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# Delaware Register of Regulations

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Issue Date: October 1, 2020

Volume 24 - Issue 4, Pages 294 - 419

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## IN THIS ISSUE:

Regulations:  
Emergency  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before September 15, 2020.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## 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.

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## 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.

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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**Symbol Key**

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

**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 EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303(a)-(c); 29 Delaware Code, Section 10119 (14 **Del.C.** §§122(b)(15) & 303(a)-(c) & 29 **Del.C.** §10119)

**EMERGENCY****ORDER****1010 Interscholastic Athletics during the COVID-19 Pandemic**

**WHEREAS**, pursuant to 14 **Del.C.** §§303(a) and (b), the Delaware Interscholastic Athletic Association (“DIAA”) is a unit of the Delaware Department of Education that works in consultation and cooperation with the Department of Education to develop regulations relating to interscholastic athletics for middle and secondary schools in Delaware; and

**WHEREAS**, pursuant to 14 **Del.C.** §303(c), DIAA adopts regulations as to the sports over which it has jurisdiction; and

**WHEREAS**, pursuant to 14 **Del.C.** §301, DIAA was established, in part, to preserve and promote the educational significance of interscholastic athletics, provide for fair competition between member schools, protect the physical well-being of student athletes, and promote healthy adolescent lifestyles; and

**WHEREAS**, the Centers for Disease Control and Prevention determined that a novel coronavirus (“COVID-19”) presents a serious public health threat and, as a result, on March 12, 2020, the Governor issued a Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (“State of Emergency Order”), which has been modified; and

**WHEREAS**, on June 1, 2020, DIAA’s Sports Medicine Advisory Committee (“SMAC”) issued recommendations to the DIAA Board of Directors for returning to play once interscholastic athletics resumes; and

**WHEREAS**, on June 4, 2020, DIAA’s Rules and Regulations Committee recommended the DIAA Board of Directors develop a new regulation regarding COVID-19 that includes SMAC’s recommendations for returning to

play; and

**WHEREAS**, on June 14, 2020, the Governor issued the Twenty-First Modification of the State of Emergency Order, which permits youth sports and other types of physical activity for children to resume during Phase 2 of the State's economic reopening, beginning on June 15, 2020; and

**WHEREAS**, the Delaware Department of Health and Social Services' Division of Public Health issued guidance concerning youth sports and suggested guidelines for returning to sports safely during COVID-19; and

**WHEREAS**, on June 24, 2020, the DIAA Board of Directors determined that the adoption of an emergency regulation was necessary to protect the physical well-being of student athletes and promote healthy adolescent lifestyles during the State of Emergency and proposed that the adoption of the regulation to the Delaware Department of Education ("DOE"), subject to the State Board of Education's approval, occur on an emergency basis (the "Emergency Regulation"); and

**WHEREAS**, on June 30, 2020, the State Board of Education approved the adoption of the Emergency Regulation and the Emergency Regulation went into effect on July 1, 2020.

**WHEREAS**, on July 15, 2020, the DOE released the State's guidance for reopening schools for the 2020-2021 school year, which outlines requirements for schools under three scenarios: if minimal community spread exists in the State (and school buildings are open), if minimal-to-moderate community spread exists in the State (situation dependent), and if significant community spread exists in the State (and school buildings are closed).

**WHEREAS**, on August 4, 2020, the State determined that minimal-to-moderate community spread exists and, as a result, schools could reopen for the 2020-2021 school year using a hybrid model of remote instruction and in-person learning options with precautions in place.

**WHEREAS**, on August 6, 2020, the DIAA Board of Directors determined that amendments to the Emergency Regulation were necessary to promote the educational significance of interscholastic athletics, provide for fair competition between member schools, protect the physical well-being of student athletes, and promote healthy adolescent lifestyles during the State of Emergency and proposed that the adoption of the amendments to the Emergency Regulation to the Department of Education, subject to the State Board of Education's approval, occur on an emergency basis;

**WHEREAS**, on August 14, 2020, the State Board of Education approved amendments to the Emergency Regulation that immediately went into effect;

**WHEREAS**, on September 1, 2020, the Governor issued the Twenty-Sixth Modification of the State of Emergency Order, which provides mandated terms for the operation of youth sports facilities, organizations, and leagues, effective September 2, 2020 at 8:00 a.m. E.D.T.; and

**WHEREAS**, on September 3, 2020, the Governor issued the Twenty-Seventh Modification of the State of Emergency Order, which consolidates prior Modifications related to the State of Emergency into one Modification and includes mandated terms for the operation of youth sports facilities, organizations, and leagues; and

**WHEREAS**, on September 10, 2020, the DIAA Board of Directors determined that further amendments to the Emergency Regulation were necessary to promote the educational significance of interscholastic athletics, provide for fair competition between member schools, protect the physical well-being of student athletes, and promote healthy adolescent lifestyles during the State of Emergency and proposed that the adoption of the amendments to the Emergency Regulation to the Department of Education, subject to the State Board of Education's approval, occur on an emergency basis;

**WHEREAS**, in accordance with 29 **Del.C.** §10119(4), the DIAA Board of Directors will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the attention of the DIAA Board of Directors, Delaware Department of Education, 35 Commerce Way, Suite 1, Dover, DE 19904 or emailing the petitions to [DIAA@doe.k12.de.us](mailto:DIAA@doe.k12.de.us).

**WHEREAS**, in accordance with 29 **Del.C.** §10119(3), the Emergency Regulation shall be effective for 120 days from July 1, 2020 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 of Regulations for publication in the next issue of the *Register of Regulations*.

**NOW, THEREFORE, IT IS ORDERED** this 17<sup>th</sup> day of September, 2020 that the following amendments to the Emergency Regulation, Interscholastic Athletics during the COVID-19 Pandemic, attached hereto as Exhibit A shall take effect immediately.

**IT IS SO ORDERED** the 17<sup>th</sup> day of September, 2020.

**Department of Education**

Susan S. Bunting, Ed., Secretary of Education

Approved this 17<sup>th</sup> day of September, 2020.

**State Board of Education**

Whitney Sweeney, President (Voted no)	/s/ Vincent Lofink
Wali W. Rushdan, II, Vice President (Voted no)	Audrey J. Noble, Ph.D. (Voted no)
/s/ Nina Lou Bunting	/s/ Provey Powell, Jr.
/s/ Candace Fifer	

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

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

**1010 Interscholastic Athletics during the COVID-19 Pandemic**

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

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

**EMERGENCY SECRETARY'S ORDER**

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119 to Paragraph A(7) of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, and pursuant

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

**3201 Skilled and Intermediate Care Nursing Facilities**

**AUTHORITY**

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119 and pursuant to Paragraph A(7) of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat ("Governor's Emergency Declaration,"), the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 DE Admin. C. 3201: *Skilled and Intermediate Care Nursing Facilities*. Additionally, 29 Del.C. §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del.C. §10115. Moreover, 16 Del.C. §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for long-term care facilities and services.

**REASON FOR THE EMERGENCY ORDER**

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

Because asymptomatic or presymptomatic residents and staff might play an important role in transmission in facilities, additional prevention measures merit consideration, including using testing to guide the use of transmission-based precautions, isolation, and cohorting strategies.

The ability to test large numbers of residents and staff may significantly decrease transmission of COVID-19 within facilities.

### **EFFECTIVE DATE OF ORDER**

It is hereby ordered, that 16 *DE Admin. C. 3201: Skilled and Intermediate Care Nursing Facilities*, specifically, Subsections 2.21, 5.5.9, 6.11, and 8.3.1, which expand definitions, documentation, emergency preparedness, and testing requirements, is temporarily modified as shown by underline as follows:

2.21 Vendor – Any individual who is not employed by the facility but provides direct services to one or more facility residents.

#### 5.5.9 Results of COVID-19 testing

#### 6.11 Specific Requirements for COVID-19

##### 6.11.1 Residents

6.11.1.1 All residents should be tested upon identification of another resident with symptoms consistent with COVID-19, or if facility staff have tested positive for COVID-19.

6.11.1.2 All other resident testing should be consistent with Division of Public Health guidance for the duration of the public health emergency.

6.11.1.3 All testing and test results must be documented in the resident medical record.

6.11.1.4 Facilities must report all resident testing and test results, to the Delaware Division of Public Health.

##### 6.11.2 Staff, vendors and volunteers

6.11.2.1 All staff, vendors and volunteers who have not previously tested positive for COVID-19 must receive a baseline COVID-19 test within 2 weeks of the effective date of this regulation.

6.11.2.2 All new staff, vendors and volunteers who cannot provide proof of previous positive testing must be tested prior to their start date.

6.11.2.3 All staff, vendors and volunteers who test negative must be retested consistent with Division of Public Health guidance for the duration of the public health emergency.

6.11.2.4 Facilities must report all staff, vendor and volunteer testing and test results, to the Delaware Division of Public Health.

6.11.2.5 Facilities must follow recommendations of the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

6.11.2.6 Facilities shall amend their policies and procedures for communicable disease to include:

6.11.2.6.1 Work exclusion and return to work protocols for staff tested positive for COVID-19

6.11.2.6.2 Staff refusals to participate in COVID-19 testing

6.11.2.6.3 Staff refusals to authorize release of their testing results to the nursing facility

6.11.2.6.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility so as to inform infection control and prevention strategies

6.11.2.6.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

8.3.1 The all-hazard emergency plan must include plans to address staffing shortages and facility demands.

The Emergency Order took effect on June 1, 2020 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on September 30, 2020 and shall remain in effect for 60 days, consistent with 29 *Del.C.* §10119(3).

**PETITION FOR RECOMMENDATIONS**

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

**ORDER**

It is hereby ordered, this 25th day of September, 2020, that the above referenced amendment to 16 *DE Admin. C.* 3201: *Skilled and Intermediate Care Nursing Facilities*, a copy of which is hereby attached, is adopted, pursuant to the Governor's Emergency Declaration, 16 *Del.C.* §1119C, and 29 *Del.C.* §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik  
Cabinet Secretary

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

**3201 Skilled and Intermediate Care Nursing Facilities**

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**DIVISION OF HEALTH CARE QUALITY**

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

**EMERGENCY SECRETARY'S ORDER**

Pursuant to 16 *Del.C.* §1119C and 29 *Del.C.* §10119, and pursuant to Paragraph A(7) of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat

**16 *Del. Admin. C.* 3225: *Assisted Living Facilities***

**3225 Assisted Living Facilities**

**AUTHORITY**

Pursuant to 16 *Del.C.* §1119C and 29 *Del.C.* §10119 and pursuant to Paragraph A(7) of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat ("Governor's Emergency Declaration,"), the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 *DE Admin. C.* 3225: *Assisted Living Facilities*. Additionally, 29 *Del.C.* §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a

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regulation with less than the notice required by 29 *Del.C.* §10115. Moreover, 16 *Del.C.* §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for long-term care facilities and services.

### **REASON FOR THE EMERGENCY ORDER**

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

Because asymptomatic or presymptomatic residents and staff might play an important role in transmission in facilities, additional prevention measures merit consideration, including using testing to guide the use of transmission-based precautions, isolation, and cohorting strategies.

The ability to test large numbers of residents and staff may significantly decrease transmission of COVID-19 within facilities.

### **EFFECTIVE DATE OF ORDER**

It is hereby ordered, that 16 *DE Admin. C.* 3225: *Assisted Living Facilities*, specifically, Subsection 18.3.1 and Section 3.0 and Subsection 9.8 which expand definitions, documentation, emergency preparedness, and testing requirements, is temporarily modified as shown by underline as follows:

“Vendor” – Any individual who is not employed by the facility but provides direct services to one or more facility residents.

#### 9.8 Specific Requirements for COVID-19:

##### 9.8.1 Residents

9.8.1.1 All residents should be tested upon identification of another resident with symptoms consistent with COVID-19, or if facility staff have tested positive for COVID-19.

9.8.1.2 All other resident testing should be consistent with Division of Public Health guidance for the duration of the public health emergency.

9.8.1.3 All testing and test results must be documented in the resident medical record.

9.8.1.4 Facilities must report all resident testing and test results, to the Delaware Division of Public Health.

##### 9.8.2 Staff, vendors and volunteers

9.8.2.1 All staff, vendors and volunteers who have not previously tested positive for COVID-19 must receive a baseline COVID-19 test within 2 weeks of the effective date of this regulation.

9.8.2.2 All new staff, vendors and volunteers who cannot provide proof of previous positive testing must be tested prior to their start date.

9.8.2.3 All staff, vendors and volunteers who test negative must be retested consistent with Division of Public Health guidance for the duration of the public health emergency.

9.8.2.4 Facilities must report all staff, vendor and volunteer testing and test results, to the Delaware Division of Public Health.

9.8.2.5 Facilities must follow recommendations of the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

9.8.2.6 Facilities shall amend their policies and procedures to include:

9.8.2.6.1 Work exclusion and return to work protocols for staff tested positive for COVID-19

9.8.2.6.2 Staff refusals to participate in COVID-19 testing

9.8.2.6.3 Staff refusals to authorize release of their testing results to the facility

9.8.2.6.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility so as to inform infection control and prevention strategies

9.8.2.6.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

18.3.1 The all-hazard emergency plan must include plans to address staffing shortages and facility demands.

The Emergency Order took effect on June 1, 2020 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on September 30, 2020 and shall remain in effect for 60 days, consistent with 29 *Del.C.* §10119(3).

**PETITION FOR RECOMMENDATIONS**

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

**ORDER**

It is hereby ordered, this 25th day of September, 2020, that the above referenced amendment to 16 *DE Admin. C.* 3225: *Assisted Living Facilities*, a copy of which is hereby attached, is adopted, pursuant to the Governor's Emergency Declaration, 16 *Del.C.* §1119C, and 29 *Del.C.* §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik  
Cabinet Secretary

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

**3225 Assisted Living Facilities**

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**DIVISION OF HEALTH CARE QUALITY**

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119  
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)  
16 **DE Admin. Code** 3230

**EMERGENCY SECRETARY'S ORDER**

Pursuant to 16 *Del.C.* §1119C and 29 *Del.C.* §10119, and pursuant to Paragraph A(7) of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat

**16 *Del. Admin. C.* §3230: *Rest (Residential) Home Regulations***

**3230 Rest (Residential) Home Regulations**

**AUTHORITY**

Pursuant to 16 *Del.C.* §1119C and 29 *Del.C.* §10119 and pursuant to Paragraph A(7) of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat ("Governor's Emergency Declaration,"), the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 *DE Admin. C.* 3230: *Rest (Residential) Home Regulations*. Additionally, 29 *Del.C.* §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 *Del.C.* §10115. Moreover, 16 *Del.C.* §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for long-term care facilities and services.

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## REASON FOR THE EMERGENCY ORDER

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

Because asymptomatic or presymptomatic residents and staff might play an important role in transmission in facilities, additional prevention measures merit consideration, including using testing to guide the use of transmission-based precautions, isolation, and cohorting strategies.

The ability to test large numbers of residents and staff may significantly decrease transmission of COVID-19 within facilities.

## EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 DE Admin Code 3230: *Rest (Residential) Home Regulations*, specifically, Subsection 6.3.1 and Sections 2.0 and 9.3, which expand definitions, documentation, emergency preparedness, and testing requirements, is temporarily modified as shown by underline as follows:

“Vendor” means any individual who is not employed by the facility but provides direct services to one or more facility residents.

6.3.1 The all-hazard emergency plan must include plans to address staffing shortages and facility demands.

9.3 Specific Requirements for COVID-19

9.3.1 Residents

9.3.1.1 All residents should be tested upon identification of another resident with symptoms consistent with COVID-19, or if facility staff have tested positive for COVID-19.

9.3.1.2 All other resident testing should be consistent with Division of Public Health guidance for the duration of the public health emergency.

9.3.1.3 All testing and test results must be documented in the resident medical record.

9.3.1.4 Facilities must report all resident testing and test results, to the Delaware Division of Public Health.

9.3.2 Staff, vendors and volunteers

9.3.2.1 All staff, vendors and volunteers who have not previously tested positive for COVID-19 must receive a baseline COVID-19 test within 2 weeks of the effective date of this regulation.

9.3.2.2 All new staff, vendors and volunteers who cannot provide proof of previous positive testing must be tested prior to their start date.

9.3.2.3 All staff, vendors and volunteers who test negative must be retested consistent with Division of Public Health guidance for the duration of the public health emergency.

9.3.2.4 Facilities must report all staff, vendor and volunteer testing and test results, to the Delaware Division of Public Health.

9.3.2.5 Facilities must follow recommendations of the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

9.3.2.6 Facilities shall amend their policies and procedures for communicable disease to include:

9.3.2.6.1 Work exclusion and return to work protocols for staff tested positive for COVID-19

9.3.2.6.2 Staff refusals to participate in COVID-19 testing

9.3.2.6.3 Staff refusals to authorize release of their testing results to the facility

9.3.2.6.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility so as to inform infection control and prevention strategies

9.3.2.6.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

The Emergency Order took effect on June 1, 2020 and was effective for 120 days. Because the public health threat continues for this vulnerable population, this renewal shall take effect on September 30, 2020 and shall remain in effect for 60 days, consistent with 29 *Del.C.* §10119(3).



