
Delaware Register of Regulations

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Volume 26 - Issue 5, Pages 341 - 416



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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before October 15, 2022.

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INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 16	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 17	4:30 p.m.

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DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303 (14 **Del.C.** §§122(b)(15) & 303)
14 **DE Admin. Code** 1034

ERRATA

1034 DIAA Health and Safety Requirements

* **Please Note:** Regulation 1034 DIAA Health and Safety Requirements was last published in the September 1, 2022 issue of the *Register of Regulations* (26 **DE Reg.** 200 (09/01/22)).

While the regulation title in the Final Order was correctly submitted as 1034 DIAA Health and Safety Requirements, the title before the regulation text was submitted as 1034 Health and Safety Requirements. The regulation title has been corrected in the Delaware Administrative Code to be 1034 DIAA Health and Safety Requirements.

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 AGRICULTURE
OFFICE OF THE SECRETARY**

Statutory Authority: 3 Delaware Code, Chapters 1 and 71 (3 **Del.C.** Chs. 1 & 71)

ORDER**102 Secretarial Powers****In Re: EMERGENCY RULE FOR DEPARTMENT OF AGRICULTURE RESPONSE TO AVIAN INFLUENZA AND OTHER CONTAGIOUS OR INFECTIOUS ANIMAL DISEASES - Final Order**

WHEREAS, there has been a recent diagnosis of highly pathogenic avian influenza (HPAI) in poultry within the State of Delaware including in small backyard flocks; and

WHEREAS, the Department of Agriculture has the power to abate, suppress, eradicate and prevent the outbreak of HPAI, a contagious, infectious and injuriously dangerous disease that has affected poultry in the State of Delaware (3 **Del.C.** §101(1) and §7101); and

WHEREAS, the Department of Agriculture has authority to take measures necessary to control disease in and ensure the welfare of poultry, as well as horses, cattle, cultured aquatic stock and other farm animals; (3 **Del.C.** §101(8)); and

WHEREAS, the Department of Agriculture has authority to devise and execute measures necessary to mitigate disease occurrences in animal species, if such disease is able to affect poultry or livestock, or is capable of causing disease in humans. (3 **Del.C.** §101(9)); Chapter 73, Chapter 74, and Chapter 81); and

WHEREAS, the Department seeks to amend Title 3 to add a new Section 102 to clarify the circumstances under which the Secretary may issue emergency orders in conjunction with the suppression or eradication of contagious,

infectious, and dangerous diseases affecting poultry and other animals; and

WHEREAS, the Department will accept, consider and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of Secretary Michael T. Scuse, Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE 19901; and

WHEREAS, in accordance with the provisions of 29 **Del.C.** § 10119(3), this Order shall be effective for 120 days from the date of execution and may be renewed once for a period not exceeding 60 days; and

WHEREAS, a copy of this Order will be submitted to the Registrar for publication in the next issue of the Delaware Register of Regulations.

NOW, THEREFORE, IT IS ORDERED this 4th day of October, 2022 that the following "Amendment to the Delaware Department of Agriculture Rules" shall take effect immediately.

Delaware Department of Agriculture
Michael T. Scuse
Cabinet Secretary

102 Secretarial Powers

1.0 Authority

This regulation is written under the authority of Title 3, Chapters 1 and 3, and Sections 101 and 302; and Chapter 71 Sections 7101 and 7104 of the **Delaware Code**.

2.0 Authority of Secretary To Prevent Spread of Contagious or Infectious Diseases

- 2.1 In order to prevent the spread of contagious or infectious diseases, the Secretary, or the Secretary's agent, may:
 - 2.1.1 Visit at any time the location in any county where the Secretary has reason to believe any contagious or infectious disease may exist;
 - 2.1.2 Test any animal for any contagious disease by any method;
 - 2.1.3 Order every animal which has been exposed to a contagious or infectious disease to be isolated in the manner deemed necessary to prevent the spread of the disease;
 - 2.1.4 Order any location where any contagious or infectious disease has existed or presently exists to be quarantined, so that no domestic animal of the same species may be removed from or brought to the quarantined premises until it is properly disinfected;
 - 2.1.5 Issue any order deemed necessary or expedient to prevent the communication of any contagious or infectious disease from the quarantined area;
 - 2.1.6 Issue any order requiring the destruction of any animal infected with or exposed to an infectious or contagious disease, and for the proper destruction of its hide or carcass, and any object which might carry infection or contagion;
 - 2.1.7 Issue an order requiring disinfection of every building, premises, vehicle, and every object which may breed or convey any infectious or contagious disease;
 - 2.1.8 Destroy any building or article that is contaminated and incapable of proper disinfection;
 - 2.1.9 Modify, cancel, or withdraw the terms of any order the Secretary issues pursuant to this subtitle; and
 - 2.1.10 Institute a livestock patrol along the State borders to prevent any livestock affected with any contagious or infectious disease from being brought into the State contrary to the laws regulating shipment of livestock into the State.
- 2.2 The owner or his agent shall secure the animal to make it possible for the Secretary or his agent to apply any test.

NUTRIENT MANAGEMENT COMMISSION

Statutory Authority: 3 Delaware Code, Section 2220(a) and 29 Delaware Code, Section 10119
(3 **Del.C.** §2220(a) & 29 **Del.C.** §10119)
3 **DE Admin. Code** 1201

ORDER**1201 Nutrient Management Certification Regulations**

WHEREAS, the Nutrient Management Commission (the "Commission") has been charged by the Delaware legislature pursuant to 3 *Del. C.* § 2220(a) with the power to the power to develop, review, approve and enforce regulations governing the certification of individuals engaged in the business of land application of nutrients and the development of nutrient management plans; and

WHEREAS, the United States Department of Agriculture and the Delaware Department of Agriculture have determined that Highly Pathogenic Avian Influenza (HPAI) remains at elevated risk to the poultry industry in Delaware, and that on March 10, 2022 (with a further modification on March 18, 2022) the Secretary of Agriculture for Delaware issued a Control Order covering the movement and handling of poultry, poultry manure and poultry mortality due to the presence of HPAI on three Delaware poultry farms;

WHEREAS, to protect family farms and the regional poultry industry, Delaware poultry growers must be able to deviate from the State Technical Standards pertaining to Temporary Field Staging, that are incorporated by reference into the Delaware Nutrient Management Commission's regulations at 3 *Del. Admin.* § 1201.3.0 as well as Commission Regulation 6.3.4 pertaining to nutrient handling; and

WHEREAS, the Commission finds that adoption of an emergency regulation to govern the deviation from the State Technical Standards Commission Regulations must occur on an emergency basis in order to "formulate a systematic and economically viable nutrient management program that will both maintain agricultural profitability and improve water quality in Delaware." 3 *Del. C.* § 2201(4). In addition, this emergency regulation serves to protect "the interest of the overall public welfare" 3 *Del. C.* § 2201(1); and

WHEREAS, the Commission will accept, consider, and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of Delaware Nutrient Management Commission, Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901; and

WHEREAS, in accordance with the provisions of 29 **Del. C.** § 10119(3), this Order shall take effect on November 1, 2022 and be effective for 120 days from the date of execution and shall be renewed once for a period not exceeding 60 days; and

WHEREAS, a copy of this Order will be submitted to the Registrar for publication in the next issue of the Delaware Register of Regulations.

NOW, THEREFORE, the Rules and Regulations of the Delaware Nutrient Management Commission, attached hereto as Exhibit A, shall take effect on November 1, 2022.

IT IS ORDERED this 4th day of October 2022 by the Delaware Nutrient Management Commission.

/s/ F. Kenneth Blessing, Jr., Chairperson	/s/ Laura Hill
/s/ Mark Adkins	Marcia Fox (absent)
Jon Nichols, Jr. (absent)	/s/ Larry Jester
/s/ Tak Keen	Wayne Hudson (absent)
/s/ Bud O'Neill	/s/ Scott Webb
/s/ Hannah Small	/s/ Alan Bailey
Ken Horeis (absent)	/s/ Gary Killmon

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

**1201 Nutrient Management Certification Regulations
(Break in Continuity of Sections)****6.0 Nutrient Handling Requirements**

- 6.1 As required by 3 Del.C. §2201 et.al, Nitrogen and Phosphorus fertilizers shall be applied according to an approved Nutrient Management plan.
- 6.2 For land areas not required to have a Nutrient Management plan, applications of Nitrogen and Phosphorus fertilizers by anyone holding a commercial nutrient handler or nutrient consultant certification, or anyone required to be certified at said level pursuant to 3 Del.C. §2242 and Section 4.0 herein, are prohibited when one of the following conditions exist:
- 6.2.1 The surface area of application is impervious such as sidewalks, roads and other paved areas and the misdirected fertilizer is not removed on the same day of application;
- 6.2.2 The surface area is covered by snow or frozen; or
- 6.2.3 The date of application is between December 7 and February 15.
- 6.3 Nutrient Storage and Staging Requirements
- 6.3.1 For any person required to develop and implement a nutrient management plan and who stores, handles, or stages any manure in any area that may be exposed to rainfall, the following requirements must be met.
- 6.3.2 Any outdoor storage of manure within the production areas, or staging within the application areas must be the result of exhausting manure storage structure space available by the nutrient generator or nutrient applicator of such manure. Stockpiling must be performed in accordance with State Technical Standards.
- 6.3.3 Any outdoor stockpiling of poultry manure within the production area or any area other than the application area will be limited to 14 days without a cover.
- 6.3.4 Any outdoor temporary field staging of poultry manure within the application area will be limited to ~~90 days~~ 120 days.
- 6.3.4.1 Authorization for exceeding the 90 day time period may be granted on a case by case situation if approved by the nutrient consultant and reported to the nutrient management program administrator. Please refer to State Technical Standards.
- 6.3.5 In order to prevent discharges of pollutants to surface waters, any outdoor staging of poultry manure within the application area shall be handled according to the following:
- 6.3.5.1 The manure must be at least 6 feet high and in a conical cross section shape; and
- 6.3.5.2 Poultry litter manure shall not consist of more than 5% crust out material; and
- 6.3.5.3 The selection of the staging site must consider the highest, most practical site possible and shall not use the same site more than once every two years (unless allowable under conditions as described in the State Technical Standards). Refer to State Technical Standards; and
- 6.3.5.4 The staging site must be located at least 100 feet from a public road, 100 feet from any surface water and 200 feet from any residence not located on the property; and
- 6.3.5.5 The staging site must be at least 200 feet from a domestic well and 300 feet from a public water supply well; and
- 6.3.5.6 Post litter removal treatment must include the removal of all litter and the top 1-2 inches of topsoil if the topsoil is co-mingled with the litter to prevent nutrient loads; and
- 6.3.5.7 A production crop or vegetative cover crop must be established and maintained at the staging site as soon as practical following post removal treatment.

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

<http://regulations.delaware.gov/register/november2022/emergency/26 DE Reg 353 11-01-22.htm>

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF 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**

Notice of Proposed Amendments to Regulations of the Harness Racing Commission

Summary

The Harness Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 501. The purpose of the proposed regulations is to amend the rules regarding who can administer Bleeder medication (Furosemide/Salix), in light of an ongoing and nationwide shortage of veterinarians. This amendment permits veterinary technicians to administer Bleeder medication, under the supervision of a licensed veterinarian. This change has already been adopted on a temporary emergency basis, and as there is no indication that the shortage of veterinarians will resolve soon, the Commission desires to implement this rule amendment on a permanent basis. Other regulations issued by the Harness Racing Commission are not affected by this proposal. The Harness Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the November 1, 2022 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Harness Racing Commission, and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: https://regulations.delaware.gov/register/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments

must be received on or before December 1, 2022. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after December 1, 2022, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Harness Racing Commission, the amendments shall take effect ten days after being published as final in the Delaware Register of Regulations. The Emergency Regulation published in the August *Register* and signed on July 7, 2022 shall end on the date this proposed amendment becomes effective.

Delaware Harness Racing Commission

Mark A. Davis

Executive Director

*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/november2022/proposed/26 DE Reg 355RFA 11-01-22.pdf>

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 355 11-01-22.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 3 Delaware Code, Sections 101, 302, 7101, 7104, 7302, 7322, 8101, 8103, 8104, and 8105 (3 Del.C. §§101, 302, 7101, 7104, 7302, 7322, 8101, 8103, 8104 & 8105)

PUBLIC NOTICE

102 Secretarial Powers

Summary

Pursuant to the authority granted by Title 3 chapters 1, 3, 71, 73, 81 of the Delaware Code, the Department of Agriculture proposes to amend its regulations. The purpose of the amended regulations is to provide clear detail regarding the authority of the Secretary of the Delaware Department of Agriculture to prevent the spread of contagious or infectious diseases.

The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

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

Interested parties may offer written comments on the proposed regulations indicating whether these proposed regulations should be adopted, rejected or modified. Interested parties may hand deliver to the Department, any written suggestions, data, briefs or other materials at the above address. Pursuant to 29 Del.C. § 10118(a), public

comments must be received on or before December 1, 2022. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

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

Effective Date of Amendments to Regulations

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

***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/november2022/proposed/26 DE Reg 356RFA 11-01-22.pdf>

102 Secretarial Powers

1.0 Authority

This regulation is written under the authority of Title 3, Chapters 1 and 3, and Sections 101 and 302; Chapter 71 Sections 7101 and 7104; Chapter 73 and Sections 7302 and 7322; and Chapter 81 Sections 8101, 8103, 8104, and 8105 of the **Delaware Code**.

2.0 Authority of the Delaware Secretary of Agriculture to Prevent the Spread of Contagious or Infectious Diseases

- 2.1 In order to prevent the spread of contagious or infectious diseases, the Secretary, or the Secretary's agent, may:
 - 2.1.1 Visit at any time the location in any county where the Secretary has reason to believe any contagious or infectious disease may exist;
 - 2.1.2 Test any animal for any contagious or infectious disease by any method;
 - 2.1.3 Order every animal which has been exposed to a contagious or infectious disease to be isolated in the manner deemed necessary to prevent the spread of the disease;
 - 2.1.4 Order any location where any contagious or infectious disease has existed or presently exists to be quarantined, so that no domestic animal of the same species may be removed from or brought to the quarantined premises until it is properly disinfected;
 - 2.1.5 Issue any order deemed necessary or expedient to prevent the communication of any contagious or infectious disease from the quarantined area;
 - 2.1.6 Issue any order requiring the destruction of any animal infected with or exposed to an infectious or contagious disease, and for the proper destruction of its hide or carcass, and any object which might carry infection or contagion;
 - 2.1.7 Issue an order requiring disinfection of every building, premises, vehicle, and every object which may breed or convey any infectious or contagious disease;
 - 2.1.8 Destroy any building or article that is contaminated and incapable of proper disinfection;
 - 2.1.9 Modify, cancel, or withdraw the terms of any order the Secretary issues pursuant to this regulation; and
 - 2.1.10 Institute a livestock patrol along the State borders to prevent any livestock affected with any contagious or infectious disease from being brought into the State contrary to the laws regulating shipment of livestock into the State.
- 2.2 The owner or the owner's agent shall secure the animal to make it possible for the Secretary or the Secretary's agent to apply any test.

PROPOSED REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

915 James H. Groves High School

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §122(b)(18), the Delaware Department of Education ("Department") developed amendments to 14 DE Admin. Code 915 James H. Groves High School. The regulation provides for the operation of James H. Groves High School, an adult education high school. The proposed amendments in this regulation include adding a defined term in Section 1.0, replacing "State Director" with "Director of Adult and Prison Education Resources" throughout the regulation, and striking the standardized assessment requirement from subsection 2.1.1.1.2. In addition, the proposed amendments include nonsubstantive changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

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

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation addresses the operation of James H. Groves High School, an adult education high school. The proposed amendments to the regulation are not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The proposed amendments are not designed to help ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The proposed amendments are not designed to help ensure students' health and safety is protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The proposed amendments are not designed to help ensure that all students' legal rights are respected.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision-making authority and accountability for addressing the subject to be regulated. By statute (14 Del.C. §121(b)(18)), the Department is authorized to prescribe a regulation that provides for the operation of adult education and family literacy programs. Such regulation is proposed by the Secretary of Education and is subject to the approval of the State Board of Education.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state

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

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

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

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 358RFA 11-01-22.pdf>

915 James H. Groves High School

1.0 Definitions

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

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

“Department” means the Delaware Department of Education.

