
Delaware Register of Regulations

Issue Date: May 1, 2022

Volume 25 - Issue 11, Pages 970 - 1040



IN THIS ISSUE:

Regulations:
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, 2022.

*Cover Photo
Dover, Delaware*

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

971

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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TABLE OF CONTENTS

973

Cumulative Tables.....	975
------------------------	-----

PROPOSED

DEPARTMENT OF AGRICULTURE

Plant Industries Section

806 Regulations for Invasive Plants.....	983
--	-----

DEPARTMENT OF EDUCATION

Office of the Secretary

885 Safe Management and Disposal of Chemicals in the Delaware Public School System.....	987
---	-----

915 James H. Groves High School.....	992
--------------------------------------	-----

Professional Standards Board

1553 Driver Education and Traffic Safety Education Teacher.....	998
---	-----

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Public Health

4459 Lead Based Paints Hazards.....	1005
-------------------------------------	------

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months.....	1006
--	------

Division of Social Services

Defining Relative In-Home Child Care: DSSM 11003.5.....	1012
---	------

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Office of Highway Safety

1205 Electronic Red Light Safety Program (ERLSP).....	1014
---	------

FINAL

DEPARTMENT OF EDUCATION

Office of the Secretary

934 Regulations for Family and Large Family Child Care Homes.....	1017
---	------

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Substance Abuse and Mental Health

6003 DUI Programs.....	1021
------------------------	------

DEPARTMENT OF INSURANCE

Office of the Commissioner

1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance.....	1028
--	------

DEPARTMENT OF STATE

Division of Professional Regulation

3500 Board of Examiners of Psychologists.....	1031
---	------

TABLE OF CONTENTS

GENERAL NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

DDDS HCBS Medicaid Waiver.....	1033
Delaware Diamond State Health Plan 1115 Demonstration Waiver Amendment.....	1035

CALENDAR OF EVENTS/HEARING NOTICES

Delaware River Basin Commission, Notice of Public Hearing and Quarterly Business Meeting.....	1038
Department of Agriculture, Notice of Public Comment Period.....	1038
Department of Education, Notice of Monthly Meeting.....	1038
Department of Health and Social Services, Division of Public Health, Division of Social Services, Notices of Public Comment Period.....	1039-1040
Department of Safety and Homeland Security, Office of Highway Safety, Notice of Public Comment Period	1040

Plant Industries Section

805 Rules and Regulations for Delaware Domestic Hemp Production Program..... 25 **DE Reg.** 169 (Final)

Standardbred Breeders' Fund

502 Delaware Standardbred Breeders' Fund Regulations..... 25 **DE Reg.** 169 (Final)
25 **DE Reg.** 220 (Errata)
25 **DE Reg.** 273 (Final)

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations..... 25 **DE Reg.** 221 (Emer.)
25 **DE Reg.** 260 (Prop.)
25 **DE Reg.** 507 (Final)
25 **DE Reg.** 806 (Prop.)
25 **DE Reg.** 900 (Prop.)

DEPARTMENT OF EDUCATION

Office of the Secretary

105 Residential Child Care Facilities and Day Treatment Programs..... 25 **DE Reg.** 223 (Emer.)
25 **DE Reg.** 225 (Emer.)
25 **DE Reg.** 657 (Emer.)
239 Behavioral Health Professional of the Year..... 25 **DE Reg.** 120 (Prop.)
239 Behavioral Health Professional of the Year..... 25 **DE Reg.** 402 (Final)
255 Definitions of Types of Schools..... 25 **DE Reg.** 903 (Prop.)
505 High School Graduation Requirements and Diplomas..... 25 **DE Reg.** 274 (Final)
525 Requirements for Career and Technical Education Programs 25 **DE Reg.** 40 (Prop.)
25 **DE Reg.** 404 (Final)
613 Uniform Procedures for Processing Attorney General's Reports..... 25 **DE Reg.** 479 (Prop.)
25 **DE Reg.** 694 (Final)
615 School Attendance..... 25 **DE Reg.** 360 (Prop.)
25 **DE Reg.** 699 (Final)
701 Unit Count 25 **DE Reg.** 41 (Prop.)
25 **DE Reg.** 275 (Final)
25 **DE Reg.** 405 (Final)
716 Maintenance of Local School District and Charter School Personnel Records 25 **DE Reg.** 118 (Errata)
25 **DE Reg.** 170 (Final)
733 Payment of Substitutes for Teachers..... 25 **DE Reg.** 905 (Prop.)
736 Local School District and Charter School Citizen Budget Oversight Committees..... 25 **DE Reg.** 907 (Prop.)
815 Health Examinations and Screening..... 25 **DE Reg.** 123 (Prop.)
25 **DE Reg.** 227 (Emer.)
25 **DE Reg.** 363 (Prop.)
25 **DE Reg.** 229 (Emer.)
25 **DE Reg.** 410 (Final)
25 **DE Reg.** 568 (Prop.)
25 **DE Reg.** 660 (Emer.)
25 **DE Reg.** 755 (Final)
931 Purple Star Schools..... 25 **DE Reg.** 484 (Prop.)
25 **DE Reg.** 7 02 (Final)
932 Military-Connected Youth..... 25 **DE Reg.** 367 (Prop.)
25 **DE Reg.** 705 (Final)
933 DELACARE: Regulations for Early Care and Education and School-Age Centers..... 25 **DE Reg.** 233 (Emer.)
25 **DE Reg.** 235 (Emer.)
25 **DE Reg.** 369 (Prop.)
25 **DE Reg.** 663 (Emer.)
25 **DE Reg.** 910 (Prop.)
934 Regulations for Family and Large Family Child Care Homes..... 25 **DE Reg.** 237 (Emer.)
25 **DE Reg.** 239 (Emer.)
25 **DE Reg.** 370 (Prop.)
25 **DE Reg.** 665 (Emer.)

938 Regulations for Youth Camps.....	25 DE Reg. 807 (Prop.) 25 DE Reg. 172 (Final)
	25 DE Reg. 242 (Emer.) 25 DE Reg. 244 (Emer.) 25 DE Reg. 371 (Prop.) 25 DE Reg. 668 (Emer.)
1006 Delaware Interscholastic Athletic Association (DIAA).....	25 DE Reg. 706 (Final)
1011 Interscholastic Athletics during the COVID-19 Pandemic.....	25 DE Reg. 173 (Final) 25 DE Reg. 175 (Final)
1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are described in the National Standards for School Transportation 1995).....	25 DE Reg. 915 (Prop.)
1203 Scholarship Incentive Program (ScIP).....	25 DE Reg. 508 (Final)
Professional Standards Board	
1503 Educator Mentoring	25 DE Reg. 82 (Final)
1511 Issuance and Renewal of Continuing License.....	25 DE Reg. 677 (Prop.) 25 DE Reg. 958 (Final)
1532 Middle Level Mathematics Teacher.....	25 DE Reg. 373 (Prop.) 25 DE Reg. 679 (Prop.) 25 DE Reg. 916 (Prop.)
1534 Middle Level Social Studies Teacher	25 DE Reg. 46 (Prop.) 25 DE Reg. 510 (Final)
1539 Health Education Teacher.....	25 DE Reg. 77 (Prop.) 25 DE Reg. 708 (Final)
1542 Secondary Mathematics Teacher.....	25 DE Reg. 127 (Prop.) 25 DE Reg. 512 (Final)
1543 Secondary Science Teacher	25 DE Reg. 84 (Final)
1544 Secondary Social Studies Teacher	25 DE Reg. 51 (Prop.) 25 DE Reg. 513 (Final)
1549 Dance Teacher.....	25 DE Reg. 746 (Prop.)
1550 AgriScience Teacher.....	25 DE Reg. 810 (Prop.)
1556 School To Work Transition Teacher	25 DE Reg. 55 (Prop.) 25 DE Reg. 442(Errata) 25 DE Reg. 515 (Final)
1557 Technology Education Teacher.....	25 DE Reg. 921 (Prop.)
1558 Theater Teacher.....	25 DE Reg. 572 (Prop.) 25 DE Reg. 847 (Final)
1559 Skilled and Technical Sciences Teacher.....	25 DE Reg. 177 (Final)
1560 Art Teacher.....	25 DE Reg. 577 (Prop.) 25 DE Reg. 852 (Final)
1561 Bilingual Teacher	25 DE Reg. 90 (Final)
1562 Teacher of English Learners	25 DE Reg. 96 (Final)
1563 Music Teacher.....	25 DE Reg. 582 (Prop.) 25 DE Reg. 857 (Final)
1564 Physical Education Teacher.....	25 DE Reg. 486 (Prop.) 25 DE Reg. 815 (Prop.)
1565 World Language Teacher.....	25 DE Reg. 927 (Prop.)
1574 Teacher of Students Who Are Deaf or Hard of Hearing.....	25 DE Reg. 178 (Final)
1581 School Reading Specialist.....	25 DE Reg. 934 (Prop.)
1583 School Psychologist.....	25 DE Reg. 131 (Prop.) 25 DE Reg. 519 (Final)

DEPARTMENT OF ELECTIONS

Office of the State Election Commissioner

101 Procedures for Addressing Post-Election Voting Machine Audit Discrepancies	25 DE Reg. 101 (Final)
--	------------------------

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Health Care Quality

3201 Skilled and Intermediate Care Nursing Facilities.....	25 DE Reg. 6 (Emer.) 25 DE Reg. 443 (Emer.) 25 DE Reg. 587 (Prop.) 25 DE Reg. 759 (Final)
3210 Nursing Homes Admitting Pediatric Residents.....	25 DE Reg. 9 (Emer.) 25 DE Reg. 319 (Emer.) 25 DE Reg. 446 (Emer.) 25 DE Reg. 588 (Prop.) 25 DE Reg. 760 (Final)
3225 Assisted Living Facilities	25 DE Reg. 11 (Emer.) 25 DE Reg. 448 (Emer.) 25 DE Reg. 590 (Prop.) 25 DE Reg. 761 (Final)
3301 Group Home Facilities for Persons with AIDS.....	25 DE Reg. 321 (Emer.) 25 DE Reg. 591 (Prop.) 25 DE Reg. 762 (Final)
3305 Group Homes for Persons with Mental Illness	25 DE Reg. 13 (Emer.) 25 DE Reg. 324 (Emer.) 25 DE Reg. 449 (Emer.) 25 DE Reg. 592 (Prop.) 25 DE Reg. 764 (Final)
3310 Neighborhood Homes for Individuals with Intellectual and/or Develop- mental Disabilities	25 DE Reg. 15 (Emer.) 25 DE Reg. 326 (Emer.) 25 DE Reg. 452 (Emer.) 25 DE Reg. 594 (Prop.) 25 DE Reg. 765 (Final)
3315 Family Care Homes.....	25 DE Reg. 17 (Emer.) 25 DE Reg. 328 (Emer.) 25 DE Reg. 454 (Emer.) 25 DE Reg. 595 (Prop.) 25 DE Reg. 766 (Final)
3320 Intensive Behavioral Support and Educational Residence.....	25 DE Reg. 19 (Emer.) 25 DE Reg. 330 (Emer.) 25 DE Reg. 455 (Emer.) 25 DE Reg. 596 (Prop.) 25 DE Reg. 767 (Final)
3330 Regulations Governing Dialysis Centers.....	25 DE Reg. 333 (Emer.) 25 DE Reg. 598 (Prop.) 25 DE Reg. 769 (Final)
3335 Office-Based Surgery.....	25 DE Reg. 335 (Emer.) 25 DE Reg. 599 (Prop.) 25 DE Reg. 770 (Final)
3340 Free Standing Emergency Departments.....	25 DE Reg. 337 (Emer.) 25 DE Reg. 600 (Prop.) 25 DE Reg. 771 (Final)
3345 Personal Assistance Services Agencies.....	25 DE Reg. 21 (Emer.) 25 DE Reg. 339 (Emer.) 25 DE Reg. 457 (Emer.) 25 DE Reg. 601 (Prop.) 25 DE Reg. 772 (Final)
3350 Skilled Home Health Agencies (Licensure).....	25 DE Reg. 602 (Prop.) 25 DE Reg. 773 (Final)
3351 Home Health Agencies--Aide Only (Licensure).....	25 DE Reg. 604 (Prop.) 25 DE Reg. 774 (Final)
4402 Regulations for Adult Day Care Facilities.....	25 DE Reg. 341 (Emer.) 25 DE Reg. 459 (Emer.) 25 DE Reg. 605 (Prop.) 25 DE Reg. 776 (Final)

4403 Free Standing Birthing Centers.....	25 DE Reg. 343 (Emer.) 25 DE Reg. 460 (Emer.) 25 DE Reg. 606 (Prop.) 25 DE Reg. 777 (Final)
4405 Free Standing Surgical Centers.....	25 DE Reg. 346 (Emer.) 25 DE Reg. 383 (Prop.) 25 DE Reg. 627 (Final) 25 DE Reg. 137 (Prop.) 25 DE Reg. 348 (Emer.) 25 DE Reg. 462 (Emer.) 25 DE Reg. 521 (Final)
4406 Home Health Agencies--Aide Only (Licensure).....	25 DE Reg. 350 (Emer.) 25 DE Reg. 464 (Emer.) 25 DE Reg. 608 (Prop.) 25 DE Reg. 778 (Final)
4407 Hospital Standards (Construction, Maintenance, and Operation).....	25 DE Reg. 352 (Emer.) 25 DE Reg. 465 (Emer.) 25 DE Reg. 611 (Prop.) 25 DE Reg. 779 (Final)
4409 Prescribed Pediatric Extended Care Centers (PPECC).....	25 DE Reg. 137 (Prop.) 25 DE Reg. 354 (Emer.) 25 DE Reg. 467 (Emer.) 25 DE Reg. 527 (Final)
4410 Skilled Home Health Agencies (Licensure).....	25 DE Reg. 357 (Emer.) 25 DE Reg. 469 (Emer.) 25 DE Reg. 613 (Prop.) 25 DE Reg. 781 (Final)
4468 Delivery of Hospice Services.....	
Division of Medicaid and Medical Assistance	
Title XIX Medicaid State Plan - Adult Dental.....	25 DE Reg. 139 (Prop.) 25 DE Reg. 419 (Final)
Title XIX Medicaid State Plan - Ambulatory Surgical Center Services.....	25 DE Reg. 141 (Prop.) 25 DE Reg. 628 (Final)
Title XIX Medicaid State Plan - Assertive Community Integration Support Team (ACIST).....	25 DE Reg. 491 (Prop.) 25 DE Reg. 862 (Final)
Title XIX Medicaid State Plan - Chiropractors' Services.....	25 DE Reg. 616 (Prop.) 25 DE Reg. 868 (Final)
Title XIX Medicaid State Plan - Guardianship Fees - Post-Eligibility Protection of Income.....	25 DE Reg. 614 (Prop.) 25 DE Reg. 866 (Final)
Title XIX Medicaid State Plan - Medication-Assisted Treatment (MAT)	25 DE Reg. 184 (Final)
Title XIX Medicaid State Plan: Drug Utilization Review (DUR) - Opioid Provisions.....	25 DE Reg. 190 (Final)
Title XIX Medicaid State Plan - Program of All-Inclusive Care for the Elderly (PACE) State Plan Amendment.....	25 DE Reg. 384 (Prop.) 25 DE Reg. 864 (Final)
Title XIX Medicaid State Plan - Streamline Application.....	25 DE Reg. 414 (Final)
Division of Public Health	
4202 Control of Communicable and Other Disease Conditions.....	25 DE Reg. 246 (Emer.) 25 DE Reg. 248 (Emer.) 25 DE Reg. 262 (Prop.) 25 DE Reg. 471 (Emer.) 25 DE Reg. 493 (Final) 25 DE Reg. 619 (Prop.) 25 DE Reg. 670 (Emer.)
4402 Regulations for Adult Day Care Facilities	25 DE Reg. 23 (Emer.)
4403 Free Standing Birthing Centers.....	25 DE Reg. 25 (Emer.)
4406 Home Health Agencies--Aide Only (Licensure).....	25 DE Reg. 27 (Emer.) 25 DE Reg. 521 (Final)

4407 Hospital Standards (Construction, Maintenance, and Operation)	25 DE Reg. 29 (Emer.)
4409 Prescribed Pediatric Extended Care Centers (PPECC).....	25 DE Reg. 33 (Emer.)
4410 Skilled Home Health Agencies (Licensure)	25 DE Reg. 35 (Emer.)
	25 DE Reg. 527 (Final)
4462 Public Drinking Water Systems.....	25 DE Reg. 494 (Prop.)
	25 DE Reg. 713 (Final)
4468 Delivery of Hospice Services.....	25 DE Reg. 37 (Emer.)
Division of Social Services	
Child Care for Families Receiving Temporary Assistance for Needy Families (TANF): DSSM 11003.....	25 DE Reg. 192 (Final)
Delaware's Temporary Assistance for Needy Families (TANF) - Definition: DSSM 3000.....	25 DE Reg. 144 (Prop.)
	25 DE Reg. 534 (Final)
Funding: DSSM 3000.1.....	25 DE Reg. 144 (Prop.)
	25 DE Reg. 534 (Final)
DSSM 11002.5 Responsibility For The Administration Of Delaware's Child Care Subsidy Program.....	25 DE Reg. 147 (Prop.)
	25 DE Reg. 537 (Final)
DSSM 11002.5.1 Responsibility for Direct Administration of Delaware's Child Care Subsidy Program.....	25 DE Reg. 147 (Prop.)
	25 DE Reg. 537 (Final)
DSSM 11002.10 Establishing Program Integrity in Child Care.....	25 DE Reg. 147 (Prop.)
	25 DE Reg. 537 (Final)
DSSM 1104 Processing Applications for Child Care.....	25 DE Reg. 280 (Final)
DSSM 11006.4.8 Completing Correct Transactions.....	25 DE Reg. 153 (Prop.)
	25 DE Reg. 536 (Final)
DSSM 11006.4.9 Completing Manual Adjustments.....	25 DE Reg. 153 (Prop.)
	25 DE Reg. 536 (Final)
DSSM 14920 Retroactive Coverage.....	25 DE Reg. 821 (Prop.)
DSSM 15200 Retroactive Coverage.....	25 DE Reg. 821 (Prop.)
Division of Substance Abuse and Mental Health	
1201 Driving Under the Influence Evaluation Program, Courses of Instruction, Programs of Rehabilitation and Related Fees.....	25 DE Reg. 496 (Prop.)
	25 DE Reg. 782 (Final)
1204 Drinking Driver Programs Standard Operating Procedures.....	25 DE Reg. 499 (Prop.)
	25 DE Reg. 783 (Final)
6001 Substance Abuse Facility Licensing Standards.....	25 DE Reg. 473 (Emer.)
6003 DUI Programs.....	25 DE Reg. 500 (Prop.)
	25 DE Reg. 783 (Final)
	25 DE Reg. 826 (Prop.)
DEPARTMENT OF INSURANCE	
Office of the Commissioner	
902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]....	25 DE Reg. 156 (Prop.)
1003 Credit for Reinsurance.....	25 DE Reg. 263 (Prop.)
	25 DE Reg. 630 (Final)
1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance.....	25 DE Reg. 684 (Prop.)
	25 DE Reg. 828 (Prop.)
1404 Long-Term Care Insurance.....	25 DE Reg. 60 (Prop.)
	25 DE Reg. 714 (Final)
1409 Insurance Coverage for Telemedicine and Telehealth.....	25 DE Reg. 285 (Final)
1411 Registration of Pharmacy Benefits Managers.....	25 DE Reg. 715 (Final)
1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions.....	25 DE Reg. 832 (Prop.)

