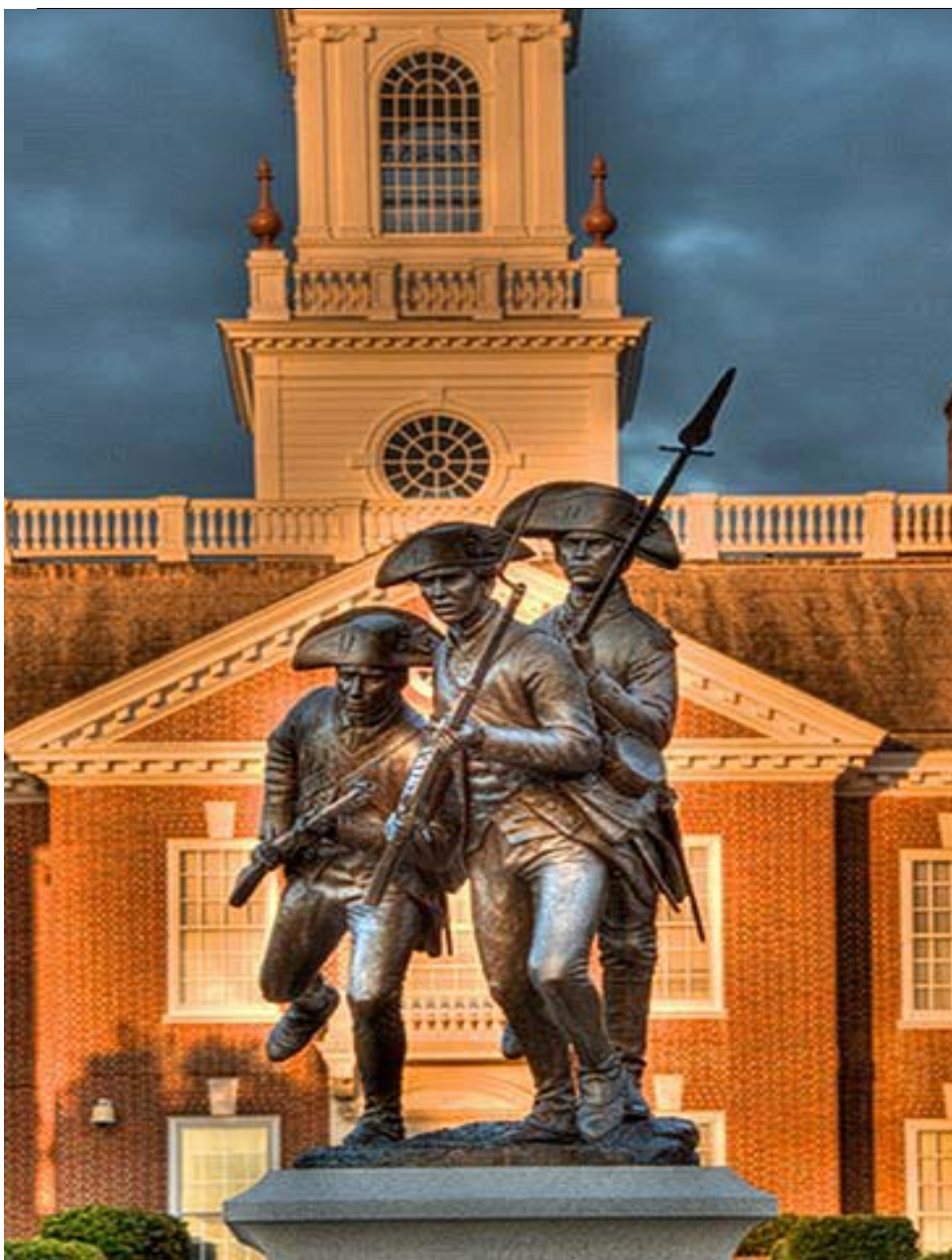

Delaware Register of Regulations

Issue Date: November 1, 2015

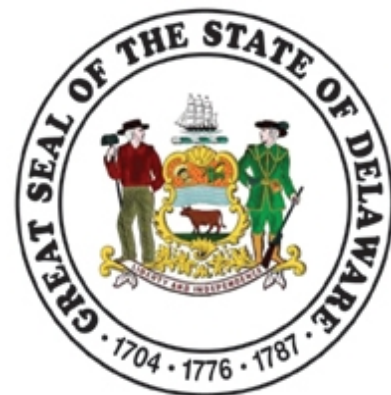
Volume 19 - Issue 5, Pages 345 - 443



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Regulations:
Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before October 15, 2015.

Cover Photo by
Dr. Brian Kutner

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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
December 1	November 16	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 16	4:30 p.m.
April 1	March 15	4:30 p.m.

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Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION**

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

PUBLIC NOTICE**1001 Thoroughbred Racing Rules and Regulations****Summary**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to adopt the ARCI Endogenous, Dietary, or Environmental Substances Schedule. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the **Delaware Code**. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the **Delaware Code**.

Comments

A copy of the proposed regulations is being published in the November 1, 2015 edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs, or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected, or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before December 1, 2015. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after December 1, 2015, following review of the public comment, the Thoroughbred Racing Commission

will determine whether to amend its regulations by adopting the proposed changes to rule 15.1.3.1.3 relating to the ARCI Endogenous, Dietary, or Environmental Substances Schedule or make additional changes because of the public comments received.

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

15.0 Medication; Testing Procedures

15.1 Prohibition and Control of Medication:

(Break in Continuity Within Section)

15.1.3 Foreign Substances:

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

(Break in Continuity Within Section)

- 15.1.3.1.3 A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Association of Racing Commissioners International (ARCI). The Commission hereby adopts by reference the ARCI Controlled Therapeutic Medication Schedule, Version 2.1. The Commission hereby adopts by reference the ARCI Endogenous, Dietary, or Environmental Substances Schedule (Version 3.0, updated July 2015). A substance listed on the ARCI Endogenous, Dietary, or Environmental Substances Schedule shall be permitted up to the threshold established by the ARCI. If there is any inconsistency between the Commission's regulations and the ARCI Controlled Therapeutic Medication Schedule or the ARCI Endogenous, Dietary, or Environmental Substances Schedule, the provisions of the Commission's regulations shall prevail. Androgenic-Anabolic Steroids are subject to the provisions of Rule 15.17.

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

1001 Thoroughbred Racing Rules and Regulations

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 252

PUBLIC NOTICE

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

252 Required Educational Records and Transfer and Maintenance of Educational Records

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Acting Secretary of Education intends to amend 14 DE Admin. Code 252 Required Educational Records and Transfer and Maintenance of Educational Records. This regulation is being amended to clarify the maintenance and transfer of student records as it pertains to private and public schools and educational programs operated by the Department of Services for Children, Youth and Their Families. It also clarifies when the student's

records should be maintained as an original Cumulative Record File and when they are permitted to be copied and transferred.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 7, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the *Register of Regulations* website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to improve student achievement as measured against state achievement standards by clarifying the transfer and maintenance of educational records.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to 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 amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The 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 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 decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
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 amendment 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 not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

252 Required Educational Records and Transfer and Maintenance of Educational Records

1.0 Definitions

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

- “**Court Orders**” shall mean any written direction from a court of competent jurisdiction directed to the student or affecting the student's care or custody.
- “**Delaware School Health Record**” shall mean the form required by 14 DE Admin Code 811 for Delaware public school students.
- “**Discipline Record**” shall mean information about any and all periods of suspension or of expulsion from the regular school setting imposed on a student as a result of an infraction of the school or district's code of conduct or other rules.
- “**Emergency/Nursing Treatment Card**” shall mean the card containing the general emergency information and procedures for the care of a student when the student becomes sick or injured in school as required in 14 DE Admin. Code 811.

“**Identifying Data**” shall mean the name of the student, date of birth, sex, race and ethnicity, address, telephone number, Delaware student identification number and the name of the parent(s), guardian(s) or Relative Caregiver.

“**Progress Report**” shall mean a single record maintained for each student in kindergarten through grade 8 that contains end of year and up to date grades; standardized test(s) scores such as the ~~DSTP~~ or ~~successor~~ state student assessment; and attendance data for each year of the student’s attendance.

“**Student Transcript**” shall mean a single record maintained for each student in grades 9 and above that contains the following: end of year and up to date grades; credits earned; class rank; Grade Point Average (GPA); withdrawal or graduation date; standardized test(s) scores such as the ~~DSTP~~ or ~~successor~~ state student assessment, SAT, PSAT, ACT; attendance data and school activities. If applicable, a list of the career technical competencies achieved by a student enrolled in a specific career technical program shall also be included.

2.0 Education Records Required by Schools in Delaware

- 2.1 Each Delaware school shall maintain a Cumulative Record File either as an electronic or paper file for each student enrolled.
 - 2.1.1 The student Cumulative Record File shall contain the Emergency/Nursing Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above) and Discipline Record.
 - 2.1.2 The student Cumulative Record File shall also contain any Court Orders in the school or district’s possession, ~~to the extent the school or district maintains such documents for an individual student.~~ and;
 - 2.1.3 ~~In addition,~~ The Cumulative Record File for a child with a disability as defined in 14 **DE Admin Code** 925 or for a child identified under Section 504 shall contain any records related to the identification, evaluation, placement, and provision of a free appropriate public education. Such documents may be collected and maintained separately.

3.0 Transfer of the Records of Public School and Private Schools Students

- 3.1 When a student transfers from a public school, private school or an educational program operated by the Department of Services for Children, Youth and Their Families to any other school in Delaware, the receiving school shall immediately request the Cumulative Record File from the sending school or program.
- 3.2 The Cumulative Record File shall follow each student transferred from one school to another including files for each student with disabilities transferred from one school to another.
 - 3.2.1 Public schools, school districts, private schools and educational programs operated by the Department of Services for Children, Youth and Their Families shall promptly transfer a student’s Cumulative Record File upon the request of a receiving school.
 - 3.2.1.1 Public schools and school districts shall maintain the original Cumulative Record File and provide a copy of the file when students transfer to a private school or educational program operated by the Department of Services for Children, Youth and Their Families.
 - 3.2.1.2 Public schools and school districts shall provide the original Cumulative Record File when transferring records to another public school.
 - 3.2.2 Unpaid student fees or fines shall not be a basis for a public school, school district or an educational program operated by the Department of Services for Children, Youth and Their Families to deny or to delay transfer of the Cumulative Record File.
 - 3.2.3 Students shall not be denied enrollment into a public school on the grounds that the student’s Cumulative Record File has not been received.
- 3.3 Before transferring student records, a public school, school district or private school shall specifically confirm that the Cumulative Record File contains the student’s Discipline Record.

- 3.4 When students transfer to a Delaware school from any other school including a school in a foreign country the receiving school is responsible for having the transcripts evaluated.

4.0 Maintenance of the Education Records of Public Schools

- 4.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the maintenance of education records.
- 4.2 Contracts for storage of student records of graduates, withdrawals and special education students ~~for district storage,~~ shall be initiated between the school district or charter school and the Delaware Public Archives.
- 4.3 The Cumulative Record Files for students who have graduated from or who left school prior to graduation from high school shall be stored at the school or district of last attendance or in the Delaware Public Archives.

5.0 Destruction of Education Records of Public Schools

- 5.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the destruction of any education records.
- 5.2 The destruction of educational records of children with disabilities shall also comply with the requirements of 14 **DE Admin. Code** 927.

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

286 Application Fee For Educator Licensure

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Acting Secretary of Education seeks the consent of the State Board of Education to create 14 **DE Admin. Code** 286 Application Fee For Educator Licensure. This regulation is being created pursuant to House Bill 146 of the 148th General Assembly, codified at 14 **Del. Code** §122(b)(27) and to comply with 14 **Del. Code** §122 related to educator licensure. This bill establishes a one-time non-refundable fee of \$100 for educators seeking new licenses in Delaware.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 7, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the *Register of Regulations* website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation intends to ultimately improve student achievement as measured against state achievement standards by helping to ensure that qualified educators are properly licensed in Delaware.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation is

intended to continue to help ensure all students receive an equitable education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not address students' health and safety.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation continues to help ensure that all student's legal rights are respected.

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

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place any unnecessary reporting or administrative requirements 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 decision making authority and accountability for addressing the subject to be regulated does not change because of the new regulation.

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the local education agencies.

286 Application Fee For Educator Licensure

1.0 Purpose

The purpose of this regulation is to comply with 14 Del.C. §122(b)(27) related to educator licensure. This regulation sets forth the rules and guidelines related to fees for educator licensure. Specifically, the Department of Education will implement a one-time, non-refundable fee of not more than \$100 for an educator's application in Delaware. This application may be for an Initial, Continuing or Advanced License.

2.0 Definitions

"Advanced License" means a license issued as part of the three tiered licensure system set forth in 14 Del.C. Ch. 12, subchapter II.

"Continuing License" means a license issued as part of the three tiered licensure system set forth in and 14 Del.C. Ch. 12, subchapter II.

"Department" means the Delaware Department of Education.

"Educator Licensure Application Fee" means the one-time, non-refundable fee of not more than \$100 an individual pays for a first educator license in Delaware.

"Initial License" means a license issued as part of the three tiered licensure system set forth in 14 Del.C. Ch. 12, subchapter II.

3.0 Application Process

3.1 Effective the later of January 15, 2016 or upon activation of the online payment option within the electronic licensure and certification system, applicants seeking an educator licensure in Delaware shall:

3.1.1 Establish an online account in the electronic licensure and certification system in Delaware;

3.1.2 Submit official documents to the Department to support their application;

3.1.3 Pay a one-time, non-refundable \$100 application fee via debit or credit card through the electronic licensure and certification system when applying for an Initial, Continuing, or Advanced License;
and

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3.1.4 Meet all statutory and regulatory requirements.

- 3.2 An application will not be processed until all conditions of 3.1 are met.
- 3.3 Upon online payment and submission of the application for educator licensure, the application will be reviewed and processed by the Department.
- 3.4 Submission of an online fee and application does not entitle the applicant to the requested license.

4.0 Exemptions From Application Fee

- 4.1 Any person who submits an application for their first license in Delaware prior to January 15, 2016 shall be exempt from the application fee.
- 4.2 Any person who is already licensed and certified to teach in Delaware prior to January 15, 2016 shall be exempt from the application fee.

5.0 Fee Payment and Collection

- 5.1 No installment or partial payments of the fee will be accepted. Only full payment of the fee, to be made as part of the online electronic application, is permitted.
- 5.2 No appeals, exceptions, or waivers shall be granted for the fee.
- 5.3 All fees collected pursuant to this regulation shall be deposited in the General Fund.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 775

PUBLIC NOTICE

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

775 New Teacher Hiring Date Reporting

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Acting Secretary of Education intends to amend 14 DE Admin. Code 775 New Teacher Hiring Date Reporting. This regulation is being amended to align teacher hiring date collection with annual reporting done within the Teacher and Leader Effectiveness branch of the Department of Education and as required by 14 Del. Code §1725.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 7, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the *Register of Regulations* website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address 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 is intended to continue to 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 amendments do not address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The 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 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 decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.

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 amendment 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 not a less burdensome method for addressing the purpose of the regulation.

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

775 New Teacher Hiring Date Reporting

1.0 Purpose

The purpose of this regulation is to outline the criteria and process related to new teacher hiring data collection and reporting by school districts as required by 14 **Del.C.** §1725 and align such with annual reporting done within the Teacher and Leader Effectiveness Branch of the Department.

2.0 Definitions

~~"Contract Offer Date" shall mean the date an authorized agent or representative of the district notifies the successful candidate of the intent to hire.~~

~~"Critical Curricular Area" shall mean an area identified as a critical area by the Department of Education and approved by the State Board of Education.~~

~~"District" shall mean a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.~~

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

~~"New Teacher Hiring Date" shall mean, for purposes of this regulation, the Contract Offer Date as defined herein.~~

~~"Position Availability Date" shall mean the date the district Human Resources Office knows the available position is released for a new full-time teacher hire.~~

~~"Position Title" shall mean the appropriate teaching position as offered to the teacher from the list of teacher position titles as provided in the Delaware Educator Data System (DEEDs).~~

~~"Position Type" shall mean the appropriate instructional level of the teacher or whether the teacher is in a critical curricular area.~~

32.0 New Teacher Hiring Data Report

On or before December 1st of each year, each ~~District~~ local education agency shall annually submit an ~~New Teacher Hiring Date Report~~ Educator Hiring Practices and Needs Report to the Department ~~on~~ in a format approved by the Department that includes, but is not limited to, ~~Contract Offer Date, Position Availability Date, and Position Title~~ number of positions available and filled, information on hard-to-staff positions, information on recruitment and selection processes, and information on staffing practices during the most recent hiring season(s). The Department may also require local educational agencies

PROPOSED REGULATIONS

to enter such information on an ongoing basis into an electronic statewide information system. The report Department shall reflect the district new teacher hiring activity from the "estimated unit count" as that term is defined pursuant to 14 Del.C. §1704 until November 15th of that same calendar year review and provide information on educator hiring practices and needs in the annual Delaware Talent Practices Report, to be provided no later than March 31st of the following year.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 817

PUBLIC NOTICE

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

817 Medications and Treatments

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Acting Secretary of Education intends to amend 14 DE Admin. Code 817 Medications and Treatments. This regulation is amended to clarify assistance with self-administration of medications at unique approved school activities, such as extended field trips and to update a citation to the Delaware Code.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 7, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to medications and treatments and is not specifically related to improving 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 is intended to continue to 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 amendments address students' health and safety in relation to assistance with self-administration of medications.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulations 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 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 decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.

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 amendment 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 not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to local schools boards for compliance with this amended regulation.

817 Medications and Treatments
(Break in Continuity of Sections)

2.0 Definitions

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

(Break in Continuity Within Section)

“Controlled Medication” means those prescribed drugs regulated by Federal (GSA Controlled Substance Act of 1970) and/or State Controlled (dangerous) Substances Act.

(Break in Continuity of Sections)

6.0 Assistance With Self-Administration of Medications at Approved School Activities

6.1 Educators and Other School Employees who are Trained Assistants for Self-Administration are authorized by 24 **Del.C.** §1921(a)(1~~7~~3) to assist a student with self-administration of Medications at an Approved School Activity for students in kindergarten through Grade 12. The Trained Assistant for Self-Administration is subject to the following provisions:

6.1.1 Assistance with Self-Administration of Medication shall not be provided without the prior written request or consent of a parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time(s) and date(s) of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a Field Trip or Approved School Activity outside of the traditional School day or off-campus.

(Break in Continuity Within Section)

6.1.2 In order to be qualified to provide Assistance with Self-Administration of Medications, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 **Del.C.** §1921(a)(1~~7~~3). Training shall be renewed minimally every five years. No person shall provide Assistance with Self-Administration of Medications without documented acknowledgment to the Department of Education that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein. A School Nurse shall:

(Break in Continuity Within Section)

6.2 District and charter school boards may develop policies for unique Approved School Activities for which the specified process is unable to be implemented.

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

817 Medications and Treatments

PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1502

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

1502 Professional Growth Salary Increments

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1502 Professional Growth Salary Increments. This regulation is being amended to provide current formatting and to eliminate unnecessary language.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 1, 2015 to Chris Kenton, Executive Director, Professional Standards Board, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to the Professional Standards Board and does not directly affect any changes to student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the Professional Standards Board and does not directly affect any changes to students' ability to receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to the Professional Standards Board and does not directly affect any changes to the protection of students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the Professional Standards Board and does not directly affect any changes to students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulations do not change or weaken the ability to make decisions 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 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 decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.

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 amendment 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 not a less burdensome method for addressing the purpose of the regulation.

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

1502 ~~Professional Growth~~ Graduate Level Salary Increments

(Effective 7/1/04)

1.0 Content

This regulation shall apply to ~~professional growth~~ graduate level salary increments for educators, pursuant to 14 **Del.C.** §1305 (a).

(Break in Continuity of Sections)

4.0 Post Master's Degree Course Work

- 4.1 Educators who hold an eligible master's degree from a regionally accredited college or university may accrue credits taken after the conferral date of their first master's degree toward salary increments toward a Master's Degree Plus 15 graduate credits, a Master's Degree Plus 30 graduate credits, a Master's Degree Plus 45 graduate credits, or a ~~doctorate~~ doctoral degree on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a). All credits taken must be graduate level and must be:
- 4.1.1 Earned through a graduate level course of study clearly related to the educator's professional responsibilities and otherwise approved pursuant to 14 **Del.C.** Ch. 12, or
- 4.1.2 Earned toward a second master's degree, or
- 4.1.3 Matriculated graduate credits earned toward a ~~doctorate~~ doctoral degree.
- 4.2 Notwithstanding 4.1, graduate credits earned prior to the conferral of a master's degree may be applied toward movement on the salary schedule if the graduate credits are part of a Specialist Degree Program as long as the credits were earned after matriculating into the program.

5.0 Use of Undergraduate and Inservice Credits

- 5.1 Educators entitled to rightward movement on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), on the basis of inservice or undergraduate credits approved prior to July 1, 2004, shall continue to be entitled to such movement in the event of any future application for movement submitted after July 1, 2004.
- 5.1.1 For example, an educator who holds a Bachelor's Plus 15 or a Bachelor's Plus 30 approved prior to July 1, 2004 and based entirely on inservice or undergraduate credits, shall be entitled to move to a Master's Degree Plus 15 or Master's Degree Plus 30, whichever is applicable, upon completion of a master's degree program.
- 5.1.2 ~~In order to use undergraduate credits toward a salary increment on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), the credits must be completed by, and the application for salary increment submitted to, and approved by, the Department by June 30, 2004. Undergraduate credits will not be accepted for Plus 15, 30 or 45 salary increments after June 30, 2004.~~
- 5.1.3 ~~In order to use inservice credits toward a salary increment on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), the credits must be completed by, and the application for salary increment submitted to, and approved by, the Department by June 30, 2004. Inservice credits will not be accepted for Plus 15, 30 or 45 salary increments after June 30, 2004.~~

(Break in Continuity of Sections)

7.0 Acceptable Grades

All grades for graduate level credit submitted for a professional growth salary increments must be a grade of "B" or ~~better~~ higher or satisfy the granting institution's standard for graduate level work. In the case of credits earned on a pass fail basis, a grade of "pass" is acceptable.

(Break in Continuity of Sections)

PROPOSED REGULATIONS

10.0 Eligibility for ~~Professional Growth~~ Graduate Level Salary Increments

- 10.1 ~~Where applicable and available, An applicant for a professional growth graduate level salary increment must hold a Standard or Professional Status Certificate issued pursuant to General Regulations for Certification of Professional Public School Personnel and the specific regulations as adopted for certification effective July 1, 1993 through August 31, 2003, or an Initial, Continuing, or Advanced License issued by the Department in accordance with 14 Del.C., Ch. 12, Subchapter III.~~
- 10.2 An educator employed on an Emergency Certificate pursuant to 14 Del.C. §1506 is eligible to receive a salary increment.

