
Delaware Register of Regulations

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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, 2023.

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Fort Delaware, Delaware City

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INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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5300 Board of Massage and Bodywork.....	26 DE Reg.330 (Final)
	26 DE Reg.827(Prop.)

Public Service Commission

1001 Rules of Practice and Procedures of the Delaware Public Service Commission.....	26 DE Reg.307(Prop.)
	26 DE Reg. 612(Final)
	26 DE Reg.632(Errata)
1002 Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission.....	26 DE Reg.542(Prop.)

DEPARTMENT OF TRANSPORTATION**Division of Motor Vehicles**

2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (Formerly Reg. No. 17).....	26 DE Reg.167 (Prop.)
	26 DE Reg.492 (Final)

Division of Transportation Solutions

2401 Utilities Manual Regulations.....	26 DE Reg. 618(Final)
2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	26 DE Reg.170 (Prop.)
	26 DE Reg. 829(Prop.)

OFFICE OF THE CHILD ADVOCATE

904 Driver Education, Driver's License, and Motor Vehicle Insurance Program for Individuals who have Experienced Foster Care.....	26 DE Reg. 544(Prop.)
	26 DE Reg. 772(Final)

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

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 20700

ERRATA**Daily Living Needs**

* **Please Note:** The Department of Health and Social Services, Division of Medicaid and Medical Assistance, regulation, 16 **DE Admin. Code** 20720 regarding Daily Living Needs was published as proposed in the *Delaware Register of Regulations*, 26 **DE Reg.** 754 (03/01/23). A submitted amendment to 20720.1 Daily Living Needs was inadvertently not included in the *Register*.

The regulation should have read:

20000 Medicaid Long Term Care**20700 Home and Community Based Services****20720.1 Daily Living Needs**

Individuals receiving Medicaid under the Division of Developmental Disabilities Services (DDDS) Lifespan Waiver who receive Residential Habilitation services are allowed a deduction equal to the current Adult Foster Care (AFC) rate. The AFC rate is based on the current SSI income level plus the Optional State Supplement amount.

Individuals receiving Medicaid under the ~~Long-Term~~ Long-Term Care Community Services (LTCCS) program and ~~are~~ residing in an Assisted Living Facility are given a deduction based on the Adult Foster Care rate less an amount payable for room and board.

Individuals receiving Medicaid under the DDDS Lifespan Waiver who do not receive a residential habilitation service and individuals receiving Medicaid under the LTCCS program (excluding those residing in an Assisted Living Facility) are allowed ~~an amount~~ a deduction equal to their total income, including income that is placed in a Miller Trust. All earned income in the form of wages shall be allowed to be protected.

The regulation is being published as final in the May 2023 *Register* and is effective as stated in this publication. See 26 **DE Reg.** 957 (05/01/23).

DEPARTMENT OF LABOR**DIVISION OF INDUSTRIAL AFFAIRS****Industrial Accident Board**

Statutory Authority: 19 Delaware Code, Sections 105 and 2301A (19 **Del.C.** §§105 & 2301A)
19 **DE Admin. Code** 1331

ERRATA**1331 Industrial Accident Board Regulations**

* **Please Note:** The Regulation for the Department of Labor, Division of Industrial Affairs, Industrial Accident Board, 19 **DE Admin. Code** 1331, Section 9.0 regarding Pre-Trial Memorandums was published as proposed in the *Delaware Register of Regulations*, 26 **DE Reg.** 538 (01/01/23). A submitted amendment to subsection 9.2.3 was inadvertently not corrected as approved. In addition, a change to subsection 9.3.7 was inadvertently not

underlined.

The revision for subsection 9.2.3 was inadvertently published as:

- 9.2.3 In the event the Pre-Trial Memorandum has not been filed with the Department ~~before the pre-trial scheduling conference or within the time specified in the notice provided by the Department~~ in the time specified in subsection 9.2.2, either party may file a motion pursuant to ~~Rule 8 Section 8.0~~ seeking an Order from the Board to compel the opposing party to complete and/or file a completed Pre-Trial Memorandum by a date ~~certain~~ certain providing notice of the filing to the moving party. Should any party fail to complete a Pre-Trial Memorandum the Board may remedy the deficiency by removing witnesses, rescheduling the Hearing, striking issues and/or defenses, and/or taking any other actions deemed appropriate to remedy prejudice to an opposing party and to facilitate the fair and orderly presentation of issues.

Subsection 9.2.3 should have read as:

- 9.2.3 In the event the Pre-Trial Memorandum has not been filed with the Department ~~before the pre-trial scheduling conference or within the time specified in the notice provided by the Department~~ in the time specified in subsection 9.2.2, either party may file a motion pursuant to ~~Rule 8 Section 8.0~~ seeking an Order from the Board to compel the opposing party to complete ~~and/or~~ or file a completed Pre-Trial Memorandum by a date ~~certain~~ certain providing notice of the filing to the moving party. Should any party fail to complete a Pre-Trial Memorandum the Board may remedy the deficiency by removing witnesses, rescheduling the Hearing, striking issues or defenses, or taking any other actions deemed appropriate to remedy prejudice to an opposing party and to facilitate the fair and orderly presentation of issues.

Subsection 9.3.7 should have read as:

- 9.3.7 ~~an~~ An accurate estimate of the time necessary for hearing. This requirement includes an ongoing responsibility to update to Board as to any changes in the estimated trial time that may arise before hearing.

The regulation will be published as final in the May 2023 *Register* and is effective as stated in that publication. See 26 DE Reg. 966 (05/01/23).

Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

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

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

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF HEALTH CARE QUALITY**

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119

(16 **Del.C.** §1119C & 29 **Del.C.** §10119)

16 **DE Admin. Code** 3345

ORDER**3345 Personal Assistance Services Agencies****AUTHORITY**

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. Code** 3345 Personal Assistance Services Agencies. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for personal assistance services agencies.

REASON FOR THE EMERGENCY ORDER

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

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3345 Personal Assistance Services Agencies is temporarily modified as follows:

1.0 Definitions: Definitions of healthcare experience, home care experience and telehealth mechanism will be added. The definition of director will be revised to allow for healthcare or home care supervisory experience.

4.0 Administration:

Subsection 4.1.2: Will be amended to require the director be appointed in writing and to require a similarly qualified person to act in the director's absence.

Subsection 4.4.2.6.5.1: Amended to allow physical examinations to be completed 12 months prior to employment/referral.

5.0 Consumer Care Management: Provisions will be added to allow for every other follow up visit to be completed by a telehealth mechanism.

This Emergency Order shall take effect on May 1, 2023 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 263 Cambridge Road, Suite 200, Newark, DE 19702, by email to Nancy.Lizzi@Delaware.gov, or by fax to 302-292-3931.

ORDER

It is hereby ordered, this 17th day of April, 2023, that the above referenced amendment to 16 **DE Admin. Code** 3345 Personal Assistance Services Agencies, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Secretary

3345 Personal Assistance Services Agencies

1.0 Definitions

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

(Break in Continuity Within Section)

"Director" means a job-descriptive term used to identify the individual appointed by the governing body to act on its behalf in the overall management of the personal assistance services agency. Job titles may include administrator, superintendent, director, executive director, president, vice-president, or executive vice-president. The director shall have at least an associates degree plus two (2) years healthcare or home care supervisory experience. A Director in place ~~at the time of the final publication of these regulations~~ as of June 1, 2020 will be exempt from this requirement.

"Full-Time" means the established hours of the personal assistance services agency.

"Governing Body or Other Legal Authority" means the individual, partnership, agency, group, or corporation designated to assume full legal responsibility for the policy determination, management, operation and financial liability of the personal assistance services agency.

"Grievance" means a written or verbal report of a concern that is made to the agency by a consumer. A grievance cannot be immediately resolved by staff present at the time of the report.

"Healthcare Experience" means the direct participation of an individual in the maintenance or improvement of health via the prevention, diagnosis, treatment, recovery, or cure of disease, illness, injury, and other physical and mental impairments in patients.

"Healthcare Facility" means any facility licensed under 16 Del.C. Ch. 10 or 11.

"Home Care Experience" means the provision of services that do not require the judgment and skills of a licensed nurse or other healthcare professional. The services are limited to individual assistance with/or supervision of activities of daily living and instrumental activities of daily living.

(Break in Continuity Within Section)

"Telehealth Mechanism" means the use of information exchange from one site to another via an electronic interactive telecommunication system. Telehealth is provided with specialized equipment at each site including real-time streaming via the use of video streaming and audio equipment. The telecommunications must permit real-time encryption of the interactive audio and video exchanges with the personal assistance services agency. The consumer must consent to the use of telehealth.

(Break in Continuity of Sections)

4.0 Administration

4.1 Agency Director

4.1.1 Every agency shall have a full-time agency director.

4.1.2 The director shall appoint, in writing, an individual a similarly qualified person to act in the director's absence. A designee in place at the time of the final publication of these regulations will be exempt from this requirement.

(Break in Continuity Within Section)

4.4 Personnel and Direct Care Worker Records

4.4.1 Records of all personnel, including each direct care worker shall be kept current and available upon request by authorized representatives of the Department.

4.4.2 For all personnel, including direct care workers, the agency shall maintain individual records which shall contain at least:

4.4.2.1 Written verification of compliance with pre-employment/referral requirements;

4.4.2.2 Documentation of competence;

4.4.2.3 Educational preparation and work history;

4.4.2.4 Written performance evaluations annually; and

4.4.2.5 A letter of appointment specifying conditions of employment/referral.

4.4.2.6 Health History

4.4.2.6.1 Minimum requirements for pre-employment/referral and annual tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

4.4.2.6.2 No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to consumers.

4.4.2.6.3 Any person having a positive skin test but a negative X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.

4.4.2.6.4 A report of all test results and all attestation statements shall be on file at the agency.

4.4.2.6.5 All new personnel, including direct care workers shall be required to have a physical examination prior to providing care:

4.4.2.6.5.1 The physical examination must have been completed within ~~three (3) months~~ twelve (12) months prior to employment/referral; and

4.4.2.6.5.2 A copy of the physical examination shall be maintained in the individual's file.

- 4.4.2.6.6 Any individual who cannot adequately perform the duties required or who may jeopardize the health or safety of the consumers shall be relieved of their duties and removed from the agency until such time as the condition is resolved. This includes infections of a temporary nature.

(Break in Continuity Within Section)

5.0 Consumer Care Management

(Break in Continuity Within Section)

5.2 Home Visits

- 5.2.1 An initial home visit and consumer evaluation shall be performed by the agency director, or designee.
- 5.2.2 The initial home visit must be performed in the consumer's residence prior to the provision of services. The purpose of the home visit is to determine whether the agency has the ability to provide the necessary services in a safe manner.
- 5.2.3 At a minimum, the following must be evaluated and included in an itemized written description of the consumer prior to providing personal assistance services:
- 5.2.3.1 Physical condition, including ability to perform activities of daily living and sensory limitations;
 - 5.2.3.2 Social situation, including living arrangements and the availability of family and community support; and
 - 5.2.3.3 Mental status, including any cognitive impairment and known psychiatric, emotional and behavioral problems.
- 5.2.4 Follow-up home visits shall occur at regular intervals based upon the consumer's condition and needs, but no less often than every ninety (90) calendar days.
- 5.2.4.1 Every other follow up visit must be completed in person.
 - 5.2.4.2 Follow up visits not completed in person must be completed by a telehealth mechanism.

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

<https://regulations.delaware.gov/register/may2023/emergency/26 DE Reg 909 05-01-23.htm>

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3350

ORDER

3350 Skilled Home Health Agencies (Licensure)

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. Code** 3350 Skilled Home Health Agencies (Licensure). Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for skilled home health agencies.

REASON FOR THE EMERGENCY ORDER

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

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3350 Skilled Home Health Agencies (Licensure) is temporarily modified as follows:

1.0 Definitions: A definition of telehealth mechanism will be added.

5.0 Administration/Personnel: Amend subsection 5.6.1.1 to allow physical examinations to be completed 12 months prior to employment/referral.

6.0 Patient Care Management

Subsection 6.2.4: Provisions will be added to allow for every other patient reassessment to be completed by a telehealth mechanism.

Subsection 6.6.4.2: Provisions will be added to allow for every other supervisory visit to be conducted by a telehealth mechanism.

Subsection 6.7.5: Will be revised to require notes be incorporated into the patient's record no less often than every 30 days.

This Emergency Order shall take effect on May 1, 2023 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 263 Cambridge Road, Suite 200, Newark, DE 19702, by email to Nancy.Lizzi@Delaware.gov, or by fax to 302-292-3931.

ORDER

It is hereby ordered, this 17th day of April, 2023, that the above referenced amendment to 16 **DE Admin. Code** 3350 Skilled Home Health Agencies (Licensure), a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Secretary

3350 Skilled Home Health Agencies (Licensure)

1.0 Definitions

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

(Break in Continuity Within Section)

"Telehealth Mechanism" means the use of information exchange from one site to another via an electronic interactive telecommunication system. Telehealth is provided with specialized equipment at each site including real-time streaming via the use of video streaming and audio equipment. The telecommunications must permit real-time encryption of the interactive audio and video exchanges with the home health agency. The consumer must consent to the use of telehealth.