DEPARTMENT OF JUSTICE

Fraud and Consumer Protection Division

105 Health Spa Act Regulation.....	25 DE Reg. 264 (Prop.)
	25 DE Reg. 539 (Final)

DEPARTMENT OF LABOR

Division of Industrial Affairs

1326 Workplace Fraud Act Regulations	25 DE Reg. 61 (Prop.)
	25 DE Reg. 287 (Final)
1329 Delaware Contractor Registration Act Regulations	25 DE Reg. 62 (Prop.)
	25 DE Reg. 288 (Final)
1331 Industrial Accident Board Regulations.....	25 DE Reg. 620 (Prop.)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1102 Permits.....	25 DE Reg. 386 (Prop.)
1103 Ambient Air Quality Standards.....	25 DE Reg. 388 (Prop.)
1124 Control of Volatile Organic Compound Emissions: Section 33.0 Solvent Cleaning and Drying.....	25 DE Reg. 196 (Final)
1130 Title V State Operating Permit Program.....	25 DE Reg. 394 (Prop.)

Division of Climate, Coastal and Energy

2103 Regulations for the Green Energy Program	25 DE Reg. 63 (Prop.)
	25 DE Reg. 721 (Final)

Division of Fish and Wildlife

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.....	25 DE Reg. 103 (Final)
3541 Atlantic Sharks.....	25 DE Reg. 290 (Final)
3542 Tilefish.....	25 DE Reg. 64 (Prop.)
	25 DE Reg. 295 (Final)
3550 Cobia (<i>Rachycentron canadum</i>).....	25 DE Reg. 66 (Prop.)
	25 DE Reg. 297 (Final)

Division of Watershed Stewardship

7401 Surface Water Quality Standards.....	25 DE Reg. 837 (Prop.)
7402 Shellfish Sanitation Regulations.....	25 DE Reg. 268 (Prop.)
	25 DE Reg. 726 (Final)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Delaware Council on Police Training

801 Regulations of the Delaware Council on Police Training.....	25 DE Reg. 839 (Prop.)
---	-------------------------------

Delaware Sex Offender Management Board

1100 Delaware Sex Offender Management Board.....	25 DE Reg. 301 (Final)
--	-------------------------------

Office of the Alcoholic Beverage Control Commissioner

Rule 705 - Expansion of Outdoor Seating: Procedures, Standards and Fees..	25 DE Reg. 940 (Prop.)
Rule 910 (Formerly Rule Number 33) A Rule Defining And Regulating The Quantities Of Sales And Methods Of Deliveries Of Certain Off-premises Sales By Licensees.....	25 DE Reg. 943 (Prop.)
Rule 1008 (Formerly 19.1) Bottle Clubs - Licensing and Operation.....	25 DE Reg. 502 (Prop.)
	25 DE Reg. 960 (Final)
Rule 1201 (Formerly Rule 7) A Rule Requiring Persons Between the Ages of 16 and 18 to Secure a Work Permit to be Employed by an On-Premises Licensee.....	25 DE Reg. 946 (Prop.)
Rule 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached the Age of 18 Years in Package Stores.....	25 DE Reg. 949 (Prop.)

DEPARTMENT OF STATE

Division of Professional Regulation

100 Board of Accountancy.....	25 DE Reg. 160 (Prop.)
	25 DE Reg. 871 (Final)
1400 Board of Electrical Examiners.....	25 DE Reg. 691 (Prop.)
	25 DE Reg. 962 (Final)
1700 Board of Medical Licensure and Discipline.....	25 DE Reg. 161 (Prop.)
1900 Board of Nursing.....	25 DE Reg. 199 (Final)
	25 DE Reg. 318 (Errata)
	25 DE Reg. 395 (Prop.)
	25 DE Reg. 786 (Final)
2500 Board of Pharmacy.....	25 DE Reg. 621 (Prop.)
	25 DE Reg. 952 (Prop.)
2700 Board of Registration for Professional Land Surveyors.....	25 DE Reg. 69 (Prop.)
	25 DE Reg. 632 (Final)
2900 Real Estate Commission.....	25 DE Reg. 842 (Prop.)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	25 DE Reg. 844 (Prop.)
2925 Real Estate Commission Education Committee.....	25 DE Reg. 505 (Prop.)
	25 DE Reg. 789 (Final)
2930 Council on Real Estate Appraisers.....	25 DE Reg. 163 (Prop.)
	25 DE Reg. 633 (Final)
3500 Board of Examiners of Psychologists.....	25 DE Reg. 622 (Prop.)
	25 DE Reg. 752 (Final)
3800 State Board of Dietetics/Nutrition.....	25 DE Reg. 201 (Final)
4100 Board of Home Inspectors.....	25 DE Reg. 845 (Prop.)
5300 Board of Massage and Bodywork.....	25 DE Reg. 955 (Prop.)
Uniform Controlled Substance Act Regulations.....	25 DE Reg. 506 (Prop.)
	25 DE Reg. 873 (Final)

Public Service Commission

3001 Rules for Certification and Regulation of Electric Suppliers.....	25 DE Reg. 396 (Prop.)
	25 DE Reg. 963 (Final)
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005).....	25 DE Reg. 541 (Final)

DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

2223 Ignition Interlock Device Installation, Removal and Monthly Monitoring and Calibration Fees.....	25 DE Reg. 874 (Final)
--	------------------------

OFFICE OF THE STATE TREASURER

Cash Management Policy Board

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds.....	25 DE Reg. 399 (Prop.)
	25 DE Reg. 728 (Final)

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE
PLANT INDUSTRIES SECTION

Statutory Authority: 3 Delaware Code, Section 2904(a) (3 **Del.C.** §2904(a))

PUBLIC NOTICE**806 Regulations for Invasive Plants****Summary**

Pursuant to the authority granted by Title 3, Section 2904(a) of the Delaware Code, the Department of Agriculture proposes to amend its Regulations to adopt Invasive Plant Regulations at 3 DE Admin. Code 806. The purpose of the amended regulations is to provide a process for the exemption of sterile and reduced fertility plant cultivars. Other regulations issued by the Department of Agriculture are not affected by this proposal. The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the May 1, 2022, edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Delaware Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Department of Agriculture at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before May 31, 2022. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after July 1, 2022, following review of the public comment, the Department of Agriculture will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public

comments received.

Effective Date of Amendments to Regulations

If adopted by the Department of Agriculture, the amendments shall take effect ten days after being published as final in the *Delaware Register of Regulations*.

Delaware Department of Agriculture
Secretary Michael T. Scuse

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

<http://regulations.delaware.gov/register/may2022/proposed/25 DE Reg 983RFA 05-01-22.pdf>

806 Regulations for Invasive Plants

1.0 Purpose

- 1.1 The purpose of these regulations is to clarify how the Department will eradicate, repress, and prevent the spread of plant pests as authorized in Title 3, Chapter 11 of the Delaware Code.
- 1.2 The Department will work with the Delaware Native Species Commission for expertise and advice on maintaining the Invasive Plant List and Plant Watch list and review of sterility exemption.
- 1.3 The Department will be responsible for enforcement of the Invasive Plant Law during routine inspections of businesses or inspections resulting from a complaint. During inspections, the Department will survey for plants on the Invasive Plant List and ensure businesses' compliance with signage requirements for plants on the Plant Watch List.

2.0 Definitions

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

"Commission" means the Delaware Native Species Commission.

"Cultivar" means a plant variety that has been produced in cultivation by selective breeding.

"Department" means the Delaware Department of Agriculture.

"Invasive plant" means any living part, cultivar, variety, species or subspecies not native to Delaware identified by the Secretary having the potential to do all of the following:

- a. Result in widespread dispersal and establishment.
- b. Out-compete other species in the same area.
- c. Exhibit rapid growth or high seed or propagule productions.
- d. Become established in natural areas in the State.

"Invasive Plant List" means the list of invasive plants maintained by the Secretary.

"Plant Watch List" means the list of potentially invasive plants maintained by the Secretary.

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

"Sterility" means unable to produce reproductive structures.

3.0 The Invasive Plant List and Plant Watch List

3.1 The Invasive Plant List

- 3.1.1 Amur honeysuckle, *Lonicera maackii*
- 3.1.2 Autumn olive, *Elaeagnus umbellata*
- 3.1.3 Callery pear, *Pyrus calleryana*
- 3.1.4 Chinese wisteria, *Wisteria sinensis*
- 3.1.5 Creeping Jenny, *Lysimachia nummularia*
- 3.1.6 Creeping water primrose, *Ludwigia peploides subsp. glabrescens*

- 3.1.7 English ivy, *Hedera helix*
 - 3.1.8 European privet, *Ligustrum vulgare*
 - 3.1.9 European reed, *Phragmites australis subsp. australis*
 - 3.1.10 European sweetflag, *Acorus calamus*
 - 3.1.11 Garlic mustard, *Alliaria petiolata*
 - 3.1.12 Hydrilla, *Hydrilla verticillata*
 - 3.1.13 Japanese barberry, *Berberis thunbergii*
 - 3.1.14 Japanese honeysuckle, *Lonicera japonica*
 - 3.1.15 Japanese knotweed, *Fallopia japonica*
 - 3.1.16 Japanese pachysandra, *Pachysandra terminalis*
 - 3.1.17 Japanese stiltgrass, *Microstegium vimineum*
 - 3.1.18 Lesser celandine, *Ficaria verna*
 - 3.1.19 Lesser periwinkle, *Vinca minor*
 - 3.1.20 Marsh dewflower, *Murdannia keisak*
 - 3.1.21 Mile-a-minute weed, *Persicaria perfoliata*
 - 3.1.22 Morrow's honeysuckle, *Lonicera morrowii*
 - 3.1.23 Multiflora rose, *Rosa multiflora*
 - 3.1.24 Norway maple, *Acer platanoides*
 - 3.1.25 Orange daylily, *Hemerocallis fulva*
 - 3.1.26 Oriental bittersweet, *Celastrus orbiculatus*
 - 3.1.27 Parrot-feather, *Myriophyllum aquaticum*
 - 3.1.28 Porcelain berry, *Ampelopsis glandulosa*
 - 3.1.29 Purple loosestrife, *Lythrum salicaria*
 - 3.1.30 Spotted knapweed, *Centaurea stoebe subsp. micranthos*
 - 3.1.31 Tatarian honeysuckle, *Lonicera tatarica*
 - 3.1.32 Tree of heaven, *Ailanthus altissima*
 - 3.1.33 Water hyacinth, *Eichhornia crassipes*
 - 3.1.34 Wineberry, *Rubus phoenicolasius*
 - 3.1.35 Winged euonymus, *Euonymus alatus*
 - 3.1.36 Yam-leaved clematis, *Clematis terniflora*
 - 3.1.37 Yellow flag iris, *Iris pseudoacorus*
- 3.2 The Plant Watch List. Plants listed on the Plant Watch List must be identified with a tag, label, or sign on each plant or in the general vicinity of the plants for sale.
- 3.2.1 The list will be added when established.

4.0 Maintenance of the Invasive Plant List and Plant Watch List

- 4.1 The Secretary shall maintain the Invasive Plant List and Plant Watch List with the advice of the Commission, so long as the Commission exists.
- 4.1.1 The Department and the Commission shall review any plants recommended to be added to or removed from the Invasive Plant List and Plant Watch List. The Department shall seek the advice of the Commission, or any subcommittee as designated by the Commission, to add or remove plants from the Invasive Plant List or Plant Watch List.
- 4.1.2 Should the Commission receive requests for review of plants to add or remove from the Invasive Plant List or Plant Watch List, the Commission shall provide its recommendations via email to the Secretary within 90 days of the initial request for review. Recommendations must include, at a minimum, a detailed methodology used by the Commission to make a determination about each plant under consideration to be added to or removed from the Invasive Plant List and Plant Watch List.

PROPOSED REGULATIONS

- 4.1.3 The Secretary shall respond to the Commission with a decision or a request for additional information within 30 days of the date of the recommendation.
- 4.1.4 The Secretary shall initiate any required regulatory changes to the Invasive Plant List and Plant Watch List within 60 days of the date that a determination has been made, with the advice of the Commission, to add or remove a plant from the Invasive Plant List and Plant Watch List.
- 4.1.5 Should the Department receive requests for review of plants to be added or removed from the Invasive Plant List or Plant Watch List, the Department shall submit requests to the Commission for advice, within 30 days of the request for review.

5.0 Allowance for Sterility

- 5.1 The Department recognizes that the level of sterility of a plant impacts its potential to:
 - 5.1.1 Result in widespread dispersal and establishment.
 - 5.1.2 Out-compete other species in the same area.
 - 5.1.3 Exhibit rapid growth or high seed propagule productions.
 - 5.1.4 Become established in natural areas in the State.
 - 5.2 The Department reserves the right to consider cultivars of plants based on level of sterility at their point of sale or delivery into the State of Delaware. The Department may grant an exemption for cultivars of plants listed on the Invasive Plant List.
 - 5.3 Persons requesting that a cultivar be exempted from the Invasive Plant List must petition the Department by submitting a Petition to Exempt a Specific Cultivar form. Persons may request that plant cultivars be exempted from the Invasive Plant List based on sterility level and seed viability and must provide an explanation and references to justify the request.
 - 5.4 The Department, with advice of the Commission, will consider submitted cultivars for exemption when there is independent, peer reviewed, scientific research evaluating the invasiveness of the cultivar. Petitions require burden of proof to be held by the breeder or plant representative and leave no responsibility to the State of Delaware.
 - 5.4.1 The Commission shall provide recommendations via email to the Secretary within 90 days of receiving the Petition to Exempt a Specific Cultivar form. The recommendations must include, at a minimum, a detailed methodology used by the Commission to make a determination about each cultivar under consideration to be exempted from the Invasive Plant List.
 - 5.4.2 The Secretary shall respond to the Commission with a decision or a request for additional information via email within 30 days of the date of the recommendations.
 - 5.4.3 The Secretary shall initiate any required regulatory changes to the Invasive Plant List within 60 days of the date that a determination has been made, with the advice of the Commission, to exempt a cultivar from the Invasive Plant List.
 - 5.4.4 Any requests brought to the Department for a cultivar to be exempted from the Invasive Plant List shall be submitted to the Commission via email within 30 days of the request for advice.
 - 5.5 Exemptions are conditional and subject to revocation by the Department.
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DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)) (14 Del.C. §122(b))
14 DE Admin. Code 885

PUBLIC NOTICE

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

885 Safe Management and Disposal of Chemicals in the Delaware Public School System

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §122 (b), the Secretary of Education intends to amend 14 DE Admin. Code 885 Safe Management and Disposal of Chemicals in the Delaware Public School System. This regulation is being amended pursuant to 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. This regulation is being amended to shorten the title of the regulation, update titles of programming where necessary, provide clarification and ensure alignment with existing practice and correct typographical and grammatical errors to comply with *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before June 3, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change 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 amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amended regulation will not cost local school boards additional funds to comply. Currently, schools incur costs to dispose of chemicals in order to comply with this regulation and OSHA regulations.

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

<http://regulations.delaware.gov/register/may2022/proposed/25 DE Reg 987RFA 05-01-22.pdf>

885 Safe Management and Disposal of Chemicals in the Delaware Public School System

1.0 Purpose

The purpose of this regulation is to outline the criteria and processes for ~~Chemical Storage and for Chemical~~ chemical storage and use in the classroom, laboratory, or other ~~Instructional Areas in Delaware public schools~~ instructional areas. This regulation sets forth the requirements for the safe procurement, management, storage, and disposal of ~~Chemicals~~ chemicals. Additional information may be found in the *Safety First: Safe Instructional Practices in the Classroom and Laboratory* manual.

2.0 Definitions:

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

"Carcinogen" means any known or suspected ~~Chemical~~ chemical that can cause cancer.

"Chemical" means any element, compound, or mixture of elements ~~and/or~~ or compounds.

"Chemical Inventory" means a list of all materials and ~~Chemicals~~ chemicals for which a Safety Data Sheet (SDS) or "SDS" must be maintained.

"Chemical Name" means the scientific designation of a ~~Chemical~~ chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (~~IUPAC~~) or "IUPAC" or the Chemical Abstracts Service (~~CAS~~) or "CAS" rules of nomenclature, or a name which will clearly identify the ~~Chemical~~ chemical for the purpose of conducting a hazard analysis.

"Chemical Procurement" means the acquisition of any ~~Chemical(s)~~ chemicals.

"Common Name" means any designation or identification such as a code name, code number, trade name, brand name, or generic name used to identify a ~~Chemical~~ chemical other than its ~~Chemical~~ chemical name.

"Corrosive" means causing visible destruction of or irreversible alterations ~~in,~~ in living tissue by ~~Chemical~~ chemical action at the site of contact.

"Department" means the Delaware Department of Education.

"Engineering Control(s) Control" means a physical modification to a process, or process equipment, or the installation of further equipment with the goal of preventing the release of contaminants and improve safety conditions.

"Explosive" means causing a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

"Expose or Exposure" or **"Exposure"** means an instance where an individual is subjected to or potentially subjected to a ~~Hazardous Chemical~~ hazardous chemical through any route of entry (inhalation, ingestion, skin contact or absorption, etc.).

"Hazardous Chemical" means any element, compound or mixture of elements ~~and/or~~ compounds which presents a ~~Physical Hazard or Health Hazard~~ physical hazard or health hazard.

"Health Hazard" means a ~~Chemical~~ chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed persons. The term "Health Hazard" includes ~~Chemicals~~ chemicals which are ~~Carcinogens~~ carcinogens, toxic or highly toxic agents, reproductive toxins,

irritants, ~~Corrosives~~ corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. The Safety Data Sheet (~~SDS~~) or "SDS" will provide information to determine whether or not the ~~Chemical is a Health Hazard~~ chemical is a health hazard.

"**Instructional Area**" means a room or defined space used for an educational activity such as a classroom, a laboratory, a field, a special building, greenhouse, or any other space where educational activities may take place.

"**Long-Term Storage**" means the storage of any ~~Chemical~~ chemical for a time period past the end of the school day.

"**Non-hazardous Chemical**" means any element, compound or mixture of elements ~~and/or~~ or compounds which do not present a ~~Physical Hazard or Health Hazard~~ physical hazard or health hazard as indicated by the Safety Data Sheet (~~SDS~~).

"**Occupational Safety and Health Administration (OSHA)**" or "OSHA" means the government agency which is part of the United States Department of Labor that develops guidelines to maintain a healthy and safe working environment.

"**Personal Protective Equipment (PPE)**" or "PPE" means equipment worn to minimize exposure to hazards that cause serious injuries and illnesses. These injuries and illnesses may result from contact with ~~Chemical~~ chemical, radiological, physical, electrical, mechanical, or other hazards. Personal protective equipment may include, but is not limited to, items such as gloves, safety glasses and shoes, earplugs or muffs, hard hats, respirators, or coveralls, vests and full body suits.

"**Physical Hazard**" means a ~~Chemical~~ chemical which is identified by the ~~SDS~~ Safety Data Sheet as a combustible liquid, a compressed gas, ~~Explosive~~ explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

"**Safety Data Sheet (~~SDS~~)**" or "SDS" means a document that contains information on the potential health effects of exposure to ~~Chemicals~~ chemicals, or other potentially dangerous substances, and on safe working procedures when handling ~~Chemical~~ chemical products. It contains hazard evaluations on the use, ~~Storage~~ storage, handling and emergency procedures related to that material. The Safety Data Sheet (~~SDS~~) contains ~~much~~ more information about the material than the label and is prepared by the supplier. It is intended to tell what the hazards of the product are, how to use the product safely, what to expect if the recommendations are not followed, what to do if accidents occur, how to recognize symptoms of overexposure, and what to do if such incidents occur.

