable Gaming, pursuant to 28 **Del.C.** §1508(a)(2), proposes to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with operational procedures at the Division of Professional Regulation regarding license renewal and disposal of criminal background checks as well as to ensure that the regulations do not conflict with a recently enacted Gaming Statute regarding licensing of third party vendors. See 29 **Del.C.** §1529. Finally, the proposed regulations delete regulations which are redundant of or conflict with the Administrative Procedures Act, Title 29, Chapter 101. The Board will hold a public hearing on the proposed rule change on June 5, 2014 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Charitable Gaming, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

**DIVISION OF PROFESSIONAL REGULATION**

**PUBLIC NOTICE**

**1900 Board of Nursing**

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulations 6.5.1.5; 6.5.6.4; 6.5.7.3; and 6.5.7.5 in order to bring the regulations affecting licensure by endorsement into line with Chapter 19, Title 24 as well as other recent changes to the Board's regulations concerning out of state nursing programs.

The Board will hold a public hearing on the proposed regulation change on June 11, 2014 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver

Lake Blvd., Dover, DE 19904. Written comments will be accepted until June 26, 2014 pursuant to 29 **Del.C.** §10118(a).

**DIVISION OF PROFESSIONAL REGULATION**  
**3500 Board of Examiners of Psychologists**  
**PUBLIC NOTICE**

The Delaware Board of Examiners of Psychologists, pursuant to 24 **Del.C.** §3506(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to bring the regulations into conformity with operational procedures at the Division of Professional Regulation regarding license renewal; clarify requirements for supervising psychologists to psychological assistants; and enhance continuing education requirements by ensuring that at least ten of the credits are earned in a live setting and clarifying the maximum number of credits which may be earned for alternative eligible credits.

The Board will hold a public hearing on the proposed rule change on June 2, 2014 at 9:00 a.m., in the 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 Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

**DIVISION OF PROFESSIONAL REGULATION**  
**5100 Board of Cosmetology and Barbering**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** § 5106(a)(1), the Board of Cosmetology and Barbering has proposed revisions to its rules and regulations.

A public hearing will be held on June 30, 2014 at 9:00 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 Cosmetology and Barbering, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** § 10118(a), the final date to receive written comments will be July 15, 2014, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting on July 28, 2014, at which time the Board will decide whether to adopt the revisions as proposed.

The proposed revisions address the licensing of mobile cosmetology shops or salons. The amendments permit the licensing of such establishments while implementing requirements to provide protection to the public.

**PUBLIC SERVICE COMMISSION**  
**PUBLIC NOTICE**  
**3001 Rules for Certification and Regulation of Electric Suppliers**

In 1999 the Delaware Public Service Commission ("PSC") has promulgated certain regulations pertaining to certification of electric suppliers in 26 **Del. Admin. Code.** §3001, now entitled "Rules for Certification and Regulation of Electric Suppliers ("Supplier Rules"). The PSC has revised the Supplier Rules several times since then.

The PSC now proposes to revise the Supplier Rules. The purpose of the proposed revisions are to ensure electric choice for customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket 10-2; to provide additional protection for customers; to require electric suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to customers to provide electric supply services; to clarify sections of the Supplier Rules; and to make the certification process for electric suppliers more uniform. Pursuant to PSC Order No. 8187 a workgroup was formed and met several times to address the issues above.

The PSC is soliciting comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before June 1, 2014. You should file such materials with the PSC at the



following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware, 19904  
Attn: Reg. Doc. 49

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-ROM or sent as an attachment to an e-mail addressed to [psc@state.de.us](mailto:psc@state.de.us), include "Reg. Doc. 49" as the subject of the email. The Commission encourages the public to submit written comments on or before June 1, 2014, but the last date to submit written comments will be on June 8, 2014.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on June 26, 2014 at 1:00 P.M. at the PSC's office at the address set forth above.

You may review PSC Order No. 8545 (April 15, 2014) (the "Order") and the proposed revised Supplier Rules in the May 2014 issue of the Delaware Register of Regulations. You may also review the Order and the proposed revised Supplier Rules at the PSC's website located at <http://depssc.delaware.gov/electric.shtml>.

Any materials submitted in connection with the proposed revised Supplier Rules will be available for public inspection and copying (to the extent they are "public records" under the Freedom of Information Act, 29 Del. C. §10002(g)) at the PSC's Dover office identified above during normal business hours. The fee for copying is \$.10 per page, with the first 20 pages being free of charge. If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the Freedom of Information Act Request Form on the PSC's website, <http://depssc.delaware.gov/default.shtml>. The PSC will respond to your request in accordance with the Freedom of Information Act, 29 Del. C. ch. 100. The Regulations may also be reviewed by appointment at the office of the Public Advocate, 820 N. French Street, 4th Floor, Carvel State Office Building, Wilmington, DE, 19801. The Regulations will also be available on the PSC's website: <http://depssc.delaware.gov/electric.shtml>.

Any individual with disabilities who wishes to review submissions or to participate in this docket should contact the PSC to discuss any auxiliary aids or services to facilitate such review or participation. Such contact may be in person, in writing, by telephone, e-mail, or by other means.

If you have questions about this matter, you may call the PSC at 1-800-282-8574 (toll-free in Delaware) or 302-736-7500 (voice and text telephone). You may also send questions regarding this matter by e-mail addressed to [psc@state.de.us](mailto:psc@state.de.us), please include "Reg. Doc. 49" as the subject of the email.

## **DEPARTMENT OF TRANSPORTATION**

### **DIVISION OF PLANNING AND POLICY**

#### **PUBLIC NOTICE**

#### **2309 Standards and Regulations for Subdivision Streets and State Highway Access**

#### **Background**

As authorized under 17 Del.C. §§132(e), 507, 508, and 29 Del.C. §8404(8), inter alia, the Delaware Department of Transportation, ("DelDOT"), through its Division of Planning and Public Policy, seeks to adopt significant general revisions to its existing regulations regarding subdivisions streets and state highway access, not least of which to broaden the title of the regulations to "Development Coordination Manual," among other changes.

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

Almost all of the new suggested text should be considered regulatory. Those portions of the revised Section 2309 that are intended to be relied upon as only guidance are clearly identified as such.

**Public Comment Period**

DelDOT will take written comments on these proposed general revisions to Section 2309 of title 2, Delaware Administrative Code, from May 1, 2014 through June 30, 2014. In addition, in the June 1 Delaware Register, and in other publications, DelDOT will announce the location, date, and time for a public workshop on the proposed revisions.

Any questions or comments regarding this document should be directed to:

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