(Break in Continuity of Sections)

5.0 Administration/Personnel

(Break in Continuity Within Section)

5.6 Health History

5.6.1 All new employees/contractors shall be required to have a physical examination prior to providing care:

5.6.1.1 The physical examination must have been completed within ~~3~~ twelve (12) months prior to employment/referral and

5.6.1.2 A copy of the physical examination shall be maintained in individual files.

(Break in Continuity Within Section)

6.0 Patient Care Management

(Break in Continuity Within Section)

6.2 Assessment

(Break in Continuity Within Section)

6.2.4 Patient reassessments and monitoring must occur at regular intervals based upon the patient's condition and needs, but no less often than every sixty (60) calendar days. A registered nurse, or a qualified professional of the appropriate discipline, must participate in the reassessment and monitoring of the patient.

6.2.4.1 Every other patient reassessment must be completed in person.

6.2.4.2 Patient reassessments not completed in person must be completed by a telehealth mechanism.

(Break in Continuity Within Section)

6.6 Patient Services

(Break in Continuity Within Section)

6.6.4 Home Health Aide

6.6.4.1 Services are provided under the supervision and direction of the clinical director or the appropriate qualified professional.

6.6.4.2 On-site professional supervisory visits are required for all patients receiving home health aide services.

6.6.4.2.1 When patients are receiving home health aide services as well as another skilled service, a registered nurse (or another professional therapist if the patient is not receiving nursing services) must make an on-site supervisory visit to the patient's residence no less frequently than every two (2) weeks.

6.6.4.2.2 When home health aide services are being provided in the absence of a skilled service, a registered nurse must make an on-site supervisory visit to the patient's residence (while the home health aide is providing care) no less frequently than every sixty (60) calendar days.

6.6.4.2.3 Every other supervisory visit must be completed in person.

6.6.4.2.4 Supervisory visits not completed in person must be completed by a telehealth mechanism.

6.6.4.3 Services must be provided in accordance with a written home health aide care plan.

(Break in Continuity Within Section)

6.7 Records and Reports***(Break in Continuity Within Section)***

- 6.7.5 All notes must be incorporated into the patient's record no less often than every ~~two (2) weeks~~ 30 days.

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

<https://regulations.delaware.gov/register/may2023/emergency/26 DE Reg 912 05-01-23.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF HEALTH CARE QUALITY**

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3351

ORDER**3351 Home Health Agencies--Aide Only (Licensure)****AUTHORITY**

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. Code** 3351 Home Health Agencies--Aide Only (Licensure). Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for home health agencies--aide only.

REASON FOR THE EMERGENCY ORDER

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

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3351 Home Health Agencies--Aide Only (Licensure) is temporarily modified as follows:

1.0 Definitions: A definition of telehealth mechanism will be added.

5.0 Administration/Personnel: Amend subsection 5.6.1.1 to allow physical examinations to be completed 12 months prior to employment/referral.

6.0 Patient Care Management

Subsection 6.2.4: Provisions will be added to allow for every other patient reassessment to be completed by a telehealth mechanism.

Subsection 6.4.3.1: Provisions will be added to allow for every other supervisory visit to be conducted by a telehealth mechanism.

Subsection 6.5: Will be revised to require notes be incorporated into the patient's record no less often than every 30 days.

This Emergency Order shall take effect on May 1, 2023 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 263 Cambridge Road, Suite 200, Newark, DE 19702, by email to Nancy.Lizzi@Delaware.gov, or by fax to 302-292-3931.

ORDER

It is hereby ordered, this 17th day of April, 2023, that the above referenced amendment to 16 **DE Admin. Code** 3351 Home Health Agencies--Aide Only (Licensure), a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Secretary

3351 Home Health Agencies--Aide Only (Licensure)

1.0 Definitions

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

(Break in Continuity Within Section)

"Telehealth Mechanism" means the use of information exchange from one site to another via an electronic interactive telecommunication system. Telehealth is provided with specialized equipment at each site including real-time streaming via the use of video streaming and audio equipment. The telecommunications must permit real-time encryption of the interactive audio and video exchanges with the home health agency. The consumer must consent to the use of telehealth.

(Break in Continuity of Sections)

5.0 Administration/Personnel

(Break in Continuity Within Section)

5.6 Health History

5.6.1 All new employees/contractors shall be required to have a physical examination prior to providing care:

5.6.1.1 The physical examination must have been completed within ~~3 months~~ twelve (12) months prior to employment/referral and

5.6.1.2 A copy of the physical examination shall be maintained in individual files.

(Break in Continuity Within Section)

6.0 Patient Care Management

(Break in Continuity Within Section)

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

6.2.4 Patient reassessments and monitoring occur at regular intervals based upon the patient's condition and needs, but no less often than every sixty (60) calendar days.

6.2.4.1 Every other patient reassessment must be completed in person.

6.2.4.2 Patient reassessments not completed in person must be completed by a telehealth mechanism.

(Break in Continuity Within Section)**6.4 Scope of Services**

6.4.1 Competent patients who do not reside in a medical facility or a facility regulated pursuant to 16 Del.C. Ch. 11 may delegate personal care services to home health aides provided:

6.4.1.1 The nature of the service/task is not excluded by law or other state or federal regulation;

6.4.1.2 The services/tasks are those competent patients could normally perform themselves but for functional limitation; and

6.4.1.3 The delegation decision is entirely voluntary.

6.4.2 Services provided to patients who are not able to delegate services/tasks due to impaired cognitive function shall be those delegated by the registered nurse as permitted by law.

6.4.3 Services are provided under the supervision and direction of the registered nurse.

6.4.3.1 On-site professional supervisory visits are required for all patients receiving home health aide services.

6.4.3.1.1 The registered nurse must make an on-site supervisory visit to the patient's residence (while the home health aide is providing care) no less frequently than every sixty (60) calendar days.

6.4.3.1.1.1 Every other supervisory visit must be completed in person.

6.4.3.1.1.2 Supervisory visits not completed in person must be completed by a telehealth mechanism.

6.4.3.1.2 A report of the supervisory visit should be kept with the patient's record.

6.5 Records and Reports***(Break in Continuity Within Section)***

6.5.4 Original notes must be incorporated into the patient's record located at the agency no less often than every ~~2-weeks~~ 30 days.

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

<https://regulations.delaware.gov/register/may2023/emergency/26 DE Reg 915 05-01-23.htm>

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 3001A-3005A (14 **Del.C.** §§3001A-3005A)
9 **DE Admin. Code** 105

PUBLIC NOTICE

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

105 Residential Child Care Facilities and Day Treatment Programs**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del. C.** §3003A, the Secretary of Education wishes to transfer 9 **DE Admin. Code** 105 to 14 DE Admin. Code by creating 935 DELACARE: Regulations for Residential Child Care Facilities and Day Treatment Programs. The Office of Child Care Licensing which oversees these facilities moved from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020, and this is the final set of regulations that were required to be transferred. The previous 105 regulations are being stricken in their entirety because they were last revised in 1998, new federal legislation (Family First Prevention Services Act) was enacted, and acceptable practices regarding the use of restrictive procedures have also changed. A task force consisting of stakeholders, licensed facilities, and agency representatives reviewed a draft and provided comments which resulted in the creation of these proposed regulations. Other changes were made to ensure compliance with the *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 2, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401

Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation 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 and safe education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help the Office of Child Care Licensing in its efforts to ensure 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 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? There are no material costs to implementing this amended regulation.

*Please Note:

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 918RFA 05-01-23.pdf>

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 918 05-01-23.htm>

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a) and 1270A (14 **Del.C.** §§122(a) & 1270A)

14 **DE Admin. Code** 106A

PUBLIC NOTICE

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

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

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §122(a) and 1270A, the Delaware Department of Education developed amendments to 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The proposed amendments change the regulation to the Delaware Teacher Growth and Support System (DTGSS) in order to align the regulation with 14 **Del.C.** §1270A. Specifically, the proposed amendments include revising the title of the regulation, adding and striking terms in Section 2.0, revising language around performance ratings and summative evaluation ratings, replacing the term "Evaluator" with "Credentialed Administrator," replacing the term "Improvement Plan" with "Directed Growth Plan," and adding Section 11.0, which concerns waivers of the DTGSS provisions. The proposed amendments are consistent with House Substitute 1 for House Bill 291 of the 151st General Assembly, which was signed into law on February 16, 2022. The applicable statutory changes are effective July 1, 2023. Other proposed amendments to this regulation include updates to comply with the *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 2, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards. DTGSS is a tool for coaching and development. Administrators and teachers use the framework to align expectations for high-quality teaching and learning. The framework is designed from research-based practices that have proven to impact student learning.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to help ensure that all students receive an equitable education. Equitable access is one indicator and each performance area has an essential question that applies to all students.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is intended to help to ensure that all students' health and safety are adequately protected. The proposed performance area #1 Performance Area #1, which is the learning environment, teaches respectful interactions and reinforces positive classroom climate.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is not designed to help to ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? By statute, 14 **Del.C.** §1270A(f) provides that a local education agency may make application to the Department for a waiver of the provisions of DTGSS if the request is based on a locally developed evaluation process that is demonstrated to be the product of a collective bargaining process

pursuant to 14 **Del.C.** Ch. 40 and community review and is as rigorous and as educationally sound as DTGSS, provides for evaluating educator performance by measuring student growth using multiple measures over the course of a curricular year, and contains a mechanism for certifying evaluators and for quality control. Proposed section 11.0 is consistent with 14 **Del.C.** §1270A(f).

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The requirements in Sections 12.0 (Evaluation of Process) and 13.0 (DTGSS Monitoring) apply to the Department, not local board and schools
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? By statute (14 **Del.C.** §1270A(b)), the Department, with the approval of the State Board of Education, promulgates the regulations to administer the DTGSS.
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. In developing the amendments to the regulation, the Department's Workforce Support Team worked with Academic Support Team to align DTGSS with academic curriculum.
9. Is there a less burdensome method for addressing the purpose of the regulation? By statute (14 **Del.C.** §1270A(b) and 14 **Del.C.** §1270A(f)), the Department, with the approval of the State Board of Education, promulgates the regulations to administer the DTGSS and for waivers of the provisions of DTGSS. 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? Although there is a cost associated with new training materials, the cost was included in the Department's budget. There is no cost to local school boards for compliance with this regulation.

***Please Note:**

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 920RFA 05-01-23.pdf>

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 920 05-01-23.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a) and 1270B (14 **Del.C.** §§122(a) & 1270B)

14 **DE Admin. Code** 107A

PUBLIC NOTICE

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

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

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(a) and 1270B, the Delaware Department of Education developed amendments to 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The proposed amendments include revising Section 1.0, adding and striking terms in Section 2.0, replacing the term "Evaluator" with the term "Credentialed Administrator" throughout the regulation, and adding

Section 11.0, which concerns waivers of DPAS II provisions. The proposed amendments are consistent with House Substitute 1 for House Bill 291 of the 151st General Assembly, which was signed into law on February 16, 2022. The applicable statutory changes are effective July 1, 2023. Other proposed amendments to this regulation include updates to comply with the *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 2, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards. The purposes of DPAS II are to help assure and support quality educators in every school building and classroom, continuous improvement of student outcomes, and educators' professional growth.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to help ensure that all students receive an equitable education. One of the components of DPAS II is Professional Practice and Delivery of Service and supporting the needs of all students.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is intended to help to ensure that all students' health and safety are adequately protected. One of the components of DPAS II is Professional Practice and Delivery of Service and supporting the needs of all students.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is intended to help to ensure that all students' legal rights are respected. One of the components of DPAS II is Professional Consultation and Collaboration, which addresses when a specialist needs to maintain student confidentiality.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? By statute, 14 **Del.C.** §1270B(f) provides that a local education agency may make application to the Department for a waiver of the provisions of DPAS II if the request is based on a locally developed evaluation process that is demonstrated to be the product of a collective bargaining process pursuant to 14 **Del.C.** Ch. 40 and community review and is as rigorous and as educationally sound as DPAS II, provides for evaluating educator performance by measuring student growth using multiple measures over the course of a curricular year, and contains a mechanism for certifying evaluators and for quality control. Proposed section 11.0 is consistent with 14 **Del.C.** §1270B(f).
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The requirements in Sections 12.0 (Evaluation of Process) and 13.0 (DPAS II Monitoring) apply to the Department, not local board and schools.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? By statute (14 **Del.C.** §1270B(b)), the Department, with the approval of the State Board of Education, promulgates the regulations to administer the DPAS II.
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? By statute (14 **Del.C.** §1270B(b) and 14 **Del.C.** §1270B(f)), the Department, with the approval of the State Board of Education, promulgates the regulations to administer the DPAS II and for waivers of the provisions of DPAS II. 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? Although there is a cost associated with credentialing or recredentialing training, the cost was included in the

Department's budget. There is no cost to local school boards for compliance with this regulation.