"**Safety First: Safe Instructional Practices in the Classroom and Laboratory Manual**" means the collection of documents that outline the mandatory safety procedures regarding the safe management, storage, and disposal of ~~Chemicals for Instructional Areas~~ chemicals for instructional areas in Delaware public schools and which may be amended from time to time as published in the Delaware Register of Regulations. The manual also provides safety practices that are governed by this regulation. This document is available on the Department's Website (www.doe.k12.de.us) Digital DE: <https://education.delaware.gov/digital-de/instructional-resources/content-specific-resources/>.

"**Short-Term Storage**" means the storage of any ~~Chemical~~ chemical for a time period before the end of the school day.

"**Storage**" means a space for the containment of ~~Chemicals~~ chemicals or other materials.

"**Surplus Chemical**" means any ~~Chemical~~ chemical that is no longer ~~Useable~~ useable or needed.

"**Useable**" means that the ~~Chemical~~ chemical or other material has not surpassed its expiration date.

3.0 Applicable Areas

This regulation is applicable to all public schools, including charter schools and all programs they offer, not already regulated by OSHA standards, including but not limited to science education (including classrooms, laboratories, combination classroom and laboratory settings, and outdoor education settings); Career and Technical Education; Technology and Engineering Education; Agricultural Education; Family and Consumer Science Education, Art Education; and ~~Athletics/Athletic~~ Athletics or Athletic Training.

4.0 Chemical Hygiene Plan

- 4.1 All Delaware public schools shall have a Chemical Hygiene Plan that outlines specific school district's or charter school's procedures in the area of staff and student ~~Chemical~~ chemical safety. The plan shall include at least the following:
- 4.1.1 Identification of at least one Chemical Hygiene Officer for the school district or charter school who shall:
- 4.1.1.1 Act as liaison between teachers, building administration, facilities staff, and the Department regarding ~~Chemical~~ chemical safety issues;
 - 4.1.1.2 Maintain the ~~Chemical Inventory~~ chemical inventory for the ~~school(s)~~ school;
 - 4.1.1.3 Approve all ~~Chemical Procurement~~ chemical procurement by the school district or charter school;
 - 4.1.1.4 Maintain a supply of ~~Safety Data Sheets (SDS)~~ SDS for all ~~Chemicals~~ chemicals in the ~~Chemical Inventory~~ chemical inventory. The SDS may be paper or electronic, and be easily accessible from outside of the facility;
 - 4.1.1.5 Assist with maintenance requests related to safety equipment;
 - 4.1.1.6 Identify and coordinate disposal of ~~Hazardous Chemical~~ hazardous chemical wastes with the Department and ~~Chemical~~ chemical disposal ~~vendor(s)~~ vendors; and
 - 4.1.1.7 Provide prior approval for new laboratory operations, procedures, or activities proposed by educators.
- 4.1.2 Standard operating procedures associated with ~~Chemical Procurement, Chemical use, Chemical Storage, Chemical~~ chemical procurement, chemical use, chemical storage, chemical disposal (both ~~Hazardous and Non-hazardous~~ hazardous and non-hazardous), and the handling of ~~Chemical~~ chemical spills.

5.0 Inventory of Chemicals

- 5.1 Each school district and charter school shall prepare a ~~Chemical Inventory~~ chemical inventory for each of its schools by September 15 of each year. A copy of this ~~Chemical Inventory~~ chemical inventory, along with the respective ~~Safety Data Sheet (SDS)~~ SDS, shall be maintained by the school principal or head of school, chief custodian, and the identified Chemical Hygiene Officer. Additionally, copies shall be maintained in the ~~Chemical Storage~~ chemical storage area and with the school nurse or school health manager. The ~~Chemical Inventory, both Hazardous and Non-hazardous~~ chemical inventory, both hazardous and non-hazardous, shall contain at least the following information:
- 5.1.1 The name of the ~~Chemical~~ chemical;
 - 5.1.2 The amount of the ~~Chemical~~ chemical (in appropriate measurement units);
 - 5.1.3 The location where the ~~Chemical~~ chemical is stored;
 - 5.1.4 The date of procurement. If the date of procurement is unknown, the earliest known date of ownership shall be indicated; and
 - 5.1.5 The form or ~~state, state~~ state (e.g. powder, solution, vapor, etc.) of the ~~Chemical~~ chemical.

6.0 Chemicals with Special Conditions

- 6.1 Mercury and mercury compounds, both organic and inorganic, shall not be present in or used in public schools, including charter schools in Delaware. Schools may continue to use mercury discharge tubes and fluorescent lights even though they contain a small amount of mercury gas because the mercury is enclosed in the glass container.
- 6.2 Known ~~Carcinogens~~ carcinogens shall not be present in or used in public schools, including charter schools in Delaware. A listing of known ~~Carcinogens~~ carcinogens can be found in *Safety First: Safe Instructional Practices in the Classroom and Laboratory*.
- 6.3 All public schools, including charter ~~schools~~ schools, shall comply with current Environmental Protection Agency (EPA) regulations regarding regulated refrigerants.

- 6.4 Further provided ~~Chemicals~~ chemicals may be identified as "~~Chemicals~~ chemicals with special conditions" or "banned" ~~as to not~~ are not to be present or used in public schools, including charter schools because of updated knowledge of the ~~Chemicals~~ chemicals.

7.0 Storage of Chemicals

- 7.1 The storage of all ~~Chemicals~~ chemicals shall conform to the mandatory specifications stated in *Safety First: Safe Instructional Practices in the Classroom and Laboratory*.
- 7.2 Chemicals in the ~~Instructional Area~~ instructional area shall be for immediate use only (~~Short-Term Storage~~ short-term storage). All ~~Long-Term Storage of Chemicals~~ long-term storage of chemicals shall be in a properly equipped ~~Chemical Storage~~ chemical storage room.
- 7.3 Pressurized storage of liquids and gases shall conform to current OSHA storage and handling regulations.

8.0 Management of Chemicals

- 8.1 Instructional staff shall provide annual training in the safe management of ~~Chemicals~~ chemicals to all students in ~~Instructional Areas~~ instructional areas that use ~~Chemicals~~ chemicals. All students shall sign a student safety acknowledgement at the conclusion of this training. The training shall be age and grade appropriate for the students and shall include at least the following:
- 8.1.1 An overview of the school safety program;
- 8.1.2 The location of all ~~Hazardous Chemical~~ hazardous chemical containers in the ~~Instructional Area~~ instructional area;
- 8.1.3 An explanation of how to read labels on containers;
- 8.1.4 The location, availability and content of ~~Safety Data Sheets (SDS)~~ SDS and an explanation of how they are used;
- 8.1.5 An explanation of the nature of ~~Health Hazards and Physical Hazards~~ physical and health hazards associated with the use of all ~~Hazardous Chemicals~~ hazardous chemicals (regardless of quantity) to which they may be exposed;
- 8.1.6 An explanation of the proper handling, storage and disposal methods for each of the ~~Hazardous Chemicals~~ hazardous chemicals present in the ~~Instructional Area~~ instructional area; and
- 8.1.7 Measures taken by the instructional staff and school personnel to prevent or control ~~Exposure~~ exposure such as ~~Engineering Controls, Personal Protective Equipment~~ engineering controls, personal protective equipment, and emergency procedures for spills or leaks.

9.0 Disposal of Surplus Chemicals

- 9.1 Disposal of ~~Surplus Non-hazardous Chemicals~~ surplus non-hazardous chemicals shall be carried out by the school district or charter school in accordance with procedures outlined in the ~~Safety Data Sheet (SDS)~~ SDS.
- 9.2 Disposal of ~~Surplus Hazardous Chemicals~~ surplus hazardous chemicals shall only be disposed of through the use of a licensed waste hauler.
- 9.2.1 Each school district and charter school shall prepare a list of ~~Surplus Hazardous Chemicals~~ surplus hazardous chemicals and submit it to the Department's Education Associate, Science by November 15 of each year. The Department shall arrange for a licensed waste hauler to take the ~~Chemicals~~ chemicals to a proper waste facility for disposal. The cost of disposal shall be prorated among the participating schools. Alternatively, a school district or charter school may independently contract with a licensed waste hauler. An official letter shall be sent to the Education Associate, Science describing the school's intentions and naming the licensed waste hauler. The licensed waste hauler shall provide the school district or charter school with a manifest of items removed. This manifest shall be retained by the school district or charter school for at least five years from the collection date.

PROPOSED REGULATIONS

10.0 Facility Requirements for Instructional Areas that use Hazardous Chemicals

- 10.1 Basic safety equipment shall be installed in all ~~Instructional Areas~~ instructional areas that use ~~Hazardous Chemicals~~ hazardous chemicals and shall conform to the requirements outlined in *Safety First: Safe Instructional Practices in the Classroom and Laboratory*. Non-traditional ~~Instructional Areas~~ instructional areas such as an outdoor classroom or an agricultural field shall include all of the safety equipment as warranted and deemed necessary based on the hazard level of the lesson and materials being used in the instruction of students. Basic safety equipment shall include at least the following items:
- 10.1.1 Eyewash (running water, continuous flow style);
 - 10.1.2 ~~Acid/Chemical~~ Acid or chemical shower (continuous flow style);
 - 10.1.3 Eye protection (wrap-around, splash-shield style goggles);
 - 10.1.4 ABC Fire extinguisher;
 - 10.1.5 Fire blanket; and
 - 10.1.6 Chemical spill equipment.
- 10.2 A properly functioning fume hood ~~and/or or~~ other industry-standard ventilation system shall be used when mixing ~~Chemicals~~ chemicals, using ~~Chemicals~~, ~~and/or for Short-term Storage of Chemicals~~ chemicals, or for short-term storage of chemicals that release hazardous fumes. The determination that hazardous fumes may be released is made by a hazard analysis and a review of the SDS ~~document(s)~~ document. Fume hoods and other ventilation systems shall conform to the requirements outlined in *Safety First: Safe Instructional Practices in the Classroom and Laboratory*.
- 10.3 All ~~Instructional Areas~~ instructional areas that use ~~Hazardous Chemicals~~ hazardous chemicals which are constructed, reconfigured, or renovated after September 1, 2011 shall provide adequate space for student work at a minimum of 50 square feet per student.
- 10.4 All ~~Instructional Areas~~ instructional areas that use ~~Hazardous Chemicals~~ hazardous chemicals shall have at least two means of egress. The second exit may pass through another room ~~and/or or~~ a ~~Non-Chemical Storage~~ non-chemical storage room if it is used only as an emergency exit.

11.0 Assurance of Safety Practices

Each school district or charter school shall submit an assurance letter annually to the Department's Education Associate, Science no later than November 15. The assurance letter shall verify that the school district or charter school's ~~Hazardous Chemical~~ hazardous chemical management program has been reviewed for compliance, and is compliant with this regulation and the corresponding sections of *Safety First: Safe Instructional Practices in the Classroom and Laboratory*.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(18) (14 **Del.C.** §122(b)(18))
14 **DE Admin. Code** 915

PUBLIC NOTICE

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

915 James H. Groves High School

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(b)(18), the Delaware Department of Education ("Department") developed an amendment to 14 **DE Admin. Code** 915 James H. Groves High School. The regulation provides for the operation

of James H. Groves High School, an adult education high school. In June 2021, subsection 2.2 of the regulation was amended concerning the age of a student in the In School Credit Program. The amendment specified that it would be in effect until June 30, 2022 as a result of the COVID-19 pandemic. The Department has determined that the change should remain in effect for the 2022-23 school year and, as a result, it has proposed to strike the date of "June 30, 2022" from subsection 2.2.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before June 3, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation addresses the operation of James H. Groves High School, an adult education high school. The proposed amendment to the regulation concerns the In School Credit Program and is not designed to directly help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help to ensure that students who are at least 14 years old and who have met the existing requirements in subsection 2.2 may participate in James H. Groves High School's In School Credit Program beyond the end of the current school year thereby enhancing their opportunity to receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The proposed amendment to the regulation concerns the In School Credit Program and is not designed to help ensure students' health and safety is protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed amendment to the regulation concerns the In School Credit Program and is not designed to help ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision-making authority and accountability for addressing the subject to be regulated. By statute (14 **Del.C.** §121(b)(18)), the Department is authorized to prescribe a regulation that provides for the operation of adult education and family literacy programs. Such regulation is proposed by the Secretary of Education and subject to the approval 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 is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.

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

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

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

<http://regulations.delaware.gov/register/may2022/proposed/25 DE Reg 992RFA 05-01-22.pdf>

915 James H. Groves High School

1.0 Definitions

“**Certificate of Educational Attainment**” or “**CEA3**” means that the holder of the certificate has passed the designated assessments with the required scores in each sub test area and has written an approved Groves content area research paper.

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

“**Groves Leadership Team**” means an advisory group composed of the Groves Center administrators, the State Director of Adult Education, a representative from the Groves student association and prison education teacher supervisors. The Associate Secretary, Student Supports shall be an ex officio member of the leadership team.

“**James H Groves Center**” or “**Center**” or “**Centers**” means the specific location in a school district, agency or organization where instruction is provided for the James H. Groves High School program.

“**James H. Groves High School**” or “**Groves**” means an adult high school established by the State of Delaware to provide the opportunity for adults and out of school youth to earn and obtain a high school diploma. The James H. Groves High School is a single school with multiple centers established and operated through a proposal application process. The James H. Groves High School is administered by the Delaware Department of Education.

“**Sex Offender**” means an offender convicted of offenses specified in 11 **Del.C.** §4121(a)(4).

2.0 Admission Criteria and Process

2.1 The following individuals may enroll in the James H. Groves High School:

2.1.1 An adult 18 years of age and older, who resides in the State of Delaware or is a resident of another state and is currently employed in Delaware and has been so employed for a minimum of six (6) months prior to enrollment.

2.1.1.1 The applicant shall:

2.1.1.1.1 Submit an application on forms approved by the Department;

2.1.1.1.2 Qualify as meeting secondary level skills, as determined by the Department, on a standardized assessment.

2.1.2 Out of school youth 16 to 17 years of age, who have officially withdrawn from a day school and who have not been expelled or have an expulsion pending shall enroll under a waiver process.

2.1.2.1 To apply for an age waiver, the prospective student shall submit to the Groves Center administrator the following.

2.1.2.1.1 A letter of request for admission with the rationale for granting a waiver;

2.1.2.1.2 A letter of recommendation from the high school of record;

2.1.2.1.3 Proof of exit from high school; and

2.1.2.1.4 Proof of age.

2.1.2.2 The prospective student seeking the age waiver shall be subject to subsection 2.1.1.1.

2.1.2.3 The decision regarding admission shall be made by the Center administrator.

2.1.2.4 The names of all students receiving an age waiver shall be forwarded within five (5) working days of approval by the Center administrator or designee to the Department’s Director of Adult and Prison Education Resources for reporting purposes.

2.2 High school students who are at least 14 years of age, have completed at least one semester of high school and enrolled for at least one (1) credit in their high school of record may earn an unrestricted number of credits in the Groves In School Credit Program and still graduate from their high school of record ~~until June 30, 2022.~~

2.2.1 To enroll in this program, students shall have the permission of their high school of record, their parent, guardian or relative caregiver and the Groves High School principal or designee.

- 2.2.2 All students enrolled in the Groves In School Credit Program shall be included in the September 30th unit count of their high school of record.
- 2.2.3 Students who withdraw from their high school of record and transfer to the Groves High School shall no longer be considered a student in the Groves In School Credit Program and shall be assessed the materials fee for that semester.
- 2.2.4 Students in the Groves In School Credit program shall not receive instruction during the school's regularly scheduled school day.
- 2.3 Individuals expelled or pending expulsion from a local school district or charter school shall not be enrolled in Groves High School during the period of expulsion or pending expulsion without a waiver from the Department. Individuals who enroll without a waiver shall lose credits earned during the expulsion period.
 - 2.3.1 An applicant for an expulsion or pending expulsion waiver shall meet the following requirements:
 - 2.3.1.1 Be 16 or 17 years of age;
 - 2.3.1.2 Intend to graduate from the James H. Groves High School;
 - 2.3.1.3 Be expelled or be pending expulsion for a nonviolent reason and not be a security threat;
 - 2.3.1.4 Submit a letter of recommendation signed by the principal or designee of their high school of record;
 - 2.3.1.5 Meet with the Department's Director of Adult and Prison Education Resources or designee to orally present their case for entry into Groves. The decision regarding admission shall be made by the Director or designee; and
 - 2.3.1.6 Meet the requirements in subsection 2.1.1.1.
- 2.4 An adult 18 years of age and older who is a registered Sex Offender and who resides in the State of Delaware or is a resident of another state and is currently employed in Delaware and has been continuously employed in Delaware for a minimum of six (6) months prior to enrollment shall:
 - 2.4.1 Present a letter to the Groves Center administrator from a licensed counselor, psychologist or physician including a summary of past behavior and a statement that the individual does not pose a safety threat to students or staff. The letter shall be dated within two (2) months prior to enrollment in the Groves Center.
 - 2.4.2 An adult 18 years of age and older who is a registered Sex Offender may be enrolled in the Diploma-At-A-Distance without the letter described in subsection 2.4.1.
 - 2.4.3 The names of all students that are registered Sex Offenders and enrolled in the James H. Groves Adult High School shall be reported to the State Director within five (5) working days.

3.0 Acceptable Methods for Offering Units of Credit and Granting Units of Credit for the James H. Groves High School Diploma

- 3.1 The Groves School is authorized to offer credit for the following methods or any combination of the following methods of accruing credit that were used prior to enrollment as well as while enrolled in the Groves program:
 - 3.1.1 High school classroom courses;
 - 3.1.2 Summer school courses offered through a district or charter school;
 - 3.1.3 Groves classroom courses;
 - 3.1.4 Distance learning courses;
 - 3.1.5 Independent study courses;
 - 3.1.6 Correspondence courses;
 - 3.1.7 Courses completed through schools in foreign countries and evaluated in terms of content equivalent to the State's high school graduation requirements;
 - 3.1.8 Career technical courses and apprenticeship courses;
 - 3.1.9 Higher education courses;

- 3.1.10 Internships designed to provide practical real-life experiences and based on the skills gained and the length of time of the experience;
- 3.1.11 Military experience based on military training and experience;
- 3.1.12 Employment or training experience based on the length of employment, the level of job responsibility and the scope of work;
- 3.1.13 Community service that recognizes the community life experiences of the student and encourages the student to assume civic responsibility. The emphasis is upon volunteer service within a non-profit or governmental agency given freely for the betterment of the community and other persons and is based on verification of length of service;
- 3.1.14 The knowledge assessments approved by the Groves Leadership Team for students to demonstrate their knowledge of course content; and
- 3.1.15 The Certificate of Educational Attainment that may provide up to ten (10) units of credit toward graduation.

