
Delaware Register of Regulations

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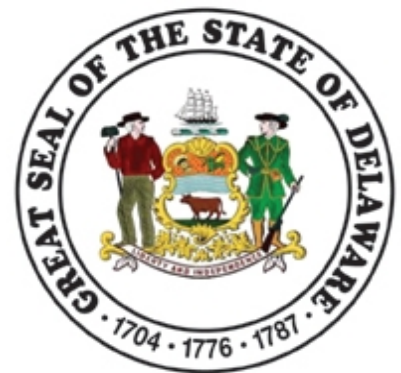


IN THIS ISSUE:

Regulations:

- Errata
- Emergency
- 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, 2021.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 17	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.

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PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1556

ERRATA**1556 School To Work Transition Teacher**

* **Please Note:** The proposed regulation for 1556 School To Work Transition Teacher was originally submitted for publication in the July 1, 2021 issue of the *Register of Regulations*.

New text in Section 9.0 of the proposed regulation was inadvertently published without underlining:

9.0 Past Certificate Recognized

The Department shall recognize a School to Work Transition Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach school to work transition.

The new text should have been published with underlining as:

9.0 Past Certificate Recognized

The Department shall recognize a School to Work Transition Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach school to work transition.

The final regulation is published in this issue, the November 1, 2021 *Register of Regulations*. See **1556 School to Work Transition Teacher**.

Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

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

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

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

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

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3201

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119

(Extension of Emergency Order)

16 **DE Admin. Code** 3201 Skilled and Intermediate Care Nursing Facilities

3201 Skilled and Intermediate Care Nursing Facilities**AUTHORITY**

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 3201 Skilled and Intermediate Care Nursing Facilities. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for long-term care facilities and services.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted congregate settings, particularly within nursing facilities, assisted living facilities, rest (residential) facilities, and intermediate care facilities for persons with intellectual disabilities.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 6 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 3201 Skilled and Intermediate Care Nursing Facilities, specifically, subsection 6.10 which expands infection prevention and control program requirements, was temporarily modified by Emergency Order by making deletions as shown by strike through and insertions as shown by underline as follows:

6.10 Infection Control

6.10.1 Infection Prevention and Control ~~Committee~~ Program

6.10.1.1 The nursing facility shall establish an infection prevention and control ~~committee~~ program (or a subcommittee of an overall quality control program) of professional staff whose responsibility shall be to manage the infection control program in the facility. One member of the ~~committee~~ program shall be designated the infection control coordinator.

6.10.1.2 The infection prevention and control ~~committee~~ program shall consist of members of the medical and nursing staffs, administration, dietetic department, pharmacy, housekeeping, maintenance, and therapy services.

6.10.1.3 The infection prevention and control ~~committee~~ program shall ~~establish written policies and procedures that describe the role and scope of each department/service in infection prevention and control activities.~~ shall be based upon the Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

6.10.1.3.1 The infection prevention and control program must cover all services and all areas of the nursing facility, including provision of the appropriate personal protective equipment for all patients/residents, staff, and visitors.

6.10.1.4 ~~The committee is responsible for the development and coordination of policies and procedures to accomplish the following:~~

6.10.1.4.1 ~~Prevent the spread of infections and communicable diseases~~

6.10.1.4.2 ~~Promote early detection of outbreaks of infection~~

6.10.1.4.3 ~~Ensure a sanitary environment for residents, staff and visitors~~

6.10.1.4.4 ~~Establish guidelines for the implementation of isolation/precautionary measures~~

6.10.1.4.5 ~~Monitor the rate of nosocomial infection~~

6.10.1.5 ~~6.10.1.4~~ The infection control coordinator shall must ~~maintain records of all nosocomial infections and corrective actions related to those infections to enable the committee to analyze clusters or significant increases in the rate of infection and to make recommendations for the prevention and control of additional cases.~~

6.10.1.4.1 Develop and implement a comprehensive plan that includes actions to prevent, identify and manage infections and communicable diseases. The plan must include mechanisms that

result in immediate action to take preventive or corrective measures that improve the nursing facility's infection control outcomes.

6.10.1.4.2 Maintain records of all nosocomial infections and corrective actions related to those infections to enable the committee to analyze clusters or significant increases in the rate of infection and to make recommendations for the prevention and control of additional cases.

~~6.10.1.6~~ 6.10.1.5 The infection control committee shall establish the infection control training of staff and volunteers, and disseminate current information on health practices.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3201 Skilled and Intermediate Care Nursing Facilities, a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C, and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the *Register* at page 6 (25 DE Reg. 6). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

3201 Skilled and Intermediate Care Nursing Facilities

EMERGENCY REGULATIONS

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3210

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119

(Extension of Emergency Order)

16 **DE Admin. Code** 3210 Nursing Homes Admitting Pediatric Residents

3210 Nursing Homes Admitting Pediatric Residents**AUTHORITY**

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 3210 Nursing Homes Admitting Pediatric Residents. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for nursing homes admitting pediatric residents.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted congregate settings, particularly within nursing facilities, assisted living facilities, rest (residential) facilities, and intermediate care facilities for persons with intellectual disabilities.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, the pandemic continues, and thus health and safety protocols must continue independent of the termination of state or federal emergency orders. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 9 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 3210 Nursing Homes Admitting Pediatric Residents, specifically, Section 17.0 which expands the infection prevention and control program requirements, was temporarily modified by Emergency Order as shown by underline as follows:

17.0 Infection Prevention and Control Program

17.1 The licensee shall establish and implement an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

- 17.1.1 The infection prevention and control program must cover all services and all areas of the facility, including provision of the appropriate personal protective equipment for all residents, staff and visitors.
- 17.2 The individual designated to lead the licensee's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the licensee's infection control outcomes.
- 17.3 All licensee's staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3210 Nursing Homes Admitting Pediatric Residents, a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the *Register* at page 9 (25 DE Reg. 9). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

[3210 Nursing Homes Admitting Pediatric Residents](#)

EMERGENCY REGULATIONS

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3225

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
(Extension of Emergency Order)
16 **DE Admin. Code** 3225 Assisted Living Facilities

3225 Assisted Living Facilities**AUTHORITY**

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 3225 Assisted Living Facilities. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for long-term care facilities and services.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted congregate settings, particularly within nursing facilities, assisted living facilities, rest (residential) facilities, and intermediate care facilities for persons with intellectual disabilities.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, the pandemic continues, and thus health and safety protocols must continue independent of the termination of state or federal emergency orders. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 11 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **Del. Admin. Code** 3225 Assisted Living Facilities, specifically, subsection 9.9 which expands infection prevention and control program requirements, was temporarily modified by Emergency Order by making insertions as shown by underline as follows:

9.9 Infection Prevention and Control Program

9.9.1 The assisted living facility shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

9.9.1.1The infection prevention and control program must cover all services and all areas of the assisted living facilities, including provision of the appropriate personal protective equipment for all residents, staff, and visitors.

9.9.2 The individual designated to lead the assisted living facility's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the assisted living facility's infection control outcomes.

9.9.3 All assisted living facility staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3225 Assisted Living Facilities, a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

*Please note that no changes were made to the regulation as originally published in the July 2021 issue of the *Register* at page 11 (25 DE Reg. 11). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:

3225 Assisted Living Facilities

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3305

EMERGENCY SECRETARY'S ORDER

(Extension of Emergency Order)

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
16 **DE Admin. Code** 3305 Group Homes for Persons with Mental Illness

3305 Group Homes for Persons with Mental Illness

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 3305 Group Homes for Persons with

Mental Illness. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for group homes for persons with mental illness.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted congregate settings.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, the pandemic continues, and thus health and safety protocols must continue independent of the termination of state or federal emergency orders. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 13 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 3305 Group Homes for Persons with Mental Illness, specifically, Section 15.0 which expands infection prevention and control program requirements, was temporarily modified by Emergency Order as shown by making deletions as shown by strike through and insertions as shown by underline as follows:

15.0 Infection Control

15.1 The group home shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

15.1.1 The infection prevention and control program must cover all services and all areas of the group home, including provision of the appropriate personal protective equipment for all patients/residents, staff, and visitors.

15.2 The individual designated to lead the group home's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the group home's infection control outcomes.

15.3 All group home staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

~~45.0~~ 16.0 Noncompliance

~~45.1~~ 16.1 Upon receipt of written notice of a violation of these regulations, the service provider shall submit a written plan of action to correct deficiencies cited within ten (10) days or such other time period as may be required by the Department. The plan of action shall address the corrective actions to be taken and include all measures to prevent their recurrence.

~~45.2~~ 16.2 The Department may impose civil money penalties and/or other enforcement remedies in accordance with the procedures outlined in 16 Del.C., Ch. 11, Subchapter I, Licensing by the State.

~~45.3~~ 16.3 The Department may suspend or revoke a license, or refuse to renew it, in accordance with 16 Del.C., Ch. 11, Subchapter I, Licensing by the State.

~~46-0-17.0~~ Waiver of Standards

Waivers may be granted by the Division of Long Term Care Residents Protection for good cause.

~~47-0-18.0~~ Severability

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of the regulations shall not be affected.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3305 Group Homes for Persons with Mental Illness, a copy of which is hereby attached, is renewed, pursuant to the Governor's Emergency Declaration, 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the Register at page 13 (25 DE Reg. 13). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

[3305 Group Homes for Persons with Mental Illness](#)

EMERGENCY REGULATIONS

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3310

EMERGENCY SECRETARY'S ORDER

(Extension of Emergency Order)

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119

16 **DE Admin. Code** 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities

3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities**AUTHORITY**

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for long-term care facilities and services.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted congregate settings.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 15 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities, specifically, Section 11.0 which expands infection prevention and control program requirements, was temporarily modified by Emergency Order by making deletions as shown by strike through and insertions as shown by underline as follows:

11.0 Infection Control

11.1 The provider shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

11.1.1 The infection prevention and control program must cover all services and all areas of the facility, including provision of the appropriate personal protective equipment for all residents, staff and visitors.

11.2 The individual designated to lead the licensee's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and

communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the licensee's infection control outcomes.

11.3 All staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

44-0 12.0 Severability

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities, a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the Register at page 15 (25 DE Reg. 15). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

[3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities](#)

EMERGENCY REGULATIONS

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3315

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
(Extension of Emergency Order)
16 **DE Admin. Code** 3315 Family Care Homes

3315 Family Care Homes**AUTHORITY**

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 3315 Family Care Homes. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for long-term care facilities and services.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted congregate settings.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 17 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 3315 Family Care Homes, specifically, Section 11.0 which includes infection prevention and control program requirements, was temporarily modified by Emergency Order by making deletions as shown by strike through and insertions as shown by underline as follows:

11.0 Infection Prevention and Control

11.1 The FCH shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

11.1.1 The infection prevention and control program must cover all services and all areas of the FCH including provision of the appropriate personal protective equipment for all occupants of the FCH and visitors.

11.1.2 The individual designated to lead the FCH's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage

infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the FCH's infection control outcomes.

44-θ 12.0 Severability

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3315 Family Care Homes, a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the Register at page 17 (25 DE Reg. 17). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

3315 Family Care Homes

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3320

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
(Extension of Emergency Order)

16 **DE Admin. Code** 3320 Intensive Behavioral Support and Educational Residence

3320 Intensive Behavioral Support and Educational Residence

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 3320 Intensive Behavioral Support and Educational Residence. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt

emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for long-term care facilities and services.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted congregate settings.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections within facilities.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 19 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 3320 Intensive Behavioral Support and Educational Residence, specifically, Section 10.0 which includes infection prevention and control program requirements, was temporarily modified by Emergency Order by making deletions as shown by strike through and insertions as shown by underline as follows:

10.0 Infection Prevention and Control

10.1 The IBSER shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

10.1.1The infection prevention and control program must cover all services and all areas of the IBSER, including provision of the appropriate personal protective equipment for all residents, staff, and visitors.

10.2 The individual designated to lead the IBSER's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the IBSER's infection control outcomes.

10.3 All IBSER staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

~~40.0~~ 11.0 Severability

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3320 Intensive Behavioral Support and Educational Residence, a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the *Register* at page 19 (25 DE Reg. 19). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

3320 Intensive Behavioral Support and Educational Residence

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3345

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
(Extension of Emergency Order)

16 **DE Admin. Code** 3345 Personal Assistance Services Agencies

3345 Personal Assistance Services Agencies

AUTHORITY

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

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving home care services throughout the community.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 21 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 3345 Personal Assistance Services Agencies, specifically, Section 9.0 which expands infection prevention and control program requirements, was temporarily modified by Emergency Order by making deletions as shown by strike through and insertions as shown by underline as follows:

9.0 Infection Prevention and Control

9.1 The agency shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

9.1.1 The infection prevention and control program must cover all services provided by the agency, including provision of the appropriate personal protective equipment for all consumers and staff.

9.2 The individual designated to lead the agency's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the agency's infection control outcomes.

9.3 All agency staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

~~9.0~~ 10.0 Severability

In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3345 Personal Assistance Services Agencies, a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C, and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the *Register* at page 21 (25 DE Reg. 21). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

3345 Personal Assistance Services Agencies

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 4402

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119

(Extension of Emergency Order)

16 **DE Admin. Code** 4402 Regulations for Adult Day Care Facilities

4402 Regulations for Adult Day Care Facilities

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 4402 Regulations for Adult Day Care Facilities. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for adult day care facilities.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 23 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 4402 Regulations for Adult Day Care Facilities, specifically, Section 16.0 which expands infection prevention and control program requirements, was temporarily modified by Emergency Order by making deletions as shown by strike through and insertions as shown by underline as follows:

16.0 Infection Control

16.1 The adult day care center shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

16.1.1 The individual designated to lead the adult day care's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the adult day care's infection control outcomes.

16.2 The infection prevention and control program must include all services and each particular area of the adult day care center, including the appropriate personal protective equipment for all patients, staff, and visitors.

16.3 All adult day care staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

~~46.0~~ 17.0 Severability

~~16.4~~ 17.1 In the event any particular clause or section of these Regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4402 Regulations for Adult Day Care Facilities, a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C, and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the Register at page 23 (25 DE Reg. 23). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

4402 Regulations for Adult Day Care Facilities

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 4403

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
(Extension of Emergency Order)
16 **DE Admin. Code** 4403 Free Standing Birthing Centers

4403 Free Standing Birthing Centers

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 4403 Free Standing Birthing Centers. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for free standing birthing centers.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 25 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 4403 Free Standing Birthing Centers, specifically, Section 14.0 which expand infection prevention and control program requirements, was temporarily modified by Emergency Order by making deletions as shown by strike through and insertions as shown by underline as follows:

14.0 Infection Prevention and Control

14.1 The birthing center shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

14.1.1 The infection prevention and control program must include all services and each particular area of the birthing center, including the appropriate personal protective equipment for all patients, staff, and visitors.

14.2 There needs to be an individual designated to lead the birthing center's infection prevention and control program, must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the birthing center's infection control outcomes.

14.3 All birthing center staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

~~44.0~~ 15.0 Severability

~~44.4~~ 15.1 In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4403 Free Standing Birthing Centers, a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C, and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the Register at page 25 (25 DE Reg. 25). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

4403 Free Standing Birthing Centers

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 4406

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119

(Extension of Emergency Order)

16 **DE Admin. Code** 4406 Home Health Agencies--Aide Only

4406 Home Health Agencies--Aide Only (Licensure)

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 4406 Home Health Agencies--Aide Only (Licensure). Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for Home Health Agencies--Aide Only (Licensure).

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for agencies to prevent or significantly decrease transmission of COVID-19 and other infections.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 27 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 4406 Home Health Agencies--Aide Only (Licensure), specifically, Section 11.0 which expands infection prevention and control program requirements, was temporarily modified by Emergency Order by making insertions as shown by underline as follows:

11.0 Infection Control

11.1 The Agency shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

11.1.1 The infection prevention and control program must include all services offered by the Agency, including the appropriate personal protective equipment for all patients and staff.

11.2 The individual designated to lead the Agency's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the Agency's infection control outcomes.

11.3 All Agency staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

~~44-0~~ 12.0 Severability

In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4406 Home Health Agencies--Aide Only (Licensure), a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C, and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the Register at page 27 (25 DE Reg. 27). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

4406 Home Health Agencies--Aide Only (Licensure)

EMERGENCY REGULATIONS

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 Del.C. §1119C & 29 Del.C. §10119)
16 DE Admin. Code 4407

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119

(Extension of Emergency Order)

16 DE Admin. Code 4407 Hospital Standards (Construction, Maintenance, and Operation)

4407 Hospital Standards (Construction, Maintenance, and Operation)

AUTHORITY

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 DE Admin. Code 4407 Hospital Standards (Construction, Maintenance, and Operation). Additionally, 29 Del.C. §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del.C. §10115. Moreover, 16 Del.C. §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for hospitals.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for hospitals to prevent or significantly decrease transmission of COVID-19 and other infections.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 DE Reg. 29 (07/01/21).

EFFECTIVE DATE OF ORDER

16 DE Admin. Code 4407 Hospital Standards (Construction, Maintenance, and Operation), specifically, Section 6.0 which expands infection prevention and control program requirements, was temporarily modified by Emergency Order by making insertions as shown by underline as follows:

6.0 Infection Prevention and Control

6.1 The hospital shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

6.1.1 The infection prevention and control program must include all services and all areas of the hospital, including provision of the appropriate personal protective equipment for all patients, staff, and visitors.

6.2 The individual designated to lead the hospital's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the hospital's infection control outcomes.

6.3 All hospital staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4407 Hospital Standards (Construction, Maintenance, and Operation), a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C, and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the Register at page 29 (25 DE Reg. 29). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

4407 Hospital Standards (Construction, Maintenance, and Operation)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 4409

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119
(Extension of Emergency Order)

16 **DE Admin. Code** 4409 Prescribed Pediatric Extended Care Centers

4409 Prescribed Pediatric Extended Care Centers (PPECC)

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 4409 Prescribed Pediatric Extended Care Centers (PPECC). Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for Prescribed Pediatric Extended Care Centers (PPECC).

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for facilities to prevent or significantly decrease transmission of COVID-19 and other infections.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 33 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 4409 Prescribed Pediatric Extended Care Centers (PPECC), specifically, subsection 8.7 which expands infection prevention and control program requirements, was temporarily modified by Emergency Order by making insertions as shown by underline as follows:

8.7 Infection Control

8.7.1 PPECC shall have written policies and procedures for infection control in accordance with the Delacare Requirements for Day Care, and the needs of all children being treated.

8.7.2 The PPECC shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

8.7.2.1 The infection prevention and control program must include all services and all areas of the PPECC, including provision of the appropriate personal protective equipment for all patients, staff, and visitors.

8.7.3 There needs to be an individual designated to lead the PPECC's infection prevention and control program, must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the PPECC's infection control outcomes.

8.7.4 All PPECC staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4409 Prescribed Pediatric Extended Care Centers (PPECC), a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C, and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the *Register* at page 33 (25 DE Reg. 33). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

4409 Prescribed Pediatric Extended Care Centers (PPECC)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 4410

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119

(Extension of Emergency Order)

16 **DE Admin. Code** 4410 Skilled Home Health Agencies

4410 Skilled Home Health Agencies (Licensure)

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 4410 Skilled Home Health Agencies (Licensure). Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for Skilled Home Health Agencies.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for agencies to prevent or significantly decrease transmission of COVID-19 and other infections.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 35 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 4410 Skilled Home Health Agencies (Licensure), specifically, subsection 6.9 which expands infection prevention and control program requirements, was temporarily modified by Emergency Order by making insertions as shown by underline as follows:

6.9 Infection Control

6.9.1 The Skilled Home Health Agency shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

6.9.1.1 The infection prevention and control program must include all services offered by the Skilled Home Health Agency, including the appropriate personal protective equipment for all patients and staff.

6.9.2 The individual designated to lead the Skilled Home Health Agency's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the Skilled Home Health Agency's infection control outcomes.

6.9.3 All Skilled Home Health Agency staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4410 Skilled Home Health Agencies (Licensure), a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C, and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the Register at page 35 (25 DE Reg. 35). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

4410 Skilled Home Health Agencies (Licensure)

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 4468

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
(Extension of Emergency Order)
16 **DE Admin. Code** 4468 Delivery of Hospice Services

4468 Delivery of Hospice Services

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 **DE Admin. Code** 4468 Delivery of Hospice Services. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for the delivery of hospice services.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

A comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for hospices to prevent or significantly decrease transmission of COVID-19 and other infections.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 37 (07/01/21).