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

“In School Credit Program” means an alternative program operated by the James H. Groves High School that provides an opportunity for students who are age 14 or older and enrolled in their local day school to attain credits needed to fulfill high school graduation requirements.

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

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

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

2.0 Admission Criteria and Process

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

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

2.1.1.1 The applicant shall:

2.1.1.1.1 Submit an application on forms approved by the Department;

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

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

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- 2.1.2.1 To apply for an age waiver, the prospective student shall submit to the Groves Center administrator the ~~following~~ following information:
- 2.1.2.1.1 A letter of request for admission with the rationale for granting a waiver;
- 2.1.2.1.2 A letter of recommendation from the high school of record;
- 2.1.2.1.3 Proof of exit from high school; and
- 2.1.2.1.4 Proof of age.
- 2.1.2.2 The prospective student seeking the age waiver shall be subject to the requirements in subsection 2.1.1.1.
- 2.1.2.3 The decision regarding admission shall be made by the Center administrator.
- 2.1.2.4 The names of all students receiving an age waiver shall be forwarded within 5 working days of approval by the Center administrator or designee to the Department's Director of Adult and Prison Education Resources for reporting purposes.
- 2.2 High school students who are at least 14 years of age, have completed at least one semester of high school and enrolled for at least 1 credit in their high school of record may earn an unrestricted number of credits in the Groves In School Credit Program and still graduate from their high school of record.
- 2.2.1 To enroll in ~~this program~~ the In School Credit Program, students shall have the permission of their high school of record, their parent, guardian or relative caregiver and the Groves High School principal or designee.
- 2.2.2 All students enrolled in the Groves In School Credit Program shall be included in the September 30th unit count of their high school of record.
- 2.2.3 Students who withdraw from their high school of record and transfer to the Groves High School shall no longer be considered a student in the Groves In School Credit Program and shall be assessed the materials fee for that semester.
- 2.2.4 Students in the Groves In School Credit ~~program~~ Program shall not receive instruction during the school's regularly scheduled school day.
- (Break in Continuity Within Section)***
- 2.4 An adult 18 years of age and older who is a registered Sex Offender and who resides in ~~the State of~~ Delaware or is a resident of another state and is currently employed in Delaware and has been continuously employed in Delaware for a minimum of 6 months prior to enrollment shall:
- 2.4.1 Present a letter to the Groves Center administrator from a licensed counselor, psychologist or physician including a summary of past behavior and a statement that the individual does not pose a safety threat to students or staff. The letter shall be dated within 2 months prior to enrollment in the Groves Center.
- 2.4.2 An adult 18 years of age and older who is a registered Sex Offender may be enrolled in the Diploma-At-A-Distance without the letter described in subsection 2.4.1.
- 2.4.3 The names of all students that are registered Sex Offenders and enrolled in the James H. Groves Adult High School shall be reported to the ~~State~~ Director of Adult and Prison Education Resources within 5 working days.

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

- 3.1 The Groves School is authorized to offer credit for the following methods or any combination of the following methods of accruing credit that were used prior to enrollment as well as while enrolled in the Groves program:

(Break in Continuity Within Section)

- 3.1.15 The Certificate of Educational Attainment (CEA 3) that may provide up to 10 units of credit toward graduation.

(Break in Continuity of Sections)

7.0 Establishing a Center

- 7.1 A school district, agency or organization may seek to establish a James H. Groves Center for service delivery by following the process outlined below. No district, agency or organization shall have more than 1 Groves Center.

(Break in Continuity Within Section)

- 7.1.4 The Groves Leadership Team shall make a recommendation for Center status through the Department's Director ~~for~~ of Adult and Prison Education Resources to the Secretary of Education.
- 7.1.5 Approval or denial shall be communicated to the district, agency or organization by the Department within 60 days of the Center status application.
- 7.1.6 If approved, the Department shall apply for Center funding in the upcoming State budget cycle. If State funding is allocated for the additional Center, full Center status shall be given to the program provided the annual performance report and State Evaluation Report are satisfactory.
- 7.1.7 Appeal Process: In the event Center status is denied by the Department a hearing may be requested by the district, agency or organization. The hearing shall be conducted by the Secretary of Education or the Secretary's designee.

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 358 11-01-22.htm>

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1522

PUBLIC NOTICE

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

1522 Elementary School Counselor

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 1522 Elementary School Counselor. The regulation concerns the requirements for an Elementary School Counselor Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include clarifying Section 1.0; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing an Elementary School Counselor Standard Certificate in Section 3.0; clarifying the education, knowledge, and skill requirements for obtaining an Elementary School Counselor Standard Certificate and adding the option of a new Praxis Subject Assessment in Section 4.0; clarifying the application requirements in Section 5.0; adding subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history; moving the section concerning the Secretary of Education's review of standard certificate applications to Section 6.0; adding subsection 8.1, which concerns limiting, suspending, and revoking a Standard Certificate; clarifying Section 9.0, which concerns recognizing past certificates that were issued by the Department; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover,

Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before December 2, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 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 an Elementary School Counselor Standard Certificate but whose effectiveness is documented by the district or school. Section 6.0 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. In addition, the requirements in Section 10.0 apply to individual applicants and Educators.

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

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

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

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

***Please Note:**

(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/november2022/proposed/26 DE Reg 361RFA 11-01-22.pdf>

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 361 11-01-22.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1545

PUBLIC NOTICE

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

1545 Secondary School Counselor

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 1545 Secondary School Counselor. The regulation concerns the requirements for a Secondary School Counselor Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include clarifying Section 1.0; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Secondary School Counselor Standard Certificate in Section 3.0; clarifying the education, knowledge, and skill requirements for obtaining a Secondary School Counselor Standard Certificate and adding the option of a new Praxis Subject Assessment in Section 4.0; clarifying the application requirements in Section 5.0; adding subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history; moving the section concerning the Secretary of Education's review of standard certificate applications to Section 6.0; adding subsection 8.1, which concerns limiting, suspending, and revoking a Standard Certificate; clarifying Section 9.0, which concerns recognizing past certificates that were issued by the Department; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

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

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 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

PROPOSED REGULATIONS

Secretary of Education review the credentials of an applicant who does not meet the requirements for a Secondary School Counselor Standard Certificate but whose effectiveness is documented by the district or school. Section 6.0 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. In addition, the requirements in Section 10.0 apply to individual applicants and Educators.

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

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

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

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

***Please Note:**

(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/november2022/proposed/26 DE Reg 363RFA 11-01-22.pdf>

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 363 11-01-22.htm>

PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1575

PUBLIC NOTICE

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

1575 Teacher of Students with Visual Impairments

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** 1575 Teacher of Students with Visual Impairments. The regulation concerns the requirements for a Teacher of Students with Visual Impairments Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include clarifying Section 1.0; adding defined terms in Section 2.0; clarifying the requirements for issuing a Teacher of Students with Visual Impairments Standard Certificate in Section 3.0; adding

subsection 3.1, which concerns educator licensure and certification investigations; specifying the education, knowledge, and skill requirements for obtaining a Teacher of Students with Visual Impairments Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns requests for the Secretary of Education to review standard certificate applications; adding Section 7.0, which concerns the validity of a Teacher of Students with Visual Impairments Standard Certificate; adding Section 8.0, which concerns disciplinary actions; revising Section 9.0, which concerns recognizing past certificates that were issued by the Department; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address. In addition, proposed 14 **DE Admin. Code** 1575 is consistent with HB 382, which repealed 14 **Del.C.** §206(d) and was signed into law on October 7, 2022 and was effective October 10, 2022.

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

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 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 Teacher of Students with Visual Impairments Standard Certificate but whose effectiveness is documented by the district or school. Section 6.0 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. In addition, the requirements in Section 10.0 apply to individual applicants and Educators.

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

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

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

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

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

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 364RFA 11-01-22.pdf>

1575 Teacher of Students with Visual Impairments

1.0 Content

This regulation shall apply to the ~~requirements for a Standard Certificate, issuance of a Teacher of Students with Visual Impairments Standard Certificate pursuant to 14 Del.C. §1220(a), for Teacher of Students with Visual Impairments. Eighteen (18) months from the effective date of this regulation, this certification shall be required for all educators within the Delaware public school system whose primary assignment is teaching children with visual impairments. The Teacher of Students with Visual Impairments Standard Certificate is required for an Educator whose primary assignment is teaching students with visual impairments in Delaware public schools.~~ This regulation does not apply to Certified Orientation and Mobility Specialists (COMS) who are certified hold a current certification issued by the Academy of for Certification of Vision Rehabilitation and Education Professionals.

2.0 Definitions

The definitions set forth in ~~14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto,~~ are incorporated herein by reference.

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

"Department" means the Delaware Department of Education.

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

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

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

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

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

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

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

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

3.0 Issuance of a Standard Certificate

- 3.1 ~~In accordance with 14 Del.C. §1220(a), the Department shall issue a Teacher of Students with Visual Impairments Standard Certificate as a Teacher of Students with Visual Impairments, to an educator applicant who has met the requirements in 14 Del.C. §206(d) and 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; and, Has met the requirements for an educator's license in Delaware and presents proof of a Valid and Current License or Certificate as a teacher of students with visual impairments issued by another state or jurisdiction.~~
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~
- 3.2 ~~Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Teacher of Students with Visual Impairments Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.~~

4.0 Additional Prescribed Education, Knowledge, and Skill Requirements

- 4.1 ~~An educator shall also have satisfied at least one (1) of the following additional education requirements:~~
- 4.1.1 ~~Holding a bachelor's or master's degree from a regionally accredited college or university with a major or its equivalent in educating Visually Impaired Students from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or~~
 - 4.1.2 ~~The successful completion of seventeen (17) credits from a regionally accredited college or university or their equivalent in professional development as approved by the Department in the following areas:~~
 - 4.1.2.1 ~~Anatomy and Physiology of the Eye (3 credits);~~
 - 4.1.2.2 ~~Braille and Nemeth Code (3 credits);~~
 - 4.1.2.3 ~~Assessment of Students with Visual Impairments (3 credits);~~
 - 4.1.2.4 ~~Methods of Instruction for Students with Visual Impairments (3 credits);~~
 - 4.1.2.5 ~~Assistive Technology (3 credits); and~~
 - 4.1.2.6 ~~Orientation/Mobility for the Teacher of Students with Visual Impairments (2 credits).~~
- 4.1 ~~An applicant for the Teacher of Students with Visual Impairments Standard Certificate shall have satisfied 1 of the following education requirements:~~
- 4.1.1 ~~Obtained and currently maintain an Exceptional Needs Specialist certificate in the specialty area of Blind and Visually Impaired from the National Board for Professional Teaching Standards; or~~
 - 4.1.2 ~~Earned a bachelor's or master's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in educating visually impaired students from an educator preparation program accredited by the Association for Education and Rehabilitation of the Blind and Visually Impaired (AER) or approved or recognized by the Council for the Accreditation of Educator Preparation (CAEP) or a state where the state approval body employed the appropriate standards; or~~
 - 4.1.3 ~~Satisfactorily completed an alternative routes for licensure or certification program to teach visually impaired students as provided in 14 Del.C. §§1260 - 1266; or~~
 - 4.1.4 ~~Satisfactorily completed a Department-approved educator preparation program in educating visually impaired students; or~~

PROPOSED REGULATIONS

4.1.5 Earned a bachelor's degree in any content area from a Regionally Accredited college or university and also satisfactorily completed 17 college credits or the equivalent number of hours with 1 credit equating to 15 hours taken as part of or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department in the following areas:

4.1.5.1 Anatomy and Physiology of the Eye (3 credits);

4.1.5.2 Braille and Nemeth Code (3 credits);

4.1.5.3 Assessment of Students with Visual Impairments (3 credits);

4.1.5.4 Methods of Instruction for Students with Visual Impairments (3 credits);

4.1.5.5 Assistive Technology (3 credits); and

4.1.5.6 Orientation/Mobility for the Teacher of Students with Visual Impairments (2 credits).

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 If the applicant is applying for the issuance or renewal of an educator's license, the applicant must disclose the applicant's criminal conviction history upon application. Failure to disclose a criminal conviction history is grounds for denial of the license application as specified in 14 **Del.C.** §1219 and could delay the processing or result in the denial of the application for a Teacher of Students with Visual Impairments Standard Certificate.

5.3 For an applicant who is applying for a Teacher of Students with Visual Impairments Standard Certificate under subsection 3.1.1 of this regulation, the following documentation is required with the application:

5.3.1 Evidence of obtaining and maintaining an Exceptional Needs Specialist certificate in the specialty area of Blind and Visually Impaired from the National Board for Professional Teaching Standards, if applicable; and

5.3.2 Official transcript from the applicant's Regionally Accredited college or university.

5.3.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or

5.3.2.2 Sealed paper transcripts may be submitted.

5.3.2.3 The Department will not accept copies of transcripts; and

5.3.3 Documents verifying successful completion of Department-approved professional development, if applicable; and

5.3.4 Additional documentation as required by the Department.

5.4 For an applicant who is applying for a Teacher of Students with Visual Impairments Standard Certificate under subsection 3.1.2 of this regulation, the following documentation is required in the application:

5.4.1 An official copy of the Valid and Current License or Certificate; and

5.4.2 Official score; and

5.4.3 Additional documentation as required by the Department.

6.0 Secretary of Education Review

6.1 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 Teacher of Students with Visual Impairments Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Teacher of Students with Visual Impairments Standard Certificate but whose effectiveness is documented by the local school district or charter school.

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

6.1.2 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.

7.0 Validity of a Standard Certificate

- 7.1 A Teacher of Students with Visual Impairments Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 7.2 A Teacher of Students with Visual Impairments Standard Certificate is not subject to renewal.

8.0 Disciplinary Action

- 8.1 An Educator's Teacher of Students with Visual Impairments 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.
- 8.2 An Educator's Teacher of Students with Visual Impairments 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.
- 8.3 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.

5-9 9.0 Past Certification Certificate Recognized

The Department shall recognize a Teacher of Students with Visual Impairments Standard Certificate ~~Teacher of Students With Visual Impairments~~ that was issued by the Department between January 11, 2007 and the effective date of this regulation. A teacher holding a Standard Certificate Teacher of Students ~~With~~ with Visual Impairments issued between January 11, 2007 and the effective date of this regulation shall be considered certified to teach children with visual impairments.

10.0 Contact Information and Change of Name or Address

- 10.1 All applicants and Educators are required to update their contact information in DEEDS if their contact information changes.
- 10.2 An Educator who legally changes the Educator's name and wishes to change the name on the Teacher of Students with Visual Impairments Standard Certificate shall provide a notarized copy of evidence of the name change such as a marriage license or court action.
- 10.3 An applicant or Educator whose mailing address, email address, or phone number changes shall provide the Department with the new mailing address, email address, or phone number within 14 calendar days of the change.

PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1583

PUBLIC NOTICE

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

1583 School Psychologist

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 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 revising a defined term in Section 2.0; adding the option of a new Praxis Subject Assessment in Section 4.0; adding subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history; moving the section concerning the Secretary of Education's review of standard certificate applications to Section 6.0; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

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

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 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 School Psychologist Standard Certificate but whose effectiveness is documented by the district or school. Section 6.0 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. In addition, the requirements in Section 10.0 apply to individual applicants and Educators.