4.0 Attendance, Grading and Graduation Criteria

- 4.1 A graduation plan shall be developed for each student enrolled in the James H. Groves High School by the Groves Administrator or the student's designee.
- 4.2 Students enrolled in James H. Groves High School courses which have an attendance requirement, shall attend a minimum of 85% of the course hours to receive a unit of credit. No provision is made for excused absences.
- 4.3 The grading system for the James H. Groves High School shall be based on a ten (10) point numeric scale. An alpha conversion chart to determine level of performance shall be:
 - 4.3.1 Students receiving a grade of "A" (90 to 100) demonstrate superior understanding of the content and have demonstrated knowledge and competence at the highest level.
 - 4.3.2 Students receiving a grade of "B" (80-89) demonstrate better than average understanding of the content and have demonstrated above average knowledge and competence.
 - 4.3.3 Students receiving a grade of "C" (70-79) demonstrate average understanding of the content and have demonstrated knowledge and competence.
 - 4.3.4 Students receiving a grade of "D" (60-69) demonstrate satisfactory understanding of the content and have demonstrated knowledge and competence.
 - 4.3.5 No credit is awarded for grades less than 60.
- 4.4 Groves High School students shall be eligible to receive a State of Delaware diploma when they have met the State graduation requirements, pursuant to 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas, in effect at the time of their graduation, except as noted below:
 - 4.4.1 Physical education is waived in lieu of another credit.
 - 4.4.2 All course content shall be based on the State Content Standards. Notwithstanding the above, students enrolled in the James H. Groves High School shall successfully complete and receive credit for a minimum of one (1) Groves course to receive a State of Delaware diploma.
 - 4.4.3 The James H. Groves High School must offer at least one (1) computer science course pursuant to 14 **Del.C.** §4139 and 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas.

5.0 Fees

All fees for the James H. Groves High School shall be set by the Delaware Secretary of Education.

6.0 Students Rights and Responsibilities

Students enrolled in each Center shall have such rights and be subject to such responsibilities as set forth in the *James H. Groves Student Rights and Responsibilities* document, and as such may be amended from time to time by the Department.

7.0 Establishing a Center

- 7.1 A school district, agency or organization may seek to establish a James H. Groves Center for service delivery by following the process outlined below. No district, agency or organization shall have more than one (1) Groves Center.
- 7.1.1 An affiliation shall be established with an existing Groves Center as a satellite site or obtain approval from the Groves Leadership Team to establish a pilot Center.
- 7.1.2 After a two (2) year affiliation as a satellite Center of an existing Groves Center or two (2) year success as a pilot Center, the Department may grant full Center status to the satellite site or the pilot Center.
- 7.1.2.1 A formal request for full Center status shall be made to the Department at the end of the first year as a satellite or pilot Center. The request shall include:
- 7.1.2.1.1 A needs assessment documenting program need for services in the district's adult community, potential population to be served, impact on existing Centers, and rationale for requesting a Groves Center;
- 7.1.2.1.2 A description of the district, agency or organization's experience and success in adult program delivery;
- 7.1.2.1.3 An explanation of the commitment to the Groves adult education program and assurances;
- 7.1.2.1.4 Budget requirements including in kind contributions;
- 7.1.2.1.5 Submission of an annual performance report; and
- 7.1.2.1.6 Submission of the State Evaluation Report completed in the tenth month of the first year.
- 7.1.3 The district agency or organization representatives shall meet with the Groves Leadership Team to review the Center request.
- 7.1.4 The Groves Leadership Team shall make a recommendation for Center status through the Department's Director for Adult Education to the Secretary of Education.
- 7.1.5 Approval or denial shall be communicated to the district, agency or organization by the Department within 60 days of the Center status application.
- 7.1.6 If approved, the Department shall apply for Center funding in the upcoming State budget cycle. If State funding is allocated for the additional Center, full Center status shall be given to the program provided the annual performance report and State Evaluation Report are satisfactory.
- 7.1.7 Appeal Process: In the event Center status is denied by the Department a hearing may be requested by the district, agency or organization. The hearing shall be conducted by the Secretary of Education or the Secretary's designee.

8.0 Closing a Center

- 8.1 Voluntary Closing: A school district, agency or organization shall close a James H. Groves Center in their service delivery area by following the process outlined below. For a voluntary closing, a school district, agency or organization shall announce by November its intention to discontinue service at the end of the fiscal year. The following steps shall be followed:
- 8.1.1 Within two (2) months of closing, the district, agency or organization shall:
- 8.1.1.1 Notify all current students of the Center closing and provide them with information to transfer to another Center. Records of active students shall be sent to the new Center;
- 8.1.1.2 Provide all current and past student and administrative records to the Department;
- 8.1.1.3 Send all equipment purchased for the Center to the Department or to the designated Centers for redistribution; and
- 8.1.1.4 Return unspent funds to the Department.
- 8.1.2 District, agency or organization representatives shall meet with the Groves Leadership Team at the monthly meetings to implement a smooth closing.

PROPOSED REGULATIONS

9.0 Non-Voluntary Closing

- 9.1 A non-voluntary closing shall be made by the Secretary of Education when:
- 9.1.1 There is insufficient enrollment or graduates to sustain a Center; or
 - 9.1.2 The Center does not follow the policies, procedures, rules, regulations, or instructional program set forth for the James H. Groves High School; or
 - 9.1.3 The Secretary of Education determines the Center is not providing a quality instructional program to the students at that Center.
- 9.2 The Secretary of Education shall provide notice to the school district, agency, or organization of the closing by November giving eight (8) months to close the Center.
- 9.2.1 Within two (2) months of closing, the district, agency, or organization shall:
- 9.2.1.1 Notify all current students of the Center closing and provide them with information to transfer to another Center.
 - 9.2.1.2 Provide all current and past student and administrative records to the Department;
 - 9.2.1.3 Send all equipment purchased for the Center to the Department or to the designated Centers for redistribution; and
 - 9.2.1.4 Return unspent funds to the Department.
- 9.3 The District, agency or organization representatives shall meet with the James H. Groves Leadership Team at the monthly meetings to implement a smooth closing.

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1553

PUBLIC NOTICE

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

1553 Driver Education and Traffic Safety Education Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1553 Driver Education and Traffic Safety Education Teacher. The regulation concerns the requirements for a Driver and Traffic Safety Education Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising the title of the regulation; clarifying Section 1.0; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Driver and Traffic Safety Education Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Driver and Traffic Safety Education Teacher Standard Certificate in Section 4.0; specifying the requirements for reciprocity in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns requests for the Secretary of Education to review standard certificate applications; adding Section 8.0, which concerns the validity of a Driver and Traffic Safety Education Teacher Standard Certificate; adding Section 9.0, which provides the requirements for retaining a Driver and Traffic Safety Education Teacher Standard Certificate; adding Section 10.0, which concerns disciplinary actions; adding Section 11.0, which concerns recognizing past certificates that were issued by the Department; and adding Section 12.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before June 1, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 and the requirements for reciprocity in Section 5.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 and the requirements for reciprocity in Section 5.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** §1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Driver Education and Traffic Safety Education Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 7.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 6.0 apply to individual applicants. In addition, the requirements in Section 12.0 apply to individual applicants and Educators.

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

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

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

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

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

<http://regulations.delaware.gov/register/may2022/proposed/25 DE Reg 998RFA 05-01-22.pdf>

1553 Driver ~~Education~~ and Traffic Safety Education Teacher

1.0 Content

- 4.1 This regulation shall apply to the requirements for a ~~Standard Certificate, Driver and Traffic Safety Education Teacher Standard Certificate~~ pursuant to 14 ~~Del.C. §1220(a), for Driver Education and Traffic Safety Education Teacher.~~ This Standard Certificate is required to teach driver and traffic safety education in a Delaware public school.
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- The following words and terms, when used in this regulation, shall have the following meaning:
- "Department"** means the Delaware Department of Education.
- "Educator"** means a person licensed and certified by the State under 14 ~~Del.C. Ch. 12~~ to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.
- "Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.
- "Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.
- "License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.
- "Regionally Accredited"** means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.
- "Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.
- "Standards Board"** means the Professional Standards Board established pursuant to 14 ~~Del.C. §1201.~~
- "Valid and Current License or Certificate"** means a current full or permanent certificate or license as an educator issued by another state or jurisdiction. This means the applicant is fully credentialed by having met all of the requirements for full licensure or certification as an educator in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 ~~Del.C. §1220(a)~~, the Department shall issue a Driver and Traffic Safety Education Teacher Standard Certificate as a ~~Driver Education and Traffic Safety Education Teacher~~ to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; ~~and 2003~~ and meets the requirements in Section 4.0 of this regulation; or

- 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for an educator's license in Delaware and presents proof of a Valid and Current License or Certificate as a driver and traffic safety education teacher issued by another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or
- 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~ Has met the requirements for an educator's license in Delaware and meets the requirements set forth in Section 5.0 of this regulation.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Driver and Traffic Safety Education Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 **Additional Prescribed Education, Knowledge, and Skill Requirements**

- 4.1 ~~An educator shall also have met the following:~~
- 4.1.1 ~~Education requirements:~~
- 4.1.1.1 ~~A minimum of twenty one (21) credits, taken either as part of a degree program or in addition to it from a regionally accredited college or university, or their equivalent in professional development approved by the Department in the following areas:~~
- 4.1.1.1.1 ~~Human Development (3 credits);~~
- 4.1.1.1.2 ~~Identifying and Treating Exceptionalities (3 credits);~~
- 4.1.1.1.3 ~~Effective Teaching Strategies (3 credits);~~
- 4.1.1.1.4 ~~Cultural Diversity (3 credits);~~
- 4.1.1.1.5 ~~Driver Education, Methods and Materials (3 credits);~~
- 4.1.1.1.6 ~~Driver Education, In-Car Training (3 credits); and~~
- 4.1.1.1.7 ~~Three (3) credits selected from one (1) of the following areas:~~
- 4.1.1.1.7.1 ~~Alcohol and Drug Education (3 credits);~~
- 4.1.1.1.7.2 ~~Current Issues in Driver Education (3 credits);~~
- 4.1.1.1.7.3 ~~Problems in Driver and Safety Education (3 credits);~~
- 4.1.1.1.7.4 ~~First Aid (3 credits);~~
- 4.1.1.1.7.5 ~~Teaching Students with Disabilities (3 credits);~~
- 4.1.1.1.7.6 ~~Education for Safe Living (3 credits); or~~
- 4.1.1.1.7.7 ~~Technology and Teaching Driver's Education.~~
- 4.1.2 ~~Driver's License Requirements:~~
- 4.1.2.1 ~~The applicant shall hold a valid driver's license.~~
- 4.1.2.2 ~~The applicant's driving record shall have no more than five (5) points total from Delaware or any other jurisdiction at the time of application.~~
- 4.1.2.3 ~~The applicant's driver's license shall not have been suspended, revoked, or disqualified in Delaware or any other jurisdiction in the last five (5) years and the applicant's driver's license shall remain valid for the duration of the applicant's employment under this Standard Certificate.~~
- 4.1.3 ~~The educator shall notify the Department immediately if they fail to meet the Driver's License Requirements.~~
- 4.1.4 ~~Testing Requirement:~~
- 4.1.4.1 ~~The applicant is not required to take and achieve a passing score on an examination of content knowledge.~~

- 4.1 An applicant for a Driver and Traffic Safety Education Teacher Standard Certificate shall have satisfied the requirements in subsections 4.1.1 through 4.1.3.
- 4.1.1 The applicant shall have completed a minimum of 21 college credits or an equivalent number of hours in professional development with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department in the following areas:
- 4.1.1.1 Human development (three credits);
- 4.1.1.2 Introduction to exceptional children (three credits);
- 4.1.1.3 Effective teaching strategies (three credits);
- 4.1.1.4 Cultural diversity (three credits);
- 4.1.1.5 Driver education: methods and materials (three credits);
- 4.1.1.6 Driver education: in-car training (three credits); and
- 4.1.1.7 One of the following:
- 4.1.1.7.1 Alcohol and drug education (three credits);
- 4.1.1.7.2 Current issues in driver education (three credits);
- 4.1.1.7.3 Safety in driver education (three credits);
- 4.1.1.7.4 First aid (three credits);
- 4.1.1.7.5 Curriculum and instruction for exceptional learners (three credits);
- 4.1.1.7.6 Education for safe living (three credits);
- 4.1.1.7.7 Technology and teaching driver education (three credits); or
- 4.1.1.7.8 Driving task analysis (three credits).
- 4.1.2 The applicant shall hold a valid and current driver's license.
- 4.1.3 The applicant's driving record shall have no more than five points total from Delaware or five points or the equivalence of five points in citations from any other jurisdiction.
- 4.1.4 The applicant's driver's license shall not have been suspended, revoked, or disqualified in Delaware or any other jurisdiction in the five years prior to the date of the application.

5.0 Reciprocity

- 5.1 If an applicant is already licensed or certified as a driver and traffic safety education teacher in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.6 in order for the Department to issue a Driver and Traffic Safety Education Teacher Standard Certificate.
- 5.1.1 The applicant shall hold a Valid and Current License or Certificate as a driver and safety education teacher.
- 5.1.2 The applicant shall hold a bachelor's degree in any content area from a Regionally Accredited college or university.
- 5.1.3 The applicant shall have completed a minimum of 21 college credits or an equivalent number of hours in professional development with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department in the areas specified in subsections 4.1.1.1 through 4.1.1.7.
- 5.1.4 The applicant shall hold a valid and current driver's license.
- 5.1.5 The applicant's driving record shall have no more than five points total or the equivalence of five points in citations from any jurisdiction.
- 5.1.6 The applicant's driver's license shall not have been suspended, revoked, or disqualified in any jurisdiction in the five years prior to the date of the application.

6.0 Application Requirements

- 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 6.2 An applicant must disclose the applicant's criminal conviction history upon application for a Driver and Traffic Safety Education Teacher Standard Certificate. Failure to disclose a criminal conviction history is grounds for denial of a Driver and Traffic Safety Education Teacher Standard Certificate as specified in 14 Del.C. §1219.
- 6.3 For an applicant who is applying under subsection 3.1.1, the following documentation is required with the application for a Driver and Traffic Safety Education Teacher Standard Certificate:
 - 6.3.1 Official transcript from the applicant's Regionally Accredited college or university.
 - 6.3.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 6.3.1.2 Sealed paper transcripts may be submitted.
 - 6.3.1.3 The Department will not accept copies of transcripts; and
 - 6.3.2 Documents verifying successful completion of Department-approved professional development, if applicable; and
 - 6.3.3 Documentation that the applicant holds a valid and current driver's license; and
 - 6.3.4 A copy of the applicant's driving record; and
 - 6.3.5 Additional documentation as required by the Department.
- 6.4 For an applicant who is applying under subsection 3.1.2, the following documentation is required with the application for a Driver and Traffic Safety Education Teacher Standard Certificate:
 - 6.4.1 An official copy of the Valid and Current License or Certificate as a driver and traffic safety education teacher; and
 - 6.4.2 Additional documentation as required by the Department.
- 6.5 For an applicant who is applying under subsection 3.1.3, the following documentation is required with the application for a Driver and Traffic Safety Education Teacher Standard Certificate:
 - 6.5.1 An official copy of the Valid and Current License or Certificate as a driver and traffic safety education teacher; and
 - 6.5.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 6.5.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 6.5.2.2 Sealed paper transcripts may be submitted.
 - 6.5.2.3 The Department will not accept copies of transcripts; and
 - 6.5.3 Documents verifying successful completion of Department-approved professional development, if applicable; and
 - 6.5.4 Documentation that the applicant holds a valid and current driver's license; and
 - 6.5.5 A copy of the applicant's driving record; and
 - 6.5.6 Additional documentation as required by the Department.

7.0 Secretary of Education Review

- 7.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Driver and Traffic Safety Education Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Driver and Traffic Safety Education Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.
 - 7.1.1 For school districts, requests shall be approved by the superintendent of the school district.

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

8.0 Validity of a Standard Certificate

- 8.1 A Driver and Traffic Safety Education Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 8.2 A Driver and Traffic Safety Education Teacher Standard Certificate is not subject to renewal.

9.0 Requirements Related to the Retention of a Driver and Traffic Safety Education Teacher Standard Certificate

- 9.1 In order to retain a Driver and Traffic Safety Education Teacher Standard Certificate, the Educator shall:
- 9.1.1 Hold a valid and current driver's license; and
- 9.1.2 Maintain a driving record that has no more than five points total from Delaware or five points or the equivalence of five points in citations from any other jurisdiction; and
- 9.1.3 Prior to the expiration of the Educator's license, affirm and document to the Department that the Educator satisfies the applicable requirements in subsections 9.1.1 and 9.1.2 of this regulation.
- 9.2 If an Educator fails to meet any of the requirements related to retaining a Driver and Traffic Safety Education Teacher Standard Certificate, the Educator shall immediately notify the Department in writing.
- 9.3 The requirements set forth in subsection 9.1 apply to all Educators regardless of the date the Driver and Traffic Safety Education Teacher Standard Certificate was issued to them.

10.0 Disciplinary Action

- 10.1 An Educator's Driver and Traffic Safety Education Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits or for the Educator's failure to comply with the requirements related to the retention of a Driver and Traffic Safety Education Teacher Standard Certificate as provided in Section 9.0.
- 10.2 An Educator's Driver and Traffic Safety Education Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.
- 10.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

11.0 Past Certificate Recognized

The Department shall recognize a Driver and Traffic Safety Education Teacher Standard Certificate issued prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach driver and traffic safety education.

12.0 Contact Information and Change of Name or Address

- 12.1 All applicants and Educators are required to update their contact information in DEEDS if their contact information changes.
- 12.2 An Educator who legally changes the Educator's name and wishes to change the name on the Driver and Traffic Safety Education Teacher Standard Certificate shall provide a notarized copy of evidence of the name change such as a marriage license or court action.

12.3 An applicant or Educator whose mailing address, email address, or phone number changes shall provide the Department with the new mailing address, email address, or phone number within 14 calendar days of the change.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(t) (16 Del.C. §122(3)(t))
16 DE Admin. Code 4459

PUBLIC NOTICE

4459 Lead Based Paints Hazards

Pursuant to 16 Del.C. §122(3)(t), the Health Systems Protection Section of the Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Lead Based Paints Hazards. On May 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Lead Based Paints Hazards regulations. The revisions include updates to lead levels in dust sampling results, which have been lowered to be consistent with EPA regulations, and technical corrections.

Copies of the proposed regulations are available for review in the May 1, 2022 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Wednesday, June 1, 2022, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4951

***Please Note:**

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

<http://regulations.delaware.gov/register/may2022/proposed/25 DE Reg 1005RFA 05-01-22.pdf>

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

4459 Lead Based Paints Hazards

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3)(t) and 2601-2606 (16 Del.C. §§122(3)(t) & 2601-2606)
16 DE Admin. Code 4459A

PUBLIC NOTICE**4459A Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months**

Pursuant to 16 Del.C. §122(3)(t) and §§ 2601-2606, the Health Systems Protection Section of the Division of Public Health, Department of Health and Social Services, is proposing revisions to the Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months. On May 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months regulations. The revisions include:

- Renamed regulation to remove outdated reference;
- Updated and added new definitions;
- Updated requirements for blood lead testing, including age requirements and documentation and reporting requirements; and
- Technical corrections.

These revisions are required by House Bill 222 as amended by House Amendment 1 (151st GA).

Copies of the proposed regulations are available for review in the May 1, 2022 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Wednesday, June 1, 2022, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4951

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

[http://regulations.delaware.gov/register/may2022/proposed/25 DE Reg 1006RFA 05-01-22.pdf](http://regulations.delaware.gov/register/may2022/proposed/25%20DE%20Reg%201006RFA%2005-01-22.pdf)

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months**1.0 General Provisions. Provisions****4.4 Preamble.**

- 4.4.4** These regulations are adopted by the Secretary of Delaware Health and Social Services pursuant to 16 Del.C., §122(3)(t) and ~~§ 2602~~ §§2601-2606. These regulations establish standards for blood lead testing of children between ~~22 12~~ and ~~26 24~~ months of age ~~who are at high risk of to test for~~ lead poisoning. These regulations also establish a record retention policy, enforcement ~~modalities~~ modalities, and penalties for violators.