11.0 Acceptable Professional Degrees

- 11.1 In order to be applicable to professional growth graduate level salary increments, master's and doctorate degrees must be directly related to an area or specialty in which the educator is employed, ~~which has been identified as a critical needs area in K to 12 education, or which the district or charter school, if applicable, in which the educator is employed has requested the educator to pursue or as required by regulation.~~
- 11.2 Any such request from a district or charter school, if applicable, must be in writing and must be submitted with the completed application for a salary increment.

12.0 Application Procedures

- 12.1 Upon completion of the credits required for movement on the basic salary schedule for educators, set forth in 14 Del.C. §1305(a), an applicant may apply for a salary increment. No applications will be considered prior to the completion of credits necessary for movement on the salary schedule.
- 12.1.1 ~~An applicant shall secure the proper form from the local school district or charter school office, complete the form, and return it to the school district office for transmittal to the Department. An applicant shall submit an electronic salary increment application through DEEDS.~~
- 12.1.2 ~~The applicant shall arrange for official transcripts to be submitted by the college or university directly to the Department or delivered by the applicant in an unopened, unaltered envelope. The applicant shall arrange for official transcripts (unopened and unaltered) to be submitted by the institution of higher learning directly to the employer's Human Resources Office. The application will be reviewed and either approved or denied by the employer. The Department in its discretion may also accept verification of an official transcript by other means if the authenticity of the transcript can be made.~~
- 12.1.3 An application for a salary increment for the current fiscal year (July 1 to June 30) must be received in the Department no later than June 1. ~~This date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment.~~ Applications received after June 1 will be approved effective the first day of the next fiscal year. If approved by the District/Charter, the application will be submitted to the Department for review and either denial or approval. Official transcripts must be submitted to the Department with the application.

13.0 Effective Date of Salary Adjustment

- 13.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the Department.
- 13.1.1 The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript or official grade slip as to when the program or credit was completed.
- 13.1.2 ~~This date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment.~~
- ~~13.1.3 Applications received after June 1 will be approved effective the first day of the next fiscal year.~~
- 13.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

13.3 No salary increment shall be retroactive to a prior fiscal year.

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

1502 Professional Growth Salary Increments

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1506

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

1506 Emergency Certificate

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1506 Emergency Certificate. This regulation is being amended to provide current formatting and to eliminate unnecessary language, as well as to allow the Department of Education the ability to process some Emergency Certificates automatically for those enrolled in an approved Alternate Routes program.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 1, 2015 to Chris Kenton, Executive Director, Professional Standards Board, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to the Professional Standards Board and does not directly affect any changes to the protection of students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the Professional Standards Board and does not directly affect any changes to students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulations do not change or weaken the ability to make decisions 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 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 decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.

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 amendment 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 not a less burdensome method for addressing the purpose of the regulation, and 14 **Del.C.** requires that we promulgate this regulation.

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

1506 Emergency Certificate (Break in Continuity of Sections)

3.0 Issuance of Emergency Certificate

(Break in Continuity Within Section)

3.7 Transfer of Emergency Certificates to a New Employing Authority.

3.7.1 Upon application by a new employing authority, the Department may approve the transfer of the Emergency Certificate if the following requirements are met:

3.7.1.1 The new employing authority that hires an individual with a valid an Emergency Certificate requests ~~prior to the expiration of the original emergency certificate~~, the continued approval of the Emergency Certificate through the remainder of the ~~original term~~ school year or requests an extension.

(Break in Continuity Within Section)

3.8 Extension of Emergency Certificates

3.8.1 The Emergency Certificate may be valid for up to two (2) consecutive school years. An employing authority must request an extension of the Emergency Certificate prior to ~~June 30th~~ November 1st.

3.8.2 Emergency Certificates granted an extension shall expire on June 30th of the consecutive school year.

3.8.3 Prior to ~~June 30th~~ November 1st, the employing authority shall review the Emergency Certificate and if considered necessary, the employing authority may apply to the Department for an extension for an additional school year.

3.8.4 The Department may grant an extension of the Emergency Certificate if the following requirements are met:

3.8.4.1 The employing authority submits a complete request and report prior to ~~June 30th~~ November 1st.

(Break in Continuity Within Section)

4.0 Application Procedures

4.1 The employing authority shall:

(Break in Continuity Within Section)

4.1.3 Apply for the Emergency Certificate within sixty (60) calendar days of the individual's hire or new job assignment. However, the Department may issue an Emergency Certificate to an employed educator enrolled in an approved alternative routes for teacher licensure and certification program even if the employing authority fails to meet the 60-day request deadline.

4.1.4 ~~Set forth a written plan with the application of the Emergency Certificate, verified by the individual and the employing authority. The plan must be designed to support and assist the individual in achieving the skills and knowledge necessary to meet the applicable certification requirements. The written plan is subject to Department approval. The written plan shall contain at a minimum the following:~~

4.1.4.1 ~~A listing of all the outstanding certification requirements necessary to obtain the standard certificate in the area for which the Emergency Certificate is requested including but not~~

~~limited to the specific examination of content knowledge such as Praxis II and any required course work, professional development, education or experience; and~~

4.1.4.2 ~~The specific course work or professional development including the educational institution or provider the individual intends to use to fulfill the requirements; and~~

4.1.4.3 ~~The anticipated time frame for the completion of the requirements; and~~

4.1.4.4 ~~A specific listing of how the employing authority shall support and assist the individual in achieving the skills and knowledge necessary and completing the requirements.~~

4.2 Failure by the employing authority to fulfill the conditions set forth shall result in denial of the Emergency Certificate.

5.0 Employing Authority Report

(Break in Continuity Within Section)

5.2 ~~Failure by t~~The employing authority ~~to~~ shall fulfill the conditions set forth in 5.1 prior to June 30th November 1st ~~shall result in the expiration of the Emergency Certificate.~~

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

1506 Emergency Certificate

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Pharmaceutical Services Reimbursement – 340B Drug Products

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 U.S.C., §1902(a)(13)(A) of the Social Security Act, 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Pharmaceutical Services, specifically, *to clarify reimbursement methodology for entities that purchase 340B drug products.*

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 Glyne Williams, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 1, 2015.

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 Title XIX Medicaid State Plan regarding Pharmaceutical Services, specifically, *to clarify reimbursement methodology for entities that purchase 340B drug products.*

Statutory Authority

- Veterans Health Care Act of 1992, Public Law 102-585, Section 602, *limitations on prices of drugs purchased by certain clinics and hospitals*, as amended by the Patient Protection and Affordable Care Act (Pub. L. No. 111-148), Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152) and Medicare and Medicaid Extenders Act of 2010 (Public Law 111-309)
- 1927(a)(1) and 1927 (a)(4) of the Social Security Act, *authorizes state to enter directly into separate or supplemental rebate agreements with manufacturers*
- 1902(a)(19) of the Social Security Act, *care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- Section 340 of the Public Health Service Act, 42 U.S.C. §256b, *imposes ceilings on prices drug manufacturers may charge for medications sold to specified health care facilities*
- 42 CFR PART 10, *340B Drug Pricing Program*
- 42 CFR §440.120, *Prescribed drugs*
- 42 CFR §447.201, *State plan requirements*
- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

Background

Under the Medicaid program, States may provide coverage of outpatient drugs as an optional service under section 1905(a)(12) of the Social Security Act (the Act). Section 1903(a) of the Act provides for Federal financial participation (FFP) in State expenditures for these drugs. In general, in order for payment to be made available under section 1903 for covered outpatient drugs, manufacturers must enter into a Medicaid drug rebate agreement as set forth in section 1927(a) of the Act. Section 1927 of the Act provides specific requirements for rebate agreements, drug pricing submission and confidentiality requirements, the formulas for calculating rebate payments, and requirements for States for covered outpatient drugs.

Medicaid Supplemental Drug Rebate Agreements

The federal Omnibus Budget Reconciliation Act of 1990, section 4401 added §1927 to the Social Security Act. Section 1927 provides that States may enter separate or supplemental drug rebate agreements as long as such agreements achieve drug rebates equal to or greater than the drug rebates set forth in the Secretary's national rebate agreement with drug manufacturers, which is published at 56 F.R. 7049 (1991). Specifically, the drug rebate statute, at section 1927(a)(1) of the Social Security Act (Act), provides that "the Secretary may authorize a State to enter directly into agreements with a manufacturer." Also, section 1927(a)(4) of the Act provides that any drug rebate agreement between a State and drug manufacturers and in effect on November 5, 1990, may constitute a rebate agreement in compliance with the statute if the Centers for Medicare and Medicaid Services (CMS) determines that any such agreement "provides for rebates that are at least as large as the rebates otherwise required under this section." CMS accordingly believes that Congress intended that States that seek CMS approval under section 1927(a)(1) to enter directly into agreements with manufacturers must ensure that any such agreement will achieve drug rebates that are at least equal to the rebates set forth in the Secretary's rebate agreements with manufacturers. Currently, prescription drug manufacturers are required to enter into a rebate agreement.

Section 340B Drug Discount Program

The drug rebate program was amended in November 1992 by Public Law 102-585, the Veterans' Health Care Act (VHCA) of 1992. Under VHCA, Congress created the 340B program which is administered by the Health Resources and Services Administration (HRSA), Office of Pharmacy Affairs (OPA). The 340B program requires manufacturers of drugs that are paid for by state Medicaid programs to enter into an agreement with HRSA to provide statutory discounts on drugs to "covered entities". This legislation was designed to establish price controls to limit the cost of drugs to Federal purchasers and to certain Federal grantees. It was a follow-up to the Medicaid Drug Rebate Program, enacted as part of the Omnibus Budget Reconciliation Act of 1990 (OBRA90). Title IV of the VHCA contains three sections—all of which deal with drug pricing issues:

- Section 601 is an introduction to general issues about drugs purchased by the Department of Veterans Affairs and other specific types of clinics and hospitals.
- Section 602 provides drug discounts to certain grantees and other eligible covered entities.

- Section 603 establishes limitations on prices that a manufacturer may charge for drugs purchased by the Department of Veterans Affairs and certain other Federal agencies.

Section 602 of the VHCA enacted Section 340B of the Public Health Service (PHS) Act.

Section 340B of the Public Health Service Act, 42 U.S.C. §256b, “imposes ceilings on prices drug manufacturers may charge for medications sold to specified health care facilities.” The 340B program requires manufacturers to enter into a Pharmaceutical Pricing Agreement (PPA) with the Secretary of Health and Human Services. Under the 340B program and in accordance with the PPA, pharmaceutical manufacturers agree to charge at or below statutorily defined prices, known as the 340B ceiling prices, for sales to qualified 340B entities.

When reimbursing for 340B-purchased drugs, State Medicaid agencies have a responsibility to accurately reimburse covered entities and appropriately claim Medicaid rebates from drug manufacturers. State Medicaid agencies can use pre-pay edits and post-pay reviews to ensure accurate reimbursements. With respect to rebates, State Medicaid agencies should exclude claims for 340B-purchased drugs (340B claims) from Medicaid rebate requests to prevent subjecting drug manufacturers to duplicate discounts (i.e., selling 340B-purchased drugs to covered entities at the discounted ceiling prices and providing Medicaid rebates on the same drugs).

Participation in the 340B program is voluntary; eligible entities must notify HRSA of their intention to participate by completing appropriate registration forms. Upon receipt and approval of the forms, HRSA adds the entity to its covered entity database, which is available on HRSA's web site. The 340B entity is responsible for alerting wholesalers and manufacturers of its participation and referring them to the database for confirmation so it can purchase covered outpatient drugs at or below the ceiling prices. The Section 340B Drug Discount Program is a complex program. Utilization of this program requires an understanding of detailed concepts of drug pricing and procurement.

Summary of Proposal

Rationale and Justification

Among the services provided to recipients of services under the Delaware Medical Assistance Program (DMAP) are prescription drugs and related pharmacy services. Expenditures for pharmacy services are offset in part by rebate agreements with suppliers of prescription drugs.

Drug manufacturers use the potential for a 340B discounted price to dispute rebate payment. Pharmacy providers enrolled with the Delaware Medical Assistance Program (DMAP) have declared that they do not use public health service products. This policy change will formalize this process and prevent incurring additional operational costs/resources to collect rebates due the state.

Purpose

To add language to the Medicaid State plan to clarify that providers of pharmaceutical services who have access to 340B medications are not dispensing nor administering them to treat Medicaid patients. This will allow claims from these entities to be included in the Federal and supplemental rebate programs.

Summary of Proposed Changes

This SPA action addresses the need to ensure the state is able to meet the full scope of responsibilities to manage the Delaware Medical Assistance Program's interactions with the 340B program.

If implemented as proposed, this reimbursement methodology plan amendment will accomplish the following, effective January 1, 2016:

The amendment is to specifically prohibit the use of 340B-purchased medications for Medicaid patients. This will simplify the rebate program and eliminate one area for provider audits. Public health service providers have the ability to purchase medications at severely discounted prices. These products are excluded from all rebate programs associated with Medicaid patients. Based on HRSA guidelines, these contracted entities have the ability to include or exclude Medicaid patients from using these medications. If contracted entities chose to use drugs purchased via the 340B discount, they must only charge the actual acquisition cost and a professional dispensing fee, when the medication is dispensed, and not administered.

To date, with few exceptions, every contracted entity listed on the 340B participating providers' file has responded in writing that they do not use these products for Delaware Medicaid patients. The Affordable Care Act has added another level of complexity to this process by excluding some drugs based on specific diagnoses. The 340B program has become increasingly difficult to manage based on retrospective changes to the HRSA website as there are no tools to gather 340B prices nor is there any accountability mechanism to monitor if the drug was

purchased through a wholesaler or through the public health service process.

The agency's proposal involves no change in the definition of those eligible to receive pharmaceutical services, and the Medicaid prescribed drugs benefit available to eligible recipients remains the same.

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 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the methods and standards governing payment methodology for pharmaceutical services. Comments must be received by 4:30 p.m. on December 1, 2015.

CMS Review and Approval

The provisions of this draft state plan amendment (SPA) are subject to the Centers for Medicare and Medicaid Services (CMS) review and approval. 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 Manual Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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 manual updates.

Fiscal Impact Statement

The proposed amendment is being implemented to clarify current practices attested to by DMAP pharmacy providers. Therefore, there is no impact on the General Fund.

DMMA PROPOSED REGULATION #15-20

REVISION:

ATTACHMENT 4.19-B
Page 14

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE

REIMBURSEMENT FOR PHARMACEUTICALS

Overview

The Delaware Medical Assistance Program (DMAP) will reimburse pharmaceuticals using the lower of:

- The usual and customary (U & C) charge to the general public for the product,
- National Average Drug Acquisition Cost (NADAC) or if a NADAC is not available the Average Wholesale Price (AWP) minus 19%,
- A State-specific maximum allowable cost (DMAC) when the purchase price is not appropriately represented by either the NADAC or the Average Wholesale Price (AWP) minus 19%,
- The Federal Upper Limit (FUL) will not be used since the NADAC reflects the actual acquisition cost.

Entities that qualify for special purchasing under Section 602 of the Veterans Health Care Act of 1992, ~~Section 340-B of the Public Health Service Act covered entities, selected disproportionate share hospitals and entities exempt~~

from the Robinson-Patman Price Discrimination Act of 1936 must charge the DMAP no more than their actual acquisition cost (AAC) plus a professional dispensing fee. The AAC must be supported by invoice and payment documentation.

Entities that purchase Section 340B of the Public Health Service Act products are prohibited from using their stock for DMAP patients either directly or through coverage of the Managed Care Organization.

Professional Dispensing Fee

The professional dispensing fee rate is ten dollars (\$10.00). There is one-time professional fee per thirty (30)-day period unless the class of drugs is routinely prescribed for a limited number of days.

Definitions

Delaware Maximum Allowable Cost (DMAC) - a maximum price set for reimbursement:

- when a single source product has Average Selling Prices provided by the manufacturer that indicates the AWP is exaggerated, or
- when the NADAC does not reflect the most current cost of a multiple source drug, or
- if a single provider agrees to a special price.

Any willing provider can dispense the product.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services - Mental Health Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services, specifically, *coverage and reimbursement methodologies for rehabilitative mental health services*.

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 Glyne Williams, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 1, 2015. Please identify in the subject line: EPSDT – Mental Health Services.

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/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Title XIX Medicaid State Plan regarding the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, specifically, *coverage and reimbursement methodologies for rehabilitative mental health services*.

Statutory Authority

- Section 1905(r) of the Social Security Act, *Early and Periodic Screening, Diagnostic, and Treatment Services*
- 42 CFR §441 Subpart B, *Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) of Individuals under Age 21*
- 42 CFR §440.60, *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.130, *Diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- State Medicaid Manual, Section 5010, *Early and Periodic Screening, Diagnostic, and Treatment Services*

Background

Early and Periodic Screening, Diagnostic, and Treatment Services

The Medicaid program's benefit for children and adolescents is known as Early and Periodic Screening, Diagnostic, and Treatment services, or EPSDT. Under federal Medicaid law at 42 U.S.C. § 1396d(r) [1905(r) of the Social Security Act], EPSDT provides a comprehensive array of prevention, diagnostic, and treatment services for low-income infants, children and adolescents under age 21, as specified in Section 1905(r) of the Social Security Act (the Act). The EPSDT benefit is more robust than the Medicaid benefit for adults and is designed to assure that children receive early detection and care, so that health problems are averted or diagnosed and treated as early as possible. The goal of EPSDT is to assure that individual children get the health care they need when they need it – the right care to the right child at the right time in the right setting.

Within the scope of EPSDT benefits under the federal Medicaid law, states are required to cover any service that is medically necessary “to correct or ameliorate a defect, physical or mental illness, or a condition identified by screening,” whether or not the service is covered under the Delaware Medicaid State Plan. The services covered under EPSDT are limited to those within the scope of the category of services listed in the federal law at 42 U.S.C. § 1396d (a) [1905(a) of the Social Security Act].

States have an affirmative obligation to make sure that Medicaid-eligible children and their families are aware of EPSDT and have access to required screenings and necessary treatment services. States also have broad flexibility to determine how to best ensure such services are provided. In general, they either administer the benefit outright (through fee-for-service arrangements) or provide oversight to private entities with whom they have contracted to administer the benefit (e.g., managed care entities). States must arrange (directly or through delegations or contracts) for children to receive the physical, mental, vision, hearing, and dental services they need to treat health problems and conditions.

Medicaid Rehabilitative Services

Treatment for mental health and substance use issues and conditions is available under a number of Medicaid service categories, including hospital and clinic services, physician services, and services provided by a licensed professional such as a psychologist. States should also make use of rehabilitative services. While rehabilitative services can meet a range of children's treatment needs, they can be particularly critical for children with mental health and substance use issues. Rehabilitative services are defined to include:

any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.

Like other services covered under EPSDT, rehabilitative services need not actually cure a disability or completely restore an individual to a previous functional level. Rather, such services are covered when they ameliorate a physical or mental disability, as discussed above. Moreover, determinations of whether a service is rehabilitative must take into consideration that a child may not have attained the ability to perform certain functions. That is, a child's rehabilitative services plan of care should reflect goals appropriate for the child's developmental stage.

Depending on the interventions that the individual child needs, services that can be covered as rehabilitative services include:

- Community-based crisis services, such as mobile crisis teams, and intensive outpatient services;

- Individualized mental health and substance use treatment services, including in non-traditional settings such as a school, a workplace or at home;
- Medication management;
- Counseling and therapy, including to eliminate psychological barriers that would impede development of community living skills; and
- Rehabilitative equipment, for instance daily living aids.

With respect to the provision of rehabilitative services, including those noted above, CMS requires more specificity of providers and services due to the wide spectrum of rehabilitative services coverable under the broad definition. CMS would expect a state to include in their State Plan the services, and providers with their qualifications, as well as a reimbursement methodology for each service it provides.

Summary of Proposal

Note: This Mental Health Services state plan amendment (SPA) is first of three (3) proposed SPA actions related to Medicaid rehabilitative services for individuals under age 21 to clarify coverage and payment methodology under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program.

Purpose

The purpose of this notice is to clarify service descriptions, reimbursement methodologies, and provider qualifications for rehabilitative mental health services under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) State Plan and to request comments from the public.

On February 23, 2011, the Centers for Medicare and Medicaid Services (CMS) sent a companion letter to the Division of Medicaid and Medical Assistance (DMMA) concerning a previously approved State Plan Amendment #08-004, School-Based Health Services. CMS performed a program analysis of corresponding coverage sections not originally submitted with this SPA. This analysis revealed concerns regarding the monthly bundled rates for rehabilitative child mental health and substance use disorder services under the EPSDT program. CMS determined that the service descriptions and reimbursement language for rehabilitative child mental health and substance use disorder services fails to comply with 42 CFR 430.10 and 42 CFR 447.252 which implement in part Section 1902(a)(30)(A) of the Social Security Act, to require collectively that States comprehensively describe the methodologies that they use to reimburse service providers. The methodologies must be understandable, clear, unambiguous, and auditable.

Proposal

In order to comport with 42 CFR 430.10 and 42 CFR 447.252, DMMA proposes to clarify existing rehabilitative mental health services and reimbursement methodology language currently described at Attachment 3.1-A and Attachment 4.19-B in the Delaware Medicaid State Plan by:

- defining the reimbursable unit of service;
- describing payment limitations;
- providing a reference to the provider qualifications per the State Plan;
- publishing location to access State developed fee schedule rates.

The agency's proposal involves no change in the definition of those eligible to receive mental health services benefit under the Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, and the mental health services benefit available to eligible recipients remains the same.

Summary of Proposed Changes

The proposed Medicaid Rehabilitative Mental Health Services SPA clarifies coverage for outpatient and residential mental health services for children under the Medicaid program including care by unlicensed practitioners and Evidence-Based Practices (EBPs). If implemented as proposed, the coverage and reimbursement methodology plan amendments will accomplish the following, effective July 1, 2016:

Crisis intervention for children, unlicensed mental health practitioners (including Community Psychiatric Support and Treatment, Psychosocial Rehabilitation, and family peer support services) and all residential programs providing children's mental health services to reflect the current rehabilitative services not covered under other Medicaid authorities. The rates for these services will be set using the same modeled rate methodology as the Division of Substance Abuse and Mental Health (DSAMH) PROMISE (*Promoting Optimal*

Mental Health for Individuals through Supports and Empowerment) fee schedule for unlicensed practitioners and programs. The rates may vary from PROMISE depending upon the need for adaptations to the rates for accessibility of services by children and differences in service delivery.

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 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the methods and standards governing payment methodology for rehabilitative mental health services under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. Comments must be received by 4:30 p.m. on December 1, 2015.