EFFECTIVE DATE OF ORDER

16 **DE Admin. Code** 4468 Delivery of Hospice Services, specifically, Section 7.0 which expands infection prevention and control program requirements, was temporarily modified by Emergency Order by making deletions as shown by strike through and insertions as shown by underline as follows:

7.0 Infection Prevention and Control

7.1 The hospice program shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

7.1.1 The infection prevention and control program must include all services and all areas of the hospice program, including provision of the appropriate personal protective equipment for all patients, staff, and visitors.

7.2 The individual designated to lead the hospice program's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the hospice program's infection control outcomes.

7.3 All hospice program staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

~~7.0~~ **8.0** Suspension or Revocation of Licenses

7.4 8.1 The Department of Health and Social Services may suspend or revoke a license issued pursuant to these regulations on any of the following grounds:

7.4.4 8.1.1 Violation of these rules and regulations issued pursuant thereto.

7.4.2 8.1.2 Permitting, aiding or abetting the commission of any illegal act in the hospice operation.

7.4.3 8.1.3 Conduct or practices detrimental to the health or welfare of the patient.

7.2 8.2 Before any license issued pursuant to these regulations is suspended or revoked, thirty (30) days notice shall be given in writing to the holder of the license, during which time he may appeal for a hearing before the Department of Health and Social Services. The Department of Health and Social Services shall hear the appeal at the next regularly scheduled meeting of the Department of Health and Social Services and shall render its decision within fifteen (15) days following such hearing.

~~8.0~~ **9.0** Renewal of License After Suspension or Revocation

If and when the conditions upon which the suspension or revocation of a license are based have been corrected, a new license may be granted.

~~9.0~~ **10.0** Severability

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

This Emergency Order took effect on July 1, 2021 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on October 29, 2021 and shall remain in effect for 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 22nd day of October, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4468 Delivery of Hospice Services, a copy of which is hereby attached, is renewed, pursuant to 16 **Del.C.** §1119C, and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS

Cabinet Secretary

***Please note that no changes were made to the regulation as originally published in the July 2021 issue of the Register at page 37 (25 DE Reg. 37). Therefore, the full regulation is not being republished. A copy of the emergency regulation is available at:**

4468 Delivery of Hospice Services

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122 and 128, and 29 Delaware Code, Section 10119 (16 **Del.C.** §§122 and 128 & 29 **Del.C.** §10119)
16 **DE Admin. Code** 4202

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §§ 122 & 128 and 29 **Del.C.** § 10119
16 **Del. Admin. C. §4202: Control of Communicable and Other Disease Conditions**

4202 Control of Communicable and Other Disease Conditions**AUTHORITY**

Pursuant to 16 **Del.C.** §§ 122(3)(a) & 128 and 29 **Del.C.** § 10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. C. § 4202: Control of Communicable and Other Disease Conditions**. Additionally, 29 **Del.C.** § 10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** § 10115. Moreover, 16 **Del.C.** § 122(3)(a) authorizes the Department to adopt, amend, repeal, or issue regulations to prevent and control the spread of all diseases that are dangerous to the public health. Further, 16 **Del.C.** § 128 authorizes the Department, as the advisor to authorities of the State in all matters pertaining to public hygiene, to make such regulations and may adopt such measures, including quarantine, vaccination, etc., as it deems most efficient to eradicate all infectious diseases.

REASON FOR THE EMERGENCY ORDER

For the first time since March 2020, children aged 5-17 have the highest COVID-19 rates in Delaware. Only 55% of children aged 12-18 are vaccinated and children 11 years old and younger are currently unable to be vaccinated. The vast majority of positive cases in Delaware are among the unvaccinated. Low vaccination rates among children make them especially susceptible to contracting the disease.

Delaware's tiered approach to mitigating COVID-19 is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. Emergency regulations to require mask usage by staff and students in kindergarten and above were published in the September 2021 *Register* at 25 DE Reg. 246 (09/01/21).

In addition, school staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the September amendment of Section 7.7.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 16 **DE Admin. C. § 4202: Control of Communicable and Other Disease Conditions**, specifically, Section 7.7 which requires all schools to institute a testing program is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

7.7 COVID-19 Mitigation and Prevention**7.7.1.5 Testing Program**

7.7.1.5.1 Staff is defined in the Division of Public Health Guidance.

7.7.1.5.2. Before their start date, all new staff must be tested for COVID-19 in accordance with Division of

Public Health Guidance or show proof of vaccination in a manner consistent with Division of Public Health Guidance.

7.7.1.5.3 All unvaccinated staff must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

7.7.1.6 Schools shall amend their current practices to include:

7.7.1.6.1 Mechanisms, including disciplinary mechanisms, for addressing staff refusals to provide testing results or vaccination status, or authorize release of such results or status, to the school; and

7.7.1.6.2 Maintaining records of staff vaccination status and testing results in the same manner as other confidential personal healthcare information as required by applicable law.

7.7.1.7 Upon request from the Division of Public Health, schools must produce documentation sufficient to demonstrate compliance with this subsection.

7.7.1.8 All schools must submit a report of the number of vaccinated staff at a time and manner determined by the Division of Public Health.

This Emergency Order shall take effect on November 1, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Public Health, 417 Federal St., Dover, DE 19901 or by email to DHSS_DPH_regulations@delaware.gov.

ORDER

It is hereby ordered, this 15th day of October 2021, that the above referenced amendment to 16 **DE Admin. C.** § 4202: Control of Communicable and Other Disease Conditions, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** § §122(3) & 128, and 29 **Del.C.** § 10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Secretary

4202 Control of Communicable and Other Disease Conditions (Break in Continuity of Sections)

7.0 Control of Specific Contagious Diseases

(Break in Continuity Within Section)

7.7 COVID-19 Mitigation and Prevention

7.7.1 Schools

(Break in Continuity Within Section)

7.7.1.5 Testing Program

7.7.1.5.1 Staff is defined in the Division of Public Health Guidance.

7.7.1.5.2 Before their start date, all new staff must be tested for COVID-19 in accordance with Division of Public Health Guidance or show proof of vaccination in a manner consistent with Division of Public Health Guidance.

7.7.1.5.3 All unvaccinated staff must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

7.7.1.6 Schools shall amend their policies and procedures to include:

- 7.7.1.6.1 Policies, including disciplinary policies, for addressing staff refusals to provide testing results or vaccination status, or authorize release of such results or status, to the school; and
- 7.7.1.6.2 Maintaining records of staff vaccination status and testing results in the same manner as other confidential personal healthcare information as required by applicable law.
- 7.7.1.7 Upon request from the Division of Public Health, schools must produce documentation sufficient to demonstrate compliance with this subsection.
- 7.7.1.8 All schools must submit a report of the number of vaccinated staff at a time and manner determined by the Division of Public Health.

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

4202 Control of Communicable and Other Disease Conditions

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 16 Delaware Code, Sections 2204-2208 and 29 Delaware Code, Section 10119

(16 **Del.C.** §§2204-2208 & 29 **Del.C.** §10119)

16 **DE Admin. Code** 6001

SECRETARY'S EMERGENCY ORDER

Pursuant to 16 **Del.C.** §§ 2204-2208 and 29 **Del.C.** § 10119

16 **DE Admin. C.** 6001: *Substance Abuse Licensing Facility Standards*

AUTHORITY

6001 Substance Abuse Facility Licensing Standards

Pursuant to 16 **Del.C.** §§2204-2208 and 29 *Del. C.* §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. C.** 6001 Substance Abuse Licensing Facility Standards. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety, or welfare requires a regulation's adoption, amendment, or repeal with less notice than required under 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §2204(1) authorizes the department to "plan for, establish, amend and revise standards for treatment programs when necessary or desirable." 16 **Del.C.** §2205(10) authorizes the department to "promulgate rules and regulations." 16 **Del.C.** §2206(1) authorizes the Department "to license all facilities to be used exclusively or partially for the treatment of persons in need of treatment." 16 **Del.C.** §2207(a) authorizes the department to "establish standards for treatment facilities." Under 16 **Del.C.** §2208(b), the Department "is authorized to promulgate regulations for licensing and develop standards for the proper operation of treatment facilities."

REASONS FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 has significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

In order to protect our most vulnerable citizens from COVID-19, staff, vendors and volunteers must either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 6001 Substance Abuse Facility Licensing Standards, specifically, Section 5.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

5.0 Infection Control**5.2 Specific Requirements for COVID-19**

- 5.2.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.**
- 5.2.2 All staff, vendors and volunteers must be tested for COVID -19 in a manner consistent with Division of Public Health Guidance.**
- 5.2.3 The agency must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.**

5.3 The agency shall amend their policies and procedures to include:

- 5.3.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.**
- 5.3.2 Staff refusals to participate in COVID-19 testing;**
- 5.3.3 Staff refusals to authorize release of testing results or vaccination status to the licensee;**
- 5.3.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and**
- 5.3.5 Plans to address staffing shortages and agency demands should a COVID-19 outbreak occur.**

This Emergency Order shall take effect on September 30, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3).

PETITIONS FOR RECOMMENDATIONS

The Department will receive, consider, and respond to a petition of an interested person for the reconsideration or revision of this order. A person may petition by written submission to the Division of Substance Abuse and Mental Health. The Division will receive petitions by mail to 1901 North DuPont Highway, New Castle, DE 19720-0906, fax to (302) 255-4427, and email to Joe.Aronson@delaware.gov. Please identify in the subject line: Emergency Order.

ORDER

It is hereby ordered, this 14th day of September 2021, that the above-referenced amendment to 16 **DE Admin. C.** 6001: *Substance Abuse Licensing Facility Standards*, a copy of which is attached, is adopted, according to 16 **Del. C.** §§ 2204-2208 and 29 **Del. C.** § 10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

6001 Substance Abuse Facility Licensing Standards
(Break in Continuity of Sections)

5.0 Standards Applicable to all Facilities and Programs***(Break in Continuity Within Section)*****5.2 Specific Requirements for COVID-19**

-
- 5.2.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.
 - 5.2.2 All staff, vendors and volunteers must be tested for COVID -19 in a manner consistent with Division of Public Health Guidance.
 - 5.2.3 The agency must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
 - 5.3 The agency shall amend their policies and procedures to include:
 - 5.3.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
 - 5.3.2 Staff refusals to participate in COVID-19 testing;
 - 5.3.3 Staff refusals to authorize release of testing results or vaccination status to the licensee;
 - 5.3.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and
 - 5.3.5 Plans to address staffing shortages and agency demands should a COVID-19 outbreak occur.

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

6001 Substance Abuse Facility Licensing Standards

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
HARNESS RACING COMMISSION**

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

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

The Delaware Harness Racing Commission (DHRC) pursuant to 3 *Del. C.* Section 10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments for clarity by adding a definition.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on October 5, 2021, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On October 12, 2021, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to the initial 30-day comment period beginning on November 1, 2021 to December 1, 2021 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on December 14, 2021 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB December 1, 2021. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark A. Davis.

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 476RFA 11-01-21.pdf>

501 Harness Racing Rules and Regulations (Break in Continuity of Sections)

7.0 Rules of the Race

7.1 Declarations and Drawing

(Break in Continuity Within Section)

7.1.2 Drawing

(Break in Continuity Within Section)

- 7.1.2.8 Where a horse properly declared is omitted from the race by an error of the Association, the omitted horse may take the post position of the incorrect horse included in the race. ~~If two horses are incorrectly included in the event, one shall be drawn by lot and included in the race, provided, however, that the error is discovered prior to the publication of the official program.~~ race: however, the Judges may redraw the race, after considering all the circumstances and concluding that a redraw is the only equitable and appropriate remedy.

(Break in Continuity Within Section)

7.1.3 Qualifying Races

(Break in Continuity Within Section)

- 7.1.3.4 ~~Any horse regularly wearing hobbles shall not be permitted to be declared to race without them and any horse regularly racing without hobbles shall not be permitted to wear hobbles in a race without first having qualified with this equipment change. In addition to the foregoing, any horse regularly wearing hobbles and which is not on a qualifying list or Stewards' List, is allowed one start without hobbles in a qualifying race; and this single performance shall not affect its eligibility to race with hobbles in a subsequent event to which it is declared. No horse shall wear hobbles in a race unless it starts in the first heat and having so started shall continue to wear them to finish of the race. No change will be allowed after a race is programmed. Any person found guilty of removing or altering a horse's hobbles during a race or between races for the purpose of fraud shall be suspended or expelled. Other than as aforementioned, the use of hobbles from race to race shall be in the sole discretion of the trainer, and not precipitate qualifying the horse.~~

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

501 Harness Racing Rules and Regulations

PLANT INDUSTRIES SECTION

Statutory Authority: 3 Delaware Code, Section 101(2) and (3) (3 Del.C. §101(2) & (3))
3 DE Admin. Code 805

PUBLIC NOTICE

805 Rules and Regulations for Delaware Domestic Hemp Production Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 3 of the Delaware Code, Chapter 1, Sections 101(2) & (3), Delaware Department of Agriculture and Plant Industries Section is proposing regulations governing the Delaware Domestic Hemp Production Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Plant Industries Section, 2320 South DuPont Highway, Camden DE 19901, by email to dda_hempprogram@delaware.gov by 4:30 p.m. on

December 1, 2021. Please identify in the subject line: Regulations Governing Delaware Domestic Hemp Production Program.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Section 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 Department of Agriculture/Plant Industries Section is proposing regulations governing Delaware Domestic Hemp Production Program.

Statutory Authority

3 Del.C. §101(2) & (3)

Background

The Delaware Department of Agriculture has been charged by the Delaware legislature pursuant to 3 Del. C. § 101(2) & (3) with the power to devise and execute measures necessary for the development of the agricultural interests of the State and to make and adopt rules for the government of the Department of Agriculture. The Department is developing proposed regulations to establish appropriate procedures, permitting process, and governing measures for the hemp agricultural program within the State of Delaware. The Department has abandoned the regulations that were published as proposed in May 2021, 24 **DE Reg.** 967 (05/01/21)(Prop.), in favor of the amendments being presented in the November *Register*.

Summary of Proposal

Summary of Proposed Changes

The Plant Industries Section plans to publish the "proposed" amendments to the regulations governing Delaware Domestic Hemp Production Program and hold them out for public comment per Delaware law. The amendments account for the Department's consideration of plants grown for research purposes, clarification of a processor, and performance-based sampling.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Department of Agriculture/Plant Industries Section gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 1, 2021.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 477RFA 11-01-21.pdf>

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

[805 Rules and Regulations for Delaware Domestic Hemp Production Program](#)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(26) (14 Del.C. §122(b)(26))
14 DE Admin. Code 613

PUBLIC NOTICE

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

613 Uniform Procedures for Processing Attorney General's Reports

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §122(b)(26), the Secretary of Education intends to amend 14 DE Admin. Code 613 Uniform Procedures for Processing Attorney General's Reports. This regulation is being amended pursuant to 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. This regulation is being amended to correct typographical errors and comply with *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 1, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, 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 specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is 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 are no material costs to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 479RFA 11-01-21.pdf>

613 Uniform Procedures for Processing Attorney General's Reports

1.0 Purpose

Pursuant to 14 Del.C. §122(b)(26), this regulation, which applies to all public school Districts and Charter Schools, provides uniform procedures for processing Delaware Attorney General's Reports.

2.0 Terms and Definitions

In this regulation, the following terms and words shall have the following meaning unless the context clearly indicates otherwise:

"Administration" means administrative staff from a District, school, or Charter School.

"Alternative Placement" means the removal of a student from ~~his or her~~ the student's school on a temporary basis for a period of time as determined by the Alternative Placement Team and Assignment to an Alternative Program.

"Alternative Program" means a school discipline improvement program that provides Appropriate Educational Services ~~that has been created~~ for students whose ~~behavior(s) is~~ behaviors are within the defined conduct under 14 DE Admin. Code 614. This includes any programs managed by a ~~school~~ District or Charter School or the Consortium Discipline Alternative Program.

"Appropriate Educational Services" means instruction and assessment provided by the District or Charter School and includes access to instructional materials, graded homework and communication with educators so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting a level of proficiency in that curriculum.

"Assignment to an Alternative Program" means student Assignment to an Alternative Program, including Consortium Discipline Alternative Program and any Alternative Program maintained by a District or Charter School, until the student has fulfilled the requirements to return to the Regular School Program.

"Attorney General's Report (~~Electronic Notice of Charges~~)" or "Report" means the Delaware Department of Justice's report of: 1) an enrolled student's alleged criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and drug offenses; 2) wanted persons enrolled in a ~~school and; school; and~~ school; and 3) missing persons enrolled in a school.

~~"Board of Education" means the Board of Education of a District or the Board of Directors of a Charter School.~~

~~"Charter School" means a charter school board~~ non-home based, full-time public school established pursuant to Chapter 5 of Title 14 of the Delaware Code.

"Consortium Discipline Alternative Program" means a school discipline improvement program which serves an organized consortium of school Districts or Charter Schools as provided for in 14 Del.C. Ch. 16.

"Criminal History Record Information" or "CHRI" means a subset of CJI, set forth in 11 Del.C. §8602(2), that includes identifiable descriptions and notations of arrests, detentions, indictments, information or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision and release.

~~"Criminal Justice Information" or "CJI" means all Criminal Justice Information System data. The term includes:~~ includes criminal history record information; biographic data; biometric data; identity history; person, organization, property, or Division of Motor Vehicles data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission, and enforce the laws of this State.

“Criminal Justice Information System” or **“CJIS”** means the computer hardware, software, and communication network which is managed, operated, and maintained by the DELJIS for the collection, warehousing, and timely dissemination of CJI to authorized agencies.

“Delaware Criminal Justice Information System” or **“DELJIS”** means the administrative body created within 11 **Del.C.** Ch. 86 that manages, operates, and maintains CJIS in the State of Delaware.

“Disciplinary Action” means ~~the action taken against~~ the student identified for Short or Long-Term Suspension, Expulsion, or Alternative Placement ~~who~~ Placement. ~~The student~~ may be excluded from all school activities, including but not limited to, extracurricular sports/programs, field trips, and ceremonies; is not allowed on School Property unless placed in an Alternative Placement on School Property; and, if applicable, will have ~~his or her~~ the student's driver's license suspended in accordance with 14 **Del.C.** §4130(e).

“District” means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.

“Expulsion” means Disciplinary Action approved by the ~~Board of Education~~ School Board resulting in a student being removed from the Regular School Program for a duration not to exceed the total number of student days in a school year. ~~A student expelled without Appropriate Educational Services shall be unenrolled from the District or Charter School during the term of the expulsion. Regardless of whether without or with services, including Alternative Placement, the expelled student is not eligible to enroll in any other Delaware public school during the period of the Expulsion and until any reasonable terms of the Expulsion are fulfilled.~~

“Grievance” means a formal complaint, filed per specific District or Charter School procedures, to school Administration regarding a student's rights or liberty interests having been denied or impaired. At a minimum, the procedures shall be similar to the Grievance Guidelines applicable to this regulation, as posted on the Department of Education website.

“Interagency Agreement” means the Interagency Agreement between the Delaware Criminal Justice Information System Board of Managers; the Delaware Department of Education; the Delaware Police Chiefs Council; Local Educational Agencies (LEAs) and Charter Schools; and the Delaware Department of Justice governing access to the Criminal Justice Information System (CJIS).

“Parent” means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a **Relative Caregiver's School Authorization** executed in compliance with 14 **Del.C.** §202(f)(1) is on file; an individual or entity who is otherwise legally responsible for the child's welfare; a surrogate parent who has been appointed in accordance with 14 **DE Admin. Code** 926.49 926, Section 19.0; or a student who has reached the age of majority as defined in 1 **Del.C.** §701.

“Principal” means the building principal, or the equivalent of the building principal, of any District or Charter School, or the principal's designee.

“Regular School Program” means student enrollment in a traditional public school or Charter School, not including specially assigned non-special education or student behavioral intervention programs within or outside the enrolled school, in which the student's classroom or course placement is based primarily on age, grade level and cognitive abilities as assigned by the school Administration or an IEP team and the student's participation in daily course instruction and activities within the assigned classroom or course.

“School Board” means charter school boards of directors organized pursuant to 14 **Del.C.** Ch. 5, and reorganized school district boards and vocational technical school district boards duly appointed or elected pursuant to 14 **Del.C.** Ch. 10.

“School Discipline Committee” means a school-level committee consisting of appropriate school personnel, similar to those identified in 14 **Del.C.** Ch. 16, which meets to decide on student Disciplinary Action recommendations made by the Principal.