2.0 ~~Definitions.~~ Definitions

For purposes of this chapter, the following definitions shall apply:

"Administer a blood test for lead" means to draw a blood specimen, by either venous or capillary methodology, and:

(a) Send the specimen to a medical laboratory for blood lead analysis; or

(b) Conduct a blood lead analysis at a health care provider's office; or

(c) Order a blood specimen to be drawn by a third-party health care provider, by either venous or capillary methodology, and sent to a medical laboratory for blood lead analysis.

"Blood lead analysis" means the analysis and determination by a medical laboratory of the blood lead level in a blood specimen.

"Blood Lead Level of Concern" means a concentration of lead in whole venous blood greater than or equal to 3.5 micrograms per deciliter in a child younger than six years old. Blood Lead Level of Concern shall be used for surveillance and outreach for children at risk of lead poisoning.

"Blood lead registry" means the database maintained by the Department that includes the results of all blood lead testing reported to the Department.

~~**"Blood lead testing"** means taking a capillary or venous sample of blood for point of care testing using a Clinical Laboratory Improvement Act of 1988 (CLIA) licensed or waived test or sending it to a laboratory to determine the level of lead in the blood.~~

"Capillary" means a blood sample taken from the capillaries in the finger or heel for lead analysis.

"Division" means the Delaware Division of Public Health.

"Department" means the Delaware Department of Health and Social Services.

"Elevated blood lead level" means an elevated blood lead level defined by the Division of Public Health to be potentially detrimental to the health, behavioral development, or cognitive potential of a child.

"Health care provider" means ~~the~~ an individual that generally provides medical care to a child including, ~~but not limited to,~~ a physician, a physician's ~~assistant~~ assistant, or a nurse.

"High risk" means ~~a child between the ages of 22 and 26 months who meets any of the following conditions:~~

- ~~• Is suspected by a parent or a health care provider to be at risk for lead exposure or to exhibit the symptoms of lead poisoning.~~
- ~~• Has a sibling or frequent playmate with lead poisoning.~~
- ~~• Is a recent immigrant, refugee, or foreign adoptee.~~
- ~~• Has a household member who uses traditional, folk, or ethnic remedies or cosmetics or who routinely eats food imported informally (e.g., by a family member) from abroad.~~
- ~~• Lives in or regularly visits a house or day care center (including out buildings) built before 1978.~~
- ~~• Lives with an adult whose job or hobby involves exposure to lead (e.g. construction, welding, pottery, mechanic, jeweler, plumber, renovator, firing range enthusiast, stained glass maker).~~
- ~~• Lives near an active lead smelter, battery recycling plant, or other industry likely to release lead.~~
- ~~• Lives in, attends day care in, or visits any of the following zip code areas at least 6 hours a week or 60 hours a year:~~
 - ~~• **197XX**: 01, 02, 03, 06, 09, 11, 13, 20, 33~~
 - ~~• **198XX**: 01, 02, 03, 04, 05, 06, 08, 09, 10~~
 - ~~• **199XX**: 01, 04, 33, 34, 38, 39, 40, 41, 43, 45, 46, 47, 50, 52, 53, 56, 58, 60, 62, 63, 66, 68, 71, 73, 75, 77.~~

"Laboratory" means a laboratory certified to perform either waived or non-waived blood lead analysis according to the federal Clinical Laboratory Improvement Act of 1988 (CLIA).

~~**"Low Risk"** means a child between the ages of 22 and 26 months who does not meet any of the conditions listed in the definition for **"High Risk"**.~~

"Parent or guardian" means an individual acting in a primary custodial capacity.

PROPOSED REGULATIONS

"Reference level" means the revised blood lead reference level as determined by the Centers for Disease Control and Prevention.

"Venous" means a blood sample taken from a vein in the arm for lead analysis.

3.0 ~~Requirement.~~ Requirement for Blood Tests for Lead Poisoning

- 3.1 ~~The A primary health care provider of for a child between the ages of 22 and 26 months shall determine if said child is at high risk of lead poisoning. If the child is determined to be at high risk, the health care provider shall perform or cause to be performed a blood lead test shall administer or order a blood test for lead when the child is at or around 12 months of age and again at or around 24 months of age.~~
- 3.2 A primary health care provider for a child who is 24 months old or older and younger than six years old shall administer a blood test for lead in the following circumstances:
- 3.2.1 If the child has not previously received a blood test for lead;
- 3.2.2 If the child's parent or guardian fails to provide documentation that the child has previously received a blood test for lead;
- 3.2.3 If the health care provider is unable to obtain the results of a previous blood lead analysis; or
- 3.2.4 If the child's parent or guardian requests that the child receive a blood test for lead regardless of the child's age or area of residence.
- 3.3 A primary health care provider shall administer or order a blood test for lead, by venous methodology, if the results of a capillary blood test for lead poisoning indicate an elevated blood lead level result greater than or equal to 3.5 micrograms per deciliter in a child younger than six years old.
- 3.4 A health care provider giving non-primary care to a child may, but is not required to, administer a blood test for lead, even if a blood test for lead is not medically indicated.
- 3.5 If a child is insured under Delaware's Medicaid program, the child's primary health care provider shall administer a blood test for lead to the child at the 12-month visit and again at the 24-month visit in accordance with Early and Periodic Screening, Diagnosis and Treatment (EPSDT) requirements regardless of the child's area of residence.

4.0 ~~Applicability.~~ Applicability

- 4.1 ~~The blood lead testing requirement specified in these regulations applies to all children 22 to 26 months of age except those determined not to be at high risk under six years of age (younger than 72 months of age).~~
- 4.2 ~~Blood lead testing is not required on a child between the ages of 22 and 26 months when said child is determined by the health care provider to be at low risk for elevated blood lead levels. If a health care provider determines that a child is low risk, the health care provider will keep the completed risk assessment questionnaire (with all "NO" responses) in the child's chart for at least three years.~~

5.0 ~~Religious exemption.~~ exemption

A religious exemption may be granted to a child if the blood lead testing conflicts with a genuine and sincere religious belief and not a belief based merely on philosophical, scientific, moral, personal, or medical opposition to blood lead testing. A certificate of blood lead testing exemption for religious reasons beliefs shall be signed and dated by the child's parent or guardian, notarized, and kept in the child's medical chart.

6.0 ~~Time-line~~ Timeline for valid blood lead testing: testing

To be valid, a blood lead test shall be performed, as required by these regulations, on a child ~~after completion of a risk assessment questionnaire when the child is between the ages of 22 and 26 months~~ when the child is at or around 12 months of age and again when the child is at or around 24 months of age. Children ~~that test with blood lead levels above the level of concern established by the~~

~~Centers for Disease Control (“CDC”), which is currently 10 µg/dl, will~~ Division must have a venous confirmation by a laboratory prior to intervention blood test.

7.0 ~~Documentation.~~ **Blood Lead Testing Documentation and Reporting Requirements**

- 7.1 A health care provider and a laboratory performing a blood lead test required by these regulations shall ensure that the results of the blood lead test are reported to the Division.
- 7.2 ~~Proof of blood lead testing will be verified through the Blood Lead Registry and by auditing a child's medical charts.~~ The laboratory, health care provider's office, or other facility that draws a blood specimen from a child 18 years old or younger for a blood lead level test shall obtain the information required by this regulation at the time of drawing the blood specimen.
- 7.3 A laboratory that performs blood lead analysis shall provide a referral form of paper or electronic requisition that specifies the required information for use by a laboratory, a health care provider's office, or another facility that draws a blood specimen.
- 7.3.1 The facility that draws a blood specimen shall:
- 7.3.1.1 Record the information required under this regulation on the laboratory's referral form or similar form; and
- 7.3.1.2 Forward the required information concurrently with the blood specimen to the laboratory that performs blood lead analysis.
- 7.4 A laboratory required to report a blood lead level test under this regulation shall report the blood lead level test in the format approved by the Division and shall include the following information:
- 7.4.1 The child's demographic information, including:
- 7.4.1.1 First name, middle initial, and last name;
- 7.4.1.2 Date of birth;
- 7.4.1.3 Country of birth;
- 7.4.1.4 Sex;
- 7.4.1.5 Race and ethnicity;
- 7.4.1.6 Master Client Index (MCI) number if the child is enrolled in Medicaid or a Delaware children's health program;
- 7.4.1.7 Complete home address at the time the blood specimen was drawn, including house or apartment number, street, city or town, county, zip code, and state;
- 7.4.1.8 Telephone number; and
- 7.4.1.9 Parent or guardian's name.
- 7.4.2 Type of blood specimen, venous or capillary, and the blood draw date;
- 7.4.3 The health care provider's name, office name, address, telephone number, and national provider identifier (NPI);
- 7.4.4 If the draw site is different from the health care provider's office, the laboratory's or other facility's name, address, telephone number, and NPI;
- 7.4.5 All of the following information about the laboratory performing the blood lead analysis:
- 7.4.5.1 Laboratory name, address, telephone number, and clinical laboratory improvement amendment number (CLIA);
- 7.4.5.2 Laboratory method used to analyze the blood specimen;
- 7.4.5.3 The limit of detection for the method used to analyze the blood specimen; and
- 7.4.5.4 If reporting a "no result" test results, the limit of detection for the laboratory.
- 7.4.6 Blood lead level in micrograms per deciliter expressed with a numeric results comparator of:
- 7.4.6.1 Equal, if the blood lead level is an exact measurement; or
- 7.4.6.2 Less than or greater than, if a blood lead level reading is below or above a certain level that a device used to analyze a blood specimen can accurately record.
- 7.4.7 Additional information as may be required by the Division.

8.0 Records-

~~A completed risk assessment questionnaire, including the determination of the child's risk of lead poisoning, shall be maintained in a child's medical chart for at least three years. The Division will conduct scheduled and impromptu chart audits to monitor compliance.~~

8.0 Missing Information

- 8.1 A laboratory that receives a blood specimen from a laboratory, a health care provider's office, or another facility without all of the required information listed in Section 7.0 included on the referral form required under subsection 7.3 shall:
- 8.1.1 Within three business days of receipt of the blood specimen, send to the facility that provided the blood specimen a written or electronic message citing the requirements of this regulation, requesting that all the required missing information be forwarded to the laboratory; and
 - 8.1.2 Upon receipt of the required information, collate and transmit the information to the Division within the time frames set forth in this regulation.
- 8.2 When the laboratory reports a blood lead level test result to the Division with one or more of the requirements listed in Section 7.0 omitted, the laboratory shall concurrently provide the name and address of the facility that:
- 8.2.1 Drew the blood specimen; and
 - 8.2.2 Failed upon request to forward the required information to the laboratory.
- 8.3 The facility that drew the blood specimen shall respond to a written or electronic message from a laboratory that did not receive all of the required information listed in Section 7.0 by providing the information to the laboratory within:
- 8.3.1 One business day of receiving the message regarding a blood lead level test result of greater than or equal to the reference level;
 - 8.3.2 Five business days of receiving the message for a blood lead level test result of less than the reference level.
- 8.4 A laboratory not permitted to perform a blood lead analysis that accepts a blood specimen from a health care provider for referral to another laboratory for blood lead analysis shall ensure that:
- 8.4.1 The requisition record includes all of the information that is required under this regulation; and
 - 8.4.2 The required information is transmitted to the laboratory performing the blood lead analysis along with the blood specimen.
- 8.5 Reporting a Blood Lead Level test result with missing information:
- 8.5.1 A laboratory shall collate information required under Section 7.0 that is collected to complete a previously incomplete requisition record for a blood lead level test before submitting the information to the Division in accordance with this regulation.
 - 8.5.2 A laboratory shall report to the Division the missing information collated pursuant to this regulation:
 - 8.5.2.1 Concurrently with the blood lead level test result, if the reporting time frame for a blood lead level test result established in subsection 8.3 has not concluded; or
 - 8.5.2.2 In a manner indicating that there has been a change in the blood lead level test record, if reporting the missing information after the initial blood lead level test result was reported to the Division.

9.0 Additional Reporting Requirements

- 9.1 In addition to the reporting requirements set forth in Section 7.0, a laboratory shall report the result of a blood lead level test to:
- 9.1.1 The health care provider that ordered the blood lead level test; and
 - 9.1.2 Another entity as required by State, federal, or local statutes or regulations, or in accordance with accepted standards of practice.

- 9.2 A laboratory shall report the result of a blood lead level test to the Division by electronic system, facsimile or other manner required by the Division within the following time frames:
- 9.2.1 By the close of business of the next business day following a final blood lead level test result of greater than or equal to the reference level; and
- 9.2.2 Within two weeks of a final blood lead level test result of less than the reference level.
- 9.3 A laboratory that uses an electronic system for tracking blood lead level test results shall report a result to the Division electronically in a manner consistent with the technical specifications established by the Division.

10.0 Proof of Documentation Requirements Prior to Child Care or School Enrollment

- 10.1 Upon first admission or continued enrollment, the parent or guardian of a child 12 months of age or older shall provide to the administrator of a child care facility, public or private nursery school, preschool, or kindergarten proof from their child's primary health care provider that the child received a blood test (screening) for lead poisoning.
- 10.2 Except in the case of enrollment in kindergarten, the screening may be done within 60 calendar days of the date of enrollment.
- 10.3 A child's parent or guardian must provide one of the following to the administrator of a child care facility, public or private nursery school, preschool, or kindergarten:
- 10.3.1 A statement from the child's primary health care provider that the child has received a blood test (screening) for lead poisoning;
- 10.3.2 A certificate signed by the parent or guardian stating that the blood test (screening) is contrary to the parent's or guardian's religious beliefs; or
- 10.3.3 Certified documentation of the child's blood lead analysis, as specified in this regulation, administered in connection with the 12-month visit and 24-month visit to the child's health care provider not later than:
- 10.3.3.1 30 calendar days from the 12-month visit or 24-month visit; or
- 10.3.3.2 30 calendar days from first entry into the program or system.
- 10.4 If the child's first blood test for lead poisoning was administered after the child is 24 months old, then only certified documentation of the most recent blood lead analysis is required to be reported.
- 10.5 If a child has more than two blood tests for lead poisoning done between the ages of 12 months and 24 months, then only certified documentation of the two most recent blood lead analyses shall be reported.
- 10.6 The information sent to or received by a program or school shall be recorded and certified by a health care provider's signature on a form that includes the following:
- 10.6.1 Name of the child;
- 10.6.2 Date of the blood lead analysis; and
- 10.6.3 The signature of the child's primary health care provider or designee.

9-0 11.0 Severability. Severability

If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect the validity of other provisions or applications of these regulations.

40-0 12.0 Penalty. Penalty

Violators are subject to sanctions pursuant to 16 Del.C., §107 for each violation of the requirements established in these regulations.

PROPOSED REGULATIONS

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11000

PUBLIC NOTICE

Defining Relative In-Home Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 Del.C. §512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) to define and explain the requirements for a relative to provide child care services in the child's home.

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, Division of Social Services (DSS), 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on May 31, 2022. Please identify in the subject line: Defining Relative In-Home Child Care.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding to define and explain the requirements for a relative to provide child care services in the child's home.

Statutory Authority

45 CFR 98.2

Background

DSS is revising DSSM 11003.5 to provide instruction for DSS staff and the public on the requirements and limitations for an individual to provide relative in-home child care services in a child's home. The revised policy limits in-home child care to DSS-approved Relative Care providers.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to define and explain the requirements for a relative to provide child care services in the child's home.

Summary of Proposed Changes

Effective for services provided on and after July 11, 2022 Delaware Health and Social Services (DHSS) /Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) to define and explain the requirements for a relative to provide child care services in the child's home.

Public Notice

In accordance with the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/ DSS gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on May 31, 2022.

Fiscal Impact

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

associated with the regulation.

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

<http://regulations.delaware.gov/register/may2022/proposed/25 DE Reg 1012RFA 05-01-22.pdf>

POLICY AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

11003.5 Defining Relative In-Home Child Care

Statutory Authority
45 CFR 98.2

~~See Administrative Notice: A 7-99 Child Care Issues~~

~~The Fair Labor Standards Act requires that in-home child care providers be treated as domestic service workers. As a result, DSS must pay these providers the federal minimum wage. Paying the federal minimum wage would make the cost of in-home care disproportionate to other types of care. As a result, DSS has placed a limit on parental use of the in-home care option.~~

- ~~A. As of July 1994, in-home care has been limited to:~~
- ~~1. families in which four or more children require care, or~~
 - ~~2. families with fewer children only as a matter of last resort.~~
- ~~B. Examples of "last resort" may include:~~
- ~~1. the parent works the late shift in a rural area where other types of care are not available, or~~
 - ~~2. there is a special needs child for whom it is impossible to find any other child care arrangement.~~

~~Federal regulations define in-home care as child care provided in the child's own home. In-home care also includes situations where the caregiver and the child share a home.~~

~~EXAMPLE 1: Ms. Jones lives at 100 Main Street in Newark. Ms. Jones goes to Mrs. Johnson's house at 200 Main Street in Newark to provide dependent care for Mrs. Johnson's children. Because in-home care is provided, Ms. Jones must be paid at least the federal minimum wage. Ms. Jones must, therefore, be providing dependent care to at least four children.~~

~~EXAMPLE 2: Ms. Smith and Ms. Kelly live in the same house at 500 DuPont Street in Wilmington. Ms. Smith provides dependent care for Ms. Kelly's only child in this house. The federal minimum wage provisions do not apply. Ms. Smith would receive the established rate for the one child even though the rate is below the federal minimum wage.~~

This policy applies to Relative Care providers who provide care in the children's home.

1. Federal regulations define an in-home child care provider as an individual who provides child care services in the child's own home.
2. The Division of Social Services (DSS) limits in-home child care to Relative Care providers only (refer to DSSM 11006.7 for Relative Child Care requirements).
3. In-home child care in the children's home is limited to Relative Care providers who are:
 - A. Caring for a minimum of four children in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
 - B. Caring for no more than two children under two years of age.
 - C. Caring for the children of one family member. The children must be related as siblings.
 - D. Only providing care during non-traditional hours, such as evening and weekend work hours, that are not normally offered through a licensed child care provider.

PROPOSED REGULATIONS

DEPARTMENT OF SAFETY AND HOMELAND SECURITY OFFICE OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code, Section 4101(d) (21 **Del.C.** §4101(d))
2 **DE Admin. Code** 1205

PUBLIC NOTICE

1205 Electronic Red Light Safety Program (ERLSP)

Purpose: In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 21 of the Delaware Code, Chapter 41, Section 4101(d), the Delaware Department of Safety and Homeland Security proposes to revise its regulations. The proposed regulations will enhance judicial efficiency.

Written Comments: The Delaware Department of Safety and Homeland Security will receive written comments, suggestions, briefs, or other written material until the close of business, 4:30 p.m., June 3, 2022. Written comments shall be submitted via e-mail to Kimberly.Chesser@delaware.gov or via the USPS to Kimberly A. Chesser, Director, Delaware Office of Highway Safety, 800 Bay Road, Suite 2, Dover, DE 19901.

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

[http://regulations.delaware.gov/register/may2022/proposed/25 DE Reg 1014RFA 05-01-22.pdf](http://regulations.delaware.gov/register/may2022/proposed/25%20DE%20Reg%201014RFA%2005-01-22.pdf)

1205 Electronic Red Light Safety Program (ERLSP)

1.0 Statement of Purpose

The purpose of these regulations is to provide for the establishment and administration of an Electronic Red Light Safety Program (ERLSP) at qualifying intersections across the State of Delaware. The Delaware Department of Transportation (DelDOT) and/or the governing body of any city or county may install and operate traffic light signal violation monitoring systems and assess fines accordingly. The Program shall use recognized safety and crash criteria in determining whether and where to add any new enforcement locations to the Program, and in any event shall continue to confirm that any such new locations are not objected to by the incumbent state Senator and Representative for the districts in which such locations are proposed. These regulations are being promulgated in accordance with 21 **Del.C.** §4101(d) and 73 **Del. Laws**, c. 350, sec. 92.