**PETITION FOR RECOMMENDATIONS**

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

**ORDER**

It is hereby ordered, this 25th day of September, 2020, that the above referenced amendment to 16 *DE Admin. C. 3230: Rest (Residential) Home Regulations*, a copy of which is hereby attached, is adopted, pursuant to the Governor's Emergency Declaration, 16 *Del.C. §1119C*, and 29 *Del.C. §10119*, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik  
Cabinet Secretary

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

**3230 Rest (Residential) Home Regulations**

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903(h) and 29 Delaware Code, Section 10119  
(7 **Del.C. §903(h)** & 29 **Del.C. §10119**)  
7 **DE Admin. Code 3801**

**SECRETARY'S ORDER**

**Pursuant to Paragraph F of the Governor's Sixth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, and pursuant to**  
7 **Del.C. §903(h)** and 29 **Del.C. §10119**

**Order No: 2020-F-0026**

**7 DE Admin. Code §§ 3801-16.2; 16.3.1; and 16.4: Shellfish Aquaculture; Active Use of Shellfish Aquaculture Subaqueous Land Lease Sites**

**3801 Shellfish Aquaculture**

**AUTHORITY**

Pursuant to Paragraph F of the Governor's Sixth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat ("Governor's Emergency Declaration"), the Department of Natural Resources and Environmental Control ("Department") is adopting an emergency rule modifying Inland Bays Shellfish Aquaculture Regulation 7 DE Admin. Code §§ 3801-16.2; 16.3.1; and 16.4 concerning Shellfish Aquaculture; Active Use of Shellfish Aquaculture Subaqueous Land Lease Sites. Paragraph F of the Governor's

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Emergency Declaration authorizes the Secretary of the Department to adopt emergency rules in order “to respond to COVID-19 concerns that implicate the natural resources of the State of Delaware.”

### **REASON FOR THE EMERGENCY RULE**

The mandatory business closures and reduced business operations resulting from national and state efforts to contain the COVID-19 pandemic have led to a catastrophic decline in commercial demand for seafood and shellfish, including oysters propagated by shellfish aquaculture in the Inland Bays. Delaware’s Inland Bays shellfish aquaculture regulations specify timeframes for when aquaculture activity must occur and minimum shellfish planting quantities on shellfish aquaculture leases. Inland Bays shellfish aquaculture lessees subject to these requirements in the year 2020 communicated to the Department that the substantial reduction in the restaurant market for shellfish does not warrant the risk, investment of time, and financial resources to plant and actively cultivate oyster stock for which there is a limited and uncertain market. Additionally, the mandatory COVID-19 quarantines on interstate travel during the spring of 2020 in Delaware and other states, as well as staffing limits placed on shellfish seed hatching, propagation, and testing facilities in several states, have resulted in challenges for the shellfish aquaculture industry in obtaining, transferring, testing, and importing shellfish seed for planting on aquaculture leases. The COVID-19 pandemic is therefore responsible for a catastrophic loss in the shellfish sales market and a disruption of the shellfish seed supply chain. Adoption of this emergency rule is necessary to ensure the financial and operational viability of the shellfish aquaculture industry and individual lessees and associated shellfish resources.

### **EMERGENCY RULE**

It is hereby ordered, this 1<sup>st</sup> day of September 2020 that 7 DE Admin. Code §§ 3801-16.2; 16.3.1; and 16.4 concerning the conditions for active use of and minimum shellfish planting quantities for Inland Bays shellfish leases are temporarily modified and rescinded as shown by strikethrough as follows:

~~3801-16.2 In the event that an aquaculture lease is determined by the Department not to be active for a period of one (1) year (12 months), the lease shall be terminated and the lease site may revert to the inventory of available lease sites.~~

~~3801-16.3.1 After two (2) years (24 months) from the date of lease issuance or transfer, leaseholders must provide evidence to the Department’s satisfaction that they annually plant at least 100,000 shellfish per acre leased.~~

~~3801-16.4 Notwithstanding subsection 16.3, the minimum planting requirement shall not apply to the initial two (2) years (24 months) of a lease, but lessees must plant sufficient shellfish to ensure that the production requirement can be met by the end of the third year (36 months), and annually thereafter.~~

This emergency rule shall take immediate effect and shall remain in effect until 12:00 a.m. on January 1, 2021.

Shawn M. Garvin  
Secretary

### **3801 Shellfish Aquaculture (Break in Continuity of Sections)**

#### **16.0 Active Use of Shellfish Aquaculture Subaqueous Land Lease Sites**

16.1 The Department shall conduct an annual review of each shellfish aquaculture lease in order to determine active use of the lease in the previous year.

- 16.2 ~~In the event that an aquaculture lease is determined by the Department not to be active for a period of one (1) year (12 months), the lease shall be terminated and the lease site may revert to the inventory of available lease sites. [Reserved]~~
- 16.3 An active lease in Delaware's Inland Bays must meet the following conditions:
- 16.3.1 ~~After two (2) years (24 months) from the date of lease issuance or transfer, leaseholders must provide evidence to the Department's satisfaction that they annually plant at least 100,000 shellfish per acre leased. [Reserved]~~
- 16.3.2 After the first three years of the lease, each leaseholder shall annually harvest and produce proof of sale for an average of at least 10 bushels of oysters per acre or 5,000 clams per acre, or an equivalent combination.
- 16.4 ~~Notwithstanding subsection 16.3, the minimum planting requirement shall not apply to the initial two (2) years (24 months) of a lease, but lessees must plant sufficient shellfish to ensure that the production requirement can be met by the end of the third year (36 months), and annually thereafter. [Reserved]~~
- 16.5 The Department may, at its discretion, grant written exemptions from the planting, harvest or sale requirement due to catastrophic loss or low shellfish stock availability.

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

**3801 Shellfish Aquaculture**

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**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b)(15) and 303(a)-(c) (14 **Del.C.** §§122(b)(15) & 303(a)-(c))  
14 **DE Admin. Code** 1011

**PUBLIC NOTICE****Education Impact Analysis Pursuant to 14 Del.C. §122(d)****1011 Interscholastic Athletics during the COVID-19 Pandemic****A. TYPE OF REGULATORY ACTION REQUESTED**

Adoption of a New Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

Pursuant to 14 **Del.C.** Sections 122(b)(15) and 303(a)-(c), the Secretary of Education seeks the approval of the State Board of Education to adopt 14 **DE Admin. Code** 1011 Interscholastic Athletics during the COVID-19 Pandemic. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Delaware Department of Education ("Department"), developed 14 **DE Admin. Code** 1011, which applies to DIAA Member Schools during the public health emergency due to the COVID-19 pandemic. On June 30, 2020, the Department, with the State Board of Education's approval, adopted an emergency regulation, 14 **DE Admin. Code** 1010 Interscholastic Athletics during the COVID-19 Pandemic. 14 **DE Admin. Code** 1010 was effective on July 1, 2020 and is in effect for a period of 120 days unless it is renewed, amended, or repealed. The proposed regulation includes pre-participation physical examination requirements, addresses when interscholastic athletic activities are suspended, provides four Return to Play Stages, specifies the dates for the fall, winter, and spring sport seasons during the 2020-2021 school year, and sets forth sport-specific requirements that are designed to protect the physical well-being of student athletes during the COVID-19 pandemic. The proposed regulation is intended to replace the emergency regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or

before November 4, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

## C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The new regulation concerns interscholastic athletics during the COVID-19 pandemic.
2. Will the amended regulation help ensure that all students receive an equitable education? The new regulation concerns interscholastic athletics during the COVID-19 pandemic.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The new regulation is intended, in part, to help ensure all student athletes' health and safety are adequately protected. The proposed regulation suspends all interscholastic athletic activities if the State determines there is significant community spread of COVID-19. In addition, if the DIAA Board of Directors determines a DIAA Return to Play Stage applies, each DIAA Return to Play Stage sets forth specific health and safety requirements.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation concerns interscholastic athletics during the COVID-19 pandemic.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change the authority and flexibility of decision makers at the local board and school level. DIAA was established, in part, to protect the physical well-being of student athletes and promote healthy adolescent lifestyles. DIAA Member Schools may provide interscholastic athletics if the DIAA Board of Directors determines a DIAA Return to Play Stage applies. There are certain requirements designed to protect the physical well-being of student athletes and promote healthy adolescent lifestyles depending on the stage. Proposed subsection 4.5.3.1 provides that Member Schools may establish and enforce stricter requirements than the requirements in this regulation.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The screening requirements for COVID-19 symptoms in subsection 4.5.3.2 are necessary to help prevent the spread of COVID-19 at DIAA Member Schools that offer interscholastic athletic activities during the pandemic.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity. The DIAA Board of Directors will determine movement from and between the DIAA Return to Play Stages in consultation with the Delaware Division of Public Health and subject to the State's orders. The DIAA Board of Directors may investigate, conduct hearings, and impose penalties for student athletes', coaches', administrators', officials', and spectators' failure to comply with the requirements of the proposed regulation.
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 new regulation concerns interscholastic athletics during the COVID-19 pandemic.
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 the amended regulation.
10. What is the cost to the state and to the local school boards of compliance with the amended regulation? Requirements for which there may be a cost, such as cleaning and disinfecting surfaces and equipment and providing access to handwashing facilities and hand sanitizer, are based on the Twenty-Seventh Modification to the State of Emergency Order, which consolidates prior Modifications related to the State of Emergency into one Modification, includes mandated terms for the operation of youth sports facilities, organizations, and leagues, and has the force and effect of law.

### \*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/october2020/proposed/24 DE Reg 313RFA 10-01-20.pdf>

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

[1011 Interscholastic Athletics during the COVID-19 Pandemic](#)

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF HEALTH CARE QUALITY**

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)  
16 DE Admin. Code 3201

#### **PUBLIC NOTICE**

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

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Skilled and Intermediate Care Nursing Facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov) or by fax to 302-292-3931 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Regulations Governing Skilled and Intermediate Care Nursing Facilities.

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

#### **SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services / Division of Health Care Quality is proposing regulations governing Skilled and Intermediate Care Nursing Facilities.

#### **Statutory Authority**

16 Del.C. §1119C

#### **Background**

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

Because asymptomatic or presymptomatic residents and staff might play an important role in transmission in facilities, additional prevention measures merit consideration, including using testing to guide the use of transmission-based precautions, isolation, and cohorting strategies.

The ability to test large numbers of residents and staff may significantly decrease transmission of COVID-19 within facilities.

#### **Summary of Proposal**

#### **Summary of Proposed Changes**

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Skilled and Intermediate Care Nursing Facilities and hold them out for public comment per Delaware law. The

amendments update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for assisted living facilities.

## Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services / Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on November 2, 2020.

## Fiscal Impact

Not applicable

**\*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/october2020/proposed/24 DE Reg 315RFA 10-01-20.pdf>

## 3201 Skilled and Intermediate Care Nursing Facilities

*(Break in Continuity of Sections)*

### 2.0 Definitions

*(Break in Continuity Within Section)*

2.21 Vendor – Any individual who is not employed by the facility but provides direct services to one or more facility residents.

*(Break in Continuity of Sections)*

### 5.0 Personnel/Administrative

*(Break in Continuity Within Section)*

5.5 The facility shall have written personnel policies and procedures. Personnel records shall be kept current and available for each employee, and include the following:

*(Break in Continuity Within Section)*

5.5.9 Results of COVID-19 testing

*(Break in Continuity of Sections)*

### 6.0 Services To Residents

*(Break in Continuity Within Section)*

6.11 Specific Requirements for COVID-19

6.11.1 Residents

6.11.1.1 All residents should be tested upon identification of another resident with symptoms consistent with COVID-19, or if facility staff have tested positive for COVID-19.

6.11.1.2 All other resident testing should be consistent with Division of Public Health guidance for the duration of the public health emergency.

6.11.1.3 All testing and test results must be documented in the resident medical record.

6.11.1.4 Facilities must report all resident testing and test results, to the Delaware Division of Public Health.

6.11.2 Staff, vendors and volunteers

6.11.2.1 All staff, vendors and volunteers who have not previously tested positive for COVID-19 must receive a baseline COVID-19 test within 2 weeks of the effective date of this regulation.

- 6.11.2.2 All new staff, vendors and volunteers who cannot provide proof of previous positive testing must be tested prior to their start date.
- 6.11.2.3 All staff, vendors and volunteers who test negative must be retested consistent with Division of Public Health guidance for the duration of the public health emergency.
- 6.11.2.4 Facilities must report all staff, vendor and volunteer testing and test results, to the Delaware Division of Public Health.
- 6.11.2.5 Facilities must follow recommendations of the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 6.11.2.6 Facilities shall amend their policies and procedures for communicable disease to include:
  - 6.11.2.6.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
  - 6.11.2.6.2 Staff refusals to participate in COVID-19 testing.
  - 6.11.2.6.3 Staff refusals to authorize release of their testing results to the nursing facility.
  - 6.11.2.6.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility so as to inform infection control and prevention strategies.
  - 6.11.2.6.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

*(Break in Continuity of Sections)*

## 8.0 Emergency Preparedness

*(Break in Continuity Within Section)*

- 8.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The plan must be submitted to the Division and DEMA in a digital format and it must conform to the template prescribed by the Division. The all-hazard emergency plan must include plans to address staffing shortages and facility demands.

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

**3201 Skilled and Intermediate Care Nursing Facilities**

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## DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)  
16 DE Admin. Code 3225

### PUBLIC NOTICE

## 3225 Assisted Living Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Assisted Living Facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov) or by fax to 302-292-3931 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Regulations Governing Assisted Living Facilities.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the



results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

## SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services / Division of Health Care Quality is proposing regulations governing Assisted Living Facilities.

### Statutory Authority

16 Del.C. §1119C

### Background

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

Because asymptomatic or presymptomatic residents and staff might play an important role in transmission in facilities, additional prevention measures merit consideration, including using testing to guide the use of transmission-based precautions, isolation, and cohorting strategies.

The ability to test large numbers of residents and staff may significantly decrease transmission of COVID-19 within facilities.

### Summary of Proposal

### Summary of Proposed Changes

The Division of Health Care Quality plans to publish the “proposed” amendments to the regulations governing Assisted Living Facilities and hold them out for public comment per Delaware law. The amendments update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for assisted living facilities.

### Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services / Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on November 2, 2020.

### Fiscal Impact

Not applicable

**\*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/october2020/proposed/24 DE Reg 317RFA 10-01-20.pdf>

## 3225 Assisted Living Facilities (Break in Continuity of Sections)

### 3.0 Glossary of Terms

*(Break in Continuity Within Section)*

“Vendor” – Any individual who is not employed by the facility but provides direct services to one or more facility residents.

*(Break in Continuity of Sections)*

### 9.0 Infection Control

*(Break of Continuity Within Section)*

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## 9.8 Specific Requirements for COVID-19:

### 9.8.1 Residents

- 9.8.1.1 All residents should be tested upon identification of another resident with symptoms consistent with COVID-19, or if facility staff have tested positive for COVID-19.
- 9.8.1.2 All other resident testing should be consistent with Division of Public Health guidance for the duration of the public health emergency.
- 9.8.1.3 All testing and test results must be documented in the resident medical record.
- 9.8.1.4 Facilities must report all resident testing and test results, to the Delaware Division of Public Health.

### 9.8.2 Staff, vendors and volunteers

- 9.8.2.1 All staff, vendors and volunteers who have not previously tested positive for COVID-19 must receive a baseline COVID-19 test within 2 weeks of the effective date of this regulation.
- 9.8.2.2 All new staff, vendors and volunteers who cannot provide proof of previous positive testing must be tested prior to their start date.
- 9.8.2.3 All staff, vendors and volunteers who test negative must be retested consistent with Division of Public Health guidance for the duration of the public health emergency.
- 9.8.2.4 Facilities must report all staff, vendor and volunteer testing and test results, to the Delaware Division of Public Health.
- 9.8.2.5 Facilities must follow recommendations of the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 9.8.2.6 Facilities shall amend their policies and procedures to include:
  - 9.8.2.6.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
  - 9.8.2.6.2 Staff refusals to participate in COVID-19 testing.
  - 9.8.2.6.3 Staff refusals to authorize release of their testing results to the facility.
  - 9.8.2.6.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility so as to inform infection control and prevention strategies.
  - 9.8.2.6.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

*(Break in Continuity of Sections)*

## 18.0 **Emergency Preparedness**

*(Break in Continuity Within Section)*

- 18.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The plan must be submitted to the Division and DEMA in a digital format and it must conform to the template prescribed by the Division. The all-hazard emergency plan must include plans to address staffing shortages and facility demands.

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

**3225 Assisted Living Facilities**

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# PROPOSED REGULATIONS

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## DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)  
16 DE Admin. Code 3230

### PUBLIC NOTICE

#### 3230 Rest (Residential) Home Regulations

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Rest (Residential) Home.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov) or by fax to 302-292-3931 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Regulations Governing Rest (Residential) Home.

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

#### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services / Division of Health Care Quality is proposing regulations governing Rest (Residential) Home.

#### Statutory Authority

16 Del.C. §1119C

#### Background

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

Because asymptomatic or presymptomatic residents and staff might play an important role in transmission in facilities, additional prevention measures merit consideration, including using testing to guide the use of transmission-based precautions, isolation, and cohorting strategies.

The ability to test large numbers of residents and staff may significantly decrease transmission of COVID-19 within facilities.

#### Summary of Proposal

#### Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Rest (Residential) Home and hold them out for public comment per Delaware law. The amendments update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for assisted living facilities.

#### Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services / Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on November 2, 2020.

## Fiscal Impact

Not applicable

\*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/october2020/proposed/24 DE Reg 320RFA 10-01-20.pdf>

## 3230 Rest (Residential) Home Regulations (Break in Continuity of Sections)

### 2.0 Definitions

#### (Break in Continuity Within Section)

“Vendor” means any individual who is not employed by the facility but provides direct services to one or more facility residents.