CMS Review and Approval

The provisions of this draft state plan amendment (SPA) are subject to the Centers for Medicare and Medicaid Services (CMS) review and approval. 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 Manual Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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 manual updates.

Fiscal Impact Statement

The purpose of this state plan amendment is to update and reorganize both the services (Attachment 3.1-A) and reimbursement (Attachment 4.19-B) sections of the Medicaid State Plan that primarily address rehabilitative services early and periodic screening, diagnostic, and treatment (EPSDT) program.

This amendment is not for the purpose of making program changes. Rather, this is part of DHSS/DMMA's continuing effort in working with CMS to assure the reimbursement pages clearly correspond to the service sections of the state plan and to implement the required wording regarding fee schedules and the dates for which reimbursement rates were set for these services. There are no intended content changes other than improved descriptions.

The proposed amendment imposes no increase in cost on the General Fund as the proposed services in this State plan amendment will be budget neutral.

Federal budget impact for federal fiscal years 2016 and 2017 is projected as follows:

Federal Fiscal Year 2016	Federal Fiscal Year 2017
\$195,802.39	\$837,865.32

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

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services - Mental Health Services

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services - Substance Use Disorder Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services, specifically, *coverage and reimbursement methodologies for Medicaid rehabilitative substance use disorder services*.

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 Glyne Williams, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 1, 2015. Please identify in the subject line: EPSDT – Substance Use Disorder Services.

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/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Title XIX Medicaid State Plan regarding the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, specifically, *coverage and reimbursement methodologies for Medicaid rehabilitative substance use disorder services*.

Statutory Authority

- Section 1905(r) of the Social Security Act, *Early and Periodic Screening, Diagnostic, and Treatment Services*
- 42 CFR §441 Subpart B, *Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) of Individuals under Age 21*
- 42 CFR §440.60, *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.130, *Diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- State Medicaid Manual, Section 5010, *Early and Periodic Screening, Diagnostic, and Treatment Services*

Background

Early and Periodic Screening, Diagnostic, and Treatment Services

The Medicaid program's benefit for children and adolescents is known as Early and Periodic Screening, Diagnostic, and Treatment services, or EPSDT. Under federal Medicaid law at 42 U.S.C. § 1396d(r) [1905(r) of the Social Security Act], EPSDT provides a comprehensive array of prevention, diagnostic, and treatment services for low-income infants, children and adolescents under age 21, as specified in Section 1905(r) of the Social Security Act (the Act). The EPSDT benefit is more robust than the Medicaid benefit for adults and is designed to assure that children receive early detection and care, so that health problems are averted or diagnosed and treated as early as

possible. The goal of EPSDT is to assure that individual children get the health care they need when they need it – the right care to the right child at the right time in the right setting.

Within the scope of EPSDT benefits under the federal Medicaid law, states are required to cover any service that is medically necessary “to correct or ameliorate a defect, physical or mental illness, or a condition identified by screening,” whether or not the service is covered under the Medicaid State Plan. The services covered under EPSDT are limited to those within the scope of the category of services listed in the federal law at 42 U.S.C. §1396d (a) [1905(a) of the Social Security Act].

States have an affirmative obligation to make sure that Medicaid-eligible children and their families are aware of EPSDT and have access to required screenings and necessary treatment services. States also have broad flexibility to determine how to best ensure such services are provided. In general, they either administer the benefit outright (through fee-for-service arrangements) or provide oversight to private entities with whom they have contracted to administer the benefit (e.g., managed care entities). States must arrange (directly or through delegations or contracts) for children to receive the physical, mental, vision, hearing, and dental services they need to treat health problems and conditions.

Medicaid Rehabilitative Services

Treatment for mental health and substance use issues and conditions is available under a number of Medicaid service categories, including hospital and clinic services, physician services, and services provided by a licensed professional such as a psychologist. States also make use of rehabilitative services. While rehabilitative services can meet a range of children’s treatment needs, they can be particularly critical for children with mental health and substance use issues. Rehabilitative services are defined to include:

any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.

Like other services covered under EPSDT, rehabilitative services need not actually cure a disability or completely restore an individual to a previous functional level. Rather, such services are covered when they ameliorate a physical or mental disability, as discussed above. Moreover, determinations of whether a service is rehabilitative must take into consideration that a child may not have attained the ability to perform certain functions. That is, a child’s rehabilitative services plan of care should reflect goals appropriate for the child’s developmental stage.

Depending on the interventions that the individual child needs, services that can be covered as rehabilitative services include:

- Community-based crisis services, such as mobile crisis teams, and intensive outpatient services;
- Individualized mental health and substance use treatment services, including in non-traditional settings such as a school, a workplace or at home;
- Medication management;
- Counseling and therapy, including to eliminate psychological barriers that would impede development of community living skills; and
- Rehabilitative equipment, for instance daily living aids.

With respect to the provision of rehabilitative services, including those noted above, CMS requires more specificity of providers and services due to the wide spectrum of rehabilitative services coverable under the broad definition. CMS expects a state to include in their State Plan the services, and providers with their qualifications, as well as a reimbursement methodology for each service it provides.

Summary of Proposal

Note: This Substance Use Disorder Services (SUDs) state plan amendment (SPA) is second of three (3) proposed SPA actions related to Medicaid rehabilitative services for individuals under age 21 to clarify coverage and payment methodology under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program.

Purpose

The purpose of this notice is to clarify service descriptions, reimbursement methodologies, and provider qualifications for rehabilitative substance use disorder services under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) State Plan and to request comments from the public.

On February 23, 2011, the Centers for Medicare and Medicaid Services (CMS) sent a companion letter to the Division of Medicaid and Medical Assistance (DMMA) concerning a previously approved State Plan Amendment #08-004, School-Based Health Services. CMS performed a program analysis of corresponding coverage sections not originally submitted with this SPA. This analysis revealed concerns regarding the monthly bundled rates for rehabilitative child mental health and substance use disorder services under the EPSDT program. CMS determined that the service descriptions and reimbursement language for rehabilitative child mental health and substance use disorder services fails to comply with 42 CFR 430.10 and 42 CFR 447.252 which implement in part Section 1902(a)(30)(A) of the Social Security Act, to require collectively that States comprehensively describe the methodologies that they use to reimburse service providers. The methodologies must be understandable, clear, unambiguous and auditable.

Proposal

In order to comport with 42 CFR 430.10 and 42 CFR 447.252, DMMA proposes to clarify existing rehabilitative substance use disorder services and reimbursement methodology language currently described at Attachment 3.1-A and Attachment 4.19-B in the Delaware Medicaid State Plan by:

- defining the reimbursable unit of service;
- describing payment limitations;
- providing a reference to the provider qualifications per the State Plan;
- publishing location to access State developed fee schedule rates.

The agency's proposal involves no change in the definition of those eligible to receive substance use disorder services benefit under the Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, and the substance use disorder services benefit available to eligible recipients remains the same.

Summary of Proposed Changes

The proposed Medicaid Rehabilitative Substance Use Disorder (SUD) Services SPA ensures that the already approved SUD state plan amendment for adults also provides coverage of SUD services for children under the Medicaid program. This SPA is a revised version of the Rehabilitative Services SPA recently approved for the State of Delaware for adults and authorizes SUD outpatient and residential services. If implemented as proposed, the coverage and reimbursement methodology plan amendments will accomplish the following, effective July 1, 2016:

The new SPA will make small changes that allow the Department of Services to Children, Youth and Their Families (DSCYF) to set program requirements for children. The Division of Substance Abuse and Mental Health (DSAMH) will still license the programs. This SPA includes one change requested by the industry to correct the scope of practice for licensed chemical dependency professional (LCDP) and Certified Dependency and Addiction Counselors (CDACs). DSCYF will use the Delaware Medical Assistance Program (DMAP) Current Procedural Terminology/Healthcare Common Procedures Coding System (CPT/HCPCS) fee schedule for licensed practitioners and set modeled rates for unlicensed practitioners and programs (thus, no changes are needed to the SPA reimbursement pages for SUD). The EPSDT rates for unlicensed practitioners and programs will be the same or similar to the adult SUD rates depending upon the need for adaptations to the rates for accessibility of services by children.

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 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the coverage and payment methodology for rehabilitative substance use disorder services under

the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. Comments must be received by 4:30 p.m. on December 1, 2015.

CMS Review and Approval

The provisions of this draft state plan amendment (SPA) are subject to the Centers for Medicare and Medicaid Services (CMS) review and approval. 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 Manual Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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 manual updates.

Fiscal Impact Statement

The purpose of this state plan amendment is to update and reorganize both the services (Attachment 3.1-A) and reimbursement (Attachment 4.19-B) sections of the Medicaid State Plan that primarily address rehabilitative services under the early and periodic screening, diagnostic, and treatment (EPSDT) program.

This amendment is not for the purpose of making program changes. Rather, this is part of DHSS/DMMA's continuing effort in working with CMS to assure the reimbursement pages clearly correspond to the service sections of the state plan and to implement the required wording regarding fee schedules and the dates for which reimbursement rates were set for these services.

There are no intended content changes other than improved descriptions. The proposed amendment imposes no increase in cost on the General Fund as the proposed services in this State plan amendment will be budget neutral. The federal fiscal impact associated with this amendment will be zero dollars.

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

EPSDT Services - Substance Use Disorder Services

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services - Inpatient Psychiatric Hospital Services for Individuals under Age 21

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services, addressing Inpatient Psychiatric Hospital Services for Individuals under Age 21, specifically, *coverage and reimbursement methodology for psychiatric residential treatment facilities (PRTFs)*.

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 Glyne Williams, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 1, 2015. Please identify in the subject line: Inpatient

Psychiatric Hospital Services for Individuals under Age 21.

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/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Title XIX Medicaid State Plan regarding the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program addressing Inpatient Psychiatric Hospital Services for Individuals under Age 21, specifically, *coverage and reimbursement methodology for psychiatric residential treatment facilities (PRTFs)*.

Statutory Authority

- Section 1905(r) of the Social Security Act, *Early and Periodic Screening, Diagnostic, and Treatment Services*
- Section 1905(a)(16), *Inpatient Psychiatric Hospital Services for Individuals under Age 21*
- 42 CFR §441 Subpart B, *Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) of Individuals under Age 21*
- 42 CFR §440.60, *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.130, *Diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- State Medicaid Manual, Section 5010, *Early and Periodic Screening, Diagnostic, and Treatment Services*

Background

Early and Periodic Screening, Diagnostic, and Treatment Services

The Medicaid program's benefit for children and adolescents is known as Early and Periodic Screening, Diagnostic, and Treatment services, or EPSDT. Under federal Medicaid law at 42 U.S.C. § 1396d(r) [1905(r) of the Social Security Act], EPSDT provides a comprehensive array of prevention, diagnostic, and treatment services for low-income infants, children and adolescents under age 21, as specified in Section 1905(r) of the Social Security Act (the Act). The EPSDT benefit is more robust than the Medicaid benefit for adults and is designed to assure that children receive early detection and care, so that health problems are averted or diagnosed and treated as early as possible. The goal of EPSDT is to assure that individual children get the health care they need when they need it – the right care to the right child at the right time in the right setting.

Within the scope of EPSDT benefits under the federal Medicaid law, states are required to cover any service that is medically necessary “to correct or ameliorate a defect, physical or mental illness, or a condition identified by screening,” whether or not the service is covered under the Delaware Medicaid State Plan. The services covered under EPSDT are limited to those within the scope of the category of services listed in the federal law at 42 U.S.C. § 1396d (a) [1905(a) of the Social Security Act].

States have an affirmative obligation to make sure that Medicaid-eligible children and their families are aware of EPSDT and have access to required screenings and necessary treatment services. States also have broad flexibility to determine how to best ensure such services are provided. In general, they either administer the benefit outright (through fee-for-service arrangements) or provide oversight to private entities with whom they have contracted to administer the benefit (e.g., managed care entities). States must arrange (directly or through delegations or contracts) for children to receive the physical, mental, vision, hearing, and dental services they need to treat health problems and conditions.

Medicaid Rehabilitative Services

Treatment for mental health and substance use issues and conditions is available under a number of Medicaid service categories, including hospital and clinic services, physician services, and services provided by a licensed professional such as a psychologist. States should also make use of rehabilitative services. While rehabilitative services can meet a range of children's treatment needs, they can be particularly critical for children with mental

health and substance use issues. Rehabilitative services are defined to include:

any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.

Like other services covered under EPSDT, rehabilitative services need not actually cure a disability or completely restore an individual to a previous functional level. Rather, such services are covered when they ameliorate a physical or mental disability, as discussed above. Moreover, determinations of whether a service is rehabilitative must take into consideration that a child may not have attained the ability to perform certain functions. That is, a child's rehabilitative services plan of care should reflect goals appropriate for the child's developmental stage.

Depending on the interventions that the individual child needs, services that can be covered as rehabilitative services include:

- Community-based crisis services, such as mobile crisis teams, and intensive outpatient services;
- Individualized mental health and substance use treatment services, including in non-traditional settings such as a school, a workplace or at home;
- Medication management;
- Counseling and therapy, including to eliminate psychological barriers that would impede development of community living skills; and
- Rehabilitative equipment, for instance daily living aids.

With respect to the provision of rehabilitative services, including those noted above, CMS requires more specificity of providers and services due to the wide spectrum of rehabilitative services coverable under the broad definition. CMS would expect a state to include in their State Plan the services, and providers with their qualifications, as well as a reimbursement methodology for each service it provides.

Inpatient Psychiatric Services for Individuals under Age 21 Benefit

The Psychiatric Services for Individuals under Age 21 benefit at section 1905(a)(16) of the Act, is optional. The benefit must be provided in all States to those individuals who are determined during the course of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) screen to need this type of inpatient psychiatric care. Under the EPSDT provision, States must provide any services listed in section 1905(a) of the Act that is needed to correct or ameliorate defects and physical and mental conditions discovered by EPSDT screening, whether or not the service is covered under the State plan.

This benefit has a long title, and so is often referred to as "Psych under 21". Most states have chosen to provide this optional benefit. Services are provided in psychiatric hospitals or psychiatric units in a hospital, or psychiatric facilities for which states may define accreditation requirements, subject to requirements at 42 CFR 441 Subpart D. Among the requirements for this service is certification of need for inpatient care, and a plan of care for active treatment, developed by an interdisciplinary team.

This benefit is significant as a means for Medicaid to cover the cost of inpatient mental health services. The federal Medicaid program does not reimburse states for the cost of institutions for mental diseases (IMDs) except for young people, who receive this service, and individuals age 65 or older served in an IMD. No later than age 22, individuals are transitioned to community services, or non-Medicaid inpatient services.

Many states provide psych under 21 services through psychiatric residential treatment facilities (PRTFs). A PRTF provides comprehensive mental health treatment to children and adolescents (youth) who, due to mental illness, substance abuse, or severe emotional disturbance, are in need of treatment that can most effectively be provided in a residential treatment facility. All other ambulatory care resources available in the community must have been identified, and if not accessed, determined to not meet the immediate treatment needs of the youth.

PRTF programs are designed to offer a short term, intense, focused mental health treatment program to promote a successful return of the youth to the community. Specific outcomes of the mental health services include the youth returning to the family or to another less restrictive community living situation as soon as clinically possible and when treatment in a PRTF is no longer medically necessary. The residential treatment facility is expected to work actively with the family, other agencies, and the community to offer strengths-based, culturally competent, medically appropriate treatment designed to meet the individual needs of the youth including those identified with emotional and behavioral issues.

What is a Psychiatric Residential Treatment Facility?

A Psychiatric Residential Treatment Facility (PRTF) is any non-hospital facility with a provider agreement with a State Medicaid Agency to provide the inpatient services benefit to Medicaid-eligible individuals under the age of 21 (psych under 21 benefit). The facility must be accredited by Joint Commission on Accreditation of Healthcare (JCAHO) or any other accrediting organization with comparable standards recognized by the State. PRTFs must also meet the requirements in §441.151 through 441.182 of the CFR. The regulatory authority for PRTFs includes Section 1864(a) of the Social Security Act (the Act), which authorizes the Secretary to enter into an agreement with the State. Authority also includes Section 1902(a)(9)(A), which authorizes the state agency or other appropriate medical agency, to be responsible for establishing and maintaining health standards, and Section 1902(a)(33)(B), licensing requirement.

Summary of Proposal

Note: This Inpatient Psychiatric Hospital Services for Individuals under Age 21 state plan amendment (SPA) is third of three (3) proposed SPA actions related to Medicaid rehabilitative services under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program.

Purpose

The purpose of this notice is to clarify service descriptions and reimbursement methodologies for Inpatient Psychiatric Hospital Services for Individuals under Age 21 and to request comments from the public.

On February 23, 2011, the Centers for Medicare and Medicaid Services (CMS) sent a companion letter to the Division of Medicaid and Medical Assistance (DMMA) concerning a previously approved State Plan Amendment #08-004, School-Based Health Services. CMS performed a program analysis of corresponding coverage sections not originally submitted with this SPA. This analysis revealed concerns regarding the monthly bundled rates for rehabilitative child mental health and substance use disorder services under the EPSDT program. CMS determined that the service descriptions and reimbursement language for rehabilitative child mental health and substance use disorder services fails to comply with 42 CFR 430.10 and 42 CFR 447.252 which implement in part Section 1902(a)(30)(A) of the Social Security Act, to require collectively that States comprehensively describe the methodologies that they use to reimburse service providers. The methodologies must be understandable, clear, unambiguous and auditable.

Proposal

In order to comport with 42 CFR 430.10 and 42 CFR 447.252, DMMA proposes to clarify existing rehabilitative child mental health and substance use disorder services reimbursement methodology language currently described at Medicaid State plan page Attachment 3.1-A and new Attachment 4.19-A.3 by:

- defining the reimbursable unit of service;
- describing payment limitations;
- providing a reference to the provider qualifications per the State Plan;
- publishing location to access State developed fee schedule rates.

The agency's proposal involves no change in the definition of those eligible to receive the inpatient psychiatric hospital services for individuals under age 21 benefit under the Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, and the "Psych under 21" benefit available to eligible recipients remains the same.

Summary of Proposed Changes

The proposed "Psych under 21" SPA provides a reimbursement methodology for psychiatric residential treatment facilities (PRTFs) for children in compliance with CMS guidance. On November 28, 2012, CMS issued an informational bulletin clarifying that states may structure coverage and payment for the benefit category of inpatient psychiatric hospital or facility services for individuals under age 21 to ensure youth receiving inpatient psychiatric services would receive medically necessary Medicaid services to meet their medical, psychological, social, behavioral, and developmental needs as identified in their plan of care. This clarification is intended to describe flexibility currently available to states to ensure the provision of medically necessary Medicaid services to children in inpatient psychiatric facilities.

To view the CMCS Informational Bulletin regarding Inpatient Psychiatric Hospital Services for Individuals under age 21, use the following link to the CMS website:

PROPOSED REGULATIONS

<http://www.medicaid.gov/Federal-Policy-Guidance/downloads/CIB-11-28-12.pdf>.

The proposed effective date for this state plan amendment is July 1, 2016.

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 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the methods and standards governing payment methodology for the rehabilitative inpatient psychiatric hospital services for individuals under age 21 benefit under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. Comments must be received by 4:30 p.m. on December 1, 2015.

CMS Review and Approval

The provisions of this draft state plan amendment (SPA) are subject to the Centers for Medicare and Medicaid Services (CMS) review and approval. 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 Manual Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals 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 manual updates.

Fiscal Impact Statement

The purpose of this state plan amendment is to update and reorganize both the services (Attachment 3.1-A) and reimbursement (Attachment 4.19-A and Attachment 4.19-B) sections of the Medicaid State Plan that primarily address rehabilitative services under the early and periodic screening, diagnostic, and treatment (EPSDT) program.

This amendment is not for the purpose of making program changes. Rather, this is part of DHSS/DMMA's continuing effort in working with CMS to assure the reimbursement pages clearly correspond to the service sections of the state plan and to implement the required wording regarding fee schedules and the dates for which reimbursement rates were set for these services.

There are no intended content changes other than improved descriptions. The proposed amendment imposes no increase in cost on the General Fund as the proposed services in this State plan amendment will be budget neutral. The federal fiscal impact associated with this amendment will be zero dollars.

DMMA FINAL ORDER REGULATION #15-23a

REVISION:

Revision: HCFA-PM-86-20 (BERC)
SEPTEMBER 1986

ATTACHMENT 3.1-A
Page 7

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Delaware

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

16. Inpatient psychiatric facility services for individuals under 22 years of age.

Provided: No limitations With limitations*

*See Attachment 3.1-A Page 2c Addendum, Item 4.b. — EPSDT

Not provided.

DMMA PROPOSED REGULATION #15-23b

REVISION:

ATTACHMENT 4.19-A.3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21

1. Psychiatric Residential Treatment Facility (PRTF) Reimbursement
Reimbursement for services is based upon a Medicaid fee schedule established by the State of Delaware. Psychiatric residential treatment facilities will be reimbursed the lesser of:
- The Delaware Medicaid per diem reimbursement rate for activities in the per diem plus additional fee-for-service reimbursement using the Delaware Medicaid fee schedule for activities on the plan of care but not in the per diem.
 - The facilities usual and customary charge to privately insured or private-pay beneficiaries, or
 - If an out of state facility, the specific in-state PRTF interim Medicaid per diem reimbursement rate for the activities included in that state's per diem rate with additional fee-for-service reimbursement using the Delaware Medicaid fee schedule for activities on the plan of care but not in that state's per diem reimbursement.

Except as otherwise noted in the State Plan, the State-developed fee schedule is the same for both governmental and private individual providers and the fee schedule and any annual/periodic adjustments to the fee schedule are published in the Delaware Register of Regulations. The Agency's fee schedule rate was set as of July 1, 2016 and is effective for services provided on or after that date. All rates are published on the Delaware Medical Assistance Program (DMAP) website at:

<http://www.dmap.state.de.us/downloads/feeschedules.html>.

- A. Delaware Medicaid per diem PRTF reimbursement rate includes the following covered inpatient psychiatric residential treatment facility (PRTF) activities for individuals under twenty-one (21) years of age when included on the patient's inpatient psychiatric active treatment plan of care:
1. Behavioral Health care by staff who are not physicians
 2. Occupational Therapy / Physical Therapy / Speech Therapy
 3. Laboratory
 4. Transportation
 5. Dental
 6. Vision
 7. Diagnostics/radiology (x-ray).