2.0 Locations of Traffic Light Signal Monitoring Systems

DelDOT is specifically directed to identify intersections with high crash incidents as potential candidates for the placement of electronic red light camera systems. If a camera installation is performed on state-maintained streets or roads by an entity other than DelDOT, the Department must first approve such installation. In addition, the Department must approve the engineering of any new cameras installed. All intersections using a traffic control photographic system or other traffic light signal violation monitoring system must adhere to the exact duration of the yellow light change interval. This time period must be no less than the yellow light change interval duration specified in the design manual developed by the Department of Transportation.

3.0 System Vendor

The Department of Transportation utilizes a supporting vendor to provide enforcement monitoring systems and assist in administering the ERLSP. System vendors are selected through an open competitive procurement process which allows for the government and the taxpayer to benefit from improved quality at lower pricing. To assure integrity and propriety, no person involved in the administration or enforcement of the Program shall own any interest or equity in the vendor used by the department to support the administrative elements of the Program. Any such person with an ownership or equity interest in such vendor must divest from this ownership or investment no later than ninety days after the effective date of this act. This restriction applies to anyone with either direct

involvement in the administering or enforcement of the Program and those in any supervisory capacity above such persons.

4.0 Fines

Violation notices are sent to the registered owner of the vehicle that fails to comply with a traffic light signal, as evidenced by information obtained from a traffic light signal monitoring system, and shall be subject to a civil offense rather than a criminal offense. At the time of this revision, the present violation fine of \$112.50 is calculated using two components: a base fine of \$75.00 and a surcharge of \$37.50. The \$75.00 fee is authorized by 21 **Del.C.** §4101(d)(2). The \$37.50 surcharge originates from 11 **Del.C.** §410, which requires fines or fees levied for violations of Title 21 to include an additional 50% surcharge assessment.

5.0 Violation Criteria

For a violation to occur, the front of a vehicle must be behind the stop line marked on the pavement at the time the traffic light signal turns red and must then continue into the intersection while the traffic light signal is red.

6.0 Determination of Violation

The technology for electronic enforcement utilizes a specialized camera, coupled with a traffic signal. The device detects the movement of vehicles into the intersection after a signal turns red. The technology video tapes this movement while simultaneously taking a picture of the violator's license plate to identify the vehicle. A trained technician, such as a law enforcement officer, employed by a state agency or entity designated by a state agency for this purpose inspects the evidence. Using this information, a violation notice is generated and sent to the registered owner of the vehicle.

7.0 Exemptions

- 7.1 The following vehicles are exempt from receiving a notice of violation:
- 7.1.1 Emergency vehicles with active emergency lights;
 - 7.1.2 Vehicles moving through the intersection to avoid or clear the way for a marked emergency vehicle;
 - 7.1.3 Vehicles under police escort; and
 - 7.1.4 Vehicles in a funeral procession.

8.0 Notice of Violation Content

- 8.1 A Notice of Violation shall contain:
- 8.1.1 The name and address of the registered owner of the vehicle that committed the violation;
 - 8.1.2 The registration number of the motor vehicle involved in the violation;
 - 8.1.3 The violation charges;
 - 8.1.4 The location where the violation occurred;
 - 8.1.5 The date and time of the violation;
 - 8.1.6 Copies of 2 or more photographs, or microphotographs or other recorded images, taken as proof of the violation;
 - 8.1.7 The amount of the civil assessment imposed and the date by which the civil assessment should be paid;
 - 8.1.8 Information advising the summonsed person of the manner, time and place by which liability as alleged in the notice may be contested, and warning that the failure to pay the civil assessment or to contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the summonsed person ~~and/or~~ or the denial of the registration or the renewal of any of the owner's vehicles; and
 - 8.1.9 Notice of the summonsed person's ability to rebut the presumption that the summonsed person was the operator of the vehicle at the time of the alleged violation and the means for rebutting such presumption.

9.0 Affidavits

- 9.1 If the registered owner of a vehicle whom has received a notice of violation contends that ~~he/she~~ the registered owner was not the operator of the vehicle at the time of the violation, ~~he/she~~ the registered owner must furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption shall be rebutted if the owner:
- 9.1.1 Furnishes an affidavit by regular mail to the entity indicated on the summons that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented or otherwise had the care, custody or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate or plates had been reported to the police as stolen prior to the time of the alleged violation; or
- 9.1.2 Provides proof in court or to the entity handling the administrative appeal process that the owner was not the operator of the vehicle at the time of the alleged violation or that the owner failed to comply with the traffic signal either in order to yield the right-of-way to an emergency vehicle or as part of a funeral procession.
- 9.2 An affidavit must be provided by the registered owner of a vehicle receiving a Notice of Violation within ~~30~~ 90 days of the issue date of the Notice of Violation or no later than 10 days prior to a hearing if one is requested, whichever date is earlier.
- 9.3 Upon receipt of an affidavit by the State of Delaware or the system vendor, the newly implicated person will be mailed a notification ~~informing him/her~~ of the violation.

10.0 Payment of Civil Assessment

A person electing to pay the civil assessment should follow the process as outlined on the Notice of Violation.

11.0 Procedures to Contest a Violation

A person receiving a Notice of Violation may request a hearing to contest the violation by notifying in writing the entity designated on the summons, within 30 days of the issue date. Upon timely receipt of a hearing request, a civil hearing shall be scheduled and the defendant notified of the hearing date by first class mail. Costs for such hearing shall not be assessed against the prevailing party. There shall be no right of transfer to the Court of Common Pleas.

12.0 Failure to Pay Civil Assessment

If the owner or the operator identified by the owner fails to pay the civil penalty by voluntary assessment, request a hearing within the required time or submit an affidavit stating that the owner or operator identified was not the driver, the Division of Motor Vehicles may refuse to renew the registration of the owner's vehicle operated at the time the summons was issued. If the owner or an operator identified by the owner is found responsible at a hearing and fails to pay as ordered by the Court, or requests a hearing and fails to pay as ordered by the Court, or requests a hearing and fails to appear, the Division of Motor Vehicles shall suspend the license of the owner or operator.

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A (14 **Del.C.** §3003A)
14 **DE Admin. Code** 934

REGULATORY IMPLEMENTING ORDER

934 Regulations for Family and Large Family Child Care Homes

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** § 3003A, the Secretary of Education intends to amend 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes. This regulation is being amended to comply with updates to DE Code, The Federal Child Care and Development Block Grant Act, to provide clarification to licensing regulations, to reduce the number of provisional licenses issued, and as well as to comply with the *Delaware Administrative Code Drafting and Style Manual*. More specifically, these updates include:

- Requiring immediate access to the family and large family home during the hours of operation;
- Requiring a State business license or verification of tax-exempt status for licensure and renewals;
- Beginning January 1, 2023, increasing the fine for unlicensed care to \$1000 or imprisoned not more than 6 months;
- Allowing for Office of Child Care Licensing (OCCL) to investigate complaints typically investigated by other entities if the complaint involves a violation of OCCL's regulations;
- Requiring the licensee, non-emergency substitute, and large family staff to complete OCCL's approved health and safety training;
- No longer requiring property insurance for large family child care homes;

- Adding information about OCCL procedures regarding suspension;
- Requiring a licensee to follow all federal, state, and local laws and regulations.
- Requiring OCCL to be notified of accidental ingestion of a medication or a drug while at the FCCH/LFCCH that results in medical attention;
- For infants age four months or older, stating semi-solid foods may be fed as requested by the parent or guardian and are required once an infant is six months old rather than 8 months unless the parent or guardian provides documentation from the infant's health care provider stating otherwise;
- Changing the breast milk regulations to comply with the Center for Disease Control's guidelines to state, "Thawed, previously frozen breast milk may be kept at room temperature for one to two hours. Breast milk must be used within two hours after a feeding has finished. Expressed breast milk must be returned to the parent if it is in an unsanitary bottle, partially used, or if it has been unrefrigerated for more than four hours or within two hours after a feeding has finished. Refrigerated, unused, freshly expressed breast milk that was never frozen must be returned to the parent after four days.";
- Adding additional requirements and explanations of safety hazards to children:

A licensee shall ensure toys and equipment used by the children are sturdy, safely assembled, hazard-free, and not recalled. Toys and equipment may not cause children to become trapped or have rough edges, sharp corners, pinch and crush points, splinters, or exposed bolts. Equipment in poor condition must be repaired, removed, or made inaccessible to children. A licensee shall take the following measures to prevent hazards to children in care:

 - o To prevent cuts, abrasions, and punctures, equipment, materials, and other objects on the premises that have sharp edges, protruding nails, bolts, or other dangers must be repaired, removed, or made inaccessible to children. Sharp edges on natural wooden equipment must be sanded;
 - o To prevent burns, equipment, materials, or products that may be hot enough to injure a child must be made inaccessible to children;
 - o To prevent sheering, crushing, or pinching, broken or cracked equipment, materials, and objects must be repaired, removed, or made inaccessible to children;
 - o To prevent entrapment, freezers, refrigerators, washers, dryers, compost bins, and other entrapment dangers must be inaccessible to children unless being actively supervised;
 - o To prevent tripping, uneven indoor or outdoor walkways, damaged flooring or carpeting, or other tripping hazards must be removed or repaired;
 - o To prevent injuries and death, large objects that pose a risk of falling or tipping must be securely anchored. Large objects include, but are not limited to, televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units; and
 - o To prevent injuries, equipment in poor condition (rusty parts, flaking paint, or other dangers) must be repaired, removed, or made inaccessible to children.
- Renaming behavior management to behavior supports.
- Clarifying the prohibition of portable sinks outdoors.
- Clarifying the prohibition of accordion and pressure gates in any area of the home;
- Requiring a licensee to design effective positive behavioral supports or to make reasonable accommodations to comply with provisions in an Individualized Family Service Plan (IFSP) or Individualized Education Plan (IEP);
- Raising the acceptable food temp to comply with DPH from 40° F to 41° F or colder;
- Requiring a licensee to design effective positive behavioral supports or to make reasonable accommodations to comply with provisions in an Individualized Family Service Plan (IFSP) or Individualized Education Plan (IEP);
- Prohibiting the use of air fresheners due to health concerns;
- Aligning the regulations and study guide on what is considered a medication error. Medication errors include giving the wrong medication, giving the wrong dose, failing to give the medication at the correct time or at all, giving medication to the wrong child, giving the medication by the wrong route, or giving medication without documenting the administration;
- Changing provisional license issuance to be time-limited;
- Adding the approved training topic of disability non-discrimination, accommodations, or modifications;
- Requiring annual training to be completed at least 30 days before license expiration;

- Requiring comprehensive background checks to be conducted every five years for household members, staff, and adult volunteers;
- Requiring an eligibility or provisional eligibility determination to be received by the licensee before a person becomes a household member, staff member, or adult volunteer at the home
- Beginning July 1, 2023, within 45 days of enrollment, obtaining parent or guardian consent or denial to complete the Department's approved developmental and social emotional screening tool, or documentation giving the licensee consent to complete the screening tool, if the parent or guardian fails to do so. Screenings must be conducted annually for each child who has not begun kindergarten or a higher grade, unless the parent or guardian does not consent;
- Beginning January 2023, with parent consent, requiring the developmental and social emotional screening tool to be conducted annually until the child enters kindergarten or a higher grade; and
- Changes to comply with the Drafting Manual.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on March 1, 2022. Additionally, notice was published in *The News Journal* and the *Delaware State News* on March 1, 2022, in the form hereto attached as Exhibit "A," all licensed family and large family child care homes were emailed regarding the changes, and OCCL hosted a meeting on March 29, 2022, to present the changes, to answer questions, and to accept comments. Comments received which were pertinent to the proposed amendments suggested the Department consider the following:

(1) The radon testing every 5 years is uncalled for unless you have moved or put an addition on. It is getting harder and harder for home daycares to stay in business because of a lot of these regulations. Have you stopped and looked at the shortage of childcare for families? I have a waiting list a year out.

Response: Considering that radon is the second leading cause of lung cancer in the United States and the low cost of conducting this test, this regulation will remain as written.

(2) It is critical that licensed child care providers and families understand the importance of developmental screening and developmental milestones. Developmental screening is very important. It is recommended at 9 months, 18 months, 24-30 months, and during the prek years by the American Academy of Pediatrics and the CDC, and it is required on the national level by Head Start. In DE, Redding Prek and ECAP programs as well as Star level 4 and 5 programs require developmental screening because it is best practice.

We don't want providers to see screening a "check the box" requirement. It is a vital tool in providing children with access to early intervention and special education services. With that said, all children are to be screened.

- a. Parents/guardians are to complete the online ASQs yearly.
- b. If parents/guardians chooses not to complete the screener (opting out), then the provider is to complete the screeners. The screeners still get completed, just not by the parent. It would be unheard of for parents to "Opt out" of progress reports or report cards. Developmental screeners are a snapshot of a child's current development. A progress report can be viewed in a similar way.

I am not sure how to best articulate the information above in regs, but the regs need to focus on the importance of screening, and the importance of early intervention, not on "compliance."

Response: The Office of Child Care Licensing appreciates this comment. In response, OCCL will repost this subsection in June 2022 for public comment. OCCL will provide clarification that parents or guardians may not opt out, will provide an exemption for children with a current IFSP or IEP, and will allow children who are already enrolled in the program to have until 12/31/2022 to complete the initial screening as to not overwhelm the staff who are responsible for reviewing the screenings and making the referrals.

(3) Comment: Our HMG data team reviewed Title 16 (DHSS) and Title 14 (Public school and OCCL regs) related to the new led law (HB222), and we discovered that the new draft OCCL regs need to include lead screening for 24 months. Two of the ladies who worked on HB222 with Representative Lambert were on the meeting today, and they confirmed the information below.

Why is a change to the draft needed?

- The current regs and the draft regs list 12 months as the required lead screening age, but HB222 requires that the second lead screening also be at 24 months.
- As per HB222, as of June 2022, the 12 month lead screening will no longer be acceptable if the child enrolls after the age of 24 months. The family will have to submit the second screener.
- Furthermore, if the child is enrolled at a center at 12 months of age, the family will need to submit the second lead screening at 24 months.

Response: In response to this comment, Office of Child Care Licensing will repost this subsection in June 2022 for public comment. OCCL will add the definition of "Blood lead Screening" to mean a capillary blood lead test, including where a drop of blood is taken from a finger or heel of the foot, and change the word test to screening for children at or around ages 12 months. In regard to the request for additional changes, OCCL will post the regulation for public comment in June that reflect these changes.

(4) Comment: CDC states powder formula should not be used more than 24 hours after it is prepared as long as its refrigerated, unless it's the ready-made kind the parent purchased, then it can be refrigerated for 48 hours.

Response: In response to this comment, the Office of Child Care Licensing has reviewed the updated CDC recommendations as well as Caring for Our Children and updated the regulations in accordance with these standards.

(5) Comment: There are safe air fresheners on the market and in home childcares this should be discussed with the parents not prohibited.

Response: Caring for Our Children (National Standards) states air fresheners or sanitizers (both manmade and natural) should not be used. They may cause nausea, an allergic or asthmatic response in some children. Therefore, the regulation will remain as written.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes in order to comply with updates to DE Code, the Federal Child Care and Development Block Grant Act, to provide clarification to licensing regulations, to reduce the number of provisional licenses issued, and as well as to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes. Therefore, pursuant to 14 **Del.C.** §122 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes hereby amended shall be in effect for a period of five years as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 14, 2022. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 14th day of April 2022.

Department of Education

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

Approved this 14th day of April 2022

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

934 Regulations for Family and Large Family Child Care Homes

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 21 Delaware Code, Section 4177D (21 **Del.C.** §4177D)
16 **DE Admin. Code** 6003

ORDER

6003 DUI Programs

NATURE OF THE PROCEEDINGS

Pursuant to the *Administrative Procedures Act* (29 **Del.C.** Ch. 101) and under the authority of 21 **Del. C.** § 4177D, the State of Delaware Department of Health and Social Service's ("the Department") Division of Substance Abuse and Mental Health ("the Division") initiated proceedings to amend regulations governing DUI programs.

On March 1, 2022, notice of the Division's proposal was published in the *Delaware Register of Regulations* (25 **DE Reg.** 826) pursuant to the *Administrative Procedures Act* (29 **Del.C.** Ch. 101). The notice requested the public provide written submissions of suggestions, data, testimony, briefs, or other materials related to the Division's proposal to the Division no later than April 1, 2022, after which the Division would review the submissions.

The Division did not receive any written submissions on the proposal.

FINDINGS OF FACT

No changes have been made to the published proposal. The Department finds that the proposed amendment, 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 amendment to 16 **DE Admin. Code** § 6003 is adopted effective May 11, 2022 (10 days), after publication in the *Delaware Register of Regulations*.

Molly K. Magarik, M.S.
Secretary

4/4/2022
Date

6003 DUI Programs

1.0 Authority

The Division of Substance Abuse and Mental Health within the Department of Health and Social Services promulgates this regulation under the authority of 21 **Del.C.** §4177D.

2.0 Definitions

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

"**Activity**" means a program's appointment, class, meeting, or session with at least one participant.

"**Blood alcohol concentration**" or "**BAC**" means the grams of alcohol per 100 milliliters of blood or 210 liters of breath in a sample taken from a participant during a chemical test.

"**Chemical test**" means as defined under 21 **Del.C.** §4177.

"**Defamatory language**" means language that is defamatory towards a person or group based on age, creed, disability, familial status, ethnicity, gender, gender identity, national origin, sexual orientation, race, religion, or other protected classification.

"**Division**" means the Division of Substance Abuse and Mental Health.

"**Driving under the influence**" or "**DUI**" means a violation subject to punishment under 21 **Del.C.** §§4177, 4177B, 4177L, 4177M, or 23 **Del.C.** §§2305(2), 2305(3), or 2305(4).

"**Drugs**" means as defined under 21 **Del.C.** §4177.

"**Governing body**" means an individual, board, or other entity with ultimate responsibility for the management, operation, and control of a program.

"**Instructor**" means an employee of a program presenting educational classes to participants.

"**License**" means a license granted by the Division to provide substance use disorder treatment.

"**Nonresident**" means an individual that is not a resident of the State of Delaware.

"**Participant**" means an individual, 18 years or older, subject to 21 **Del.C.** §4177D or 23 **Del.C.** §2305(8).

"**Program**" means an entity providing services.

"**Resident**" means an individual living or attending school in Delaware or living within one hour's travel time of Delaware.

"**Services**" means screening and referral, educational, or treatment services.

3.0 Purpose

This regulation adopts rules and fees for programs providing services to participants.

4.0 Applicability

- 4.1 Except as otherwise provided under subsection 4.2 of this regulation, this regulation applies to programs and participants.
- 4.2 This regulation does not apply to the Court of Common Pleas Driving Under the Influence Treatment Program or the Program's participants.

5.0 Programs

- 5.1 A program may provide services if the program is authorized, contracted, and licensed by the Division to provide substance use disorder services.
- 5.2 The Division may authorize and contract with a program to provide one or more of the following service types:
 - 5.2.1 Screening and referral.
 - 5.2.2 Education.
 - 5.2.3 Treatment.
- 5.3 A program must comply with the requirements of the program's license and other requirements issued by the Division.
- 5.4 A program's governing body must designate a program director responsible for the program's daily operation and administration. ~~The program director must be a licensed chemical dependency professional.~~
- 5.5 A program must have written rules and policies for at least the following:
 - 5.5.1 Protection of participant rights including informed consent.
 - 5.5.2 Submission of grievances and appeals of program decisions.
 - 5.5.3 Confidentiality of participant records.
 - 5.5.4 Participant conduct.
 - 5.5.5 Attendance, including requesting and excusing absences.
 - 5.5.6 Leaves of absence.
 - 5.5.7 Rescheduling activities.
 - 5.5.8 Payments to the program.
- 5.6 A program must maintain a record for each participant.