***Please Note:**

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 921RFA 05-01-23.pdf>

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 921 05-01-23.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a) and 1270B (14 Del.C. §§122(a) & 1270B)
14 DE Admin. Code 108A

PUBLIC NOTICE

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

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

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §122(a) and 1270B, the Delaware Department of Education developed amendments to 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The proposed amendments include revising Section 1.0, adding and striking terms in Section 2.0, replacing the term "Evaluator" with the term "Credentialed Administrator" throughout the regulation, and adding Section 12.0, which concerns waivers of DPAS II provisions. The proposed amendments are consistent with House Substitute 1 for House Bill 291 of the 151st General Assembly, which was signed into law on February 16, 2022. The applicable statutory changes are effective July 1, 2023. Other proposed amendments to this regulation include updates to comply with the *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 2, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards. The purposes of DPAS II are to help assure and support quality educators in every school building and classroom, continuous improvement of student outcomes, and educators' professional growth.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to help ensure that all students receive an equitable education. One of the components of DPAS II for administrators is Leadership for Self and Others, which focuses on the administrator's actions to act ethically and strive for enacting systems that promote the equity of

educational opportunities and culturally responsive practices for each student's academic success and well-being.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is intended to help to ensure that all students' health and safety are adequately protected. One of the components of DPAS II for administrators is Leadership for Purpose and Improvement, which focuses on the administrator's actions to develop, advocate, and enact systems aligned to the mission, vision, and core values of the school or district, including the alignment to the school or district success plans to promote each student's academic success and well-being.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is intended to help to ensure that all students' legal rights are respected. One of the components of DPAS II for administrators is Leadership for Self and Others, which focuses on the administrator's actions to act ethically and strive to enact systems that promote the equity of educational opportunities and culturally responsive practices for each student's academic success and well-being.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? By statute, 14 **Del.C.** §1270B(f) provides that a local education agency may make application to the Department for a waiver of the provisions of DPAS II if the request is based on a locally developed evaluation process that is demonstrated to be the product of a collective bargaining process pursuant to 14 **Del.C.** Ch. 40 and community review and is as rigorous and as educationally sound as DPAS II, provides for evaluating educator performance by measuring student growth using multiple measures over the course of a curricular year, and contains a mechanism for certifying evaluators and for quality control. Proposed section 12.0 is consistent with 14 **Del.C.** §1270B(f).
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The requirements in Sections 13.0 (DPAS II Monitoring) and 14.0 (Evaluation of Process) apply to the Department, not local board and schools
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? By statute (14 **Del.C.** §1270B(b)), the Department, with the approval of the State Board of Education, promulgates the regulations to administer the DPAS II.
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? By statute (14 **Del.C.** §1270B(b) and 14 **Del.C.** §1270B(f)), the Department, with the approval of the State Board of Education, promulgates the regulations to administer the DPAS II and for waivers of the provisions of DPAS II. 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? Although there is a cost associated with credentialing or recredentialing training, the cost was included in the Department's budget. There is no cost to local school boards for compliance with this regulation.

***Please Note:**

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 923RFA 05-01-23.pdf>

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 923 05-01-23.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapter 5 (14 Del.C. Ch. 5)
14 DE Admin. Code 275

PUBLIC NOTICE

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

275 Charter Schools

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to of 14 Del.C. §122 and Chapter 5, the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 275 Charter Schools. This regulation was proposed January 1, 2023 in order to: (1) remove reference to "Delaware Comprehensive Assessment System," (2) to include additional clarifying language regarding debts of a charter school, (3) update the definition of "Charter School" to align with 14 DE Admin. Code 255 Definitions of Types of Schools, and (4) to make grammatical corrections to comply with the *Delaware Administrative Code Manual*. Two comments were received asking for further clarification to Section 8.0 and to not remove "non-home based" in the definition of "Charter School," as there is concern that the definition would allow charter schools to operate as full-time virtual schools which could negatively impact students' academic and mental health. The Department considered these comments and at this time is amending the regulation to make the four changes noted above and to update Section 8.0 to reflect current case law regarding Individuals with Disabilities Education Act debts. Also, for further clarification, the Department has specified the statute (14 Del.C. Ch. 5) in the definition of "Department's Annual Charter Report," and removed the definition of "Highly Successful Charter School Operator" as it is not used in the regulation. The Department wishes to allow charter schools the flexibility to have virtual programming and does not believe the proposed changes allow for fully virtual charter schools.

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 2, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation 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 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? There are no material costs to implementing this amended regulation.

***Please Note:**

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 925RFA 05-01-23.pdf>

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 925 05-01-23.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

16 **DE Admin. Code** 20330

PUBLIC NOTICE

US Savings Bonds

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 Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 20330.7 regarding US Savings Bonds, specifically, to clarify policy and procedures.

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, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on May 31, 2023. Please identify in the subject line: US Savings Bonds.

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 Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 20330.7 regarding US Savings Bonds, specifically, to clarify policy and procedures.

Statutory Authority

- 31 CFR 352

Background

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

Summary of Proposal

Purpose

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 20330.7 regarding US Savings Bonds, specifically, to clarify policy and procedures.

Summary of Proposed Changes

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

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA 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, 2023.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

There is no anticipated fiscal impact.

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 926RFA 05-01-23.pdf>

20000 Medicaid Long Term Care

20330 Countable Resources Computation

20330.7 U.S. Savings Bonds

U.S. Savings Bonds are obligations of the Federal Government. They are not transferable and can only be sold back to the Federal Government. Normally, they cannot be redeemed for six months after the issue date specified on the face of the bond. For Series EE, and I Savings Bonds, the redemption period has been extended to 12

months. They become resources (not income) as of the 7th or 13th month. A bond may not roll over or renew in order to prolong the minimum retention period. Actual redemption (converting to cash) of one bond is required before purchasing a new bond. However, the U.S. Treasury regulation authorizes the Commission of Public Debt to waive the regulatory provisions pertaining to U.S. Savings bonds including the redemption period in order to "relieve any person or persons of unnecessary hardship". A request for a refund because the person now requires Nursing Home care and so needs the funds used to purchase the bonds may constitute hardship. A written request to the Commissioner of Public Debt requesting a waiver to the redemption period is all that is required. The bondholder may simultaneously tender the bond(s) for redemption. If the Treasury receives the bond(s) and grants the waiver, it will issue the individual a check. Since bonds are redeemable due to hardship, the redemption value is treated as an available resource.

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

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

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

~~Office of Public Debt~~

~~Buffalo Branch, FRB of NY~~

~~Fiscal Services Division~~

~~P.O. Box 964~~

~~Buffalo, NY 14240-0964~~

~~www.publicdebt.reas.gov~~

Treasury Retail Securities Services

P.O. Box 9150

Minneapolis, MN 55480-9150

(844) 284-2676

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

See 20330.7 U.S. Savings Bonds - History

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)t and Sections 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, 2023, 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).

The proposed regulation published in the February 2023 *Register of Regulations* (26 DE Reg. 677 (02/01/23) (Prop.)) is no longer being considered in favor of the amendments presented here pursuant to 29 Del.C. §10118(c).

Copies of the proposed regulations are available for review in the May 1, 2023 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

NOTICE OF PUBLIC HEARING

The Division of Public Health will hold a public hearing on Wednesday, May 24, 2023 at 5:00 p.m. The public hearing will be conducted remotely with a physical anchor location for those who wish to attend in person. Details about the physical location, the remote platform, and how to attend will be posted on the State Public Meeting Calendar at the following link:

<https://publicmeetings.delaware.gov/#/meeting/75123>.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Thursday, June 8, 2023, 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:

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 929RFA 05-01-23.pdf>

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 929 05-01-23.htm>

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Determining Relative 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 DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on May 31, 2023. Please identify in the subject line: Defining Relative 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
45 CFR 98.41

Background

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

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, 2023 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, 2023.

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:**

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 930RFA 05-01-23.pdf>

11000 Child Care Subsidy Program

11006.7 Determining Relative Child Care

Statutory Authority

45 CFR 98.2, 98.41

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

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

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

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

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

3. The relative provider shall:

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

4. The relative provider must successfully complete:

PROPOSED REGULATIONS

- The "Criminal History, Child Abuse, and Neglect Background Check Request Form". This form must be completed for the relative provider and each individual 18 years of age or older who is living in the relative provider's home;
 - The orientation class on relative child care rules and regulations;
 - 28 hours of approved training within 12 months of completing the relative child care orientation class;
 - Three hours of health and safety training annually; and
 - CPR and first aid courses. The relative provider's certifications must be current and re-certifications must be completed every two years.
- 5. In the children's home, the relative provider shall:**
- Care for a minimum of ~~four children~~ one child in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
 - Care for no more than two children under two years of age.
 - Care for the children of one family member. The children must be related as siblings.
- 6. In the relative provider's home, the relative provider shall:**
- Care for a minimum of one child in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
 - Care for no more than two children under two years of age.
 - Care for the children of one family member. The children must be related as siblings.

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

DEPARTMENT OF LABOR DIVISION OF PAID LEAVE

Statutory Authority: 19 Delaware Code, Section 105 (19 Del.C. §105)

PUBLIC NOTICE

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

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 19 Del.C. §105, the Delaware Department of Labor ("Department") proposes to introduce regulations concerning the establishment of the Healthy Delaware Families Act ("Act") and to set forth definitions, guidance, procedures, and standards for the implementation of the Act and its Family and Medical Leave Insurance Program ("PFML"). The Division of Paid Leave ("Division"), a separate division within the Department, is established and will administer the Act, Program, and this regulation.

In accordance with 29 Del.C. §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Christopher Counihan
Division Director, Division of Paid Leave
Delaware Department of Labor
4425 North Market Street, 4th Floor
Wilmington, DE 19802

Comments may also be directed via electronic mail to PFML@Delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the above contact at the Delaware Department of Labor no later than 4:00 p.m. EST, on June 1, 2023. The action concerning determination of whether to adopt the proposed regulations will be based upon consideration of the written comments and any other written materials filed by the public.

Background

The Department is authorized by the General Assembly of the State of Delaware, to establish rules and regulations for the administration of the Healthy Delaware Families Act ("Act"). Administering this Act is accomplished with the establishment of the Division of Paid Leave ("Division"), Family and Medical Leave Insurance Program ("PFML") and the Family and Medical Leave Insurance Appeal Board ("Board"). The Department is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 19 or of any other law of the State; provided, however that no such rule or regulation shall extend, modify, or conflict with any law of this State or the reasonable implications thereof; and provided further, that such rules and regulations, as established by the Department, shall focus primarily on the Act, Program, and Board.

Summary of Proposal

In June 2022, three-fifths of all members elected to each house of the Delaware General Assembly passed Senate Substitute No. 2 for Senate Bill No. 1 as amended by House Amendment No. 1. This bill, known as the "Healthy Delaware Families Act" ("Act"), established the Division of Paid Leave ("Division"), Family and Medical Leave Insurance Program ("PFML") and the Family and Medical Leave Insurance Appeal Board ("Board") in the State of Delaware. The Governor signed the bill in May 2022, and it became effective July 1, 2022.

The Act creates a statewide paid family and medical leave insurance program that is primarily administered by the employers. Delaware-based employees can access up to twelve (12) weeks of paid family and medical leave through the State's paid leave trust fund for a qualifying event, including the following: (1) to address a worker's own serious health condition; (2) to care for a family member with a serious health condition; (3) to bond and care for a new child; and (4) to address impact arising from a family member's military deployment.

The first substitute to Senate Bill No. 1 differed with regard to the eligibility determination process, covered relationships, length of leave, forms of leave covered, cumulative leave, eligibility criteria, implementation timeline, appeal process, departmental powers, and not requiring participation from certain smaller businesses. The second substitute to Senate Bill No. 1 differed by making technical corrections, intent and providing greater statutory detail with regard to appeals, coordination of benefits, definitions, private plans, and departmental powers, and providing temporary flexibility regarding implementation.

Overall, the proposed Rules implement the Act, PFML program and Board by providing definitions, guidance, processes, and standards for employees, covered individuals, employers, and small businesses, as defined in the Act. The proposed rules outline procedures, forms, and eligibility standards for employees who apply to their employer for claims and benefits payments under the program and seek review from the Department, including an appeal of a denial to the Board. In addition, the proposed rules also set forth guidance, procedures, and forms for employers and small businesses, as defined in the Act, for their administration of the Act and the PFML program.

As part of the implementation of the Family and Medical Leave Insurance Program, the State is designing an administrative system, that will be made available for employers and others, to manage the program more efficiently. Employers will be able to use this system to make changes to the enrollment of their program, record their employee's hours and wages, and adjudicate their claim applications. In turn and based on that information, the system will advise the employers as to what the Department would do based on the information at hand. Our goal is to make the program as simple as possible for employers, employees, and others to use.

Statutory Authority **19 Del.C. §105.**

19 **Del.C.** §105 enables the Delaware Department of Labor to adopt and promulgate rules and regulations consistent with Title 19 of the Delaware Code; provided, that no such rule or regulation shall extend, modify, or conflict with any law of the State of Delaware or the reasonable implications thereof.

***Please Note:**

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 932RFA 05-01-23.pdf>

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 932 05-01-23.htm>

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Pharmacy

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

PUBLIC NOTICE

2500 Board of Pharmacy

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy ("Board") has proposed revisions to its Rules and Regulations. The new subsection 5.1.5.1 prohibits the delivery of drugs to a patient's residence where such drugs are intended to be later transported to another location for administration and that require special storage, reconstitution or compounding. An exception is made for patients with bleeding disorders. The new subsection 5.1.5.2 prohibits delivery of a patient-specific compounded preparation to a practitioner's office or infusion center unless there is a written agreement between the dispensing pharmacist and the ordering physician or facility.