PROPOSED REGULATIONS

ATTACHMENT 4.19-A.3.1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
– INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21 CONTINUED

- B. Pharmaceuticals and physician activities provided to the youth in a PRTF, when on the active treatment plan of care, are components of the Medicaid covered PRTF service. These activities will be paid directly to the treating pharmacy or physician, using Medicaid pharmacy and physician fee schedule rates excluded from the psychiatric residential treatment facility (PRTF) State of Delaware Medicaid per diem reimbursement rates.
- C. Medical services under 1905(a) of the Social Security Act that are listed on the inpatient psychiatric active treatment plan and excluded in A or B above shall be paid directly to the treating provider, using Medicaid fee schedule rates. Such services are excluded from the psychiatric residential treatment facility (PRTF) State of Delaware Medicaid per diem reimbursement rates.
- D. The Medicaid PRTF per diem reimbursement rates shall exclude such costs other than pharmaceutical, physician, and other medical services that could be covered under 1905(a) of the Social Security Act on the inpatient psychiatric active treatment plan unrelated to providing inpatient psychiatric care for individual less than twenty-one (21) years of age including, but not limited to the following:
1. Group education including elementary and secondary education.
 2. Medical services that are not listed in Items A, B, and C above.
 3. Activities not on the inpatient psychiatric active treatment plan.
2. Psychiatric Residential Treatment Facility (PRTF) Reimbursement Rate Methodology
- A. Medicaid certified providers will be reimbursed for covered PRTF services using a Medicaid per diem reimbursement rate consistent with the principles in section 1 above. The Medicaid per diem reimbursement rate paid to the provider will be determined by the following service criteria:
1. PRTF specializing in sexually-based treatment programs.
 2. PRTF specializing in substance use disorder treatment programs.
 3. PRTF treating children with mental health diagnoses.

ATTACHMENT 4.19-A.3.2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
– INPATIENT PSYCHIATRIC CARE FOR UNDER AGE 21 CONTINUED

The Delaware Medicaid PRTF fee development methodology will build fees considering each component of provider costs as outlined below. These reimbursement methodologies will produce rates sufficient to enlist enough providers so that services under the State Plan are available to beneficiaries at least to the extent that these services are available to the general population, as required by 42 CFR 447.204. These rates comply with

the requirements of Section 1902(a)(3) of the Social Security Act and 42 CFR 447.200, regarding payments and are consistent with economy, efficiency, and quality of care. Provider enrollment and retention will be reviewed periodically to ensure that access to care and adequacy of payments are maintained.

DMMA PROPOSED REGULATION #15-23c

REVISION:

ATTACHMENT 4.19-B

Page 19a

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE

5. Other EPSDT Services

Reimbursement for services not otherwise covered under the State Plan is determined by the Medicaid agency through review of a rate setting committee. Non-institutional services are paid on a fee-for-service basis. Institutional services are per diem rates based on reasonable costs. These services include:

(a) Prescribed Pediatric Extended Care - see ATT. 4.19-B, Page 7

~~(b) Inpatient and Partial Hospital Psychiatric Services—reimbursed on a per diem basis~~

~~(c) Outpatient Psychiatric Facility Services—fee for service~~

~~(d)~~ (b) School-Based Health Service (SBHS) Providers:

School based health service providers include Delaware school districts and charter schools and may provide the following Medicaid services per Attachment 3.1-A, Page 2 Addendum:

- EPSDT Screens
- Nursing Services
- Physical Therapy
- Occupational Therapy
- Speech Therapy, Language and Hearing Services
- Psychological and Developmental Treatment Assessment
- Counseling and Therapy
- Residential Mental Health or Developmental Disability Treatment
- Specialized Transportation Services

PROPOSED REGULATIONS

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 25 (16 Del.C. Ch. 25)
16 DE Admin. Code 4304

PUBLIC NOTICE

4304 Medical Orders for Life-Sustaining Treatment or Pre-Hospital Advance Care Directives

Division of Public Health, Department of Health and Social Services, is proposing to repeal and replace regulations for Delaware Medical Orders Scope of Treatment (DMOST). The purpose of replacing existing regulation with the proposed regulations is to improve the quality of care people receive at the end of life by translating patient/resident goals and preferences into medical orders. The proposed regulations will set requirements for use of DMOST forms, provide guidance in the use of the forms and formalize the DMOST form itself. On November 1, 2015, DPH plans to publish as proposed the new regulations, and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC COMMENT PERIOD

Copies of the proposed regulations are available for review in the November 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, December 4, 2015, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

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

4304 Medical Orders for Life-Sustaining Treatment or Pre-Hospital Advance Care Directives

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3) (16 Del.C. §122(3))
16 DE Admin. Code 4406

PUBLIC NOTICE

4406 Home Health Agencies--Aide Only (Licensure)

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Home Health Care Agencies - Aide Only (4406). One purpose of the amendments to these regulations is to allow for the provision of services by these agencies in nursing facilities and hospitals. This change will allow patients to receive the services necessary to safely achieve their highest level of independence and optimal quality of life while residing in their own home or during a necessary hospitalization. In addition, amendments were made to update the requirements to ensure patients receive safe and quality care. On November 1, 2015, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

A public hearing will be held on Wednesday, December 2, 2015 at 2:00 p.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the November 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Thursday, December 17, 2015, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

4406 Home Health Agencies--Aide Only (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)

~~“Branch Office” means a separately licensed office within the state which is located within fifty miles of the parent agency and shares administrative functions with the parent. The branch maintains patient records while patients are active with the agency.~~

(Break in Continuity Within Section)

“Director” means the individual appointed by the governing body to act on its behalf in the overall management of the home health agency. The director shall have a Baccalaureate Degree in health or a related field. The “Director” and “Clinical Director” may be the same individual if that individual is dually qualified.

“Full-time” means the established business hours of the home health 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 home health agency.

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

“Home Health Agency (HHA)” means any business entity or sub-division thereof, whether public or private, proprietary or not-for-profit, which provides home health aide services, to an individual primarily in their place of residence. The HHA shall only provide services in the county in which the HHA is located and/or the county(ies) which are immediately adjacent.

(Break in Continuity Within Section)

“Home Health Aide Care Plan” means a written plan developed by the nurse that specifies the tasks that are to be performed by the aide primarily in the patient’s residence. The written plan specifies scope, frequency and duration of services.

“Homemaker Services” means performance of household chores for an individual, primarily in her/his place of residence. Household chores may include but are not necessarily limited to housekeeping, meal preparation and shopping.

(Break in Continuity Within Section)

~~“Parent Agency” means the agency located within the state that develops and maintains administrative control of branch offices. The parent agency is separately licensed from the branch(es) and must be located within fifty miles of any branch.~~

PROPOSED REGULATIONS

(Break in Continuity Within Section)

“Residence” means the domicile of the patient either personally owned by that patient or considered the place of residence of that patient.

“Supervision of Services” means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

2.0 Licensing Requirements and Procedures

(Break in Continuity Within Section)

2.3 Issuance of Licenses

(Break in Continuity Within Section)

2.3.3 License

(Break in Continuity Within Section)

2.3.3.4 A license may not be issued to a home health agency; ~~which is not in substantial compliance with these regulations or whose deficient practices present an immediate threat to the health and safety of its patients.~~

2.3.3.4.1 Which does not meet the definition of a home health agency as contained within these regulations;

2.3.3.4.2 Which is not in substantial compliance with these regulations; or

2.3.3.4.3 Whose deficient practices present an immediate threat to the health and safety of its patients.

(Break in Continuity Within Section)

2.9.6 A Personal Assistance Services Agency which solely provides services defined in 16 Del.C. §122~~(*)~~ (3).

3.0 General Requirements

(Break in Continuity Within Section)

~~3.5~~ ~~The home health agency may not establish separate offices without first contacting and receiving approval from the Department.~~

~~3.6~~ The home health agency may contract with a staffing agency for services to be provided to its patients when the home health agency is not able to meet staffing needs. Individuals providing services under contract must meet the same requirements as those persons employed directly by the agency.

~~3.7~~6 The director or clinical director shall be available at all times during the operating hours of the home health agency.

~~3.8~~7 The home health agency shall advise the Department in writing at least thirty (30) calendar days prior to any change in office location.

~~3.9~~8 The home health agency must permit photocopying of any records or other information by, or on behalf of authorized representatives of the Department, as necessary to determine or verify compliance with these regulations.

~~3.4~~9 The agency shall have policies and an operational system which assure uninterrupted implementation of the plan of care. In furtherance of this requirement, the agency shall, at a minimum: 1) maintain a sufficient pool of qualified employees/contractors to fulfill plans of care and provide scheduled services; and 2) develop and maintain a back-up system to provide substitute employees/contractors if regularly scheduled employees/contractors are unavailable.

~~3.4~~10 The agency shall be in compliance with federal, state and local laws and codes.

3.11 Prior to the provision of services in a healthcare facility, the home health agency must obtain written permission from each healthcare facility in which services will be provided.

(Break in Continuity of Sections)

5.0 Administration/Personnel

(Break in Continuity Within Section)

5.7 Staff Development

(Break in Continuity Within Section)

- 5.7.9 All newly-hired employees and contractors must pass a competency evaluation test prior to providing care to patients and annually thereafter.

6.0 Patient Care Management

(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 ~~Del.C. 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 ~~Del.C. 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 ~~home~~ residence (while the home health aide is providing care) no less frequently than every sixty (60) calendar days.

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

(Break in Continuity Within Section)

6.5 Records and Reports

(Break in Continuity Within Section)

- 6.5.5 All patient records shall be available at all times for review by authorized representatives of the Department and to legally authorized persons; otherwise patient records shall be held confidential. The written consent of the patient or her/his representative, if the patient is incapable of making decisions, shall be obtained before any personal information is released from her/his records as authorized by these regulations or Delaware law.

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

4406 Home Health Agencies--Aide Only (Licensure)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(3)o (16 Del.C. §122(3)o)

16 DE Admin. Code 4410

PUBLIC NOTICE

4410 Skilled Home Health Agencies (Licensure)

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social

PROPOSED REGULATIONS

Services, is proposing revisions to the regulations governing Home Health Care Agencies - Skilled (4410). One purpose of the amendments to these regulations is to allow for the provision of services by these agencies in nursing facilities and hospitals. This change will allow patients to receive the services necessary to safely achieve their highest level of independence and optimal quality of life while residing in their own home or during a necessary hospitalization. In addition, amendments were made to update the requirements to ensure patients receive safe and quality care. On November 1, 2015, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

A public hearing will be held on Wednesday, December 2, 2015 at 2:00 p.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the November 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Thursday, December 17, 2015, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

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

4410 Skilled Home Health Agencies (Licensure)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(3)x (16 Del.C. §122(3)x)
16 DE Admin. Code 4469

PUBLIC NOTICE

4469 Personal Assistance Services Agencies

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Personal Assistance Service Agencies (4469). One purpose of the amendments to these regulations is to allow for the provision of services by these agencies in nursing facilities and hospitals. This change will allow consumers to receive the services necessary to safely achieve their highest level of independence and optimal quality of life while residing in their own home or during a necessary hospitalization. In addition, amendments were made to update the requirements to ensure patients receive safe and quality care. On November 1, 2015, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

A public hearing will be held on Wednesday, December 2, 2015 at 2:00 p.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

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Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Thursday, December 17, 2015, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

4469 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)

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

(Break in Continuity Within Section)

"Personal Assistance Services Agency" is an agency that employs or contracts with direct care workers to provide personal assistance services to consumers ~~of the agency primarily in his/her place of residence.~~ The personal assistance services agency shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent.

(Break in Continuity Within Section)

"Residence" means the domicile of the consumer either personally owned by that consumer or considered the place of residence of that consumer ~~and that is not licensed, operated for profit, or operating as a healthcare facility.~~

(Break in Continuity Within Section)

2.0 Licensing Requirements and Procedures

(Break in Continuity Within Section)

- 2.2 Application Process

(Break in Continuity Within Section)

- 2.2.2 In addition to a completed application for licensure, applicants shall submit to the Department the following information:

2.2.2.1 The names, addresses and types of facilities owned or managed by the applicant;

2.2.2.2 A copy of the Applicant's policies and procedures manual as outlined in Regulation Section 4.3;

(Break in Continuity Within Section)

2.2.2.7 A copy of the test to be given to each direct care worker, as required by Regulation Section 4.5;

2.2.2.8 Proof of insurance and bonding as required in Regulation Section 7.0.

2.2.2.9 Any other information required by the Department.

- 2.3 Issuance of Licenses

(Break in Continuity Within Section)

- 2.3.3 License

(Break in Continuity Within Section)

PROPOSED REGULATIONS

2.3.3.4 A license may not be issued to a personal assistance services agency; ~~that is not in substantial compliance with these regulations or whose deficient practices present an immediate threat to the health and safety of its consumers.~~

2.3.3.4.1 Which does not meet the definition of a personal assistance services agency as contained within these regulations;

2.3.3.4.2 Which is not in substantial compliance with these regulations; or

2.3.3.4.3 Whose deficient practices present an immediate threat to the health and safety of its consumers.

(Break in Continuity Within Section)

2.9 Exclusions from Licensure

The following persons, associations or organizations are not required to obtain a Personal Assistance Services Agency license:

(Break in Continuity Within Section)

2.9.6 A Home Health Agency which solely provides services defined in 16 Del.C. §122(e) (3)o.

3.0 General Requirements

(Break in Continuity Within Section)

3.12 Prior to the provision of personal care services in a healthcare facility, the personal assistance services agency must:

3.12.1 Disclose the personal assistance services agency's and the direct care worker's status with respect to attendant tax, worker's compensation and liability insurance obligations, insurance coverage or the lack thereof to each healthcare facility in which services are provided.

3.12.2 Obtain written permission from each healthcare facility in which personal care services will be provided.

3.13 The personal assistance services agency must not use the word "healthcare", or any other language which implies or indicates the provision of healthcare services, in its title or in its advertising.

4.0 Administration

4.1 Agency Director

(Break in Continuity Within Section)

4.1.4 The director must ensure that the personal assistance services agency adheres to its policies and procedures.

(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:

(Break in Continuity Within Section)

4.4.2.6 Health History

(Break in Continuity Within Section)

4.4.2.6.5 All new direct care workers shall be required to have a pre-employment/referral physical examination, a copy of which shall be maintained in individual files. 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 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.

(Break in Continuity Within Section)

4.5 Orientation and Testing

4.5.1 All direct care workers are required to complete an orientation program given by the Agency before providing services to a consumer.

4.5.2 The orientation program shall include but not be limited to:

(Break in Continuity Within Section)

4.5.2.22 Service Plan specific description; and

(Break in Continuity Within Section)

4.5.3 All newly hired/contracted direct care workers must pass a competency test prior to providing care to consumers and annually thereafter.

4.5.3.1 The competency test must include questions addressing the competencies listed in Section 4.5.2.

4.5.3.2 It is the responsibility of the personal assistance services agency to ensure that direct care workers are proficient to carry out the care assigned in a safe, effective and efficient manner.

~~4.5.44.5.3.2.1A~~ Personal Assistance Services Agency that provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall provide dementia specific training to those healthcare providers who must participate in continuing education programs all direct care workers. The mandatory training must include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons. ~~This paragraph shall not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 of the Delaware Code.~~

5.0 Consumer Care Management

(Break in Continuity Within Section)

5.4 Scope of Services

5.4.1 Competent consumers 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 direct care workers provided:

5.4.1.1 The nature of the service/task is not excluded by ~~Del.C.~~ law or other state or federal regulation.

(Break in Continuity Within Section)

5.4.2 For consumers who are not able to delegate services/tasks due to impaired cognitive function, services/tasks shall be limited by the following:

(Break in Continuity Within Section)

5.4.2.2 ~~Fingernail~~ Nail Care

(Break in Continuity Within Section)

5.5 Records and Reports

5.5.1 There shall be a separate record maintained at the personal assistance services agency for each consumer which shall contain:

(Break in Continuity Within Section)

5.5.1.9 Signed disclosure form required by ~~Regulation~~ Section 5.1.3; and

(Break in Continuity Within Section)

5.5.3 Activity logs shall be signed and dated by the direct care worker on the day that the service is rendered.

5.5.4 Copies of all activity logs shall be maintained at the residence of the consumer.

5.5.5 Original activity log notes must be incorporated into the consumer's record located at the Agency no less often than every 90 days.

PROPOSED REGULATIONS

5.5.6 All agency records shall be available at all times for review by authorized representatives of the Department and to legally authorized persons; otherwise consumer records shall be held confidential. The consent of the consumer or his representative if the consumer is incapable of making decisions shall be obtained before any personal information is released from his records as authorized by these regulations or Delaware law.

(Break in Continuity Within Section)

5.5.13 The personal assistance services agency must ensure all consumer records are accurate and complete.

(Break in Continuity Within Section)

6.0 Consumer Rights

(Break in Continuity Within Section)

6.3 Each consumer shall have the right to:

(Break in Continuity Within Section)

6.3.8 Be fully informed, at the time of admission into the program, of services and activities available and related charges, including the disclosure required by Regulation Section 5.1.3; and

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

4469 Personal Assistance Services Agencies

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 50 (18 Del.C. §311 & Ch. 50)
18 DE Admin. Code 1801

PUBLIC NOTICE

1801 Registration of Insurance Holding Companies

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 1801 relating to Registration of Insurance Holding Companies [Formerly Regulation 13]. The docket number for this proposed AMENDED regulation is 2969-2015.

The proposed amended regulation is being submitted to maintain accreditation and replaces the current regulation with the updated National Association of Insurance Commissioners (NAIC) Model Insurance Holding Company System Model Regulation With Reporting Forms And Instruction, to support the Insurance Holding Company System Regulatory Act. The Delaware Code authority for the change is 18 Del.C. §311 and Ch. 50, and 29 Del.C. Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Tuesday, December 1, 2015. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard

Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

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

1801 Registration of Insurance Holding Companies

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF ENERGY AND CLIMATE

Statutory Authority: 26 Delaware Code, Section 354(i) and (j) (26 **Del.C.** §354(i) & (j))

REGISTER NOTICE #2015-XX

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

1. TITLE OF THE REGULATION:

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

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

The purpose of this action is to propose rules to govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 **Del.C.** §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of Delaware's Renewable Energy Portfolio Standards as provided for in 26 **Del.C.** §354(a).

Start Action Notice 2012-03 initiating this rule making process was issued April 16, 2012.

This proposed regulation replaces the regulation posted in the *Register* on October 1, 2015, which contained significant typographical errors.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

26 **Del.C.** §354(i) & (j)

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

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on 102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions (Proposed Rules to Implement 26 **Del.C.** §354(i) & (j)) will open November 1, 2015 and will close December 8, 2015 at 4:30 PM.

Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. However, any comments submitted in response to the regulation posted in the October 1, 2015 *Register* will be considered to be part of the record.

The public hearing scheduled for November 3, 2015, starting at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901 has been cancelled and rescheduled for November 23, 2015 as noted below.

A public hearing on the proposed amendment will be held on November 23, 2015 beginning at 6:00 p.m. in the Public Service Commission Hearing Room, 861 Silver Lake Blvd., Dover, DE, 19904.

7. PREPARED BY:

Thomas Noyes Thomas.Noyes@state.de.us (302) 735-3356

Philip Cherry, Director

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions**1.0 Purpose**

These rules govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 Del.C. §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of the Renewable Energy Portfolio Standards as provided for in 26 Del.C. §354(a).

2.0 Definitions

For purposes of this regulation, the following words and phrases shall have the following meaning unless the context clearly indicates otherwise:

"Alternative compliance payment" means a payment of a certain dollar amount per megawatt hour, which a Commission-Regulated Electric Company may submit in lieu of supplying the minimum percentage of RECs from Eligible Energy Resources required as defined and set by 26 Del.C. §§352(1) and 358(d).

"Avoided system costs" means reductions in electric generation, transmission or distribution costs.

"Commission-Regulated Electric Company" means the same as an Electric Distribution Company in 26 Del.C. §1001(12).

"Compliance year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Commission-Regulated Electric Company must demonstrate that it has met the requirements of the subchapter known as the "Renewable Energy Portfolio Standards Act".

"Director" means the Director of the Division of Energy & Climate, who is considered the State Energy Coordinator for the purpose of these rules.

"Division" means the Division of Energy & Climate, the successor agency to the Delaware Energy Office.

"End-use customer" means a person or entity in Delaware that purchases electrical energy at retail prices from regulated electric utilities.

"Exempt sales" means the retail customer sales of a Commission-Regulated Electric Company that is not included in the total retail sales for RPS compliance.

"Externality benefits" means reductions in environmental, health and mortality costs resulting from reduced emissions.

"Freeze" means suspension of enforcement or implementation of the annual increase in the RPS as provided for under 26 Del.C. §§352(3) & 354(a).

"Green Energy Fund" means the grant program authorized under 29 Del.C. §8057.

"Integrated Resource Plan" or "IRP" means the plan filed by the Commission-Regulated Electric Company to meet the requirements of 26 Del.C. §1007(c) & (d).

"Non-exempt sales" means the retail customer sales of a Commission-Regulated Electric Company that is included in the total retail sales for RPS compliance.

"PJM" or "PJM interconnection" means the regional transmission organization that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"Price suppression effects" means reductions in energy or capacity costs due to competitive pressures from renewable resources.

"PSC" means the Delaware Public Service Commission.

“REC costs of compliance” means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for RECs during a respective compliance year.

“REC percentage requirements” and “SREC percentage requirements” mean the renewable energy portfolio requirements for each compliance year as set forth in 26 Del.C. §354(a).

“Renewable Energy Cost of Compliance” means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for all renewable energy during a respective compliance year.

“Renewable Energy Credit” or “REC” means a tradable instrument defined by 26 Del.C. §352(18) used to demonstrate compliance with the percentage requirements set forth in 26 Del.C. §354(a).

“RPS” means the renewable portfolio standard, the minimum percentage of total electricity sales delivered to Delaware end-use customers that is derived from eligible energy resources established under 26 Del.C., §354.

“Solar alternative compliance payment” means the payment of certain dollar amounts expended in lieu of supplying the minimum percentage from solar photovoltaics as defined and set by 26 Del.C. §§352(24) and 358(e).

“Solar Renewable Energy Cost of Compliance” means the total costs expended by a Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for solar photovoltaic renewable energy during a respective compliance year.

“Solar Renewable Energy Credit” or “SREC” means the tradable instrument defined by 26 Del.C. §352(25) used to demonstrate compliance with the percentage requirements set forth in 26 Del.C. §354(a).

“Third party supplier” means an electricity supplier that sells power to end-use customers delivered over the distribution facilities of the Commission-Regulated Electric Company. It does not include the Commission-Regulated Electric Company, Rural Electric Cooperatives or Municipal Electric Companies.

“Total Retail Costs of Electricity” means the total costs paid by customers of the Commission-Regulated Electric Company for the supply, transmission, distribution and delivery of retail electricity to serve non-exempt customers, including those served by third party suppliers, during a respective compliance year.