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

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

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

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

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 370RFA 11-01-22.pdf>

1583 School Psychologist (Break in Continuity of Sections)

2.0 Definitions

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

(Break in Continuity Within Section)

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

(Break in Continuity of Sections)

4.0 Prescribed Education, Knowledge, and Skill Requirements

4.1 An applicant for a School Psychologist Standard Certificate shall have satisfied the requirements in subsections 4.1.1 through 4.1.3.

4.1.1 The applicant shall have earned one of following:

4.1.1.1 An Educational Specialist (Ed.S.) degree, the equivalent of an Ed.S. degree, or a doctoral degree through a program approved by the National Association of School Psychologists (NASP) at a Regionally Accredited college or university. The equivalent of an Ed.S. degree means a degree earned by completing a specialist-level program of study in school psychology that includes a minimum of ~~three~~ 3 years of full-time study at the graduate level or the equivalent, inclusive of structured field experiences, and at least 60 graduate semester hours or the equivalent, with at least 54 hours exclusive of credit for the supervised specialist-level internship; or

4.1.1.2 A doctoral degree in school psychology through a program approved by the American Psychological Association (APA) at a Regionally Accredited college or university.

4.1.2 The applicant shall have achieved ~~a minimum score of 147 on the Praxis Subject Assessment—School Psychology (ETS Test Code # 5042).~~ the minimum score on 1 of the following examinations:

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4.1.2.1 A minimum score of 147 on the Praxis Subject Assessment - School Psychology (ETS Test Code # 5042); or

4.1.2.2 A minimum score of 155 on the Praxis Subject Assessment - School Psychologist (ETS Test Code #5403).

4.1.3 The applicant shall have completed a supervised, culminating, comprehensive field experience of at least 1,200 hours, 600 hours of which must have been completed in an educational setting, in an institution or agency that is approved by the applicant's graduate program or the Department, completed at or near the end of formal training, through which the applicant had the opportunity to integrate and apply professional knowledge and skills acquired in prior courses and practica as well as to acquire new competencies consistent with training program goals.

4.2 Notwithstanding subsection 4.1, the Department may issue a School Psychologist Standard Certificate to an applicant who holds a Nationally Certified School Psychologist (NCSP) certificate from NASP that is in good standing.

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 If the applicant is also applying for the issuance or renewal of an educator's license or paraeducator's permit, the applicant must disclose the applicant's criminal conviction history upon application. Failure to disclose a criminal conviction history is grounds for denial of the license or permit application as specified in 14 Del.C. §1219 and it could delay the processing or result in the denial of the application for a School Psychologist Standard Certificate.

~~5.2~~ 5.3 For applicants who are applying for the School Psychologist Standard Certificate under subsections 3.1.1 and 4.1, the following documentation is required:

~~5.2.1~~ 5.3.1 Official transcript from the applicant's Regionally Accredited college or university.

~~5.2.1.1~~ 5.3.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or

~~5.2.1.2~~ 5.3.1.2 Sealed paper transcripts may be submitted.

~~5.2.1.3~~ 5.3.1.3 The Department will not accept copies of transcripts; and

~~5.2.2~~ 5.3.2 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2;

~~5.2.3~~ 5.3.3 The Department-approved form verifying the applicant's completion of the requirement in subsection 4.1.3; and

~~5.2.4~~ 5.3.4 Additional documentation as required by the Department.

~~5.3~~ 5.4 For applicants who are applying for the School Psychologist Standard Certificate under subsections 3.1.1 and 4.2, the following documentation is required:

~~5.3.1~~ 5.4.1 Documentation that the applicant holds a NCSP certificate from NASP that is in good standing; and

~~5.3.2~~ 5.4.2 Additional documentation as required by the Department.

~~5.4~~ 5.5 For applicants who are applying for the School Psychologist Standard Certificate under subsection 3.1.2, the following documentation is required:

~~5.4.1~~ 5.5.1 An official copy of the Valid and Current License or Certificate; and

~~5.4.2~~ 5.5.2 Additional documentation as required by the Department.

6.0 Secretary of Education Review

6.1 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 Psychologist 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 Psychologist Standard Certificate but whose effectiveness is documented by the local school district or charter school.

- 6.1.1 For school districts, requests shall be approved by the superintendent of the school district.
- 6.1.2 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.

~~6-9~~ 7.0 Validity of a Standard Certificate

- ~~6-4~~ 7.1 A School Psychologist 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~~ 7.2 A School Psychologist Standard Certificate is not subject to renewal.

~~7-9~~ 8.0 Disciplinary Action

- ~~7-4~~ 8.1 An Educator's School Psychologist 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~~ 8.2 An Educator's School Psychologist 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~~ 8.3 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.

~~8-9~~ 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 Psychologist 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 Psychologist 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 Psychologist 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 practice as a school psychologist.

10.0 Contact Information and Change of Name or Address

- 10.1 All applicants and Educators are required to update their contact information in DEEDS if their contact information changes.
- 10.2 An Educator who legally changes the Educator's name and wishes to change the name on the School Psychologist Standard Certificate shall provide a notarized copy of evidence of the name change such as a marriage license or court action.
- 10.3 An applicant or Educator whose mailing address, email address, or phone number changes shall provide the Department with the new mailing address, email address, or phone number within 14 calendar days of the change.

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 370 11-01-22.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 14800

PUBLIC NOTICE

Reasonable Income Compatibility Threshold

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) 14800 regarding the Reasonable Income Compatibility Threshold.

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 Melissa.Dohring@Delaware.gov or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2022. Please identify in the subject line: Reasonable Income Compatibility Threshold.

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 proposed regulation is to change the Delaware Social Services Manual (DSSM) 14800 to align with the Verification Plan. The Verification Plan has been updated to change the Reasonable Compatibility for income from 10% to 25%.

Statutory Authority

42 CFR 435.949

Background

Affordable Care Act (ACA) regulations require that states compare electronic data sources to income information attested to by an applicant or beneficiary to determine whether the attestation and electronic data are "reasonably compatible." States do not have to obtain additional documents from applicants or beneficiaries to determine eligibility if their attestations are "reasonably compatible" with the electronic data. Under the regulations, Medicaid agencies must compare the applicant's or beneficiary's attestation to available electronic data sources and evaluate whether any difference affects eligibility. If both the attestation and the data source are at or below the eligibility threshold, the Medicaid agency finds the individual eligible. In these situations, the difference between the attestation and data source does not affect eligibility, because the individual would be eligible using either the electronic data or the attestation. With the approval of the Centers for Medicare & Medicaid Services (CMS), states can establish a reasonable compatibility standard, which applies when an attestation is at or below the eligibility threshold but data sources show income above the threshold. States may set an acceptable level of variance - either a percentage of income or a specific dollar amount - when the difference between the attestation and data source does not have to be reconciled.

CMS issued the Medicaid and CHIP COVID-19 Health Emergency Eligibility and Enrollment Pending Actions Resolution Planning Tool to states in March 2022 to assist states in developing a comprehensive unwinding

operational plan to restore routine operations in Medicaid and CHIP once the COVID-19 Public Health Emergency (PHE) ends. The plan should describe how the state will complete outstanding work, ensure continuity of coverage for eligible individuals, and facilitate seamless transitions for individuals who become eligible for other forms of coverage. This unwinding planning tool provides various risk mitigation strategies that states can implement to ensure there are no inappropriate coverage losses among eligible beneficiaries once the unwinding period begins. One of these options is to assess and adjust the current reasonable compatibility threshold for income.

As a result, DMMA is proposing to change the reasonable compatibility threshold for income from 10% to 25%. This change will aid in the passive renewal process of Medicaid members during the PHE and the unwinding period of the PHE. This will decrease the need for manual intervention, decrease the risk for inappropriate terminations, and allow staff the ability to focus on the large caseload of renewals that are unable to be passively renewed.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to change the Delaware Social Services Manual (DSSM) 14800 to align with the Verification Plan. The Verification Plan has been updated to change the Reasonable Compatibility for income from 10% to 25%.

Summary of Proposed Changes

Effective for services provided on and after November 1, 2022 DHSS/DMMA proposes to amend DSSM 14800 regarding the Reasonable Income Compatibility Threshold.

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, 2022.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

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/november2022/proposed/26 DE Reg 374RFA 11-01-22.pdf>

14000 Medicaid General Eligibility Requirements**14800 Verifications of Factors of Eligibility**Regulatory Statute42 CFR 435.94842 CFR 435.94942 CFR 435.95242 CFR 435.956

Attestation will be accepted for most factors of eligibility at application, renewal, and for a change in circumstances. Attestation will be accepted by the individual; an adult who is in the applicant's household; an authorized representative; or if the individual is a minor or incapacitated someone acting responsibly for the individual. Certain factors of eligibility will be verified post-enrollment, post-renewal, and after a redetermination of eligibility due to a change in circumstances.

Verification will be obtained electronically using the Federal Data Services Hub (FDSH) and other electronic data sources. The FDSH is a service that enables access to multiple data bases via a single electronic transaction. Data will be available from the Social Security Administration (SSA), Department of Homeland Security (DHS), Internal Revenue Service (IRS), and Equifax Workforce Solutions (also known as TALX). TALX is a contracted service that verifies earned income as reported by employers. The agency will not be obtaining IRS data.

Other electronic data sources include the following:

- State Wage Information Collection Agency (SWICA)
- State Unemployment Compensation
- General Assistance Program
- Supplemental Nutrition Assistance Program (SNAP)
- Temporary Assistance for Needy Families (TANF)
- Child Care Subsidy Program
- Office of Vital Statistics
- Department of Motor Vehicles
- Office of Child Support Enforcement
- Public Assistance Reporting Information System (PARIS).

Attestation will be accepted without post-enrollment verification for the following factors of eligibility:

- residency
- date of birth
- household composition
- household relationships
- application for other benefits
- pregnancy – unless other available information, such as a medical claim, is not reasonably compatible with such attestation.

Attestation will be accepted with post-enrollment verification for the following factors of eligibility:

- income
- Medicare.

Attestation will not be accepted and must be verified via the FDSH for the following factors of eligibility:

- citizenship and identity
- immigration status
- Social Security number (SSN).

If citizenship and immigration status cannot be verified via the FDSH, the individual will be provided with a 90-day reasonable opportunity period to submit other documentation and may be found eligible during that time period. The reasonable opportunity period will be extended beyond 90 days if the individual is making a good faith effort to obtain the documentation.

Verification of SSN will be in accordance with Sections 14105-14105.1.

Individuals will not be required to provide additional information or documentation unless the information cannot be obtained electronically or is not reasonably compatible with the attested information.

Reasonably compatible means that the information provided by an electronic data source is generally consistent with the information reported by the applicant or beneficiary. Income verification obtained through an electronic data source shall be considered reasonably compatible when:

- attestation of income and the electronic verification are at or below the income standard;
- attestation of income and the electronic verification are above the income standard; and
- attestation of income is at or below the income standard and the electronic verification is above the income standard and the difference between the two is 40% 25% or less.

When the difference between the attestation of income and the electronic verification is more than 40% 25%, a reasonable explanation will be sought from the applicant or beneficiary. A reasonable explanation may include, but is not limited to, a loss of employment or reduced hours of employment. If both the reported income and the data source indicate that the income is below the applicable standard then no additional information is needed.

Post-enrollment verification will be completed in accordance with the agency's verification plan approved by the Centers for Medicare & Medicaid Services (CMS). Post-enrollment verification of income and Medicare will be completed within thirty (30) days of the date of enrollment. When additional information is needed to complete the eligibility determination, the agency will request such additional information from the individual. The individual will be provided thirty (30) days to respond to the request for additional information. If the additional information requested is not provided, eligibility will be terminated.

Exceptions to the verification requirements will be permitted on a case-by-case basis when documentation does not exist or is not reasonably available, such as for individuals who are homeless or have experienced domestic violence or a natural disaster. The exception does not apply to the verification requirements for citizenship and immigration status.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1104 (7 Del.C. §1104)
7 DE Admin. Code 3301 and 3304

REGISTER NOTICE

SAN # 2022-04

DOCKET # 2022-R-F-0016

3300 Non-Tidal Finfish

1. TITLE OF THE REGULATIONS:

Amend 7 **DE Admin. Code** 3300 Non-Tidal Finfish - 3301 Definitions and 3304 Creel Limits, Size Limits and Seasons 3.0 Trout.

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

The Department provides a put-and-take freshwater trout fishery each spring in select piedmont streams of New Castle County, one pond in Kent County, and one pond in Sussex County. This action proposes to augment the waters open for trout fishing by adding an additional 0.4 miles of designated trout stream to the stocked portion of Red Clay Creek, create a fly fishing-only area on Red Clay Creek, and increase trout fishing participation by young people with the designation of Youth Days.

Appropriate waters for stocking freshwater trout are limited due to restricted public access and trout habitat requirements. Development, property rights, and population growth have reduced public access on some of Delaware's Designated Trout Streams. Freshwater trout angling remains a seasonally popular activity and the continuing water quality improvement of Red Clay Creek provides an opportunity to expand Delaware's trout waters in an undeveloped area of Auburn Valley State Park, increase public access to Red Clay Creek's freshwater trout fishery, and provide the second fly-fishing only area in the state.

This action will also create Youth Days (one day on the Kent and Sussex County trout ponds and one day on

PROPOSED REGULATIONS

the New Castle County trout streams) for anglers under the age of 16. The growing need of the public to find safe, suitable outdoor activities for children during the 2020 lockdown phase of the COVID pandemic provided the impetus for DNREC to use the State of Emergency to designate the opening day of the trout season on the New Castle County streams as a Youth Day in 2020 and opening day for the ponds and streams as Youth Days in 2021. The Youth Days, which restricted trout fishing to young people under the age of 16, were very popular and helped increase the number of trout anglers both years compared to 2019. Youth Days provide a great introduction to fishing for Delaware's young people with the hope that many of the Youth Day participants become lifelong anglers.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §1104

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

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3300 Non-Tidal Finfish - 3301 Definitions and 3304 Creel Limits, Size Limits and Seasons 3.0 Trout opens November 1, 2022 (Hearing Docket No. 2022-R-F-0016). A virtual public hearing will be held on **Tuesday, November 22, 2022, beginning at 6 p.m.** The web link to the virtual meeting is found on the DNREC Public Hearings site at <https://de.gov/dnrechearings>. If prompted for a password, please use: TROUT. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 2340 459 7194. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing. The designated page for this Pre-Registration process can be found here: <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>

Individuals may submit written comments regarding the proposed changes via e-mail to DNRECHearingComments@delaware.gov, or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business **Wednesday, December 7, 2022.**

7. PREPARED BY:

John H. Clark

Email: John.Clark@delaware.gov

Phone: (302)739-9914

***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/november2022/proposed/26 DE Reg 377RFA 11-01-22.pdf>

3300 Non-Tidal Finfish

3301 Definitions

1.0 For purposes of Regulations 3301 through 3311, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

“Administered by the Division” means owned, leased or licensed by the Division.

“Bait” means any nontoxic food material, compound or mixture of ingredients which wildlife is able to consume.

“Baited Field” means include any farm field, woodland, marsh, water body or other tract of land where minerals, grain, fruit, crop or other nontoxic compounds have been placed to attract wildlife to be hunted.

“Designated Trout Pond” means:

Newton Pond in Sussex county (near Greenwood);

Tidbury Pond in Kent County.

“Designated Trout Stream” means:

“Beaver Run”, from the boundary line between this State and the Commonwealth of Pennsylvania to the Brandywine River;

“Christina Creek”, from the boundary line between this State and the State of Maryland through Rittenhouse Park;

“Mill Creek”, from Brackenville Road to Route 7;

“Pike Creek”, from Route 72 to the bridge at Route 2 (Kirkwood Highway);

“Red Clay Creek”, from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania to the bridge at Yorklyn Road approximately 1.4 miles downstream to the Auburn Valley State Park boundary adjacent to Creek Road (39°48'31.00"N and 75°40'13.00"W Delaware Coordinate System of 1983);

“White Clay Creek”, from the boundary line between this State and the Commonwealth of Pennsylvania to the downstream side of Paper Mill Road; and

“Wilson Run”, from Route 92 through Brandywine Creek State Park.