#### (Break in Continuity of Sections)

### 6.0 Emergency Preparedness

#### (Break in Continuity Within Section)

- 6.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The emergency plan shall conform to the template provided by the Division. The all-hazard emergency plan must include plans to address staffing shortages and facility demands.

#### (Break in Continuity of Sections)

### 9.0 Communicable Diseases

#### (Break in Continuity Within Section)

#### 9.3 Specific Requirements for COVID-19

##### 9.3.1 Residents

- 9.3.1.1 All residents should be tested upon identification of another resident with symptoms consistent with COVID-19, or if facility staff have tested positive for COVID-19.
- 9.3.1.2 All other resident testing should be consistent with Division of Public Health guidance for the duration of the public health emergency.
- 9.3.1.3 All testing and test results must be documented in the resident medical record.
- 9.3.1.4 Facilities must report all resident testing and test results, to the Delaware Division of Public Health.

##### 9.3.2 Staff, vendors and volunteers

- 9.3.2.1 All staff, vendors and volunteers who have not previously tested positive for COVID-19 must receive a baseline COVID-19 test within 2 weeks of the effective date of this regulation.
- 9.3.2.2 All new staff, vendors and volunteers who cannot provide proof of previous positive testing must be tested prior to their start date.
- 9.3.2.3 All staff, vendors and volunteers who test negative must be retested consistent with Division of Public Health guidance for the duration of the public health emergency.
- 9.3.2.4 Facilities must report all staff, vendor and volunteer testing and test results, to the Delaware Division of Public Health.
- 9.3.2.5 Facilities must follow recommendations of the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 9.3.2.6 Facilities shall amend their policies and procedures for communicable disease to include:

# PROPOSED REGULATIONS

- 9.3.2.6.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 9.3.2.6.2 Staff refusals to participate in COVID-19 testing.
- 9.3.2.6.3 Staff refusals to authorize release of their testing results to the facility.
- 9.3.2.6.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility so as to inform infection control and prevention strategies.
- 9.3.2.6.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

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

## 3230 Rest (Residential) Home Regulations

### DIVISION OF PUBLIC HEALTH

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

#### PUBLIC NOTICE

### 4462 Public Drinking Water Systems

Pursuant to 16 Del.C. §122(3)(c), Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems. On October 1, 2020, the Division of Public Health plans to publish as “proposed” revisions to the Public Drinking Water Systems regulations. The revisions include:

- EPA-required corrections for specific rule primacy;
- Fluoride requirements for systems required to provide fluoride under Delaware law;
- Definitions and a new chapter for cross-connections; and
- Minor clarifications and technical changes.

Copies of the proposed regulations are available for review in the October 1, 2020 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Monday, November 2, 2020, at:

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

**\*Please Note:**

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

<http://regulations.delaware.gov/register/october2020/proposed/24 DE Reg 322RFA 10-01-20.pdf>

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

### 4462 Public Drinking Water Systems

## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 11003

### PUBLIC NOTICE

#### Defining Family Size For Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Child Care Subsidy Program, specifically, to define family size for child care.

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, Policy and Quality Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Defining Family Size for Child Care.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual regarding Child Care Subsidy Program, specifically, to define family size for child care.

#### Statutory Authority

45 CFR 98.20

#### Background

DSS is revising the eligibility requirements for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant Act, which mandated new eligibility requirements for child care assistance.

DSS amended DSSM 11003.9.3 "Defining Family Size for Child Care" to include the current criteria that DSS staff are to follow to calculate the family size, which is used to determine the family's financial eligibility and copayment for child care. DSS changed the formatting of the policy so that the policy is easier for DSS staff, stakeholders, and the public to understand.

#### Summary of Proposal

##### *Purpose*

The purpose of the proposed change is to explain how DSS groups parents and children together to determine eligibility for Purchase of Care. The family size includes parents and minor children who live together and whose needs and incomes are considered together for child care subsidy.

##### *Summary of Proposed Changes*

Effective for services provided on and after December 1, 2020, Delaware Health and Social Services/Division of Social Services proposes to amend Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, to define family size for child care.

##### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social

Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on November 2, 2020.

## Fiscal Impact

DSS amended the eligibility policy to provide clear and accurate directions on the eligibility requirements for the Child Care Subsidy Program. This policy is currently in place and there are no new financial responsibilities associated with the amended eligibility policy.

**\*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/october2020/proposed/24 DE Reg 323RFA 10-01-20.pdf>

## POLICY – AMENDMENT

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

### 11003.9.3 Defining Family Size for Child Care

#### 45 CFR 98.20

~~The people whose **needs** and **income** are considered together comprise the definition of family size. Family size is the basis upon which DSS looks at income to determine a family's financial eligibility and the child care parent fee. Therefore, knowing who to include in the determination of family size is an important part in deciding financial eligibility. Rules to follow when considering family size are relationship and whose income is counted.~~

~~In all instances, the people counted together for family size when determining financial eligibility are the same people counted for family size when determining the family's child care parent fee.~~

~~A. Family size is defined as parents (natural, legal, adoptive, step, and unmarried partners with a child in common) and their children under 18 living in the home, will always be included together in the determination of family size.~~

~~EXAMPLE 1: Ms. Brown, a single mother, lives together with her two year old daughter. She is applying for child care as a Category 31, income eligible case. Mrs. Brown and her daughter are a family size of two.~~

~~EXAMPLE 2: Susan Jones and Mark Evans live together as unmarried partners. Susan has a one year old child from a previous relationship. She applies for Category 31 child care. Susan and her child are a family size of two. Mark is not counted. His income is not considered since he is not the father of the child and there is no child in common between Susan Jones and Mark Evans. (NOTE: If Mark Evans admits to being the natural parent of the child, his income is counted and this is a family of three.)~~

~~EXAMPLE 3: Ms. Johnson, a single parent, has three children ages 13, 10, and 5. She works and needs child care for her youngest child who attends preschool. She is applying for Category 31 child care. Even though she needs care for only one child, her family size is a family size of four when looking at financial eligibility.~~

~~EXAMPLE 4: Ms. Green cares for her three year old niece. Ms. Green works and needs child care. Since Ms. Green is not the parent of the child, she is considered a caretaker. Therefore, Ms. Green's income is not counted and she is not included in the family composition. Ms. Green's niece is considered a family size of one and any income attributable to the niece is countable income.~~

~~EXAMPLE 5: Mom and step dad live with mom's two children, ages two and five, from a previous marriage. Mom and step dad both work and need child care. Mom, step dad, and her two children are a family size of four. Step dad is included.~~

~~EXAMPLE 6: Mom and step-dad live with mom's three year old child from a previous marriage. Step-dad also has a five year old child from a previous marriage living in the home. Mom and step-dad both work and need child care. This family is a family size of four.~~

~~EXAMPLE 7: Mom and her unmarried partner have a child in common. Mom and the unmarried partner also have one child each from previous relationships. Since Mom and the unmarried partner have a child in common the needs and income of each parent will be considered for all three children. This would be a family size of 5. In this example the Child Care Sub-system will first build the family together as one AG. If the AG fails the system will break this family down into 3 AG's to determine as many persons eligible as possible. The three AG's would be Mom, unmarried partner and child in common, Mom and child from a previous relationship, unmarried partner and his child from a previous relationship.~~

~~B. Adults who are not the natural, legal, adoptive, or step-parent of any of the children under 18 living in the home are not included when determining family size and child care fee.~~

~~EXAMPLE: Mom lives with her grandmother. Mom has two children ages 10 and 6 for whom she needs after-school care. Mom and her two children are considered a family size of three. Grandmother is not included because she is not the parent of the children nor is her income counted.~~

Family size is defined by the individuals who live together and whose needs and incomes are considered together for child care subsidy.

1. The family size includes parents and their children under age 18 who are living in a household together.
    - A. DSS defines parents as:
      - i. Natural birth parents of a child;
      - ii. Legal parents of a child as deemed by a court of law;
      - iii. Adoptive parents of a child as deemed by a court of law;
      - iv. A stepparent of a child; or
      - v. Unmarried partners with a child in common.
    - B. DSS includes in the family size the parent or parents with their natural, legal, adopted, or step-child or children under age 18 who are residing in the same household.
    - C. DSS groups unmarried partners together in the family size only if they live together and have a child in common residing in the same household.
      - i. When DSS groups unmarried partners together, the family size will include:
        - The unmarried partners;
        - The child in common; and
        - Any other child who is the natural, legal, adoptive, or step-child of one of the unmarried partners and residing in the same household.
    - D. DSS excludes from the family size any adults who are not the natural, legal, adoptive, or step-parent of the child or children in the household, including a caretaker, legal guardian, or unmarried partner who is not the child's parent.
    - E. A parent may receive child care even if there is another adult living in the household who is not included in the family size, such as an unmarried partner who is not the child's parent, a relative, or a friend.
  2. DSS uses the earned and unearned income per DSSM 11003.9.1 that is received by the parents and children included in the family size to determine the family's financial eligibility and copayment for child care.
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# PROPOSED REGULATIONS

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 11004 & 11006

### PUBLIC NOTICE

#### POC – Changing Providers And Charging Fees

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to update policy related to changing child care providers and charging fees to Purchase of Care (POC) families.

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, Policy and Quality Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: POC – Changing Providers and Charging Fees.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to update policy related to changing child care providers and charging fees to Purchase of Care (POC) families.

#### Statutory Authority

42 U.S.C. 9858  
45 CFR 98.30  
45 CFR 98.45

#### Background

DSS is revising the eligibility requirements for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant Act, which mandated new eligibility requirements for child care assistance. DSS has changed the formatting of the regulations so that the policy is easier for DSS staff, stakeholders, and the public to understand.

DSS amended DSSM 11004.9.3 Changing Child Care Providers to clarify parental rights and when it is appropriate to change or add a child care provider to a family's POC case. DSS added a section to the policy to provide procedures for DSS eligibility staff.

DSS amended DSSM 11006.4.2 Charging Fees to Purchase of Care Families to provide guidance to child care providers regarding the fees they may charge POC families. The policy explains that a fee policy must be developed, presented, and explained to families. DSS also added a section regarding the Purchase of Care Plus program, with procedures and documentation that must be available.

#### Summary of Proposal

##### *Purpose*

The purpose is to update policy related to changing child care providers and charging fees to Purchase of Care (POC) families.

##### *Summary of Proposed Changes*

Effective for services provided on and after December 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual regarding the Child Care Subsidy Program, specifically, to update policy related to changing child care providers and charging fees to Purchase of Care (POC) families.

## Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on November 2, 2020.

## Fiscal Impact

DSS amended these regulations to provide clear and accurate directions on parental choice and fees for the Child Care Subsidy Program. These regulations are currently in place and there are no new financial responsibilities associated with the amendments.

**\*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/october2020/proposed/24 DE Reg 326RFA 10-01-20.pdf>

## POLICY – AMENDMENT

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

### 11004.9.3 Changing ~~Provider~~ Child Care Providers

#### 45 CFR 98.30

~~DSS designed the CCMIS so that there would not be two "active" authorizations for one child at the same time. However, there is one exception: when a parent/caretaker wishes to change providers. In this instance, enter the change of provider and the CCMIS will (1) change the old authorization to close it effective the end of the current month, and (2) create a new authorization effective the date of the change in provider. Both authorizations will remain in effect until the first expires. This will allow DSS to pay both providers.~~

~~However, because DSS requires that providers be given at least five days notice of this change, there may be instances when the original authorization will remain in effect until the last day of the next month. Since the Change Authorization will be mailed to the provider, do not send a separate notice. Ensure that parent/caretakers pay any fees they may owe the old child care provider.~~

Parents and caretakers who receive child care subsidy for their children have parental choice in selecting child care providers. DSS case workers will follow the procedures in this policy when a parent or caretaker requests to change or add a child care provider.

#### **1. Parents and caretakers have parental choice to change and add child care providers during their eligibility period for the Purchase of Care program.**

A. A parent or caretaker who wants to change child care providers must give a five-day notice to their current child care provider prior to withdrawing the child from the child care site.

B. A parent or caretaker may add an alternate child care provider in the event the primary child care provider is unable to care for the child.

# PROPOSED REGULATIONS

- i. The alternate child care provider cannot receive payments for absent days.
- C. A parent or caretaker may use two child care providers if care is needed during different hours or at different locations.
  - i. DSS will authorize each provider only for the days and hours that the child attends each child care site.
  - ii. Examples:
    - a. A parent is employed and works day and evening hours. The parent may use one provider during the day and a second provider during the evening.
    - b. A parent is employed and works two days at one location and three days at another location. The parent may use one provider near one location and a second provider near the other location.
- 2. **DSS will remove and add child care provider authorizations in a family's Purchase of Care case when the parent or caretaker requests to change providers.**
  - A. DSS case workers will end the authorization in the eligibility system for the child care site that the child will no longer attend effective the last day of the month the authorization will end.
  - B. DSS case workers will add the authorization in the eligibility system for the new child care site effective the first day the child will attend the site.
- 3. **DSS will add an additional child care provider authorization to a family's Purchase of Care case when the parent or caretaker requests an alternate provider or two providers.**
  - A. DSS case workers will confirm a parent's or caretaker's need when a parent or caretaker requests two child care providers.
  - B. DSS case workers will add the authorization in the eligibility system for the new child care site effective the first day the child will attend the site.

## POLICY – AMENDMENT

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

### **11006.4.2 Fee Paying Clients Charging Fees to Purchase of Care Families**

#### 45 CFR 98.45

~~The client fee is based on the DSS scale according to the client's income. The provider is responsible for collecting fees from their private and DSS fee-paying clients. The provider must develop a fee collection policy that states the fees collected prior to or after delivery of service and the frequency of collection, such as weekly, biweekly, or monthly. The provider's fee collection policy should be discussed with the parent/caretaker upon initial enrollment at the facility and should be reviewed periodically.~~

~~The provider must ensure that enrollment procedures include how the provider informs parent/caretakers of the availability of purchase of care slots for non-fee paying clients.~~

Purchase of Care (POC) providers may charge certain fees to families receiving the POC child care subsidy.

#### **1. POC providers can charge families receiving POC only for the following fees:**

- A. The parent copayment that DSS determines based on the family's household size and income.
- B. Purchase of Care Plus (POC+) fees that are determined by subtracting the State's daily payment rate from the provider's private daily payment rate. Families in the POC+ program must pay the difference between the two rates.
- C. Late pick-up fees charged when a child is picked-up after the family's authorized hours for care.
- D. Field trip fees charged for a child to participate in an activity.
  - i. The provider must present the activity, the date of the activity, and the cost of the activity to the family prior to the field trip.
  - ii. The provider must allow the family to choose if the child will participate in the field trip.
  - iii. If the child does not participate in the field trip, the provider cannot charge the family for the field trip date if child care services are not available to the child because the provider's site is closed during the activity.
- E. Returned check fees charged when the family's payment cannot be collected.

**2. Fees not listed in section (1) must be approved by DSS before the provider can charge the family.**

**3. A family that receives POC is responsible for paying their parent copayment (if applicable) and the fees listed in section (1) when the fee is charged by the POC provider.**

- A. A family must continue to pay their parent copayment during instances when their POC provider is closed, unless DSS waives the family's copayment for an approved reason.
  - i. A family will pay their copayment when their provider is closed due to:
    - Vacation;
    - Illness;
    - Training; or
    - A provider holiday that replaces a DSS approved holiday.

**4. POC providers are responsible for collecting fees from the families that they serve.**

**5. POC providers must develop a fee policy, discuss the policy with families at initial enrollment, and review the policy with families at least every 12 months.**

- A. The provider's fee policy must state:
  - i. The fees that the provider will charge to families prior to, during, and after delivery of service; and
  - ii. The provider's fee collection schedule.
- B. Providers who are approved by DSS to charge POC+ fees must:
  - i. Display the POC+ certificate;
  - ii. Inform families of regular POC slots as slots become available;
  - iii. Review the POC+ contract with families;
  - iv. Complete a budget with families that agree to pay POC+ fees; and
  - v. Maintain copies of executed POC+ contracts signed by families and the provider.

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# PROPOSED REGULATIONS

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 2312 (18 Del.C. §§311 & 2312)  
18 DE Admin. Code 902

### PUBLIC NOTICE

#### 902 Prohibited Unfair Claim Settlement Practices

##### A. Type of Regulatory Action Required

Second re-proposal of amendments to Regulation 902 - Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26].

##### B. Synopsis of Subject Matter of the Regulation

In the May 1, 2020 edition of the *Register of Regulations*, the Department published a proposal to update and clarify requirements concerning prohibited unfair claim settlement practices that are set forth in Regulation 902 (see 23 DE Reg. 920 (05/01/2020)). In that proposal, the Department proposed adding new subsection 3.1.14, which included a failure to promptly settle a claim as required under Regulation 903 as an unfair claim settlement practice. The Department also took the opportunity of the proposal to make grammatical and formatting edits throughout the regulation.

Upon further review, the Department determined not to proceed with proposed new subsection 3.1.14 and withdrew that proposal, as violations of Regulation 903 are already a defined unfair claims settlement practice.

Instead, the Department proposed to add new subsection 3.2, which would have specifically provided that three instances of an insurer's commission of a prohibited claim settlement practice within a 36-month period, as listed in subsection 1.2.1 (to be recodified at subsection 3.1), shall give rise to a rebuttable presumption that the insurer is in violation of this regulation and 18 Del. C. §2304(16)f. This first re-proposal was published in the June 1, 2020 edition of the *Register of Regulations* (see 23 DE Reg. 997 (06/01/2020)). The Department again took the opportunity of the re-proposal to make grammatical and formatting edits throughout the regulation.