A public hearing will be held on June 21, 2023 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at sarah.siok@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be July 6, 2023. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 934RFA 05-01-23.pdf>

2500 Board of Pharmacy
(Break in Continuity of Sections)

5.0 Dispensing

- 5.1 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist.

- 5.1.1 Receive oral prescriptions and reduce them immediately to writing.
- 5.1.2 Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)
- 5.1.3 The pharmacist, intern or student who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable.
- 5.1.4 Prior to dispensing a prescription to the patient or agent of the patient the pharmacist must verify that the medication in the container is as labeled. Pharmacies must include a description of their verification process in their policy and procedures manual.
- 5.1.5 Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of the pharmacist, shall conduct a prospective drug review. A prospective drug review may be conducted before refilling a prescription to the extent deemed appropriate. A prospective drug review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.
 - 5.1.5.1 A pharmacy, a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist, shall not deliver, or cause to be delivered, dispensed drugs to a patient's residence where such drugs are intended to be subsequently transported by the patient or patient's agent to a hospital, medical clinic, prescriber's office, or pharmacy for administration and that require special storage, reconstitution or compounding prior to administration. An exception to this subsection may be made for patients with inherited bleeding disorders who may require therapy to prevent or treat bleeding episodes.
 - 5.1.5.2 A patient-specific compounded preparation may not be delivered by a pharmacy to the office of a practitioner or an infusion center for administration unless there is a written contract or agreement between the dispensing pharmacist and the ordering physician or facility determining that this delivery arrangement is in the best interest of that specific patient. The written contract or agreement must describe the procedures for such a delivery system and the responsibilities of each party.

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 934 05-01-23.htm>

DIVISION OF PROFESSIONAL REGULATION

Board of Veterinary Medicine

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 Del.C. §3306(a)(1))
24 DE Admin. Code 3300

PUBLIC NOTICE

3300 Board of Veterinary Medicine

Pursuant to 24 Del.C. §3306(a)(1), the Delaware Board of Veterinary Medicine ("Board") has proposed revisions to its Rules and Regulations. Subsection 6.1.2 addresses requirements for applicants for licensure as veterinarians who did not graduate from an AVMA-accredited veterinary school or college. The proposed amendment adds the Program for the Assessment of Veterinary Education Equivalence ("PAVE") as another method to meet the requirements for licensure.

A public hearing will be held on June 13, 2023 at 1:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at randall.clack@delaware.gov.

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

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 935RFA 05-01-23.pdf>

3300 Board of Veterinary Medicine
(Break in Continuity of Sections)

6.0 Qualification For Veterinary Licensure By Examination

(24 Del.C. §3313) and by Reciprocity (4 Del.C. §3314)

6.1 The applicant shall file the following documents:

6.1.1 Completed application form obtained from the Board office.

6.1.2 Official transcript from an AVMA approved veterinary college or university. If an applicant is not a graduate of an AVMA-accredited veterinary school or college, the applicant must possess either a certificate issued by the Educational Commission for Foreign Veterinary Graduates (ECFVG), or its successor, a certificate issued by the Program for the Assessment of Veterinary Education Equivalence (PAVE), or its successor, or a Certificate of Qualification issued by the Canadian Veterinary Medical Association, or its successor.

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

<https://regulations.delaware.gov/register/may2023/proposed/26 DE Reg 935 05-01-23.htm>

Symbol Key

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

Final Regulations

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

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

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))
1 **DE Admin. Code** 709

ORDER

709 Fire Service Standards

Pursuant to 16 *Del. C.* § 6604(1), the Delaware State Fire Prevention Commission proposed to revise Regulation 709 Fire Service Standards (the "Regulations"). The proposed changes to the Regulations included modifying the process of addressing complaints and grievances, detailing conduct that can be considered official misconduct of firefighters and fire companies, adding a process for conducting investigations of firefighter injuries, adding minimum training requirements for firefighters, incorporating and adopting additional National Fire Prevention Association standards, and making other non-substantive changes.

The proposed amendments to the Regulations were published in the Delaware Register of Regulations on February 1, 2023. A written comment period was held open through March 10, 2023. The Commission received written comments from the following individuals and fire companies: (1) Christiana Fire Company; (2) Rehoboth Fire Company (including a separate one-page letter from Warren F. Jones, Vice President and PIO of the Rehoboth Beach Fire Company); (3) the Volunteer Hose Company, Inc.; (4) Roxana Volunteer Fire Company; (5) Claymont Fire Department; (6) Milton Fire Dept., Inc.; and (7) Frankford Volunteer Fire Co. (the "Written Comments").

On March 14, 2023, a duly-appointed Committee of Commissioners and representation from the Delaware Volunteer Firefighters Association, met, considered and discussed the Written Comments. Following the meeting, which was publicly noticed, the Committee decided not to recommend any further substantive changes to the Regulations and the proposed amendments, other than to delete Sections 1.4 and 1.5 of Chapter 7, pertaining to minimum training for Crew Leader, Fire Officer 1 and Fire Officer 2.

At the Commission's regularly-scheduled monthly meeting on March 21, 2023, the Commission considered

the Committee's recommendation and discussed certain Written Comments further. The Commission also opened the meeting up for public comment on the proposed amendments to the Regulations. Warren Jones provided comment relating to the proposed training standards that are being removed. There were no other public comments or opposition to the proposed amendments.

Summary of the findings of fact

Pursuant to discussions held during the Committee meeting on March 14, 2023, and during the Commission's meeting on March 21, 2023, the Commission voted to approve the amendments to the Regulations as they were proposed with the exception that proposed Sections 1.4 and 1.5 of Chapter 7 shall be deleted, as recommended by the Committee.

Decision of the Commission

Other than technical, non-substantive changes noted during the hearing and with the deletion of Sections 1.4 and 1.5 of Chapter 7, the Commission adopts the proposed amendments to Regulations as set forth above as final, with the deletions and other non-substantive changes set forth in this Order. The final proposed amendments are reflected in Exhibit A.

THESE AMENDMENTS SHALL GO EFFECTIVE May 11, 2023.

IT IS SO ORDERED, this 21st day of March 2023, by the Commission:

/s/ Ronald H. Marvel, Chairman	/s/ William C. Kelly, Vice Chairman
/s/ Lynn Truitt	/s/ Richard T. Perillo
/s/ Joseph J. Leonetti, Sr.	/s/ Alan Robinson, Jr.
/s/ Daniel Carrier	

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

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

<https://regulations.delaware.gov/register/may2023/final/26 DE Reg 937 05-01-23.htm>

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

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

ORDER

1001 Thoroughbred Racing Rules and Regulations

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 3 Del. C. §10103(c) the Thoroughbred Racing Commission proposed to amend its regulations to Entries, Subscriptions, Delegations (11.0), Claiming Races (13.0), and Bleeder Medication (15.2 and 2.6.2.5). The changes to 11.0 will allow the naming of an apprentice jockey with the apprentice weight allowance at the draw; allow the entry of a horse into two stakes on the same day; and will decouple Mutual Entries which will allow the same owner to run horses in the same race as a separate betting interest. The changes to 13.0 will eliminate the "Open Claim" license which will make it easier for new owners to invest in the industry and avoid hidden ownership by owners who want to claim but are not eligible. The changes to 15.2 will allow practicing

veterinarians to declare a horse eligible for Furosemide (Lasix/Salix) administration. Changes were also made in 15.2 to be consistent in the references to the Bleeder medication and to update numbering.

Notice of a public comment period of thirty (30) days on the Thoroughbred Racing Commission's proposed amended regulations was published in the Delaware *Register of Regulations* for March 1, 2023 in accordance with 29 Del. C. §10118(a). This is the Thoroughbred Racing Commission's Decision and Order adopting the proposed amended regulations.

II. FINDINGS AND CONCLUSIONS

1. The public was given the required notice of the Thoroughbred Racing Commission's intention to adopt the proposed amended regulation and was given ample opportunity to provide the Thoroughbred Racing Commission with comments opposing the Thoroughbred Racing Commission's plan.

2. There were no public comments provided to the Thoroughbred Racing Commission during the written public Comment period.

3. Pursuant to 3 Del. C. §10103(c) and 3 DE Admin. Code 1001, the Thoroughbred Racing Commission has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The proposed changes amend rules regarding Claiming Races (13.0) to eliminate the "Open Claim" license which will make it easier for new owners to invest in the industry and avoid hidden ownership by owners who want to claim but are not eligible; Rule (15.2) Bleeder Medication which allows practicing veterinarians to declare a horse eligible for Lasix administration; and Rule (11.0) Entries, Subscriptions, Delegations which allows the naming of and apprentice jockey with the weight allowance at the draw; allows the entry of a horse into two stakes on the same day; and will decouple Mutual Entries which will allow the same owner to run horses in the same race as a separate betting interest.

5. Thus, the Thoroughbred Racing Commission concludes that its consideration of the proposed amended regulation was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt the proposed amended regulation.

III. DECISION AND ORDER CONCERNING THE REGULATIONS

AND NOW on this 6th day of April 2023, it is hereby ordered that:

1. The proposed amendments to the Thoroughbred Racing Commission's regulations are adopted;

2. The text of the final regulations shall be in the form attached hereto as Exhibit A, which remain unchanged as initially published in the March 1, 2023 *Delaware Register of Regulations*;

3. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 Del. C. §10118(e); and

4. The Thoroughbred Racing Commission reserves to itself the authority to issue such other and further orders concerning its Regulations as it deems appropriate.

Delaware Thoroughbred Racing Commission
Sarah A. Crane, Executive Director

***Please note that no changes were made to the regulation as originally proposed and published in the March 2023 issue of the Register at page 732 (26 DE Reg. 732). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/may2023/final/26 DE Reg 938 05-01-23.htm>

FINAL REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

ORDER

915 James H. Groves High School

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b)(18), the Delaware Department of Education ("Department") developed amendments 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. The proposed amendments in this regulation include adding a defined term in Section 1.0, replacing "State Director" with "Director of Adult and Prison Education Resources" throughout the regulation, and striking the standardized assessment requirement from subsection 2.1.1.1.2. In addition, the proposed amendments include nonsubstantive changes consistent with the Delaware Administrative Code Drafting and Style Manual.

The proposed amendments were published in the *Register of Regulations* on November 1, 2022. The Department received one written submittal concerning the proposed amendments. Benjamin Schrader, Chairperson of the State Council for Persons with Disabilities ("SCPD") commented that the SCPD recommends that the Department include "education" between "alternative" and "program" in the definition of "In School Credit Program" and that the Department not remove the requirement the standard assessment requirement from subsection 2.1.1.1.2 or identify other ways of meeting the secondary skill level. In addition, Mr. Schrader commented that SCPD recommends there be additional language that identifies Groves as providing education to incarcerated students and that those students are otherwise exempt from the admission criteria; the Department reconsider whether expelled students can enroll in Groves without a waiver in subsection 2.3; and reconsider amending subsection 4.2 regarding the absence policy.

As a result of SCPD's written submittal, the Department decided to add "education" to the definition of "In School Credit Program" in Section 1.0 and to not strike the standardized assessment requirement from subsection 2.1.1.1.2 and add additional language to the subsection. Additionally, the Department decided to strike the requirement that provision cannot be made for excused absences from subsection 4.2 because each Groves site has its own attendance policy and the requirement is not necessary. The Department decided not to make any further changes to the regulation that was published on November 1, 2022 as a result of SCPD's written submittal.

In accordance with 29 **Del.C.** §10118(c), the additional changes in Section 1.0, subsection 2.1.1.1.2, and subsection 4.2 are substantive changes. Therefore, the additional changes, together with the amendments that were published on November 1, 2022, are included in this proposed regulation.

Notice of the proposed regulation was published in the *Register of Regulations* on February 1, 2023. The Department received one written submittal concerning the proposed regulation from Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"). Ms. Fisher commented that GACEC submitted comments on November 30, 2022 on the proposed regulation that was published on November 1, 2022 but GACEC's comments were not noted in the synopsis of the proposed regulation that was published on February 1, 2023. Ms. Fisher further commented that GACEC's comments in November 2022 were similar to SCPD's comments. Regarding the proposed regulation, Ms. Fisher commented that GACEC thanked the Department for incorporating "education" to the definition of "In School Credit Program" in Section 1.0 and removing the ban on excused absences. Ms. Fisher commented that the proposed change to subsection 2.1.1.1.2 partially addresses GACEC's concern and that GACEC requested clarification about the meaning of "high school credits attained" and whether there are specific instances where one measure is used over another. Additionally, Ms. Fisher commented that GACEC recommended the Department include language that identifies Groves as providing education to incarcerated students and that those students are exempt from the admission criteria. Ms. Fisher also commented that GACEC recommend the Department reconsider the requirement that a student who is pending expulsion or has been expelled from a public school must receive a waiver from the Department in order to enroll in James H. Groves Adult High School.