“Director” means the Director or Acting Director of the Division.

“Division” means the Division of Fish and Wildlife of the Department.

“Established road” means a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.

“Fishing” or **“to fish”** means to take, catch, kill or reduce to possession or attempt to take, catch, kill or reduce to possession any fish by any means whatsoever.

“Game fish” means smallmouth bass, largemouth bass, black or white crappie, rock bass, white bass, walleye, northern pike, chain pickerel, muskellunge (or hybrids), salmon, trout, sunfishes and white bass/striped bass hybrids.

“Possession” means either actual or constructive possession of or any control over the object referred to.

“Refuge” means an area of land, whether in public or private ownership, designated by the Department as a refuge. Land shall only be designated with the permission of the landowner and if such designation is thought to be in the best interest of the conservation of wildlife. Refuges shall normally be closed at all times to all forms of hunting, except as permitted by the Director in writing for wildlife management purposes.

“Restricted Trout Stream” means the White Clay Creek from a point 25 yards above Thompson Bridge at Chambers Rock Road to the boundary line between this State and the Commonwealth of Pennsylvania and Red Clay Creek from the downstream side of Yorklyn Road (39°48'29.00"N and 75°40'33.00"W Delaware Coordinate System of 1983) approximately 0.4 miles downstream to the Auburn Valley State Park boundary adjacent to Creek Road (39°48'31.00"N and 75°40'13.00"W Delaware Coordinate System of 1983).

“Roadway” means any road, lane or street, including associated right-of-ways, maintained by this State or any political subdivision of this State.

“Season” means that period of time during which a designated species of wildlife may be lawfully hunted or a designated species of fish may be lawfully fished.

“Vehicle” means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

“Youth” means any individual under the age of 16 engaged in fishing.

3304 Creel Limits, Size Limits and Seasons

(Penalty Section 7 Del.C. §1304)

- 1.0 Closed Seasons. Unless otherwise provided by law or regulation of the Department, there is no closed season, size limits or possession limits on any species of fish taken by hook and line in any non-tidal waters of this State.
- 2.0 Bass.
 - 2.1 Statewide limits.
 - 2.1.1 It is unlawful for any person to have in possession more than six (6) largemouth bass or to have in possession more than six (6) smallmouth at or between the place where said largemouth and/or smallmouth bass were caught and said person's personal abode or temporary or transient place of lodging.
 - 2.1.2 Unless otherwise authorized in this regulation, it is unlawful for any person to possess any largemouth bass that measure less than twelve (12) inches in total length. Any largemouth bass taken which is less than the twelve (12) inches in total length must be immediately returned to the water with the least possible injury.
 - 2.1.3 It is unlawful for any person to possess any smallmouth bass measuring from twelve (12) inches to and including (17) inches in total length. Any smallmouth bass taken which is equal to or greater than twelve (12) inches and less than or equal to seventeen (17) inches must be immediately returned to the water with the least possible injury.
 - 2.1.4 Notwithstanding 2.1.1 of this section, it is unlawful for any person to have in possession more than one (1) smallmouth bass measuring more than seventeen (17) inches in total length at or between the place where said smallmouth bass was caught and said person's personal abode or temporary or transient place of lodging.
 - 2.1.5 It is lawful for any person to have in possession while fishing up to six (6) smallmouth bass that are less than twelve (12) inches in total length.
 - 2.2 Becks Pond.
 - 2.2.1 Notwithstanding 2.1.1 of this section, it is unlawful for any person to have in possession while fishing on Becks Pond more than two (2) largemouth bass.
 - 2.2.2 Notwithstanding 2.1.2 of this section, it is unlawful for any person to have in possession while fishing on Becks Pond any largemouth bass less than fifteen (15) inches in total length. Any largemouth bass less than fifteen (15) inches in total length must be immediately returned to Becks Pond with the least possible injury.
- 3.0 Trout.
 - 3.1 Pond and Stream Seasons.
 - 3.1.1 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout streams, except between and including the first ~~Saturday~~ Sunday of April and the second Saturday of March of each succeeding year.
 - 3.1.2 Notwithstanding subsection 3.1.1, it is lawful for any youth to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout streams on the first Saturday of April.
 - ~~3.1.2~~ 3.1.3 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout ponds, except between and including the first ~~Saturday~~ Sunday of March and the second Saturday of February of each succeeding year.
 - 3.1.4 Notwithstanding subsection 3.1.3, it is lawful for any youth to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout ponds on the first Saturday of March.
 - 3.2 Hours of Fishing.
 - 3.2.1 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout streams on the opening day of the trout

season before 7:00 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.

3.2.2 It is unlawful for any person to fish for rainbow trout, brown trout, brook trout, or any hybrids of these species in designated trout ponds on the opening day of the trout season before 7 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.

3.3 Possession. It is unlawful for any person to possess in any one day during the prescribed open season more than six (6) rainbow trout, brown trout brook trout or any hybrids of these species in any combination. On any day after a person takes his or her legal limit of trout, said person is prohibited from fishing in a designated trout stream or a designated trout pond on the same day, unless otherwise authorized by law or this regulation.

3.4 Trout Stamp.

3.4.1 It is unlawful for any person to fish in a designated trout stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30, unless said person has in his or her possession a valid trout stamp, or unless said person is exempted by law from having a trout stamp.

3.4.2 It is unlawful for any person to fish in a designated trout pond from the first Saturday in March through April 1, unless said person has in his or her possession a valid trout stamp, or unless said person is exempted by law from having a trout stamp.

3.5 Restricted Trout Stream.

3.5.1 It is unlawful for any person to fish in a restricted trout stream with more than two (2) flies on a line at any one time.

3.5.2 It is unlawful for any person to use any metallic, wooden, plastic or rubber spinners, spoons, lures, plugs, or any natural or synthetic bait on any restricted trout stream.

3.5.3 It is unlawful for any person to have in his or her possession more than four (4) trout within 50 feet of any restricted trout stream. On the restricted trout stream only, trout may be caught and released as long as the four (4) trout possession limit is not exceeded. All trout released must be returned to the water as quickly as possible with the least possible injury.

3.6 Closure of Designated Trout Streams and Ponds.

3.6.1 It is unlawful for any person to fish in a designated trout stream two weeks (14 days) prior to the scheduled opening of the stream trout season.

3.6.2 It is unlawful for any person to fish in a designated trout pond two weeks (14 days) prior to the scheduled opening of the pond trout season.

4.0 Striped Bass and Hybrid Striped Bass

4.1 It is unlawful for any person to have in his or her possession while fishing in the non-tidal waters of this State more than two (2) striped bass (*Morone saxatilis*) or striped bass hybrids (*Morone saxatilis* x *M. chrysops*).

4.2 It is unlawful for any person to possess any striped bass or any striped bass hybrid under the length of fifteen (15) inches measured from the tip of the snout to the tip of the tail while fishing in the non-tidal waters of this State.

5.0 Panfish Limits. It is unlawful for any person to have in possession while fishing in any State-owned non-tidal water more than fifty (50) panfish in aggregate to include bluegill, pumpkinseed, redear sunfish, black crappie, white crappie, white perch or yellow perch, provided no more than twenty-five (25) of the fifty (50) allowed in possession are of any one species.

PROPOSED REGULATIONS

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Medical Licensure and Discipline

Statutory Authority: 24 Delaware Code, Section 1770(c) (24 Del.C. §1700(c))
24 DE Admin. Code 1700

PUBLIC NOTICE

1700 Board of Medical Licensure and Discipline

Pursuant to 24 Del.C. § 1770(c), the Regulatory Council for Physician Assistants ("the Council") of the Board of Medical Licensure and Discipline has proposed revisions to its rules and regulations. A new subsection 13.4 is added to implement standards for the performance of abortion by physician assistants.

A public hearing will be held on December 6, 2022 at 1:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Regulatory Council for Physician Assistants, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address or at shauna.slaughter@delaware.gov. Pursuant to 29 Del.C. § 10118(a), the final date to receive written comments will be December 21, 2022. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 382RFA 11-01-22.pdf>

1700 Board of Medical Licensure and Discipline (Break in Continuity of Sections)

13.0 Physician Assistants

(Break in Continuity Within Section)

13.4 The Physician Assistant may perform medication and manual vacuum aspiration (MVA) abortion to 12 weeks gestation.

13.4.1 Prior to performing MVA the PA must enter into a collaborative agreement with an appropriately trained Delaware licensed obstetrician gynecologist.

13.4.2 Prior to performing MVA the PA must successfully complete any of the following trainings:

13.4.2.1 The American College of Nurse-Midwives.

13.4.2.2 Planned Parenthood.

13.4.2.3 The Reproductive Health Access Project.

13.4.2.4 On the job training from an experienced provider with privileges to perform MVA.

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 382 11-01-22.htm>

DIVISION OF PROFESSIONAL REGULATION Board of Home Inspectors

Statutory Authority: 24 Delaware Code, Section 4106(a)(1) (24 Del.C. §4106(a)(1))
24 DE Admin. Code 4100

PUBLIC NOTICE

4100 Board of Home Inspectors

The Delaware Board of Home Inspectors, pursuant to 24 Del. C. § 4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes aim to address a growing practice in the profession of licensed home inspectors performing partial home inspections and not producing written reports.

The Board will hold a public hearing on the proposed regulation change on January 10, 2023 at 9:00 a.m., either telephonically or in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Michelle Loper at the Delaware Board of Home Inspectors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 25, 2023 pursuant to 29 Del. C. § 10118(a).

***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/november2022/proposed/26 DE Reg 383RFA 11-01-22.pdf>

4100 Board of Home Inspectors (Break in Continuity of Sections)

17.0 Code of ethics.

(Break in Continuity Within Section)

17.3 Home inspectors shall avoid activities that may harm the public, discredit themselves, or reduce public confidence in the profession.

17.3.1 Advertising, marketing, and promotion of home inspectors' services or qualifications shall not be fraudulent, false, deceptive, or misleading.

17.3.2 Home inspectors shall not provide oral reports.

~~17.3.2~~ 17.3.3 Home inspectors shall report substantive and willful violations of the Board's Code of Ethics to the Division of Professional Regulation.

18.0 Standards of practice.

18.1 Purpose and scope.

18.1.1 The purpose of the Standards of Practice is to establish minimum and uniform standards for home inspectors.

18.1.2 Inspection: Home inspectors shall inspect readily accessible, visually observable, installed systems and components listed in this section.

18.1.3 Written report: The home inspector's report ~~shall be legible and shall~~ must be in writing and legible. Oral reports are prohibited. All reports must include:

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 383 11-01-22.htm>

PROPOSED REGULATIONS

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 209 and 1014(e) (26 Del.C. §§209(a)(1) & 1014(e))
26 DE Admin. Code 3001

PUBLIC NOTICE

3001 Rules for Certification and Regulation of Electric Suppliers, Net Metering, and Community Energy Facilities

IN THE MATTER OF REVISIONS TO THE RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF 26 DEL. C. CH. 10 RELATING TO THE CREATION OF A COMPETITIVE MARKET FOR RETAIL ELECTRIC SUPPLY SERVICE (OPENED APRIL 27, 1999; RE-OPENED JANUARY 7, 2003; SEPTEMBER 22, 2009; SEPTEMBER 7, 2010; JULY 17, 2012; JULY 14, 2021; AND OCTOBER 12, 2022)

PSC REGULATION DOCKET
NO. 49

PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE PUBLIC SERVICE COMMISSION'S RULES REGARDING NET ENERGY METERING

TO: ALL ELECTRIC SERVICE CUSTOMERS OF DELMARVA POWER & LIGHT COMPANY AND OTHER INTERESTED PERSONS

On July 22, 2022, the Governor of the State of Delaware signed into law Senate Bill 298, which amended provisions in Title 26 of the Delaware Code, at § 1014 relating to net energy metering, including: (1) increasing the cap at which an electric utility may elect not to provide net metering services from the current 5% of its peak demand to 8%; (2) providing that the Commission's net energy metering rules must consider the reliability, safety, and capacity of the electric distribution system; (3) defining "Excess kWh Credit" as any excess production in kWh of a net energy metering customer's generating facility that exceeds the customer's on-site consumption of kWh in a billing period; (4) removing the charges for societal benefits programs from those charges against which a commission-regulated utility applies a net energy metering customer's "Excess kWh Credits" in subsequent monthly billing periods (and to define "societal benefits programs"); (5) providing that electric utilities shall not reimburse or credit net energy metering customers for any "Excess kWh Credits" at the end of the annualized billing period, and that "Excess kWh Credits" shall revert to the electric distribution company at the end of the annualized billing period; (6) providing that, if a net metering customer abandons the property where the generating equipment is located, the equipment may remain connected to the electric distribution system unless the equipment presents a risk to the safety and reliability of the system; and (7) providing that non-residential customers shall be responsible for the reasonable cost of meters that are installed or modified for net-metering purposes and caps such costs for residential customers at \$200.

By Order No. 10109 dated October 12, 2022 (the "Order"), the Commission now proposes to revise its *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 Del. Admin. C. § 3001 ("*Supplier Rules*") to reflect the Senate Bill 298 amendments as well as make certain other up-dates to the *Supplier Rules*.

The text of the revised *Supplier Rules* is attached to the Order. The Order and related exhibits are reproduced in the November 1, 2022 edition of the *Delaware Register of Regulations* and may also be reviewed online at the Commission's website at www.depsc.delaware.gov. You may also obtain a pa-per copy of the Orders at the Commission's Dover office for a fee of \$0.25 per page.

The Commission will conduct a public hearing on the revised *Supplier Rules* on Wednesday, December 14, 2022, beginning at 1:00 PM, in accordance with 26 Del. C. § 209(a). All persons who wish to be heard by the Commission may attend in person or by teleconference. Dial-in information will be provided on the agenda for the

December 14, 2022 meeting, which can be found on the PSC website at www.depsc.delaware.gov. Interested parties may file written comments, suggestions, briefs, compilations of data, or other materials concerning the Amendments. Such material may be submitted to the Commission on or before December 29, 2022, by email to samuel.kayne@delaware.gov or at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Bldg., Suite 100
Dover, Delaware, 19904
Attn: PSC Reg. Dckt. 49

To be considered at the December 14, 2022 hearing, however, written materials must be submitted on or before November 28, 2022.

If you are handicapped and need assistance or aids in participating in this matter, please contact the Commission to discuss any needed assistance or aids. You may contact the Commission with questions or requests about this matter at the Commission's toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You may also send inquiries by Inter-net e-mail addressed to psc@delaware.gov.