##### C. Summary of Comments on the First Re-Proposal

The Department received several comments from insurance industry-related stakeholders, many of whom expressed surprise that the Department would propose such an amendment because the commenters were not aware of any negative market conduct trends in Delaware that would have led the Department to take such action.

One commenter objected that proposed new subsection 3.2 would discourage informal resolution of market conduct exam findings, "emphatically discourage self-reporting and self-remediation of claims processing errors or violations, even if unintentional and harmless to policyholders, and . . . would unfairly expose insurers to bad faith actions that are, on the merits, unfounded, based on a 'general practices' presumption of just three violations over 36 months.

Other commenters opined that proposed new subsection 3.2 makes Delaware's regulation exceed the expectations set forth in the 2008 National Association of Insurance Commissioners (NAIC) Model Unfair Claims Settlement Act. In that Act, the NAIC discussed defining "general business practice" but chose not to define it, instead opting to establish a statistically based benchmark error rate of seven percent for auditing claim practices and 10 percent for other trade practices. These commenters went on to opine that Delaware would be the only state in the nation to set numeric limits on numbers of claims over a specified time that would trigger the rebuttable presumption of an unfair trade practice.

The commenters also pointed out that, in their opinion, the specific number of claims (3) over a set time period (36 months) is unfair and untenable for companies that process thousands of claims per month, further stating that while some of the Department's regulations understandably contain "three strikes" provisions, those provisions are relegated to the health care arena. These commenters concluded that three claims in three years does not rise to the level of an unfair business practice; unfair business practice should be reserved for systemic violations, not for a mistake made due to human error.

**D. Summary of Department's Second Re-proposal**

On re-proposal, the Department has determined to revise proposed new subsection 3.2 to provide that:

An insurer's commission of prohibited unfair claim settlement practices listed in subsection 3.1 of this regulation in four percent or more of claims sampled by the Department during any investigation or examination of the insurer, shall give rise to a rebuttable presumption that the insurer is in violation of this regulation and 18 **Del. C.** §2304(16)f.

The Delaware Code authority for the regulation and the proposed amendments is 18 **Del.C.** §§311 and 2312.

**E. Notice and Public Comment for the Second Re-Proposal**

The Department has determined to hold a virtual public hearing on the proposed amendments to Regulation 902 on **October 22, 2020 at 9:00 a.m.** The hearing will be facilitated through WebEx at <https://stateofdelaware.webex.com/stateofdelaware/j.php?MTID=mcb66b1d7794ffd79b6a2b963bb23bb43> meeting number (access code): 173 669 0005 and meeting password: Fp7rW3juew9.

Holding a virtual public meeting is specifically permitted by Paragraph 5 of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat issued by Governor John Carney on March 12, 2020 and extended monthly thereafter (see <https://governor.delaware.gov/health-soe/> for the complete list of modifications and extensions).

The proposed amendments appear below and may also be viewed on the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 6<sup>th</sup> day of November 2020. Any such requests and any questions concerning connecting to the public hearing should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Docket 4259-2020  
1351 West North Street, Suite 101  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

**\*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/october2020/proposed/24 DE Reg 330RFA 10-01-20.pdf>

**902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]**

~~Claim Settlement Practices Which, When Committed Or Performed with Such Frequency as to Indicate a General Business Practice, Are Prohibited~~

**1.0 Purpose**

The purpose of this regulation is to set forth unfair claim settlement practices which, when committed or performed with such frequency as to indicate a general business practice, are prohibited.

**2.0 Authority**

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311 and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

# PROPOSED REGULATIONS

## ~~4.0~~ 3.0 Authority for Regulation; Basis for Regulation Prohibited Unfair Claims Settlement Practices

- 4.1 ~~18 Del.C. §314~~ authorizes the Insurance Commissioner to "...make reasonable rules and regulations necessary for or as an aid to the administration or effectuation of any provision of this title."
- 4.2 ~~18 Del.C. Ch. 23~~ entitled "Unfair Business Practices in the Insurance Business," ~~18 Del.C. §2304(16) Unfair Claim Settlement Practices; 18 Del.C. §2304(17) Failure to Maintain Complaint Handling Procedures; and 18 Del.C. §2304(18) Misrepresentation in Insurance Applications,~~ provide the basis for this regulation.
- 4.2.4 3.1 ~~The Following Claim Settlement Practices When Committed or Performed following unfair claim settlement practices when committed or performed with such Frequency frequency as to Indicate a General Practice are Prohibited indicate a general business practice are prohibited:~~
- 4.2.4.1 3.1.1 Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue.
- 4.2.4.2 3.1.2 Failing to acknowledge and respond within 15 working days, upon receipt by the insurer, to communications with respect to claims by insureds arising under insurance policies.
- 4.2.4.3 3.1.3 Failing to implement prompt investigation of claims arising under insurance policies within 10 working days upon receipt of the notice of loss by the insurer.
- 4.2.4.4 3.1.4 Refusing to pay claims without conducting an investigation based upon all available information when the notice of loss received by the insurer indicates that such an investigation is necessary to properly determine such a denial of payment.
- 4.2.4.5 3.1.5 Failing to affirm or deny coverage or a claim or advise the person presenting the claim, in writing, or other proper legal manner, of the reason for the inability to do so, within 30 days after proof of loss statements have been received by the insurer.
- 4.2.4.6 3.1.6 Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims in which liability has become clear.
- 4.2.4.7 3.1.7 Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts which they might be entitled to under normal fair claims evaluations.
- 4.2.4.8 3.1.8 Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.
- 4.2.4.9 3.1.9 Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge of the insured.
- 4.2.4.10 3.1.10 Making claims payments to insured or beneficiaries not accompanied by a statement setting forth the coverage under which the payment has been made.
- 4.2.4.11 3.1.11 Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of a formal proof of loss form, both of which submissions contain substantially the same information, unless the formal proof of loss is required by law, prevailing rules, or the policy.
- 4.2.4.12 3.1.12 Failing to promptly settle claims, where liability has become clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.
- 4.2.4.13 3.1.13 Failing when requested to promptly provide an explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the offer of a compromise settlement. Such explanation may be made verbally but when given, must be documented in the claims file.
- 3.2 An insurer's commission of prohibited unfair claim settlement practices listed in subsection 3.1 of this regulation in four percent or more of claims sampled by the Department during any investigation or examination of the insurer, shall give rise to a rebuttable presumption that the insurer is in violation of this regulation and 18 Del.C. §2304(16)f.

## ~~2-0~~ **4.0 Violations; Penalties**

2-4 Failure to comply will subject the violators to the provisions of ~~18 Del.C. §1732 (c)(2) and 18 Del.C. §2307(a)~~ 18 Del.C. §§1712, 2307(a) and 2308, which ~~deals~~ deal with hearings, license revocation, suspension or fine for non-compliance of any regulation.

## ~~3-0~~ **5.0 Severability**

If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

## ~~4-0~~ **6.0 Effective Date**

This Regulation ~~shall become~~ became effective August 1, 1977. The amendments to this Regulation shall become effective ten (10) days after publication of the final order adopting the amendments.

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF WASTE AND HAZARDOUS SUBSTANCES WASTE MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6305(a) (7 Del.C. §§6010(a) & 6305(a))  
7 DE Admin. Code 1301

#### REGISTER NOTICE SAN #2019-02

#### 1301 Regulations Governing Solid Waste

#### 1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 1301, Delaware's Regulations Governing Solid Waste (DRGSW)

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

To provide greater environmental protection and to reduce human health risks, the Compliance and Permitting Section (CAPS) proposes to modify the DRGSW to adopt regulations to clarify the State's Single Use Plastic Bag Ban and At Store Recycling Program.

#### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

#### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGSW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Sections 6010(a) and 6305(a).

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

None

#### 6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing on the proposed amendments to DRGSW (Docket # 2020-R-WH-0025) will be held on **Wednesday, October 21, 2020, beginning at 6:00 PM**. A web link to the virtual hearing will be posted on the DNREC Public Hearings site at <https://de.gov/dnrehearings>. To access the audio-only portion of the virtual hearing, dial in at 1-408-418-9388 and enter event code 173 830 4476. Closed-captioning available by request if made at least 7 days before the event.



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# PROPOSED REGULATIONS

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Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register using the weblink posted on the DNREC Public Hearings site at <https://de.gov/dnrechearings> or by contacting Adam Schlachter.

The proposed amendments may be inspected online as of October 1, 2020 at [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or in-person by appointment only by contacting contact Adam Schlachter by phone at 302-739-9403; or by email at [Adam.Schlachter@delaware.gov](mailto:Adam.Schlachter@delaware.gov).

The hearing record will remain open for at least 15 days following the date of the hearing. The Department will accept public comment through the close of business on Thursday, November 5, 2020 and comments pertaining to the above regulations will be accepted in written form via:

Email: [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov)

Online Form: <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>

or via USPS to the following address:

Theresa Newman, Hearing Officer  
DNREC - Office of the Secretary  
89 Kings Highway  
Dover, DE 19901

## 7. PREPARED BY:

Adam Schlachter, Environmental Program Manager II, Compliance and Permitting Section - (302) 739-9403.

### \*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/october2020/proposed/24 DE Reg 333RFA 10-01-20.pdf>

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

**[1301 Regulations Governing Solid Waste](#)**

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 1900 BOARD OF NURSING

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

### PUBLIC NOTICE

#### **[1900 Board of Nursing](#)**

The Delaware Board of Nursing, pursuant to 24 *Del. C.* § 1904(c), proposes to revise its regulations to add failing to practice nursing without discrimination to the list of examples of unprofessional conduct.

The Board will hold a public hearing on the proposed regulation changes on November 18, 2020 at 9:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until December 3, 2020 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/october2020/proposed/24 DE Reg 334RFA 10-01-20.pdf>**

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1900 Board of Nursing  
(Break in Continuity of Sections)

## 10.0 Disciplinary Proceedings

### 10.1 Unprofessional Conduct Defined

(Break in Continuity Within Section)

#### 10.1.2 Unprofessional conduct shall include but is not limited to the following:

(Break in Continuity Within Section)

- 10.1.2.3 Performing new nursing techniques ~~and/or~~ or procedures without education and practice.

(Break in Continuity Within Section)

- 10.1.2.6 Violating professional boundaries of the nurse-patient relationship including but not limited to physical, sexual, emotional or financial exploitation of the patient or patient's significant ~~other(s)~~ others.

(Break in Continuity Within Section)

- 10.1.2.21 Allowing another person to use ~~her/his~~ the licensee's nursing license or temporary permit.

- 10.1.2.22 Aiding, abetting ~~and/or~~ or assisting an individual to violate or circumvent any law or duly promulgated rule and regulation intended to guide the conduct of a nurse or other health care provider.

(Break in Continuity Within Section)

- 10.1.2.30 Failing to practice without discrimination as to age, race, religion, sex, sexual orientation, national origin, or disability.

### 10.2 Reissuance of License Following Disciplinary ~~Action~~ Action.

- ~~40.2.4~~ Upon application made by the licensee, a suspended or probated license may be reissued or reinstated in accordance with conditions that the Board may apply, after the imposed period of discipline has concluded and after evidence is presented to satisfy the Board that the condition that lead to the disciplinary action has been corrected.

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

**1900 Board of Nursing**

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

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

### PUBLIC NOTICE

**2925 Real Estate Commission Education Committee**

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

Specifically, Section 4.0 has been revised to state that prelicensing education and continuing education may be delivered in a traditional classroom setting or by distance learning, which may be asynchronous or synchronous. Asynchronous learning is "distance learning without the opportunity for real time interaction between the instructor and students." Synchronous learning is "distance learning that happens in real time where there is the opportunity for direct interaction between the instructor and students." The proposed revisions outline the requirements for each method of instruction. Inclusion of synchronous learning in Section 4.0 will expand

educational opportunities for applicants and for licensees without compromising professional standards. This proposal strikes the current Section 4.0, including the amendment in subsection 4.5, which was adopted by emergency regulation as published in Register of Regulations on August 1, 2020, Volume 24, Issue 2.

A public hearing will be held on November 12, 2020 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at [danielle.cross@delaware.gov](mailto:danielle.cross@delaware.gov).

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be **November 30, 2020**. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

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

<http://regulations.delaware.gov/register/october2020/proposed/24 DE Reg 335RFA 10-01-20.pdf>

## 2925 Real Estate Commission Education Committee (Break in Continuity of Sections)

### 4.0 Distance Education

#### 4.1 Definitions

- 4.1.1 A "distance education course" is one in which instruction takes place in other than a traditional classroom setting, the instructor and student are in physically separate locations, and instructional methods include interactive video-based instruction, computer conferencing, interactive audio, interactive computer software, and internet-based instruction.
- 4.1.2 The term "school" shall include distance education unless otherwise specified in these Guidelines.

#### 4.2 Courses

- 4.2.1 Pre-licensing courses, for both salespeople and brokers, and continuing education courses, may be taken through distance education.
- 4.2.2 All distance education courses shall be certified by the Association of Real Estate License Law Officials (ARELLO) or the International Distance Education Certification Center (IDECC), or its successor, before being submitted to the Commission for approval and shall retain certification in order to retain Commission approval. This includes pre-licensing and continuing education courses.
- 4.2.3 ARELLO or IDECC certified distance education courses shall follow curriculum requirements as specified by the Commission.
- 4.2.4 The distance education course shall include the same informational content as a course that would otherwise qualify for the requisite number of hours of classroom-based instruction, and students must proceed through and demonstrate comprehension of all the material.
- 4.2.5 The distance education course shall include consistent and regular interactive events as appropriate to the medium. The interactive elements must be designed to promote student involvement in the learning process, and must directly support the student's achievement of the course's learning objectives. The course approval application must identify the types of interactive events included in the course and specify how the interactive events contribute to the achievement of the stated learning objectives.
- 4.2.6 The distance education course shall require that the student demonstrate mastery of the learning objectives as designated for each lesson in order to successfully complete the lesson. The course shall provide a mechanism of individual remediation to correct any deficiencies identified during the instruction and assessment process.
- 4.2.7 Continuing education courses shall be, at minimum, at the intermediate level and shall provide for 50 minutes of seat time for each hour of credit.

~~4.2.8 The Commission may withdraw approval for any distance education course that is not offered in accordance with Commission requirements as set forth in these Guidelines.~~

## ~~4.3 Providers~~

~~4.3.1 A provider offering pre-licensing distance education courses shall be approved as a school by the Commission prior to offering education for Delaware.~~

~~4.3.2 The course provider shall measure, at regular intervals, the student's progress toward and completion of the mastery requirement of each lesson or module covering all the required subject matter. In the case of computer-based instruction, the course software shall include automatic shutdown after a ten minute period of inactivity.~~

~~4.3.3 The course provider shall demonstrate that approved instructors are available to answer student questions regarding course content at reasonable times and by reasonable means, including in-person contact, individual and conference telephone calls, e-mail, and fax. Communication by written postal correspondence alone is insufficient to satisfy the requirements of this Guideline.~~

~~4.3.4 The course provider shall provide reasonable security to ensure that the student who receives credit for the course is the student who enrolled in and completed the course. Both the provider and the student must certify in writing that the student has successfully completed the course.~~

~~4.3.5 The course provider shall require that the student pass an appropriate exam to successfully complete and receive credit. An examination will be considered appropriate if it contains at least five multiple-choice questions for each hour of credit and requires a minimum passing score of 80 percent.~~

~~4.3.6 The course provider shall give distance education students instructions on how they can electronically submit a course evaluation.~~

~~4.3.7 The Commission may withdraw approval for any distance education provider who is not in compliance with Commission requirements for distance education courses.~~

## ~~4.4 Instructors~~

~~4.4.1 Instructors of distance education courses shall be approved by the Commission. Instructors shall not receive approval until they receive the Distance Education Instructor Certification from IDECC (or its successor), which is a subsidiary of ARELLO, and submit verification of the certification to the Commission. The Distance Education Instructor Certification shall be renewed and kept current in order for the instructor to continue offering distance education courses for Delaware.~~

## **4.0 Methods of Education Delivery**

**4.1 Prelicensing education and continuing education may be delivered in a traditional classroom setting or by distance learning, which may be asynchronous or synchronous.**

### **4.2 Definitions**

**"Asynchronous learning" means distance learning without the opportunity for real time interaction between the instructor and students.**

**"Distance learning" means education in which instruction takes place in other than a traditional classroom setting, the instructor and student are in physically separate locations, and instructional methods include interactive video-based instruction, computer conferencing, interactive audio, interactive computer software, and internet-based instruction.**

**"Synchronous learning" means distance learning that happens in real time where there is the opportunity for direct interaction between the instructor and students and where there is audio and visual connection between the instructor and students.**

### **4.3 Asynchronous Learning**

**4.3.1 In addition to all other Commission requirements set forth in these Guidelines and the Commission's Rules and Regulations, asynchronous courses must satisfy the following requirements:**

**4.3.1.1 All asynchronous courses must be certified by the Association of Real Estate License Law Officials (ARELLO) or the International Distance Education Certification Center (IDECC), or its successor, before being submitted to the Commission for approval and must retain**

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## PROPOSED REGULATIONS

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certification in order to retain Commission approval. This includes pre-licensing and continuing education courses.