“School Environment” means within or on School Property, and at school sponsored or supervised activities, including, for example, on school grounds, on school buses, at functions held on school

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grounds, at school sponsored extracurricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

"School Property" means any building, structure, athletic field, sports stadium or real property that is owned, operated, leased or rented by any ~~public school~~ District or Charter School including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or charter school, or any motor vehicle owned, operated, leased, rented or subcontracted by any ~~public school~~ District or Charter School.

"Student Code of Conduct" means the District or Charter School approved document which specifies the rights and responsibilities of students, defines conduct that disrupts or threatens a positive and safe School Environment, standardizes procedures for consequences and Disciplinary Action, and defines due process and Grievance procedures.

"Superintendent" means the chief school officer of any public school District or Charter School, or the equivalent of a superintendent.

"Suspension, Long-term (~~Long-term Suspension~~)" or "Long-term Suspension" means Disciplinary Action approved by the Superintendent upon recommendation of the Principal or District or Charter School Alternative Placement Team resulting in the student being removed from the Regular School Program for eleven (11) consecutive school days or more and not to exceed the total number of school days in a school year. Student chooses to waive ~~his~~ the student's right to a formalized due process hearing as outlined in Section 10.0 of 14 **DE Admin. Code** 616, maintains enrollment in the District or Charter School, and is provided Appropriate Educational Services during the term of the suspension, but is excluded from all school activities including, but not limited to, extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on School Property when suspension is out-of-school. A Long-term Suspension requires initial due process procedures as outlined in Section 4.0 of 14 **DE Admin. Code** 616 and the student choosing to waive ~~his~~ the student's right to a formalized due process hearing as outlined in Section 10.0 of 14 **DE Admin. Code** 616.

"Suspension, Short-term (~~Short-term Suspension~~)" or "Short-term Suspension" means Disciplinary Action approved by the Principal or School Discipline Committee resulting in the student being removed from ~~his~~ the student's Regular School Program for at least one half school day and not more than ten (10) consecutive school days. Student maintains enrollment in a District or Charter School, but is excluded from all school activities including, but not limited to extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on School Property when Short-term Suspension is out-of-school. A Short-term Suspension requires initial due process procedures as outlined in subsection 5.1 of 14 **DE Admin. Code** 616.

3.0 Uniform Processing Procedures

- 3.1 When a District or Charter School receives an Attorney General's Report, the following uniform procedures shall be followed:
- 3.1.1 Only the Superintendent or designated District- or Charter School-level administrative professional employee (hereinafter "designee") shall handle the processing of the Attorney General's Report. The designee shall be an employee at the District or Charter School administrative office level and shall not be a secretary or administrative assistant.
 - 3.1.2 The Superintendent or designee shall review the Attorney General's Report, as soon as practicable thereafter and no later than three (3) school days after delivery of the Report, to determine if the listed charges warrant accessing the Criminal Justice Information System to obtain additional information. In the event of the absence of the Superintendent or designee, procedures shall be identified for the review of the Attorney General's Report within the allotted time frame.
 - 3.1.2.1 If the Superintendent or designee determines that access to the Criminal Justice Information System is needed, that access will occur as soon as practicable thereafter and no later than three (3) school days of the determination.
 - 3.1.2.2 On the basis of that review, the Superintendent or designee shall make a determination as to whether the student's alleged ~~action(s)~~ actions are a threat to the health, safety and

welfare of others, in particular, staff and students within the School Environment and action needs to be taken.

- 3.1.3 The District or Charter School may provide the Attorney's General Report and Criminal Justice Information to the school Principal if the District or Charter School decides to take action. The school Principal shall use this information only for action planning purposes.
- 3.1.4 A hard copy of a student's Report or Criminal Justice Information shall not be maintained in any manner except for use as evidence in a student discipline hearing and manifestation determination meeting. Upon conclusion of the student disciplinary hearing and any ~~appeal(s)~~ appeals, the hard copy of the Report and Criminal Justice Information shall be destroyed. Notwithstanding the foregoing, the hard copy of the Report and Criminal Justice Information used at the manifestation determination meeting shall be maintained as part of the record of that meeting during the time for filing any dispute resolution proceedings under the Individuals with Disabilities Education Act (IDEA).
- 3.1.4.1 Any personally identifiable information relating to a victim listed in a Report or the Criminal Justice Information used for a disciplinary hearing or manifestation determination shall be redacted. For the purposes of this regulation, personally identifiable information includes name, date of birth, age, sex, race, home address, school, workplace, driver license number, and vehicle registration number. If the victim and alleged offender attend the same school, that information may be shared with the Principal of the school for safety planning purposes.

4.0 District or Charter School Action in Response to Attorney General's Report

- 4.1 The decision to act upon the information provided in the Attorney General's Report and Criminal Justice Information shall be the sole discretion of the District or Charter School in accordance with the District's or Charter School's policies and procedures including the Student Code of Conduct. Such action may include, but is not limited to, student ~~and/or~~ or Parent conference, counseling, safety planning and Disciplinary Action.
- 4.1.1 If the victim listed in the Criminal Justice Information attends the same school as the Report's alleged offender, the victim and victim's Parent shall be notified regarding any safety planning actions decided upon by the District or Charter School. The District or Charter School shall make reasonable efforts to include the victim and victim's Parent in the safety planning process.
- 4.1.2 If a District or Charter School policy allows for Disciplinary Action to be taken in response to a student Attorney General's Report, the District's or Charter School's Student Code of Conduct shall include a statement that clearly gives notice that all off-campus, non-school activity conduct which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and drug offenses, may subject a student to Disciplinary Action as indicated in the District's or Charter School's Student Code of Conduct.
- 4.1.2.1 Any Disciplinary Action taken by the District or Charter School in response to an Attorney General's Report that results in a Short-Term or Long-Term Suspension, Alternative Placement, or Expulsion of a student shall be in accordance with the requirements of 14 **DE Admin. Code** 614 and 616.
- 4.1.2.2 A student expelled without Appropriate Educational Services shall be unenrolled from the District or Charter School during the term of the expulsion. Regardless of whether without or with services, including Alternative Placement, the expelled student is not eligible to enroll in any other Delaware public school during the period of the Expulsion and until any reasonable terms of the Expulsion are fulfilled.

5.0 Students with Disabilities

- 5.1 Nothing in this regulation shall alter a District's or Charter School's duties under the Individual with Disabilities Act (IDEA) or 14 **DE Admin. Code** 922 through 929. Nothing in this regulation shall prevent a District or Charter School from providing supportive instruction to children with disabilities in

a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Delaware Department of Education regulations.

- 5.2 Nothing in this regulation shall alter a District's or Charter School's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a District or Charter School from providing supportive instruction to such students.

6.0 Implementation

If any portion of this regulation is in conflict with the Interagency Agreement in existence, the Interagency Agreement shall control.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 135 (14 Del.C. §135)

PUBLIC NOTICE

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

931 Purple Star Schools

A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del C. §135, the Secretary of Education intends to create 14 **DE Admin. Code** 931 Purple Star Schools. This regulation is being created to comply with Senate Bill 117 as amended by Senate Amendment No. 1 of the 151st General Assembly which requires the Delaware Department of Education to promulgate regulations outlining the criteria for district and charter schools to be designated a Purple Star School.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 1, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, 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 does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation will help ensure all students receive an equitable education. The new regulation focuses on the transition of military-connected youth.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation will help ensure all students' health and safety are adequately protected.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation continues to help ensure that all students' 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 or mandates on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The new regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

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 no less burdensome method for addressing the purpose of the new regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this new regulation.

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 484RFA 11-01-21.pdf>

931 Purple Star Schools

1.0 Purpose

The purpose of this regulation is to outline criteria for district and charter schools to be designated a Purple Star School under 14 Del.C. §135 Purple Star Schools.

2.0 Definitions

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

“Purple Star School” means a recognition designed to encourage the successful transition of military-connected youth, which may include the development of programs that highlight the importance of military service.

“Purple Star School Designation Application” means the form and process developed by the Department of Education, which may be amended from time to time and shall be maintained on the Department’s website.

3.0 Qualifications

3.1 In order to be designated a Purple Star School, any district or charter school shall qualify by having:

3.1.1 A designated staff member as a military liaison, whose duties include:

3.1.1.1 Identifying military-connected youth enrolled at the school;

3.1.1.2 Serving as the point of contact between the school and military-connected youth and their families;

3.1.1.3 Determining appropriate school services available to military-connected youth;

3.1.1.4 Assisting in coordinating school programs relevant to military-connected youth;

3.1.1.5 Participating in training specific to supporting the various challenges that face military families; and

3.1.1.6 Conducting school-wide professional development that informs staff of the unique needs of military-connected students and available resources.

3.1.2 An easily-accessible, maintained webpage on the school’s website that includes resources for military-connected youth and their families, including information regarding:

3.1.2.1 Relocating, enrollment, registration, and transferring records to the school.

3.1.2.2 Preparing for a move from the current school.

3.1.2.3 Academic planning information including course sequences, advanced classes, application deadlines, graduation requirements, etc.

PROPOSED REGULATIONS

- 3.1.2.4 The Interstate Compact on Educational Opportunities for Military Children (MIC3).
- 3.1.2.5 Special education services, including related parental rights.
- 3.1.2.6 Counseling and other support services available for military-connected youth enrolled at the school.
- 3.1.3 A well-maintained transition program led by youth, where appropriate, that assists military-connected youth in transitioning into the school.
- 3.1.4 An assigned central office staff member to be the contact for the school-based liaison and military families, if a district.
- 3.1.5 A designated member of the school leadership team to be the contact for the school-based liaison and military families, if a charter school.
- 3.1.6 Offer at least one (1) of the following initiatives:
 - 3.1.6.1 A resolution showing support for military-connected youth and their families;
 - 3.1.6.2 Recognition of the Month of the Military Child or Military Family Month with relevant events hosted by the school;
 - 3.1.6.3 A partnership with a local military installation that provides opportunities for active duty military members to volunteer at the school, speak at an assembly, or host a field trip;
 - 3.1.6.4 A military recognition event designed to demonstrate a military-friendly culture across the school community;
 - 3.1.6.5 A public military display in the school (such as a memorial, tribute wall, bulletin board, or Purple Star room);
 - 3.1.6.6 Military family committees or counseling groups to offer support; or
 - 3.1.6.7 Fundraise to support military veterans and active-duty members.
- 3.1.7 A complete application submitted between November 1st and February 1st of the school year. Incomplete applications will not be considered.

4.0 Selection Process

- 4.1 The Department shall identify a panel of stakeholders to review the applications and determine eligibility for the designation based on the criteria in Section 3.0.
- 4.2 Designation announcements shall be made by the Department in April of each year.
- 4.3 The Purple Star School Designation shall be valid for a period of three (3) years. The first year is the year in which the school is awarded. The school will not have to reapply for the designation for the following two (2) years.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1564

PUBLIC NOTICE

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

1564 Physical Education Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation

and cooperation with the Delaware Department of Education (“Department”), developed amendments to 14 **DE Admin. Code** 1564 Physical Education Teacher. The regulation concerns the requirements for a Physical Education Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Physical Education Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Physical Education Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Physical Education Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business (4:30 p.m.) on or before December 2, 2021 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation’s website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education’s Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

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

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

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Physical Education Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants.

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

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

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

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

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 486RFA 11-01-21.pdf>

1564 Physical Education Teacher

Non regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 ~~Del.C. §1220~~ and 14 ~~DE Admin. Code 1505~~, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Physical Education Teacher Standard Certificate, Certificate pursuant to 14 ~~Del.C. §1220(a)~~, for Physical Education Teacher. This certification is required for grades K to 12. This Standard Certificate is required for all physical education teachers in Delaware public schools.
- 1.2 Except as otherwise provided, the requirements set forth in 14 ~~DE Admin. Code 1505 Standard Certificate~~, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

The definitions set forth in 14 ~~DE Admin. Code 1505 Standard Certificate~~, including any subsequent amendment or revision thereto, are incorporated herein by reference. The following words and terms, when used in this regulation, shall have the following meaning:

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 ~~Del.C. Ch. 12~~ to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 ~~Del.C. §1201~~.

"Valid and Current License or Certificate" means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Physical Education Teacher Standard Certificate as a Physical Education Teacher to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; License or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and 2003 and meets the requirements in Section 4.0 of this regulation; or
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto. Has met the requirements for an educator's license in Delaware and presents proof of a Valid and Current License or Certificate as a physical education teacher issued by another state or jurisdiction.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Physical Education Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have satisfied one of the following education requirements:
- 4.1.1.1 Obtained and currently maintain a Physical Education certificate from the National Board for Professional Teaching Standards; or
 - 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in physical education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
 - 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach physical education as provided in 14 **Del.C.** §§1260 - 1266; or
 - 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in physical education; or
 - 4.1.1.5 If the applicant is applying for an Initial License after the applicant completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school as provided in subsection 4.1.3.1 of 14 **DE Admin. Code** 1510, earned a bachelor's degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 college credits or an equivalent number of hours in professional development with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department related to physical education of which at least six credits focus on pedagogy.
 - 4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the 15 credits or the equivalent number of hours in professional development subject to the Department's approval.
 - 4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the 15 credits or the equivalent number of hours in professional development in consultation with the Department and subject to the Department's approval.

PROPOSED REGULATIONS

- 4.1.1.5.3 For the purpose of subsection 4.1.1.5, professional development means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants' attitudes, insights, and perspectives and ultimately results in improved professional practice.
- 4.1.1.5.4 Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:
 - 4.1.1.5.4.1 Relevant courses from a Regionally Accredited college or university in physical education are not available to the applicant online or in the applicant's county of residence; and
 - 4.1.1.5.4.2 The activity is grounded in research and current best practices as judged by the Department's content specialist in physical education; and
 - 4.1.1.5.4.3 The activity is documented by the provider to provide knowledge and skills that are required for the physical education certification; and
 - 4.1.1.5.4.4 The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.
- 4.1.2 The applicant shall have achieved the minimum score on one of the following examinations:
 - 4.1.2.1 A minimum score of 152 on the Praxis Subject Assessment - Physical Education: Content Knowledge (ETS Test Code # 5091); or
 - 4.1.2.2 A minimum score of 160 on the Praxis Subject Assessment - Health and Physical Education - Content Knowledge (ETS Test Code # 5857).
- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved the minimum score on an examination as provided in subsection 4.1.2.

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Physical Education Teacher Standard Certificate:
 - 5.2.1 Evidence of obtaining and maintaining a Physical Education certificate from the National Board for Professional Teaching Standards, if applicable; and
 - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.2.2.2 Sealed paper transcripts may be submitted.
 - 5.2.2.3 The Department will not accept copies of transcripts; and
 - 5.2.3 Documents verifying successful completion of Department-approved professional development, if applicable; and
 - 5.2.4 An experience form, completed in full and signed by the applicant, if applicable; and
 - 5.2.5 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and
 - 5.2.6 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Physical Education Teacher Standard Certificate:
 - 5.3.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and
 - 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure as an educator in Delaware and hold a Valid and Current License or Certificate in physical education from another state or jurisdiction, the

following documentation is required in the application for a Physical Education Teacher Standard Certificate:

- 5.4.1 An official copy of the Valid and Current License or Certificate; and
- 5.4.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

- 6.1 A Physical Education Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A Physical Education Teacher Standard Certificate is not subject to renewal.

7.0 Disciplinary Action

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

8.0 Secretary of Education Review

- 8.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Physical Education Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Physical Education Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.
 - 8.1.1 For school districts, requests shall be approved by the superintendent of the school district.
 - 8.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

9.0 Past Certificate Recognized

The Department shall recognize a Physical Education Teacher Standard Certificate issued prior to effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach physical education.

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

Assertive Community Integration Support Team (ACIST)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §440.386, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing

to amend the Title XIX Medicaid State Plan regarding Health Home Services, specifically, Assertive Community Integration Support Team (ACIST) as an option from the Delaware Medicaid State Plan.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2021. Please identify in the subject line: Assertive Community Integration Support Team (ACIST).

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 Health Home Services, specifically, sunset Assertive Community Integration Support Team (ACIST) as an option from the Delaware Medicaid State Plan.

Statutory Authority

- 1902(a)(10)(D) of the Social Security Act, Home health services

Background

DDDS in partnership with DMMA amended the 1915 (c) Home and Community Based Services Lifespan waiver to allow enrollees to also be enrolled in Managed Care for their acute medical care needs, where in previous years they had been carved out into Fee for Service Medicaid. This change became effective July 1, 2019. At approximately the same time, DDDS decided to do a thorough evaluation of the services and supports the MCOs were providing. As a result of that review it was determined that the ACIST program was no longer the best way to meet the service needs of those enrolled in the program, and in fact, they would receive very similar support through the MCO carve in. DDDS decided to discontinue this specialized program in order for service recipients to receive supports in the most integrated manner, which is through the MCOs. The ACIST Home Health program is currently closed and no provider is actively providing this State Plan service.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to sunset Assertive Community Integration Support Team (ACIST) as an option from the Delaware Medicaid State Plan.

Summary of Proposed Changes

Effective for services provided on and after January 11, 2022 DHSS/DMMA proposes to amend Title XIX Medicaid State Plan regarding Health Home Services, specifically, sunset Assertive Community Integration Support Team (ACIST) as an option from the Delaware Medicaid State Plan.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on December 1, 2021.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

There is no anticipated fiscal impact.

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 491RFA 11-01-21.pdf>

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

Assertive Community Integration Support Team (ACIST) Health Home Service

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3)(a) and 504 (16 **Del.C.** §§122(3)(a) & 504)
16 **DE Admin. Code** 4202

PUBLIC NOTICE

4202 Control of Communicable and Other Disease Conditions

Pursuant to 16 **Del. C.** §122(3)(a) and §504, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On November 1, 2021, the Division of Public Health plans to publish as "proposed" revisions to the Control of Communicable and Other Disease Conditions regulations. These revisions include previously proposed requirements for mask use among all students, faculty, staff, and visitors inside K-12 school buildings, regardless of vaccination status, as well as a severability clause, and new requirements for school staff to provide evidence of COVID-19 vaccination or undergo regular COVID-19 testing. The proposed regulation published in the September 2021 *Register of Regulations* (25 **DE Reg.** 262 (09/01/21)) is no longer being considered in favor of the amendments presented here.

Copies of the proposed regulations are available for review in the November 1, 2021 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Wednesday, December 1, 2021, at:

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

***Please Note:**

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 493RFA 11-01-21.pdf>

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

4202 Control of Communicable and Other Disease Conditions

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(3)c (16 Del.C. §122(3)c)
16 DE Admin. Code 4462

PUBLIC NOTICE**4462 Public Drinking Water Systems**

Pursuant to 16 Del.C. §122(3)(c), Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems. On November 1, 2021, the Division of Public Health plans to publish as "proposed" revisions to the Public Drinking Water Systems regulations. The revisions include striking a word in subsection 12.15.2 that was mistakenly not stricken during a previous revision.

Copies of the proposed regulations are available for review in the November 1, 2021 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

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

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

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 494RFA 11-01-21.pdf>

**4462 Public Drinking Water Systems
(Break in Continuity of Sections)****12.0 Disinfectant Residuals, Disinfection Byproducts, and Disinfection Precursors
(Break in Continuity Within Section)**

12.15 Reporting and recordkeeping requirements:

(Break in Continuity Within Section)

12.15.2 Disinfection byproducts. Systems must report the information specified in the following table:

If you are a...	You must report ¹ ...
System monitoring for TTHM and HAA5 under the requirements of subsection 12.7 on a quarterly or more frequent basis	<ol style="list-style-type: none"> 1. The number of samples taken during the last quarter. 2. The location, date, and result of each sample taken during the last quarter. 3. The arithmetic average of all samples taken in the last quarter. 4. The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters. 5. Whether, based on subsection 12.15.1, the MCL was violated.
System monitoring for TTHMs and HAA5 under the requirements of subsection 12.7 less frequently than quarterly (but at least annually).	<ol style="list-style-type: none"> 1. The number of samples taken during the last year. 2. The location, date, and result of each sample taken during the last quarter monitoring period. 3. The arithmetic average of all samples taken over the last year. 4. Whether, based on subsection 12.15.1, the MCL was violated.
System monitoring for TTHMs and HAA5 under the requirements of subsection 12.7 less frequently than annually.	<ol style="list-style-type: none"> 1. The location, date, and result of the last sample taken. 2. Whether, based on subsection 12.15.1, the MCL was violated.
System monitoring for chlorite under the requirements of subsection 12.7.	<ol style="list-style-type: none"> 1. The number of entry point samples taken each month for the last three months. 2. The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter. 3. For each month in the reporting period, the arithmetic average of all samples taken in each three samples set taken in the distribution system. 4. Whether, based on subsection 12.15.3, the MCL was violated, and how many times it was violated each month.
System monitoring for bromate under the requirements of subsection 12.7.	<ol style="list-style-type: none"> 1. The number of samples taken during the last quarter. 2. The location, date, and result of each sample taken during the last quarter. 3. The arithmetic average of the monthly arithmetic averages of all samples taken in the last year. 4. Whether, based on subsection 12.15.2 the MCL was violated.