IN THE MATTER OF REVISIONS TO THE RULES
AND REGULATIONS TO
IMPLEMENT THE PROVISIONS OF 26 *DEL. C.*
CH. 10 RELATING TO THE CREATION OF A
COMPETITIVE MARKET FOR RETAIL ELECTRIC
SUPPLY SERVICE (OPENED APRIL 27, 1999;
RE-OPENED JANUARY 7, 2003; SEPTEMBER
22, 2009; SEPTEMBER 7, 2010; JULY 17, 2012;
JULY 14, 2021; AND OCTOBER 12, 2022)

PSC REGULATION DOCKET
NO. 49

ORDER NO. 10109

AND NOW, this 12th day of October 2022, the Delaware Public Service Commission ("Commission") determines and orders as follows:

WHEREAS, on July 22, 2022, the Governor of the State of Delaware signed into law Senate Bill 298, which amended provisions in 26 *Del. C.* § 1014 relating to net energy metering, including: (1) increasing the cap at which an electric utility may elect not to provide net metering services from the current 5% of its peak demand to 8%; (2) providing that the Commission's net energy metering rules must consider the reliability, safety, and capacity of the electric distribution system; (3) defining "Excess kWh Credit" as any excess production in kWh of a net energy metering customer's generating facility that exceeds the customer's on-site consumption of kWh in a billing period; (4) removing the charges for societal benefits programs from those charges against which a commission-regulated utility applies a net energy metering customer's "Excess kWh Credits" in subsequent monthly billing periods (and to define "societal benefits programs"); (5) providing that electric utilities shall not reimburse or credit net energy metering customers for any "Excess kWh Credits" at the end of the annualized billing period, and that "Excess kWh Credits" shall revert to the electric distribution company at the end of the annualized billing period; (6) providing that, if a net metering customer abandons the property where the generating equipment is located, the equipment may remain connected to the electric distribution system unless the equipment presents a risk to the safety and reliability of the system; and (7) providing that non-residential customers shall be re-sponsible for the reasonable cost of meters that are installed or modified for net-metering purposes and caps such costs for residential customers at \$200; and

WHEREAS, Commission Staff ("Staff") has drafted amendments to the Commission's *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 *Del. Admin. C.* § 3001 ("Supplier Rules"), in compliance with the new requirements set forth by Senate Bill 298; and

WHEREAS, Staff has included in the draft amendments certain other updates to the *Supplier Rules* including

PROPOSED REGULATIONS

removing the requirement that Electric Suppliers file reports with the Commission disclosing their fuel resource mix for the electricity supplied to their Delaware customers, to reflect the amendment to 26 *Del. C.* § 1014 made by Senate Bill 18 (150th General Assembly), which was signed into law on April 17, 2019; and

WHEREAS, Staff now recommends that the Commission issue the attached proposed amendments to the *Supplier Rules* for publication in the *Delaware Register of Regulations*;

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

1. That, for the reasons set forth above, and pursuant to 26 *Del. C.* §§ 209 and 1014(e) and 29 *Del. C.* § 10114, the Commission proposes to revise its *Supplier Rules*, which were last revised by PSC Order No. 9976 (March 16, 2022) and published at 25 DE Reg. 963 (April 1, 2022), in compliance with Senate Bill 298, relating to net energy metering, and for certain other updates. A marked-up version of the proposed amendments to the *Supplier Rules* (including only the amended sections) is attached to this Order as Exhibit "A."

2. That, pursuant to 29 *Del. C.* § 10115(a), the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the November 1, 2022 edition of the *Delaware Register of Regulations*.

3. That, pursuant to 29 *Del. C.* § 10115(b), the Secretary shall cause the form of public notice attached as Exhibit "B" to be published in two-column format, outlined in black, in the *Delaware State News* and *The News Journal* newspapers on or before November 1, 2022. In addition, the Secretary shall mail a copy of this Order, with its exhibits, to the Division of the Public Advocate and to all persons or entities who have made written requests for advance notice of this Commission's rule-making proceedings.¹ The Secretary shall file a certification of the completion of these tasks by November 15, 2022.

4. That, pursuant to 26 *Del. C.* § 209(a), the Commission will hold a public hearing on the proposed amendments on Wednesday, December 14, 2022, beginning at 1:00 PM. Interested persons or entities may submit written suggestions, compilations of data, briefs, or other written materials concerning these proposed amendments on or before December 29, 2022.² **To be considered at the December 14, 2022 hearing, however, written materials must be submitted on or before November 28, 2022.**

5. 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 T. Conaway, Commissioner
 Harold B. Gray, Commissioner
 Manubhai "Mike" Karia, Commissioner
 K. F. Drexler, Commissioner

ATTEST: Donna Nickerson, Secretary

***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/november2022/proposed/26 DE Reg 384RFA 11-01-22.pdf>

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 384 11-01-22.htm>

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1. 29 *Del. C.* § 10115(c) requires agencies to mail notice to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.
 2. 29 *Del. C.* § 10118(a) requires that the opportunity for public comment be extended for a minimum of 15 days after the final public hearing on a proposed regulation. The Commission's final decision on these amendments, therefore, will not be made until after such comment period expires.

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 131, 132 and 143; 26 Delaware Code, Chapters 9, 11 and 13 (17 **Del.C.** §§131, 132 & 143; 26 **Del.C.** Ch. 9, 11 & 13)
2 **DE Admin. Code** 2401

PUBLIC NOTICE

2401 Utilities Manual Regulations

Pursuant to the authority provided in Title 17 of the **Delaware Code**, Sections 131, 132 and 143, as well as 26 **Delaware Code** Chapters 9, 11, and 13 the Delaware Department of Transportation (DelDOT), adopted the 2401 Utilities Manual Regulations. The Department seeks to adopt revisions to the regulation to clarify intent and to address recent updates to federal law.

Public Comment Period

DelDOT will take written comments on the proposed revisions to Section 2401 of Title 2, Delaware Administrative Code, from November 1, 2022 through December 1, 2022. The public may submit their comments to:

Eric Cimo, P.E., Utilities Engineer, Division of Transportation Solutions
(eric.cimo@delaware.gov) or in writing to their attention,
Delaware Department of Transportation
Division of Transportation Solutions
P.O. Box 778 Dover, DE 19903

*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/november2022/proposed/26 DE Reg 387RFA 11-01-22.pdf>

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

<http://regulations.delaware.gov/register/november2022/proposed/26 DE Reg 387 11-01-22.htm>

Symbol Key

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

Final Regulations

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

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

DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM
DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM BOARD OF MANAGERS
Statutory Authority: 11 Delaware Code, Section 8605 (11 **Del.C.** §8605)
1 **DE Admin. Code** 1301

ORDER

1301 Delaware Criminal Justice Information System Rules and Regulations

NATURE OF THE PROCEEDINGS

At 26 **DE Reg.** 6 (July 1, 2022), the Delaware Criminal Justice Information System Board of Managers (DELJIS Board of Mangers), pursuant to 11 **Del. C.** §8605, and in accordance with 29 **Del. C.** §10115, published notice of intent to adopt regulations that seek to ensure that access to criminal justice information conforms to the statutory requirements outlined in Chapters 85 and 86 of Title 11 of the Delaware Code. At the same time, the DELJIS Board of Managers submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del. C.** Ch. 104. The DELJIS Board of Managers solicited written comments from the public for thirty (30) days as mandated by 29 **Del. C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with law, public notice regarding the proposed revised regulation was published in the *Delaware Register of Regulations*. The public comment period was open from July 1, 2022 through August 5, 2022. During this period, the DELJIS Board of Managers did not receive any written responses.

FINDINGS OF FACT

The public was given the required notice of the DELJIS Board of Mangers' intention to adopt the proposed revised

regulation and was given opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. No written responses were received during the comment period. Thus, the DELJIS Board of Managers finds that the proposed revised regulations should be adopted as submitted by DELJIS.

EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the DELJIS Board of Managers pursuant to 11 **Del. C.** §8605. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

ORDER

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the DELJIS Board of Managers does hereby ORDER this 15th day of September 2022 that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

IT IS SO ORDERED, this 15th day of September 2022.

Delaware Criminal Justice Information System Board of Managers

/s/ Jeffrey Horvath, Chair, DELJIS Board of Managers, Police Chief's Council	/s/ LT. James Leonard, New Castle County Police Department
/s/ Robert Coupe, Department of Justice	/s/ Jason Clarke, Secretary, Department of Technology and Information
/s/ Ken Kelemen, Administrative Office of the Courts	/s/ Chris McGonigle, Office of Defense Services
/s/ Renee Ciconte, DSCYF, Division of Youth Rehabilitative Services	/s/ Mark Hitch, Justice of the Peace Court
/s/ Renee Rigby, Delaware State Police	

***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 2022 issue of the *Register* at page 6 (26 DE Reg. 6). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/november2022/final/26 DE Reg 388 11-01-22.htm>

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 8906D (14 **Del.C.** §8906D)
14 **DE Admin. Code** 237

REGULATORY IMPLEMENTING ORDER

237 Educational Support Professional of the Year

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §8906D, the Secretary of Education intends to amend 14 **DE Admin. Code** 237 Educational Support Professional of the Year. This regulation is being amended to comply with Senate Bill 252 of the 151st General Assembly which modified the annual award amount for the Education Support Professional of the Year

Award from \$2,500 to \$5,000. It is also being amended to remove language that the award "fund(s) educational materials," as 14 **Del.C.** §8906D does not limit the award funds to only be used for educational materials.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on September 1, 2022. The Department of Education did not receive any comments for this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin.** 237 Educational Support Professional of the Year in order to comply with Senate Bill 252 of the 151st General Assembly which modified the annual award amount for the Education Support Professional of the Year Award from \$2,500 to \$5,000. It is also being amended to remove language that the award "fund(s) educational materials," as 14 **Del.C.** §8906D does not limit the award funds to only be used for educational materials.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 237 Educational Support Professional of the Year. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 237 Educational Support Professional of the Year attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 237 Educational Support Professional of the Year amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 237 Educational Support Professional of the Year amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 237 Educational Support Professional of the Year in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 6, 2022. The effective date of this Order shall be 10 days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 6th day of October 2022
Department of Education

Mark A. Holodick, Ed.D., Secretary of Education
Approved this 6th day of October 2022

***Please note that no changes were made to the regulation as originally proposed and published in the September 2022 issue of the *Register* at page 151 (26 DE Reg. 151). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/november2022/final/26 DE Reg 389 11-01-22.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

Statutory Authority: 16 Delaware Code, Section 122 and 29 Delaware Code, Section 7909A(e)
(16 **Del.C.** §122 & 29 **Del.C.** §7909A(e))
16 **DE Admin. Code** 2100

ORDER

2100 Eligibility Criteria

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services (DHSS) / Division of Developmental Disabilities Services (DDDS) initiated proceedings to adopt revised regulations governing the criteria for establishing eligibility for DDDS services. The DHSS proceedings to amend its regulations were initiated pursuant to 16 **Del.C.** §122 and 29 **Del.C.** §7909A(e).

DHSS published its notice of proposed regulation changes pursuant to 16 **Del.C.** §122 and 29 **Del.C.** §7909A(e) in the August 1, 2022, *Delaware Register of Regulations* (Volume 26, Issue 2). It requested that written materials and suggestions from the public concerning the proposed regulations be delivered by September 1, 2022, at which time DHSS would review information, factual evidence, and public comment to the proposed changes to the regulation.

SUMMARY OF PROPOSAL

Effective for services provided on and after November 11, 2022, DHSS/DDDS proposes to amend the eligibility criteria used in the determination of process for DDDS services.

Statutory Authority

16 Delaware Code, Section 122 and 29 Delaware Code, Section 7909A(e) (16 **Del.C.** §122 & 29 **Del.C.** §7909A(e))

Purpose

The Division of Developmental Disabilities Services proposed a number of key amendments to its eligibility criteria to provide updates to language and terminology and clarify areas involving assessment, age, citizenship status, and the very young applicant without all of the required assessment information.

Fiscal Impact

None

Summary of Comments Received with Agency Responses

The Division received comments from two organizations. The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) offered the following summarized comments:

Comment - updated terminology: GACEC and SCPD expressed appreciation for the removal of outdated terminology and the inclusion of current diagnostic clarifications and People First language.

Agency Response: DDDS thanks the GACEC and the SCPD for their support updating language and terminology.

Comment - non-citizen residency: Two comments were provided related to access to services for those that are non-citizen residents:

1. GACEC and SCPD recommended DDDS clarify in the regulation that the five-year bar, which qualified aliens are subjected to before eligibility for Medicaid services, does not apply to non-Medicaid DDDS services and would not be a barrier to DDDS eligibility.

2. SCPD and GACEC also recommended that DDDS include lawfully residing non-qualified aliens covered by §14350.

Agency Response: DDDS appreciates the clarifications requested. The Division has included more specific language to address the concerns related to the five-year bar to make it clear that this does not apply to non-Medicaid DDDS services.

With regards to the second comment, DDDS acknowledges, and appreciates, this suggestion, but will not pursue this change at this time.

Comment - Changes related to age for eligibility: The Division proposed three changes: inclusion of the minimum age for services, provisional eligibility for applicants aged 3 through 8, and increased flexibility when records before age 22 are unavailable. GACEC and SCPD expressed support of the second two changes.

Agency Response: DDDS is aware of the services provided to individuals by the State in the birth to three age group and does not want a duplication of services.

Comment - Clinical criteria: GACEC and SCPD requested clarification of the subsections under 2.1.3.2 (adaptive functioning).

Agency Response: DDDS added clarifying language and punctuation.

Comment - Future eligibility considerations: GACEC and SCPD recommended that DDDS explore moving towards an approach to eligibility focused more exclusively on functional needs.

Agency Response: DDDS appreciates the comment and will take this into consideration for the future.

Comment - Updates to eligibility assessments: GACEC and SCPD supported the changes in the proposed regulation that allow DDDS to update acceptable assessments without the regulatory notice and comment process. This would allow them to respond in a more timely manner to changes in nationally accepted assessments.

Agency Response: DDDS acknowledges the support of this change.

Comment - Eligibility determined without all documentation: GACEC and SCPD supported this provision, as it would permit DDDS to act in extraordinary circumstances, even if they do not have all the documentation needed.

Agency Response: DDDS acknowledges the support of this change.

DDDS is appreciative of the thoughtful input received and looks forward to continuing to work with our partners in the provision of services for individuals with intellectual and developmental disabilities in Delaware.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2022 *Register of Regulations*, and amended as indicated herein, should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Developmental Disabilities Services eligibility criteria, is adopted and shall be final effective November 11, 2022.

10/14/2022

Molly Magarik, Secretary, DHSS

Date of Signature

2100 Eligibility Criteria *(Break in Continuity of Sections)*

2.0 Eligibility Requirements

2.1 Eligibility is established by the following criteria, all of which must be met except when explicitly stated otherwise:

2.1.1 Residency

2.1.1.1 The applicant must be a resident of the State of Delaware; and

2.1.1.2 The applicant must be a U.S. citizen or qualified alien according to DE Medicaid requirements (16 DE Admin. Code 14310). [The five-year bar, which qualified aliens are subjected to before Medicaid eligibility, does not apply to non-Medicaid DDDS services.]

2.1.2 Age

2.1.2.1 The applicant must have attained a minimum age of 3.

2.1.2.2 The applicant must have documented evidence that the disability originated prior to the age of 22.

2.1.2.3 DDDS may accept a comprehensive assessment and diagnosis of a qualifying condition by a licensed practitioner completed after age 22 after unsuccessful attempts to obtain assessments and records from the developmental period.

2.1.3 Clinical Requirements

2.1.3.1 The applicant must have a disabling condition that meets at least one of the following criteria:

2.1.3.1.1 Intellectual Disability (ID), which can be caused by a brain injury or other neurologically disabling condition. An intellectual disability is characterized by significantly below-average general intellectual functioning with a valid intelligence quotient (IQ) or IQ-equivalent score of approximately 70 or below on a normed and standardized assessment;

2.1.3.1.2 Autism Spectrum Disorder (ASD), as defined by the current version of the American Psychiatric Association's Diagnostic and Statistical Manual (DSM) determined through a comprehensive evaluation by a licensed practitioner or school psychologist, including a detailed developmental history that documents behavioral characteristics of ASD based on the current version of the DSM;

2.1.3.1.3 Prader-Willi Syndrome diagnosis by a licensed practitioner.

2.1.3.2 The applicant must also have significant limitations in adaptive behavior functioning which includes conceptual, social, and practical skills that are learned and performed by people in their everyday lives, as established by the following:

2.1.3.2.1 ~~[Composite score~~ **Score**] of approximately 70 or below, **[on the composite score]** or in at least one domain of a standardized adaptive behavior functioning ~~[assessment; assessment.]~~

2.1.3.2.2 ~~[When If]~~ there are ratings from two different respondents, scores from different raters should be consistent **[with one another]** and approximately 70 or below as **[a composite score or in at least one domain]** noted in section 2.1.3.2.1].