3.0 Application

- 3.1 These rules shall apply only to a Commission-Regulated Electric Company. These rules shall not apply to electric supply provided by either:
 - 3.1.1 an exempted municipal electric company or a municipal utility (as set forth in 26 Del.C. §363); or
 - 3.1.2 an exempted rural electric cooperative or a rural electric cooperative (as set forth in 26 Del.C. §363).
- 3.2 These rules will be applied immediately upon enactment.

4.0 Calculation of the Cost of Compliance

- 4.1 The Division shall calculate the Renewable Energy Cost of Compliance, the Solar Renewable Energy Cost of Compliance and the Total Retail Cost of Electricity as follows.
- 4.2 The Division shall calculate the Renewable Energy Cost of Compliance for a particular compliance year to be:
 - 4.2.1 the total of contributions to that portion of the Green Energy Fund used to support the development of renewable resources, plus
 - 4.2.2 the cost of RECs and SRECs retired to satisfy the RPS requirement, plus
 - 4.2.3 all Alternative Compliance Payments.
- 4.3 The Division shall calculate the Solar Renewable Energy Cost of Compliance for a particular compliance year to be:

- 4.3.1 the total of contributions to that portion of the Green Energy Fund used to support the development of photovoltaic renewable resources, plus
 - 4.3.2 the cost of SRECs retired to satisfy the RPS requirement, plus
 - 4.3.3 all Solar Alternative Compliance Payments for the solar photovoltaic requirement.
- 4.4 The Division will determine the Total Retail Costs of Electricity as all customer costs for non-exempt load customers for a particular compliance year.

5.0 Determination by the Director

- 5.1 The Director shall review the calculations of the Division.
- 5.2 If the Division calculations show that the Renewable Energy Cost of Compliance is greater than 3 percent of the Total Retail Costs of Electricity for the compliance year, the Director shall, after consulting with the staff of the PSC, determine whether a freeze should be implemented.
- 5.3 If the Division calculations show that the Solar Renewable Energy Cost of Compliance is greater than 1 percent of the Total Retail Costs of Electricity for the compliance year, the Director shall, after consulting with the staff of the PSC, determine whether a freeze should be implemented.
- 5.4 In making a determination, the Director may consider:
 - 5.4.1 the overall energy market conditions;
 - 5.4.2 the avoided cost benefits from the RPS;
 - 5.4.3 the externality benefits due to the RPS; and
 - 5.4.4 the economic impacts of the deployment of renewable energy in Delaware.
- 5.5 Overall market conditions may include shifts in energy prices, long term market trends, adjustments for short term fluctuations, changes in compliance costs, consumer benefits of other state energy policies such as the implementation of energy efficiency programs, and the overall cost of energy to consumers.
- 5.6 Avoided cost benefits from the RPS may include avoided system costs and price suppression effects attributable to the deployment of renewable energy that result in lower net electricity costs.
- 5.7 Externality benefits of changes in energy markets may include externality savings in health and mortality costs and environmental impacts due to policies promoting cleaner energy in Delaware and regional energy generation. To the extent possible, the externality savings should be consistent with the current IRP filed by the Commission-Regulated Electric Company, except where other published methods or studies are determined to be more appropriate.
- 5.8 Economic development benefits may include the overall economic activity attributed to jobs created by the development of renewable energy in Delaware.

6.0 Implementation

If the Director determines that a freeze should be implemented under Section 5.0 above, the Director, in consultation with the staff of the PSC, will declare the freeze and notify the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also publish notice of the freeze in the next appropriate issue of the *Delaware Register of Regulations*.

7.0 Lifting of a Freeze

- 7.1 If a freeze has been imposed, the Division will calculate compliance costs, using the methods described in Section 4.0 of this regulation.
- 7.2 The Director will review the calculation and determine whether to lift a freeze using the methods and criteria described in Section 5.0 of this regulation.
- 7.3 If the total cost of compliance falls below the 3 percent threshold in Section 5.2 of this regulation or 1 percent threshold in Section 5.3 of this regulation, the Director shall lift a freeze following consultation with the staff of the PSC.

- 7.4 If a freeze is lifted, the Director will promptly notify, electronically and by mail, the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also:
- 7.4.1 provide prior notice of the lifting of the freeze to the PSC; and
 - 7.4.2 publish notice of the lifting of the freeze in the next appropriate issue of the Delaware Register of Regulations.

8.0 Administration

- 8.1 Within 90 days after the end of any compliance year, the Commission-Regulated Electric Company shall submit to the Division in writing and electronically the following information for the applicable compliance year:
- 8.1.1 the Renewable Energy Cost of Compliance for that compliance year;
 - 8.1.2 the Solar Renewable Energy Cost of Compliance costs for that compliance year; and
 - 8.1.3 the Total Retail Costs of Electricity for that compliance year.
- 8.2 Within 30 days from receipt of the information described in Section 8.1 of this regulation from the Commission-Regulated Electric Company, the Division shall calculate the cost of compliance as described in Section 4.0 of this regulation and present the results to the Director.
- 8.3 Within 30 days of receipt of the calculations of the cost of compliance from the Division, the Director will, after receipt of the calculations, make a determination as described in Section 5.0 of this regulation and present to the Registrar for publication.
- 8.4 The public will have 15 business days from the publication of the Director's determination to offer comment. The Director may alter or amend the determination based on review of the public comments.
- 8.5 The Director shall make a final determination, including effective date, and provide public notice and notify electronically and by mail the PSC, the Commission-Regulated Electric Company, and other interested parties within 15 business days of the close of public comments.

9.0 Existing Contracts

In implementing a freeze under these rules, existing contracts for the production or delivery of RECs, SRECs, renewable energy supply or other environmental attributes shall not be abrogated.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d) and 903(e)(3) (7 **Del.C.** §§901(c & d) & 903(e)(3))

REGISTER NOTICE #2015 - 03
3500 Tidal Finfish
3542 Tilefish

1. TITLE OF THE REGULATION:

3542 Tilefish

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

The Department of Natural Resources & Environmental Control (DNREC) initiated the development of regulations pertaining to Tilefish at the request of the Mid-Atlantic Fishery Management Council (MAFMC) and based on guidance from Delaware's Advisory Council on Tidal Finfisheries. Two management options were presented to the public in proposed form (18 **DE Reg.** 951 (06/01/15)) and a public hearing on the matter was held June 24, 2015 at 6:00 PM in the DNREC Auditorium, Dover, DE. Both management options included a commercial trip limit of 300 pounds and a recreational possession limit of no more than seven fish per person; however, one option limited the new regulation to Blueline Tilefish (*Caulolatilus microps*) and one option applied the regulation more broadly (as in Maryland and

PROPOSED REGULATIONS

Virginia) to include both Blueline and Golden Tilefish (*Lopholatilus chamaelonticeps*). The hearing record was closed on July 9, 2015. Following careful consideration of the hearing record, the Department has opted to adopt a Tilefish regulation that affords protections to both Blueline Tilefish and Golden Tilefish (Option 2). Additionally, to provide greater understanding to the regulated community, the Department proposes to clarify that the term “possess” pertains to individuals “aboard a vessel”.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

§901(c & d), §903(e) (3), Title 7 **Delaware Code**

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

N/A

6. NOTICE OF PUBLIC COMMENT:

No additional hearing will be held; the Department will receive written comment through November 30, 2015. Individuals may submit written comments regarding the proposed clarification to 7 **DE Admin. Code** 3542 via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

3542 Tilefish

1.0 Tilefish possession limits

- 1.1 It is unlawful for a recreational finfisherman to possess aboard a vessel more than seven (7) tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*), unless otherwise authorized by the Department.
- 1.2 Notwithstanding the provisions of subsection 1.1, a person issued a valid commercial food fishing license may possess aboard a vessel up to 300 pounds of tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*) in any number, provided said tilefish were taken using gear for which said person is lawfully permitted under 7 **Del.C.** §915.
- 1.3 It is unlawful for a person issued a valid commercial food fishing license to possess aboard a vessel more than 300 pounds of tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*).

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

TANK MANAGEMENT BRANCH

Statutory Authority: 7 Delaware Code, Chapters 60 and 74 (7 **Del.C.** Ch. 60 & 74)
7 **DE Admin. Code** 1351

REGISTER NOTICE: SAN #2015-04

1351 Underground Storage Tank Systems

1. TITLE OF THE REGULATIONS:

Administrative Code Section 1351, Underground Storage Tank Regulations

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

DNREC is taking action to clarify several issues concerning cleanup liability associated with releases from underground storage tanks resulting from the amendment of 7 Delaware Code Chapter 74, Delaware's Underground Storage Tank Act in October 2014. These changes clarify when the Department will require a responsible party to perform additional corrective actions following the Department issuing a No Further Action letter. Also, the changes establish an All Appropriate Inquiry Standard for residential properties that if completed would exempt a purchaser from liability associated with the cleanup of a release from an underground storage tank discovered after they purchased the property.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is not a sunset date related to the proposed regulations.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

The statutory basis for these regulations is Title 7 Delaware Code Chapter 74, Section 7407.

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

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed amendments to 7 **DE Admin. Code** §1351 Underground Storage Tank Regulations will be open November 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendments will be held on December 1, 2015 beginning at 6:00 PM in the DNREC New Castle Office, located at 391 Lukens Drive, New Castle DE 19720.

PREPARED BY:

Alex Rittberg, 302-395-2500

Email: Alex.Rittberg@state.de.us

EAR 2015-26

1351 Underground Storage Tank Systems

(Break in Continuity of Sections)

PART E: Requirements for Reporting, Release Investigation, Remedial Action and NO FURTHER ACTION DETERMINATIONS For Underground Storage Tank Systems

(Break in Continuity of Sections)

6.0 No Further Action Requirements

(Break in Continuity Within Section)

6.2 Department Response to a Request for No Further Action

6.2.1 The DNREC Tank Management ~~Branch~~ Section shall issue a letter requiring no further action (NFA ~~letter~~) and documenting that site cleanup objectives have been met. The ~~no further action approval~~ issuance of the NFA letter does not absolve the Responsible Parties from previously incurred or potential future liability.

6.2.2 The ~~no further action~~ NFA letter applies to site conditions at the time that the request for no further action was made. ~~If the risk posed by the site changes in the future, including but not limited to land use changes at the site or surrounding area, the Responsible Parties shall perform additional Remedial Action as necessary to eliminate the risk to human health, safety and the environment. Except as discussed in 6.2.3, once the Department has issued a NFA letter associated with a release, the Department shall not require Responsible Parties to perform additional corrective actions associated with the release unless site conditions, including but not limited to the current or future land use, change or there is new information that the release poses an unacceptable risk to human health, safety, and the environment.~~

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6.2.3 The Department shall not require Responsible Parties to perform additional corrective actions associated with an underground storage tank (UST) system when all of the following conditions have been met: (1) the Department has issued any type of NFA letter, either with conditions for future management or without conditions for future management after the removal or closure in place of the UST System, (2) the UST system was located on a residential property, (3) the underground storage tank associated with the UST system contained heating fuel used for Consumptive Use On the Premises.

6.2.34 Any Person disturbing any residual contamination at the site by digging, boring, excavating, dewatering, or other means, shall submit a contaminated material management plan to the Department for approval prior to work commencing and shall be financially responsible for implementing it.

7.0 All Appropriate Inquiry

When residential property is purchased by an individual, individuals, or a nonprofit agency as defined by the Internal Revenue Service or State law, a title search and a visual inspection by the purchaser or his or her agent that is intended to locate evidence of a UST system on the property shall constitute all appropriate inquiry pursuant to 7 Del.C. Chapter 74, Section 7406e(2)(b).

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

1351 Underground Storage Tank Systems

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 Del.C. Ch. 27)

24 DE Admin. Code 2400

PUBLIC NOTICE

2400 Board of Examiners of Constables

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 Del.C. Ch. 27 proposes to amend/adopt Rules: 4.0 – Badges & Vehicle Markings – requires all badges and vehicle markings to be approved by the Board; and 9.0 – Minimum Training Standards & In-Service Training – clarifies the requirements for the training standards and continuing education through in-service. If you wish to view these amendments/adoption, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by December 1, 2015, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold the annual meeting on Thursday, December 10, 2015, Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

2400 Board of Examiners of Constables

(Break in Continuity of Sections)

4.0 Reserved Badges and Vehicle Markings

4.1 All persons licensed under 10 Del.C. Ch. 27 shall wear or display any uniform, patch, badge, seal, vehicle and the markings, letterhead, business card, advertisement, or other form of publication unless first approved by the Board of Examiners.

- 4.2 Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.
- 4.3 No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.
- 4.4 All persons licensed under 10 Del.C. Ch. 27 shall wear or display their assigned badge visibly on the outermost garment.
- 4.5 Vehicle Identification
- 4.5.1 No vehicle utilized for purposes covered by 10 Del.C. Ch. 27 shall have an appearance that creates a reasonable likelihood of confusion with a police vehicle used by the Delaware State Police or a law enforcement agency of any state or governmental subdivision. The Board of Examiners shall have discretion to review the appearance of vehicles, and to make comparisons with known law enforcement vehicles, in order to enforce this Rule.
- 4.5.2 In the event that a vehicle is not approved by the Board of Examiners pursuant to Rule 4.0, the Board may indicate what changes to the vehicle appearance would be sufficient to satisfy the standards and criteria set forth above.
- 4.5.3 Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

(Break in Continuity of Sections)

9.0 Minimum Training Standards and In-Service Training

- 9.1 The Constable Academy, administered through Delaware Technical Community College (DTCC) Workforce Development and Community Education (WDCE), shall instruct applicants in the minimum training standards established by the Board. The Academy shall be a minimum of 180.5 hours and include, but is not limited to the following courses:
- Introduction to law enforcement and constables; constitution and bill of rights; other police agencies/fire departments/ambulance jurisdictions; basic defensive driving; traffic investigations; criminal investigations; sex crimes; criminal code; handling person with disabilities; interventions with people suffering with mental health and substance abuse; civil disobedience; labor disputes (crowd control); active shooter; courtroom procedure and demeanor; cultural diversity and community relations; domestic violence; basic first aid; CPR; AED; NIMS 700; ICS 100; information systems – communications, report writing, DELJIS; interview/interrogation techniques; manual traffic control; juvenile procedures; laws of evidence and search and seizure; laws of arrest; police communication and crisis intervention; police discipline and ethics; baton/nightstick/pr24/chemical spray/handcuffing; officer survival/defensive techniques; patrol procedures; drug identification and controlled substances; canine; and 4th amendment.
- 9.2 Applicants attending the Academy must take and pass the test with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the Academy again.
- 9.3 In-service training shall be every year. Odd years will be eight hours of classroom training through DTCC/WDCE. Even years will be done by completing an on-line modular and test through DTCC/WDCE.
- 9.3.1 All in-service training courses must be approved by the Board.
- 9.3.2 Failure to complete the in-service training every year shall be grounds for suspension or revocation of a current commission. Any commissioned individual not obtaining the in-service training for a given year by the last class offered shall be placed on emergency suspension immediately. Any training missed, or not completed, by a commissioned individual must be completed before the emergency suspension may be administratively lifted. On-line training must be made up on-line and classroom instruction must be made up in person in the classroom. Notwithstanding the foregoing, the Board may consider extenuating circumstances for reinstatement at its discretion.

PROPOSED REGULATIONS

9.3.3 Any in-service training test must be passed with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the individual to take the training again.

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

2400 Board of Examiners of Constables

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Statutory Authority: 4 Delaware Code, Section 304(a) (4 Del.C. §304(a))

4 DE Admin. Code

PUBLIC NOTICE

Alcoholic Beverage Control Regulations

A. Type of Regulatory Action Required

Amendments to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Office of the Alcoholic Beverage Control Commissioner intends to amend Title 4 of the Delaware Administrative Code by revising the existing regulations to reflect the current regulatory environment. These amendments will update the regulations to control the manner of the sale of alcoholic beverages to protect the public safety and insure that the sales are in the best interest of the public.

These proposed amendments were previously published in September 2014 and have not been changed since that date. Any comments regarding the previously proposed amendments made:

- a) at the hearings,
- b) in writing with delivery to this Office, and
- c) electronically sent to this Office

will be considered and there is no necessity of repeating these comments.

Should you desire to make additional comments, written comments will be accepted until close of business on December 2, 2015. Written comments should be submitted to Lauren Shinault, Regulation Review, Office of the Alcoholic Beverage Control Commissioner, Carvel Building 3rd Floor, 820 N. French Street, Wilmington, Delaware 19801 or electronically to OABCCrulescomments@state.de.us. A copy of these regulations may be viewed at the above address.

*** Please Note: Due to the size and extent of the revisions they are not printed here. A PDF version is available at the following link:**

Alcoholic Beverage Control Regulations

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 2906(b) (16 **Del.C.** §2906(b))
16 **DE Admin. Code** 4452

ORDER

4452 Clean Indoor Air Act

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Clean Indoor Air Act (4452). The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Chapter 101 and authority as prescribed by 16 **Del.C.** §2906(c).

On September 1, 2015 (Volume 19, Issue 3), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 9, 2015, or be presented at a public hearing on September 30, 2015, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) State of Delaware Clean Indoor Air Act (4452) were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Comments from Jeanne Chiquoine, Delaware Government Relations Director, ACS CAN:

The American Cancer Society Cancer Action Network (ACS CAN) would like to provide the following testimony on the proposed regulations (16 **DE Admin. Code**, Section 4522) adding electronic smoking devices to the Clean Indoor Air Act. First as Delawareans we should all be proud that our Clean Indoor Air Act passed in 2003 was one of the first such laws in the country and to this day it remains one of the nation's most comprehensive in protecting citizens from the harms of secondhand smoke exposure. It is critical as a state we maintain our leadership role by making sure that our laws keep pace in language and in action to protect the health of our citizens.

The use of electronic cigarettes, or e-cigarettes, should be prohibited in all workplaces, restaurants, bars, and casinos to protect against secondhand exposure to nicotine and other potentially harmful chemicals, to ensure the enforcement of the existing smoke-free law is not compromised, and the public health benefits of smoke-free laws are not undermined.

A growing number of studies have examined the contents of e-cigarette aerosol. Unlike a vapor, an aerosol contains fine particles of liquid, solid, or both. Propylene glycol, nicotine, and flavorings were most commonly found in e-cigarette aerosol. Other studies have found the aerosol to contain heavy metals, volatile organic compounds and tobacco-specific nitrosamines, among other potentially harmful chemicals. A 2009 study done by the FDA found cancer-causing substances in several of the e-cigarette samples tested. Additionally, Food and Drug Administration (FDA) tests found nicotine in some e-cigarettes that claimed to contain no nicotine.

There are serious questions about the safety of inhaling the substances in e-cigarette aerosol. Studies have shown that the use of e-cigarettes can cause short-term lung changes and irritations. Preliminary studies indicate nonusers can be exposed to the same potentially harmful chemicals as users, including nicotine, ultrafine particles, heavy metals and volatile organic compounds.

The use of e-cigarettes in workplaces, restaurants, bars, and casinos can undermine the public health benefits that have been and continue to be achieved by smoke-free laws. Because some e-cigarettes are designed to look like cigarettes and cigars, their indoor use may renormalize smoking, encourage kids to try them and make it more difficult for adults to quit or maintain their nonsmoking status. Additionally, from a practical standpoint, business owners can face difficulty and confusion when enforcing smoke-free laws if e-cigarette use is permitted. Some e-cigarette manufacturers even specifically market their products for use in places where smoking is prohibited.

We applaud the General Assembly's action to include electronic smoking devices in our Clean Indoor Air Act and we encourage the members of this committee to endorse their language which protects everyone's right to breathe clean indoor air, free from the unknown chemicals in e-cigarette aerosol.

Program Response:

The Division of Public Health thanks you for the support of the proposed revisions to the regulations.

Comments from the American Lung Association:

ALA supports the proposed regulations **DE Admin Code** 16, 4452 Clean Indoor Air Act. At the same time, ALA remains concerned that the absence of a disclosure of the contents of the material used for smoking with e-cigarettes is a risk to individuals who are using the e-cigarette as a part of their cessation effort. Earlier research into the content of that material suggests it may contain high levels of nicotine with its highly addictive effect. With increasing adolescent utilization of e-cigarettes this is particularly concerning. When FDA actions in help consumers identify the content of the materials used to smoke e-cigarettes, the ALA encourages the DPH to review the appropriate restrictions on use of e-cigarettes beyond inclusion in the Clean Indoor Air Act.

Thank you for receiving this information and we look forward to our continued work with the Div of Public Health that shares our mission to protect lung health of all Delawareans.

Program Response:

The Division of Public Health thanks you for the support of the proposed revisions to the regulations. DPH will continue to review FDA actions related to e-cigarettes and consider appropriate revisions to these regulations.

The public comment period was open from September 1, 2015 through October 9, 2015. Two parties provided comments on the regulations, which did not result in changes to the regulations.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

No changes were made to the proposed regulations based on the comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Clean Indoor Air Act (4452) is adopted and shall become effective December 1, 2015, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the September 2015 issue of the *Register* at page 169 (19 DE Reg. 169). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4452 Clean Indoor Air Act

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 49A (16 **Del.C.**, Ch. 49A)
16 **DE Admin. Code** 4470

ORDER

4470 State of Delaware Medical Marijuana Code

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Medical Marijuana Code (4470). The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Chapter 101 and authority as prescribed by 16 **Del.C.** §4923A.

On August 1, 2015 (Volume 19, Issue 2), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by September 8, 2015, or be presented at a public hearing on August 27, 2015, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

On July 20, 2015, the DHSS, in accordance with Section 6.0 of the Delaware Medical Marijuana Code, posted a petition to add autism with aggressive or self-injurious behavior to the list of qualifying conditions under which individuals could apply for registration with the program. Comments on the petition were accepted from July 20, 2015 through October 5, 2015, with a public meeting on the petition held on August 27, 2015.

SUMMARY OF EVIDENCE

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

Comments on the proposed revisions to the Medical Marijuana code, excluding the addition of Autism with Aggressive or Self-Injurious behavior which is addressed below, were received from the Governor's Advisory Council for Exceptional Citizen's and the State Council for Persons With Disabilities. As the comments from both agencies were similar in scope and nature, they are addressed concurrently in this summary of evidence.

Comments on Revisions to Medical Marijuana Code**Comment:**

First, it would be preferable to permit an adult with a qualifying condition to receive marijuana oil as juxtaposed to traditional dried-plant-based marijuana. The regulation ostensibly disallows adults from acquiring marijuana oil. See §7.2.8.3.1.4. Indeed, it is defined as "Pediatric Medical Marijuana Oil". Consider the following:

A. Ingesting an oil would not have the adverse lung effects of smoking marijuana.

B. A minor turning 18 for whom the oil is effective must categorically stop using the oil. See §5.3.8. It is difficult to imagine that the efficacy of the oil would change on someone's birthday.