II. FINDINGS OF FACT

The Department considered GACEC's written submittal and finds that further changes as a result of the written submittals are not necessary. The Department finds that the written comment period for the proposed regulation that was published on November 1, 2022 ended on December 1, 2022 and that it did not receive GACEC's November 30, 2022 written submittal until March 1, 2023, three months after the deadline. The Department further finds that subsection 2.1.1.1.2 provides the requirement that an applicant for enrollment in James H. Groves Adult High School have secondary level skills and the proposed regulation would allow two options for demonstrating that requirement is met by either passing a high school level standardized assessment or earning some high school credits. In addition, the Department finds that individuals who are incarcerated in a Delaware Department of Correction facility receive education through the Prison Education Program established under 11 *Del. C.* § 6531A. Although some students in the Prison Education Program attend classes through James H. Groves Adult High School, the Prison Education Program provides other educational opportunities for incarcerated individuals, including special education, vocational training, and life skills courses. The Department also finds that the statute cited by GACEC, 14 *Del. C.* § 4130, concerns public school students who are expelled from a school district or charter school and it does not prohibit the Department from requiring students who have been expelled or are pending expulsion from obtaining a waiver to enroll in James H. Groves Adult High School. The waiver process in subsection 2.3 is in place to support students' progress and to help protect the safety of students and staff.

The Department further finds that the proposed amendments to the regulation are necessary for the operation of the adult education. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School subject to the State Board of Education's approval. On March 16, 2023, the State Board of Education approved amending 14 **DE Admin. Code** 915 James H. Groves High School. Therefore, pursuant to 14 **Del.C.** §122(b)(18), 14 **DE Admin. Code** 915 James H. Groves High School, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 915 James H. Groves High School adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 915 James H. Groves High School in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 16th day of March, 2023.

Department of Education

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

Approved this 16th day of March, 2023.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

/s/ Wali W. Rushdan, II

/s/ Candice Fifer

/s/ Deborah Stevens

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

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

*Please note that no changes were made to the regulation as originally proposed and published in the February 2023 issue of the *Register* at page 657 (26 DE Reg. 657). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/may2023/final/26 DE Reg 940 05-01-23.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3442 (14 **Del.C.** §§122(b)(8), 181(15), 183, 3402(c), 3440, 3441, & 3442)

ORDER

1219 B. Bradford Barnes Memorial Scholarship

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§ 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3442, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14 **DE Admin. Code** 1219 B. Bradford Barnes Memorial Scholarship. The B. Bradford Barnes Memorial Scholarship is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the B. Bradford Barnes Memorial Scholarship. The proposed regulation is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022.

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

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 34 and the B. Bradford Barnes Memorial Scholarship, which is a student financial assistance program that DHEO administers. In addition, the Department finds that House Bill 480 of the 151st General Assembly amended 14 **Del.C.** Ch. 34 and that the proposed regulation is consistent with the statute that went into effect on August 25, 2022.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1219 B. Bradford Barnes Memorial Scholarship subject to the State Board of Education's approval. On March 16, 2023, the State Board of Education approved the adoption of 14 **DE Admin. Code** 1219 B. Bradford Barnes Memorial Scholarship. Therefore, pursuant to 14 **Del.C.** §§ 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3442, 14 **DE Admin. Code** 1219 B. Bradford Barnes Memorial Scholarship, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1219 B. Bradford Barnes Memorial Scholarship adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1219 B. Bradford Barnes Memorial Scholarship in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 16th day of March, 2023.

Department of Education

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

Approved this 16th day of March, 2023.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

/s/ Wali W. Rusdan, II

/s/ Candice Fifer

/s/ Deborah Stevens

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

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

1219 B. Bradford Barnes Memorial Scholarship

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the B. Bradford Barnes Memorial Scholarship pursuant to 14 **Del.C. §3442**.

2.0 Definitions

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

"Award" means a scholarship awarded under the B. Bradford Barnes Memorial Scholarship Program.

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

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

"Full-Time Student" means a student enrolled in a minimum of college credit hours as required by the student's college or university for full-time status. Generally, for an undergraduate program, this is a minimum of 12 credit hours per term.

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

3.0 Eligibility

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

3.1.1 The applicant shall be a graduating high school senior who received an offer of admission from the University of Delaware.

3.1.2 The applicant will enroll as a first-time, Full-Time undergraduate student in the University of Delaware for the following school year.

3.1.3 The applicant must meet the definition of residency as defined in 14 **Del.C. §3402(f)**.

4.0 Application Requirements

4.1 The application acceptance and submission period for the B. Bradford Barnes Memorial Scholarship shall be posted on the DHEO's website by December 1 of each calendar year.

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

4.1.2 Incomplete applications shall not be accepted or processed.

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

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

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- 4.2.1.1 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.
- 4.2.1.2 A first time applicant must establish an account and provide the applicant's valid email address and permanent mailing address before being permitted to submit the information required in subsection 4.2 of this regulation.
- 4.2.2 The applicant shall complete the FAFSA for the school year in which the scholarship is sought by the application deadline.

5.0 Awards

- 5.1 One scholarship will be awarded each year to an applicant who meets the requirements of Section 3.0 of this regulation based on the applicant's academic achievement, community service, participation in extracurricular activities, and promise of academic success in college. If several applicants are determined to be equally qualified for an Award, DHEO will consider their financial need.
- 5.2 To determine an applicant's financial need for the purpose of the B. Bradford Barnes Memorial Scholarship, DHEO will consider the applicant's EFC; the expense of attending the University of Delaware; and the applicant's eligibility for Pell grants and other federal, state, or private grant assistance. For the purpose of this regulation, EFC means the Expected Family Contribution, which is the number that is calculated using the financial information an applicant provides on the applicant's Free Application for Federal Student Aid (FAFSA) to determine the applicant's eligibility for federal student aid.
- 5.3 An Award shall be used for, and not in excess of, tuition, required fees, room, board, and books at the University of Delaware.
- 5.4 An Award is renewable within the limits of the appropriations for the B. Bradford Barnes Memorial Scholarship Program.
- 5.5 To be eligible to renew an Award, a student shall update the student's enrollment information on the Student Account Access Site; meet the academic progress standards set by DHEO and communicated in writing to the student at the time the initial Award is granted; and continue to be enrolled full-time at the University of Delaware, successfully completing coursework according to the standards of the University of Delaware, and eligible to continue to receive financial aid.
- 5.6 A student shall not receive more than 4 annual Awards.

6.0 Award Payment

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3443 (14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), 3440, 3441, & 3443)

ORDER

1220 Herman M. Holloway Memorial Scholarship

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3443, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14 DE Admin. Code 1220 Herman M. Holloway Memorial Scholarship. The Herman M. Holloway, Sr. Memorial

Scholarship is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the Herman M. Holloway, Sr. Memorial Scholarship. It is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022.

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

II. FINDINGS OF FACTS

The Department made a change that was not the result of any written submittals, i.e., adding "Sr." after "Holloway" throughout the proposed regulation. The change was made to be consistent with the title of the program in the statute (14 **Del.C.** §3443). The Department finds that the change is not substantive and, therefore, the Department is not required to repropose the regulation in accordance with 29 **Del.C.** §10118(c).

In addition, the Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 34 and the Herman M. Holloway, Sr. Memorial Scholarship, which is a student financial assistance program that DHEO administers. The Department further finds that House Bill 480 of the 151st General Assembly amended 14 **Del.C.** Ch. 34 and that the proposed regulation, with the additional change, is consistent with the statute that went into effect on August 25, 2022.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1220 Herman M. Holloway, Sr. Memorial Scholarship subject to the State Board of Education's approval. On March 16, 2023, the State Board of Education approved the adoption of 14 **DE Admin. Code** 1220 Herman M. Holloway, Sr. Memorial Scholarship. Therefore, pursuant to 14 **Del.C.** §§ 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3443, 14 **DE Admin. Code** 1220 Herman M. Holloway, Sr. Memorial Scholarship, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1220 Herman M. Holloway, Sr. Memorial Scholarship adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1220 Herman M. Holloway, Sr. Memorial Scholarship in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 16th day of March, 2023.

Department of Education

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

Approved this 16th day of March, 2023.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

/s/ Wali W. Rushdan, II

/s/ Candice Fifer

/s/ Deborah Stevens

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

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

1220 Herman M. [Holloway Holloway, Sr.] Memorial Scholarship**1.0 Purpose**

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the Herman M. [Holloway Holloway, Sr.] Memorial Scholarship pursuant to 14 **Del.C.** §3443.

2.0 Definitions

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

"Award" means a scholarship awarded under the Herman M. [Holloway Holloway, Sr.] Memorial Scholarship Program.

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

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

"Full-Time Student" means a student enrolled in a minimum of college credit hours as required by the student's college or university for full-time status. Generally, for an undergraduate program, this is a minimum of 12 credit hours per term.

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

3.0 Eligibility

3.1 In order to be eligible for an Award under the Herman M. [Holloway Holloway, Sr.] Memorial Scholarship Program, an applicant shall meet the requirements of subsections 3.1.1 through 3.1.3.

3.1.1 The applicant shall be a graduating high school senior who received an offer of admission from the Delaware State University.

3.1.2 The applicant will enroll as a first-time, Full-Time undergraduate student in the Delaware State University for the following school year.

3.1.3 The applicant must meet the definition of residency as defined in 14 **Del.C.** §3402(f).

4.0 Application Requirements

4.1 The application acceptance and submission period for the Herman M. [Holloway Holloway, Sr.] Memorial Scholarship shall be posted on the DHEO's website by December 1 of each calendar year.

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

4.1.2 Incomplete applications shall not be accepted or processed.

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

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

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

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

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

5.0 Awards

- 5.1 One scholarship will be awarded each year to an applicant who meets the requirements of Section 3.0 of this regulation based on the applicant's academic achievement, community service, participation in extracurricular activities, and promise of academic success in college. If several applicants are determined to be equally qualified for an Award, DHEO will consider their financial need.
- 5.2 To determine an applicant's financial need for the purpose of the Herman M. ~~Holloway~~ Holloway, Sr.] Memorial Scholarship, DHEO will consider the applicant's EFC; the expense of attending the Delaware State University; and the applicant's eligibility for Pell grants and other federal, state, or private grant assistance. For the purpose of this regulation, EFC means the Expected Family Contribution, which is the number that is calculated using the financial information an applicant provides on the applicant's Free Application for Federal Student Aid (FAFSA) to determine the applicant's eligibility for federal student aid.
- 5.3 An Award shall be used for, and not in excess of, tuition, required fees, room, board, and books at the Delaware State University.
- 5.4 An Award is renewable within the limits of the appropriations for the Herman M. ~~Holloway~~ Holloway, Sr.] Memorial Scholarship Program.
- 5.5 To be eligible to renew an Award, a student shall update the student's enrollment information on the Student Account Access Site; meet the academic progress standards set by DHEO and communicated in writing to the student at the time the initial Award is granted; and continue to be enrolled full-time at the Delaware State University, successfully completing coursework according to the standards of the Delaware State University, and eligible to continue to receive financial aid.
- 5.6 A student shall not receive more than 4 annual Awards.

6.0 Award Payment

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3447 (14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), 3440, 3441, & 3447)

ORDER

1221 Charles L. "Chuck" Hebner Scholarship

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3447, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14 DE Admin. Code 1221 Charles L. "Chuck" Hebner Scholarship. The Charles L. "Chuck" Hebner Scholarship is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the Charles L. "Chuck" Hebner Scholarship. The proposed regulation is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022.

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

II. FINDINGS OF FACTS

FINAL REGULATIONS

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 34 and the Charles L. "Chuck" Hebner Scholarship, which is a student financial assistance program that DHEO administers. In addition, the Department finds that House Bill 480 of the 151st General Assembly amended 14 **Del.C.** Ch. 34 and that the proposed regulation is consistent with the statute that went into effect on August 25, 2022.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1221 Charles L. "Chuck" Hebner Scholarship subject to the State Board of Education's approval. On March 16, 2023, the State Board of Education approved the adoption of 14 **DE Admin. Code** 1221 Charles L. "Chuck" Hebner Scholarship. Therefore, pursuant to 14 **Del.C.** §§ 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3447, 14 DE Admin. Code 1221 Charles L. "Chuck" Hebner Scholarship, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1221 Charles L. "Chuck" Hebner Scholarship adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1221 Charles L. "Chuck" Hebner Scholarship in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 16th day of March, 2023.

Department of Education

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

Approved this 16th day of March, 2023.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

/s/ Wali W. Rushdan, II

/s/ Candice Fifer

/s/ Deborah Stevens

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

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

1221 Charles L. "Chuck" Hebner Scholarship

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the Charles L. "Chuck" Hebner Scholarship pursuant to 14 **Del.C.** §3447.

2.0 Definitions

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

"Award" means a scholarship awarded under the Charles L. "Chuck" Hebner Scholarship Program.

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

"Full-Time Student" means a student enrolled in a minimum of college credit hours as required by the student's college or university for full-time status. Generally, for an undergraduate program, this is a minimum of 12 credit hours per term.

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

3.0 Eligibility

- 3.1 In order to be eligible for an Award under the Charles L. "Chuck" Hebner Scholarship Program, an applicant shall meet the requirements of subsections 3.1.1 through 3.1.3.
 - 3.1.1 The applicant shall be a graduating high school senior.
 - 3.1.2 The applicant will enroll as a first-time, Full-Time undergraduate student at a degree-granting college for the following school year.
 - 3.1.3 The applicant must meet the definition of residency as defined in 14 Del.C. §3402(f).