¹ The Division may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

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

4462 Public Drinking Water Systems

PROPOSED REGULATIONS

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 21 Delaware Code, Section 4177D (21 Del.C. §4177D)
2 DE Admin. Code 1201

PUBLIC NOTICE

1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees

In compliance with the *Administrative Procedures Act* (29 Del. C. Ch. 101) and under the authority of 21 Del. C. § 4177D, the State of Delaware Department of Health and Social Service's Division of Substance Abuse and Mental Health ("the Division") is proposing the repeal of 2 DE Admin. Code § 1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees.

A person may make suggestions or provide compilations of data, testimony, briefs, or other materials concerning the Division's proposal by written submission to the Community Behavioral Health Bureau, Division of Substance Abuse and Mental Health. The Division will receive submissions made before 4:30 p.m. on December 1, 2021, by mail to 1901 North DuPont Highway, New Castle, DE 19720-0906, by fax to (302) 255-4427, and by email to david.okeke@delaware.gov. Please identify in the subject line: 1201 DUI Regulations.

The Division's determination to adopt this proposal will include analysis and consideration of submissions received by the Division.

SUMMARY

This notice aims to advise the public that the Division is proposing to repeal 2 DE Admin. Code § 1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation, and Related Fees.

Statutory Authority

21 Del. C. § 4177D authorizes the Division to promulgate regulations related to driving under the influence programs and issue this proposal.

Background

Enacted in 2018, 81 Del. Laws Ch. 331 amended 21 Del. C. § 4177D by transferring "the responsibilities relating to courses of instruction and programs of rehabilitation for persons whose drivers' licenses have been revoked for driving while under the influence of alcohol or drugs or both" from the Office of Highway Safety to the Division. Therefore, 2 DE Admin. Code § 1201 no longer possesses the appropriate statutory authority under which the Office of Highway Safety promulgated it.

Summary of the Proposal

This proposal intends to repeal 2 DE Admin. Code § 1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation, and Related Fees in its entirety.

Fiscal Impact

There is no fiscal impact associated with this proposal.

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 496RFA 11-01-21.pdf>

1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees

4-0 Authority

The authority to promulgate this regulation is ~~21 Del.C. §302, 21 Del.C. §4177(D) and 29 Del.C. §10115.~~

2.0 Purpose

A program is hereby established which involves an evaluation and referral to appropriate courses of instruction and/or rehabilitation for an alcohol related violation/offense.

3.0 Applicability

This policy regulation concerns the following sections found in Title 21: ~~§4177, §4177A, §4177B, §4177C, §4177D, 4177E, §4177F, §2742, §2743, and §4175(b).~~

4.0 Substance of Policy

4.1 The Delaware Evaluation & Referral Program, (DERP)

4.1.1 ~~All persons who have been ordered to, or have volunteered to, enter a course of instruction or program of rehabilitation, shall first be evaluated by the Delaware DUI Evaluation & Referral Program. All evaluations completed by any other agencies (for out of state clients) are subject to a review and approval by DERP.~~

4.1.2 ~~The minimum fee for DERP is \$100.00. The minimum fee for processing an out of state evaluation and referral is \$125.00. These fees shall be the responsibility of the clients.~~

4.2 The Education Program

4.2.1 ~~A course of instruction shall be administered by any State of Delaware contracted education program provider. Any agency providing an instructional course must submit notice of completion to DERP. The Division of Motor Vehicles shall accept notice of completions from DERP for courses of instruction administered by State of Delaware contracted education program providers. Any out of state clients must be evaluated and treated by an agency approved by one of Delaware's contracted providers.~~

4.2.2 ~~The minimum fee for the Education program is not to exceed the maximum fine imposed for the offense as set forth in § 4177 of the Delaware Code. These fees shall be the responsibility of the clients.~~

4.2.3 ~~Persons with more than one alcohol related violation must enter treatment and cannot be referred to an educational program.~~

4.3 The Out Patient Treatment Program

4.3.1 ~~The program of rehabilitation shall be administered by any State of Delaware contracted treatment provider. Any agency providing rehabilitation treatment must submit a discharge summary for each client to DERP. The Division of Motor Vehicles shall accept notice of completions from DERP for courses of rehabilitation administered by State of Delaware contracted treatment program providers. Any out of state clients must be evaluated and treated by an agency approved by one of Delaware's contracted providers.~~

4.3.2 ~~The minimum fee for this program is not to exceed the maximum fine imposed for the offense as set forth in § 4177 of the Delaware Code. These fees shall be the responsibility of the clients.~~

4.3.3 ~~The program of rehabilitation may be required for persons who have one alcohol related violation, and shall be required for persons who have two or more alcohol related violations. Further, this rehabilitation program may be required for persons regardless of blood alcohol content or refusal to submit to the chemical test and shall be required for persons with a blood alcohol content of 0.15 or greater.~~

4.4 Alternative Treatment Programs

~~Programs shall be made available through existing contracted agencies to provide treatment services for those clients with alternative needs. Programs shall administer programs for those individuals under the age of 21 years, as well as for those individuals with mental health issues. In addition, if the treatment providers reach a clinical determination that the client needs further services not available at the providers' level, the client may be referred outside the network for those necessary services. (i.e.~~

PROPOSED REGULATIONS

~~residential treatment services) Monitoring of additional treatment services and satisfactory completion release from the program shall be made by the designated contracted agency.~~

4.5 Failure To Appear

~~Additional fees may be charged by the evaluation unit, the educational program, and the treatment program for those clients failing to keep scheduled appointments or classes. If clients are unable to keep scheduled appointments, they must contact the evaluation unit or treatment unit, present an acceptable excuse, and request a rescheduling of their appointment or class. The fee for failure to appear shall not exceed \$35.00. All fees shall be the responsibility of the clients.~~

4.6 Non-Compliance

~~The absence of client contact within a 30 day period is cause for non-compliance. More specifically, clients who miss two subsequent appointments, or miss three appointments over the course of treatment, are subject to non-compliance processing as well. The fee for a client to be reinstated in the program (within a 2 year period) shall not exceed \$35.00. Any clients waiting longer than 2 years to re enter the program will be required to pay all DERP fees in full as indicated in Section 1.~~

4.7 Program Evaluation

~~The Secretary of Public Safety or designee retains the authority to evaluate, whenever he/she deems appropriate, the above courses of instruction, programs of rehabilitation, and alcohol evaluation agency.~~

4.8 Schedule of Fees

~~The schedule of fees for ,the courses of instruction, programs of rehabilitation, and alcohol evaluation agency shall be established by the Secretary of the Department of Public Safety and shall be posted within the standard operating procedures manual for the programs. All changes to the schedule of fees must be approved by the Secretary of Public Safety, and such fees not exceed the maximum fine imposed for the offense as set forth in 21 Del. C. §4177~~

4.9 Definition of Alcohol Related Violations And Offenses

~~For purposes of this policy regulation, alcohol related violation/offense shall mean any violation under 21 Del.C. that is a violation of, Sections 2740, 2742, 4177, 4177B, 4175 and all conforming statutes of any other state or the District of Columbia, or local ordinances in conformity therewith.~~

5.0 Severability

~~If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.~~

6.0 Effective Date

~~The following regulations shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 Del. C. § 10118(e).~~

7.0 DUI Service Provider Fees (Effective March 11, 2011)

Service	Current Fee
Screening by DERP	\$100.00
Out of State Processing	\$125.00
No Show (DERP)	\$35.00
Administrative Reentry* (DERP)	\$35.00
Education Program	\$250.00
Outpatient Treatment	\$750.00
Urinalysis	\$35.00
Administrative Re-Screening**	\$65.00

~~*This is an administrative fee is for non-complied clients that do not require a new evaluation, but must be re-entered and referred to a program. The client will also be charged this fee at the Provider Agency for administrative costs associated with processing the client referral.~~

~~**This is an administrative fee for clients who tamper with their urine specimens to achieve dilute readings, which results in the need for further urine drug testing and further clinical evaluation.~~

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 21 Delaware Code, Section 4177D (21 Del.C. §4177D)
2 DE Admin. Code 1204

PUBLIC NOTICE

1204 Drinking Driver Programs Standard Operating Procedures

In compliance with the *Administrative Procedures Act* (29 Del. C. Ch. 101) and under the authority of 21 Del. C. § 4177D, the State of Delaware Department of Health and Social Service's Division of Substance Abuse and Mental Health ("the Division") is proposing the repeal of 2 DE Admin. Code § 1204 Drinking Driver Programs Standard Operating Procedures.

A person may make suggestions or provide compilations of data, testimony, briefs, or other materials concerning the Division's proposal by written submission to the Community Behavioral Health Bureau, Division of Substance Abuse and Mental Health. The Division will receive submissions made before 4:30 p.m. on December 1, 2021, by mail to 1901 North DuPont Highway, New Castle, DE 19720-0906, by fax to (302) 255-4427, and by email to david.okeke@delaware.gov. Please identify in the subject line: 1204 DUI Regulations.

The Division's determination to adopt this proposal will include analysis and consideration of submissions received.

SUMMARY

This notice aims to advise the public that the Division is proposing to repeal 2 DE Admin. Code § 1204 Drinking Driver Programs Standard Operating Procedures.

Statutory Authority

21 Del. C. § 4177D authorizes the Division to promulgate regulations related to driving under the influence programs and issue this proposal.

Background

Enacted in 2018, 81 Del. Laws Ch. 331 amended 21 Del. C. § 4177D by transferring "the responsibilities relating to courses of instruction and programs of rehabilitation for persons whose drivers' licenses have been revoked for driving while under the influence of alcohol or drugs or both" from the Office of Highway Safety to the Division. Therefore, 2 DE Admin. Code § 1204 no longer possesses the appropriate statutory authority under which the Office of Highway Safety promulgated it.

Summary of the Proposal

This proposal intends to repeal 2 DE Admin. Code § 1204 Drinking Driver Programs Standard Operating Procedures in its entirety.

Fiscal Impact

There is no fiscal impact associated with this proposal.

*Please Note:

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 499RFA 11-01-21.pdf>

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

1204 Drinking Driver Programs Standard Operating Procedures

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 21 Delaware Code, Section 4177D (21 Del.C. §4177D)

PUBLIC NOTICE

6003 DUI Programs

In compliance with the *Administrative Procedures Act* (29 Del. C. Ch. 101) and under the authority of 21 Del. C. § 4177D, the State of Delaware Department of Health and Social Service's Division of Substance Abuse and Mental Health ("the Division") is proposing regulations governing driving under the influence programs ("DUI programs").

A person may make suggestions or provide compilations of data, testimony, briefs, or other materials concerning the Division's proposal by written submission to the Community Behavioral Health Bureau, Division of Substance Abuse and Mental Health. The Division will receive submissions made before 4:30 p.m. on December 1, 2021, by mail to 1901 North DuPont Highway, New Castle, DE 19720-0906, by fax to (302) 255-4427, and by email to david.okeke@delaware.gov. Please identify in the subject line: 6003 DUI Regulations.

The Division's determination to adopt this proposal will include analysis and consideration of submissions received.

SUMMARY

This notice's purpose is to advise the public that the Division is proposing regulations governing DUI programs.

Statutory Authority

21 Del. C. § 4177D authorizes the Division to promulgate regulations related to driving under the influence programs and issue this proposal.

Background

Enacted in 2018, 81 Del. Laws Ch. 331 amended 21 Del. C. § 4177D by transferring "the responsibilities relating to courses of instruction and programs of rehabilitation for persons whose drivers' licenses have been revoked for driving while under the influence of alcohol or drugs or both" from the Office of Highway Safety to the Division. Additionally, 21 Del. C. § 4177D requires the Division to adopt a schedule of fees for these courses and programs.

Summary of the Proposal

The proposed regulation ("the regulation") seeks to establish requirements and provide clear guidance to programs providing screening and referral, education, or treatment services to individuals whose driver's license the Department of Transportation has revoked for driving under the influence ("participants"). Except for participants in the Court of Common Pleas Driving Under the Influence Treatment Program, the regulation applies to all programs and participants.

The regulation establishes all of the following:

- Eligibility requirements for programs seeking to offer DUI programs including the adoption of written rules and policies.
- Rules governing participant conduct and attendance.
- Service-specific guidelines for programs for screening and referral, education, and treatment services.
- A methodology for referring participants to appropriate services.
- Criteria under which a program may grant a certificate of completion to a participant.

- The maximum allowable fees that a program may charge a participant for services.
- Rules governing a program's application of disciplinary measures to a participant.
- A grievance and appeals process.

Fiscal Impact

The Division anticipates the regulation will have a de minimus fiscal impact on programs. However, the Division acknowledges that the regulation represents a significant fiscal impact for participants. The regulation sets the maximum allowable fees that a program may charge a participant for services. In determining these limits, the Division attempted to balance the interests of both programs and participants.

The Office of Highway Safety set the current schedule of fees in 2011.

Table 1 Selection of Current DUI Program Fees

Service	Current Fee
Screening and Referral	\$100
Education	\$250
Treatment Program (16-hour)	\$750
Treatment Program (27-hour)*	\$1,265

**This level of treatment program does not currently exist, so the Division approximated a current fee by extrapolating the current hourly fee for a 16-hour treatment program.*

Under 21 Del. C. § 4177D, "the schedule of fees may not exceed the maximum fine imposed." The Division interprets this provision to mean that the total amount of fees a program charges to a participant must not exceed the maximum fine authorized under 21 Del. C. § 4177D. The Division believes this is a reasonable interpretation as under the current fee schedule. Currently, for example, a first-time DUI offender fined the minimum of \$500 by a court who a program referred to treatment would pay a total fee of at least \$850 (\$100 for screening and referral plus \$750 for treatment), which is \$350 more than the fine imposed by the court.

Table 2 DUI Fines

DUI	Minimum Fine	Maximum Fine
1 st	\$500	\$1,500
2 nd	\$750	\$2,500
3 rd	-	\$5,000

** For 4th and subsequent DUIs, a participant would complete a program while imprisoned and not participate in a program subject to the regulation.*

In setting fees in the regulation, the Division considered the current fees, the cost to programs, national comparisons, the ability of participants to pay, and the medical services component of the medical care index (MCI). The MCI is one of eight major groups in the U.S. Bureau of Labor Statistics' Consumer Price Index, which measures the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services.

After careful consideration and consultation with programs, the Division set the fee for treatment at the current

PROPOSED REGULATIONS

rate plus the increase in the medical services component of the MCI over the past decade. The Division felt that the current fees for screening and referral and educational services were initially set too low and raised these fees slightly above the medical services component of the MCI over the past decade.

Service	Proposed Maximum Fee	Change Compared to MCI
Screening and Referral	\$150	13%
Education	\$400	20%
Treatment Program (16-hour)	\$1,000	0%
Treatment Program (27-hour)	\$1,700	1%

The Division believes that these fees are necessary to ensure that providing these services remains a financially viable venture for programs. However, the Division is sympathetic to the concern of the financial burden imposed on participants. The Division recognizes that a great deal of discussion occurs related to the fees charged to criminal defendants. Some of them commit additional violations or face imprisonment due to their inability to pay. Furthermore, the Division believes that access to treatment is crucial for all Delawareans regardless of the circumstances under which they participate.

While the Division is supportive of a sliding scale fee based on the participant's ability to pay, the Division is unable to implement such a system as it lacks a funding source to reimburse programs the difference and the administrative capacity to determine financial eligibility for all participants.

***Please Note:**

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 500RFA 11-01-21.pdf>

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

6003 DUI Programs

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

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

4 DE Admin. Code 1008

PUBLIC NOTICE

Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 Del.C. §304, the Delaware Alcoholic Beverage Control Commissioner proposes to introduce an updated definition within Rule 1008, governing the standards of a restaurant and bottle club, specifically concerning the number of dining seats at tables on the premises.

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

Wendy Hudson
Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 3rd Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to OABCCrulescomments@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4 p.m. on December 1, 2021.

The action concerning determination of whether to adopt the proposed regulation will be based upon consideration of the written comments and any other written materials filed by the public.

Background

The Delaware Alcoholic Beverage Control Commissioner is authorized by the General Assembly of the State of Delaware, to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code or with any other law of the State. The Commissioner is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 4 or of any other law of the State, and such rules and regulations shall have the force and effect of law; provided, however that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof; and provided further, however, that such rules and regulations, as established by the Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry.

Further, the Commissioner shall determine and publish standards for the manner in which the dining room or dining rooms of a hotel, restaurant or club shall be equipped in order to be allowed to exercise the privilege of the sale of alcoholic liquors therein. A "bottle club" license authorized by Section 515A, Title 4 of the Delaware Code shall be granted to persons doing business in an establishment meeting the standards of a restaurant as defined by Title 4, and to persons renting premises to customers for holding weddings or other social functions where food is also provided either by the customer or a licensed caterer.

Summary of Proposal

The purpose of this notice is to advise the public that the Delaware Alcoholic Beverage Control Commissioner proposes to promulgate an updated definition within Rule 1008 with respect to the minimum number of dining room seats on the premises of a bottle club license. The statutory definition of a "restaurant" at Title 4, Section 101(39) of the Delaware Code was previously changed from seating at tables for 35 or more persons to seating at tables for 12 or more persons: "a 'restaurant' means any establishment which is regularly used and kept open for the purpose of serving complete meals to persons for consideration and which has seating at tables for 12 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook." A bottle club license can be granted only to persons doing business in an establishment that meets the standards of a restaurant or to persons renting premises to customers for weddings or other similar social functions.

This proposed regulation updates Rule 1008 as to dining room seats at tables, from 35 or more to 12 or more on the premises of a bottle club license. The Commissioner has determined the previous restaurant change from 35 seats to 12 seats should also apply to bottle clubs in order to maintain consistency in the rules that apply to licensed establishments. Title 4, Section 101(39) of the Delaware Code defines a restaurant, in relevant part, as having dining seats at tables for 12 or more people. Standards for a bottle club provide there shall be seating at tables for not less than thirty-five persons. This update to Rule 1008 will make the rule consistent with Section 101(39) and subsection 4.7.1 of Rule 1008.

Statutory Authority 4 Del.C. §304.

4 Del.C. §304 enables the Delaware Alcoholic Beverage Control Commissioner to adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code and all such rules and regulations shall have the force and effect of law; provided, that no such rule or regulation shall extend, modify or conflict with any law of the

State of Delaware or the reasonable implications thereof. The Commissioner shall also determine and publish standards for the manner in which the dining room or dining rooms of a restaurant shall be equipped in order to be allowed to exercise the privilege of the sale of alcoholic liquors therein.

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 502RFA 11-01-21.pdf>

Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation

1.0 Purpose and Scope

This Rule implements the 1982 and 1989 Amendments to the Liquor Control Act extending the jurisdiction of the Commissioner to so called "bottle clubs." 4 **Del.C.** §515, 515Aa, 902(7) and 554(aa), 60 **Del. Laws**, Ch. 232 (April 30, 1982), 67 **Del. Laws**, Ch. 122 (July 14, 1989). It applies to all businesses operated for profit where patrons carry onto the premises alcoholic liquors to be consumed thereon and removed by patrons upon their departure.

2.0 Definitions

"Bottle Club" means an establishment operated for profit or pecuniary gain where persons enter upon the premises for the purposes of consuming alcoholic liquors which are brought onto the premises by customers of the establishment and are consumed therein and removed by such persons upon their departure.

"Consume" in any tense, means the act of drinking or eating alcoholic beverages and includes possession of an alcoholic beverage with the present ability to drink or eat it.

"Operated for profit or pecuniary gain" means a business owned by a sole proprietor, partnership, corporation or other business association where such owner is not exempt from federal or state taxes on income on the profits (or losses) from such business, or the profits (or losses) from such business are for the benefit of an individual partnership, corporation or other business association which is not exempt from federal or state taxes on income. An organization qualified to receive a gathering license under 4 **Del.C.** §514, shall be deemed to be not for profit or pecuniary gain unless the profits or losses from such enterprise are otherwise subject to federal or state tax on income.