C. The May 14, 2015 article suggests that other states allow adults access to the oil-based marijuana: Fourteen states have approved cannabis oil for the treatment of epilepsy and other serious conditions. The list includes Virginia, where lawmakers earlier this year passed legislation allowing residents, including children, to use marijuana oils to treat seizures.

D. The synopsis to S.B. 90 posits that age of the user should be immaterial: These oils don't have enough "active ingredient" to get someone high. Therefore, there is no reason whatsoever not to allow its use for treatment of these conditions, no matter what the age of the person needing its help.

E. The text of S.B. 90 does not limit access to marijuana oils to minors. The definition of "usable marijuana" is amended to include "marijuana oil" and adults are eligible to receive "usable marijuana".

MMP Response:

The use of Medical Marijuana Oils has always been in place for adults. The changes driven by SB-90 were to make oils available to patients under the age of 18 years. The pediatric medical marijuana oils are limited in their formulation in as much as they cannot contain greater than seven percent tetrahydrocannabinol. If an adult wishes to use CBD or THC-A Oils, even at the pediatric formulas, they can purchase them from the Compassion Center.

2.0 Definitions

"Medical marijuana oil" means a resinous matrix of cannabinoids obtained from the Cannabis plant by solvent extraction, formed into oil.

"Pediatric Medical marijuana oil" means:

a. "Cannabidiol oil" which is a processed Cannabis plant extract that contains at least 15 percent cannabidiol but no more than seven percent tetrahydrocannabinol, or a dilution of the resin of the Cannabis plant that contains at least 50 milligrams of cannabidiol per milliliter but not more than seven percent tetrahydrocannabinol; and

b. "THC-A oil" which is a processed Cannabis plant extract that contains at least 15 percent tetrahydrocannabinol acid but not more than seven percent tetrahydrocannabinol, or a dilution of the resin of the Cannabis plant that contains at least 50 milligrams of tetrahydrocannabinol acid per milliliter but not more than seven percent tetrahydrocannabinol; and

c. any change in the oil formulation which is made by the Department based upon the recommendation of the advisory council Medical Marijuana Act Oversight Committee"

Comment:

Second, it is unclear how much marijuana oil can be dispensed (to a child or adult). Section 7.2.8.3.1.2 limits dispensing to no more than three ounces of usable marijuana during a 14 day period. Three ounces of a liquid oil may be quite different than three ounces of a dried plant product. The Division may wish to assess whether the three-oz. cap should apply to oils. Also, Council suggests allowing prescribing entities to determine the amount and timeframes for dispensation rather than the regulations.

MMP Response:

All medical marijuana products are counted in grams and ounces. Oils contain 15 milligrams of cannabinoids per ML - A patient purchasing medical marijuana oils or pediatric medical marijuana oils would buy it in either 3ML or 5ML syringes - so the active ingredient is expressed in mgs for purchase limit calculations. As to the comment on prescribing practices, modification of the prescription allowances for medical marijuana is outside the scope of the proposed revisions to the regulations. Changes to that aspect of the program would require legislative action to revise the authorizing statute, Title 16 Chapter 49a.

Comment:

Third, the definition of "Responsible Party", second sentence, merits correction for grammar. There is a plural

pronoun ("their") with a singular antecedent ("Party"). Consider substituting "Responsible Party's" for "their".

MMP Response:

Thank you for your comment; we will modify the definition to read as below.

"Responsible Party" means the parent or legal guardian with responsibility and decision-making capability for a qualifying patient or applicant. The Responsible Party will have primary responsibility for purchase, handling and dispensing of the medical marijuana products for the person under ~~their~~ the Responsible Party's charge.

Comment:

Fourth, an adult with a qualifying condition for whom a guardian has been appointed could participate in the program with the guardian serving as the "Responsible Party". However, §3.3.3 categorically presumes that anyone with a guardian will be a minor. Thus, only pediatric physicians are authorized to certify eligibility. The requirement that a pediatric physician certify the eligibility of an adult with a guardian should be corrected. Note that the reference to pediatric physicians in §3.3.3 may be redundant anyway given the definition of "Physician".

MMP Response:

Thank you for your comment; we will modify the sentence to read as below.

3.3.3 If the patient is under the age of 18, the ~~The~~ physician must be a pediatric neurologist, pediatric gastroenterologist, pediatric oncologist or pediatric palliative care specialist and certify that...

Comment:

Fifth, §3.3.3.2 should be reviewed. Since there is a plural pronoun ("they") with a singular antecedent ("patient"), consider substituting "the patient has" for "they have". Moreover, the term "seizures" should be inserted after "nausea;". Compare S.B. No. 90, §4902A(3)b. There could be seizures without "painful and persistent muscle spasms".

MMP Response:

Thank you for your comment; we will modify the sentence to read as below.

3.3.3.2. The qualifying patient has a chronic or debilitating disease or medical condition where ~~the patient has they have~~ failed treatment involving 1 or more of the following symptoms: cachexia or wasting syndrome; intractable nausea; seizures; severe, painful and persistent muscle spasms.

Comment:

Sixth, the grammar in §3.3.5 should be corrected. Substitute "Parties" for "Party's".

MMP Response:

Thank you for your comment; we will modify the sentence to read as below.

3.3.5 ~~Responsible Party's~~ Parties for qualifying patients under the age of 18 will be issued an identification card with the same 10-digit alphanumeric identifier provided on the patient card issued to patient under their charge,

Comment:

Seventh, the grammar in §5.3.8, first sentence, should be corrected. Consider the following substitute: "When a registered qualifying pediatric patient passes their 18" birthday attains 18 years of age, the patient may...."

MMP Response:

Thank you for your comment; we will modify the sentence to read as below.

5.3.8 ~~When a registered qualifying pediatric patient passes their 18th birthday, they attains 18 years of age,~~ the patient may request a new patient card releasing them from the pediatric restrictions. The new patient ID Card will be issued at the card replacement cost \$20 and maintain the original expiration date.

Comment:

Eighth, §7.2.6 adopts more flexible standards for the maximum inventory of marijuana that can be maintained by a compassion center. This change is consistent with a recommendation in the attached article, M. Lally, "What's in Store for Delaware's First Medical Cannabis Dispensary" at p. 23:

In addition, Delaware law prohibits a registered compassion center from having more than 150 marijuana plants, irrespective of the stage of grow, or from possessing more than 1,500 ounces of usable marijuana, regardless of formulation. These restrictions may adversely impact the ability of registered dispensaries to produce enough medicine.

Adopting a more flexible standard is ostensibly a prudent amendment.

MMP Response:

Thank you for your comment.

Comment:

Ninth, instead of having a limit on the amount of medical marijuana determined by regulation (which is not individualized) it should be treated like other drugs and DPH should consider allowing physicians the ability to prescribe the amount and periodicity of medical marijuana administration.

MMP Response:

Thank you for your comment; modification of the prescription allowances for medical marijuana is outside the scope of the proposed revisions to the regulations. Changes to that aspect of the program would require legislative action to revise the authorizing statute, Title 16 Chapter 49a.

Comments on the Petition to Add a Qualifying Condition - Autism with Aggressive or Self-Injurious Behavior

Comments from Ms. Humphreys:

I'm just here to represent my petition in memory of my son Scott, who passed away on June 20th of this year, and I feel that it's beneficial or hopefully will be beneficial to other people with this debilitating condition. Scott, we had tried over 20 different medications with him, and nothing worked, and his life was always a struggle, and I think with -- I wanted the opportunity for him to try medical marijuana. Of the things that I had heard about it, in considering the side effects of some of the psychotropic medications that he had been on that -- devastating, could have lasting effects, it certainly seemed worth pursuing a natural course of treatment for Scott. And I had the support of his doctors for doing this. Unfortunately, like I said, Scott will never have the opportunity, but I'm hoping that there are other parents and guardians out there that will want to do this for their son or daughter or guardian.

MMP Response:

Thank you for your comments.

Comments from Brandon Kalbfleisch:

My name is Brandon Kalbfleisch. I basically was born in Newark, Delaware. I'm hear to absolutely support the petition. I moved out to Colorado and I basically got to see firsthand what medical marijuana can do for so many different ailments and so many different people and truly believe it can help people with autism and people with chronic disease and debilitating diseases. It basically helps brings new perspective into people's lives and can give them at least a chance to heal. I'm here to support that, and I truly have read over the petition and I believe in its -- I hope it will help so many people to come. Thank you for letting me come and comment.

MMP Response:

Thank you for your comments.

Comments from Carol A. Donahue:

My name is Carol A. Donahue. I'm mother and guardian for my son, Thomas Donahue, and he's age 46 years old. He is a resident of Delaware and he resides in a group home. Do you need the address? Group home which is run by Chimes Delaware. My son is -- he has hyperactivity and he's also -- he has pica and he's a walk-away/run-away. He needs one-on-one supervision. And his behaviors are cyclical. At times he will be calm, but at other times he's just so agitated and hyperactive. He can tire in front of me. He walks almost all of the day. His activity is walking. But when his behavior gets out of control, he will be throwing things and knocking things, not really aware of his surroundings as far as bumping into things. He will just walk into anything in the way, he just bumps into them. I don't know if -- he does not take medications to alter his behavior. He does take like a sedative, tranquilizer Lorazepam, to somewhat quiet him, but it's basically when he has a high activity and hyperactivity and irrational behavior, it doesn't do anything. In the past when we did try antipsychiatric medication at one time in his life when he was younger, all that did was it made him aphasic and subject to fall, behaviors continue. So nothing really, really helps. And I don't know if at some time I might be pressed that he be prescribed medical marijuana to help quiet him if the cyclical behaviors continue over a long period of time, just for his own safety and also the safety of the staff who monitor his safety and behaviors, his daily needs. And when he's real excitable, like doing his daily showering and daily activities, he -- it's just difficult to handle. I don't know if it's something -- that it's a natural

substance and it might be better than the chemicals that are out there. I have to rely on his reaction to taking any medications or foods or anything because he does not speak to let me know how he feels. It's mostly facial expressions or his -- like his behavior on trying something new.

MMP Response:

Thank you for your comments.

The public comment period for the regulatory revisions was open from August 1, 2015 through September 5, 2015. The comment period for the Petition to Add a Qualifying Condition was open from July 20, 2015 through October 9, 2015. Comments received on these proposals did not result in substantive changes.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Changes made to the regulations based on the comments received are detailed in the summary of evidence. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Medical Marijuana Code 4470 is adopted and shall become effective November 11, 2015, after publication of the final regulation in the Delaware Register of Regulations.

Rita M. Landgraf, Secretary

4470 State of Delaware Medical Marijuana Code (Break in Continuity of Sections)

2.0 Definitions

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

(Break in Continuity Within Section)

"**Debilitating medical condition**" means one or more of the following:

- (a) cancer, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), decompensated cirrhosis (hepatitis C), amyotrophic lateral sclerosis (ALS or Lou Gehrig's Disease), post-traumatic stress disorder (PTSD), intractable epilepsy, **[autism with self-injurious or aggressive behavior,]** and agitation of Alzheimer's disease or the treatment of these conditions;

(Break in Continuity Within Section)

"**Responsible Party**" means the parent or legal guardian with responsibility and decision-making capability for a qualifying patient or applicant. The Responsible Party will have primary responsibility for purchase, handling and dispensing of the medical marijuana products for the person under ~~their~~ **the Responsible Party's** charge.

(Break in Continuity Within Section)

3.0 Qualifying Patient Identification Card Application Requirements

(Break in Continuity Within Section)

3.3 If the qualifying patient is under the charge of a Responsible Party as defined in these regulations:

(Break in Continuity Within Section)

3.3.3 [If the patient is under the age of 18, the ~~The~~ physician must be a pediatric neurologist, pediatric gastroenterologist, pediatric oncologist or pediatric palliative care specialist and certify that:

3.3.3.1 The qualifying patient has intractable epilepsy; or

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3.3.3.2 The qualifying patient has a chronic or debilitating disease or medical condition where ~~[they have the patient has]~~ failed treatment involving 1 or more of the following symptoms: cachexia or wasting syndrome; intractable nausea; **[seizures;]** severe, painful and persistent muscle spasms.

3.3.4 Patients under the age of 18 will have distinctive identifying banner on their patient identification card limiting the patient to marijuana oil purchases only.

3.3.5 Responsible **[Party's Parties]** for qualifying patients under the age of 18 will be issued an identification card with the same 10-digit alphanumeric identifier provided on the patient card issued to the minor in question.

(Break in Continuity of Sections)

5.0 Registry Identification Cards

5.3 Supplemental requirement:

5.3.8 When a registered qualifying pediatric patient ~~[passes their 18th birthday, they]~~ **attains 18 years of age, the patient]** may request a new patient card releasing them from the pediatric restrictions. The new patient ID Card will be issued at the card replacement cost \$20 and maintain the original expiration date.

(Break in Continuity of Sections)

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2015 issue of the *Register* at page 116 (19 DE Reg. 116). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

4470 State of Delaware Medical Marijuana Code

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 2741; 21 Delaware Code, Section 2118(o)

(18 Del.C. §§311 and 2741; 21 Del.C. §2118(o))

18 DE Admin. Code 606

ORDER

Docket No. 2464-2015

606 Proof of Automobile Insurance

Proposed amended Department of Insurance Regulation 606 relating to Proof of Automobile Insurance [Formerly Regulation 31] was published in the Delaware *Register of Regulations* on September 1, 2015. The comment period remained open until September 30, 2015. There was no public hearing on proposed amended Regulation 606. Public notice of the proposed amended Regulation 606 was published in the *Register of Regulations* in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No comments were received on the proposed amended Regulation 606, with no additional amendments being suggested. No changes are being made to the proposed amended Regulation 606.

FINDINGS OF FACT

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 **Del.C.** §§311 and 2741 require a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed amended Regulation 606 best serve the interests of the public and of insurers and comply with Delaware law.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §§311 and 2741; 21 **Del.C.** §2118(o); and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 606 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

TEXT AND CITATION

The text of proposed Regulation 606 last appeared in the *Register of Regulations* Vol. 19, Issue 3, pages 173-175.

IT IS SO ORDERED this 11th day of November, 2015.

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the September 2015 issue of the *Register* at page 173 (19 DE Reg. 173). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

606 Proof of Automobile Insurance

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

OFFICE OF LABOR LAW ENFORCEMENT

Statutory Authority: 29 Delaware Code, Section 6960 (29 **Del.C.** §6960)
19 **DE Admin. Code** 1322

ORDER

1322 Prevailing Wage Regulations

NATURE OF THE PROCEEDINGS:

Pursuant to its authority under 29 **Del.C.** §10111(1), the Delaware Division of Industrial Affairs of the State of Delaware, Department of Labor (“the Department”) proposed to amend its prevailing wage regulations. The Department’s purpose in proposing these amendments was to bring its regulations into legal conformity with recent statutory changes to the Prevailing Wage Law, 29 **Del.C.** §6960. The Department’s proceedings to adopt its regulations were initiated pursuant to 29 **Del.C.** §10113(b)(5), with authority prescribed by 29 **Del.C.** §6960. These regulations are exempt from the standard Administrative Procedures Act process and may therefore be adopted informally.

FINDINGS OF FACT:

The Department finds that these changes are exempt from the procedural requirements of the Administrative Procedures Act (Title 29 Chapter 101).

ORDER:

AND NOW this 1st day of November, 2015, it is hereby ordered that:

1. The proposed amendments to the Division's regulations are adopted;
2. The text of the regulations shall be in the form attached hereto;
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 Division reserves to itself the authority to issue such order and further orders in this matter as may be just and proper.

IT IS ORDERED.

John J. McMahon Jr., Secretary of Labor

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

1322 Prevailing Wage Regulations

DIVISION OF INDUSTRIAL AFFAIRS

OFFICE OF WORKERS' COMPENSATION

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

ORDER

1341 Workers' Compensation Regulations

A public meeting was held on September 21, 2015, by the Department of Labor to receive public comments relating to revised sections of the Fee Schedule Instructions and Guidelines. The members of the Workers' Compensation Oversight Panel ("Panel"), signed below, recommend the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Volume 19, Issue 3 (September 2015).

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Exhibits Admitted Prior to and During the Public Meeting:

Exhibit 1 - *News Journal*, Affidavit of publication of notice of public meeting.

Exhibit 2 - *Delaware State News*, Affidavit of publication of notice of public meeting.

Exhibit 3 - State of Delaware Public Meeting Calendar electronic posting of today's meeting.

After the Panel concluded with their introductions, the public was invited to share their comments.

Joseph Lee with Reed Elsevier encouraged the Panel to consider his company as a provider of Average Wholesale Price information.

The Panel agreed to submit and recommend for adoption by the Delaware Department of Labor the revisions to the Fee Schedule Instructions and Guidelines.

RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

The Panel is persuaded that the proposals are consistent with administering the statutory directives in the workers' compensation law. In 2013, the Administrative Procedures Act changed to extend the public comment period 15 days past the date of the public meeting, which is October 6, 2015. Any further public comment received between September 21, 2015 and October 6, 2015, is included in the attached addendum, along with an e-mail reaffirmation from each Panel member present at the September 21, 2015, public meeting. If no further public comment was received, no addendum will exist.

RECOMMENDATION

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 21st day of September, 2015.

WORKERS' COMPENSATION OVERSIGHT PANEL

A. Richard Heffron, Chair	Hardy Drane
Joseph J. Rhoades, Esq., Vice Chair	Matthew Eppley, M.D. (absent)
Secretary John J. McMahon, Jr.	Anthony Frabizzio, Esq.
Barry Bakst, D.O	Karen Jacobs, Esq.
Theodore W. Becker, Jr. (absent)	Christopher Kenny, Esq. (absent)
Douglas R. Briggs, D.C.	Samuel Lathem (absent)
Glenn P. Brown, MMSC, PT (absent)	Bruce Rudin, M.D.
Edward Capodanno	Sajjad Savul, M.D. (absent)
John Casey, Jr. (absent)	Theresa Smith
N. Lee Dotson	Wayne Smith
James Downing, M.D. (absent)	Joseph J. Straight, M.D. (absent)

DECISION AND EFFECTIVE DATE

Having reviewed and considered the record and recommendations of members of the Workers' Compensation Oversight Panel to adopt revisions of the Fee Schedule Instructions and Guidelines, the revisions are hereby adopted by the Delaware Department of Labor and made effective January 31, 2016.

TEXT AND CITATION

The proposed Fee Schedule Instructions and Guidelines notice appeared in the *Register of Regulations*, Volume 19, Issue 3 (September 1, 2015). The Fee Schedule Instructions and Guidelines are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the *Register of Regulations* web site at

<http://regulations.delaware.gov/register/november2015/final/19%20DE%20Reg%20416%2011-01-15.htm>.

John McMahon, Secretary of Labor
DEPARTMENT OF LABOR

1341 Workers' Compensation Regulations (Break in Continuity of Sections)

4.0 Workers' Compensation Health Care Payment Rates for Physicians, Other Qualified Health Care Professionals, Hospitals and Hospital Outpatient Facilities, as well as Ambulatory Surgery Centers (the "Fee Schedule"). Instructions and Guidelines

(Break in Continuity Within Section)

4.20 Anesthesia

4.20.1 Introduction

4.20.1.1 ~~Anesthesia services provided to employees pursuant to 19 Del.C. §2322B(3) shall be paid at a unit charge of one hundred dollars (\$100.00) per unit in geozip 197-198 and seventy-six dollars (\$76.00) per unit in geozip 199, with an annual CPI-U adjustment as referenced in 19 Del.C. §2322B(5). The formula to calculate anesthesia services provided to employees pursuant to 19 Del.C. §2322B(7) shall be as follows: CMS base units + time~~

unit[e]s + physical status modifier + qualifying circumstances multiplied by the Conversion Factor.

*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2015 issue of the *Register* at page 175 (19 DE Reg. 175). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1341 Workers' Compensation Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1301

Secretary's Order No.: 2015-WH-0014

1301 Regulations Governing Solid Waste

Date of Issuance: September 18, 2015

Effective Date of the Amendment: January 1, 2016

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, and 7 **Del.C.** §§6301 et seq., and any other relevant authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 **DE Admin. Code** 1301, Delaware Regulations Governing Solid Waste ("DRGSW"), to wit: Scrap Tire Facility Management Provisions. The Department's Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section ("SHWMS"), has conducted this regulatory development process consistent with the requirements of 29 **Del.C.** Chapter 101, and has commenced said process with Start Action Notice 2011-13 dated September 28, 2011.

The Department published its initial proposed regulation Amendments in the January 1, 2015 Delaware *Register of Regulations*. The Department then held a public hearing on February 9, 2015. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through February 24, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to existing DRGSW to enable the Department to provide greater environmental protection and to reduce human health risks. Specifically, the proposed action will allow DNREC to have oversight on the management of scrap tires, including, but not limited to, the amount of tires allowed to be accumulated in one area, siting restrictions, and mosquito control.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on February 9, 2015, at which time the SHWMS provided an exhaustive review of the proposed regulation amendments, addressing (1) the Department's reasoning for promulgation of these proposed Amendments; (2) the persons affected by these proposed Amendments; and (3) the particulars of the proposed Amendments, including a thorough discussion of all definitions and processes set forth therein. Members of the public attended the hearing on February 9, 2015, and comment was received by the Department with regard to this proposed regulatory promulgation. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing on February 9, 2015, and based on public comments received by the Department in this matter, the proposed regulatory Amendments were revised from the original Amendments initially published on January 1, 2015. These revisions to the original Amendments were done to clarify the

application of the proposed rule to the affected regulated community, and to provide enhanced understanding of the regulation to the public. These revisions do not constitute a substantive change to the proposed regulatory language, and therefore no re-noticing of the revised proposed regulatory language by the Department is necessary in this matter.

It should also be noted that several months have passed since the hearing record closed with respect to public comment received in this matter. During the exhaustive review subsequently performed by the Department's Division of Waste and Hazardous Substances' Solid and Hazardous Waste Management Section, it was discovered that proper enforcement of these proposed regulations would necessitate additional staff. Thus, final promulgation of these regulations was temporarily delayed until such time as additional SHWMS staff was hired, to ensure that the Department had a proper mechanism in place for enforcement of these regulations to be possible.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 26, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed revised regulatory Amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed revised regulatory Amendments to 7 DE Admin. Code 1301: *Delaware Regulations Governing Solid Waste*, to wit: *Scrap Tire Facility Management Provisions*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed revised regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section, fully developed the record to support adoption of these revised regulatory Amendments. The adoption of these revised regulatory Amendments will allow Delaware to (1) have oversight on the management of scrap tires, including, but not limited to, the power to limit the amount of tires allowed to be accumulated in one area; (2) provide environmental and human health protection via siting restrictions and mosquito control; and (3) provide a mechanism for enforcement when necessary.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 1301, pursuant to 7 **Del.C.**, Chapters 60 and 63;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.**, Chapter 60, to issue an Order adopting these proposed revised regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on February 9, 2015, and held the record open through close of business on February 24, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed revised regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed revised regulatory amendments to 7 **DE Admin. Code** 1301: Delaware Regulations Governing Solid Waste, to wit: Scrap Tire Facility Management Provisions, will enable the Department's SHWMS to (1) have oversight on the management of scrap tires, including, but not limited to, the power to limit the amount of tires allowed to be accumulated in one area; (2) provide environmental and human health protection via siting restrictions and mosquito control; and (3) provide a mechanism for enforcement when necessary;
6. The Department has reviewed these proposed revised regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed regulatory amendments, as published in the January 1, 2015 Delaware *Register of Regulations*, and as revised and set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect twenty days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed revised Amendments to 7 DE **Admin. Code** 1301: Delaware Regulations Governing Solid Waste, to wit: Scrap Tire Facility Management Provisions, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

1301 Regulations Governing Solid Waste
(Break in Continuity of Sections)

3.0 Definitions

The following words, phrases, and terms as used in these regulations have the meanings given below:

(Break in Continuity Within Section)

“[Enclosed by a] Building” means a permanent fixed structure [with surrounded on all sides by] four solid walls, a structurally sound roof, and an impermeable floor[, with no permanent openings].