4.0 Application Requirements

- 4.1 The application acceptance and submission period for the Charles L. "Chuck" Hebner Scholarship shall be posted on the DHEO's website by December 1 of each calendar year.
 - 4.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
 - 4.1.2 Incomplete applications shall not be accepted or processed.
- 4.2 In order for an application to be considered complete, an applicant shall complete an online application through the Student Account Access Site by the last date of the application acceptance period.
 - 4.2.1 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.
 - 4.2.2 A first time applicant must establish an account and provide the applicant's valid email address and permanent mailing address before being permitted to submit the information required in subsection 4.2 of this regulation.

5.0 Awards

- 5.1 DHEO determines the number and amount of Awards to be given annually. The number and amount of Awards each year will vary and is based on and subject to the General Assembly appropriating funds for the Charles L. "Chuck" Hebner Scholarship. Scholarships will be awarded to applicants who meet the requirements of Section 3.0 of this regulation based on the applicant's academic achievement, community service, participation in extracurricular activities, and promise of academic success in college.
- 5.2 An Award shall be used for, and not in excess of, tuition, mandatory fees, room, board, and other direct and indirect educational expenses at the applicant's college.
- 5.3 An Award is renewable within the limits of the appropriations for the Charles L. "Chuck" Hebner Scholarship Program.
- 5.4 To be eligible to renew an Award, a student shall update the student's enrollment information on the Student Account Access Site; meet the academic progress standards set by DHEO and communicated in writing to the student at the time the initial Award is granted; and continue to be enrolled full-time at the student's college, successfully completing coursework according to the standards of the student's college, and eligible to continue to receive financial aid.
- 5.5 A student shall not receive more than 4 annual Awards.

6.0 Award Payment

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCEStatutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**ORDER****Medicaid and CHIP coverage of COVID-19 Treatment, Vaccines, & Testing**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Medicaid and CHIP coverage of COVID-19 Treatment, Vaccines, & Testing. Specifically, to assure coverage of COVID-19 treatment, vaccines, vaccine administration, vaccine counseling, and testing consistent with the Centers for Disease Control and Prevention (CDC) definitions of screening, testing, and diagnosis for COVID-19 and its recommendations for who should receive diagnostic and screening tests for COVID-19 with no cost sharing for Medicaid and CHIP plans. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and Title XXI CHIP State Plan regarding the coverage of COVID-19 treatment, vaccines, & testing. Specifically, to assure coverage of COVID-19 treatment, vaccines, vaccine administration, vaccine counseling, and testing consistent with the Centers for Disease Control and Prevention (CDC) definitions of screening, testing, and diagnosis for COVID-19 and its recommendations for who should receive diagnostic and screening tests for COVID-19 with no cost sharing for Medicaid and CHIP plans.

Background

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Social Security Act (Act). On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

CMS has issued subsequent guidance that required states to assure coverage of COVID-19 testing, vaccines, vaccine administration, and vaccine counseling without cost sharing. CMS also issued guidance that required states to assure coverage of COVID-19 treatment, including specialized equipment and therapies (including preventive therapies). Delaware has been compliant with this requirement for the duration of the PHE and is publishing these pages to attest to this assurance.

Statutory Authority

American Rescue Plan Act of 2021

Section 1135(b)(1)(C) and section 1135(b)(5) of the Social Security Act

Purpose

The purpose of this proposed regulation is to amend Delaware's Medicaid State Plan by modifying language on Attachment 7.7-A Pages 1-3, Attachment 7.7-B Pages 1-3, and Attachment 7.7-C Pages 1-3. Also, the Delaware Health Children's Program State Plan will be amended by modifying language in Sections 1.4 and 6.2.27.

Summary of Proposed Changes

Effective March 11, 2021, Delaware's State Plan will be amended by modifying language on Attachment 7.7-A Pages 1-3 regarding COVID-19 vaccines, vaccine administration, and vaccine counseling; Attachment 7.7-B Pages 1-3 regarding COVID-19 testing; and Attachment 7.7-C Pages 1-3 regarding COVID-19 treatment. The Delaware Health Children's Program State Plan will be amended by modifying language in Sections 1.4 and 6.2.27 regarding COVID-19 testing, vaccines, and treatment for CHIP plans.

Effective on and after April 1, 2021, Delaware's State Plan will be amended by modifying language in Section 7.7-A Page 3, regarding rates for any medically necessary stand-alone COVID-19 vaccine counseling.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 2023.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

	Federal Fiscal Year 2022	Federal Fiscal Year 2023
Federal funds	\$ 8,206,000	\$ 7,584,000
General (State) funds	\$ 4,633,000	\$ 5,383,000

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) supports the proposed amendment.

Agency Response: DMMA appreciates your support.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Medicaid and CHIP coverage of COVID-19 Treatment, Vaccines, & Testing Provisions is adopted, specifically, to assure coverage of COVID-19 treatment, vaccines, vaccine administration, vaccine counseling, and testing consistent with the Centers for Disease Control and Prevention (CDC) definitions of screening, testing, and diagnosis for COVID-19 and its recommendations for who should receive diagnostic and screening tests for COVID-19 with no cost sharing for Medicaid and CHIP plans and shall be final effective May 11, 2023.

3/29/23

Date of Signature

Molly Magarik, Secretary, DHSS

Medicaid and CHIP coverage of COVID-19 Treatment, Vaccines, & Testing

***Please Note: Due to the formatting requirements of the regulation, it is being attached here as a series of PDF documents:**

<http://regulations.delaware.gov/register/may2023/final/Attachment 7.7-A Amended.pdf>

<http://regulations.delaware.gov/register/may2023/final/Attachment 7.7-B Amended.pdf>

<http://regulations.delaware.gov/register/may2023/final/Attachment 7.7-C Amended.pdf>

<http://regulations.delaware.gov/register/may2023/final/CHIP COVID coverage Amended.pdf>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 14920 and 15200

ORDER

Retroactive Coverage

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Retroactive Coverage, specifically, to revise policy incorporating retroactive eligibility changes to align with current policy. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the March 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2022, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this proposed regulation is to amend the Division of Social Services Manual (DSSM) regarding Retroactive Coverage, specifically, to revise policy incorporating retroactive eligibility changes to align with current policy.

Background

Federal regulation requires states to provide three months of retroactive eligibility for Medicaid, if an individual received covered services and would have been eligible at the time the service was provided.

On July 31, 2019, the Centers for Medicare & Medicaid Services (CMS) approved Delaware's request for extension and amendment of its Medicaid demonstration project, entitled "Diamond State Health Plan," to grant beneficiaries eligibility beginning the month they submit an application and to waive the three-month retroactive eligibility period.

As a result of the approval of the Medicaid 1115 Waiver, retroactive coverage is potentially available (if general financial and technical eligibility requirements are met) to the following groups: Pregnant women (including during the 60-day postpartum period beginning on the last day of pregnancy); Infants under age 1; and Individuals under age 19 (listed separately from the group above due to different income limits).

Individuals eligible under the Delaware Healthy Children's Program (DHCP) are not eligible for retroactive Medicaid.

Statutory Authority

42 CFR 435.915

Purpose

The purpose of this proposed regulation is to revise policy, incorporating retroactive eligibility changes.

Summary of Proposed Changes

Effective for services provided on and after January 1, 2022, DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM) regarding Retroactive Coverage, specifically, to revise policy incorporating retroactive eligibility changes to align with current policy.

Public Notice

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

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

	Federal Fiscal Year 2023	Federal Fiscal Year 2024
Federal funds	\$31,746	\$33,746
General (State) funds	\$23,254	\$24,733

Summary of Comments Received with Agency Response and Explanation of Changes

There were no public comments received.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2022 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the Retroactive Coverage is adopted and shall be final effective May 11, 2023.

3/29/23

Date of Signature

Molly Magarik, Secretary, DHSS

14000 Medicaid General Eligibility Requirements**14920 Retroactive Coverage**

The agency must make eligibility for Medicaid effective no later than the third month before the month of application if the individual:

~~received~~ Received Medicaid services, at any time during that period, of a type covered under the plan; and ~~would~~ Would have been eligible for Medicaid in one of the below retroactive eligibility groups at the time ~~he~~ the individual received the services if ~~he~~ the individual had applied (or someone had applied ~~for him, on their behalf~~) regardless of whether the individual is alive when application for Medicaid is ~~made~~; made; and

Is eligible under one of the below eligibility groups at the time of application for Medicaid.

Individuals eligible under the Delaware Healthy Children's Program (DHCP) are not eligible for retroactive Medicaid.

Effective April 1, 2012, those that may be found eligible for retroactive Medicaid coverage include:

- a. Individuals entitled to or eligible for a Medicare Savings Program (excluding QMB);
- b. Individuals residing in a nursing facility;
- c. Individuals residing in an intermediate care facility for ~~the developmentally disabled (ICF/MR)~~ individuals with intellectual disabilities (ICF/IID) or for individuals with mental disease (ICF/IMD);
- d. Individuals in need of only the 30-day Acute Care Hospital Program (in no case should the effective date be earlier than the first day of hospitalization);
- e. Women eligible under the Breast and Cervical Cancer Treatment Group;
- f. Individuals eligible under the Medicaid for Worker's with Disabilities Group (provided premium requirements are met).

Effective August 1, 2019, those that may be found eligible for retroactive Medicaid coverage include:

- a. Pregnant and Postpartum Women.
- b. Infants under age 1
- c. Individuals under the age of 19.

Example 1: A woman (over the age of 19) applies for Medicaid March 1, 2020 and requests retroactive Medicaid for the previous three months (February, January and December). She had a baby on December 10, 2020 so she was in her postpartum period through February 2020. She is not eligible for retroactive Medicaid because she does not qualify for and is not receiving Medicaid in any of the retroactive eligibility groups listed above at the time of her application.

Example 2: An individual applies for Medicaid on February 2, 2020 and requests retroactive Medicaid. The individual turned 20 years old on January 31, 2020 and was 19 years old during the three-month

retroactive Medicaid period. This individual is not eligible for retroactive Medicaid because at the time of application the individual was not in or eligible for one of the above retroactive Medicaid eligibility groups.

Example 3: A woman applies for Medicaid on March 10, 2020 during her post-partum period. She had her baby on February 5, 2020. As long as she meets all financial and technical eligibility requirements for one of the retroactive Medicaid eligibility groups listed above at the time of application and during the three (3) months immediately preceding the month of application, she is eligible for retroactive Medicaid coverage for December 2019, January 2020, and February 2020.

14920.1 Retroactive Coverage Limitations

~~Effective January 1, 1996, retroactive Medicaid coverage is NOT available to any individual who, in the month of application, is eligible for enrollment under the *Diamond State Health Plan* or *Diamond State Partners*.~~

~~Effective April 1, 2012, retroactive Medicaid coverage is not available to most individuals who, in the month of application, are eligible for enrollment under the *Diamond State Health Plan Plus*.~~

Effective August 1, 2019 retroactive Medicaid coverage is available to some individuals who are eligible for enrollment under the *Diamond State Health Plan* or the *Diamond State Health Plan Plus*.

See DSSM 14920 for eligibility groups that may be found eligible for retroactive Medicaid coverage.

See 14920.1 Retroactive Coverage Limitations - History

14920.2 Retroactive Coverage Of ~~Unpaid~~ **Medical Bills**

~~Individuals or families who apply for MAO (Medical Assistance Only), TANF/AFDC, GA, or SSI Medicaid and who are excluded from the *Diamond State Health Plan* or *Diamond State Partners* may be eligible for *Diamond State Health Plan* or the *Diamond State Health Plan Plus* may be eligible for retroactive Medicaid coverage of any unpaid medical bills incurred in any of the three months prior to the month in which they applied. However, certain requirements must be met in order for these bills to be paid under Medicaid.~~

a. ~~The client must have been eligible in all respects for MAO, TANF/AFDC, GA, or SSI Medicaid in one of the retroactive eligibility categories in the month(s) that the medical services were received (including Delaware residency).~~

b. The medical bill must be for a service covered by Medicaid.

c. The client did not have any third party coverage that would have been responsible for paying the bill.

d. The medical service must have been given by a provider who was a participant in the Delaware Medicaid program at the time of service. If the provider was not enrolled at the time of the service, the provider may enroll retroactively (up to 12 months).

14920.3 Retroactive Coverage Time Limits

~~There is no time limitation on requests for retroactive coverage. They may be processed at any time. Individuals who are eligible to enroll in *Diamond State Health Plan* or *Diamond State Partners* in the month of application, will never be eligible for the 3-month retroactive time period prior to that application.~~

14920.4 Retroactive Application Process

Requests for retroactive Medicaid are received in various ways as described below:

a. Applicants indicate on the application that they have unpaid medical bills in the three months prior to the month of application.

b. Many requests are received over the telephone from clients who have an unpaid bill.

c. The Medicaid units receive lists from various medical providers such as Division of Public Health, and the school districts requesting assistance with the resolution of an unpaid bill for a Medicaid client.

d. The SSI Medicaid Unit receives data from the Social Security Administration via the SDX regarding individuals who need retroactive coverage.