6.0 Participant Conduct

- 6.1 A participant must comply with rules and policies adopted by a program and the requirements of this regulation.
- 6.2 Whenever participating in a program, a participant must do all of the following:

- 6.2.1 Be respectful of staff and other participants.
- 6.2.2 Attend scheduled program activities.
- 6.2.3 Pass required urine drug screenings.
- 6.2.4 Actively participate during program activities.
- 6.2.5 Dress and groom in a manner that falls within generally accepted definitions of neatness and cleanliness.
- 6.3 A participant must not do any of the following:
 - 6.3.1 Engage in aggressive, hostile, harassing, threatening, or violent behavior.
 - 6.3.2 Act in a manner that endangers the health and safety of staff or other participants.
 - 6.3.3 Be disruptive or distracting.
 - 6.3.4 Communicate using profanity or defamatory language.
 - 6.3.5 Commit a criminal or traffic offense.
 - 6.3.6 Except for prescribed medication taken according to a prescription, use or consume alcohol or drugs.

7.0 Attendance

- 7.1 Whenever a program schedules a participant to attend an activity, the program must provide the participant with notice at least five days before the activity. The notice must include the activity's start time and location. A program providing a participant with a schedule of all the participant's scheduled activities fulfills the requirements under this subsection.
- 7.2 To successfully attend an activity, a participant must do all of the following:
 - 7.2.1 Arrive before the activity starts.
 - 7.2.2 Sign in on the form provided.
 - 7.2.3 Be present for the entirety of the activity.
 - 7.2.4 Actively participate.
- 7.3 Except if excused, a participant is absent from an activity whenever the participant does not attend an activity.
- 7.4 A participant's absence is excused from an activity whenever any of the following occurs:
 - 7.4.1 The participant notifies a program during regular business hours at least 24 hours before the start of an activity and requests to be excused.
 - 7.4.2 The participant's absence is due to events that are wholly beyond the participant's control, or the participant otherwise demonstrates good cause.
 - 7.4.3 The activity does not begin less than one hour after the scheduled start time.
 - 7.4.4 The program cancels the activity.
- 7.5 A participant may request that a program excuse an absence. The program may request reasonable documentation to support the participant's request.
- 7.6 If a participant is absent or excused, the participant must make up the missed activity no more than seven days after the initially scheduled date. If the participant fails to make up the missed activity, the absence counts towards the participant's limit.
- 7.7 A participant is allowed one absence from a screening and referral activity and two absences from an educational or treatment activity.
- 7.8 Except if a program grants a participant a leave of absence, the program may dismiss the participant from the program whenever a participant does not attend an activity for 21 consecutive days.
- 7.9 A participant may request a leave of absence from a program. Subject to the approval of the program's director, a program may grant the participant's request if the participant does all of the following:
 - 7.9.1 Requests the leave in advance.
 - 7.9.2 Demonstrates good cause.
 - 7.9.3 Provides reasonable documentation to support the request.

8.0 Screenings

- 8.1 As used in this section, "program" means a program providing screening and referral services.
- 8.2 Except if a program screens a participant, a program must not refer a participant to an educational course or treatment services.
- 8.3 A participant must contact a program to schedule a screening appointment. During the appointment, the program must screen the participant using a Division-approved standardized tool. After screening the participant, the program must complete a screening report for the participant in the manner authorized by the Division.
- 8.4 Subject to Section 9.0 of this regulation, a program must refer a participant for appropriate services after completing a screening report.
- 8.5 A program may screen a participant remotely.

9.0 Referrals

- 9.1 A program must refer a participant younger than 18 years to a treatment program approved by the Department of Services for Children, Youth, and Their Families.
- 9.2 A program must refer a participant to a program for educational services whenever all of the following conditions exist:
 - 9.2.1 The participant's DUI is the participant's first.
 - 9.2.2 The participant's BAC was less than .15.
 - 9.2.3 The participant's screening report identifies a low risk of substance use disorder.
- 9.3 A program must refer a participant to a program for treatment services whenever any of the following conditions exist:
 - 9.3.1 The participant's DUI is the participant's first and any of the following conditions exist:
 - 9.3.1.1 The participant's screening report identifies a moderate or higher risk of substance use disorder.
 - 9.3.1.2 The participant's BAC was .15 or more.
 - 9.3.1.3 The participant refused to submit to a chemical test.
 - 9.3.1.4 The participant's DUI involved the use of drugs.
 - 9.3.2 The participant's DUI is the participant's second within 10 years and the participant's BAC was .15 or less.
- 9.4 A program must refer a participant to a program for intensive treatment services whenever any of the following conditions exist:
 - 9.4.1 The participant's DUI is the participant's second within 10 years and any of the following conditions exist:
 - 9.4.1.1 The participant's BAC was .15 or more.
 - 9.4.1.2 The participant refused to submit to a chemical test.
 - 9.4.1.3 The participant's DUI involved the use of drugs.
 - 9.4.2 The participant's DUI is the participant's third or subsequent DUI.
- 9.5 Whenever a participant does not meet the criteria under subsections 9.2 through 9.4 of this regulation, a program must refer the participant for appropriate treatment services based on the participant's risk of substance use disorder identified in the participant's screening report.
- 9.6 Whenever a participant's screening report indicates co-occurring mental health or medical conditions, a program must provide the participant with a referral to appropriate services.

10.0 Educational Services

- 10.1 As used in this section, "program" means a program providing educational services.
- 10.2 A program must adopt a curriculum approved by the Division.
- 10.3 A program must present an educational course that consists of 16 hours of instruction.

- 10.4 An instructor presenting a class must have all of the following:
 - 10.4.1 Necessary training or certification on the curriculum.
 - 10.4.2 Relevant knowledge of the criminal justice system.
 - 10.4.3 Training or experience as an instructor.
- 10.5 A program's director shall review and approve each instructor's qualifications.

11.0 Treatment Services

- 11.1 As used in this section, "program" means a program providing treatment services.
- 11.2 A program must provide treatment services per the program's license ~~and by a licensed chemical dependency professional.~~
- 11.3 Before providing treatment services to a participant, a program must assess the participant using standardized, evidence-based instruments approved by the Division.
- 11.4 After a participant's assessment, a program must create a written, individualized, and outcome-oriented treatment plan for the participant. The plan must do at least the following:
 - 11.4.1 Identify and respond to the evidence and determinations arising from the participant's assessment.
 - 11.4.2 State the specific interventions recommended by the program and the evidence supporting the interventions.
 - 11.4.3 State the requirements and expectations for the participant's satisfactory completion of treatment.
 - 11.4.4 State the consequences for the participant for failing to complete treatment.
- 11.5 A program must treat a participant according to the participant's treatment plan.
- 11.6 A program may require a participant to submit to urine drug screenings as part of the participant's treatment plan. Subject to the Division's approval, a program administering urine drug screenings must adopt written policies and procedures for conducting the screenings.

12.0 Completion Requirements

- 12.1 A program may grant a certificate of completion to a participant receiving education services whenever the participant does all of the following:
 - 12.1.1 Attends 16 hours of educational activities.
 - 12.1.2 Attends a meeting of a mutual-help group.
 - 12.1.3 Has a DUI avoidance plan approved by an instructor.
 - 12.1.4 Pays the required fees.
- 12.2 A program may grant a certificate of completion to a participant receiving treatment services whenever the participant satisfies the requirements of their treatment plan, attends 16 hours of treatment activities, and pays the fees required by the program.
- 12.3 A program may grant a certificate of completion to a participant receiving intensive treatment services whenever the participant satisfies the requirements of their treatment plan, attends 27 hours of treatment activities, and pays the fees required by the program.
- 12.4 A program may grant a certificate of completion to a nonresident participant if the participant substantially satisfies the requirements of this section in their home state. Subject to the Division's approval, the program must establish policies and procedures to assist a nonresident participant satisfactorily in complying with the requirements of this section.

13.0 Fees and Payments

- 13.1 Except as authorized under this section, a program may not charge a participant a fee.
- 13.2 A program may charge a participant any of the following administrative fees:
 - 13.2.1 \$50 or less per absence.
 - 13.2.2 \$30 or less for a late payment.
- 13.3 An education or treatment program may charge a participant any of the following administrative fees:

- 13.3.1 \$150 or less for supervision and processing of a nonresident.
- 13.3.2 \$50 or less for processing the participant's transfer to another program.
- 13.3.3 \$50 or less for reinstating the participant after the participant's dismissal.
- 13.3.4 \$50 or less for materials.
- 13.4 A program may charge a participant any of the following service fees:
 - 13.4.1 \$150 or less for screening and referral services.
 - 13.4.2 \$35 or less per urine drug screen.
- 13.5 An education program may charge a participant a total program fee of \$400 or less for 16-hours of education activities.
- 13.6 A treatment program may charge a participant a total program fee of \$1,000 or less for 16-hours of treatment activities.
- 13.7 A treatment program may charge a participant a total program fee of \$1,700 or less for 27-hours of intensive treatment activities.
- 13.8 If a program excuses a participant's absence, the program may not charge the participant a fee under subsections 13.2.1 or 13.2.2 of this regulation.
- 13.9 A program fee charged by a program under subsections 13.6 or 13.7 of this regulation is subject to the Department and Division's policies and the program's contractual agreements with the State.
- 13.10 A participant is responsible for paying fees charged by a program.
- 13.11 A program must provide participants with a receipt at the time of payment and maintain a record of payments made by participants. A program must provide a copy of the record to the Division upon request.
- 13.12 A program must accept participant payments made via cash, cashier's check, certified check, money order, or a third-party payer. A program may accept participant payments made via credit card, debit card, or personal check.
- 13.13 A program may require payment before providing services.
- 13.14 A program may establish payment agreements with participants.

14.0 Disciplinary Actions

- 14.1 A participant commits a violation whenever the participant does not comply with the requirements of Section 6.0 of this regulation or exceeds the allowed number of absences under subsection 7.7 of this regulation. Each absence beyond the permitted number of absences counts as a new violation. A program may determine that a participant has committed multiple violations as part of one incident.
- 14.2 Whenever a participant commits a violation, a program may impose sanctions on the participant.
- 14.3 A participant is subject to disqualification from receiving services under this regulation whenever the participant does any of the following:
 - 14.3.1 Commits three or more violations.
 - 14.3.2 Commits a criminal or traffic offense.
 - 14.3.3 Threatens or engages in violence.
 - 14.3.4 Acts in a manner that the program believes requires the participant's disqualification.
- 14.4 A program must maintain a record of a participant's violations.
- 14.5 Whenever a program determines that a participant commits a violation, the program must inform the participant in writing. A violation constitutes an adverse action.
- 14.6 If a program disqualifies a participant, the program must notify the participant, the Division, and the court.
- 14.7 Whenever a program disqualifies a participant, the participant may not participate in activities under this regulation.
- 14.8 A participant may appeal a violation or disqualification under Section 15.0 of this regulation.

15.0 Appeals

- 15.1 Whenever a program takes adverse action against a participant, the participant may appeal the adverse action to the program's director by submitting a written request on the form approved by the Division no more than 10 days after receiving written notice of the adverse action from the program.
 - 15.2 Except if submitted according to subsection 15.1 of this regulation, a program must not consider an appeal.
 - 15.3 A program director must review an appeal no more than five days after receiving the appeal. The program director's review must be based on the form submitted under subsection 15.1 of this regulation and contemporaneous documentation and records. A program is not required to conduct a hearing.
 - 15.4 No more than 10 days after receiving an appeal, and after conducting a review under subsection 15.3 of this regulation, a program director must issue a written decision that contains at least the following:
 - 15.4.1 A concise statement of the adverse action.
 - 15.4.2 A concise statement of the appeal.
 - 15.4.3 If applicable, a summary of the evidence.
 - 15.4.4 The decision of the program director to take one of the following actions:
 - 15.4.4.1 Dismiss the appeal.
 - 15.4.4.2 Grant the appeal.
 - 15.4.4.3 Partially grant the appeal and modify the adverse action.
 - 15.5 Notice of a decision issued under subsection 15.4 of this regulation must be given to a participant. The notice must include a copy of the written decision. A program must maintain a copy of a decision.
 - 15.6 If a program director does not issue a decision within the time provided under subsection 15.4 of this regulation, the appeal is automatically granted and the adverse action is void.
 - 15.7 A participant may appeal a program director's decision by submitting a written request on the form approved by the Division no more than 10 days after receiving notice of the decision under subsection 15.5 of this regulation.
 - 15.8 Except if submitted according to subsection 15.7 of this regulation, the Division must not consider an appeal.
 - 15.9 The Division Director shall appoint a review committee consisting of three Division staff to consider appeals made under subsection 15.7 of this regulation. The committee must meet at least monthly.
 - 15.10 The committee's members must review the available record. The Division is not required to conduct a hearing. At the meeting, the committee must, by majority vote, make one of the following determinations:
 - 15.10.1 To dismiss the appeal.
 - 15.10.2 To grant the appeal.
 - 15.10.3 To partially grant the appeal and modify the adverse action.
 - 15.11 The Division must notify the participant and the program in writing of the review committee's determination under subsection 15.10 of this regulation.
 - 15.12 The determination of the review committee is final.
-

FINAL REGULATIONS

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 334, 2503, 3342B and 3556A (18 Del.C. §§311, 334, 2503, 3342B & 3556A)

REGULATORY IMPLEMENTING ORDER

1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

A. Proposal 1

In the January 1, 2022 edition of the *Register of Regulations* at 25 DE Reg. 684, the Commissioner of the Delaware Department of Insurance (Commissioner) published a proposal which included a notice of intent to codify proposed new Regulation 1322 relating to Requirements for Mandatory Minimum Payment Innovations in Health Insurance (Proposal 1). The proposed new regulation would implement the requirements established pursuant to Senate Substitute 1 for Senate Bill 120 (SS1 for SB 120), through the expanded regulatory authority provided to the Delaware Department of Insurance (the Department) as more fully described in the January proposal. The Department solicited written comments from the public for 30 days as mandated by the Administrative Procedures Act at 29 Del.C. §10118(a). The Department did not hold a public hearing on the proposal. The Department received comments from 10 commenters, which are on file with the Department. Two commenters endorsed the Commissioner's proposed regulation wholesale. The other eight commenters offered comments that suggested substantive changes that required further public comment.

B. Proposal 2

In response to the comments received on Proposal 1, the Department published its re-proposed Regulation 1322 (Proposal 2) to affect the same purposes as Proposal 1, taking into consideration comments received on Proposal 1. The Department provided a summary of the comments received in connection with Proposal 1 in a separate section of the introduction to Proposal 2 (see at 25 DE Reg. 828 (03/01/2022)), along with the Department's responses and determinations related to the comments received. As with Proposal 1, the Department solicited written comments on Proposal 2 from the public for 30 days as mandated by the Administrative Procedures Act at 29 Del.C. § 10118(a). The Department did not hold a public hearing on Proposal 2. The Department received comments on Proposal 2 from two commenters, which are on file with the Department.

C. Summary of Public Comment and Responses on Proposal 2

1. Comments related to Section 3.0 - Scope

One commenter requested the Department again clarify that the regulation applies to the fully insured market only and remove language related to self-insured plans.

2. Comments related to Section 4.0 - Definitions

One commenter requested several changes to the definition of "primary care services" or "primary care" in Section 4.0 of the regulation as points of clarification as follows: (i) add clarifying language to specify that categories of Current Procedure Terminology (CPT) codes are provided by way of example and may expand in the future; (ii) clarify that administrative overhead expenses for primary care services be included without limitation based solely on parent/subsidiary status of the primary care provider or parent entity of the primary care provider; and (iii) include outpatient office-based behavioral health services as a category of "primary care."

One commenter requested the Department include primary care services paid on a non-claims-based basis in its definition of primary care.

Apart from the comments received by the Department, the Department is taking the opportunity to make minor technical corrections to the regulatory text that do not alter the substance of the regulation.

II. FINDINGS OF FACT

1. Proposed new Regulation 1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance implements the requirements of SS1 for SB 120 (83 Del. Laws., c. 237 (2021)).
2. The Commissioner finds that the Department responses and determinations related to the comments received on Proposal 1 are appropriate for the reasons set forth in the public notice for Proposal 2.
3. The Commissioner determines that the following revisions add clarity to the text of the regulation without changing the substantive meaning of the regulation and are therefore permitted pursuant to the Administrative Procedures Act at 29 **Del.C.** § 10118(c), which allows non-substantive changes to a proposal to be made on adoption as a result of public comments:
 - a. The sentence in Section 1.0 of the regulation (Authority) regarding the Department's authority to set affordability standards will be deleted since the original Section 9.0 from Proposal 1 was deleted in Proposal 2 in response to public comments received.
 - b. As stated in the Department's response to comments on Proposal 1, the Department recognizes the need to allow flexibility for the regulation to keep up with rapid advances in the field of primary care. The Commissioner agrees with modifying the definition of "primary care services" in Section 4.0 to clarify that the identified list of procedures and CPT codes is not an exhaustive list of the types of services that may be included in the definition of "primary care services."
 - c. The language in subsection 5.2 of the regulation related to "services not provided to Delaware residents on a fee-for-service basis" should be clarified to read "services provided to Delaware residents on a non-fee-for service basis," which is consistent with the terminology used in subsection 5.2.3 of the regulation and better reflects the intent of the original language without the potential for misinterpretation.
4. The Commissioner declines to further clarify that the regulation applies only to fully-insured plans, as requested by one commenter. As the commenter points out in its letter, the Department has already clarified, both in the public notice to Proposal 2 and the re-proposed regulation, that it has no jurisdiction to require self-insured plans to comply with the regulation or the statute. Because the proposed regulation at Section 3.0 is clear that it applies only to the fully-insured market, no further changes to the proposed regulation are necessary, and the Department cannot delete or remove language that was published in public notice related to Proposal 2.
5. The Commissioner declines to adopt the suggestion that language be added to the definition of "primary care services" to clarify that reimbursement for services include administrative overhead expenses without limitation based solely on the parent/subsidiary status of the primary care provider or parent entity of the primary care provider. The Commissioner assumes that investments in primary care will, in part, reimburse for some administrative overhead expense associated with primary care delivery. However, since the purpose of SS1 for SB 120 is to develop a robust system of primary care by 2026, it is critical that dollars are paid to primary care providers, care teams and organizations, and then those providers determine how the dollars are spent to create the most effective and efficient care delivery for patients and meet the requirements of the carriers' programs.
6. The Commissioner declines to adopt the suggestion of one commenter to include outpatient office-based behavioral health services in the definition of primary care. The Commissioner agrees with the commenter that there is a deficiency in behavioral health services and that incentives should be in place to encourage the expansion of behavioral health services. As such, the Department has already included behavioral health clinicians in its definition of primary care providers and included integrated behavioral health in its definition of primary care services. No additional changes are required to the regulation in response to this request.
7. The Commissioner declines to adopt the suggestion of one commenter to include primary care services paid on a non-claims-based basis in its definition of primary care. The Commissioner determines that the regulation already includes several non-exclusive categories of non-claims-based services in the proposed definition of "primary care," including the specific services noted in the commenter's response, and, therefore, no additional changes are required to the regulation in response to this request.