"Restaurant" means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration, and which has seating at tables for ~~thirty five (35)~~ 12 or more persons, and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of "meals" [4 **Del.C.** §101(35)]. In addition, a "restaurant" shall have a valid and current restaurant retailer license required by 30 **Del.C.** §2906.

3.0 General Policy

No establishment shall be operated for profit or pecuniary gain as a "bottle club" unless licensed by the Commissioner. Licensed "bottle clubs" shall, within the limits of their license, be held to the same standards of performance and financial responsibility as other types of license holders.

4.0 Standards of Operation for "Bottle Club"

4.1 Hours of Operation

4.1.1 An establishment operated as a "bottle club" shall not permit the consumption of alcoholic beverages on its premises after 2:00 a.m. or before 9:00 a.m. on any day. The presence of alcoholic liquors on the premises of a "bottle club" between the hours of 2:00 a.m. and 9:00 a.m. shall be prima facie evidence of a violation.

4.2 Service of General Public.

- 4.2.1 A "bottle club" may require membership upon payment of a reasonable fee, but approval of such membership shall not be unreasonably denied. A club shall not charge an admission charge or fee, but may charge a cover or minimum during hours when live entertainment is actually being presented.
- 4.3 Service of Food
- 4.3.1 A reasonable selection of food shall be available from a written menu or menu board at all hours when alcoholic beverages are being consumed. The selection of foods shall include a choice of sandwiches, entrees, and non-alcoholic beverages.
- 4.4 Service of Persons Under 21
- 4.4.1 Minors may be admitted to the premises of a "bottle club." Minors may not consume alcoholic beverages at any time. It shall be a rebuttable presumption that minors found on the premises or departing therefrom who are found to have consumed alcoholic liquors or are in possession of alcoholic liquors, consumed or possessed such alcoholic liquors on the premises.
- 4.5 Service of Alcoholic Liquors.
- 4.5.1 A "bottle club" may serve food, non-alcoholic beverages, mixers and ice and may charge for such service. "Bottle clubs" may not mix or provide bartender service to patrons, nor may a "bottle club" chill or keep alcoholic liquors for customers. A "bottle club" shall not serve alcoholic liquors.
- 4.6 Presence of Intoxicated Persons on Premises
- 4.6.1 A "bottle club" shall not permit an intoxicated person to remain on its premises.
- 4.7 Design and Layout
- 4.7.1 In a "bottle club" there shall be seating at tables for not less than ~~thirty-five~~ 12 persons. Seats at a bar shall not exceed 25% of the dining seats of the establishment.
-

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****2925 REAL ESTATE COMMISSION EDUCATION COMMITTEE**

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))
24 **DE Admin. Code** 2925

PUBLIC NOTICE**2925 Real Estate Commission Education Committee**

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission ("Commission") has proposed revisions to its Education Guidelines ("Guidelines").

Specifically, subsection 10.6, pertaining to first time instructor applicants, has been revised to state that an applicant who applies for instructor approval for the first time may be approved to teach only one continuing education module, and after obtaining at least 60 positive course evaluations, the instructor may apply to teach additional modules. This change broadens the instructor approval process to permit first time applicants to teach more than just Module 7.

A public hearing will be held on December 9, 2021 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address or at danielle.cross@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be December 27, 2021. The Commission will deliberate on all of the public comments at its regularly scheduled meeting.

***Please Note:**

- (1) **The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by**

PROPOSED REGULATIONS

29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 505RFA 11-01-21.pdf>

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

2925 Real Estate Commission Education Committee

**DIVISION OF PROFESSIONAL REGULATION
CONTROLLED SUBSTANCE ADVISORY COMMITTEE**

Statutory Authority: 16 Delaware Code, Section 4731 (16 Del.C. §4731)

PUBLIC NOTICE

Uniform Controlled Substances Act Regulations

Pursuant to 16 Del.C. § 4731(a), the Delaware Secretary of State has proposed revisions to the Uniform Controlled Substance Act Rules and Regulations. Specifically, the proposed changes, set forth in subsection 4.7, address the expiration of controlled substance prescriptions for Schedule II and III medications and the partial filling of controlled substance prescriptions for Schedule II - V medications. These changes will make the Rules and Regulations consistent with the federal Comprehensive Addiction and Recovery Act, which Congress passed in 2016. The Controlled Substance Advisory Committee will serve as the Secretary of State's designee in the hearing on the proposed regulatory changes. 16 Del.C. § 4731(b). Additional technical and stylistic edits were made to the regulation as well.

A public hearing will be held on December 1, 2021 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Office of Controlled Substances, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Office of Controlled Substances at the above address or at sarah.siook@delaware.gov.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be December 16, 2021. The Controlled Substance Advisory Committee will deliberate on all of the public comments at its next regularly scheduled meeting.

***Please Note:**

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

<http://regulations.delaware.gov/register/november2021/proposed/25 DE Reg 506RFA 11-01-21.pdf>

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

Uniform Controlled Substances Act 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 AGRICULTURE THOROUGHBRED RACING COMMISSION

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

FINAL ORDER

1001 Thoroughbred Racing Rules and Regulations

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 3 Del.C. §10103(c) the State of Delaware, Department of Agriculture proposed to amend its regulations to amend Rule 13.12.3 which provides that a claim may be voided if a horse is vanned off the racetrack at the direction of the commission veterinarian; or is observed by the Commission Veterinarian to be lame or unsound while still on the racetrack and as such the Commission Veterinarian places that horse on the Vets list. Rule 15.14.4 is also being added to address consequences for a horse leaving the racetrack after entry but before racing.

Notice of a public comment period of thirty (30) days on the Thoroughbred Racing Commission's proposed amended regulations was published in the *Delaware Register of Regulations* for September 1, 2021 in accordance with 29 Del. C. §10118(a). This is the Thoroughbred Racing Commission's Decision and Order adopting the proposed amended regulations.

II. FINDINGS AND CONCLUSIONS

1. The public was given the required notice of the Thoroughbred Racing Commission's intention to adopt the proposed amended regulation and was given ample opportunity to provide the Thoroughbred Racing Commission with comments opposing the Thoroughbred Racing Commission's plan.
2. There were no public comments provided to the Thoroughbred Racing Commission during the written

public Comment period.

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

4. The proposed changes seek to allow a claim to be voided if a horse is vanned off the racetrack at the direction of the commission veterinarian; or is observed by the Commission Veterinarian to be lame or unsound while still on the racetrack and as such the Commission Veterinarian places that horse on the Vets list. It also addresses consequences for a horse leaving the racetrack after entry but before racing.

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

III. DECISION AND ORDER CONCERNING THE REGULATIONS

AND NOW on this 13th day of October 2021, it is hereby ordered that:

1. The proposed amendments to the Thoroughbred Racing Commission's regulations are adopted;
2. The text of the final regulations shall be in the form attached hereto as Exhibit A, which remain unchanged as initially published in the September 1, 2021 *Delaware Register of Regulations*.
3. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 *Del. C.* §10118(e); and
4. The Thoroughbred Racing Commission reserves to itself the authority to issue such other and further orders concerning its Regulations as it deems appropriate.

Delaware Thoroughbred Racing Commission

Sarah A. Crane, Executive Director

***Please note that no changes were made to the regulation as originally proposed and published in the September 2021 issue of the *Register* at page 260 (25 DE Reg. 260). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1001 Thoroughbred Racing Rules and Regulations](#)

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 183 and 3402(c) (14 **Del.C.** §§183 & 3402(c))
14 **DE Admin. Code** 1203

REGULATORY IMPLEMENTING ORDER

[1203 Scholarship Incentive Program \(ScIP\)](#)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§183 and 3402(c), the Delaware Department of Education ("Department"), acting in cooperation with the Delaware Higher Education Office ("DHEO"), seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1203 Scholarship Incentive Program. In accordance with 14 **Del.C.** §§181(15) and 3402(a), the DHEO administers the Scholarship Incentive Program set forth in subchapter II of 14 **Del.C.** Ch. 34. 14 **DE Admin. Code** 1203 outlines the eligibility criteria and application process for the Scholarship Incentive Program. The proposed amendments include an updated definition of academic merit to align with federal standards for receiving financial aid at a college or university and an update to the application process to reflect a new online application.

Notice of the proposed regulation was published in the *Register of Regulations* on February 1, 2021. In

addition, notice of the proposed regulation was published in *The News Journal* and *Delaware State News* on February 1, 2021, which is attached hereto as Exhibit A.

The Department received a written submittal from Terri Hancharick, Chairperson of the State Council for Persons with Disabilities ("SCPD"), concerning the proposed amendments. SCPD commented that it "endorses the proposed regulation contingent upon the DOE including alternative submission options for individuals with disabilities that are unable to use technology and individuals that do not have access to the internet."

II. FINDINGS OF FACTS

The Department considered SCPD's written submittal. Currently, applicants for Scholarship Incentive Program ("ScIP") are required to create a Student Account online through DHEO's website, submit their major and the name of their college or university through their online Student Account, submit their academic record by mail, fax, or email, and complete the FAFSA. Thus, for at least six years, there has been an online component to applying for ScIP. Each December, when the application period opens, DHEO provides school counselors with information on how students can apply for financial assistance through DHEO, including ScIP. School counselors notify DHEO of applicants who need assistance applying for ScIP. Also, applicants contact DHEO directly by phone or email for assistance applying for ScIP. DHEO works with applicants to provide assistance with their ScIP applications. Applicants who do not have access to the internet at home have completed the online component at their school. DHEO created an online application for ScIP to streamline its application process and align it with other applications for financial assistance, which are online. Applicants who are unable to complete ScIP's application online may request a paper copy of ScIP's application. The Department finds that further changes to the proposed regulation as a result of the written submittal are not necessary.

In addition, the Department clarified the language of subsections 4.1.2.1, 4.1.2.2, and 4.1.2.3. In accordance with 29 **Del.C.** §10118(c), the changes to subsections 4.1.2.1, 4.1.2.2, and 4.1.2.3 are nonsubstantive and, as a result, the Department is not required to repropose the changes.

The Department finds that the proposed amendments to the regulation are necessary to the administration of the Scholarship Incentive Program set forth in subchapter II of 14 **Del.C.** Ch. 34. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1203 Scholarship Incentive Program.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1203 Scholarship Incentive Program with the State Board of Education's consent. Therefore, pursuant to 14 **Del.C.** §§183 and 3402(c), 14 **DE Admin. Code** 1203 Scholarship Incentive Program, attached hereto as Exhibit B, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1203 Scholarship Incentive Program adopted hereby shall be in the form attached hereto as Exhibit B and said regulation shall be cited as 14 **DE Admin. Code** 1203 Scholarship Incentive Program in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 23rd day of September, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 23rd day of September, 2021.

State Board of Education

Whitney Sweeney, President (Absent)	/s/ Vincent Lofink
/s/ Shawn Brittingham, Vice President	/s/ Audrey J. Noble, Ph.D.
/s/ Wali W. Rushdan, II	/s/ Provey Powell, Jr.
Candice Fifer (Absent)	

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

**1203 Scholarship Incentive Program (ScIP)
(Break in Continuity of Sections)**

4.0 Eligibility

4.1 Applicants must meet the following requirements to be eligible for the ScIP:

4.1.1 Be a Resident of the State; and

4.1.2 Be a Full-Time Student enrolled in:

4.1.2.1 ~~an~~ An undergraduate degree program at a ~~regionally accredited college or university~~ higher education institution [with that is located in Delaware and has] regional accreditation from an accrediting agency recognized by the U.S. Secretary of Education ~~[in Delaware]~~; or

4.1.2.2 ~~an~~ An undergraduate degree program at a ~~regionally accredited college or university~~ higher education institution [with that is located outside of Delaware and has] regional accreditation from an accrediting agency recognized by the U.S. Secretary of Education ~~[outside of Delaware and]~~ that is not offered by a publicly assisted college or university in Delaware; or

4.1.2.3 ~~a~~ A graduate or professional education degree program at a ~~regionally accredited college or university~~ higher education institution [with that is located outside of Delaware and has] regional accreditation from an accrediting agency recognized by the U.S. Secretary of Education ~~[outside of Delaware and]~~ that is not offered by a publicly assisted college or university in Delaware and [is] in pursuit of a degree that is deemed in the best interest of the State.

***Please note that no additional changes were made to the regulation as originally proposed and published in the February 2021 issue of the Register at page 753 (24 DE Reg. 753). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

1203 Scholarship Incentive Program (ScIP)

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1534

REGULATORY IMPLEMENTING ORDER

1534 Middle Level Social Studies Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1534 Middle Level Social Studies Teacher. The regulation concerns the requirements for a Middle Level

Social Studies Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms in Section 2.0; clarifying the requirements for issuing a Middle Level Social Studies Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Middle Level Social Studies Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Middle Level Social Studies Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on July 1, 2021. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On September 2, 2021, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 23rd day of September, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 23rd day of September, 2021.

State Board of Education

Whitney Sweeney, President (Absent)	/s/ Audrey J. Noble, Ph.D.
/s/ Shawn Brittingham, Vice President	/s/ Provey Powell, Jr.
Candice Fifer (Absent)	/s/ Wali W. Rushdan, II
/s/ Vincent Lofink	

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

*Please note that no changes were made to the regulation as originally proposed and published in the July 2021 issue of the *Register* at page 46 (25 DE Reg. 46). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1534 Middle Level Social Studies Teacher

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1542

REGULATORY IMPLEMENTING ORDER

1542 Secondary Mathematics Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1542 Secondary Mathematics Teacher. The regulation concerns the requirements for a Secondary Mathematics Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms in Section 2.0; clarifying the requirements for issuing a Secondary Mathematics Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Secondary Mathematics Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Secondary Mathematics Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2021. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On September 2, 2021, the Professional Standards Board voted to propose 14 DE Admin. Code 1542 Secondary Mathematics Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 Del.C. Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 DE Admin. Code 1542 Secondary Mathematics Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 DE Admin. Code 1542 Secondary Mathematics Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 Del.C. §§1203 and 1205(b), 14 DE Admin. Code 1542 Secondary Mathematics Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 DE Admin. Code 1542 Secondary Mathematics Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 DE Admin. Code 1542 Secondary

Mathematics Teacher in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 23rd day of September, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 23rd day of September, 2021.

State Board of Education

Whitney Sweeney, President (Absent)	/s/ Audrey J. Noble, Ph.D.
/s/ Shawn Brittingham, Vice President	/s/ Provey Powell, Jr.
Candice Fifer (Absent)	/s/ Wali W. Rushdan, II
/s/ Vincent Lofink	

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

***Please note that no changes were made to the regulation as originally proposed and published in the August 2021 issue of the *Register* at page 127 (25 DE Reg. 127). A copy of the final regulation is available at:**

1542 Secondary Mathematics Teacher

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1544

REGULATORY IMPLEMENTING ORDER

1544 Secondary Social Studies Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1544 Secondary Social Studies Teacher. The regulation concerns the requirements for a Secondary Social Studies Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms in Section 2.0; clarifying the requirements for issuing a Secondary Social Studies Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Secondary Social Studies Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Secondary Social Studies Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on July 1, 2021. The

Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On September 2, 2021, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 23rd day of September, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 23rd day of September, 2021.

State Board of Education

Whitney Sweeney, President (Absent)	/s/ Audrey J. Noble, Ph.D.
/s/ Shawn Brittingham, Vice President	/s/ Provey Powell, Jr.
Candice Fifer (Absent)	/s/ Wali W. Rushdan, II
/s/ Vincent Lofink	

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

***Please note that no changes were made to the regulation as originally proposed and published in the July 2021 issue of the *Register* at page 51 (25 DE Reg. 51). A copy of the final regulation is available at:**

1544 Secondary Social Studies Teacher

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1556

REGULATORY IMPLEMENTING ORDER

1556 School To Work Transition Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1556 School To Work Transition Teacher. The regulation concerns the requirements for a School to Work Transition Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms in Section 2.0; clarifying the requirements for issuing a School to Work Transition Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School to Work Transition Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a School to Work Transition Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on July 1, 2021. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On September 2, 2021, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1556 School to Work Transition Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1556 School to Work Transition Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1556 School to Work Transition Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1556 School to Work Transition Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1556 School to Work Transition Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1556 School to Work Transition Teacher in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

FINAL REGULATIONS

IT IS SO ORDERED the 23rd day of September, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 23rd day of September, 2021.

State Board of Education

Whitney Sweeney, President (Absent)	/s/ Audrey J. Noble, Ph.D.
/s/ Shawn Brittingham, Vice President	/s/ Provey Powell, Jr.
Candice Fifer (Absent)	/s/ Wali W. Rushdan, II
/s/ Vincent Lofink	

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

1556 School ~~To~~ to Work Transition Teacher

1.0 Content

- 4.1 This regulation shall apply to the issuance and retention of a ~~Standard Certificate, School to Work Transition Teacher Standard Certificate~~ pursuant to 14 ~~Del.C. §1220(a), for School to Work Transition Teacher. This certification~~ The School to Work Transition Teacher Standard Certificate is required for grades 9 to 12 and is valid in a Middle Level school, grades 6–8 educators who provide employability skills training, career exploration, and counseling and support in the transition to and graduation from high school for grades 6 to 12 in Delaware public schools.
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2.1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise:~~

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 ~~Del.C. Ch. 12~~ to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

~~"School to Work Transition" means the provision of work transition training, counseling and assistance to, and support in meeting graduation requirements for public high school students.~~

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.

"Valid and Current License or Certificate" means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a School to Work Transition Teacher Standard Certificate as a ~~School to Work Transition Teacher~~ to an applicant who ~~has met the following:~~
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced ~~License; License~~ or a Standard or Professional Status Certificate issued by the Department prior to August 31, ~~2003; and, 2003~~ and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 Has met the requirements ~~as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto~~ for an educator's license in Delaware and presents proof of a Valid and Current License or Certificate as a school to work transition teacher issued by another state or jurisdiction.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a School to Work Transition Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 Additional Prescribed Education, Knowledge, and Skill Requirements

- 4.1 An educator must also have met the following additional education requirements:
- 4.1.1 Has completed eighteen (18) semester hours or the equivalent in course work or professional development, to include three semester hours in each of the following areas:
 - 4.1.1.1 Educational Psychology, Human Growth and Development and Adolescent Psychology;
 - 4.1.1.2 Tools and Techniques in Counseling;
 - 4.1.1.3 Methods of Teaching School to Work Transition Students;
 - 4.1.1.4 Job Development Training;
 - 4.1.1.5 Career Guidance and Information; and
 - 4.1.1.6 Occupational and Educational Information.
 - 4.1.2 Professional development programs developed by the Jobs for Delaware Graduates (JDG) Office and approved by the Department may be substituted.
- 4.2 ~~An educator must also have completed a minimum of two years of full time work experience in trade, business, education, social services or industry, as approved by the Department.~~
- 4.1 An applicant for a School to Work Transition Teacher Standard Certificate shall have satisfied one of the following education requirements:
- 4.1.1 The applicant earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in school to work transition education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator

Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or

- 4.1.2 The applicant satisfactorily completed a Department-approved educator preparation program in school to work transition; or
- 4.1.3 The applicant earned a bachelor's degree from a Regionally Accredited college or university in any content area and satisfactorily completed a professional development program developed by Jobs for Delaware Graduates (JDG) and approved by the Department. The program shall include not less than 150 hours of professional development in the following areas:
 - 4.1.3.1 Classroom management and student engagement;
 - 4.1.3.2 Instructional practices for school to work transition programs;
 - 4.1.3.3 Career coaching and student goal planning;
 - 4.1.3.4 Creating and maintaining data systems and contracts for school to work transition programs; and
 - 4.1.3.5 School to work curriculum and assessment.

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For an applicant who is applying for the School to Work Transition Teacher Standard Certificate under subsection 3.1.1 of this regulation, the following documentation is required in the application:
 - 5.2.1 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.2.1.2 Sealed paper transcripts may be submitted.
 - 5.2.1.3 The Department will not accept copies of transcripts; and
 - 5.2.2 Documentation that the applicant completed a Department-approved professional development program developed by JDG, if applicable; and
 - 5.2.3 Additional documentation as required by the Department.
- 5.3 For an applicant who is applying for the School to Work Transition Teacher Standard Certificate under subsection 3.1.2 of this regulation, the following documentation is required in the application:
 - 5.3.1 An official copy of the Valid and Current License or Certificate; and
 - 5.3.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

- 6.1 A School to Work Transition Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A School to Work Transition Teacher Standard Certificate is not subject to renewal.

7.0 Disciplinary Action

- 7.1 An Educator's School to Work Transition Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's School to Work Transition Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.

7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

8.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a School to Work Transition Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a School to Work Transition Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

8.1.1 For school districts, requests shall be approved by the superintendent of the school district.

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

9.0 Past Certificate Recognized

The Department shall recognize a School to Work Transition Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach school to work transition.