14920.5 Retroactive Eligibility Determination

~~If the client is potentially eligible for or enrolled in the *Diamond State Health Plan* or *Diamond State Partners*, the worker will not do an eligibility determination.~~

If the individual is determined to be eligible for retroactive coverage, the worker must ~~determine~~ confirm that the date of service of the individual's medical bill(s) falls within the three months prior to the month of application and that the individual meets the financial and technical eligibility requirements under MAO, TANF/AFDC, SSI, or GA. ~~The individual does not have to meet the TANF/AFDC requirement to cooperate with child support Medicaid in one of the programs eligible for retroactive coverage.~~ Retroactive coverage for Children's Community Alternative Disability Program must be approved by the Medical Review Team. Verify income or resources ~~on DCIS through ASSIST Worker Web (AWW) or other available electronic data sources,~~ if available. If information is not ~~on DCIS in AWW or available through other electronic data sources,~~ accept the individual's declaration on the application and obtain post-eligibility verification in accordance with DSSM 14800.

Obtain information about third party liability information and forward to the TPL Unit.

A notice of Retroactive Medicaid Approval or Denial will be used to inform the client of the agency's disposition of the request for retroactive coverage. The client should be aware that even those bills submitted for payment may not be reimbursed by Medicaid (i.e., service not covered by Medicaid, non-participating provider, etc.).

14920.6 Retroactive Eligibility For Newborns

A baby born to a woman eligible for and receiving Medicaid on the date of the child's birth is deemed to have filed an application. Also, a mother ~~(who is excluded from *Diamond State Health Plan* or *Diamond State Partners*)~~ can apply after a child is born and we will determine her eligibility for three month retroactive coverage. If the mother is determined retroactively eligible ~~in a month prior to the birth (still pregnant), or in the month of birth during her pregnancy or post-partum period,~~ the infant is deemed eligible at birth and remains eligible for 1 year.

~~NOTE: Remember that retroactive coverage is only available to individuals excluded from managed care. A woman who is eligible for enrollment in the *Diamond State Health Plan* or *Diamond State Partners* cannot apply after the month of birth and be determined retroactively eligible. In this case, there is no deemed newborn eligibility and a separate determination of eligibility must be made for the baby.~~

15000 Family and Community Medicaid Eligibility Groups

15200 Pregnant Woman Group

The section describes the eligibility requirements for the Pregnant Woman Group.

15200.1 Definitions

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

“**Pregnant Woman**” means a woman during pregnancy and the post partum period, which begins on the date the pregnancy ends, extends 60 days, and then ends on the last day of the month in which the 60-day period ends.

15200.2 Pregnant Woman Group General Eligibility Requirements

A pregnant woman must meet the general eligibility requirements described in Section 14000. Exception: A pregnant woman is not required to cooperate in establishing paternity and obtaining medical support.

15200.3 Technical Eligibility

~~A pregnant woman must may apply in the month of birth or in a month prior to the month of birth (while still pregnant) to be found eligible for Medicaid at any time during her pregnancy or 60 day postpartum period, as~~

defined under 15200.6 Postpartum Period.

Self-attestation of pregnancy and the unborn fetus count is accepted unless the information provided is not reasonably compatible with other available information. Other available information may include medical claims that are not reasonably compatible with such attestation.

15200.4 Financial Eligibility

Financial eligibility is determined using the modified adjusted gross income (MAGI) methodologies described in Section 16000. The pregnant woman counts as at least two family members for the financial eligibility determination. If a pregnant woman is diagnosed with a multiple pregnancy, the unborn fetus count is increased accordingly.

Household income must not exceed 212% of the Federal Poverty Level (FPL).

15200.5 Continuous Eligibility

Once a pregnant woman is determined eligible, she remains eligible throughout the pregnancy and the postpartum period regardless of changes in household income.

15200.6 Postpartum Period

~~The 60-day postpartum period is a mandatory extension of coverage for women who were determined eligible in the month of birth or in a month prior to the month of birth (while still pregnant). A woman cannot apply and be found eligible for the postpartum period alone. Coverage begins on the day the pregnancy ends and continues through the last day of the month in which the 60 days end.~~

The 60-day postpartum period is a mandatory extension of coverage for women who were determined eligible under the pregnancy eligibility category. A woman applying in her postpartum period could be determined eligible using the eligibility criteria applicable to postpartum coverage (pregnant woman group), even if she was not open in the pregnant woman group at the time of the birth of her child.

Undocumented aliens are not eligible for the postpartum period.

15210 Deemed Newborn Group

The section describes the eligibility requirements for the Deemed Newborn Group.

An infant born to a woman eligible for and receiving Delaware Medicaid (including emergency services and labor and delivery only coverage) on the date of the infant's birth is deemed eligible at birth.

15210.1 Deemed Newborn Group General Eligibility Requirements

An infant must meet the general eligibility requirements described in Section 14000.

Exceptions: An application for the newborn is not required. A newborn deemed eligible does not have to provide or apply for a Social Security number until age one.

15210.2 Financial Eligibility

There is no income test. Eligibility begins on the date of birth and continues until the end of the month in which the infant turns age one regardless of changes in income. The newborn's eligibility is not dependent on the continuation of the mother's eligibility for Medicaid.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

16 DE Admin. Code 20700

ORDER

Daily Living Needs

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated

proceedings to amend the Division of Social Services Manual (DSSM) 20720.1 regarding the Daily Living Needs Calculations, specifically, to clarify policy and procedures. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 20720.1 regarding the Daily Living Needs Calculations, specifically, to clarify policy and procedures.

Background

The Division of Medicaid and Medical Assistance (DMMA) must reduce its payment for home and community-based services (HCBS) provided to an individual by the amount that remains after the application of certain deductions from the individual's income. The daily living needs deduction is applicable to individuals receiving HCBS through either the Long-Term Care Community Services (LTCCCS) Program or the Division of Developmental Disabilities Services (DDDS) Lifespan Waiver. The amount of the daily living needs deduction varies by program and setting. DMMA wishes to revise existing language regarding the application of the daily living needs deduction for clarity and consistency.

Statutory Authority

Social Security Act §1915(c), Home and community-based services
Social Security Act §1115, Demonstration projects
42 CFR §435.217, Individuals receiving home and community-based services

Purpose

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is to amend the Division of Social Services Manual (DSSM) 20720.1 regarding the Daily Living Needs Calculations, specifically, to clarify policy and procedures.

Summary of Proposed Changes

Effective for services provided on and after July 1, 2017, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) is to amend the Delaware Social Services Manual (DSSM) to clarify internal policy and procedures regarding the Daily Living Needs Calculations.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on March 31, 2023.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing

guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: The State Council for Persons with Disabilities (SCPD) endorses this amendment but asks that DMMA clean up the ambiguity created by the language regarding wages being totally protected.

Agency Response: DMMA appreciates the submission of comments regarding this regulation. DMMA has reviewed these comments and has determined that the proposed DMMA regulation, 26 DE Register of Regulation, 754 is not a change to the Daily Needs Allowance procedure, but rather a clarification of the existing policy.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- State Council for Persons with Disabilities (SCPD)

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware State Service Manual (DSSM) 20720.1 regarding Daily Living Needs Provisions is adopted, specifically, to clarify internal policy and procedures and shall be final effective May 11, 2023.

4/12/2023

Date of Signature

Molly Magarik, Secretary, DHSS

20000 Medicaid Long Term Care

20700 Home and Community Based Services

20720.1 Daily Living Needs

Individuals receiving Medicaid under the Division of Developmental Disabilities Services (DDDS) Lifespan Waiver who receive Residential Habilitation services are allowed a deduction equal to the current Adult Foster Care (AFC) rate. The AFC rate is based on the current SSI income level plus the Optional State Supplement amount.

Individuals receiving Medicaid under the ~~Long-Term~~ Long-Term Care Community Services (LTCCS) program and ~~are~~ residing in an Assisted Living Facility are given a deduction based on the Adult Foster Care rate less an amount payable for room and board.

Individuals receiving Medicaid under the DDDS Lifespan Waiver who do not receive a residential habilitation service and individuals receiving Medicaid under the LTCCS program (excluding those residing in an Assisted Living Facility) are allowed ~~an amount a~~ a deduction equal to their total income, including income that is placed in a Miller Trust. All earned income in the form of wages shall be allowed to be protected.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Case Management of High-Risk Pregnant Women

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan to remove case management of high-risk pregnant women service as an option from the Delaware Medicaid State Plan. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del.C. §10114 and its authority as prescribed by 31 Del.C. §512.

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

SUMMARY OF PROPOSAL

Effective for services provided on and after January 1, 2023, DHSS/DMMA is to amend XIX Medicaid State Plan to remove case management of high-risk pregnant women as an option from the Delaware Medicaid State Plan.

Background

There is growing evidence that increased stress from social factors such as food insecurity, as well as poverty and social exclusion, can have a major impact on health and can lead to premature death as well as poor birth outcomes for pregnant women and infants. As DMMA's mission is to "Improve health outcomes by ensuring that the highest quality medical services are provided to the vulnerable populations of Delaware in the most cost-effective manner," addressing social factors and ensuring our most vulnerable populations receive the most effective health care coverage has become imperative to improving health outcomes.

DMMA has provided case management of high-risk pregnant women as an optional Medicaid State Plan service since 1987. Since that time, many evidenced-based home visiting models for pregnant and post-partum women have been developed, researched, and proven effective in improving maternal and child health outcomes. Therefore, effective for services provided on January 1, 2023, DMMA has amended its Diamond State Health Plan (DSHP) 1115 Waiver to include 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 the Nurse Family Partnership and Healthy Families of Delaware, and therefore, the optional state plan service will be sunset.

Statutory Authority

1902(a)(23) of the Social Security Act
42 CFR 440.169 -- Case management services
Social Security Act §1115, *Demonstration projects*

Purpose

The purpose of this notice is to remove the optional service, case management of high-risk pregnant women, from the Delaware Medicaid State Plan as these services will now be provided via an evidence-based home visiting model under 1115 Waiver authority.

Public Notice

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

4:30 p.m. on March 31, 2023.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan to remove case management of high-risk pregnant women service as an option from the Delaware Medicaid State Plan, is adopted and shall be final effective May 11, 2023.

4/12/2023

Date of Signature

Molly Magarik, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the March 2023 issue of the *Register* at page 752 (26 DE Reg. 752). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/may2023/final/26 DE Reg 960 05-01-23.htm>

DIVISION OF SOCIAL SERVICES

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

ORDER

Defining Relative In-Home Child Care

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend Division of Social Services Manual (DSSM) regarding, Defining Relative In-Home Child Care, specifically, to define and explain the requirements for a relative to provide childcare services in the child's home.

The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the May 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2022, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after July 11, 2022, the 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 childcare services in the child's home.

Statutory Authority

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

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 childcare services in a child's home. The revised policy limits in-home childcare to DSS-approved Relative Care providers.

Purpose

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

Public Notice

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

Fiscal Impact Statement

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

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) would like to reiterate concerns that were shared when the regulations were revised in 2018 and request information on why the regulations only apply to families with at least four children.

Agency Response: DSS appreciates your observations and recommendations regarding the proposed policy. The proposed policy is being amended to clearly define relative in-home care.

Families requesting "special needs" for their children are reviewed on a case-by-case basis. When all eligibility requirements are met, the relative may care for the child outside of the non-traditional hours as notated in policy. DSS is aware that many families have "special needs". DSS prides itself on determining eligibility on a case-by-case basis for these families, and children with disabilities are no exception. For their safety and well-being, children with "special needs" will continue to be determined eligible on a case-by-case basis. DSS will amend the language in this policy and policy 11006.7 Determining Relative Child Care to reflect the fact that "special needs" children are determined eligible on a case-by-case basis.

DSS policy 11003.5 regarding in-home care has been revised to address your concerns and is being submitted for final publication. The policy will now allow a provider to care for a minimum of one child and a maximum of five children in the child's home. Again, DSS will determine eligibility for "special needs" or other extenuating circumstances on a case-by-case basis.

Comment: The State Council for Persons with Disabilities (SCPD) has reviewed the proposed revisions. Of significant concern to SCPD is that DSS appears to be restating the provisions limiting Relative In-Home Care to families with four or more children and eliminating the "last resort" exception to the role for special needs children when other childcare cannot be found.

Agency Response: DSS appreciates your observations and recommendations regarding the proposed policy. The proposed policy is being amended to clearly define relative in-home care.

Families requesting "special needs" for their children are reviewed on a case-by-case basis. When all eligibility requirements are met, the relative may care for the child outside of the non-traditional hours as notated in policy. DSS is aware that many families have "special needs". DSS prides itself on determining eligibility on a case-by-case basis for these families, and children with disabilities are no exception. For their safety and well-being, children with "special needs" will continue to be determined eligible on a case-by-case basis. DSS will amend the language in this policy and policy 11006.7 Determining Relative Child Care to reflect the fact that "special needs" children are determined eligible on a case-by-case basis.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

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

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the *May 2022 Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding Defining Relative In-Home Child Care, specifically, to define and explain the requirements for a relative to provide childcare services in the child's home, is adopted and shall be final effective May 11, 2023.

3/29/23

Date of Signature

Molly Magarik, Secretary, DHSS

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~~ **one child** in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
 - 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.
 - [i. Children with "special needs" as defined in DSSM 11003.7.8 and newborns will be reviewed on a case-by-case basis for exemption to the non-traditional hours requirement.]**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 3008

ORDER

TANF Family Cap

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend Division of Social Services Manual (DSSM) regarding the TANF Family Cap, specifically, to provide additional financial assistance to applicable TANF recipients. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del.C. §10114 and its authority as prescribed by 31 Del.C. §512.