2.1.4 Assessment Requirements

2.1.4.1 Assessments must be performed by a licensed practitioner or school psychologist using the most recent editions of standardized assessments for the period accepted by the Division. Accepted standardized assessments are published on the DDDS website. DDDS may accept other assessments if they are comprehensive, structured, and use instruments that are normed and standardized.

2.1.4.2 The assessment for ASD must include a detailed developmental history with evidence that behavioral characteristics of ASD (based on the current DSM) were present during the developmental period. A detailed developmental history interview is necessary because standardized measures to diagnose ASD retrospectively do not exist.

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2022 issue of the *Register* at page 89 (26 DE Reg. 89). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

<http://regulations.delaware.gov/register/november2022/final/26 DE Reg 391 11-01-22.htm>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCEStatutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**ORDER****Medicaid Recovery Audit Contractors Program****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding the Medicaid Recovery Audit Contractor (RAC) Program, specifically, to request an exception to the RAC contracting requirements. 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 September 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 3, 2022 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 1, 2022, DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to request an exception to the RAC contracting requirements.

Background

Under Section 1902(a)(42)(B)(i) of the Act, states and territories are required to establish programs to contract with one or more Medicaid Recovery Audit Contractors (RACs) to identify underpayments and overpayments, as well as recouping overpayments, under the Medicaid State Plan and any Medicaid State Plan Waivers. This applies to all services for which payment is made to any entity under such plan or waiver. States must establish these programs in a manner consistent with State law and generally in the same way as the Secretary contracts with contingency fee contractors for the Medicare RAC program.

Section 1902(a)(42)(B)(i) of the Act specifies that States shall establish programs under which they contract with Medicaid RACs subject to such exceptions or requirements as the Secretary may require for purposes of a particular State. This provision enables the Centers for Medicare and Medicaid Services (CMS) to vary the Medicaid RAC program requirements. For example, CMS may exempt a State from the requirement to pay Medicaid RACs on a contingent basis for collecting overpayments when State law expressly prohibits contingency fee contracting. However, another fee structure could be required under any such exception (e.g., a flat fee arrangement).

States that otherwise wish to request variances concerning, or an exception from, Medicaid RAC program requirements must submit a request to CMS from the State's Medicaid Director to the CMS/Medicaid Integrity Group.

Although the Delaware Division of Medicaid and Medical Assistance (DMMA) previously had a Recovery Audit Contract (RAC) vendor, that contract is no longer in place. DMMA posted a Request for Proposals (RFPs) to attract a new RAC vendor but received no bids. Most of Delaware's Medicaid population is enrolled in managed care, and the providers treating them are not subject to audit recovery contracting. There is not sufficient revenue generation to fund an adequate contingency fee.

In a letter dated December 26, 2020, the Centers for Medicare & Medicaid Services (CMS) approved an amendment modifying the State Plan to grant Delaware an exception to the RAC requirements for a 2-year period

ending June 30, 2020. After careful review, the RAC requirements continue to be impractical and not cost-effective for Delaware's Medicaid program. Delaware will submit an amendment to modify the State Plan to grant Delaware an exception to the RAC requirements.

Statutory Authority

- The Patient Protection and Affordable Care Act, Public Law 111-148, Section 6411, Expansion of the Recovery Audit Contractor (RAC) program
- Section 1902(a)(42)(b) of the Social Security Act requires states to establish programs to contract with RACs to audit payments to Medicaid providers by December 31, 2010
- 42 CFR 455 Subpart A, Medicaid Agency Fraud Detection and Investigation Program
- 42 CFR 455 Subpart F, Medicaid Recovery Audit Contractors Program

Purpose

The purpose of this proposed regulation is to request an exception to the RAC contracting requirements.

Summary of Proposed Changes

Effective for services provided on and after October 1, 2022, DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to request an exception to the RAC contracting requirements.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 3, 2022.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

DMMA received the following comments:

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) supports these regulations but would like to clarify what other methods DMMA plans to use to enhance program integrity.

Response: DMMA appreciates the support. The Surveillance Utilization Review (SUR) Unit under the Program

Integrity Section in partnership with the Delaware Medicaid Fraud Control Unit and our Managed Care Organizations Special Investigation Units continues to increase fraud waste abuse awareness. Improvements in information sharing continues to be ongoing to support the need of investigations.

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

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the Medicaid Recovery Audit Contractor (RAC) Program, specifically, to request an exception to the RAC contracting requirement is adopted and shall be final effective November 11, 2022.

10/13/2022

Molly Magarik, Secretary, DHSS

Date of Signature

***Please note that no changes were made to the regulation as originally proposed and published in the September 2022 issue of the *Register* at page 155 (26 DE Reg. 155). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/november2022/final/26 DE Reg 394 11-01-22.htm>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCEStatutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**ORDER****Ambulatory Surgical Center Services Rate****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology. 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 September 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 3, 2022, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 1, 2022, DHSS/DMMA proposes to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology.

Background

The Centers for Medicare and Medicaid Services (CMS) defines an Ambulatory Surgical Center (ASC) as "any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission. An ASC satisfies the criterion of being a 'distinct' entity when it is wholly separate and clearly distinguishable from any other health care facility or office-based physician practice.

DMMA currently covers medical surgical procedures in an ASC. During the COVID 19 PHE, access to outpatient hospital surgical space became very limited, and effective October 1, 2021, DMMA expanded access by allowing surgical dental procedures to take place in an ASC. After almost a year of operating this way, it was determined that the ASC reimbursement methodology was not adequate to cover the costs of providing these services in the ASC. As a result, DMMA performed research, including surveys of other state Medicaid programs, and develop a new rate methodology to ensure that these services remain accessible to Medicaid members.

Statutory Authority

42 CFR 416 - Ambulatory Surgical Services

Purpose

The purpose of this proposed regulation is to adjust the reimbursement methodology for Ambulatory Surgical Center Services.

Summary of Proposed Changes

Effective for services provided on and after October 1, 2022 DHSS/DMMA proposes to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 3, 2022.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) supports these regulations as it aligns with the increasing accessibility of dental care to patients using Medicaid while ensuring such centers receive proper compensation for provision of services.

Agency Response: DMMA appreciates the support.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful

input given.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology is adopted and shall be final effective November 11, 2022.

10/12/2022

Molly Magarik, Secretary, DHSS

Date of Signature

*Please note that no changes were made to the regulation as originally proposed and published in the September 2022 issue of the *Register* at page 153 (26 DE Reg. 153). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<http://regulations.delaware.gov/register/november2022/final/26 DE Reg 396 11-01-22.htm>

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 2712, 21 Delaware Code, Section 2118, and 29 Delaware Code, Chapter 101 (18 **Del.C.** §§311 & 2712, 21 **Del.C.** §2118, and 29 **Del.C.** Ch. 101)
18 **DE Admin. Code** 603

EXEMPT FINAL ORDER

603 Delaware Motorists Protection Act

Regulation 603 implements the Delaware Motorists Protection Act, 21 **Del.C.** §2118.

With this order, the Department is updating Regulation 603 to correct an erroneous statutory cross reference and to make stylistic updates. This order is exempt from the requirement of public notice and comment because it includes "nonsubstantive changes in existing regulations to alter style or form or to correct technical errors," pursuant to 29 **Del.C.** §10113(b)(4).

This order shall be effective 10 days after publication in the *Register of Regulations*.

IT IS SO ORDERED.

This 11 day of October, 2022

Trinidad Navarro
Commissioner, Delaware Department of Insurance

603 Delaware Motorists Protection Act
(Break in Continuity of Sections)

3.0 Minimum Coverage Required

The provisions herein required need not be stated in the language or form of these regulations, but the coverage afforded shall be equal or of greater benefit to the insured with the exception of the requirement stated in ~~section 41.4~~ subsection 11.1 of this regulation.

4.0 Definitions

"**Bodily Injury**" means bodily injury to a person and sickness, disease or death which results from it.

"Funeral Expenses" means reasonable, customary and necessary expenses incurred within two years of the accident for professional funeral services. These expenses include the cost of a burial plot for one person.

"Injured Person" is as defined in ~~21 Del.C. §2118(a)(5)~~ 21 Del.C. §2118(a)(2)a.5.

"Innocent Third Parties" means claimants who at the time of the event leading to the claim (1) were not in violation of any Rules of the Road as promulgated under Title 21, **Delaware Code** and (2) whose activities did not contribute in any way to the accident. This presumption may be rebutted by clear and convincing evidence.

"Loss of Earnings" means loss of salary or its equivalent, net of taxes which were lost by reason of inability to work. This covers loss of wages, salary or lost earnings of a self-employed person. Payment of lost earnings is to be at the time they are actually lost.

"Loss of Use" means expenses necessarily and actually incurred by the named insured as a result of damage to the insured motor vehicle.

"Medical Expenses" means reasonable charges for necessary medical, hospital, dental, surgical, x-ray, ambulance, professional nursing services and prosthetic devices.

"Motor Vehicle" means a land motor vehicle, including a trailer or semi-trailer as used therewith, required to be registered, licensed and required to carry insurance under the Financial Responsibility Laws.

"Nonstandard" means an insured policyholder who is unable to procure insurance through the standard market and whose premium charge is in excess of the premium charged by the Delaware Automobile Insurance Plan ("DAIP") for similar (though not identical) coverage.

"Substitute Service Expenses" means reasonable and necessary extra-incurred expense for personal services which would have been performed by the injured person had he or she not been injured.

"Wilmington Auto Accident Reparations Arbitration Committee or Its Successors" as described at 21 Del.C. §2118(g)(3) is deemed to include the insurance industry forums including the nationwide intercompany arbitration agreement, special arbitration agreement forum, automobile accident reparations arbitration agreement.

(Break in Continuity of Sections)

9.0 General Conditions

- 9.1 The coverages provided in an insurance policy as described herein may be subject to conditions and exclusions customary to the field of liability, casualty and property insurance and not inconsistent with the requirements of this section.
- 9.2 Personal Injury Protection benefits shall be considered excess to any other similar insurance for passengers, other than Delaware residents, when the accident occurs outside this State.
- 9.3 To enable owners of motor vehicles to properly exercise the coverage elections, insurers are required to offer deductibles, waiting periods, sublimits, percentage reductions and excess provisions as designated in ~~21 Del.C. §2118(a)(2)(f)~~ 21 Del.C. §2118(a)(2)f.
- 9.4 To enable owners of motor vehicles who are unable to procure insurance through the standard market to properly exercise their coverage elections, insurers and insurance agents are required ~~to~~ to:
 - 9.4.1 ~~notify~~ Notify policyholders if they are considered nonstandard by the ~~insurer~~ insurer; and
 - 9.4.2 ~~to~~ To inform the policyholders of the availability of the Delaware Assigned Insurance Risk Plan ("DAIP"). Notwithstanding the above, no agent is required to write a DAIP policy.
- 9.5 Insurers are required to notify injured persons covered under this section that the coverage is for two years from the date of the accident, and that it only extends beyond two years in cases involving surgical or dental procedures related to the accident and that were impossible or impractical to perform within the two year period. Such surgical or dental procedures must be verified in writing within two years of the accident, by a qualified medical or dental practitioner. The insurer must give prompt and timely notice after the written application for benefits has been made. This notice can be included on the APPLICATION FOR BENEFITS form.

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

<http://regulations.delaware.gov/register/november2022/final/26 DE Reg 398 11-01-22.htm>

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
OFFICE OF THE SECRETARY

Statutory Authority: 11 Delaware Code, Section 1469(d)(2) (11 **Del.C.** §1469(d)(2))

ORDER

103 Regulations Governing the Delaware Large Capacity Magazine Compensation Program

NATURE OF THE PROCEEDINGS

At **26 DE Reg. 165** (September 1, 2022), the Delaware Department of Safety and Homeland Security, Office of the Secretary, pursuant to the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 5, Section 6901(c), published notice of its intent to adopt regulations to implement the Delaware Large Capacity Magazine Prohibition Act of 2022 compensation program. At the same time, DSHS submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed regulation, as required by 29 **Del. C.** Ch. 104. DSHS solicited written comments from the public for thirty (30) days as mandated by 29 **Del. C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with law, public notice regarding the proposed regulation was published in the *Delaware Register of Regulations*. The public comment period was open from September 1, 2022 through October 3, 2022. During this period, DSHS received thirteen written responses, which are on file with DSHS. One commenter offered comments that suggested substantive changes including alternative pricing schemes and definitions. The other twelve commenters provided nonsubstantive comments or criticisms of the Delaware Large Capacity Magazine Prohibition Act of 2022.

FINDINGS OF FACT

The public was given the required notice of DSHS's intention to adopt the proposed regulation and was given opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed regulation was submitted. Thirteen written responses were received during the comment period. After reviewing the written comments received from the public, DSHS declines to adopt the suggestions of one commenter with substantive changes. DSHS determines that the regulation already includes the information required by 11 **Del.C.** §1469(d)(2) and therefore no additional changes are required to the regulation. Thus, DSHS finds that the proposed regulations should be adopted as submitted by DSHS.

EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by DSHS pursuant to 11 **Del. C.** §1469(d)(2). The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

ORDER

NOW THEREFORE, under the statutory authority and for the reasons set forth above, DSHS does hereby ORDER this 14th day of October 2022 that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

IT IS SO ORDERED, this 14th day of October 2022.

Delaware Department of Safety and Homeland Security

Nathaniel McQueen Jr., Secretary

103 Regulations Governing the Delaware Large Capacity Magazine Compensation Program

1.0 Definitions

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

"DSHS" means Delaware Department of Safety and Homeland Security.

"Gift Card" means type of payment used by a law enforcement agency to pay for a surrendered large capacity magazine such as VISA or MasterCard gift card.

"Large capacity magazine" or "LCM" means as defined by 11 Del.C. § 1468(2) any ammunition feeding device capable of accepting, or that can readily be converted to hold, more than 17 rounds of ammunition. "Large-capacity magazine" does not include an attached tubular device designed to accept, and only capable of operating with, .22 caliber rimfire ammunition.

"Law Enforcement Agency" means the Delaware State Police.

"LCMCP" means the Delaware Large-Capacity Magazine Prohibition Act of 2022 Compensation Program described in 11 Del.C. § 1469(d).

"Secretary" means the Secretary of Delaware Department of Safety and Homeland Security.

2.0 Authorization

2.1 Funds allocated pursuant to 11 Del.C. §1469(d)(1) shall be maintained in the DSHS, Office of the Secretary. Funds will be distributed to the law enforcement agency in the form of gift cards or cash.

2.2 The Secretary will designate which law enforcement agency locations will participate in the LCMCP.

2.2.1 An agency location designated to participate in the LCMCP and receive funds shall make public notice upon designation by the Secretary, at least 14 business days in advance of starting their program indicating the following:

2.2.1.1 The dates, times, location and duration of the collection.

2.2.1.2 The contact person for the LCMCP responsible for maintaining the funds or inventory allocated by DSHS.

2.3 Within 14 business days after the conclusion of the LCMCP period, the law enforcement agency shall submit to the Secretary an accounting of all funds allocated by DSHS under these regulations.

2.4 All unused funds shall be returned to DSHS in the form it was received, within 14 business days of the conclusion of the LCMCP period.