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1583

REGULATORY IMPLEMENTING ORDER

1583 School Psychologist

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1583 School Psychologist. The regulation concerns the requirements for a School Psychologist Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a School Psychologist Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Psychologist Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a School Psychologist Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

The proposed amendments were published in the *Register of Regulations* on February 1, 2021. The Board received written submittals from the State Council for Persons with Disabilities ("SCPD"), the Delaware Association of School Psychologists ("DASP"), and the Delaware State Education Association ("DSEA"). On March 4, 2021, the Board considered the written submittals. Both DASP and DSEA each commented that proposed language in subsection 4.1.1.1, i.e., "the equivalent of an Ed.S. degree," is vague and suggested that the Board add language from the 2020 National Association of School Psychologist Professional Standards. As a result of DASP's and DSEA's comment, the Board added the suggested language to the subsection to define the equivalent of an Ed.S. degree. The Board decided not to make any additional changes as a result of DASP's and DSEA's other comments or SCPD's comments.

On April 1, 2021, the changes that were originally published on February 1, 2021 and the additional change to define the equivalent of an Ed.S. in subsection 4.1.1.1 was published in the *Register of Regulations*. The Board received written submittals from DASP, the Delaware Association of School Personnel Administrators, and the Delaware Association of Special Education Professionals within the Delaware Association of School Administrators. On May 6, 2021, the Board considered the written submittals. The Board withdrew the proposed amendments that were published on April 1, 2021.

A review of the Praxis Subject Assessment - School Psychology was held on June 4, 2021. On July 8, 2021, the Board considered data concerning the Praxis Subject Assessment - School Psychology, including the results of the Praxis review, the requirements for a school psychology educator's license or certificate in the District of Columbia, Maryland, New Jersey, and Pennsylvania, and information on current school psychologists in Delaware. The Board added clarifying language to subsection 3.1.2, which concerns applicants who hold a valid and current license as a school psychologist that is issued by another jurisdiction. The Board voted to publish the changes that were published on April 1, 2021 as well as the additional clarifying language in subsection 3.1.2.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2021. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On September 2, 2021, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1583 School Psychologist, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1583 School Psychologist.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1583 School Psychologist subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1583 School Psychologist, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1583 School Psychologist adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1583 School Psychologist in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 23rd day of September, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 23rd day of September, 2021.

State Board of Education

Whitney Sweeney, President (Absent)	/s/ Audrey J. Noble, Ph.D.
/s/ Shawn Brittingham, Vice President	/s/ Provey Powell, Jr.
Candice Fifer (Absent)	/s/ Wali W. Rushdan, II
/s/ Vincent Lofink	

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

***Please note that no changes were made to the regulation as originally proposed and published in the August 2021 issue of the *Register* at page 131 (25 DE Reg. 131). A copy of the final regulation is available at:**

1583 School Psychologist

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF HEALTH CARE QUALITY

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

ORDER

4406 Home Health Agencies--Aide Only (Licensure)

BEFORE THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

IN THE MATTER OF:	
ADOPTION OF THE STATE OF DELAWARE	
REGULATIONS GOVERNING HOME	
HEALTH AGENCIES - AIDE ONLY	

Nature of The Proceedings

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt revised Regulations Governing Home Health Agencies - Aide Only. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122 (3)o.

On August 1, 2021 (Volume 25, 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 1, 2021, after which time the DHSS would review information, factual evidence and public comment to the 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

STATE OF DELAWARE REGULATIONS GOVERNING
HOME HEALTH AGENCIES - AIDE ONLY

In accordance with Delaware Law, public notice regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Home Health Agencies - Aide Only was published in the Delaware Register of Regulations. Written comments were received on the proposed regulations during the public comment period (August 1, 2021 through September 1, 2021).

Public comments and the DHSS (Department) responses are as follows:

Jean Mullen, Executive Director, Delaware Association of Home and Community Care

Comment: Thank you for initially meeting with the DAHCC Board to work with us on revisions for both Home Health Skilled Agency and Home Health Aide Only regulations.

As you know, considerable time (approximately 2 years) has passed since our revision meetings with you. Since that time, experience has created new perspectives on our work. As a result of both time lapsed and a new normal, the Board is submitting the attached comments for additional revisions along with rationale for the same.

Please find the attached four pages outlining our suggestions for both 4406 and 4410 revisions.

We are available to provide further explanation where needed, and or to meet with you for discussion.

1.0 Definitions

"Clinical Director" means a registered nurse who is sufficiently qualified to provide general supervision and direction of the services offered by the home health agency and who has at least one year of home health care and administrative/supervisory health care experience. The "Clinical Director" and "Director" may be the same individual if that individual is dually qualified.

Recommend removing "home health care and".

Rationale: Based on the definition of "home health care experience" added to the definitions, continuing to restrict this role only to registered nurses who have home health care agency experience will compromise agencies' ability to hire otherwise qualified nurses for this role in an increasingly limited labor market and in the face of a significant nursing shortage. A nurse with administrative/supervisory experience in a segment of the health care industry other than home health care should qualify to oversee skilled agency services with proper training and onboarding to the position.

Response: Thank you for your comments. The Clinical Director is responsible for providing general supervision and direction of all services offered by the home health agency; therefore, it is imperative that the Clinical Director have home health care experience. The regulatory definition will stand as written.

Comment: 1.0 Definitions

"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. shall:

(1) Have a baccalaureate degree with five years health care experience and at least one year supervisory experience (full-time or equivalent) in home health care; or

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

Recommend replacing 5 years with 2 years health care experience and removing the word "home" from the one-year supervisory experience.

Rationale: Adding 5 years experience in health care and one year supervisory experience in home health care will severely limit the pool of qualified candidates among new and existing agencies and as a result, will impede any ability to operate an aide only agency in Delaware. In addition, there must be two people on staff that meet these qualifications, with one designated as the alternate. It is not clear with a Clinical Director also on staff, why the director could not qualify with translatable experience from another industry. Also, with a registered nurse also required to have 5 years experience, this in essence results in an extremely narrowed labor pool and inability of home care providers in Delaware to bring in qualified people to the industry. Also, should there be a vacancy, the ability to replace will compromise the agency's ability to continue operating - resulting in closures and reduced access to care.

Response: Thank you for your comments. Revisions to the definition of "Director" were not proposed. The "Director" is responsible for the overall management of the home health agency, therefore, they must have the knowledge and experience to perform these duties. This regulatory definition will remain as written.

Comment:

Complaint means a formal or informal written or verbal notification of patient issues that can be immediately addressed by staff who are present at the time of the complaint.

Recommend removing "immediately" and "who are present at the time"

Recommend adding "and resolved with the patient or patient representative"

Vs.

"Grievance" means a formal or informal written or verbal complaint that is made to the agency by a patient, or the patient's representative. A grievance cannot be immediately resolved by staff present at the time of the complaint.

Recommend replacing the definition above with the definition below to provide clarification for the difference in complaint vs. grievance. This definition was taken from the following link:

<https://www.reliasmedia.com/articles/57864-when-does-a-complaint-become-a-grievance>

"The factor that distinguishes a complaint from a grievance is the formality of the process. In a grievance situation, the patient (or the patient's representative) is specifically requesting that his or her complaint undergo a formal (and therefore well-defined) review process. This request may follow a complaint that was not resolved to the patient's satisfaction, or the request for a formal review may be the first step a patient takes when he is dissatisfied."

Response: Thank you for your comments. The difference between a complaint and a grievance is the timeframe in which the issue can be resolved. Furthermore, a grievance does require investigation of the issue to ensure that a fair and just resolution can be established. The regulatory definition will remain as written.

Comment: 2.0 Licensing Requirements and Procedures, 2.3 Issuance of Licenses

Section 2.3.1.5 ~~A probationary~~ An initial license may not be renewed.

Recommend adding language that an initial license may be renewed at the discretion of the state in the event circumstances unrelated to the agency prevent the state from conducting the initial survey within the first 90 days.

Response: Thank you for your comments. There is a process for initial licensure surveys. Renewing an initial license is not consistent with other state regulations. The regulation will remain as written.

Comment: 4.0 Governing Body:

4.6 Bylaws shall be reviewed annually by the governing body and so dated. Revisions shall be completed as necessary.

Recommend removal. This should be left to the agency's governing body to determine.

Response: Thank you for your comments. Reviewing the bylaws annually is a minimum standard to ensure the delivery of safe quality care. Agencies can choose to review the bylaws more frequently. The regulations will remain as written.

Comment: 5.0 Administration/Personnel, 5.1 Director

5.1.3.2 Program planning, budgeting, management and program evaluation;

Recommend removal of program evaluation as responsibility of director and replacing with "implementing a quality improvement program as defined in Section 8.0 of these regulations."

Rationale: CMS removed the program evaluation requirement along with the PAC.

Response: Thank you for your comments. The "Director" is responsible for the overall management of the home health agency which includes the program evaluation and the quality improvement program. Both aspects are necessary to ensure the delivery of safe, quality care to vulnerable patients. The regulation will remain as written.

Comment: 6.0 Patient Care Management, 6.1 Admission

6.1.3.1 Specify the services to be provided by the agency, including but not limited to: frequency of visits Including ~~scheduled days and hours~~ (or visits) per day or week and number of days per week, transportation agreements as appropriate, emergency procedures and conditions for discharge and appeal.

Recommend adding "(or visits)" and "number of" for clarification as inserted above.

Response: Thank you for your comments. The Centers for Medicare and Medicaid Services requires that the frequency and duration of visits be included in the individualized plan of care, which is consistent with the language in the skilled home health agency regulations. The regulation will remain as written.

Terri Hancharick, Chairperson, State Council for Persons with Disabilities

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division Health Care Quality's (DHCQ) proposal to amend its regulation regarding Home Health Agencies -Aide Only (Licensure). Consistent with the Summary of Proposal, the intent is to update the regulatory language to clearly define the scope of practice required of a home health agency - aide only. In addition, the amendments

intend to provide a level of protection for the patients that seek services from home health agencies - aide only, by ensuring the delivery of safe and adequate care. The proposed regulation was published as 25 DE Reg. 137 in the August 1, 2021 issue of the Register of Regulations. SCPD has the following observations.

First, the definition of "Clinical Director" requires at least one year of home health care experience and at least one year of administrative or supervisory health care experience. SCPD endorses the requirement, but questions whether one year of experience is sufficient for a job of this magnitude.

Response: Thank you for your comments. The Division of Health Care Quality agrees that it is imperative that the Clinical Director have home health care experience. However, given the current healthcare staffing crisis having a requirement that is too stringent may leave the home health agencies unable to fill the "Clinical Director" position. The regulatory definition will stand as written.

Comment: Second, "Medication Reminder" is an addition that defines a reminder as a verbal prompt and which specifically excludes administration or "any physical touching of the medication." The definition of "health aide services" is modified to include medication reminders. SCPD strongly recommends that DHQC further broaden the health aide services definition to include assistance with medication short of actual administration to competent individuals with disabilities who lack the physical ability to open a medication box or a bottle but who can otherwise self-administer. Currently, under restrictive Nurse Practices regulations, nurses cannot delegate medication administration to anyone, licensed or not. Therefore, home health aides, who are supervised by nurses, cannot assist in administration. However, 24 Del. Code 1921(a)(15) allows competent individuals not in Chapter 11 facilities to direct unlicensed individuals to assist in administration; 25 Del Code 1921 (a)(16) authorizes lay administration under Section 1932 (child care workers, etc.) and 24 Del Code Section 1921(a)(17) allows caregivers to instruct and supervise personal care services employees to administer medications.

This can result in the unfortunate and potentially dangerous situation where licensed home health aides who are supervised by medical personnel cannot even touch medication and lay people can administer it. This may be an ADA violation because individuals with disabilities cannot utilize home health aides to provide assistance in administration as an accommodation. Also, the restriction defies common sense as a person who is under the supervision of a nurse cannot assist, and a person "off the street" can.

Response: Thank you for your comments. The current regulations contain provisions at 6.4.1 to address 24 Del. Code 1921(a)(15). The regulations at 6.4.1 address circumstances where a competent patient who does 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: the nature of the service/task is not excluded by law or other state or federal regulation, the services/tasks are those competent patients could normally perform themselves but for functional limitation; and the delegation decision is entirely voluntary. The regulation will stand as written.

Comment: Third, "Service Area" is defined to include the county in which the agency office is located and the one immediately adjacent. The term is further used in Section 2.1.7 restricting service to this area with the exception of allowing "time limited travel outside of the service area." The ability of nurses and HHAs to travel with patients more broadly than the county where the office is located and the contiguous county is absolutely necessary in order to allow access to specialty health services, day programs, educational opportunities for children and family recreation and travel. Nursing or HHA services for these activities can be covered under Medicaid and waiver programs. SCPD recommends, at a minimum, that DHQC further elaborate that these activities are contemplated by this exception to the "service area" restriction so there is no misunderstanding as to what "time limited" means.

Response: Thank you for your comments. Home health agencies have used this exception for instances such as traveling with the patient to a specialist appointment in another state or to travel with children to destinations arranged through the Make-A-Wish Foundation. Due to the various circumstances this exception could address, compiling a list of all activities and destinations that would fall under this exception would be presumptuous and extremely cumbersome. The regulation will stand as written.

Comment: Fourth, "Serious Injury" is a new definition which is restricted to physical injuries that create a substantial risk of death or which cause serious disfigurement, injury or impairment of function of any bodily organ. In Section 6.5.10, home health agencies are only obligated to report and investigate "major adverse events." These are defined to include suspected abuse and neglect, unexpected death, a medication error with the potential to cause harm, and an accident that causes "serious injury." The proposed language adds the qualifier "serious" to

injury. This addition greatly diminishes the types of injuries that must be reported to the Department.

Although the section does require reporting of suspected abuse or neglect, the restriction of accident reporting to "serious" injury may lead to under-reporting of such abuse and neglect. Accidents that are not life-threatening or potentially disfiguring nevertheless can be indicia of abuse or neglect that was not otherwise reported by a home health aide. SCPD strongly recommends that DHQC modify this language to require reporting of any injury that requires outside medical attention or treatment.

Response: Thank you for your comments. Without the addition of "serious" the definition of injury is open to interpretation. Adding the word "serious" and clarifying the definition was necessary to ensure the Division of Health Care Quality received such reports. Lastly, this definition is consistent with other Division of Health Care Quality regulations. The definition will stand as written.

Comment: Fifth, in Section 6.2.2.5, the proposed regulation adds a home visit to the Assessment for the purpose of "determine[ing] whether the agency has the ability to provide necessary services in a safe manner." "Safe manner" and "safe" are not defined. While it is important for the agency to assess the home, the risk with this language is that it gives unlimited discretion to the agency to decide what "safety" is. SCPD may wish to ask DHCQ to provide parameters for this assessment, in order to avoid agencies discriminating based on perceptions of risk that may not be appropriate or that could be alleviated. For example, an agency may not allow a HHA to serve people in a particular neighborhood based on generalized opinions about safety.

Response: Thank you for your comments. Prior to the provision of services, each home health agency must complete an initial assessment to ensure that they are able to deliver safe, quality care in the patient's home. This assessment does not include an assessment of the "neighborhood". The regulation will stand as written.

Comment: Sixth, Section 6.5.4 states the time frame for notes to be incorporated in the patient record is every 2 weeks. SCPD requests the justification for this time period since it could interfere with abuse and neglect investigations, and adequate supervision of client care as opposed to a shorter time period (e.g., every week).

Response: Thank you for your comments. This regulation was not revised. As more home health agencies move toward electronic records, this is becoming a moot point. Lastly, the agency must allow the Department access to all agency records for the purposes of conducting inspections/surveys/investigations. Therefore, the Department could request notes prior to the two-week timeframe if necessary. The regulation will stand as written.

Comment: Seventh, Section 6.6 discusses Discharge. There is no requirement that plans for discharge must be communicated to all health care providers participating the patient's care or the case manager. SCPD recommends such requirements. In addition, the regulation does not provide any parameters for involuntary discharge, nor does it provide for any meaningful obligation to assist the patient in finding alternative care. We are all aware of situations where agencies leave clients at risk of hospitalization or institutionalization by failing to assist in providing adequate planning for follow up care. We are all aware of situations where patients are dumped without good reason. SCPD recommends additional provisions strengthening the rights of consumers of these services so that they are not compromised by inadequate discharge planning and unfair discharges.

Response: Thank you for your comments. Home health agency - aide only services do not require a physician or health care provider order and are usually not involved in the plan of care for the provision of home health agency - aide only services. Case management is often provided by the patient's insurer, which are generally notified if services are needed after discharge or in the event of a discharge. Insurance and billing issues are not regulated by the Division of Health Care Quality.

The regulations at 6.6.3 address discharging a patient who does not wish to be discharged. In these cases, the home health agency is required to give the patient two week notice to permit the patient to obtain an alternate service provider. Exceptions to the two (2) week notice provision include the following situations:

- The discharge of patients when care goals have been met.
- The discharge of patients when care needs undergo a change which necessitates transfer to a higher level of care and for whom a new discharge plan needs to be developed.
- The discharge of patients when there is documented non-compliance with the plan of care or the admission agreement (including, but not limited to, non-payment of justified charges).
- The discharge of patients when activities or circumstances in the home jeopardize the welfare and safety of the home health agency caregiver.

The regulation will remain as written.

Comment: Eighth, Section 7.3 establishes the requirement that agencies have a grievance process for complaints without any details regarding these processes. SCPD requests more specificity regarding these procedures and additional language that redacted grievance data be publicly available and shared with the licensing agency.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

Response: Thank you for your comments. Each agency must develop their own process to handle grievances which must be in compliance with the regulations included in 7.3. Since each agency must develop their own policy and procedure each agency will have a different policy and procedure. Grievances often contain protected information and can not be made publicly available due to the sensitive nature of the information. The regulation will remain as written.

Summary of Proposal

Effective November 1, 2021, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Home Health Agencies - Aide Only.

Background

As more services are being provided in the home and community setting, it is necessary to ensure home health services are provided in accordance with recognized standards of practice.

Statutory Authority

16 Del.C. §122(3)(o)

Purpose

The purpose of this proposed amendment is to update the requirements to be consistent with recognized standards of practice and to ensure patients receive safe and quality care from home health agencies - aide only.

Fiscal Impact

N/A

Findings of Fact:

There were no changes made to the regulations based on the comments received and 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 Regulations Governing Home Health Agencies - Aide Only are adopted and shall become effective November 11, 2021, after publication of the final regulations in the Delaware Register of Regulations.

10/13/2021

Date

Molly K. Magarik, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the August 2021 issue of the *Register* at page 137 (25 DE Reg. 137). A copy of the final regulation is available at:**

4406 Home Health Agencies--Aide Only (Licensure)

DIVISION OF HEALTH CARE QUALITY

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

ORDER

4410 Skilled Home Health Agencies (Licensure)

IN THE MATTER OF: |
|
ADOPTION OF THE STATE OF DELAWARE |
REGULATIONS GOVERNING SKILLED HOME |
HEALTH AGENCIES |

Nature of The Proceedings

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt revised Regulations Governing Skilled Home Health Agencies. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122 (3)o.

On August 1, 2021 (Volume 25, 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 1, 2021, after which time the DHSS would review information, factual evidence and public comment to the 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 Proposal

Effective November 1, 2021, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Skilled Home Health Agencies.

Background

As more services are being provided in the home and community setting, it is necessary to ensure skilled home health services are provided in accordance with recognized standards of practice.

Statutory Authority

16 Del.C. §122(3)(o)

Purpose

The Division of Health Care Quality published proposed amendments to regulations governing skilled home health agencies and held them out for public comment according to required procedures. The proposed amendments will update home health agency regulations to be consistent with nationally recognized standards of practice and to clarify regulatory requirements to ensure patients receive safe and quality care for a skilled home health agency.

Prior to this proposed change, a physician had to establish a written plan of care for each patient receiving skilled home health agency services. This requirement created an extreme hardship for home care providers and the vulnerable patients needing skilled home health services. The proposed amendment will permit allowable providers to order skilled home health services, allow individuals more access to skilled home health services.

Lastly, rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. In an effort to prevent or significantly decrease transmission of COVID-19 and other infections, a requirement was added for the skilled home health agency to have a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention and other nationally recognized sources.

Fiscal Impact

N/A

Findings of Fact:

There were no changes made to the regulations based on the comments received and 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 Regulations Governing Skilled Home Health Agencies is adopted and shall become effective November 11, 2021, after publication of the final regulation in the *Delaware Register of Regulations*.