- 4.3.1.2 The asynchronous course must require that the student demonstrate mastery of the learning objectives as designated for each lesson in order to successfully complete the lesson. The course must provide a mechanism of individual remediation to correct any deficiencies identified during the instruction and assessment process.
- 4.3.1.3 Asynchronous continuing education courses must be, at minimum, at the intermediate level
- 4.3.1.4 The course software must include automatic shutdown after a ten minute period of inactivity.
- 4.3.1.5 The course provider must demonstrate that approved instructors are available to answer student questions regarding course content at reasonable times and by reasonable means, including in-person contact, individual and conference telephone calls, e-mail, and fax. Communication by written postal correspondence alone is insufficient to satisfy the requirements of this Guideline.
- 4.3.1.6 The course provider must provide reasonable security to ensure that the student who receives credit for the course is the student who enrolled in and completed the course. Both the provider and the student must certify in writing that the student has successfully completed the course.
- 4.3.1.7 The course provider must require that the student pass an appropriate exam to successfully complete and receive credit. An examination will be considered appropriate if it contains at least five multiple-choice questions for each hour of credit and requires a minimum passing score of 80 percent.
- 4.3.1.8 The course provider must give students instructions on how they can electronically submit a course evaluation.
- 4.3.1.9 Instructors of asynchronous learning must receive the Distance Education Instructor Certification from IDECC (or its successor), which is a subsidiary of ARELLO, and submit verification of the certification to the Commission.

### 4.4 Synchronous Learning

4.4.1 Various platforms may be used for delivery of synchronous learning (including but not limited to Zoom, GoTo Meeting and Adobe Connect). In addition to all other Commission requirements set forth in these Guidelines and the Commission's Rules and Regulations, synchronous courses must also satisfy the following requirements:

#### 4.4.1.1 Student Technology Requirements

- 4.4.1.1.1 Students are required to have a device that has reliable internet access, video camera and working speakers so that they may interact in the class and their engagement can be monitored at all times.
- 4.4.1.1.2 Students are responsible for the performance of their own technology including audio volume, video clarity, and internet connection.

#### 4.4.1.2 Security

- 4.4.1.2.1 A password and meeting number will be required for each class and will be included in the class invitation.
- 4.4.1.2.2 A waiting room will be utilized so that no one can enter the class that is not registered.
- 4.4.1.2.3 The instructor will admit each student from the waiting room, one-by-one, and verify their identity by driver's license or other acceptable picture identification.
- 4.4.1.2.4 Once the class has begun, the session must be "locked" and no one else can enter the class.

#### 4.4.1.3 Login/Check-In

- 4.4.1.3.1 Each class will be open for admittance into a waiting room at least 15 minutes prior to the start time.

- 4.4.1.3.2 Depending on the class size, the time for admittance may be longer.
- 4.4.1.3.3 Admittance ends once the class has begun and the session is locked.
- 4.4.1.4 Monitoring
  - 4.4.1.4.1 There will be a class monitor assigned for every 25 students or portion thereof, and the monitor will assure that each student on camera is in compliance with all Guidelines.
  - 4.4.1.4.2 One of the following methods must be utilized to assure student compliance and engagement:
    - 4.4.1.4.2.1 Screenshots taken at unannounced times to view each participant.
    - 4.4.1.4.2.2 Polls that require responses by each student to assure their engagement which may address subjects just covered or be random questions to gain responses from each student in a short period of time.
    - 4.4.1.4.2.3 The instructor may ask each student to "raise your hand" at any time during the session.
    - 4.4.1.4.2.4 Students must be visible on camera at all times during the class to receive credit.
- 4.4.1.5 Attendance
  - 4.4.1.5.1 The monitor must verify the attendance of each student on an attendance log, including the cumulative time that each student was online, that will be submitted to the Commission.
- 4.4.1.6 Testing
  - 4.4.1.6.1 Testing is required and may be administered through the use of a fillable form emailed to or posted for each student to complete at the time of the test and returned to the instructor within the allotted time.
  - 4.4.1.6.2 The instructor and monitor must proctor the test via video and each student must make themselves and their work area visible on video during the test.
  - 4.4.1.6.3 No microphones may be muted during testing.
- 4.4.1.7 Course Provider Evaluation Form
  - 4.4.1.7.1 The Course Provider Evaluation Form will be sent to each instructor in advance of the class.
  - 4.4.1.7.2 The instructor will sign and scan back the Course Provider Evaluation Form to the course provider for submission to the Commission.
- 4.4.1.8 Student Evaluation Form
  - 4.4.1.8.1 The Student Evaluation Form must be sent to each student electronically for the student to complete within 24 hours after the end of class.
  - 4.4.1.8.2 Students must return the Student Evaluation form to the course provider within 24 hours of completion of the class in order to receive course credit and a certificate of completion for the class.
- 4.4.1.9 Certificates of completion must be forwarded electronically or mailed to each student upon successful completion of all course requirements.
- 4.4.1.10 Phone use and unrelated computer work during class is prohibited.
- 4.4.1.11 Cameras
  - 4.4.1.11.1 All time off camera or while logged off will be recorded.
  - 4.4.1.11.2 Students may not "step away" from the camera for any reason during the class. If an emergency arises, the "Chat" feature must be utilized to privately notify the instructor or monitor of the situation.
  - 4.4.1.11.3 Cameras must remain stable during the class. Excessive camera movement is distracting and may result in removal from class at the instructor's discretion.
  - 4.4.1.11.4 Students should choose a location that provides privacy and a non-distracting atmosphere both for themselves and those viewing via video and may not share a

# PROPOSED REGULATIONS

room with others unless this has been approved in writing in advance by the course provider in conjunction with the instructor.

4.4.1.12 Appropriate attire is required.

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

**2925 Real Estate Commission Education Committee**

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## DIVISION OF PROFESSIONAL REGULATION 3800 BOARD OF DIETETICS/NUTRITION

Statutory Authority: 24 Delaware Code, Section 3805(1) (24 **Del.C.** §3805(1))  
24 **DE Admin. Code** 3800

### PUBLIC NOTICE

#### 3800 State Board of Dietetics/Nutrition

The Delaware Board of Dietetics/Nutrition, pursuant to 24 **Del.C.** §3805(1), proposes to revise its regulations. The proposed amendments to the regulations seek to wholly amend the continuing education requirements for renewal to more closely align with the requirements of Commission on Dietetic Registration thus expanding the ways in which a licensee can obtain continuing professional education. In addition, the changes clarify the time a licensee may remain on inactive status and the procedures required to reactivate a license.

The Board will hold a public hearing on the proposed rule change on November 13, 2020 at 1:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Danielle Ridgway, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until November 30, 2020.

**\*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/october2020/proposed/24 DE Reg 340RFA 10-01-20.pdf>**

#### 3800 State Board of Dietetics/Nutrition (Break in Continuity of Sections)

## 2.0 Qualifications of Applicants

### (Break in Continuity Within Section)

#### 2.2 Foreign Degrees:

2.2.1 An agency authorized to validate foreign academic degrees equivalent to the Baccalaureate or Master's Degree conferred by a regionally accredited college or University in the U.S. includes the following:

International Consultants of Delaware, Inc., P.O. Box 8629, Philadelphia, PA 19101 -  
[www.icdel.com](http://www.icdel.com) <http://www.icdeval.com/>

### (Break in Continuity of Sections)

## 4.0 Continuing Professional Education

4.1 "~~Continuing professional education~~" (CPE) as specified in the ~~Dietician/Nutritionist Licensure Act, 24 Del.C. §3808,~~ must meet the content requirements of The American Dietetic Association for CPE credit. ~~One hour of CPE credit shall be given for each hour of CPE activity.~~

- 4.1.1 ~~To renew his or her license a LDN must obtain thirty (30) hours of CPE during each two-year certification period.~~
  - 4.1.1.1 ~~CPE requirements shall be prorated for new LDNs as follows: If the new LDN has been licensed less than 1 year, CPE is not required for renewal, if the new LDN has been licensed for more than 1 year but less than 2 years, half of the 30 CPE hours (15 hours) are required. If licensed for 2 or more years, the full 30 hours of CPE is required.~~
  - 4.1.1.2 ~~Extensions of time: An extension of time to complete CPE requirements will be granted to any LDN who can demonstrate to the Board an acceptable cause. The LDN must petition the Board for an extension. Should the Board deny the request, the LDN must complete the requirements to maintain licensure. Examples of circumstances for which the Board may grant extensions of time include, but are not limited to, prolonged illness or extended absence from the country.~~
- 4.2 ~~Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 4.0.~~
  - 4.2.1 ~~Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~
  - 4.2.2 ~~Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 4.3.~~
- 4.3 ~~Random audits will be performed by the Board to ensure compliance with the CPE requirements.~~
  - 4.3.1 ~~The Board will notify LDNs within sixty (60) days after the license renewal date that they have been selected for audit.~~
  - 4.3.2 ~~LDNs selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.~~
  - 4.3.3 ~~Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CPE requirements in Rule 4.0, which may include, but is not limited to, the following information:~~
    - 4.3.3.1 ~~Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance.~~
    - 4.3.3.2 ~~Date of CPE course;~~
    - 4.3.3.3 ~~Instructors of CPE course;~~
    - 4.3.3.4 ~~Sponsor of CEU course;~~
    - 4.3.3.5 ~~Title of CPE course; and~~
    - 4.3.3.6 ~~Number of hours of CPE course.~~
  - 4.3.4 ~~The CPE activities must be performed within the two-year period prior to renewal of licensure. If an activity overlaps two renewal periods, the date of completion of the activity determines the date in which the activity can be reported.~~
  - 4.3.5 ~~The current document published by CDR, describing CPE guidelines for registered dietitians shall be used as a guide to interpret requirements of CDR for CPE.~~
  - 4.3.6 ~~The Board will accept the decisions of CDR and CBNS for appropriateness of CPE activities and reserves the right to approve or disapprove any other activity deemed appropriate for CPE, using current CDR standards as criteria.~~
  - 4.3.7 ~~The Board may establish maximum hours allowed for any type of activity in the two-year period.~~
    - 4.3.7.1 ~~A maximum of 15 CPE hours shall be allowed for selfstudy programs.~~
    - 4.3.7.2 ~~A maximum of 6 CPE hours shall be allowed for exhibits.~~
    - 4.3.7.3 ~~A maximum of 10 CPE hours shall be allowed for poster presentations.~~
- 4.4 ~~The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent~~



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# PROPOSED REGULATIONS

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~~noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered grounds for discipline in the practice of dietetics and nutrition, pursuant to 24 Del.C. §3811. The minimum penalty for unjustified noncompliance shall be a letter of reprimand.~~

- 4.5 ~~Any licensee denied renewal or disciplined pursuant to these rules and regulations may contest such ruling by filing an appeal pursuant to the Administrative Procedures Act.~~

## **4.0 Continuing Professional Education**

### 4.1 Continuing Education Hours Required for Renewal

4.1.1 The LDN shall be required to complete 30 hours of continuing professional education (CPE) acceptable to the Board during each biennial renewal period.

4.1.2 Proof of continuing professional education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of this Rule.

4.1.3 Attestation shall be completed electronically at the time of online renewal.

4.1.4 The LDN shall retain all certificates and other documented evidence of participation in an approved/accredited CPE program for a period of at least three years. Upon request, such documentation shall be made available to the Board for random audit and verification purposes.

4.1.4.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. Acceptable proof shall include:

4.1.4.1.1 The date of CPE course;

4.1.4.1.2 The instructors of CPE course;

4.1.4.1.3 The sponsor of CPE course;

4.1.4.1.4 The title of CPE course; and

4.1.4.1.5 The number of hours of CPE course.

4.1.5 CPE requirements shall be prorated for new LDNs as follows:

4.1.5.1 If the new LDN has been licensed less than 1 year, CPE is not required for renewal.

4.1.5.2 If the new LDN has been licensed for more than 1 year but less than 2 years, half of the 30 CPE hours (15 hours) are required.

4.1.5.3 If the new LDN has been licensed for 2 or more years, the full 30 hours of CPE is required.

### 4.2 Exemptions and Extensions

4.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing professional education requirement may apply to the Board for a waiver. A waiver may provide for an extension of time or an exemption from some or all of the continuing professional education requirements for one renewal period. A separate request must be submitted for every renewal period during which a waiver is requested.

4.2.2 A request for a waiver must be submitted sixty days prior to the license renewal date.

4.2.3 Requests for Extension - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve months to make up all outstanding required hours upon a showing of good cause as to why the requirements could not be met at the time of renewal. The licensee must state the reason for such extension along with any relevant documentation. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or licensee's immediate family, or a death in the immediate family of the licensee. The written request for extension must be received prior to the renewal deadline. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required hours. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board. Make-up credits may not be used in the next renewal period.

4.3 Acceptable Continuing Professional Education. The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is whether the program is a planned

program of learning that contributes directly to the professional competence of the LDN. Continuing education hours awarded for activities or programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

4.3.1 The Commission on Dietetic Registration

4.3.2 The Board for Certification of Nutrition Specialists

4.3.3 Other professional or education organizations so long as the specific program is acceptable to the Board.

4.4 Acceptable CPE Activities. The following are acceptable CPE activities and the maximum number of hours allowed for each activity during the biennial renewal period:

4.4.1 Academic Coursework:

4.4.1.1 A one semester or trimester credit hour course taken will be worth 5 CPEs (No maximum);

4.4.1.2 A one semester or trimester credit hour course audited will be worth 3 CPEs (No maximum);

4.4.1.3 A one quarter credit hour course taken will be worth 3 CPEs (No maximum);

4.4.1.4 A one quarter credit hour course audited will be worth 2 CPEs (No maximum);

4.4.2 Non-Academic Coursework:

4.4.2.1 Recorded Online Academic Lectures or Seminars: Recorded online lectures or seminars that are offered by US regionally accredited colleges or universities. Official verification of participation is required such as a certificate of completion. (No maximum);

4.4.2.2 Case Presentations: Examples include but are not limited to grand rounds and patient case studies. (No maximum);

4.4.2.3 Certificate Program: Intensive training program with a component that assesses the participant's performance. Upon completion of the program, participants receive a certificate attesting to the attainment of a new knowledge or skill set (e.g., CDR's Certificate of Training in Adult Weight Management). If the program includes a self-study component, the self-study must include an assessment based on stated learning objectives wherein course participants must pass the assessment to continue in the program and to receive CPEUs for the self-study component. (No maximum). Certificate programs must:

4.4.2.3.1 Be dietetics-related;

4.4.2.3.2 Have stated learning objectives upon which the course and assessment content is based;

4.4.2.3.3 Include content expert instruction and interactive discussion, which may occur face-to-face or by electronic delivery;

4.4.2.3.4 Include a post-course assessment that assesses the participant's completion of the program's learning objectives;

4.4.2.3.5 Have all course materials reviewed by a minimum of three professionals with demonstrated expertise in the content area attesting to the number of hours needed to complete the program; and

4.4.2.3.6 Be sponsored by the Commission on Dietetic Registration (CDR) or a CDR-accredited provider.

4.4.2.4 Exhibits: Dietetics-related exhibits such as those presented at the Academy of Nutrition and Dietetics Food and Nutrition Conference and Expo. (5 CPE maximum);

4.4.2.5 Experiential Skill Development: Examples include but are not limited to culinary skills training, physical assessment training, multi-skills training, and computer/technology training. (No maximum);

4.4.2.6 Journal Clubs: Preplanned meetings, which provide for group participation, include three or more professionals and include in-depth discussion of a single dietetics-related topic from pre-assigned articles/papers in professional, peer-reviewed journals (materials should not be older than five years). Online journal clubs, in which interactive posts by

## PROPOSED REGULATIONS

dietetics professionals are read by and responded to by dietetics professionals. (No maximum);

- 4.4.2.7 Lectures, Seminars, Webinars, or Teleseminars: These activities must occur in real time and allow for interaction between the presenter and attendees. (No maximum);
- 4.4.2.8 Recorded CPE Preapproved by CDR, CBNS, or other acceptable provider. (10 CPE maximum);
- 4.4.2.9 Poster Sessions: Dietetics-related poster sessions, such as those seen at the Academy of Nutrition and Dietetics Food and Nutrition Conference and Expo, can be awarded CPEUs. (5 CPE maximum);
- 4.4.2.10 Professional Leadership: Holding an elected or appointed office. (5 CPE maximum); and
- 4.4.2.11 Professional Reading: Peer-reviewed, dietetics-related articles from professional journals and professional newsletters. Online journals are acceptable. Articles in professional newsletters must be identified as peer reviewed. The article must be read within 5 years of the date the article was published. (5 CPE maximum).

### 4.5 Audit of Continuing Education Hours

- 4.5.1 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage of licensees, determined by the Board, to be audited. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 4.5.2 Documentation. When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various hours claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board shall attempt to verify the hours shown on the documentation provided by the licensee. The Board will determine whether the licensee's hours meet the requirements of these rules.
  - 4.5.2.1 Any continuing education not meeting all provisions of these rules will be rejected in part or in whole by the Board.
  - 4.5.2.2 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Board.
  - 4.5.2.3 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Board. This continuing education will not be counted towards the next renewal period.

- 4.6 Board Review and Hearing Process. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing will be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if the licensee has met the requirement and if not, if there are any extenuating circumstances justifying the noncompliance with these requirements. Unjustified noncompliance with these regulations shall be considered unprofessional conduct in the practice of dietetics and nutrition and subject to discipline.