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

SUMMARY OF PROPOSAL

Effective for services provided on and after May 1, 2023 the Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) section 3008.2 regarding the TANF Family Cap.

Statutory Authority

45 CFR 260

Background

Delaware previously imposed a "family cap" on recipients of Temporary Assistance for Needy Families (TANF) to reduce out-of-wedlock pregnancies among recipients. Under the family cap rule, a household will receive no additional TANF cash benefits if the household size increases due to the birth of a child that occurs more than ten months after the date of application for TANF, with some exceptions. This means that some households receive less in TANF cash benefits than they would have in the absence of Delaware's family cap policy.

Current research has found the family cap rule has the potential to drive children and families deeper into poverty with little evidence that the rule affects the birthrate for TANF recipients. Family cap rules are also likelier to increase financial hardship for children and families of color.

Delaware is proposing to repeal the family cap policy to help reduce childhood poverty and support families as they work toward achieving financial stability. As a result of this policy amendment, children who were previously family capped will receive monthly TANF benefits which will increase their family's benefit amount. This change will provide additional financial assistance to approximately 155 Delaware families.

Purpose

The purpose of this proposed regulation is to change the Delaware Social Services Manual (DSSM) 3008.2 to provide additional financial assistance to applicable TANF recipients.

Public Notice

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

Fiscal Impact Statement

	Federal Fiscal Year 2023	Federal Fiscal Year 2024
Federal funds	\$ 0	\$ 0
General (State) funds	\$ 201,000	\$ 205,020

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: There were 6 endorsements of the regulation.

Agency Response: DSS thanks you for your support.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- State Council for Persons with Disabilities (SCPD)
- Governor's Advisory Council for Exceptional Citizens (GACEC)
- COMMUNITY LEGAL AID SOCIETY, INC. ("CLASI")
- Delaware Coalition Against Domestic Violence
- Delaware NOW
- American Civil Liberties Union Foundation Delaware (ACLU of Delaware)

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend DSSM 3008.2 regarding TANF Family Cap, specifically, to provide additional financial assistance to applicable TANF recipients, is adopted and shall be final effective May 11, 2023.

4/12/2023

Date of Signature

Molly Magarik, Secretary, DHSS

3008 Eligibility of Certain Minors

~~3008.2 Family Cap~~

~~Required Individuals:~~

~~No additional TANF cash benefits will be issued due to the birth of a child, if the birth occurs more than ten (10) calendar months after:~~

- ~~• the date of application for TANF; or~~
- ~~• for active cases, the date of the first redetermination after October 1, 1995.~~

~~While no additional TANF cash benefits will be issued for the child(ren), the child(ren) will be considered a TANF recipient for all other purposes, including Medicaid coverage, Welfare Reform child care, other supportive services and food stamp benefits.~~

~~NOTE: Children born prior to the periods identified above who return or enter the household are not included in this restriction.~~

~~Exceptions~~

~~The family cap restrictions will not apply in the following cases:~~

- ~~• to an additional child conceived as a result of incest or sexual assault; or~~
- ~~• to a child who does not reside with his or her parent; or~~
- ~~• to a child that was conceived in a month the assistance unit (i.e., the entire family) was not receiving TANF. This does not apply in cases that close due to being sanctioned.~~

~~Determining financial eligibility and grant amounts for an assistance unit which contains child(ren) affected by the family cap provision.~~

~~The child(ren) is/are included when determining the assistance unit's need for assistance. The child(ren)'s income and resources is/are included when determining the assistance unit's income and resources. The child(ren) is/are not included when determining the payment standard for the assistance unit.~~

~~See 3022 Ineligibility Due to Family Cap~~

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS Industrial Accident Board

Statutory Authority: 19 Delaware Code, Sections 105 and 2301A (19 Del.C. §§105 & 2301A)
19 DE Admin. Code 1331

ORDER

1331 Industrial Accident Board Regulations

SUMMARY OF THE EVIDENCE

1. Title 19, Sections 105 and 2301A of the Delaware Code authorize the Industrial Accident Board ("Board") to establish regulations in relation to the administration and enforcement of the Workers' Compensation Act ("Act") in Delaware.

2. Pursuant to 19 Del. C. §§105 and 2301A, the Board intends to amend 19 DE Admin. C. §1331, Section 9.0, to establish a new electronic format and process for the completion and filing of Pre-Trial Memorandums. When the Department of Labor ("Department") notifies parties of the date and time of the Pre-Trial Conference, the Department will also electronically send a link of the online memorandum form to petitioner's counsel. The parties will then complete their portions of the electronic form and thereafter electronically file with the Board.

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

4. The Board invited a period of 30 days, until January 31, 2023, for written comment from the public.

5. No public comments were received for the proposed changes to this regulation.

6. Having solicited and requested public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., this is the Board's Order adopting the proposed amended regulation as published.

FINDINGS OF FACT

The Board finds that it is necessary to adopt the proposed amended regulation as part of an overall modernization of the hearing process under the Act. The changed regulation will allow for electronic Pre-Trial Memorandum forms for completion and electronic filing.

DECISION AND ORDER TO AMEND THE REGULATION

For the foregoing reasons, the Board concludes that it is appropriate to modify 19 DE Admin. Code §1331, Section 9.0 and therefore the amended regulation as published and in the form attached hereto as Exhibit A shall be adopted in accordance with this Order. The regulation changes will be effective on May 11, 2023 following publication of this Order in the *Delaware Register of Regulations* on May 1, 2023.

IT IS SO ORDERED this 30th day of March, 2023 by the Industrial Accident Board.

Industrial Accident Board

/s/ Mark Murowany, Chair

/s/Vince D'Anna, Member

/s/ Charles Freel, Member

/s/ William F. Hare, Member

/s/ Peter Hartranft, Member

/s/ Valencia Hayes, Member

/s/ Robert Mitchell, Member

/s/ Idel Wilson, Member

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

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

<https://regulations.delaware.gov/register/may2023/final/26 DE Reg 966 05-01-23.htm>

GENERAL NOTICES

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 Del.C. §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 – Edinburgh Villas Subdivisions

April 4, 2023

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 Del. C. §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 Del. C. §4505(c), for the following permanent traffic control device for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on all local streets in the Edinburgh Villas subdivision.

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

DIVISION OF TRANSPORTATION SOLUTIONS
Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Marrows Road (N351)

March 24, 2023

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control device for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on Marrows Road (N351) between SR273 Ogletown Road (N18) and SR4 Chestnut Hill Road (N366)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

GENERAL NOTICES

DIVISION OF TRANSPORTATION SOLUTIONS

Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Old Forge Road (N136760)

March 20, 2023

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control device for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on Old Forge Road (N136760) between Wilton Boulevard (N69) and Appleby Road (N343)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

DIVISION OF TRANSPORTATION SOLUTIONS
Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Penn Acres and Wilmington Manor Gardens Subdivisions

March 28, 2023

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control device for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on all local streets in the Penn Acres and Wilmington Manor Gardens subdivisions.

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

GENERAL NOTICES

DIVISION OF TRANSPORTATION SOLUTIONS

Traffic Operation Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Walther Road (N346)

April 5, 2023

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), notice is hereby given by the Delaware Department of Transportation, Traffic Operation Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following temporary traffic control device for the safe movement of traffic in the area:

"Trailers, semi-trailers, and recreational trailers unattached to a motor vehicle, shall be prohibited from stopping, standing, or parking" on Walther Road (N346) between Old Baltimore Pike (N26) and US40 Pulaski Highway (N32)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag, P.E., PTOE
Chief of Traffic Engineering

DIVISION OF TRANSPORTATION SOLUTIONS
Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Wilton Boulevard (N69)

March 20, 2023

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control device for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on Wilton Boulevard (N69) between US40 Pulaski Highway (N32) and Appleby Road (N343)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

GENERAL NOTICES

LEGISLATIVE COUNCIL DIVISION OF RESEARCH

Statutory Authority: Chapter 217 of Volume 83 of the Laws of Delaware

NOTICE

Effective Date of §914 of Title 29 of the Delaware Code

April 27, 2023

SENT VIA E-MAIL

Yvette Smallwood
Registrar of Regulations
Division of Research
411 Legislative Avenue
Dover, DE 19901

Dear Mrs. Smallwood:

Chapter 217 of Volume 83 of the Laws of Delaware (formerly House Bill No. 130 (151st General Assembly)) enacted § 914 of Title 29 of the Delaware Code. Section 2 of Chapter 217 of Volume 83 of the Laws of Delaware provides that § 914 of Title 29 "takes effect on the date of final passage of an act of the 152nd General Assembly concurring in the amendments to the Delaware Constitution proposed by House Bill No. 130 of the 151st General Assembly". Additionally, Section 2 directs me to provide notice to you when this contingency has been fulfilled and for this notice to be published in the Register of Regulations.

Please accept this letter as notice of all of the following:

- (1) That Senate Bill No. 38 (152nd General Assembly) is the act of the 152nd concurring in the amendments to the Delaware Constitution proposed by House Bill No. 130 of the 151st General Assembly.
- (2) That Senate Bill No. 38 received the constitutionally required vote and passed the Senate on March 15, 2023, and received the constitutionally required vote and passed the House of Representatives on April 25, 2023.
- (3) That the date of final passage of Senate Bill No. 38 is April 25, 2023, and, therefore, § 914 of Title 29 is now effective.

Sincerely,

Mark J. Cutrona
Director
Division of Research

cc: Daniel Wolcott and Jamie Sharp, Delaware Code Revisors

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Wednesday, May 10, 2023 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 registration to speak, 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 in person on Wednesday, June 7, 2023 commencing at 1:00 p.m. at Rutgers University - Camden, Campus Center, 326 Penn Street, Camden, NJ 08102. 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, including links to live streams of these events, please visit the DRBC website at www.drbc.gov or contact Patricia Hausler at patricia.hausler@drbc.gov.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

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

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

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
US Savings Bonds

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 Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 20330.7 regarding US Savings Bonds, specifically, to clarify policy and procedures.

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, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on May 31, 2023. Please identify in the subject line: US Savings Bonds.

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

DIVISION OF 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, 2023, 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).

The proposed regulation published in the February 2023 *Register of Regulations* (26 **DE Reg.** 677 (02/01/23) (Prop.)) is no longer being considered in favor of the amendments presented here pursuant to 29 **Del.C.** §10118(c).

Copies of the proposed regulations are available for review in the May 1, 2023 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

NOTICE OF PUBLIC HEARING

The Division of Public Health will hold a public hearing on Wednesday, May 24, 2023 at 5:00 p.m. The public hearing will be conducted remotely with a physical anchor location for those who wish to attend in person. Details about the physical location, the remote platform, and how to attend will be posted on the State Public Meeting Calendar at the following link:

<https://publicmeetings.delaware.gov/#/meeting/75123>.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Thursday, June 8, 2023, 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

Determining Relative 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 DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on May 31, 2023. Please identify in the subject line: Defining Relative 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 LABOR**DIVISION OF PAID LEAVE****PUBLIC NOTICE****1401 Rules Defining and Regulating the Healthy Delaware Families Act, Family and Medical Leave Insurance Program and the Division of Paid Leave**

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 19 **Del.C.** §105, the Delaware Department of Labor ("Department") proposes to introduce regulations concerning the establishment of the Healthy Delaware Families Act ("Act") and to set forth definitions, guidance, procedures, and standards for the implementation of the Act and its Family and Medical Leave Insurance Program ("PFML"). The Division of Paid Leave ("Division"), a separate division within the Department, is established and will administer the Act, Program, and this regulation.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Christopher Counihan
Division Director, Division of Paid Leave
Delaware Department of Labor
4425 North Market Street, 4th Floor
Wilmington, DE 19802

Comments may also be directed via electronic mail to PFML@Delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the above contact at the Delaware Department of Labor no later than 4:00 p.m. EST, on June 1, 2023. The action concerning determination of whether to adopt the proposed regulations will be based upon consideration of the written comments and any other written materials filed by the public.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION**PUBLIC NOTICE****2500 Board of Pharmacy**

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy ("Board") has proposed revisions to its Rules and Regulations. The new subsection 5.1.5.1 prohibits the delivery of drugs to a patient's residence where such drugs are intended to be later transported to another location for administration and that require special storage, reconstitution or compounding. An exception is made for patients with bleeding disorders. The new subsection 5.1.5.2 prohibits delivery of a patient-specific compounded preparation to a practitioner's office or infusion center unless there is a written agreement between the dispensing pharmacist and the ordering physician or facility.

A public hearing will be held on June 21, 2023 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at sarah.siok@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be July 6, 2023. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
3300 Board of Veterinary Medicine

Pursuant to 24 **Del.C.** §3306(a)(1), the Delaware Board of Veterinary Medicine ("Board") has proposed revisions to its Rules and Regulations. Subsection 6.1.2 addresses requirements for applicants for licensure as veterinarians who did not graduate from an AVMA-accredited veterinary school or college. The proposed amendment adds the Program for the Assessment of Veterinary Education Equivalence ("PAVE") as another method to meet the requirements for licensure.

A public hearing will be held on June 13, 2023 at 1:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at randall.clack@delaware.gov.

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