(Break in Continuity Within Section)

~~“Enclosed” means surrounded on all sides by walls, a roof, and a floor, with no significant openings.~~

(Break in Continuity Within Section)

"Refuse" means any putrescible or nonputrescible solid waste, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, scrap tire[(s)], offal and solid agricultural, commercial, industrial, hazardous and institutional wastes, and construction wastes.

(Break in Continuity Within Section)

"Setback" means the area between the actual disposal area and the property line which can be used for construction of environmental control systems such as runoff diversion ditches, monitoring wells, or scales; for scrap tire facilities, "setback" means the minimum amount of distance required between the [most outer edge of the] scrap tire facility and another object [such as including, but not limited to,] a property line, public roads, wells, etc.

(Break in Continuity Within Section)

4.0 Permit Requirements And Administrative Procedures

4.1 General Provisions

(Break in Continuity Within Section)

4.1.5 Duration of permit

A permit will be issued for a specific duration which will be determined by the Department.

- 4.1.5.1 Solid waste facility operating permits (landfills, resource recovery facilities, transfer stations, incinerators, ~~[and] scrap tire facilities~~) shall not be issued for periods greater than 10 years.

(Break in Continuity of Sections)

12.0 Scrap Tire Facilities

12.1 Scope and Applicability

- 12.1.1 This section applies to new and existing areas established for scrap tires that are associated with a qualifying business. A qualifying business is a business that generates and accumulates scrap tires but whose primary purpose is not to accumulate scrap tires [(defined as no more than 1/3 of all tires on site meeting the definition of a scrap tire)]. Examples of qualifying businesses may

include **[but are not limited to]**: tire retreading businesses; automobile graveyards or junkyards; local and state governmental agencies and/or facilities such as county maintenance, police, and fire; military institutions and/or facilities; farmers; and other automotive businesses. This section does not apply to owner/operators who have a current and valid resource recovery facility permit (or other approval issued pursuant to these regulations) that addresses scrap tire management. This section also does not apply to persons who are registered with, and actively participating in, the Scrap Tire Management Program, administered by the Department. ~~[Note that all]~~ **[All]** transporters must comply with any applicable provisions in Section 7.0. ~~[and that]~~ **[All]** scrap tire facilities whose primary purpose is to accumulate scrap tires ~~[(defined as no more than 1/3 of all tires on site meeting the definition of a scrap tire)]~~ must comply with any applicable provisions in Section 10.0.

(Break in Continuity Within Section)

12.3 ~~[Transition Provisions~~ Implementation Date]

12.3.1 ~~[No later than 90 days after the effective date of these regulations, all Group 1 scrap tire facilities must obtain a permit issued by the Department pursuant to these regulations and comply with these regulations. The permit can be requested by completing a Departmental "Scrap Tire Facility Permit Form" and submitting the appropriate documentation. Each scrap tire facility in existence prior to the effective date of these regulations must apply for a permit issued by the Department pursuant to these regulations no later than 90 days for Group 1 and 180 days for Group 2 and comply with these regulations.]~~

12.3.2 ~~[No later than 180 days after the effective date of these regulations, all Group 2 scrap tire facilities must obtain a permit issued by the Department pursuant to these regulations and comply with these regulations. The permit can be requested by completing a Departmental "Scrap Tire Facility Permit Form" and submitting the appropriate documentation. A scrap tire facility may exist and/or operate past that date only under the terms of a written agreement with the Department which establishes a reasonable schedule for bringing the scrap tire facility into compliance with these regulations. Each scrap tire facility created after the effective date of these regulations must comply with subsection 4.1.1.3 of these regulations.]~~

(Break in Continuity Within Section)

12.8 Financial Assurance (Required only for Group 2)

12.8.1 ~~The owner/operator must obtain and retain a minimum of \$10,000 financial assurance. Financial assurance is not required if the owner/operator can demonstrate a current, valid contract or other legal documentation with an approved TSDRF that requires the owner/operator to pay the cost of removing the scrap tires prior to delivery of a trailer where the scrap tires will be accumulated. Failure to obtain financial assurance will result in denial of issuance of a permit, which will cause the owner/operator to be in violation of these regulations. Failure to **[retain maintain]** financial assurance will result in revocation of the permit, which will cause the owner/operator to be violation of these regulations.~~

(Break in Continuity Within Section)

12.10 Notification of Closure/Closure

(Break in Continuity Within Section)

12.10.4 ~~[At a minimum, the~~ **The** owner/operator must remove all scrap tires from the facility. All scrap tires must be properly transported to an authorized ~~[treatment, storage, disposal, or recycling facility (TSDRF)~~ **TSDRF**. Documentation demonstrating delivery (e.g., tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Department) to the TSDRF must be kept for a period of at least three years and all documentation must be available for inspection by the Department upon request.

(Break in Continuity Within Section)

12.11 All other scrap tire facilities

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12.11.1 All other scrap tire facilities not complying with the requirements of Group 1 or Group 2 or owner/operators who do not have a current and valid resource recovery facility permit (or other approval issued pursuant to these regulations) that addresses scrap tire management; or persons who are not registered with, and actively participating in, the Scrap Tire Management Program are prohibited and all scrap tires must be removed in accordance with this subsection and the facility shall be closed in a manner that will eliminate the need for further maintenance of the facility. The following conditions apply:

12.11.1.1 The owner/operator must submit to the Department within ~~[45]~~ **30** days ~~[of non-compliance with these regulations]:~~

(Break in Continuity Within Section)

12.11.1.3 ~~[At a minimum, the~~ The] owner/operator must remove all scrap tires from the facility. All scrap tires must be properly transported to an authorized treatment, storage, disposal, or recycling facility (TSDRF). Documentation demonstrating delivery (e.g., tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Department) to the TSDRF must be kept for a period of at least three years and all documentation must be available for inspection by the Department upon request.

*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2015 issue of the *Register* at page 530 (18 DE Reg. 530). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1301 Regulations Governing Solid Waste

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1301

Secretary's Order No.: 2015-WH-0039

1301 Regulations Governing Solid Waste

Date of Issuance: October 15, 2015

Effective Date of the Amendment: November 21, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §§6006, 6010, and 7 Del.C. §§6301 et seq., and any other relevant authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 **DE Admin. Code** 1301, Delaware Regulations Governing Solid Waste ("DRGSW"). The Department's Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section ("SHWMS"), has conducted this regulatory development process consistent with the requirements of 29 **Del.C.** Chapter 101, and has commenced said process with Start Action Notice 2014-11 dated December 11, 2014.

The Department published its initial proposed regulation Amendments in the February 1, 2015 Delaware *Register of Regulations*. The Department then held a public hearing on February 26, 2015. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through March 13, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to existing DRGSW to enable the Department to provide greater environmental protection and to reduce human health risks. The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on February 26, 2015, at which time the SHWMS provided an exhaustive

review of the proposed regulation Amendments, addressing (1) the Department's reasoning for promulgation of these proposed Amendments; (2) the persons affected by these proposed Amendments; and (3) the particulars of the proposed Amendments, including a thorough discussion of all definitions and processes set forth therein. Members of the public attended the hearing on February 26, 2015, and comment was received by the Department with regard to this proposed regulatory promulgation. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing on February 26, 2015, the Department fully responded to each individual comment received from the public with regard to this proposed regulatory promulgation. The Department's presiding hearing officer, Lisa A. Vest, then prepared a Hearing Officer's Report dated October 2, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed regulatory Amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to **7 DE Admin. Code 1301: Delaware Regulations Governing Solid Waste** are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section, fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) provide greater environmental protection and reduce human health risks; (2) increase enforceability and oversight available to the Department; (3) to ease the regulatory burden for small businesses generating only a small amount of infectious waste by modification of the existing infectious waste regulations with regard to allowing sharps to be transported without a transporter permit if certain conditions are met; and (4) provide greater consistency and fairness, as well as additional clarity (due to the correction of current clerical error) to the regulated community.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to **7 DE Admin. Code 1301**, pursuant to **7 Del. C.**, Chapters 60 and 63;
2. The Department has jurisdiction under its statutory authority, pursuant to **7 Del.C.**, Chapter 60, to issue an Order adopting these proposed regulatory Amendments as final;
3. The Department provided adequate public notice of the proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory Amendments, including at the time of the public hearing held on February 26, 2015, and held the record open through close of business on March 13, 2015, consistent with **29 Del.C. §10118(a)**, in order to consider public comment on these proposed regulatory Amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed regulatory amendments to **7 DE Admin. Code 1301: Delaware Regulations Governing Solid Waste**, will enable the Department's SHWMS to (1) provide greater environmental protection and reduce human health risks; (2) increase enforceability and oversight available to the Department; (3) to ease the regulatory burden for small businesses generating only a small amount of infectious waste by modification of the existing infectious waste regulations with regard to allowing sharps to be transported without a transporter permit if certain conditions are met; and (4) provide greater consistency and fairness, as well as additional clarity (due to the correction of current clerical error) to the regulated community;
6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with **29 Del.C. Ch. 104**, and believes the same to be lawful, feasible and

desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed regulatory Amendments, as published in the February 1, 2015 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect twenty days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed Amendments to 7 DE Admin. Code 1301: *Delaware Regulations Governing Solid Waste*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

1301 Regulations Governing Solid Waste (Break in Continuity of Sections)

2.0 Scope and Applicability

(Break in Continuity Within Section)

2.5 Composting And Recycling Approvals Permits

2.5.1 Composting Approvals Permits

Other than individual household composting, all other composting operations must obtain ~~written approval~~ a permit from the Department prior to commencing a composting operation. To obtain an ~~approval permit~~, a person must submit **[an application provided by the Department, including, but not limited to,]** the following information ~~[to the Department]:~~

2.5.1.1 A written plan of operation demonstrating to the Department that the requestor of the ~~approval permit~~ and the person responsible for operating the composting facility understand and will apply the principles and proper methods of composting. The plan of operation must also demonstrate that the composting facility will be operated in a manner that will not pose a threat to human health and the environment; and

2.5.1.2 A written statement explaining how the applicant intends to use the compost.

2.5.2 Recycling Approvals Permits

Recycling solid waste into specific market applications requires ~~written approval~~ a permit prior to commencing this activity. To obtain an ~~approval permit~~, a person must submit **[an application provided by the Department, including, but not limited to,]** the following information ~~[to the Department]:~~

(Break in Continuity of Sections)

11.0 Special Wastes Management Part 1- Infectious Waste

(Break in Continuity Within Section)

- 11.14 Transporter Requirements. All transporters of infectious waste must be in compliance with all applicable federal and state regulations and codes. No person shall transport solid waste, including infectious waste, without first having obtained a permit from the Department, unless specifically exempted by these Regulations. Refer to Section 7 of these Regulations, TRANSPORTERS. Exemption: ~~[Transporters of solely sharps do not need to obtain a solid waste transporter permit]~~ **The United States Postal Service (USPS) and the United Parcel Service (UPS) may transport solely sharps without obtaining a solid waste transporter permit]**, provided that: the transporter follows, at a minimum, all Department of Transportation requirements; the sharps being transported are only generated by a Small Quantity Generator of infectious waste [who has obtained prior written approval from the Department to utilize this exemption]; the total shipment per generator does not exceed 35 pounds by weight; [and] the shipment is documented by a manifest or

other shipping record illustrating receipt at an appropriate disposal facility~~[- and the transporter has prior written approval from the Department].~~

*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2015 issue of the *Register* at page 629 (18 DE Reg. 629). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1301 Regulations Governing Solid Waste

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 Del.C. Ch. 27)

24 DE Admin. Code 2400

ORDER

2400 Board of Examiners of Constables

Pursuant to the Guidelines in 29 Del.C. §10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to:

- Rule 3.0 Criminal Offenses, and
- Rule 5.0 Firearms Policy

the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to:
 - Give the definitions of moral turpitude, and
 - Define the training requirements and add another weapon

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will:
 - Give the definitions of moral turpitude, and
 - Define the training requirements and add another weapon
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to
 - Give the definitions of moral turpitude, and
 - Define the training requirements and add another weapon

Conclusion

7. The proposed rule was published by the Board in accord with the statutory duties and authority as set forth in 10 Del.C. §2701 et seq. and, in particular, 10 Del.C. §2702(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 Del.C. §2701 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of

Delaware.

10. The Board therefore adopts this amendment pursuant to 10 **Del.C.** §2702(b) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be November 11, 2015.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 24th day of September 2015.

BOARD OF EXAMINERS OF CONSTABLES:

Chief William E. Bryson

Captain Douglas Merrill

Ralph K. Durstein, III, Esquire

Mr. John F. Tharan

Lt. Colonel Monroe B. Hudson, Jr.

2400 Board of Examiners of Constables
(Break in Continuity of Sections)

5.0 Firearm's Policy

(Break in Continuity Within Section)

5.67 All individuals must ~~qualify~~ meet the minimum qualifications set forth in [subsection] 5.3 with the same make/model/caliber of weapon that he/she will carry.

***Please note that no additional changes were made to the regulation as originally proposed and published in the June 2015 issue of the *Register* at page 953 (18 DE Reg. 953). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

2400 Board of Examiners of Constables

DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 **Del.C.** Ch. 27)
24 **DE Admin. Code** 2400

ORDER

2400 Board of Examiners of Constables

This Order is exempt pursuant to 29 **Del.C.** §10113 of the Administrative Procedures Act.

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. The Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board expressed its desire to adopt the amendment to change the name of the weapon to follow guidelines.

Findings of Fact

2. The Board finds that the adoption of this rule to change the name of the weapon to follow guidelines will have no adverse impact on the public.

3. The Board finds that the amendment is well written and describes its intent to adopt the rule to change the

name of the weapon to follow guidelines.

4. The Board finds that the adoption will have no adverse impact on the public.

5. The Board finds that the amendment is well written and describes its intent to adopt the rule to change the name of the weapon to follow guidelines.

Conclusion

6. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 **Del.C.** §2701 et. seq.

7. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

8. The Board therefore adopts this amendment pursuant to 10 **Del.C.** §2702(b) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

9. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

10. The effective date of this Order shall be November 11, 2015.

11. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 24th day of September 2015.

BOARD OF EXAMINERS OF CONSTABLES:

Chief William E. Bryson

Captain Douglas Merrill

Ralph K. Durstein, III, Esquire

Mr. John F. Tharan

Lt. Colonel Monroe B. Hudson, Jr.

2400 Board of Examiners of Constables (Break in Continuity of Sections)

7.0 ~~Electronic Control Device (ECD)~~ Conducted Electrical Weapon (CEW)

7.1 In order for a constable to carry/use an ~~electronic control device (ECD)~~ conducted electrical weapon (CEW), he/she must complete a training program approved by the Board and all certifications or recertifications must be on file with the Professional Licensing Section.

7.2 ~~ECD~~ CEW Instructors

7.2.1 All ~~ECD~~ CEW instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.

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

2400 Board of Examiners of Constables

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 506(a)(1) (24 **Del.C.** §506(a)(1))
24 **DE Admin. Code** 500

ORDER

500 Board of Podiatry

Pursuant to 29 **Del.C.** §10113(b)(5) and 24 **Del.C.** §506(a)(1), the Delaware Board of Podiatry issues this Order adopting the below amendments to the Board's regulations. Specifically, pursuant to 29 **Del.C.** §10113(b)(5),

Regulations 2.5 through 2.5.7.3 must be deleted and Regulation 4.2.3 must be amended to make the Board's regulations consistent with newly adopted statutory changes in Title 24, Chapter 5 of the Delaware Code. These changes do not otherwise alter the substance of the regulations.

SUMMARY OF THE EVIDENCE

1. Rules 2.5 through 2.5.7.3 specifically describe the now obsolete Delaware podiatric preceptorship program as follows:
 - 2.5 Preceptorship Program.
 - 2.5.1 Pursuant to 24 **Del.C.** §508(a)(2), each and every applicant for licensure by examination who has not satisfactorily completed an APMA approved hospital residency program shall complete a one year preceptorship, during which time the applicant's clinical abilities and skills shall be under the observation and supervision of a preceptor, who shall be a Delaware licensed podiatrist, who has received the prior written approval of the Board to supervise the preceptorship of one or more candidates for licensure.
 - 2.5.2 Preceptorships shall run for twelve (12) months.
 - 2.5.3 A candidate for the preceptorship program shall submit his or her curriculum vitae, certified transcripts from podiatric medical school(s) showing confirmation of "Doctor of Podiatric Medicine" degree, and evidence of passing scores on National Board Examinations Part I and Part II, before the Board may approve his or her admission to the preceptorship program.
 - 2.5.4 The Board shall, by letter, notify each applicant who has submitted all required documentation of his or her admission to the preceptorship program.
 - 2.5.5 Following receipt by an applicant of notice of his or her admission to the preceptorship program, it shall be the responsibility of the applicant to apply to a licensed practitioner for a twelve (12) month preceptorship with that practitioner. It shall be the responsibility of the Board, in connection with the above-described preceptorship requirements to approve and certify all preceptors; and approve and certify all preceptorship programs and evaluations.
 - 2.5.6 The preceptor shall provide professional liability (malpractice) coverage for candidates for whom they are the preceptor at all times during the preceptorship.
 - 2.5.7 During the course of each twelve (12) month preceptorship, each candidate shall be evaluated by the preceptor (primary clinical observer) for whom he or she is working. The preceptorship shall pattern itself after and ensure exposure to all areas covered by the CPME standards for Rotating Podiatric Residency (RPR) Sections 21.0 through 21.6, and the candidate shall be evaluated in those areas.

Each candidate shall be evaluated during the twelve (12) month preceptorship by one other licensed practitioner (secondary clinical observer) approved by the Board in the following areas: podiatric medicine, physical examination and the basic application of podiatric principles. The primary observer shall submit his observations in the form of a letter addressed to the Board. The primary observer shall report to the Board every three (3) months. The letter shall include an evaluation covering the prescribed subjects above. The secondary observer shall submit a similar appropriate report by letter to the Board, accompanied by evaluations covering the prescribed subjects.

 - 2.5.7.1 In the event that the primary observer has been unable to expose the candidate to any required category of evaluation, he or she shall advise the secondary observer of this fact, and shall include the fact in his quarterly report to the Board.
 - 2.5.7.2 In the event that a preceptorship candidate receives a negative or deficient evaluation from his or her preceptor, in two or less of the above-described categories of evaluation, the Board shall allow the applicant to correct the deficiency or deficiencies by attendance at and completion of a course or program in each said deficient area. Said program or course shall have prior written approval by the Board. Upon successful completion of all such approved programs, the Board shall forthwith issue

- to the candidate a letter indicating that he or she may proceed with his preceptorship program.
- 2.5.7.3 In the event that a preceptorship candidate receives a negative or deficient evaluation from his or her preceptor, in more than two of the above-described categories of evaluation, the candidate may request another Delaware licensed podiatrist to independently evaluate the candidate's competency in those areas and report to the Board. The Board will review all evaluations and make a determination as to the status of the preceptorship.
2. The Board now deletes all of the above regulations as the preceptorship has been statutorily eliminated.
3. In addition, Rule 4.2.3 now states:
Satisfactory completion of a hospital residency program approved by the American Podiatric Medical Association (APMA), or completion of an approved preceptorship program in the office of a podiatrist, licensed in the state in which the applicant is licensed or certified, for a period of one year.
4. The Board makes the following change to this regulation (removals are stricken through):
Satisfactory completion of a hospital residency program approved by the American Podiatric Medical Association (APMA), ~~or completion of an approved preceptorship program in the office of a podiatrist, licensed in the state in which the applicant is licensed or certified, for a period of one year.~~
5. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on November 1, 2015.

SO ORDERED this 7th day of October, 2015:

BY THE DELAWARE BOARD OF PODIATRY:

Dr. James D. Bray, President
Dr. Harold Gruber
Amy Kratz, Public Member
Teresa Wilson, Public Member

500 Board of Podiatry
(Break in Continuity of Sections)

2.0 Application And Licensing Requirements

(Break in Continuity Within Section)

2.5 Preceptorship Program.

- 2.5.1 Pursuant to ~~24 Del.C. §508(a)(2)~~, each and every applicant for licensure by examination who has not satisfactorily completed an APMA approved hospital residency program shall complete a one year preceptorship, during which time the applicant's clinical abilities and skills shall be under the observation and supervision of a preceptor, who shall be a Delaware licensed podiatrist, who has received the prior written approval of the Board to supervise the preceptorship of one or more candidates for licensure.
- 2.5.2 Preceptorships shall run for twelve (12) months.
- 2.5.3 A candidate for the preceptorship program shall submit his or her curriculum vitae, certified transcripts from podiatric medical school(s) showing confirmation of "Doctor of Podiatric Medicine" degree, and evidence of passing scores on National Board Examinations Part I and Part II, before the Board may approve his or her admission to the preceptorship program.
- 2.5.4 The Board shall, by letter, notify each applicant who has submitted all required documentation of his or her admission to the preceptorship program.