*(Break in Continuity of Sections)*

### 10.0 Inactive status

- 10.1 A licensee may be placed on inactive status by the Board for a period of no more than five years. Requests for inactive status shall be made, in writing, to the Board.
- 10.2 To apply for reactivation of an inactive license, a licensee shall:
  - 10.2.1 Submit a letter requesting reactivation;

10.2.2 Submit a prorated reactivation fee:

10.2.3 Submit proof of completion of the full CPE requirement within 24 months prior to reapplication.

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

**3800 Board of Dietetics/Nutrition**

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## OFFICE OF THE STATE TREASURER

on behalf of the

### CASH MANAGEMENT POLICY BOARD

Statutory Authority: 29 Delaware Code, Section 2716 (29 Del.C. §2716)

1 DE Admin. Code 1201

#### PUBLIC NOTICE

#### 1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

#### NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION

In accordance with the procedures set forth in 29 *Del. C.* Ch. 11, subch. III, and 29 *Del. C.*, ch. 101, the Cash Management Policy Board (the "Board") is proposing to amend previously adopted regulations governing the deposit and investment of State funds, as permitted by 29 *Del. C.* § 2716.

#### STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

29 *Del. C.* § 2716.

#### OTHER REGULATIONS AFFECTED

None.

#### HOW TO COMMENT ON THE PROPOSED REGULATION

Members of the public may receive a copy of the proposed regulations at no charge by U.S. mail by writing, emailing or calling Mr. Jordan Seemans at the Office of the State Treasurer ("OST"), 820 N. French St., Suite 201, Wilmington, Delaware 19801, [Jordan.W.Seemans@delaware.gov](mailto:Jordan.W.Seemans@delaware.gov), (302) 577-4211. Members of the public may present written comments on the proposed regulations by submitting such written comments to Mr. Seemans at the address above. Written comments must be received on or before November 1, 2020.

#### SUMMARY OF PROPOSED REGULATION

The Board is authorized to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any State pension fund or the State deferred compensation program, and (b) to determine the terms, conditions, and other matters relating to those investments including the designation of permissible investments. See 29 *Del. C.* § 2716(a). The Board is required to approve by majority vote all financial institutions that are selected to provide banking and investment services to the State. See 29 *Del. C.* § 2716(a)(2). The Board's existing regulations (the "Guidelines"), among other things, establish requirements related to the deposit of State funds in demand deposit accounts and establish permissible investments and percentage limits for State funds held for investment. See 1 *Del. Admin. C.* § 1201. The proposed Guideline amendments: (1) provide a definition for the capitalized term "Merchant Bank" and require OST to reflect approved Merchant Banks on the list of accounts and cash management banks that OST is required to maintain on its website; (2) extend the reserve account maturity restriction from 10 years to 10 years and one month to permit managers to invest in securities that would otherwise be disqualified because of a technical timing issue; (3) clarify that, where the Guidelines require two or more "NRSRO" ratings, the lowest such rating shall control; (4) clarify the deadline for managers to remove securities that (a) were purchased in violation of the Guidelines, or (b) cease to

qualify as permissible investments as the result of a downgrade; and (5) modify the mutual fund exception to require endowment or other managers utilizing a mutual fund to adhere to those specific provisions of the Guidelines that OST, after consultation with the Board's consultant, determines should apply to and govern the account.

The Guidelines apply to and govern the conduct of the State's approved depository banks, custodians and investment managers and will have no direct impact on individuals or businesses that do not serve in such capacity for the State.

The Board believes that it has authority to promulgate deposit and investment policies without complying with the formal regulatory requirements of Delaware's Administrative Procedures Act, 29 Del. C. Ch.101 (the "APA"). The Board is promulgating amended regulations under the APA out of an abundance of caution, consistent with prior practices.

**\*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/october2020/proposed/24 DE Reg 345RFA 10-01-20.pdf>

## 1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

*(Break in Continuity of Sections)*

### 2.0 Accounts

- 2.1 **Designation of Accounts.** For purposes of these Guidelines, State Funds are to be allocated and held in a variety of accounts as outlined below ("Accounts"):

*(Break in Continuity Within Section)*

- 2.1.6 **Settlement Accounts.** "Settlement Accounts" consist of State Funds that have been deposited into a demand deposit account at a Merchant Bank following the processing of a debit or credit card transaction. Cleared amounts deposited to the Settlement Accounts, net of merchant processor and related fees, shall be transmitted via ACH to a Collection and Disbursement Account within two business days after deposit. Settlement Accounts shall be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 10.0 below. The term "Merchant Bank" means a qualified financial institution approved by the Board to maintain a Settlement Account.

- 2.2 **List of Accounts.** OST shall maintain on its website a current listing of all Accounts and the Cash Management Banks, Merchant Banks, Liquidity Managers, Reserve Managers, and Endowment Managers approved by the Board to manage State Funds in such Accounts.

*(Break in Continuity of Sections)*

### 7.0 Reserve Accounts

*(Break in Continuity Within Section)*

- 7.2 **Maturity Restrictions.** The maximum maturity for any investment of State Funds in the Reserve Accounts shall be ten years and one month from the date of settlement.

- 7.3 **Permissible Investments and Percentage of Account Limitations.** State Funds held in Reserve Accounts can be invested solely in the types of securities set out in this subsection 7.3. Each Reserve Manager is further subject to limit the aggregate value of State Funds invested in each type of security held in the account under such manager's discretion to the "Percentage Limit" of such security type identified in this subsection 7.3, measured as a percentage of the total Reserve Account value of State Funds under such manager's discretion.

*(Break in Continuity Within Section)*

#### 7.3.10 Asset Backed Securities

- 7.3.10.1 Definition: Securities collateralized by pools of auto loan receivables, credit card receivables, and equipment loans; provided that (i) such securities have the highest credit

rating from ~~the highest credit rating from~~ at least two NRSROs and (ii) an average life not to exceed two years from the date of settlement (unless such securities are subject to periodic reset of coupon or interest rate, in which case the average life may not exceed three years from the date of settlement).

***(Break in Continuity of Sections)***

**11.0 Restrictions & Violations**

- 11.1 **Investment Restrictions.** Notwithstanding any other provision, none of the banks or managers engaged to manage or invest State Funds may:

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

11.1.10 Where these Guidelines require at least two NRSRO ratings for a security, the lowest such rating shall control.

- 11.2 **Purchases in Violation of Guidelines.** In the event that a bank or manager purchases any security that at the time of purchase violates Sections 5.0 – 10.0, the bank or manager shall remove the security from the State's portfolio as soon as possible by the close of the business day following the date on which the bank or manager learns of the violation and will bear all costs associated with the purchase and sale of such security. The bank or manager shall further ensure that the State recognizes no investment gain or loss on the purchase and sale of such security and/or shall effect such transactions as shall be necessary to eliminate any such gain or loss on the books and records of the State's Account with such bank or manager. A bank or manager shall report immediately to OST any such violation and the remedial action(s) taken to correct such violation to OST or proposed by the close of the business day following the date on which the bank or manager learns of the violation.

- 11.3 **Holding Impermissible Securities Following a Downgrade.** In the event that a bank or manager holds any security that complied with Sections 5.0 – 10.0 at the time of purchase, but which ceases to qualify as a permissible investment as the result of a downgrade, the bank or investment manager shall remove the security from the State's portfolio immediately by the close of the business day following the date on which the bank or manager learns of the downgrade without any consideration as to the investment gains or losses occasioned thereby. In such case, the State shall bear all costs associated with the purchase and sale of such security and shall recognize any investment gain or loss on such transactions on the books and records of the State's Account with such bank or manager. A bank or manager shall report immediately to OST any such violation downgrade and the remedial action(s) taken to correct such violation to OST or proposed by the close of the business day following the date on which the bank or manager learns of the downgrade.

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

- 11.5 **Mutual or Commingled Fund Exceptions to Guidelines.** The Board recognizes that (i) mutual funds and other types of commingled investment vehicles can provide, under some circumstances, lower costs and better diversification than can be obtained with a separately managed fund pursuing the same investment objectives and (ii) such funds cannot customize their investment policies to conform to the guidelines set out herein. In such cases, unless OST, after consultation with the Board or the Board's consultant determines otherwise, the policies of such funds shall supersede these guidelines and are exempt from the policies and restrictions specified herein.

**Originally adopted January 18, 1982**

~~**Revised December 12, 2014**~~

~~**Revised August 12, 2015**~~

~~**Revised August 10, 2016**~~

~~**Revised May 14, 2018**~~

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

**1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds**

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## Symbol Key

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

## Final Regulations

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

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

**DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b)(11) (14 **Del.C.** §122(b)(11))  
14 **DE Admin. Code** 252

**REGULATORY IMPLEMENTING ORDER****252 Required Educational Records and Transfer and Maintenance of Educational Records****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §122(b)(11), the Secretary of Education intends to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. Upon such review the Department concluded that some definitions need to be added or updated and that provisions for student records upon the closure of a charter school pursuant to 14 **Del.C.** §515(i) needed to be included in the regulation. Additionally, the regulation was updated to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on August 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on August 1, 2020, in the form hereto attached as *Exhibit "A"*. No comments received for this proposed amended regulation.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. Upon such review the Department concluded that some definitions need to be added or updated and that provisions for student records upon the closure of a charter school pursuant to 14 **Del.C.** §515(i) needed to be included in the regulation. Additionally, the regulation was

updated to comply with the *Delaware Administrative Code Drafting and Style Manual*.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records hereby 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** 252 Required Educational Records and Transfer and Maintenance of Educational Records amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records 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 September 8, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 8<sup>th</sup> day of September 2020.

**Department of Education**

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

Approved this 8<sup>th</sup> day of September 2020

## **252 Required Educational Records and Transfer and Maintenance of Educational Records**

### **1.0 Definitions**

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

**"Court Orders"** means any written direction from a court of competent jurisdiction directed to the student or affecting the student's care or custody.

**"Cumulative Record File"** means a file containing the Emergency/Nursing Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above), and Discipline Record.

**"Delaware School Health Record"** means the form required by 14 **DE Admin Code** 811 for Delaware public school students.

**"Discipline Record"** means information about any and all periods of suspension or of expulsion from the regular school setting imposed on a student as a result of an infraction of the school or district's code of conduct or other rules.

~~**"Emergency/Nursing Treatment Card"** means the card containing the general emergency information and procedures for the care of a student when the student becomes sick or injured in school as required in 14 **DE Admin. Code** 811.~~

**"Emergency/Nursing Treatment Card"** means a form containing contact information and general school emergency procedures for the care of a student who becomes sick or injured at school. The card contains the following information: the student's name, birth date, school district, school, grade or class assignment, home address, and telephone number; the name, place of employment and work



telephone number of the parent, guardian or relative caregiver; two other names, addresses, and telephone numbers of individuals who can be contacted at times when the parent, guardian or relative caregiver cannot be reached; the name and telephone number of the primary health care provider and family dentist; any medical conditions or allergies the student has; and the student's medical insurance.

**"Identifying Data"** means the name of the student, date of birth, sex, race and ethnicity, address, telephone number, Delaware student identification number and the name of the ~~parent(s), guardian(s) or Relative Caregiver.~~ parents, guardians, or relative caregivers.

**"Progress Report"** means a single record maintained for each student in kindergarten through grade 8 that contains end of year and up to date grades; standardized ~~test(s)~~ tests scores such as the state student assessment; and attendance data for each year of the student's attendance.

**"Public School"** means a school or charter school having any or all of grades kindergarten through ~~twelve, grade 12,~~ supported primarily from public funds and under the supervision of public school administrators.

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

## 2.0 Education Records Required by Schools in Delaware

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

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

- 3.1 When a student transfers from a public school, private school or an educational program operated by the Department of Services for Children, Youth and Their Families to any other school in Delaware, the receiving school shall immediately request the Cumulative Record File from the sending school or program.
- 3.2 The Cumulative Record File shall follow each student transferred from one school to another including files for each student with disabilities transferred from one school to another.
  - 3.2.1 Public schools, school districts, private schools and educational programs operated by the Department of Services for Children, Youth and Their Families shall promptly transfer a student's Cumulative Record File upon the request of a receiving school.
    - 3.2.1.1 Public schools and school districts shall maintain the original Cumulative Record File and provide a copy of the file when students transfer to a private school or educational program operated by the Department of Services for Children, Youth and Their Families.
    - 3.2.1.2 Public schools and school districts shall provide the original Cumulative Record File when transferring records to another public school.

- 3.2.2 Unpaid student fees or fines shall not be a basis for a public school, school district or an educational program operated by the Department of Services for Children, Youth and Their Families to deny or to delay transfer of the Cumulative Record File.
- 3.2.3 Students shall not be denied enrollment into a public school on the grounds that the student's Cumulative Record File has not been received.
- 3.3 Before transferring student records, a public school, school district or private school shall specifically confirm that the Cumulative Record File contains the student's Discipline Record.
- 3.4 When students transfer to a Delaware school from any other school including a school in a foreign ~~country~~ country, the receiving school is responsible for having the transcripts evaluated.
- 3.5 Upon the closure of a charter school, the student's Cumulative Record File shall be forwarded to the receiving school in accordance with charter school closure protocol as outlined in 14 Del.C. §512(16) and §515(i).

## 4.0 Maintenance of the Education Records of Public Schools

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

## 5.0 Destruction of Education Records of Public Schools

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

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 101, 121(a), 122(b)(1) and (b)(2)  
(14 **Del.C.** §§101, 121(a), 122(b)(1) and (b)(2))  
14 **DE Admin. Code** 817

### REGULATORY IMPLEMENTING ORDER

### 817 Medications and Treatments

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §101, §121(a) and §122(b)(1) and (b)(2), the Secretary of Education seeks to amend 14 **DE Admin. Code** 817 Medications and Treatments. This regulation is being amended to add a definition of "Hand Sanitizer" in order to clarify its use in response to the COVID-19 pandemic and beyond, as well as to edit the regulation to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on August 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on August 1, 2020, in the form hereto attached as *Exhibit "A"*. No comments were received for this proposed amended regulation.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments in order to add a definition of “Hand Sanitizer” and clarify its use in response to the COVID-19 pandemic and beyond, as well as to edit the regulation to comply with the *Delaware Administrative Code Drafting and Style Manual*.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 817 Medications and Treatments attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 817 Medications and Treatments hereby 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** 817 Medications and Treatments amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 817 Medications and Treatments 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 September 8, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 8<sup>th</sup> day of September 2020.

Department of Education

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

Approved this 8<sup>th</sup> day of September 2020

**817 Medications and Treatments**

#### 1.0 Purpose

The purpose of this regulation is to provide guidance regarding the medications and treatments to be provided to students pursuant to current Delaware Code.

#### 2.0 Definitions

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

“**Approved School Activity**” means a school-sponsored field trip or approved school activity outside of the traditional school day or ~~off-campus~~ off campus.

“~~Assist(ance)~~ **Assistance with Self-Administration of Medication**” means assisting a student in kindergarten through grade 12 in the self-administration of a medication taken orally, by inhalation, or applied topically, provided that the medication is in a properly labeled container. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Assistance does not include making nursing judgments. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail for life-threatening symptoms of a diagnosed ~~condition~~, condition and includes the administration of the medication based on the healthcare provider’s order and parent permission.

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

“**Current**” means a medication or prescription that is not outdated or expired according to the date on the label. A current prescription is written for a specific time period, not to exceed one (1) year.

“**Dosage**” or “**Dose**” means a specific amount of medication prescribed or directed to be taken at any one (1) time.

“**Educators**” means teachers, administrators, and paraeducators employed by a school.

“**Emergency Medication**” means a medication necessary for response to a life-threatening allergic reaction.

“**Emergency Medication for a Diagnosed Medical Condition**” means a medication prescribed to treat a life-threatening symptom of a diagnosed medical condition.

“**Emergency Medication Summary Sheet**” means a document developed by the Department of Education and the Division of Public Health to report the use of Emergency Medication in the school setting.

“**Field Trip**” means any off campus, school sponsored activity.

“**Hand Sanitizer**” means a commercially available healthcare topical antiseptic product with at least 60% ethanol or 70% isopropyl alcohol content.

“**Licensed Healthcare Provider**” means anyone lawfully authorized to prescribe medications and treatments.

“**Medication**” means a legal drug, which has been authorized for a student to use and includes both prescription and non-prescription drugs. This definition excludes Hand Sanitizer.

“**Non-prescription Medication medication**” means any over-the-counter medication that can be sold legally without a prescription. This definition excludes Hand Sanitizer.

“**Other School Employees**” means coaches or persons hired or contracted by schools.

“**Paraeducators**” mean teaching assistants or aides in a school.

“**Prescription Medication medication**” means a legal drug that has a written order for an individual student by a licensed ~~health care~~ healthcare provider licensed to prescribe medication.

“**School**” means an educational facility serving students in kindergarten through grade 12 and any associated pre-kindergarten program in such facility.

“**School Nurse**” means a Registered Nurse licensed to practice in the State of Delaware, who is employed by a school district, charter school, or private school.

“**Self-Use of Hand Sanitizer**” means a student using Hand Sanitizer in a legally permissible manner.

“**Traditional School-Day school day**” means the hours within the days counted to meet the state minimum number of school days each year and summer school.

“**Trained Assistant for Self-Administration**” means an Educator or Other School Employee who has completed the training to assist a student with self-administration of medications. This person may render emergency care, including injection, to any student unable to self-administer medication for life-threatening symptoms of a diagnosed condition based on the healthcare provider’s order and parent permission.