10/13/2021

Date

Molly Magarik, Secretary, DHSS?

SUMMARY OF EVIDENCESTATE OF DELAWARE REGULATIONS GOVERNING
SKILLED HOME HEALTH AGENCIES

In accordance with Delaware Law, public notice regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Skilled Home Health Agencies was published in the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (August 1, 2021 through September 1, 2021).

Public comments and the DHSS (Department) responses are as follows:

Jean Mullen, Executive Director, Delaware Association of Home and Community Care

Comment: Thank you for initially meeting with the DAHCC Board to work with us on revisions for both Home Health Skilled Agency and Home Health Aide Only regulations.

As you know, considerable time (approximately 2 years) has passed since our revision meetings with you. Since that time, experience has created new perspectives on our work. As a result of both time lapsed and a new normal, the Board is submitting the attached comments for additional revisions along with rationale for the same.

Please find the attached four pages outlining our suggestions for both 4406 and 4410 revisions.

We are available to provide further explanation where needed, and or to meet with you for discussion.

1.0 Definitions

1.0 Definitions

"Clinical Director" means a registered nurse who is sufficiently qualified to provide general supervision and direction of the services offered by the home health agency and who has at least one year of home health care and administrative/supervisory health care experience. The "Clinical Director" and "Director" may be the same individual if that individual is dually qualified.

Recommend removing "home health care".

Rationale: Based on the definition of "home health care experience" added to the definitions, continuing to restrict this role only to registered nurses who have home health care agency experience will compromise agencies' ability to hire otherwise qualified nurses for this role in an increasingly limited labor market and in the face of a significant nursing shortage. A nurse with administrative/supervisory experience in a segment of the health care industry other than home health care should qualify to oversee skilled agency services with proper training and onboarding to the position.

Response: Thank you for your comments. The Clinical Director is responsible for providing general supervision and direction of all services offered by the home health agency; therefore, it is imperative that the Clinical Director have home health care experience. The regulatory definition will stand as written.

Comment: 1.0 Definitions

"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. shall:

(1) Have a baccalaureate degree with five years health care experience and at least one year supervisory experience (full-time or equivalent) in home health care; or

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

Recommend replacing 5 years with 2 years health care experience and removing the word "home" from the one-year supervisory experience.

Rationale: Adding 5 years experience in health care and one year supervisory experience in home health care will severely limit the pool of qualified candidates among new and existing agencies and as a result, will impede any ability to operate an aide only agency in Delaware. In addition, there must be two people on staff that meet these qualifications, with one designated as the alternate. It is not clear with a Clinical Director also on staff, why the director could not qualify with translatable experience from another industry. Also, with a registered nurse also required to have 5 years experience, this in essence results in an extremely narrowed labor pool and inability of home care providers in Delaware to bring in qualified people to the industry. Also, should there be a vacancy, the ability to replace will compromise the agency's ability to continue operating - resulting in closures and reduced access to care.

Response: Thank you for your comments. Revisions to the definition of "Director" were not proposed. The "Director" is responsible for the overall management of the home health agency, therefore, they must have the knowledge and experience to perform these duties. This regulatory definition will remain as written.

Comment:

"Complaint" means a formal or informal written or verbal notification of patient issues that can be immediately addressed by staff who are present at the time of the complaint.

Recommend removing "immediately" and "who are present at the time"

Recommend adding "and resolved with the patient or patient representative"

Vs.

"Grievance" means a formal or informal written or verbal complaint that is made to the agency by a patient, or the patient's representative. A grievance cannot be immediately resolved by staff present at the time of the complaint.

Recommend replacing the definition above with the definition below to provide clarification for the difference in complaint vs. grievance. This definition was taken from the following link:

<https://www.reliasmedia.com/articles/57864-when-does-a-complaint-become-a-grievance>

"The factor that distinguishes a complaint from a grievance is the formality of the process. In a grievance situation, the patient (or the patient's representative) is specifically requesting that his or her complaint undergo a formal (and therefore well-defined) review process. This request may follow a complaint that was not resolved to the patient's satisfaction, or the request for a formal review may be the first step a patient takes when he is dissatisfied."

Response: Thank you for your comments. The difference between a complaint and a grievance is the timeframe in which the issue can be resolved. Furthermore, a grievance does require investigation of the issue to ensure that a fair and just resolution can be established. The regulatory definition will remain as written.

Comment: 2.0 Licensing Requirements and Procedures, 2.3 Issuance of Licenses

Section 2.3.1.5 ~~A probationary~~ An initial license may not be renewed.

Recommend adding language that an initial license may be renewed at the discretion of the state in the event circumstances unrelated to the agency prevent the state from conducting the initial survey within the first 90 days.

Response: Thank you for your comments. There is a process for initial licensure surveys. Renewing an initial license is not consistent with other state regulations. The regulation will remain as written.

Comment: 4.0 Governing Body:

4.6 Bylaws shall be reviewed annually by the governing body and so dated. Revisions shall be completed as necessary.

Recommend removal. This should be left to the agency's governing body to determine.

Response: Thank you for your comments. Reviewing the bylaws annually is a minimum standard to ensure the delivery of safe quality care. Agencies can choose to review the bylaws more frequently. The regulations will remain as written.

Comment: 5.0 Administration/Personnel, 5.1 Director

5.1.3.2 Program planning, budgeting, management and program evaluation;

Recommend removal of **program evaluation as responsibility of director** and replacing with "implementing

a quality improvement program as defined in Section 8.0 of these regulations."

Rationale: CMS removed the program evaluation requirement along with the PAC.

Response: Thank you for your comments. The "Director" is responsible for the overall management of the home health agency which includes the program evaluation and the quality improvement program. Both aspects are necessary to ensure the delivery of safe, quality care to vulnerable patients. The regulation will remain as written.

Comment: 6.0 Patient Care Management, 6.1 Admission

6.1.3.1 Specify the services to be provided by the agency, including but not limited to: frequency of visits Including ~~scheduled days and hours~~ (or visits) per day or week and number of days per week, transportation agreements as appropriate, emergency procedures and conditions for discharge and appeal.

Recommend adding "(or visits)" and "number of" for clarification as inserted above.

Response: Thank you for your comments. The Centers for Medicare and Medicaid Services requires that the frequency and duration of visits be included in the individualized plan of care, which is consistent with the proposed language. The regulation will remain as written.

Comment: 6.8 Discharge

6.8.2.1 The plans for the patient's discharge and any revisions must be communicated to all physicians and allowable providers participating in the patient's care and the patient's primary physician or allowable provider or other health care professionals who will be responsible for providing care and services to the patient after discharge (if any).

Aide Only Services: Recommend this apply to patients who are receiving skilled services only where the plan of care is established by physician or other allowed provider. Based on the proposed language of 6.3.4.2 The plan of care for patients receiving aide only services must be reviewed by the registered nurse or qualified professional of the appropriate discipline, suggests that a physician's review and order is not required for establishment of plan of care for aide only services, and therefore, this requirement should not apply to this level of service.

Response: Thank you for your comments. Any physicians and allowable providers that are participating in the patient's care should receive communications about revisions to the discharge plan. In addition, revisions to the discharge plan must be communicated to the patient's primary physician or allowable provider and any other health care professionals that will be responsible for providing care and services to the patient after discharge. Healthcare professionals that are not participating in the patient's care or not responsible for providing care after discharge would not be required to receive communications about the discharge plan. This regulation will stand as written.

Terri Hancharick, Chairperson, State Council for Persons with Disabilities

Comment: The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division Health Care Quality's (DHCQ) proposal to amend its regulation regarding Skilled Home Health Agencies (Licensure). Consistent with the *Summary of Proposal*, the intent is to update the requirements to be consistent with nationally recognized standards of practice and clarify the regulatory requirements to ensure patients receive safe and quality care from a skilled home health agency. The proposed regulation was published as 25 DE Reg. 138 in the August 1, 2021 issue of the Register of Regulations. SCPD has the following observations.

First, the regulation adds the requirement that the "Clinical Director" has at least one year of home health care experience and at least one year of administrative or supervisory health care experience. SCPD believes this may improve quality, but questions whether one year of experience is sufficient for a job of this magnitude.

Response: Thank you for your comments. The Division of Health Care Quality agrees that it is imperative that the Clinical Director have home health care experience. However, given the current healthcare staffing crisis having a requirement that is too stringent may leave the skilled home health agencies unable to fill the "Clinical Director" position. The regulatory definition will stand as written.

Comment: Second, "Medication Reminder" is an addition that defines a reminder as a verbal prompt and which specifically excludes administration or "any physical touching of the medication." The definition of "health aide services" is modified to include medication reminders. SCPD strongly recommends that DHQC further broaden the health aide services definition to include assistance with medication short of actual administration to competent individuals with disabilities who lack the physical ability to open a medication box or a bottle but who can otherwise self-administer. Currently, under restrictive Nurse Practices regulations, nurses cannot delegate medication administration to anyone, licensed or not. Therefore, home health aides, who are supervised by nurses, cannot assist in administration. However, 24 Del. Code 1921(a)(15) allows competent individuals not in Chapter 11

facilities to direct unlicensed individuals to assist in administration; 25 Del Code 1921 (a)(16) authorizes lay administration under Section 1932 (child care workers, etc.) and 24 Del Code Section 1921(a)(17) allows caregivers to instruct and supervise personal care services employees to administer medications.

This can result in the unfortunate and potentially dangerous situation where licensed home health aides who are supervised by medical personnel cannot even touch medication and lay people can administer it. This may be an ADA violation because individuals with disabilities cannot utilize home health aides to provide assistance in administration as an accommodation. Also, the restriction defies common sense as a person who is under the supervision of a nurse cannot assist, and a person "off the street" can.

Response: Thank you for your comments. The current regulations contain provisions at 6.6.6 to address 24 Del. Code 1921(a)(15). The regulations at 6.6.6 address circumstances where a competent patient who does 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: the nature of the service/task is not excluded by law or other state or federal regulation, the services/tasks are those competent patients could normally perform themselves but for functional limitation; and the delegation decision is entirely voluntary. The regulation will stand as written.

Comment: Third, "Service Area" is defined to include the county in which the agency office is located and the one immediately adjacent. The term is further used in Section 2.1.7 restricting service to this area with the exception of allowing "time limited travel outside of the service area." The ability of nurses and HHAs to travel with patients more broadly than the county where the office is located and the contiguous county is absolutely necessary in order to allow access to specialty health services, day programs, educational opportunities for children and family recreation and travel. Nursing or HHA services for these activities can be covered under Medicaid and waiver programs. SCPD recommends, at a minimum, that DHCQ further elaborate that these activities are contemplated by this exception to the "service area" restriction so there is no misunderstanding as to what "time limited" means.

Response: Thank you for your comments. Skilled home health agencies have used this exception for instances such as traveling with the patient to a specialist appointment in another state or to travel with children to destinations arranged through the Make-A-Wish Foundation. Due to the various circumstances this exception could address, compiling a list of all activities and destinations that would fall under this exception would be presumptuous and extremely cumbersome. The regulation will stand as written.

Comment: Fourth, "Serious Injury" is a new definition which is restricted to physical injuries that create a substantial risk of death or which cause serious disfigurement, injury or impairment of function of any bodily organ. In Section 6.7.12, home health agencies are only obligated to report and investigate "major adverse events." These are defined to include suspected abuse and neglect, unexpected death, a medication error with the potential to cause harm, and an accident that causes "serious injury." The proposed language adds the qualifier "serious" to injury. This addition greatly diminishes the types of injuries that must be reported to the Department.

Although the section does require reporting of suspected abuse or neglect, the restriction of accident reporting to "serious" injury may lead to under-reporting of such abuse and neglect. Accidents that are not life-threatening or potentially disfiguring nevertheless can be indicia of abuse or neglect that was not otherwise reported by a home health aide. SCPD strongly recommends that DHCQ modify this language to require reporting of any injury that requires outside medical attention or treatment.

Response: Thank you for your comments. Without the addition of "serious," the definition of injury is open to interpretation. Adding the word "serious" and clarifying the definition was necessary to ensure the Division of Health Care Quality received such reports. Lastly, this definition is consistent with other Division of Health Care Quality regulations. The definition will stand as written.

Comment: Fifth, in Section 6.2.2.5, the proposed regulation adds a home visit to the Assessment for the purpose of "determine[ing] whether the agency has the ability to provide necessary services in a safe manner." "Safe manner" and "safe" are not defined. While it is important for the agency to assess the home, the risk with this language is that it gives unlimited discretion to the agency to decide what "safety" is. SCPD may wish to ask DHCQ to provide parameters for this assessment, in order to avoid agencies discriminating based on perceptions of risk that may not be appropriate or that could be alleviated. For example, an agency may not allow a HHA to serve people in a particular neighborhood based on generalized opinions about safety.

Response: Thank you for your comments. Prior to the provision of services, each home health agency must complete an initial assessment to ensure that they are able to deliver safe, quality care in the patient's home. This assessment does not include an assessment of the "neighborhood". The regulation will stand as written.

Comment: Sixth, Section 6.7.5 expands the time frame for notes to be incorporated in the patient record from

one week to two. SCPD requests the justification for this change since it could interfere with abuse and neglect investigations and adequate supervision of client care.

Response: Thank you for your comments. This regulation was revised to be consistent with the Home Health Agency - Aide Only regulations. Additionally, as more home health agencies move toward electronic records, this is becoming a moot point. Lastly, the agency must allow the Department access to all agency records for the purposes of conducting inspections/surveys /investigations. Therefore, the Department could request notes prior to the two-week timeframe if necessary. The regulation will stand as written.

Comment: Seventh, Section 6.8 discusses Discharge. Section 6.8.2.1 adds the requirement that plans for discharge must be communicated to all health care providers participating in the patient's care. SCPD believes this requirement should also include the case manager if the patient has one. In addition, the regulation does not provide any parameters for involuntary discharge, nor does it provide for any meaningful obligation to assist the patient in finding alternative care. We are all aware of situations where agencies leave clients at risk of hospitalization or institutionalization by failing to assist in providing adequate planning for follow up care. We are all aware of situations where patients are dumped without good reason. SCPD recommends additional provisions strengthening the rights of consumers of these services so that they are not compromised by inadequate discharge planning and unfair discharges.

Response: Thank you for your comments. Case management is often provided by the patient's insurer, which are generally notified if services are needed after discharge or in the event of a discharge. Insurance and billing issues are not regulated by the Division of Health Care Quality.

The regulations at 6.8.3 address discharging a patient who does not wish to be discharged. In these cases, the home health agency is required to give the patient two week notice to permit the patient to obtain an alternate service provider. Exceptions to the two (2) week notice provision include the following situations:

- The discharge of patients when care goals have been met.
- The discharge of patients when care needs undergo a change which necessitates transfer to a higher level of care and for whom a new discharge plan needs to be developed.
- The discharge of patients when there is documented non-compliance with the plan of care or the admission agreement (including, but not limited to, non-payment of justified charges).
- The discharge of patients when activities or circumstances in the home jeopardize the welfare and safety of the home health agency caregiver.

The regulation will remain as written.

Comment: Eighth, Section 7.3 establishes the requirement that agencies have a grievance process for complaints without any details regarding these processes. SCPD requests more specificity regarding these procedures and additional language that redacted grievance data be publicly available and shared with the licensing agency.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

Response: Thank you for your comments. Each agency must develop their own process to handle grievances which must be in compliance with the regulations included in 7.3. Since each agency must develop their own policy and procedure, each agency will have a different policy and procedure. Grievances often contain protected information and cannot be made publicly available due to the sensitive nature of the information. The regulation will remain as written.

Tay Kopanos, DNP, NP, VP of Government Affairs, American Association of Nurse Practitioners

Comment: The American Association of Nurse Practitioners (AANP), with a membership of over 118,000 nurse practitioners (NPs), represents the interests of the more than 325,000 NPs in the United States. This includes the over 1,358 NPs practicing in Delaware, 280 of whom are AANP members. AANP welcomes the opportunity to provide comment on the Delaware Department of Health and Social Services, Office of Health Facilities Licensing and Certification, Division of Health Care Quality, proposed regulations governing Skilled Home Health Agencies (Licensure). The proposed amendment would permit allowable providers, including a person currently licensed as an advanced practice nurse pursuant to 24 Del. C. Ch. 17, to order skilled home health services, and allow individuals more access to skilled home health services.

NPs are advanced practice registered nurses who are prepared at the masters or doctoral level to provide primary, acute, chronic and specialty care to patients of all ages and walks of life. Daily practice includes: assessment; ordering, performing, supervising and interpreting diagnostic and laboratory tests; making diagnoses;

initiating and managing treatment including prescribing medication and non-pharmacologic treatments; coordinating care; counseling; and educating patients and their families and communities. NPs practice in nearly every health care setting including clinics, hospitals, Veterans Health Administration and Indian Health Services facilities, emergency rooms, urgent care sites, private physician or NP practices (both managed and owned by NPs), skilled nursing facilities (SNFs) and nursing facilities (NFs), schools, colleges and universities, retail clinics, public health departments, nurse managed clinics, homeless clinics, and home health. NPs hold prescriptive authority in all 50 states and the District of Columbia.

AANP appreciates that the Delaware Department of Health and Social Services, Office of Health Facilities Licensing and Certification Division of Health Care Quality made it a priority to update their home health agency regulations. As noted by the agency, the previous requirement that a physician establish a written plan of care for each patient receiving skilled home health agency services created an extreme hardship for home care providers and the vulnerable patients needing skilled home health services. These proposed changes will update the Delaware requirements to be consistent with nationally recognized standards of practice and clarify the regulatory requirements to ensure patients have access to safe and quality care from a skilled home health agency.

We agree that updating the home health regulations pursuant to the recent changes made by section 3708 of the CARES Act will better align the Department of Health and Social Services regulations with 42 CFR 440.70 and provide Delaware patients with critical increased access to home health care services.

We support the proposed changes to 16 DE Admin. Code 4410, as they would ensure Delaware Home Health regulations are consistent with nationally recognized standards of practice and federal regulations.

This new authority streamlines the home health care process and reduces the risk of costly complications resulting from delays in care.

We thank you for the opportunity to comment on these proposed changes to the Delaware Department of Health and Social Services, Office of Health Facilities Licensing and Certification, Division of Health Care Quality Regulations Governing Skilled Home Health Agencies. We again express our appreciation for making increased access to home health services a priority. These proposed regulations will increase the ability of NPs and other clinicians to deliver high-quality, cost-effective health care and will improve access to these services for residents of Delaware.

Response: Thank you very much for your comments.

Dr. Susan Conaty-Buck, DNP, FNP-C, FAANP Chair, DNCP Advocacy Committee, Delaware Coalition of Nurse Practitioners

Comment: This email is from the members of the Delaware Coalition of Nurse Practitioners, the state membership organization representing the 1,358 Nurse Practitioners providing care to patients in Delaware. We are writing in support of Delaware Department of Health and Social Services, Office of Health Facilities Licensing and Certification, Division of Health Care Quality's proposed regulatory amendments permitting allowable providers, including a person currently licensed as an advanced practice nurse pursuant to 24 Del. C. Ch. 17, to order skilled home health services, thus allowing Delawareans greater access to skilled home health services.

Nurse Practitioners are advanced practice registered nurses who are prepared at the masters or doctoral level to provide primary, acute, chronic and specialty care to patients of all ages in a variety of settings. This work includes patient assessment, ordering and evaluating diagnostic testing, providing an evidence-based plan of care and following up to ensure the patient response to care meets expectations. Nurse Practitioners are qualified to order care for home health patients without the collaboration of another healthcare professional.

Prior to the recommended amendment, home health regulations in 16 DE Admin. Code 4410 required a physician to provide a plan of care for any patient requiring skilled home health agency services. This dangerously delayed care for some of Delaware's most vulnerable patients. Updating Delaware's home health regulations to concur with Section 3708 of the CARES Act ensures qualified allowable providers (including NPs) are able to provide care that will better align Department of Health and Social Services regulations with 42 CFR 440.70. This makes Delaware's requirements consistent with nationally recognized standards of practice and clarifies the regulatory requirements needed to ensure patients in Delaware have access to safe, effective care from a skilled home health agency.

Thank you for offering these proposed changes to the regulations governing Skilled Home Health Agencies which demonstrate the state's prioritization of the health of its citizens. Increasing the ability of qualified NPs to deliver prompt, high-quality, cost-effective health care to patients in all settings improves Delaware's health and wellness.

Response: Thank you very much for your comment.