III. DECISION TO ADOPT

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt proposed new 18 DE Admin. Code 1322 as further amended by this order.

IV. EFFECTIVE DATE OF ORDER

The effective date of the Regulation shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*, pursuant to 29 Del.C. § 10118 and 29 DE Admin. Code 101-5.1.

IT IS SO ORDERED.

The 18th day of April, 2022.

Trinidad Navarro
Commissioner
Delaware Department of Insurance

1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance

1.0 Authority

This regulation is promulgated and adopted pursuant to the authority granted in 18 Del.C. §§311, 334, 2503, 3342B and 3556A, and in accordance with 29 Del.C. Ch. 101. ~~[Subsection 9.0 is codified under the Department's express authority under 18 Del.C. §334 to set affordability standards, which do not include a sunset date.]~~

(Break in Continuity of Sections)

4.0 Definitions

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

(Break in Continuity Within Section)

"Primary care services" or "primary care" means the provision of integrated, accessible health care services by primary care providers and their health care teams who are accountable for addressing a large majority of personal health care needs, developing a sustained partnership with patients, and practicing in the context of family and community. The care is person-centered, team-based, community-aligned, and designed to achieve better health, better care, and lower costs.

Primary care services include the following **[non-exhaustive list of]** categories of Current Procedure Terminology (CPT) codes **[, which is intended for guidance purposes only and is not intended to be an all-inclusive list of the types of services that may be included in the definition of "primary care services" or "primary care,"]** when provided by primary care providers in a primary care place of service:

(Break in Continuity Within Section)

5.0 Coverage for Primary Care and Chronic Care Management Services

5.1 A carrier shall reimburse a contracted primary care provider, the provider's care teams and the provider's organizations for primary care and chronic care management services furnished to Delaware residents on a fee-for-service basis according to the following:

5.1.1 The reimbursement rate shall be greater than or equal to the non-facility Delaware Medicare fee schedule that is in effect at the time the service is billed and that can be found in the Medicare Physician Fee Schedule published online at [CMS.gov](https://www.cms.gov); and

5.1.2 A carrier shall not use business rules or any other mechanism to discount a reimbursement rate such that the resulting payment would be less than the Medicare payment that would have been made had the Medicare rate been utilized.

5.2 A carrier shall reimburse a contracted primary care provider, the provider's care team, and organizations for primary care and chronic care management services [not] provided to Delaware residents on a [non-]fee-for-service basis by offering the primary care provider the opportunity to participate in one or more of the following primary care incentive programs:

*Please note that no additional changes were made to the regulation as originally proposed and published in the March 2022 issue of the *Register* at page 828 (25 DE Reg. 828). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

3500 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

ORDER

3500 Board of Examiners of Psychologists

NATURE AND STAGE OF THE PROCEEDINGS

On February 1, 2022, the Delaware Board of Examiners of Psychologists published proposed changes to its regulations in the Delaware Register of Regulations, Volume 25, 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 7, 2022 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 March 7, 2022. 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. § 3506(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes to the Rules and Regulations seek to require licensees to complete three continuing education credits in cultural inclusion, equity, and diversity. Psychologists will still be required to complete 40 CEs per renewal period, and psychological assistants will still be required to complete 20 CEs per renewal period, but of those totals, three must be in cultural inclusion, equity, and diversity.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

FINAL REGULATIONS

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 4th day of April 2022.

BY THE DELAWARE BOARD OF EXAMINERS OF PSYCHOLOGISTS

/s/ Dr. Laura Cooney-Koss, President

/s/ Dr. Katherine Elder, Vice President

/s/ Dr. Debbie Harrington, Public Member, Secretary

/s/ Dr. Meghan Cohen

/s/ Dr. Robert Mapou

/s/ Dr. Rebecca Richmond

/s/ Dr. Michael Harpe, Public Member

/s/ Rachel Sandy, Public Member

Heather Contant, Public Member (absent)

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

***Please note that no changes were made to the regulation as originally proposed and published in the February 2022 issue of the *Register* at page 752 (25 DE Reg. 752). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3500 Board of Examiners of Psychologists

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

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

NOTICE

DDDS HCBS Medicaid Waiver

In accordance with the public notice requirements of 42 CFR 441.304 (d1)(e) and (f) and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) gives notice related to the amendment of the DDDS HCBS Medicaid Waiver authorized under section 1915(c) of the Social Security Act.

Purpose

The purpose of this posting is to provide public notice and elicit public input regarding Delaware's proposed amendment to its current 1915 (c) HCBS Lifespan Waiver that serves individuals with intellectual and developmental disabilities (IDD).

Background

Delaware has operated a Home and Community Based Services (HCBS) Waiver for individuals with intellectual and developmental disabilities continuously since 1987. The authority under the Social Security Act that allows HCBS waivers to be created requires that each waiver be renewed every five years and any changes during those five years must be made through an amendment to the current approved waiver.

Overview and Summary of the Lifespan Waiver Amendment

Delaware proposes to amend the DDDS waiver that has been in continuous operation since 1987. The DDDS waiver is targeted to individuals with intellectual and developmental disabilities (IDD) (including brain injury), autism spectrum disorder, and Prader-Willi Syndrome. It provides services and supports as an alternative to institutional placement and is designed to enable the individual to live safely in the community and to respect and support their desire to work or engage in other productive activities.

Change(s) to the current waiver are:

- A tiered rate structure for Behavioral and Nurse Consultation services, where providers of these services are compensated based upon their education and experience.
- Transportation as a component part of Day Habilitation, Community Participation, and Pre-Vocational services, will be reimbursed as a separate rate on days when it is provided.
- Increasing the current combined Respite and Personal Care service budget from \$2,700 to \$3,500 annually.
- The addition of a rate for Day Habilitation, Community Participation, Pre-Vocational, Supported Employment, Residential Habilitation, and Medical Residential Habilitation services where providers are compensated for employing Direct Support Professionals (DSPs) that are American Sign Language (ASL) fluent or certified when supporting Deaf service recipients that use ASL to communicate.
- The addition of a rate for Day Habilitation, Community Participation, Pre-Vocational, Supported Employment, Residential Habilitation, and Medical Residential Habilitation services where providers are compensated for employing Direct Support Professionals (DSPs) that are Registered Behavior Technicians (RBTs) when supporting service recipients with an increased behavioral support need.
- New provider type added to Assistive Technology.
- Removal of DDDS as a direct provider of HCB services.
- Technical changes related to state procedure/policy changes.

Public Comment Submission Process

As required by 42 CFR Part 441.304, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the waiver and the state public notice requirements of Title 29, Chapter 101 of the

Delaware Code, DHSS/DMMA is providing an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on June 15, 2022.

Individuals may submit written comments using one or all of the following methods:

By email: DMMA_PublicHearing@delaware.gov
(Please identify in the subject line: *DDDS Lifespan Waiver Amendment*)

By fax: 302-255-4481 to the attention of Kimberly Xavier by written comments sent to:

DDDS Lifespan Waiver Amendment
Division of Medicaid and Medical Assistance
Planning, Policy & Quality Unit
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720-0906

An electronic copy of waiver amendment can be found at:

<https://dhss.delaware.gov/dhss/dmma/homeandc.html>

The hardcopy waiver amendment will be available at the following locations from May 1, 2022 through the end of the comment period:

- DDDS Fox Run Office at: 2540 Wrangle Hill Road, Suite 200, Bear, DE 19701
- Thomas Collins Building at: 540 South Dupont Hwy, 1st Floor, Dover, DE 19901
- At the Woodbrook Office at: 1056 S. Governors Ave, Dover, DE 19904
- On the Stockley Center campus at: 26351 Patriots Way, Georgetown, DE 19947 - 101 Lloyd Lane and 101 Boyd Blvd.

Public Hearings

Dates and Locations for Public Hearings for the Lifespan Waiver Amendment are listed below:

New Castle County

May 16, 2022
9:30 am- 10:30 am
DDDS Fox Run Office
2540 Wrangle Hill Road, Suite 200, Bear, DE 19701
2nd floor large training room
***If you would prefer to participate virtually:**
Via Zoom:
<https://ddds.zoom.us/j/84507488998>
833 548 0282 US Toll-free
Meeting ID: 845 0748 8998

Kent County

May 17, 2022
1:00 pm- 2:00 pm
DDDS Annex (right next to KSI building)
291 A Rehoboth Blvd.
Milford, De 19963
***If you would prefer to participate virtually:**
Via Zoom:
<https://ddds.zoom.us/j/82434259586>

833 548 0282 US Toll-free
Meeting ID: 824 3425 9586

Sussex County

May 18, 2022
6:00 pm - 7:00 pm
Georgetown Public Library
123 W. Pine Street
Georgetown, De 19947

***If you would prefer to participate virtually:**

Via Zoom:

<https://ddds.zoom.us/j/82965733046>

833 548 0282 US Toll-free
Meeting ID: 829 6573 3046

Any public feedback received will be summarized including any changes that will be made as a result of the public comment to the proposed Lifespan Waiver Amendment that will be submitted to CMS.

If you require special assistance and/or services to participate in the public hearing (e.g., sign language interpretation or other translation services, etc) please call or e-mail the following contact at least ten (10) days prior to the hearing for arrangements: Stacy Watkins at 302-893-3044; Stacy.Watkins@delaware.gov. The prompt submission of requests helps to ensure the availability of qualified individuals and appropriate accommodations in advance

/s/ Stephen M. Groff
EDT
Director
Division of Medicaid and Medical Assistance

Date 4/6/2022 | 11:38 AM

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

NOTICE

Delaware Diamond State Health Plan 1115 Demonstration Waiver Amendment

In accordance with the public notice requirements of 42 CFR 441.304 (d1)(e) and (f) and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) gives notice of its intent to file an application with the Centers for Medicare and Medicaid Services (CMS) to amend Delaware's Section 1115 Diamond State Health Plan (DSHP) Demonstration Waiver to add four additional Medicaid benefits and incorporate these benefits into managed care by January 1, 2023.

Purpose

The purpose of this posting is to provide public notice and receive public input for consideration regarding Delaware's Diamond State Health Plan (DSHP) 1115 Waiver amendment, which will add, effective January 1, 2023, four additional Medicaid services under the authority of the DSHP 1115 Waiver and incorporate these services into the DSHP and DSHP Plus managed care delivery system. These new services include:

- (1) Coverage of two models of evidenced-based home visiting for pregnant women and children;
- (2) Permanent coverage for a second home-delivered meal for members receiving home- and community-based services (HCBS) in DSHP Plus;

- (3) Coverage of a pediatric respite benefit as an American Rescue Plan Act (ARP) Section 9817 Medicaid HCBS Spending Plan initiative; and
- (4) Adding a self-directed option for parents on behalf of certain children and young adults receiving State Plan personal care services.

DSHP 1115 Waiver Program: Waiver Amendment Description, Goals and Objectives

The Delaware DHSS/DMMA is requesting an amendment to the DSHP 1115 Waiver to include these four new waiver services identified in response to Delaware's efforts to improve maternal child health and to support Delaware Medicaid beneficiaries and families who rely on home and community based services. The following is a summary description of these new benefits:

- (1) **Evidence-based Home Visiting Models** - To improve maternal and child health outcomes, Delaware Medicaid is proposing to add coverage of two models of evidenced-based home visiting for pregnant women and children under the age of two who meet enrollment criteria established by Nurse Family Partnership and Healthy Families of Delaware.
- (2) **HCBS home-delivered meals** - To address the risk of food insecurity among DSHP Plus members who rely on home and community based services, Delaware Medicaid is seeking permanent authority from CMS for coverage of up to two home-delivered meals. Delaware currently covers this second meal under temporary authority from CMS that will expire six months after the end of the COVID-19 public health emergency.
- (3) **Pediatric respite** - In response to the needs of Delaware families, Medicaid is proposing to add coverage of a pediatric respite benefit. This benefit will be funded initially as an initiative under the American Rescue Plan Act (ARP) Section 9817 HCBS Spending Plan authority. Respite will be provided for children and young adults up to age 21 who are not receiving respite through DSHP Plus, PROMISE or the Lifespan Waiver. This new pediatric respite benefit will be provided for children with a physical health or behavioral health condition affecting their ability to care for themselves and will be furnished on a short-term basis to allow temporary relief from caretaking duties for the child's primary unpaid caregiver, parent, court-appointed guardian, or foster parent.
- (4) **Self-directed personal care/attendant care for children** - In response to the needs of Delaware families, including parents and guardians serving children with complex medical conditions, Medicaid is seeking authority to give parents/guardians the option to self-direct the Medicaid State Plan personal care (attendant care) received by their child or young adult up to age 21. This self-directed option will give families the flexibility to hire, for example, a neighbor, friend, or family member, including a legally responsible family member as the service provider, as long as the individual meets all employee qualifications as verified by the DSHP MCO.

This 1115 waiver amendment will enable Delaware to improve health outcomes for pregnant women and young children, to address food insecurity among seniors and individuals with disabilities who rely on home and community based services, and to expand access to respite and personal care services for families caring for children and young adults.

Public Comment Submission Process

As required by 42 CFR Part 441.304, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the waiver and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA is providing an open comment period to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on June 10, 2022.

Individuals may submit written comments using one or all of the following methods:

By email: DMMA_PublicHearing@delaware.gov

(Please identify in the subject line: *1115 Demonstration Waiver Amendment*)

By fax: 302-255-4481 to the attention of Kimberly Xavier

By written comment:

1115 Demonstration Waiver Amendment
Division of Medicaid and Medical Assistance
Planning, Policy & Quality Unit
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720-0906

An electronic copy of waiver amendment can be found at:

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

The hardcopy waiver amendment will be available by request via email: DMMA_PublicHearing@delaware.gov
(Please identify in the subject line: 1115 Demonstration Waiver Amendment)

Public Meetings

DHSS/DMMA will hold two public meetings with opportunity for public comment, as listed below:

New Castle County

May 18, 2022

Virtual Meeting

9:00 am - 11:00 am

Via Zoom:

<https://zoom.us/j/99696774582?pwd=SDJCCgPvAmx3Sy9jMkRiNXpJaStNdz09>

Meeting ID: 996 9677 4582

Passcode: 080737

+13017158592 99696774582#

Kent County

May 24, 2022

2:00 pm- 3:30 pm

Edgehill Shopping Center

Large Conference Room

43 S. DuPont Hwy.

Dover, DE 19901

***If you would prefer to participate virtually:**

Via Zoom:

<https://us06web.zoom.us/j/87837587571>

Meeting ID: 878 3758 7571

Passcode: 381804

One tap mobile

+13017158592,,87837587571# US (Washington DC)

+13126266799,,87837587571# US (Chicago)

If you require special assistance and/or services to participate in the public meeting (e.g., sign language interpretation or other translation services, etc), please call or e-mail the following contact at least ten (10) days prior to the meeting for arrangements: Maxine Jacobs at 302-255-9651; sarahmaxine.jacobs@delaware.gov. The prompt submission of requests helps to ensure the availability of qualified individuals and appropriate accommodations in advance.

/s/ Stephen M. Groff

EDT

Director

Division of Medicaid and Medical Assistance

Date 4/12/2022 | 9:34 AM

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Wednesday, May 11, 2022 commencing at 1:30 p.m. The public hearing will be conducted remotely. The draft docket decisions and draft resolutions that will be subjects of the public hearing, along with details about the remote platform and how to attend, will be posted on the Commission's website, www.drbc.gov, at least ten (10) days prior to the meeting date.

The Commission's quarterly business meeting will be held on Wednesday, June 8, 2022 commencing at 10:30 a.m. The business meeting will be conducted both remotely and in person at the Chase Center on the Riverfront located at 815 Justison Street, Wilmington, DE, in the Center's Dravo Auditorium. Details about the remote platform, any Covid protocols for the in-person business meeting venue, and an agenda will be posted on the Commission's website, www.drbc.gov, at least ten (10) days prior to the meeting date.

For additional information, please visit the DRBC website at www.drbc.gov or contact Patricia Hausler at patricia.hausler@drbc.gov.

DEPARTMENT OF AGRICULTURE
PLANT INDUSTRIES SECTION
PUBLIC NOTICE
806 Regulations for Invasive Plants**Summary**

Pursuant to the authority granted by Title 3, Section 2904(a) of the Delaware Code, the Department of Agriculture proposes to amend its Regulations to adopt Invasive Plant Regulations at 3 DE Admin. Code 806. The purpose of the amended regulations is to provide a process for the exemption of sterile and reduced fertility plant cultivars. Other regulations issued by the Department of Agriculture are not affected by this proposal. The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the May 1, 2022, edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Delaware Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Department of Agriculture at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before May 31, 2022. Written materials submitted will be available for inspection at the above address.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education meets monthly. These meetings are open to the public. The Board rotates locations of regular meetings among the three counties.

Meeting information can be accessed via the public meeting calendar.

Meeting materials available on the State Board of Education's eBoard site (https://simbli.eboardsolutions.com/SB_Meetings/SB_MeetingListing.aspx?S=190001). (If you are having technical difficulties accessing the site, please try a different browser.)

The next meeting is scheduled for May 2, 2022.

Information regarding special meetings or Committee meetings of the State Board will be posted on the public meeting calendar.

Minutes from recent State Board of Education meetings can be found on the public meeting calendar.

Audio recordings are available after every Board meeting (<https://www.doe.k12.de.us/domain/225>).

Public meeting calendar: <https://publicmeetings.delaware.gov/#/search?anyall=any&agencyid=22&startdateinclusive=2019-01-01>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

PUBLIC NOTICE

4459 Lead Based Paints Hazards

Pursuant to 16 **Del.C.** §122(3)(t), the Health Systems Protection Section of the Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Lead Based Paints Hazards. On May 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Lead Based Paints Hazards regulations. The revisions include updates to lead levels in dust sampling results, which have been lowered to be consistent with EPA regulations, and technical corrections.

Copies of the proposed regulations are available for review in the May 1, 2022 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Wednesday, June 1, 2022, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4951

DIVISION OF PUBLIC HEALTH

PUBLIC NOTICE

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months

Pursuant to 16 **Del.C.** §122(3)(t) and §§ 2601-2606, the Health Systems Protection Section of the Division of Public Health, Department of Health and Social Services, is proposing revisions to the Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months. On May 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months regulations. The revisions include:

- Renamed regulation to remove outdated reference;
 - Updated and added new definitions;
 - Updated requirements for blood lead testing, including age requirements and documentation and reporting requirements; and
 - Technical corrections.
-

These revisions are required by House Bill 222 as amended by House Amendment 1 (151st GA).

Copies of the proposed regulations are available for review in the May 1, 2022 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Wednesday, June 1, 2022, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4951

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
Defining Relative In-Home Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) to define and explain the requirements for a relative to provide child care services in the child's home.

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, Division of Social Services (DSS), 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on May 31, 2022. Please identify in the subject line: Defining Relative In-Home Child Care.

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 SAFETY AND HOMELAND SECURITY
OFFICE OF HIGHWAY SAFETY
PUBLIC NOTICE

1205 Electronic Red Light Safety Program (ERLSP)

Purpose: In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 21 of the Delaware Code, Chapter 41, Section 4101(d), the Delaware Department of Safety and Homeland Security proposes to revise its regulations. The proposed regulations will enhance judicial efficiency.

Written Comments: The Delaware Department of Safety and Homeland Security will receive written comments, suggestions briefs or other written material until the close of business, 4:30 p.m., June 3, 2022. Written comments shall be submitted via e-mail to Kimberly.Chesser@delaware.gov or via the USPS to Kimberly A. Chesser, Director, Delaware Office of Highway Safety, 800 Bay Road, Suite 2, Dover, DE 19901.