3.0 Collection and Disposition of Recovered Large Capacity Magazines

3.1 Upon surrender, all LCM shall be tagged or marked by the collecting agency as to:

3.1.1 Where collected;

3.1.2 Whom collected by;

3.1.3 Who collected from;

3.1.4 The date of collection;

3.1.5 The make, model and serial number if applicable.

3.2 Funds shall be issued for LCM which, upon preliminary inspection, appear to be operational, in amounts not to exceed the following:

3.2.1 LCM 18 to 30 rounds: \$15.00

3.2.2 LCM 31 or greater rounds:\$25.00

3.2.3 LCM Drums: \$80.00

- 3.3 The law enforcement agency shall not have the discretion to pay an amount exceeding the amounts as described in subsection 3.2 during the LCMCP period.
- 3.4 Within 14 days after the conclusion of the LCMCP period, a complete list of all LCM collected shall be supplied to the Secretary containing information listed in subsection 3.1 of these regulations.
- 3.5 It shall be the responsibility of the law enforcement agency participating in the LCMCP to dispose of the LCMs collected. Disposal may include any, or a combination of the following:
- 3.5.1 Destruction in a manner causing destruction of the LCM through such methods as crushing, melting or shredding.
- 3.6 Agencies, upon destruction of weapons, shall furnish a list of all disposed LCMs to the Secretary within 14 business days.

4.0 General Rules

- 4.1 The LCMCP shall be completed by June 30, 2023. The LCMCP is subject to the availability of funds appropriated for this specific purpose by the General Assembly. The LCMCP does not create a right or entitlement in a resident to receive a monetary payment under the LCMCP.
- 4.2 An agency conducting an LCMCP shall be responsible for the security of the site, the surrounding area, the surrendered LCM, transportation, unused funds and inventory.
- 4.3 To ensure safety, any agency conducting an LCMCP shall have at least one person on site knowledgeable in the operation and safety of firearms.
- 4.4 Any individual who elects to surrender an LCM anonymously at an LCMCP designated location may do so; however, the individual will not be eligible for compensation.
- 4.5 Personal identification showing proof of Delaware residency shall be required to be presented at the time of the redemption.
- 4.6 The LCMCP is only intended for individuals and does not apply to wholesale, retail, manufacturers and distributor business entities.
- 4.7 An LCM relinquished to a law-enforcement agency of the state as part of the LCMCP may be destroyed by the agency 30 days after relinquishment.
- 4.8 Notwithstanding any law to the contrary, any person, provided the person is, in good faith, on an immediate, direct route to a designated law enforcement agency in the LCMCP shall be immune from criminal prosecution for the criminal offenses defined in 11 Del.C. §1469.

OFFICE OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code, Section 4177G (21 Del.C. §4177G)
2 DE Admin. Code 1203

ORDER

1203 Ignition Interlock Device Installation, Removal and Monthly Monitoring and Calibration Fees

NATURE OF THE PROCEEDINGS

At **26 DE Reg. 40** (July 1, 2022), the Delaware Department of Safety and Homeland Security, Office of Highway Safety, pursuant to the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 21 of the Delaware Code, Chapter 41, Section 4177G, proposed to repeal 1203 Ignition Interlock Device Installation, Removal and Monthly Monitoring and Calibration Fees to be consistent with changes in basic law. The Office of Highway Safety no longer possesses the appropriate statutory authority under which **2 DE Admin. Code § 1203** was promulgated and it has since been replaced by **2 DE Admin. Code § 2223** Ignition Interlock Device Installation, Removal and Monthly Monitoring and Calibration Fees by the Department of Transportation on March 1, 2022. At the same time, DSHS submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed repeal, as required by 29 Del. C. Ch. 104. DSHS solicited written comments from the

public for thirty (30) days as mandated by 29 **Del. C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with law, public notice regarding the proposed repeal was published in the *Delaware Register of Regulations*. The public comment period was open from July 1, 2022 through August 5, 2022. During this period, DSHS did not receive any written comments.

FINDINGS OF FACT

The public was given the required notice of DSHS's intention to repeal the regulation and was given opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed repeal was submitted. DSHS did not receive any written comments. Thus, DSHS finds that the regulations should be repealed as submitted by DSHS.

EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by DSHS pursuant to 21 **Del. C.** §4177G. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

ORDER

NOW THEREFORE, under the statutory authority and for the reasons set forth above, DSHS does hereby ORDER this 14th day of October 2022 that the regulations be, and that they hereby are, repealed as set forth below.

IT IS SO ORDERED, this 14th day of October 2022.

Delaware Department of Safety and Homeland Security

Nathaniel McQueen Jr., Secretary 14 October 2022

1203 Ignition Interlock Device Installation, Removal and Monthly Monitoring and Calibration Fees

* Please Note: Jurisdiction was transferred to the Division of Motor Vehicle, July 2010. Please see: 2 **DE Admin. Code** 2223

1.0 Authority

The authority to promulgate this regulation is ~~21 **Del.C.** §4177F(e).~~

2.0 Purpose

~~Title 21 **Del.C.** §4177F established a program utilizing the Ignition Interlock device for those individuals with an alcohol related violation or offense. After surveying the fees charged by surrounding jurisdictions for similar services, this policy regulation will establish a fee schedule for all expenses related to installation and lease of the device.~~

3.0 Applicability

~~This policy regulation concerns Title 21 **Del.C.** §4177F.~~

4.0 Substance of Policy

~~4.1 Installation of Device~~

~~4.1.1 All persons who voluntarily or as a result of a court order, install an Ignition Interlock device in a motor vehicle monitored in conjunction with the Division of Motor Vehicles, will be charged a fee by~~

~~the provider for that service, and this fee will include the cost of removing the device at the termination of the program.~~

~~4.1.2 The service providers shall charge a fee not to exceed \$100.00 for installation of the Interlock device, but this amount includes a rebate of \$30.00 which will be returned to the client at the time of removal. This fee shall be the responsibility of the clients.~~

~~4.2 Monthly Monitoring & Calibration~~

~~4.2.1 All persons with an Ignition Interlock device installed in a vehicle monitored in conjunction with the Division of Motor Vehicles, shall be charged a fee for the monthly electronic monitoring and regular calibration of the device.~~

~~4.2.2 The service providers shall charge a fee not to exceed \$75.00 for monthly monitoring and calibration. This fee shall be the responsibility of the clients.~~

~~4.3 Initial down Payment~~

~~4.3.1 The initial payment will include the installation fee and the first month's monitoring and calibration. The initial payment, therefore, shall not exceed \$175.00 and the bi-monthly payment shall not exceed \$150.00~~

~~4.4 Other Fees~~

~~4.4.1 The Division of Motor Vehicles recognizes that Service providers may charge fees for other services outside the scope of this policy regulation, including but not limited to fees for missed appointments, device resets, and optional insurance programs relating to damage or loss of the device.~~

~~4.5 Definition of Alcohol Related Violations and Offenses~~

~~4.5.1 For purposes of this policy regulation, alcohol-related violations and offenses shall mean violations of Sections 2740, 2742, 4177, 4177B, 4175 of Title 21, conforming statutes of other states or the District of Columbia, or local ordinances in conformity therewith.~~

5.0 Severability

If any part of this Regulation 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 Regulation shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulation 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).

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Medical Licensure and Discipline**

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 ~~Del.C.~~ §1713(a)(12))
24 ~~DE Admin. Code~~ 1700

ORDER

1700 Board of Medical Licensure and Discipline

Pursuant to 29 ~~Del.C.~~ § 10118 and 24 ~~Del.C.~~ § 1713(a)(12), the Delaware Board of Medical Licensure and Discipline ("Board") issues this Final Order adopting amendments to the Board's Rules and Regulations. Specifically, pursuant to 29 ~~Del.C.~~ § 10113(b)(5), Section 19.0, pertaining to telemedicine, must be amended, without prior publication, as it is inconsistent with 24 ~~Del.C.~~ Ch. 60.

Summary of the Evidence

1. Section 19.0 currently states:

19.0 Telemedicine

19.1 A remote, audio-only examination is not an "appropriate in-person examination" as that term is used in 24 Del.C. §1769D(b)(4).

19.2 No opioid prescribing is permitted via telemedicine with the exception of addiction treatment programs offering medication assisted treatment that have received a Division of Substance Abuse and Mental Health (DSAMH) waiver to use telemedicine through DSAMH's licensure or renewal process as outlined in 16 DE Admin. Code 6001 Substance Abuse Facility Licensing Standards Sec. 4.15. All other controlled substance prescribing utilizing telemedicine is held to the same standards of care and requisite practice as prescribing for in-person visits.

19.3 For formation of the physician-patient relationship using audio and visual communications pursuant to 24 Del.C. §1769D(h)(3), the audio and visual communications must be live, real-time communications.

19.4 "Major medical specialty societies" as the term is used in 24 Del.C. §1769D(h)(4) means specialty societies that are members of the Council of Medical Specialty Societies.

2. Effective July 1, 2021, Section 1769D of Title 24, cited in the current Rules and Regulations and forming the basis for the current Section 19.0, was repealed by the Delaware General Assembly. 83 Del. Laws. c. 53, § 6. Effective that same day, 24 **Del.C.** §§ 6001-6005, created new requirements for practicing telemedicine. The new requirements conflict with the language of the Board's current Section 19.0.

3. The Board proposes to strike Section 19.0 in its entirety, as follows:

~~19.0 Telemedicine~~

~~19.1 A remote, audio-only examination is not an "appropriate in-person examination" as that term is used in 24 Del.C. §1769D(b)(4).~~

~~19.2 No opioid prescribing is permitted via telemedicine with the exception of addiction treatment programs offering medication assisted treatment that have received a Division of Substance Abuse and Mental Health (DSAMH) waiver to use telemedicine through DSAMH's licensure or renewal process as outlined in 16 DE Admin. Code 6001 Substance Abuse Facility Licensing Standards Sec. 4.15. All other controlled substance prescribing utilizing telemedicine is held to the same standards of care and requisite practice as prescribing for in-person visits.~~

~~19.3 For formation of the physician-patient relationship using audio and visual communications pursuant to 24 Del.C. §1769D(h)(3), the audio and visual communications must be live, real-time communications.~~

~~19.4 "Major medical specialty societies" as the term is used in 24 Del.C. §1769D(h)(4) means specialty societies that are members of the Council of Medical Specialty Societies.~~

Decision and Effective Date

The Board hereby adopts the changes to the Rules and Regulations as proposed, to be effective 10 days following publication of this Final Order in the *Register of Regulations*. The new Rules and Regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 11th day of October 2022.

/s/ Stephen Lawless, M.D.

/s/ Randeep Kahlon, M.D.

/s/ Barry L. Bakst, D.O.

/s/ Sharon Williams-Mayo, Public Member

/s/ Lauren Davey, P.A.

/s/ Melissa Warren, Public Member

/s/ Joseph Rubacky, D.O.

/s/ Bethany Melo, P.A.

/s/ Mary Lomax, Public Member

/s/ Joseph M. Parise, D.O.

/s/ Janice Truitt, Public Member

/s/ Bryan D. Villar, M.D.

/s/ Georges A. Dahr, M.D.

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

**1700 Board of Medical Licensure and Discipline
(Break in Continuity of Sections)**

49.0 Telemedicine

- ~~19.1 A remote, audio-only examination is not an "appropriate in-person examination" as that term is used in 24 Del.C. §1769D(b)(4).~~
- ~~19.2 No opioid prescribing is permitted via telemedicine with the exception of addiction treatment programs offering medication-assisted treatment that have received a Division of Substance Abuse and Mental Health (DSAMH) waiver to use telemedicine through DSAMH's licensure or renewal process as outlined in 16 DE Admin. Code 6001 Substance Abuse Facility Licensing Standards Sec. 4.15. All other controlled substance prescribing utilizing telemedicine is held to the same standards of care and requisite practice as prescribing for in-person visits.~~
- ~~19.3 For formation of the physician-patient relationship using audio and visual communications pursuant to 24 Del.C. §1769D(h)(3), the audio and visual communications must be live, real-time communications.~~
- ~~19.4 "Major medical specialty societies" as the term is used in 24 Del.C. §1769D(h)(4) means specialty societies that are members of the Council of Medical Specialty Societies.~~

20.019.0 Electronic Prescribing [Authority: 24 Del.C. §1764A]

- ~~20.119.1A~~ "temporary technological or electrical failure" as that term is used in 24 Del.C. §1764A(b)(2) shall mean a technological or electrical failure that occurred through no fault of the licensee and lasts no more than one week.
- ~~20.2 19.2~~ Electronic prescriptions are not required for prescriptions that will be dispensed by a pharmacy not under the jurisdiction of the State of Delaware that does not have an electronic prescribing requirement in place via statute or regulation at the time the prescription is issued.
- ~~20.3 19.3A~~ licensee may petition the Board for a waiver of the e-prescribing requirement under 24 Del.C. §1764A(b)(9). Waiver petitions must be made in writing to the Board and will only be issued for one of the following reasons:
 - ~~20.3.1 19.3.1~~ The licensee does not issue more than 50 prescriptions in one calendar year;
 - ~~20.3.2 19.3.2~~ The licensee will experience a financial hardship if required to issue prescriptions electronically; or
 - ~~20.3.3 19.3.3~~ The licensee is unable to issue electronic prescriptions as a result of technological limitations that are not reasonably within the control of the practitioner, such as limited internet coverage in geographic region of practice.
- ~~20.4 19.4~~ If the Board grants a waiver, such waiver shall be valid for a specified period of time not to exceed one year and may be renewed upon a demonstration that the basis for the initial waiver still exists. Renewal requests must be made in writing to the Board.

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

<http://regulations.delaware.gov/register/november2022/final/26 DE Reg 404 11-01-22.htm>

DIVISION OF PROFESSIONAL REGULATION Board of Nursing

Statutory Authority: 24 Delaware Code, Section 1906(a)(1) (24 Del.C. §1906(a)(1))
24 DE Admin. Code 1900

ORDER

1900 Board of Nursing

The Delaware Board of Nursing pursuant to 24 Del. C. § 1906(a)(1), proposed to revise its regulations. The proposed amendments seek to revise its regulations to set forth the required qualification for and parameters under which a certified nurse midwife or certified nurse practitioner may perform medication and manual vacuum aspiration abortions.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware Register of Regulations on August 1, 2022 a public hearing was held on September 14, 2022. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2, documentation of publication of the notice of the public hearing in the News Journal and the Delaware State News.

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

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

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the Delaware State News; and

Board Exhibit 3 - September 29, 2022 letter from Tijah R. Hilton-Phillips, Esquire, Director of Regulatory Affairs for Highmark Blue Cross Blue Shield Delaware suggesting two additions to the proposed regulations. Specifically, Highmark requested that a requirement that providers demonstrate competency via proof of number of prior procedures performed and that a physician backup be present during the procedure.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. On September 29, 2022 Highmark Blue Cross Blue Shield Delaware submitted a letter asking the Board to add a requirement that providers demonstrate competency via proof of number of prior procedures performed and that a physician backup be present during the procedures in case of complications such as a perforated uterus.
3. The Board discussed the comment from Highmark and noted that the regulations were developed by the APRN Committee, made up of several members qualified to perform the procedures set forth in the regulations. The Board noted that these professionals are not currently required to comply with Highmark's proposed requirements, and several of other procedures they perform have a risk of uterine perforation, such as IUD insertion or endometrial biopsy.
4. The Board further found that the decision regarding requirements for these procedures should be up to the facilities where they are performed. The request that doctors be present undercuts APRNs' rights to independent practice. As such, the Board voted unanimously to reject Highmark's proposed changes.
5. Pursuant to 24 Del. C. § 1906(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
6. The proposed amendments seek to revise its regulations to set forth the required qualification for and parameters under which a certified nurse midwife or certified nurse practitioner may perform medication and manual vacuum aspiration abortions.
7. The public was given notice and an opportunity to provide the Board with comments in writing and by

testimony at the public hearing on the proposed changes to the Board's rules and regulations.

8. For the reasons stated above, the Board finds no reason to substantively amend the regulations.

DECISION AND ORDER CONCERNING THE REGULATIONS

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

IT IS SO ORDERED this 12th day of October 2022 by the Delaware Board of Nursing.