*Please note that no changes were made to the regulation as originally proposed and published in the August 2021 issue of the *Register* at page 138 (25 DE Reg. 138). A copy of the final regulation is available at:

4410 Skilled Home Health Agencies (Licensure)

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 3000

ORDER

Delaware's Temporary Assistance for Needy Families (TANF)

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES
IN THE MATTER OF

REVISION OF THE REGULATION	
OF DELAWARE'S	
DELAWARE SOCIAL SERVICES MANUAL (DSSM)	
DSSM 3000 and 3000.1	

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Defining and Funding Delaware's Temporary Assistance for Needy Families (TANF). The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the August 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2021 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after November 11, 2021 Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) proposes to amend Division of Social Service Manual (DSSM) regarding Delaware's Temporary Assistance for Needy Families (TANF), specifically, to provide clear and accurate information on the TANF program.

Statutory Authority

45 CFR §260.20;
45 CFR §201, §261, §263, §264, §265, §270, §283

Background

DSSM 3000 Defining Delaware's Temporary Assistance for Needy Families (TANF) Program explains the federal purposes, state objectives, and the responsibilities of the state and recipients for the TANF program.

DSSM 3000.1 Funding the TANF Program explains funding provisions for the TANF Block Grant, including the funding amount, contingency funding, administrative spending, and penalties.

Purpose

The purpose of DSSM 3000 Defining Delaware's Temporary Assistance for Needy Families (TANF) Program is to add the federal purposes of the program, revise the state's objectives, and update the formatting. The purpose of DSSM 3000.1 Funding the TANF Program is to remove or replace outdated text, add all TANF funding penalties, and update the formatting.

Public Notice

In accordance with the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DSS gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on August 31, 2021.

Fiscal Impact Statement

DSS amended these regulations to provide clear and accurate information on the TANF program. These regulations are currently in place and there are no new financial responsibilities associated with the amendments.

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding Defining and Funding Delaware's Temporary Assistance for Needy Families (TANF), is adopted and shall be final effective November 11, 2021.

10/22/2021

Date of Signature

Molly Magarik, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the August 2021 issue of the *Register* at page 144 (25 DE Reg. 144). A copy of the final regulation is available at:**

Delaware's Temporary Assistance for Needy Families (TANF)

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Sections 103 and 512 (31 Del.C. §§103 & 512)
16 DE Admin. Code 11006

ORDER

Adjusting Child Care Payments And Authorizations

BEFORE THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

IN THE MATTER OF:

REVISION OF THE REGULATION	
OF DELAWARE'S	
DELAWARE SOCIAL SERVICES MANUAL (DSSM)	
DSSM 11006.4.8 and 11006.4.9	

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Child Care Subsidy Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the August 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2021 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after November 11, 2021 Delaware Health and Social Services (DHSS) /Division of Social Services (DSS) proposes to amend Division of Social Service Manual (DSSM) regarding the Child Care Subsidy Program.

Statutory Authority

45 CFR 98.45 (I)(6)

Background

DSSM 11006.4.8 Completing Correct Transactions explains the process that DSS staff must complete to correct a child care provider payment when a processing error occurs or there is a change in care or family circumstances reported or discovered during an authorized month.

DSSM 11006.4.9 Completing Manual Adjustments explains the process that DSS staff must complete to correct a child care authorization when a processing error occurs.

Purpose

The purpose of this proposed regulation is to provide instructions for DSS staff on completing adjustments to provider payments and child care authorizations.

Public Notice

In accordance with the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/ DSS gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on August 31, 2021.

Fiscal Impact Statement

DSS is adding the regulations to provide clear and accurate directions on completing adjustments to provider payments and child care authorizations. These procedures are currently in place and there are no new financial responsibilities associated with the regulations.

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 31, 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, is adopted and shall be final effective November 11, 2021.

10/14/2021

Date of Signature

Molly Magarik, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the August 2021 issue of the *Register* at page 144 (25 DE Reg. 144). A copy of the final regulation is available at:**

Adjusting Child Care Payments And Authorizations

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Sections 103 and 512 (31 **Del.C.** §§103 & 512)
16 **DE Admin. Code** 11002

ORDER**Child Care Administration and Integrity**

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES
IN THE MATTER OF

REVISION OF THE REGULATION
OF DELAWARE'S
DELAWARE SOCIAL SERVICES MANUAL (DSSM)
DSSM 11002.5, 11002.5.1 and 11002.10

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Child Care Subsidy Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the August 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2021 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after November 11, 2021 Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) proposes to amend Division of Social Service Manual (DSSM) regarding the Child Care Subsidy Program.

Statutory Authority

45 CFR 98.68
31 *Del C.* §103

Background

DSS is amending DSSM 11002.5 to provide a comprehensive list of the responsibilities for the Child Care Subsidy Program held by DHSS, DSS, and units within DSS. DSSM 11002.5.1 is being repealed as the policy is redundant, and the responsibilities of DSS are being added to DSSM 11002.5. DSSM 11002.5 now includes all units within DSS that manage components of the Child Care Subsidy Program.

DSS is adding DSSM 11002.10 to the Child Care administration policies to outline how DSS is ensuring integrity in the Child Care Subsidy Program. DSS supports program integrity by collaborating with other state agencies, verifying eligibility and payments, monitoring providers, maintaining quality assurance standards, training staff, and educating families on their rights and responsibilities as recipients of child care subsidies.

Purpose

The purpose of this proposed regulation is to amend DSSM 11002.5 to explain the responsibilities of the Department of Health and Social Services (DHSS), the Division of Social Services (DSS), and units within DSS for the administration of Delaware's Child Care Subsidy Program and to amend DSSM 11002.10 to institute guidelines to ensure integrity and accountability in Delaware's Child Care Subsidy Program.

Public Notice

In accordance with the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DSS gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on August 31, 2021.

Fiscal Impact Statement

DSS is amending the regulations to provide information on the administration of the Child Care Subsidy Program. These policies outline the administrative practices of DHSS and DSS and do not have any new fiscal requirements.

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program is adopted and shall be final effective November 11, 2021.

10/22/2021

Date of Signature

Molly Magarik, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the August 2021 issue of the *Register* at page 147 (25 DE Reg. 147). A copy of the final regulation is available at:**

Child Care Administration and Integrity

DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION DIVISION

Statutory Authority: 29 Delaware Code, Section 2521 (29 Del.C. §2521)

ORDER

BEFORE THE DELAWARE DEPARTMENT
OF JUSTICE CONSUMER PROTECTION UNIT
IN THE MATTER OF

REGULATION OF DELAWARE'S HEALTH
SPA ACT 105

|
|
|

105 Health Spa Act Regulation

Nature of the Proceedings

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and 29 Del.C. §2521, the Consumer Protection Unit of the Delaware Department of Justice ("the Unit") is proposing the Health Spa Act Regulation to assist in the implementation and enforcement of the Health Spa Regulation Act by clarifying instructions for health spa registration, fee payment, contract requirements, and limitations of initiation fees.

The Unit published its notice of proposed regulation pursuant to 29 Del.C. § 10115 in the September 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 2021, at which time the Unit would receive information, factual evidence, and public comment to the proposed regulation.

No comments were received by the Unit.

Summary of Proposed Regulation

The proposed regulation was created to assist in the implementation and enforcement of the Health Spa Regulation Act by clarifying instructions for health spa registration, fee payment, contract requirements, and limitations of initiation fees.

Possible Terms of the Action Agency

None.

Other Regulations That May be Affected by the Proposal

The agency does not believe that other regulations will be impacted.

Findings of Fact

The Unit finds the proposed regulation as set forth in the September 2021 Register of Regulations should be adopted with additions. The Unit finds that the proposed does not require further public notice or comment because the amendments are non-substantive pursuant to 29 Del.C. §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to the Health Spa Act is adopted and shall be final effective November 11, 2021.

October 15, 2021
Date of Signature

Marion Quirk
Director, Consumer Protection Unit

105 Health Spa Act Regulation6 Del.C. §§4201 - 4222*(Break in Continuity of Sections)***3.0 Registration***(Break in Continuity Within Section)*

3.5 All Health Spas must be properly registered by January 1 of every calendar year. A calendar year runs from January 1 to December 31.

3.5.1 Applications to register must be emailed to the Director at HealthSpaRegulation@Delaware.gov by ~~November 15~~ **December 1** prior to the year the Health Spa is registering for.

3.5.2 Applications submitted after ~~November 15~~ **December 1** may be subject to fines at the Director's discretion.

*(Break in Continuity of Sections)***6.0 Initiation Fees Limited***(Break in Continuity Within Section)*

6.3 Initiation fees include ~~annual fees.~~ one-time facility fees, club entrance fees, and one-time fees marketed as refundable pending successful completion of the contract.

*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2021 issue of the *Register* at page 264 (25 DE Reg. 264). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

105 Health Spa Act Regulation

DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 362(a) and 29 Delaware Code, Section 10113(b)(5) (26 **Del.C.** §362(a) & 29 **Del.C.** §362(b)(5))
26 **DE Admin. Code** 3008

ORDER

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

IN THE MATTER OF THE ADOPTION OF RULES		
AND PROCEDURES TO IMPLEMENT THE		
RENEWABLE ENERGY PORTFOLIO STANDARDS		
ACT, 26 <i>DEL. C.</i> §§ 351-363, AS APPLIED TO		
RETAIL ELECTRICITY SUPPLIERS (OPENED		PSC REGULATION
AUGUST 23, 2005, REOPENED SEPTEMBER 4, 2007;		DOCKET NO. 56
AUGUST 5, 2008; SEPTEMBER 22, 2009; AUGUST		
17, 2010; SEPTEMBER 6, 2011; SEPTEMBER 18, 2012;		
FEBRUARY 2, 2017; MARCH 31, 2021; AUGUST		
25, 2021)		

ORDER NO. 9896 AMENDING ORDER NO. 9871

AND NOW, this 6th day of October 2021, the Delaware Public Service Commission ("Commission") determines and orders as follows:

WHEREAS, in June 2021, the General Assembly passed Senate Bill 2, which was signed by the Governor on September 17, 2021, will amend the *Renewable Energy Portfolio Standards Act* ("*REPSA*") at §§ 352 and 360 of Title 26 of the Delaware Code;¹ and

WHEREAS, Senate Bill 2 added the definitions of "Community-owned energy generating facility" and "Unsubscribed energy;" and

WHEREAS, the attached revisions to the Commission's *Rules and Procedures to Implement the Renewable Energy Portfolio Standard*, 26 *Del. Admin. C.* § 3008 *et seq.* ("*RPS Rules*")² are necessary to reflect the Senate Bill 2 amendments by updating the definitions; and

WHEREAS, under 29 *Del. C.* § 10113(b)(5), an agency's "amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations" are exempt from the requirements of 29 *Del. C.* c. 101 relating to notice and public comment and may instead be informally adopted or amended; and

WHEREAS, the attached revisions to the *RPS Rules* also include nonsubstantive changes to alter style or form or to correct technical errors; and

WHEREAS, given that the attached revisions are necessary to make the *RPS Rules* consistent with the Senate Bill 2 amendments to *REPSA*, to address style and form, and to correct technical errors, the Commission finds that 29 *Del. C.* § 10113(b)(5) apply to these amendments;

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

1. That pursuant to 26 *Del. C.* § 362(a) and 29 *Del. C.* § 10113(b)(5), the Commission hereby amends its *Rules and Procedures to Implement the Renewable Energy Portfolio Standard*, 26 *Del. Admin. C.* § 3008, as

proposed herein. A markup version of the *RPS Rules* reflecting only the amended sections is attached as **Exhibit "B"**.

2. That pursuant to 26 *Del. C.* §§ 10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order, including Exhibits "B," to the Registrar of Regulations for publication in the November 1, 2021 edition of the *Delaware Register of Regulations*. An exact copy of the *RPS Rules*, as amended, shall be published in the *Delaware Register of Regulations* as the current official regulation as defined in 29 *Del. C.* § 1132.

3. That the effective date of the amendments to the *RPS Rules* shall be the later of November 11, 2021, or ten days after publication in the *Delaware Register of Regulations*.

4. 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, Chairman

Joann Conaway, Commissioner

Harold Gray, Commissioner

Kim Drexler, Commissioner

Manubhai C. Karia, Commissioner (absent)

ATTEST: Matthew Hartigan, Acting Secretary

¹ Senate Bill 2 is attached hereto as Exhibit "A."

² The Commission Order No. 6931 dated June 6, 2006 and subsequently amended with last made changes by Order No. 9768 dated March 31, 2021.

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

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Wednesday, November 10, 2021** beginning at **1:30 p.m.** The public hearing will be conducted on a remote platform. Please check the Commission's website, www.drbc.gov, on or after October 29, 2021 for details regarding the draft docket decisions that will be subjects of the public hearing and for information on how to attend and participate in this remote public hearing.

The Commission's quarterly business meeting will be held the following month, on **Wednesday, December 08, 2021**, beginning at **10:30 a.m.** The business meeting will also be conducted remotely. Details about the meeting format and how to attend will be posted on the Commission's website, www.drbc.gov, no later than November 26, 2021.

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

DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**PUBLIC NOTICE****501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission (DHRC) pursuant to 3 *Del. C.* Section 10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments for clarity by adding a definition.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on October 5, 2021, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On October 12, 2021, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to the initial 30-day comment period beginning on November 1, 2021 to December 1, 2021 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on December 14, 2021 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB December 1, 2021. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark A. Davis.

PLANT INDUSTRIES SECTION**PUBLIC NOTICE****805 Rules and Regulations for Delaware Domestic Hemp Production Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 3 of the Delaware Code, Chapter 1, Sections 101(2) & (3), Delaware Department of Agriculture and Plant Industries Section is proposing regulations governing the Delaware Domestic Hemp Production Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Plant Industries Section, 2320 South DuPont Highway, Camden DE 19901, by email to dda_hempprogram@delaware.gov by 4:30 p.m. on December 1, 2021. Please identify in the subject line: Regulations Governing Delaware Domestic Hemp Production Program.

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

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

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

Meeting information can be accessed via the public meeting calendar.

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

The next meeting is scheduled for November 18, 2021.

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

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

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

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Assertive Community Integration Support Team (ACIST)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §440.386, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Health Home Services, specifically, Assertive Community Integration Support Team (ACIST) as an option from the Delaware Medicaid State Plan.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2021. Please identify in the subject line: Assertive Community Integration Support Team (ACIST).

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

4202 Control of Communicable and Other Disease Conditions

Pursuant to 16 Del. C. §122(3)(a) and §504, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On November 1, 2021, the Division of Public Health plans to publish as "proposed" revisions to the Control of Communicable and Other Disease Conditions regulations. These revisions include previously proposed requirements for mask use among all students, faculty, staff, and visitors inside K-12 school buildings, regardless of vaccination status, as well as a severability clause, and new requirements for school staff to provide evidence of COVID-19 vaccination or undergo regular COVID-19 testing. The proposed regulation published in the September 2021 *Register of Regulations* (25 DE Reg. 262 (09/01/21)) is no longer being considered in favor of the amendments presented here.

Copies of the proposed regulations are available for review in the November 1, 2021 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Wednesday, December 1, 2021, at:

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

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4462 Public Drinking Water Systems

Pursuant to 16 Del. C. §122(3)(c), Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems. On November 1, 2021, the Division of Public Health plans to publish as "proposed" revisions to the Public Drinking Water Systems regulations. The revisions include striking a word in subsection 12.15.2 that was mistakenly not stricken during a previous revision.

Copies of the proposed regulations are available for review in the November 1, 2021 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

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

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

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH
PUBLIC NOTICE

1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees

In compliance with the *Administrative Procedures Act* (29 Del. C. Ch. 101) and under the authority of 21 Del. C. § 4177D, the State of Delaware Department of Health and Social Service's Division of Substance Abuse and Mental Health ("the Division") is proposing the repeal of 2 *DE Admin. Code* § 1201 Driving Under the Influence Evaluation Program, Courses Of Instruction, Programs of Rehabilitation and Related Fees.

A person may make suggestions or provide compilations of data, testimony, briefs, or other materials concerning the Division's proposal by written submission to the Community Behavioral Health Bureau, Division of Substance Abuse and Mental Health. The Division will receive submissions made before 4:30 p.m. on December 1, 2021, by mail to 1901 North DuPont Highway, New Castle, DE 19720-0906, by fax to (302) 255-4427, and by email to david.okeke@delaware.gov. Please identify in the subject line: 1201 DUI Regulations.

The Division's determination to adopt this proposal will include analysis and consideration of submissions received by the Division.

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH
PUBLIC NOTICE

1204 Drinking Driver Programs Standard Operating Procedures

In compliance with the *Administrative Procedures Act* (29 Del. C. Ch. 101) and under the authority of 21 Del. C.

CALENDAR OF EVENTS/HEARING NOTICES

§ 4177D, the State of Delaware Department of Health and Social Service's Division of Substance Abuse and Mental Health ("the Division") is proposing the repeal of 2 *DE Admin. Code* § 1204 Drinking Driver Programs Standard Operating Procedures.

A person may make suggestions or provide compilations of data, testimony, briefs, or other materials concerning the Division's proposal by written submission to the Community Behavioral Health Bureau, Division of Substance Abuse and Mental Health. The Division will receive submissions made before 4:30 p.m. on December 1, 2021, by mail to 1901 North DuPont Highway, New Castle, DE 19720-0906, by fax to (302) 255-4427, and by email to david.okeke@delaware.gov. Please identify in the subject line: 1204 DUI Regulations.

The Division's determination to adopt this proposal will include analysis and consideration of submissions received.

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

PUBLIC NOTICE

6003 DUI Programs

In compliance with the *Administrative Procedures Act* (29 *Del. C.* Ch. 101) and under the authority of 21 *Del. C.* § 4177D, the State of Delaware Department of Health and Social Service's Division of Substance Abuse and Mental Health ("the Division") is proposing regulations governing driving under the influence programs ("DUI programs").

A person may make suggestions or provide compilations of data, testimony, briefs, or other materials concerning the Division's proposal by written submission to the Community Behavioral Health Bureau, Division of Substance Abuse and Mental Health. The Division will receive submissions made before 4:30 p.m. on December 1, 2021, by mail to 1901 North DuPont Highway, New Castle, DE 19720-0906, by fax to (302) 255-4427, and by email to david.okeke@delaware.gov. Please identify in the subject line: 6003 DUI Regulations.

The Division's determination to adopt this proposal will include analysis and consideration of submissions received.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

PUBLIC NOTICE

Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 *Del.C.* §304, the Delaware Alcoholic Beverage Control Commissioner proposes to introduce an updated definition within Rule 1008, governing the standards of a restaurant and bottle club, specifically concerning the number of dining seats at tables on the premises.

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

Wendy Hudson
Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 3rd Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to OABCCrulescomments@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4 p.m. on December 1, 2021.

The action concerning determination of whether to adopt the proposed regulation will be based upon consideration of the written comments and any other written materials filed by the public.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2925 REAL ESTATE COMMISSION EDUCATION COMMITTEE
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission ("Commission") has proposed revisions to its Education Guidelines ("Guidelines").

Specifically, subsection 10.6, pertaining to first time instructor applicants, has been revised to state that an applicant who applies for instructor approval for the first time may be approved to teach only one continuing education module, and after obtaining at least 60 positive course evaluations, the instructor may apply to teach additional modules. This change broadens the instructor approval process to permit first time applicants to teach more than just Module 7.

A public hearing will be held on December 9, 2021 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address or at danielle.cross@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be December 27, 2021. The Commission will deliberate on all of the public comments at its regularly scheduled meeting.

DIVISION OF PROFESSIONAL REGULATION
CONTROLLED SUBSTANCE ADVISORY COMMITTEE
PUBLIC NOTICE
Uniform Controlled Substances Act Regulations

Pursuant to 16 **Del.C.** § 4731(a), the Delaware Secretary of State has proposed revisions to the Uniform Controlled Substance Act Rules and Regulations. Specifically, the proposed changes, set forth in subsection 4.7, address the expiration of controlled substance prescriptions for Schedule II and III medications and the partial filling of controlled substance prescriptions for Schedule II - V medications. These changes will make the Rules and Regulations consistent with the federal Comprehensive Addiction and Recovery Act, which Congress passed in 2016. The Controlled Substance Advisory Committee will serve as the Secretary of State's designee in the hearing on the proposed regulatory changes. 16 **Del.C.** § 4731(b). Additional technical and stylistic edits were made to the regulation as well.

A public hearing will be held on December 1, 2021 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Office of Controlled Substances, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Office of Controlled Substances at the above address or at sarah.siok@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be December 16, 2021. The Controlled Substance Advisory Committee will deliberate on all of the public comments at its next regularly scheduled meeting.