“**Trained Person**” means an Educator or Other School Employee who has completed the training to administer ~~Medicine~~ medication to diagnosed and undiagnosed students with symptoms of a life-threatening allergic reaction in the school setting.

## 3.0 Medications

3.1 Medications may be administered to a public school student by the School Nurse when a written request to administer the medication or treatment is on file from the parent, guardian or ~~Relative Caregiver~~ relative caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by ~~42 USC 11434a~~) 42 U.S.C. §11434a).

3.1.1 The School Nurse shall check the student health records and history for contraindications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms or conditions persist.

- 3.1.2 The School Nurse shall also document the student's name, the name of medication and treatment administered, the date and time it was administered and the dosage if medication was administered.
- 3.2 In addition to the requirements set forth in subsection 3.1 above, in the case of a Prescription ~~Medications~~ medications, the requirements set forth below in subsections 3.2.1 through 3.2.4 shall also apply.
- 3.2.1 Prescription medications shall be provided to the School in the original container and properly labeled with the student's name; the prescribing licensed ~~health-care~~ healthcare provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
- 3.2.2 Medications and dosages administered by the School Nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses or guidelines that are both safe and effective, or guidelines that are specified in regional or national guidelines.
- 3.2.3 The prescription and the medication shall be current and ~~long-term~~ long-term prescriptions shall be reauthorized at least once a year.
- 3.2.4 All medications classified as controlled substances shall be counted and reconciled each month by the School Nurse and kept under double lock. Such medications should be transported to and from School by an adult.
- 3.3 Non-prescription ~~Medication~~ medication must be in an original container with full label and may be given by the School Nurse after the School Nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered.

#### 4.0 Treatments

Treatments, including specialized health procedures, shall be prescribed by a licensed ~~health-care~~ healthcare provider with directions relative to administration or supervision.

#### 5.0 IEP Team

For a student who requires significant medical or nursing interventions, the Individual Education Program (IEP) team shall include the School Nurse.

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

- 6.1 Educators and Other School Employees who are Trained Assistants for Self-Administration are authorized by 24 ~~Del.C.~~ §1921(a)(13) to assist a student with self-administration of Medications at an Approved School Activity for students in kindergarten through Grade 12. The Trained Assistant for Self-Administration is subject to the following provisions:
- 6.1.1 Assistance with Self-Administration of Medication shall not be provided without the prior written request or consent of a parent, guardian or ~~Relative Caregiver~~ relative caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by ~~42 USC 11434a~~) 42 U.S.C. §11434a). Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the ~~time(s) and date(s)~~ times and dates of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a Field Trip or Approved School Activity outside of the traditional ~~School~~ school day or ~~off-campus~~ off campus.
- 6.1.1.1 Medications shall be prescribed by a licensed ~~health-care~~ healthcare provider and are ones that cannot be rescheduled for times when a person, who may legally administer medication, is available.

- 6.1.1.1.1 Doses may be provided for up to one week, unless covering an Approved School Activity lasting longer than this time ~~period~~, period and shall be maintained in a secure location.
- 6.1.1.2 Prescription medications shall be provided to the School Nurse by the parent and shall be properly labeled with the student's name; the licensed ~~health-care~~ healthcare provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy; and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
- 6.1.1.2.1 Controlled medications must be stored on the person assisting or in a secure location under double lock. Maintaining doses for greater than one day is not permitted except in the case of an overnight activity.
- 6.1.1.3 Non-prescription medications shall be provided to the School Nurse by the parent in an original container along with a current, written directive from the student's licensed ~~health care~~ healthcare provider and shall include the student's name; the licensed ~~health-care~~ healthcare provider's name; the name of the medication; the dosage; and how and when it is to be administered.
- 6.1.2 In order to be qualified to provide Assistance with Self-Administration of Medications, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 **Del.C.** §1921(a)(13). Training shall be renewed minimally every five years. No person shall provide Assistance with Self-Administration of Medications without documented acknowledgment to the Department of Education that ~~he/she~~ has they have completed the course and that ~~he/she~~ understands they understand the same, and will abide by the safe practices and procedures set forth therein. A School Nurse shall:
- 6.1.2.1 Complete instructor training as designated by the Department of Education.
- 6.1.2.2 Oversee the training for Educators and Other School Employees.
- 6.1.2.3 Coordinate the collection and review of the written parental consent.
- 6.1.2.4 Provide the appropriately labeled medication, copy of the consent, and directions on assistance to the Trained Assistant for Self-Administration.
- 6.1.3 Each School shall maintain a record of all students receiving Assistance with Self-Administration of Medications pursuant to this regulation. Said record shall contain the student's name; the name of the medication; the dose; the time of administration; the method of administration; and the name of the person assisting.
- 6.1.4 The School Nurse may prepare a Trained Assistant for Self-Administration to render emergency care to a student, with a known, diagnosed condition, who is in pre-kindergarten through Grade 12 and shows life-threatening signs and symptoms of the condition at an Approved School Activity.
- 6.1.4.1 Response shall include immediate activation of emergency medical services.
- 6.1.4.2 Preparation shall include instruction in the provision of the student's Emergency Medication for a Diagnosed Medical Condition, including injection, for symptoms related to the condition. Instruction will be based on the healthcare provider's order and the manufacturer's instructions for administration.
- 6.1.4.3 The Trained Assistant for Self-Administration shall annually demonstrate ~~his/her~~ their ability to provide Emergency Medication for a Diagnosed Medical Condition.
- 6.1.4.4 An Emergency Medication for a Diagnosed Medical Condition shall be a current prescription provided by the student's licensed healthcare provider for a diagnosed medical condition that requires immediate medication to save or sustain life and is one which can be safely provided by a Trained Assistant for Self-Administration.
- 6.1.4.5 In addition to subsection 6.1.3, the Trained Assistant for Self-Administration shall provide documentation related to the rendering of emergency care, to include at a minimum, the student's symptoms, time of the incident, medication administered, other actions taken, and the response by emergency medical services.

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

## 7.0 Emergency Medication Administration for Life-threatening Allergic Reaction in School

- 7.1 School Nurses and Trained Persons are authorized by 16 **Del.C.** Ch. 30E to administer Emergency Medication ~~Without an Order~~ without an order at School to a student in pre-K through grade 12, who is symptomatic of a life-threatening allergic reaction in the school setting.
- 7.1.1 ~~Public~~ School Nurses shall follow the Division of Public Health's medical emergency standing orders for allergic reactions and anaphylaxis in previously undiagnosed individuals.
- 7.1.2 Trained Persons shall follow the guidance issued by the Division of Public Health on the administration of Emergency Medications without an order in the school setting to undiagnosed individuals.
- 7.2 The School, in consultation from the School Nurse, shall annually identify and train a sufficient number of Educators and Other School Employees to become Trained Persons.
- 7.2.1 An identified person cannot be compelled to become a Trained Person, unless training is a requirement of their position, hire, or contract.
- 7.2.2 The training shall be a program approved by the Department of Education and the Division of Public Health.
- 7.2.3 The Trained Person shall annually re-train or demonstrate competency as a Trained Person.
- 7.2.4 The School shall maintain documentation of annual training and Trained Persons and make available upon request to the Department of Education or Division of Public Health.
- 7.3 The School shall maintain current, stock Emergency Medication.
- 7.3.1 Emergency Medication shall be stored in a minimum of two (2) secure and accessible locations in the school setting as identified by the School Nurse: one for the School Nurse and the other for the Trained Person.
- 7.4 The School shall maintain documentation of the use of Emergency Medication.
- 7.4.1 The Trained Person shall complete the Emergency Medication Administration by Trained Person Sheet on the day of the any administration and shall submit to the School Nurse.
- 7.5 The School Nurse shall submit the Emergency Medication Summary Sheet to the Department of Education and the Division of Public Health within 48 hours of the use of an Emergency Medication.

## 8.0 Other School Employees Obligation

Except for a School Nurse, no Educator or Other School Employee shall be compelled to assist a student with medication or to administer emergency medication unless training is a requirement of hire or contract. If a facility is otherwise required to have a School Nurse, nothing contained here shall be interpreted to relieve the school of such obligation.

## 9.0 Self-Use of Hand Sanitizer

- 9.1 Annually each district and charter school shall publish on its website, and through at least one (1) other format, that Hand Sanitizer will be available for student use.
- 9.1.1 The parent, guardian or relative caregiver shall be provided a process for their child to be identified as unable to use Hand Sanitizer.
- 9.1.2 The parent, guardian or relative caregiver shall be provided a process for their child to receive assistance on self-use of Hand Sanitizer.
- 9.1.3 Any information received pursuant to subsections 9.1.1 and 9.1.2 shall be maintained in the student's Cumulative Record File.
- 9.1.4 Relevant school personnel shall be made aware of any student identified in subsections 9.1.1 and 9.1.2.

Nonregulatory note: 14 **DE Admin. Code** 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses

student self-administration of a prescribed asthmatic quick relief inhaler and student self-administration of prescribed autoinjectable epinephrine, an insulin pump or administration of medical marijuana oil.

Nonregulatory note: 16 **Del.C.** §3007E provides liability protection for any Trained Person or School Nurse, who, in good faith and without expectation of compensation from the person aided or treated, administers Emergency Medication.

Nonregulatory note: 16 **Del.C.** §4904A provides exceptions for the administration of medical marijuana oil by a parent or designated caregivers.

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 and 1205(b))  
14 **DE Admin. Code** 1521

### REGULATORY IMPLEMENTING ORDER

#### 1521 Elementary Teacher

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education (“Department”), developed amendments to 14 **DE Admin. Code** 1521 Elementary Teacher. The regulation concerns the requirements for an Elementary Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include striking subsection 4.1.1.5 because the option to earn a degree in any content area and complete 15 credits or the equivalent in professional development in the area of the certificate does not apply to elementary teachers as they provide instruction in core content areas (14 **Del.C.** §1210(a)(1)). In addition, the proposed additional language in subsection 4.1.2.2 aligns with the date through which the assessment (ETS Test Code #7801) will be offered by ETS and the proposed amendment to subsection 4.1.2.4.3 is to strike an erroneous reference to ETS Test Code #7815. Other proposed amendments include clarifying changes in Section 1.0; striking two defined terms from Section 2.0 because the terms do not appear elsewhere in the regulation as a result of striking subsection 4.1.1.5; clarifying changes and removing the reference to Meritorious New Teacher Candidate Designation, which was through a reciprocal licensing agreement with other states that no longer exists, in Section 3.0; and clarifying changes in Sections 4.0, 5.0, 6.0, 7.0, and 9.0.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2020. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

#### II. FINDINGS OF FACTS

On August 6, 2020, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1521 Elementary Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education’s approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1521 Elementary Teacher.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1521 Elementary Teacher subject to the State Board of Education’s approval. Therefore, pursuant to 14 **Del.C.**



§§1203 and 1205(b), 14 **DE Admin. Code** 1521 Elementary Teacher attached hereto as Exhibit "A" is hereby amended.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1521 Elementary Teacher adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1521 Elementary Teacher in the Administrative Code of Regulations for the Department.

#### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 20<sup>th</sup> day of August, 2020.

#### Department of Education

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

Approved this 20<sup>th</sup> day of August, 2020.

#### State Board of Education

/s/ Whitney Sweeney, President

Vincent Lofink (Absent)

/s/ Wali W. Rushdan, II, Vice President

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

/s/ Nina Lou Bunting

Provey Powell, Jr. (Absent)

Candace Fifer (Absent)

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

#### 1521 Elementary Teacher

#### 1.0 Content

1.1 This regulation shall apply to the issuance of a ~~Standard Certificate~~, an Elementary Teacher Standard Certificate pursuant to 14 **Del.C.** §1220(a), ~~for Elementary Teacher~~. This Certification is required for grades K to 6.

1.1.1 Notwithstanding subsection 1.1, the Early Childhood Teacher ~~Certification~~ Standard Certification may be used for K to grade 2 in lieu of this Certification.

#### 2.0 Definitions

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

**"Certification"** means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

**"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.

~~"**Fifteen (15) Credits or the Equivalent in Professional Development**" means college credits or an equivalent number of hours with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to a degree program from a regionally accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a regionally accredited college or university or other Department approved provider.~~

"**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 his or her unfitness or otherwise.

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

"**Major or Its Equivalent**" means a minimum of ~~thirty (30)~~ 30 semester hours of course work in a particular content area.

"**Passing Score**" means a minimum score as established by the Professional Standards Board, in consultation with the Department, and with the approval of the State Board of Education.

~~"**Professional Development**" means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and/or perspectives; and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.~~

"**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 from Another State**" means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction. 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 an Elementary Teacher Standard Certificate to an Educator who:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License, ~~or a~~ or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
  - 3.1.2 Has met the requirements for licensure and holds a Valid and Current License or Certificate ~~from Another State~~ in elementary ~~education~~; or education.
  - ~~3.1.3 Has met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 **Del.C.** §1203.~~
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for ~~Certification~~ an Elementary Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the ~~alleged conduct involves allegations of~~ allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

#### 4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 For an applicant who is applying for his or her first ~~Standard Certificate~~ does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have:
- 4.1.1.1 Obtained and currently maintain an Early Childhood/Generalist certificate from the National Board for Professional Teaching Standards; or
  - 4.1.1.2 ~~Completed~~ Earned a bachelor's degree from a regionally accredited college or university with a Major or Its Equivalent in elementary education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
  - 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach grades K to 6 as provided in ~~44 DE Admin. Code 1507~~ 14 Del.C. §§1260 - 1266; or
  - 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in elementary ~~education~~; or education.
  - 4.1.1.5 ~~Completed a bachelor's degree from a regionally accredited college or university in any content area and satisfactory completion of fifteen (15) credits or the equivalent in Department approved Professional Development related to elementary education of which at least six (6) credits must focus on pedagogy.~~
    - 4.1.1.5.1 ~~The applicant, in consultation with the applicant's Employing Authority, shall select the Fifteen (15) Credits or the Equivalent in Professional Development subject to the Department's approval.~~
    - 4.1.1.5.2 ~~If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the Fifteen (15) Credits or the Equivalent in Professional Development in consultation with the Department and subject to the Department's approval.~~
- 4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:
- 4.1.2.1 On the Praxis Subject Assessment - Elementary Education: Multiple Subjects (ETS Test Code # 5001), the applicant shall have achieved a Passing Score on each of the following subtests:
    - 4.1.2.1.1 Reading and Language Arts Subtest (ETS Test Code # 5002) a Passing Score of 157; and
    - 4.1.2.1.2 Mathematics Subtest (ETS Test Code # 5003) a Passing Score of 157; and
    - 4.1.2.1.3 Social Studies Subtest (ETS Test Code # 5004) a Passing Score of 155; and
    - 4.1.2.1.4 Science Subtest (ETS Test Code # 5005) a Passing Score of 159; or
  - 4.1.2.2 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7801), the applicant shall have achieved a Passing Score on each of the following subtests prior to August 31, 2020:
    - 4.1.2.2.1 Reading and Language Arts CKT Subtest (ETS Test Code # 7802) a Passing Score of 156; and
    - 4.1.2.2.2 Mathematics CKT Subtest (ETS Test Code # 7803) a Passing Score of 143; and
    - 4.1.2.2.3 Science CKT Subtest (ETS Test Code # 7804) a Passing Score of 144; and
    - 4.1.2.2.4 Social Studies Subtest (ETS Test Code # 7805) a Passing Score of 155; or
  - 4.1.2.3 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7811), the applicant shall have achieved a Passing Score on each of the following subtests:
    - 4.1.2.3.1 Reading and Language Arts CKT Subtest (ETS Test Code # 7812) a Passing Score of 156; and
    - 4.1.2.3.2 Mathematics CKT Subtest (ETS Test Code # 7813) a Passing Score of 143; and
    - 4.1.2.3.3 Science CKT Subtest (ETS Test Code # 7814) a Passing Score of 144; and

- 4.1.2.3.4 Social Studies CKT Subtest (ETS Test Code # 7815) a Passing Score of 153; or
- 4.1.2.4 The applicant shall have achieved a Passing Score on each of the following subtests:
  - 4.1.2.4.1 Praxis Subject Assessment - Elementary Education: Reading Language Arts Subtest (ETS Test Code # 5002) a Passing Score of 157 or Praxis Elementary Education: Content Knowledge for Teaching Reading and Language Arts CKT Subtest (ETS Test Code # 7802 or 7812) a Passing Score of 156; and
  - 4.1.2.4.2 Praxis Subject Assessment - Elementary Education: Mathematics Subtest (ETS Test Code # 5003) a Passing Score of 157 or Praxis Elementary Education: Content Knowledge for Teaching Mathematics CKT Subtest (ETS Test Code # 7803 or 7813) a Passing Score of 143; and
  - 4.1.2.4.3 Praxis Subject Assessment - Elementary Education: Social Studies Subtest (ETS Test Code # 5004) a Passing Score of 155 or Praxis Elementary Education: Content Knowledge for Teaching Social Studies Subtest (ETS Test Code # 7805 or 7815) a Passing Score of 155 or Social Studies CKT Subtest (ETS Test Code # 7815) a Passing Score of 153; and
  - 4.1.2.4.4 Praxis Subject Assessment - Elementary Education: Science Subtest (ETS Test Code # 5005) a Passing Score of 159 or Praxis Elementary Education: Content Knowledge for Teaching Science CKT Subtest (ETS Test Code # 7804 or 7814) a Passing Score of 144.

4.2 For an applicant who ~~is applying for his or her second or subsequent~~ holds at least one content area Standard Certificate, the applicant shall have achieved a Passing Score on ~~one of the following examinations:~~ an examination as provided in subsection 4.1.2.