Jacqui Mainwaring, CRNA

Pamela James, RN

Stephanie Mitchell, FNP, PMH, NP

Sandra Glenn-Vernon, RN

Christina Hushen, RN

Danielle Lowe, RN

Tiarra Davis, Public Member

Carol Abdill, RN

Prameela Kaza, Public Member

Gayle Melvin, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the August 2022 issue of the *Register* at page 96 (26 DE Reg. 96). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/november2022/final/26 DE Reg 407 11-01-22.htm>

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4504 (21 Del.C. §4504)

2 DE Admin. Code 2405

ORDER

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual

Pursuant to the authority provided by 21 *Del. C.* § 4504, the Delaware Department of Transportation proposed to adopt changes to its regulation entitled the Oversize/Overweight Hauling Permit Policy and Procedures Manual.

The Department, through its Division of Transportation Solutions, published proposed revisions to the existing regulation, the Oversize/Overweight Hauling Permit Policy and Procedures Manual, seeking public comment through the public notice appearing in **26 DE Reg. 170 (09/01/22)**.

The Department indicated in its September 1, 2022 notice that it would accept written public comments on the proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual from September 1, 2022 through October 3, 2022.

Summary of the Evidence and Information Submitted.

There were no comments received by the Department. The proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual intended to revise Regulation 2405 are procedural changes which are administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

Findings of Fact and Conclusions

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

1. The proposed amendments to the Oversize/Overweight Hauling Permit Policy and Procedures Manual are useful and proper. The public comment period was appropriately held open for thirty days and no public comment was received.
2. The adoption of these proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual is in the best interests of the State of Delaware. Having received no public comment, there is no basis upon which to further amend the regulation and it is adopted as amended.

Decision and Effective Date

The Department hereby adopts the Regulations as proposed, to be effective November 11, 2022.

IT IS SO ORDERED this 5th day of October 2022.

Nicole Majeski, Secretary
Delaware Department of Transportation

***Please note that no changes were made to the regulation as originally proposed and published in the September 2022 issue of the *Register* at page 170 (26 DE Reg. 170). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/november2022/final/26 DE Reg 408 11-01-22.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCEStatutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**NOTICE****Proposed Extension and Amendment of the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver**

In accordance with the public notice requirements of 42 CFR 431.408 and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives notice related to the upcoming proposed extension and amendment of the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver.

Purpose

The purpose of this posting is to provide advance public notice of the upcoming opportunity to provide input regarding Delaware's proposed extension and amendment of the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver.

Overview of the DSHP 1115 Waiver

Delaware will be proposing to extend the current DSHP 1115 Waiver for an additional year and amend the DSHP 1115 Waiver to incorporate important program enhancements. The DSHP 1115 Waiver currently expires December 31, 2023 and is renewed every five years. The DSHP 1115 Waiver enrolls most Medicaid beneficiaries and authorizes Delaware to deliver Medicaid services through managed care organizations (MCOs). The DSHP 1115 Waiver also authorizes the DSHP Plus managed long-term services and supports program, authorizes expanded behavioral health services in the PROMISE Program, authorizes substance use disorder services in institutions for mental disease settings, and expands eligibility to certain groups, including out-of-state former foster care youth.

In addition to a one-year extension of the DSHP 1115 Waiver, Delaware will be proposing to amend the DSHP 1115 Waiver for changes that include, for example:

- Expanding access by eliminating Delaware's waiver of retroactive Medicaid eligibility
- Addressing health-related social needs by piloting Medicaid coverage of DMMA's Food Box initiative for post-partum women
- Expanding access to substance use disorder services by adding new services and supports for individuals with substance use disorders
- Incorporating children's dental services into the DSHP 1115 managed care delivery model

Public Comment Submission Process

As required by 42 CFR Part 431.408, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the waiver and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code. DHSS/DMMA will be providing public notice of these changes and an open comment period to allow all stakeholders an opportunity to provide input on the proposed DSHP 1115 Waiver changes. The public notice and draft waiver application will be posted to DMMA's website no later than November 11, 2022 and will be held open for 30 days. DMMA's website address is:

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

The DMMA website will indicate the locations at which the hardcopy can be viewed, the public dates and locations of public meetings on the DSHP 1115 Waiver, and will provide details on how the public may submit comments.

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

Date 10/17/2022 | 2:58 PM EDT

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Wednesday, November 9, 2022** commencing at **1:30 p.m.** The public hearing will be conducted remotely. Any draft dockets and draft resolutions that will be subjects of the public hearing, along with details about the remote platform and how to attend, will be posted on the Commission's website, www.drbc.gov, at least 10 days prior to the meeting date.

The Commission's quarterly business meeting will be held the following month, on **Wednesday, December 7, 2022** commencing at **10:30 a.m.** The business meeting will be conducted remotely. Details about the remote platform and a meeting agenda will be posted on the Commission's website, www.drbc.gov, at least 10 days prior to the meeting date.

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

DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**PUBLIC NOTICE****501 Harness Racing Rules and Regulations****Summary**

The Harness Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 501. The purpose of the proposed regulations is to amend the rules regarding who can administer Bleeder medication (Furosemide/Salix), in light of an ongoing and nationwide shortage of veterinarians. This amendment permits veterinary technicians to administer Bleeder medication, under the supervision of a licensed veterinarian. This change has already been adopted on a temporary emergency basis, and as there is no indication that the shortage of veterinarians will resolve soon, the Commission desires to implement this rule amendment on a permanent basis. Other regulations issued by the Harness Racing Commission are not affected by this proposal. The Harness Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the November 1, 2022 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Harness Racing Commission, and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: https://regulations.delaware.gov/register/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before December 1, 2022. Written materials submitted will be available for inspection at the above address.

OFFICE OF THE SECRETARY**PUBLIC NOTICE****102 Secretarial Powers****Summary**

Pursuant to the authority granted by Title 3 chapters 1, 3, 71, 73, 81 of the Delaware Code, the Department of Agriculture proposes to amend its regulations. The purpose of the amended regulations is to provide clear detail regarding the authority of the Secretary of the Delaware Department of Agriculture to prevent the spread of contagious or infectious diseases.

CALENDAR OF EVENTS/HEARING NOTICES

The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

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

Interested parties may offer written comments on the proposed regulations indicating whether these proposed regulations should be adopted, rejected or modified. Interested parties may hand deliver to the Department, any written suggestions, data, briefs or other materials at the above address. Pursuant to 29 **Del.C.** § 10118(a), public comments must be received on or before December 1, 2022. Written materials submitted will be available for inspection at the above address.

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

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

Meeting information can be accessed via the public meeting calendar.

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

The next meeting is scheduled for November 17, 2022.

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

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

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

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Reasonable Income Compatibility Threshold

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) 14800 regarding the Reasonable Income Compatibility Threshold.

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 Melissa.Dohring@Delaware.gov or by fax to 302-255-4413 by 4:30 p.m. on December 1, 2022. Please identify in the subject line: Reasonable Income Compatibility Threshold.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF FISH AND WILDLIFE****PUBLIC NOTICE****3300 Non-Tidal Finfish****1. TITLE OF THE REGULATIONS:**

Amend 7 **DE Admin. Code** 3300 Non-Tidal Finfish - 3301 Definitions and 3304 Creel Limits, Size Limits and Seasons 3.0 Trout.

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

The Department provides a put-and-take freshwater trout fishery each spring in select piedmont streams of New Castle County, one pond in Kent County, and one pond in Sussex County. This action proposes to augment the waters open for trout fishing by adding an additional 0.4 miles of designated trout stream to the stocked portion of Red Clay Creek, create a fly fishing-only area on Red Clay Creek, and increase trout fishing participation by young people with the designation of Youth Days.

Appropriate waters for stocking freshwater trout are limited due to restricted public access and trout habitat requirements. Development, property rights, and population growth have reduced public access on some of Delaware's Designated Trout Streams. Freshwater trout angling remains a seasonally popular activity and the continuing water quality improvement of Red Clay Creek provides an opportunity to expand Delaware's trout waters in an undeveloped area of Auburn Valley State Park, increase public access to Red Clay Creek's freshwater trout fishery, and provide the second fly-fishing only area in the state.

This action will also create Youth Days (one day on the Kent and Sussex County trout ponds and one day on the New Castle County trout streams) for anglers under the age of 16. The growing need of the public to find safe, suitable outdoor activities for children during the 2020 lockdown phase of the COVID pandemic provided the impetus for DNREC to use the State of Emergency to designate the opening day of the trout season on the New Castle County streams as a Youth Day in 2020 and opening day for the ponds and streams as Youth Days in 2021. The Youth Days, which restricted trout fishing to young people under the age of 16, were very popular and helped increase the number of trout anglers both years compared to 2019. Youth Days provide a great introduction to fishing for Delaware's young people with the hope that many of the Youth Day participants become lifelong anglers.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** §1104

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

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 **DE Admin. Code** 3300 Non-Tidal Finfish - 3301 Definitions and 3304 Creel Limits, Size Limits and Seasons 3.0 Trout opens November 1, 2022 (Hearing Docket No. 2022-R-F-0016). A virtual public hearing will be held on **Tuesday, November 22, 2022, beginning at 6 p.m.** The web link to the virtual meeting is found on the DNREC Public Hearings site at <https://de.gov/dnrechearings>. If prompted for a password, please use: TROUT. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 2340 459 7194. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing. The designated page for this Pre-Registration process can be found here: <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>

Individuals may submit written comments regarding the proposed changes via e-mail to DNRECHearingComments@delaware.gov, or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover,

DE 19901. Public comments will be received until close of business **Wednesday, December 7, 2022.**

7. PREPARED BY:
John H. Clark
Email: John.Clark@delaware.gov
Phone: (302)739-9914
-

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Medical Licensure and Discipline
PUBLIC NOTICE
1700 Board of Medical Licensure and Discipline

Pursuant to 24 **Del.C.** § 1770(c), the Regulatory Council for Physician Assistants ("the Council") of the Board of Medical Licensure and Discipline has proposed revisions to its rules and regulations. A new subsection 13.4 is added to implement standards for the performance of abortion by physician assistants.

A public hearing will be held on December 6, 2022 at 1:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Regulatory Council for Physician Assistants, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address or at shauna.slaughter@delaware.gov. Pursuant to 29 **Del.C.** § 10118(a), the final date to receive written comments will be December 21, 2022. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.

DIVISION OF PROFESSIONAL REGULATION
Board of Home Inspectors
PUBLIC NOTICE
4100 Board of Home Inspectors

The Delaware Board of Home Inspectors, pursuant to 24 *Del. C.* § 4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes aim to address a growing practice in the profession of licensed home inspectors performing partial home inspections and not producing written reports.

The Board will hold a public hearing on the proposed regulation change on January 10, 2023 at 9:00 a.m., either telephonically or in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Michelle Loper at the Delaware Board of Home Inspectors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until January 25, 2023 pursuant to 29 *Del. C.* § 10118(a).

**PUBLIC SERVICE COMMISSION
PUBLIC NOTICE****3001 Rules for Certification and Regulation of Electric Suppliers, Net Metering, and Community Energy Facilities**

IN THE MATTER OF REVISIONS TO THE RULES
AND REGULATIONS TO
IMPLEMENT THE PROVISIONS OF 26 DEL. C.
CH. 10 RELATING TO THE CREATION OF A
COMPETITIVE MARKET FOR RETAIL ELECTRIC
SUPPLY SERVICE (OPENED APRIL 27, 1999;
RE-OPENED JANUARY 7, 2003; SEPTEMBER
22, 2009; SEPTEMBER 7, 2010; JULY 17, 2012;
JULY 14, 2021; AND OCTOBER 12, 2022)

PSC REGULATION DOCKET
NO. 49

**PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE PUBLIC SERVICE COMMISSION'S RULES
REGARDING NET ENERGY METERING**

**TO: ALL ELECTRIC SERVICE CUSTOMERS OF DELMARVA POWER & LIGHT COMPANY AND OTHER
INTERESTED PERSONS**

On July 22, 2022, the Governor of the State of Delaware signed into law Senate Bill 298, which amended provisions in Title 26 of the Delaware Code, at § 1014 relating to net energy metering, including: (1) increasing the cap at which an electric utility may elect not to provide net metering services from the current 5% of its peak demand to 8%; (2) providing that the Commission's net energy metering rules must consider the reliability, safety, and capacity of the electric distribution system; (3) defining "Excess kWh Credit" as any excess production in kWh of a net energy metering customer's generating facility that exceeds the customer's on-site consumption of kWh in a billing period; (4) removing the charges for societal benefits programs from those charges against which a commission-regulated utility applies a net energy metering customer's "Excess kWh Credits" in subsequent monthly billing periods (and to define "societal benefits programs"); (5) providing that electric utilities shall not reimburse or credit net energy metering customers for any "Excess kWh Credits" at the end of the annualized billing period, and that "Excess kWh Credits" shall revert to the electric distribution company at the end of the annualized billing period; (6) providing that, if a net metering customer abandons the property where the generating equipment is located, the equipment may remain connected to the electric distribution system unless the equipment presents a risk to the safety and reliability of the system; and (7) providing that non-residential customers shall be responsible for the reasonable cost of meters that are installed or modified for net-metering purposes and caps such costs for residential customers at \$200.

By Order No. 10109 dated October 12, 2022 (the "Order"), the Commission now proposes to revise its *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 Del. Admin. C. § 3001 ("*Supplier Rules*") to reflect the Senate Bill 298 amendments as well as make certain other up-dates to the *Supplier Rules*.

The text of the revised *Supplier Rules* is attached to the Order. The Order and related exhibits are reproduced in the November 1, 2022 edition of the *Delaware Register of Regulations* and may also be reviewed online at the Commission's website at www.depsec.delaware.gov. You may also obtain a pa-per copy of the Orders at the Commission's Dover office for a fee of \$0.25 per page.

The Commission will conduct a public hearing on the revised *Supplier Rules* on Wednesday, December 14, 2022, beginning at 1:00 PM, in accordance with 26 Del. C. § 209(a). All persons who wish to be heard by the Commission may attend in person or by teleconference. Dial-in information will be provided on the agenda for the December 14, 2022 meeting, which can be found on the PSC website at www.depsec.delaware.gov. Interested parties may file written comments, suggestions, briefs, compilations of data, or other materials concerning the Amendments. Such material may be submitted to the Commission on or before December 29, 2022, by email to samuel.kayne@delaware.gov or at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Bldg., Suite 100
Dover, Delaware, 19904
Attn: PSC Reg. Dckt. 49

To be considered at the December 14, 2022 hearing, however, written materials must be submitted on or before November 28, 2022.

If you are handicapped and need assistance or aids in participating in this matter, please contact the Commission to discuss any needed assistance or aids. You may contact the Commission with questions or requests about this matter at the Commission's toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You may also send inquiries by Inter-net e-mail addressed to psc@delaware.gov.

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

PUBLIC NOTICE

2401 Utilities Manual Regulations

Pursuant to the authority provided in Title 17 of the **Delaware Code**, Sections 131, 132 and 143, as well as 26 **Delaware Code** Chapters 9, 11, and 13 the Delaware Department of Transportation (DelDOT), adopted the 2401 Utilities Manual Regulations. The Department seeks to adopt revisions to the regulation to clarify intent and to address recent updates to federal law.

Public Comment Period

DelDOT will take written comments on the proposed revisions to Section 2401 of Title 2, Delaware Administrative Code, from November 1, 2022 through December 1, 2022. The public may submit their comments to:

Eric Cimo, P.E., Utilities Engineer, Division of Transportation Solutions
(eric.cimo@delaware.gov) or in writing to their attention,
Delaware Department of Transportation
Division of Transportation Solutions
P.O. Box 778 Dover, DE 19903