- ~~2.5.5 Following receipt by an applicant of notice of his or her admission to the preceptorship program, it shall be the responsibility of the applicant to apply to a licensed practitioner for a twelve (12) month preceptorship with that practitioner. It shall be the responsibility of the Board, in connection with the above described preceptorship requirements to approve and certify all preceptors; and approve and certify all preceptorship programs and evaluations.~~
- ~~2.5.6 The preceptor shall provide professional liability (malpractice) coverage for candidates for whom they are the preceptor at all times during the preceptorship.~~
- ~~2.5.7 During the course of each twelve (12) month preceptorship, each candidate shall be evaluated by the preceptor (primary clinical observer) for whom he or she is working. The preceptorship shall pattern itself after and ensure exposure to all areas covered by the CPME standards for Rotating Podiatric Residency (RPR) Sections 21.0 through 21.6, and the candidate shall be evaluated in those areas.~~
- ~~Each candidate shall be evaluated during the twelve (12) month preceptorship by one other licensed practitioner (secondary clinical observer) approved by the Board in the following areas: podiatric medicine, physical examination and the basic application of podiatric principles. The primary observer shall submit his observations in the form of a letter addressed to the Board. The primary observer shall report to the Board every three (3) months. The letter shall include an evaluation covering the prescribed subjects above. The secondary observer shall submit a similar appropriate report by letter to the Board, accompanied by evaluations covering the prescribed subjects.~~
- ~~2.5.7.1 In the event that the primary observer has been unable to expose the candidate to any required category of evaluation, he or she shall advise the secondary observer of this fact, and shall include the fact in his quarterly report to the Board.~~
- ~~2.5.7.2 In the event that a preceptorship candidate receives a negative or deficient evaluation from his or her preceptor, in two or less of the above described categories of evaluation, the Board shall allow the applicant to correct the deficiency or deficiencies by attendance at and completion of a course or program in each said deficient area. Said program or course shall have prior written approval by the Board. Upon successful completion of all such approved programs, the Board shall forthwith issue to the candidate a letter indicating that he or she may proceed with his preceptorship program.~~
- ~~2.5.7.3 In the event that a preceptorship candidate receives a negative or deficient evaluation from his or her preceptor, in more than two of the above described categories of evaluation, the candidate may request another Delaware licensed podiatrist to independently evaluate the candidate's competency in those areas and report to the Board. The Board will review all evaluations and make a determination as to the status of the preceptorship.~~

Statutory authority: 24 Del.C. §§508(a)(2)

(Break in Continuity of Sections)

4.0 Reciprocity

(Break in Continuity Within Section)

- 4.2 Requirements for registration and certification, as they relate to states other than Delaware, are deemed by the Board to be substantially similar to those of the State of Delaware when said requirements include:
- 4.2.1 Satisfactory completion of a degree of Doctor of Podiatric Medicine or its equivalent from a school currently accredited by the APMA or its successor;
- 4.2.2 Satisfactory completion of the NBPME Part I, Part II and PMLexis examinations, with at least the minimum passing score recommended by the testing service providing the examination; and;
- 4.2.3 Satisfactory completion of a hospital residency program approved by the American Podiatric Medical Association (APMA), or completion of an approved preceptorship program in the office of

~~a podiatrist, licensed in the state in which the applicant is licensed or certified, for a period of one year.~~

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

500 Board of Podiatry

DIVISION OF PROFESSIONAL REGULATION

1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 **Del.C.** §1106(a)(1))
24 **DE Admin. Code** 1100

ORDER

1100 Board of Dentistry and Dental Hygiene

On May 1, 2015, the Delaware Board of Dentistry and Dental Hygiene published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 18, Issue 11. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on June 18, 2015 at a regularly scheduled meeting of the Delaware Board of Dentistry and Dental Hygiene to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on June 18, 2015. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §1106(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes to the Board's regulations, at 10.0, *et. seq.* seek to clarify the bases and procedures for appeals to the dental and dental hygiene clinical examinations.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

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

in the Delaware *Register of Regulations* on November 1, 2015. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 15th day of October, 2015.

BOARD OF DENTISTRY AND DENTAL HYGIENE:

Brian McAllister, DDS, President	Bruce Mathews, DDS (absent)
Lucinda Bunting, DDS, Secretary	Thomas A. Mercer, DMD
Carol Argo, RDH	Rumiko Nelson, RDH, Hygiene Advisory
Rozi Berberian, Public Member	Buffy Parker, RDH, Hygiene Advisory
Debra Bruhl, RH, Hygiene Advisory (absent)	Mary Trinkle, RDH, Hygiene Advisory
June Ewing, Public Member	Sharon Welsh, DDS
Nathaniel Gibbs, Public Member	

***Please note that no changes were made to the regulation as originally proposed and published in the May 2015 issue of the *Register* at page 849 (18 DE Reg. 849). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION

1900 BOARD OF NURSING

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

ORDER

1900 Board of Nursing

The Delaware Board of Nursing pursuant to 24 **Del.C.** §1904(c), proposed to revise Regulations 2.1, 2.4.1.7, 3.0, 4.0, 5.0, and 9.4.5.1. The proposed change at 2.1 adds definition to the nursing regulations regarding nursing competency and standards. The proposed change at 2.4.1.7 revises the Board's regulations approved nursing education programs and such programs acceptable curricula. The proposed changes at 3.0 and 4.0 offer updates to the Board's refresher course or supervised practice requirement for nurses who seek to apply for endorsement or reinstatement of licensure and have not been actively employed over the past five years. The proposed changes at 5.0, et. seq. seek to bring the nursing regulations into line with a recent statutory change addressing the limited lay administration of medications, and the proposed change at 9.4.5.1 eliminates a Board requirement that continuing education programs keep a record of participants' social security numbers.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on August 1, 2015 a public hearing was held on September 9, 2015. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. The Board further marked as Board Exhibit 3 a letter dated August 26, 2015 from the Delaware State Council for Persons with Disabilities commenting upon the proposed regulatory changes, and a letter dated August 31, 2015 from the Governor's Advisory Council for Exceptional Citizens as Board Exhibit 4.

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

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

Board Exhibit 2 – Affidavit of publication of the public hearing notice in the *Delaware State News*;

Board Exhibit 3 – August 26, 2015 letter from the Delaware State Council for Persons with Disabilities (DSCPD) stating that the Board should consider allowing nurses to work in setting beyond long term care facilities for supervised practice plans; the Board should include non-prescription drug administration in section 5 of the regulations; and the Board should consider clarifying how many medication errors LLAM trained unlicensed assistive personnel may commit before being required to retake the training program; and

Board Exhibit 4 – August 31, 2015 letter from the Governor's Advisory Council for Exceptional Citizens (GACEC) restating the concerns raised by the DSCPD.

There was no verbal testimony given at the public hearing on September 9, 2015. No written comments were received by the Board after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

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

2. The SCPD and GACEC's first public comment stated that the Board should consider broadening the eligible facilities or settings for a nurse to complete a supervised practice plan.

3. The Board did not disagree with this comment and noted that such an expansion is allowed by the statute and will be discussed by the Board's Rules and Regulations Committee in the near future. While the Board generally agreed with the comments, it did not see either comment as a basis to change the currently proposed regulation 4.2.1 and thus mandate that the Board begin the regulation promulgation process anew.

4. The SCPD and GACEC's second comment recommended that the Board add "nonprescription" to proposed regulation 5.2.1 in order to comply with the recently added statutory provisions at 24 **Del.C.** §§1902(h) and 1932(a).

5. The Board noted that the reference to prescription in regulation 5.2.1 refers to the fact that in order to administer either an over the counter or prescription medication in an eligible facility, a UAP must have a doctor's order/prescription. As such, the Board voted to move forward with the regulation as proposed, but noted that the LLAM Committee will discuss whether this language should be clarified through future regulation changes.

6. The SCPD and GACEC's third comment expressed confusion that the regulations indicate at 5.5.2 that a UAP must repeat the LLAM training program after two errors, but at 5.4.2 state that the UAPs may renew their status by demonstrating no errors.

7. The Board pointed out that proposed regulation 5.4.2 refers to errors in the LLAM training program, not errors in medication administration after completion of the training program. As such, the Board agreed that no changes were needed in response to these comments.

8. The SCPD and GACEC's fourth comment recommended that the Board not require UAPs to re-take the training program every year.

9. The Board disagreed with this comment, particularly as UAPs are unlicensed individuals. As such, the Board believes it is of great importance that such individuals repeatedly establish that they are competent to administer medications through an annual renewal and testing process.

10. Pursuant to 24 **Del.C.** §1906(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

11. The proposed change at 2.1 adds definition to the nursing regulations regarding nursing competency and standards. The proposed change at 2.4.1.7 revises the Board's regulations approved nursing education programs and such programs acceptable curricula. The proposed changes at 3.0 and 4.0 offer updates to the Board's refresher course or supervised practice requirement for nurses who seek to apply for endorsement or reinstatement of licensure and have not been actively employed over the past five years. The proposed changes at 5.0, et. seq. seek to bring the nursing regulations into line with a recent statutory change addressing the limited lay administration of medications, and the proposed change at 9.4.5.1 eliminates a Board requirement that continuing education programs keep a record of participants' social security numbers.

12. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.

13. For the reasons stated above, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* on November 1, 2015.

IT IS SO ORDERED this 14th day of October, 2015 by the Delaware Board of Nursing.

Robert Contino, RN, President	Raymond Moore, Public Member (absent)
Pam Tyranski, RN, Vice-President (absent)	Madelyn Nellius, Public Member
Kathy L. Bradley, LPN	David Salati, RN
George Brown, Public Member	Harland Sanders, Jr., Public Member
Linda Darling, RN	Victoria Udealer, RN
Valerie Devereaux, DNP, MSN, RN	Megan Williams, APN
Dianne Halpern, RN	

***Please note that no changes were made to the regulation as originally proposed and published in the August 2015 issue of the *Register* at page 125 (19 DE Reg. 125). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1900 Board of Nursing

PUBLIC SERVICE COMMISSION

Statutory Authority: 29 Delaware Code, Section 103(3) (3 Del.C. §103(b))
8 DE Admin. Code 1202

ORDER NO. 8790

IN THE MATTER OF THE ADOPTION OF RULES AND REGULATIONS GOVERNING THE PROCEDURE FOR INSPECTION AND COPYING OF PUBLIC RECORDS UNDER THE FREEDOM OF INFORMATION ACT, 29 Del.C., §§10001-10006 (OPENED AUGUST 17, 2010; REOPENED MAY 10, 2011; REOPENED NOVEMBER 8, 2011)

PSC REGULATION DOCKET NO. 62

1202 Policies and Procedures Regarding FOIA Requests

AND NOW, this 22nd day of September, 2015, in accordance with 26 Del.C. §209(a)(1) and 29 Del.C. §§10113(b) and 10003(b), for the reasons stated below, this ORDER is adopted to amend the regulations of Public Service Commission ("Commission") setting forth the Policies and Procedures regarding requests under the Delaware Freedom of Information Act ("FOIA").

NATURE OF PROCEEDINGS

1. On October 20, 2011, the Governor of the State of Delaware signed Executive Order Number 31 which directed each executive branch agency to implement and promulgate uniform FOIA policies in substantial compliance with the form attached to the Executive Order. In accordance with Executive Order Number 31, 26 Del.C. §209(a)(1), and 29 Del.C. §10113(b)(1), the Commission repealed its prior regulations and adopted new final regulations governing the policies and procedures regarding FOIA requests in Order No. 8082, dated December 20, 2011. These regulations were published in the Delaware *Register of Regulations* on January 1, 2012, and became effective ten days from the date of publication in the Delaware *Register of Regulations*, in

accordance with 29 **Del.C.** §10118(g).

2. Pursuant to 78 **Del. Laws**, c. 382, §1, 29 **Del.C.** §10002 of Delaware's FOIA statute was amended, effective August 1, 2012. As a result, certain subsections incorporated by the Commission's regulations were renumbered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

3. The Commission has statutory authority to promulgate regulations pursuant to 26 **Del.C.** §209(a)(1).

4. Pursuant to 29 **Del.C.** §10113(b), regulations describing an agency's procedures for obtaining information, nonsubstantive changes in existing regulations that correct technical errors, and amendments to existing regulations that make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

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

5. Under the statutory authority and for the reasons set forth in the body of this Order, the Commission does hereby ORDER that the regulations attached as Exhibit "A" be, and that they hereby are, adopted and promulgated as set forth below to make certain technical corrections consistent with the amendments of 78 **Del. Laws**, c. 382, §1.

6. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the Delaware *Register of Regulations* a copy of this Order.

7. That the effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

8. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair

Joann T. Conaway, Commissioner

Harold B. Gray, Commissioner

K. F. Drexler, Commissioner

Mike Karia, Commissioner

ATTEST:

Donna Nickerson, Secretary

1202 Policies and Procedures Regarding FOIA Requests (Break in Continuity of Sections)

3.0 Records Request, Response Procedures and Access

(Break in Continuity Within Section)

3.7 Review by Commission

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

3.8 Hours of Review

- 3.8.1 The Commission shall provide reasonable access for reviewing Public Records during its regular business hours.

(Break in Continuity of Sections)

6.0 Agency-Specific Provisions.

(Break in Continuity Within Section)

- 6.2 Records identified as non-public pursuant to 29 **Del.C.** §10002(g) shall not be produced in response to a FOIA Request. In addition, the following procedures shall apply to requests seeking records that the Commission believes are non-public because they are Third Party Confidential Records:

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

1202 Policies and Procedures Regarding FOIA Requests

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Tuesday, November 10, 2015** beginning at **1:30 p.m.** A business meeting will be held the following month on **Wednesday, December 9, 2015** beginning at **10:30 a.m.** The hearing and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION
PUBLIC NOTICE**1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to adopt the ARCI Endogenous, Dietary, or Environmental Substances Schedule. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the November 1, 2015 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before December 1, 2015. Written materials submitted will be available for inspection at the above address.

On or after December 1, 2015, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed changes to rule 15.1.3.1.3 relating to the ARCI Endogenous, Dietary or Environmental Substances Schedule or make additional changes because of the public comments received.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, November 19, 2015 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE**Pharmaceutical Services Reimbursement – 340B Drug Products**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 U.S.C., §1902(a)(13)(A) of the Social Security Act, 42 CFR §447.205, and under the authority of Title 31

of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Pharmaceutical Services, specifically, *to clarify reimbursement methodology for entities that purchase 340B drug products.*

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 Glyne Williams, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 1, 2015.

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 MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services - Mental Health Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services, specifically, *coverage and reimbursement methodologies for rehabilitative mental health services.*

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 Glyne Williams, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 1, 2015. Please identify in the subject line: EPSDT – Mental Health Services.

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 MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services - Substance Use Disorder Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services, specifically, *coverage and reimbursement methodologies for Medicaid rehabilitative substance use disorder services.*

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 Glyne Williams, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 1, 2015. Please identify in the subject line: EPSDT – Substance Use Disorder Services.

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 MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE****Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services - Inpatient Psychiatric Hospital Services for Individuals under Age 21**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services, addressing Inpatient Psychiatric Hospital Services for Individuals under Age 21, specifically, *coverage and reimbursement methodology for psychiatric residential treatment facilities (PRTFs)*.

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 Glyne Williams, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 1, 2015. Please identify in the subject line: Inpatient Psychiatric Hospital Services for Individuals under Age 21.

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****4304 Medical Orders for Life-Sustaining Treatment or Pre-Hospital Advance Care Directives**

Division of Public Health, Department of Health and Social Services, is proposing to repeal and replace regulations for Delaware Medical Orders Scope of Treatment (DMOST). The purpose of replacing existing regulation with the proposed regulations is to improve the quality of care people receive at the end of life by translating patient/resident goals and preferences into medical orders. The proposed regulations will set requirements for use of DMOST forms, provide guidance in the use of the forms and formalize the DMOST form itself. On November 1, 2015, DPH plans to publish as proposed the new regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the November 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, December 4, 2015, at:

Jamie Mack

Division of Public Health

417 Federal Street

Dover, DE 19901

Email: jamie.mack@state.de.us

Phone: (302) 744-4951

DIVISION OF PUBLIC HEALTH**PUBLIC NOTICE****4406 Home Health Agencies--Aide Only (Licensure)**

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Home Health Care Agencies - Aide Only (4406). One purpose of the amendments to these regulations is to allow for the provision of services by these agencies in

nursing facilities and hospitals. This change will allow patients to receive the services necessary to safely achieve their highest level of independence and optimal quality of life while residing in their own home or during a necessary hospitalization. In addition, amendments were made to update the requirements to ensure patients receive safe and quality care. On November 1, 2015, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

A public hearing will be held on Wednesday, December 2, 2015 at 2:00 p.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the November 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Thursday, December 17, 2015, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

DIVISION OF PUBLIC HEALTH**PUBLIC NOTICE****4410 Skilled Home Health Agencies (Licensure)**

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Home Health Care Agencies - Skilled (4410). One purpose of the amendments to these regulations is to allow for the provision of services by these agencies in nursing facilities and hospitals. This change will allow patients to receive the services necessary to safely achieve their highest level of independence and optimal quality of life while residing in their own home or during a necessary hospitalization. In addition, amendments were made to update the requirements to ensure patients receive safe and quality care. On November 1, 2015, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

A public hearing will be held on Wednesday, December 2, 2015 at 2:00 p.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the November 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Thursday, December 17, 2015, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

DIVISION OF PUBLIC HEALTH**PUBLIC NOTICE****4469 Personal Assistance Services Agencies**

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social

Services, is proposing revisions to the regulations governing Personal Assistance Service Agencies (4469). One purpose of the amendments to these regulations is to allow for the provision of services by these agencies in nursing facilities and hospitals. This change will allow consumers to receive the services necessary to safely achieve their highest level of independence and optimal quality of life while residing in their own home or during a necessary hospitalization. In addition, amendments were made to update the requirements to ensure patients receive safe and quality care. On November 1, 2015, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

A public hearing will be held on Wednesday, December 2, 2015 at 2:00 p.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the November 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Thursday, December 17, 2015, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

PUBLIC NOTICE

1801 Registration of Insurance Holding Companies

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 1801 relating to Registration of Insurance Holding Companies [Formerly Regulation 13]. The docket number for this proposed AMENDED regulation is 2969-2015.

The proposed amended regulation is being submitted to maintain accreditation and replaces the current regulation with the updated National Association of Insurance Commissioners (NAIC) Model Insurance Holding Company System Model Regulation With Reporting Forms And Instruction, to support the Insurance Holding Company System Regulatory Act. The Delaware Code authority for the change is 18 **Del.C.** §311 and Ch. 50, and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Tuesday, December 1, 2015. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379 / Fax: (302) 739-5566
Email: rhonda.west@state.de.us

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF ENERGY AND CLIMATE****102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions****PUBLIC NOTICE**

The purpose of this action is to propose rules to govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 **Del.C.** §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of Delaware's Renewable Energy Portfolio Standards as provided for in 26 **Del.C.** §354(a).

Start Action Notice 2012-03 initiating this rule making process was issued April 16, 2012.

This proposed regulation replaces the regulation posted in the *Register* on October 1, 2015, which contained significant typographical errors.

The hearing record on 102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions (Proposed Rules to Implement 26 **Del.C.** §354(i) & (j)) will open November 1, 2015 and will close December 8, 2015 at 4:30 PM.

Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. However, any comments submitted in response to the regulation posted in the October 1, 2015 *Register* will be considered to be part of the record.

The public hearing scheduled for November 3, 2015, starting at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901 has been cancelled and rescheduled for November 23, 2015 as noted below.

A public hearing on the proposed amendment will be held on November 23, 2015 beginning at 6:00 p.m. in the Public Service Commission Hearing Room, 861 Silver Lake Blvd., Dover, DE, 19904.

DIVISION OF FISH AND WILDLIFE**3542 Tilefish****PUBLIC NOTICE**

The Department of Natural Resources & Environmental Control (DNREC) initiated the development of regulations pertaining to Tilefish at the request of the Mid-Atlantic Fishery Management Council (MAFMC) and based on guidance from Delaware's Advisory Council on Tidal Finfisheries. Two management options were presented to the public in proposed form (18 **DE Reg.** 951 (06/01/15)) and a public hearing on the matter was held June 24, 2015 at 6:00 PM in the DNREC Auditorium, Dover, DE. Both management options included a commercial trip limit of 300 pounds and a recreational possession limit of no more than seven fish per person; however, one option limited the new regulation to Blueline Tilefish (*Caulolatilus microps*) and one option applied the regulation more broadly (as in Maryland and Virginia) to include both Blueline and Golden Tilefish (*Lopholatilus chamaelonticeps*). The hearing record was closed on July 9, 2015. Following careful consideration of the hearing record, the Department has opted to adopt a Tilefish regulation that affords protections to both Blueline Tilefish and Golden Tilefish (Option 2). Additionally, to provide greater understanding to the regulated community, the Department proposes to clarify that the term "possess" pertains to individuals "aboard a vessel".

No additional hearing will be held; the Department will receive written comment through November 30, 2015. Individuals may submit written comments regarding the proposed clarification to 7 **DE Admin. Code** 3542 via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**TANK MANAGEMENT BRANCH****1351 Underground Storage Tank Systems****PUBLIC NOTICE**

DNREC is taking action to clarify several issues concerning cleanup liability associated with releases from underground storage tanks resulting from the amendment of 7 Delaware Code Chapter 74, Delaware's Underground Storage Tank Act in October 2014. These changes clarify when the Department will require a responsible party to perform additional corrective actions following the Department issuing a No Further Action letter. Also, the changes establish an All Appropriate Inquiry Standard for residential properties that if completed would exempt a purchaser from liability associated with the cleanup of a release from an underground storage tank discovered after they purchased the property.

The hearing record on the proposed amendments to 7 **DE Admin Code** §1351 Underground Storage Tank Regulations will be open November 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendments will be held on December 1, 2015 beginning at 6:00 PM in the DNREC New Castle Office, located at 391 Lukens Drive, New Castle DE 19720.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**DIVISION OF STATE POLICE****2400 BOARD OF EXAMINERS OF CONSTABLES****PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27 proposes to amend/adopt Rules: 4.0 – Badges & Vehicle Markings – requires all badges and vehicle markings to be approved by the Board, and; 9.0 – Minimum Training Standards & In-Service Training – clarifies the requirements for the training standards and continuing education through in-service. If you wish to view these amendments/adoptions, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by December 1, 2015, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold the annual meeting on Thursday, December 10, 2015, Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**PUBLIC NOTICE****Alcoholic Beverage Control Regulations**

The Office of the Alcoholic Beverage Control Commissioner intends to amend Title 4 of the Delaware Administrative Code by revising the existing regulations to reflect the current regulatory environment. These amendments will update the regulations to control the manner of the sale of alcoholic beverages to protect the public safety and insure that the sales are in the best interest of the public.

These proposed amendments were previously published in September 2014 and have not been changed since that date. Any comments regarding the previously proposed amendments made:

- a) at the hearings,
- b) in writing with delivery to this Office, and
- c) electronically sent to this Office

will be considered and there is no necessity of repeating these comments.

Should you desire to make additional comments, written comments will be accepted until close of business on December 2, 2015. Written comments should be submitted to Lauren Shinault, Regulation Review, Office of the Alcoholic Beverage Control Commissioner, Carvel Building 3rd Floor, 820 N. French Street, Wilmington, Delaware 19801 or electronically to OABCCrulescomments@state.de.us. A copy of these regulations may be viewed at the above address.