- 4.2.1 ~~On the Praxis Subject Assessment - Elementary Education: Multiple Subjects (ETS Test Code # 5001), the applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.1; or~~
- 4.2.2 ~~On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7801), the applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.2; or~~
- 4.2.3 ~~On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7811), the applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.3; or~~
- 4.2.4 ~~The applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.4.~~

## 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 ~~an~~ the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For ~~applicants who are applying for their first~~ an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for an Elementary Teacher Standard Certificate:
  - 5.2.1 Evidence of obtaining and maintaining an Early Childhood/Generalist certificate from the National Board for Professional Teaching Standards, if applicable; and
  - 5.2.2 Official transcript from the applicant's ~~regionally-accredited~~ Regionally Accredited college or university.
    - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's ~~regionally-accredited~~ Regionally Accredited college or university; or
    - 5.2.2.2 Sealed paper transcripts may be submitted.
    - 5.2.2.3 The Department will not accept copies of transcripts; and
  - 5.2.3 If applicable, documents verifying successful completion of Professional Development; and

~~5.2.4~~ 5.2.3 Official scores on the Praxis Subject Assessment or Praxis Elementary Education: Content Knowledge for Teaching as provided in subsection 4.1.2; and

~~5.2.5~~ If applicable, an experience form must be completed in full and signed by the applicant; and

~~5.2.6~~ 5.2.4 Additional documentation as required by the Department.

5.3 For ~~applicants who are applying for their second or subsequent~~ an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a ~~Standard Certificate for Elementary Teacher~~ an Elementary Teacher Standard Certificate:

5.3.1 Official scores on the Praxis Subject Assessment or Praxis Elementary Education: Content Knowledge for Teaching as provided in subsection 4.2; and

5.3.2 Additional documentation as required by the Department.

5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate ~~from Another State~~ in elementary education, the following documentation is required in the application for a ~~Standard Certificate for Elementary Teacher~~ an Elementary Teacher Standard Certificate:

5.4.1 An official copy of the ~~valid and current educator license or certificate from another state or professional license~~. Valid and Current License or Certificate; and

5.4.2 Additional documentation as required by the Department.

## 6.0 Validity of a Standard Certificate

6.1 ~~A Standard Certificate for Elementary Teacher~~ An Elementary Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

6.2 ~~A Standard Certificate for Elementary Teacher~~ An Elementary Teacher Standard Certificate is not subject to renewal.

## 7.0 ~~Revocation of a Standard Certificate~~ Disciplinary Action

7.1 An Educator's Elementary Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.

7.2 An Educator's Elementary Teacher Standard Certificate shall be revoked ~~in the event if~~ the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's ~~Standard Certificate~~ application in accordance with 14 Del.C. §1222.

~~7.2~~ 7.3 An Educator whose ~~Standard Certificate~~ certificate is noticed for ~~revocation~~ disciplinary action is entitled to a full and fair hearing before the Standards Board.

~~7.2.4~~ Hearings shall be conducted in accordance with the 14 DE Admin. Code 1515 Hearing Procedures and Rules.

## 8.0 Secretary of Education Review

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

## 9.0 Past Certificate Recognized

The Department shall recognize an Elementary Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An educator holding such a Standard Certificate ~~issued by the Department before the effective date of this regulation~~ shall be considered certified ~~as an elementary teacher to teach elementary education~~.

## PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1533

### REGULATORY IMPLEMENTING ORDER

#### 1533 Middle Level Science Teacher

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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** 1533 Middle Level Science Teacher. The regulation concerns the requirements for a Middle Level Science Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a Middle Level Science Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Middle Level Science Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Middle Level Science Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Notice of the proposed regulation was published in the *Register of Regulations* on July 1, 2020. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

#### II. FINDINGS OF FACTS

On August 6, 2020, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1533 Middle Level Science Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education’s approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1533 Middle Level Science Teacher.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1533 Middle Level Science Teacher subject to the State Board of Education’s approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1533 Middle Level Science Teacher attached hereto as Exhibit “A” is hereby amended.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1533 Middle Level Science Teacher adopted hereby shall be in the form attached hereto as Exhibit “A,” and said regulation shall be cited as 14 **DE Admin. Code** 1533 Middle Level Science Teacher in the Administrative Code of Regulations for the Department.

#### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

# FINAL REGULATIONS

IT IS SO ORDERED the 20<sup>th</sup> day of August, 2020.

## Department of Education

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

Approved this 20<sup>th</sup> day of August, 2020.

### State Board of Education

/s/ Whitney Sweeney, President

Vincent Lofink (Absent)

/s/ Wali W. Rushdan, II, Vice President

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

/s/ Nina Lou Bunting

Provey Powell, Jr. (Absent)

/s/ Candace Fifer

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

### 1533 Middle Level Science Teacher

#### 1.0 Content

- 4.1 This regulation shall apply to the issuance of a Middle Level Science Teacher Standard Certificate, Certificate pursuant to 14 ~~Del.C. §1220(a), for Middle Level Science Teacher~~. This certification Standard Certificate is required for grades 6, 7 and 8 in a ~~Middle Level~~ middle level Delaware public school. Notwithstanding the above requirement, the Secondary Science Teacher ~~Certification Standard Certificate~~ may be used for grades 6, 7 and 8 in a ~~Middle Level~~ middle level school in lieu of ~~this certification~~ the Middle Level Science Teacher Standard Certificate.
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

#### 2.0 Definitions

- 2.1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2.2 The following ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- "Department"** means the Delaware Department of Education.
- "Educator"** means a person licensed and certified by the State under 14 ~~Del.C. Ch. 12~~ to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.
- "Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.
- "Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.
- "License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.
- "Major or Its Equivalent"** means a minimum of 30 semester hours of coursework in a particular content area.

**"Passing Score"** means a minimum score as established by the ~~Professional Standards Board,~~ Standards Board in consultation with the Department and with the approval of the State Board of Education.

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

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

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

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

### 3.0 **Issuance of a Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Middle Level Science Teacher Standard Certificate as a Middle Level Science Teacher to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced ~~License;~~ License or a 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 licensure and presents proof of a Valid and Current License or Certificate as a middle level science teacher.
  - 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 Middle Level Science Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

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

- 4.1 An educator shall have also met the following:
- 4.1.1 ~~achieved on the Praxis Subject Assessment – Middle School Science (ETS Test # 5440) a Passing Score of 150.~~
- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have:
    - 4.1.1.1 Obtained and currently maintain a Science certificate from the National Board for Professional Teaching Standards; or
    - 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a Major or Its Equivalent in middle level science education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or



- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach middle level science as provided in 14 Del.C. §§1260 – 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in middle level science education.
- 4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:
  - 4.1.2.1 A Passing Score of 150 on the Praxis Subject Assessment – Middle School Science (ETS Test Code # 5440); or.
  - 4.1.2.2 A Passing Score of 152 on the Praxis Middle School Science (ETS Test Code #5442).
- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a Passing Score on an examination as provided in subsection 4.1.2.

## **5.0 Application Requirements**

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Middle Level Science Teacher Standard Certificate:
  - 5.2.1 Evidence of obtaining and maintaining a Science certificate from the National Board for Professional Teaching Standards, if applicable; and
  - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
    - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
    - 5.2.2.2 Sealed paper transcripts may be submitted.
    - 5.2.2.3 The Department will not accept copies of transcripts; and
  - 5.2.3 Official score on the Praxis as provided in subsection 4.1.2; and
  - 5.2.4 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Middle Level Science Teacher Standard Certificate:
  - 5.3.1 Official score on the Praxis as provided in subsection 4.2; and
  - 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate as a middle level science teacher, the following documentation is required in the application for a Middle Level Science Teacher Standard Certificate:
  - 5.4.1 An official copy of the Valid and Current License or Certificate; and
  - 5.4.2 Additional documentation as required by the Department.

## **6.0 Validity of a Standard Certificate**

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

## **7.0 Disciplinary Action**

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

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

## **8.0 Secretary of Education Review**

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 Middle Level Science Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Middle Level Science Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

## **9.0 Past Certificate Recognized**

The Department shall recognize a Middle Level Science Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach middle level science.

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### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))  
14 DE Admin. Code 1570

### REGULATORY IMPLEMENTING ORDER

### 1570 Early Childhood Exceptional Children Special Education Teacher

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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 1570 Early Childhood Exceptional Children Special Education Teacher. The regulation concerns the requirements for an Early Childhood Exceptional Children Special Education Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding clarifying language regarding category certificates in Section 1.0; adding defined terms to Section 2.0; clarifying the requirements for issuing an Early Childhood Exceptional Children Special Education Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining an Early Childhood Exceptional Children Special Education Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of an Early Childhood Exceptional Children Special Education Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Notice of the proposed regulation was published in the *Register of Regulations* on July 1, 2020. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

#### II. FINDINGS OF FACTS

On August 6, 2020, the Professional Standards Board voted to propose 14 DE Admin. Code 1570 Early Childhood Exceptional Children Special Education Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education’s approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 Del.C. Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 DE Admin. Code 1570 Early

Childhood Exceptional Children Special Education Teacher.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1570 Early Childhood Exceptional Children Special Education Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1570 Early Childhood Exceptional Children Special Education Teacher attached hereto as Exhibit "A" is hereby amended.

### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1570 Early Childhood Exceptional Children Special Education Teacher adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1570 Early Childhood Exceptional Children Special Education Teacher in the Administrative Code of Regulations for the Department.

### V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 20<sup>th</sup> day of August, 2020.

#### Department of Education

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

Approved this 20<sup>th</sup> day of August, 2020.

#### State Board of Education

/s/ Whitney Sweeney, President

Vincent Lofink (Absent)

/s/ Wali W. Rushdan, II, Vice President

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

/s/ Nina Lou Bunting

Provey Powell, Jr. (Absent)

/s/ Candace Fifer

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

#### 1570 Early Childhood Exceptional Children Special Education Teacher

#### 1.0 Content

1.1 This regulation shall apply to the issuance of ~~a Standard Certificate~~, an Early Childhood Exceptional Children Special Education Teacher Standard Certificate (Category) pursuant to 14 **Del.C.** §1220(a); ~~for Early Childhood Exceptional Children Special Education Teacher. This certification is for Birth to Grade 2, however, certification as an Exceptional Children Special Education Teacher may also be used in K to grade 2.~~

1.1.1 This Standard Certificate is required for an Educator whose primary assignment is teaching Students with Disabilities from Birth to Grade 2 in Delaware public schools.

1.1.1.1 The Early Childhood Exceptional Children Special Education Teacher Standard Certificate may be used for grades K to 2 in lieu of the Special Education Teacher of Students with Disabilities Standard Certificate.

1.1.1.2 The Teacher of Students with Autism or with Severe Intellectual Disabilities Standard Certificate, Teacher of Students Who Are Deaf or Hard of Hearing Standard Certificate,

and Teacher of Students with Visual Impairments Standard Certificate shall be used when the teacher's primary assignment is providing instruction to the category of students designated within those category certifications.

1.1.2 This Certification is a category Standard Certificate and does not certify an Educator to practice in a particular area or teach a particular subject. A category Standard Certificate only establishes that an Educator has met the prescribed education, knowledge, or skill requirements to instruct a particular category of students. This Certification is limited to the category of teaching Students with Disabilities from Birth to Grade 2 in Delaware public schools.

1.1.3 An Educator shall hold at least one content area Standard Certificate.

4.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

## 2.0 Definitions

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

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

**"15 Credits or the Equivalent in Professional Development"** means college credits or an equivalent number of hours with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a Regionally Accredited college or university or other Department-approved provider.

**"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.

**"Major or Its Equivalent"** means a minimum of 30 semester hours of coursework in a particular content area.

**"Professional Development"** means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and perspectives and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

**"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.

“Students with Disabilities” means the same as “Child with a Disability” as provided in 14 Del.C. §3101(2).

“Valid and Current License or Certificate” means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction. 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 Standard Certificate~~ as an Early Childhood Exceptional Children Special Education Teacher Standard Certificate to an ~~educator~~ Educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; ~~or a Limited Standard, or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and;~~ 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 licensure and holds a Valid and Current License or Certificate in early childhood exceptional children special education.~~
- 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 an Early Childhood Exceptional Children Special Education Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation’s resolution.

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

- 4.1 An Educator must also have met the following:
- 4.1.1 ~~If the educator is applying for a first Standard certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.3.1, the required 15 credits or their equivalent in professional development required in 14 DE Admin. Code 1505 Standard Certificate 3.1.3.1 that must be satisfactorily completed for this standard certificate must at a minimum include the following areas;~~
- 4.1.1.1 Atypical Infants and Toddlers (3 credits);
- 4.1.1.2 Emergent Literacy in Reading and Writing (3 credits);
- 4.1.1.3 Assessment of Young Children (3 credits);
- 4.1.1.4 Differentiated Instruction for Young Children (3 credits); and
- 4.1.1.5 Consultation or Working with Families (3 credits).
- 4.1.2 ~~If the educator is applying for a second or subsequent Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 5.0, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the following areas;~~
- 4.2.1.1 Atypical Infants and Toddlers (3 credits);
- 4.2.1.2 Emergent Literacy in Reading and Writing (3 credits);
- 4.2.1.3 Assessment of Young Children (3 credits);
- 4.2.1.4 Differentiated Instruction for Young Children (3 credits); and
- 4.2.1.5 Consultation or Working with Families (3 credits).
- 4.1 An applicant shall have satisfied one of the following education requirements:
- 4.1.1 Obtained and currently maintain an Exceptional Needs Specialist certificate from the National Board for Professional Teaching Standards; or

- 4.1.2 Earned a bachelor's, master's, or doctoral degree from a Regionally Accredited college or university with a Major or Its Equivalent in early childhood exceptional children special education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
- 4.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach early childhood exceptional children as provided in 14 Del.C. §§1260 – 1266; or
- 4.1.4 Satisfactorily completed a Department-approved educator preparation program in early childhood exceptional children education; or
- 4.1.5 Earned a bachelor's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 15 Credits or the Equivalent in Professional Development in the following areas that are guided by and include the following Council for Exceptional Children's (CEC) Early Childhood Special Education (ECSE) Initial Preparation Standards:
  - 4.1.5.1 Child development and early learning for young children with special needs;
  - 4.1.5.2 Partnering with families of young children with special needs;
  - 4.1.5.3 Collaboration and teaming to meet the needs of young children with exceptionalities;
  - 4.1.5.4 Assessment processes for young children with special needs;
  - 4.1.5.5 Application of curriculum frameworks in the planning and facilitation of meaningful learning experiences for young children with special needs;
  - 4.1.5.6 Using responsive and reciprocal interactions, interventions, and instruction for young children with special needs; and
  - 4.1.5.7 Professionalism and ethical practice.

## **5.0 Application Requirements**

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 The following documentation is required with the application for an Early Childhood Exceptional Children Special Education Teacher Standard Certificate:
  - 5.2.1 Evidence of obtaining an Exceptional Needs Specialist certificate from the National Board for Professional Teaching Standards, if applicable.
  - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
    - 5.2.2.1 Electronic transcripts may be submitted by the applicant's Employing Authority or Regionally Accredited college or university.
    - 5.2.2.2 Sealed paper transcripts may be submitted by the applicant, the applicant's Employing Authority, or the applicant's Regionally Accredited college or university.
    - 5.2.2.3 The Department will not accept copies of transcripts.
  - 5.2.3 Evidence of completing the equivalent of 15 Credits or the Equivalent in Professional Development, as provided in subsection 4.1.5, if applicable.
  - 5.2.4 Additional documentation as required by the Department.
- 5.3 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate in early childhood exceptional children special education, the following documentation is required in the application for an Early Childhood Exceptional Children Special Education Teacher Standard Certificate:
  - 5.3.1 An official copy of the educator license or certificate from another state or jurisdiction.
  - 5.3.2 Additional documentation as required by the Department.

## **6.0 Validity of a Standard Certificate**

- 6.1 An Early Childhood Exceptional Children Special Education Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 An Early Childhood Exceptional Children Special Education Teacher Standard Certificate is not subject to renewal.

### **7.0 Disciplinary Action**

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

### **8.0 Secretary of Education Review**

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

### **9.0 Past Certificate Recognized**

The Department shall recognize an Early Childhood Exceptional Children Special Education Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate issued shall be considered certified to instruct Students with Disabilities from Birth to Grade 2.

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## **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1573

### **REGULATORY IMPLEMENTING ORDER**

#### **1573 Teacher of Students with Autism or Students with Severe Intellectual Disabilities**

#### **I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1573 Teacher of Students with Autism or Students with Severe Intellectual Disabilities. The regulation concerns the requirements for a Teacher of Students with Autism or Students with Severe Intellectual Disabilities Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding clarifying language regarding category certificates in Section 1.0; adding defined terms to Section 2.0; clarifying the requirements for issuing a Teacher of Students with Autism or Students with Severe Intellectual Disabilities Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a

Teacher of Students with Autism or Students with Severe Intellectual Disabilities Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Teacher of Students with Autism or Students with Severe Intellectual Disabilities Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2020. The Professional Standards Board received one written submittal. Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), commented that GACEC supports the proposed amendments. Also, GACEC commented that it appreciated that its past recommendation to clarify subsection 3.2 was incorporated in the proposed amendments. Additionally, GACEC commented that it is concerned that the Professional Standards Board does not prescribe specific professional development for educators and that it is possible that an educator with a Teacher of Students with Autism or Students with Severe Intellectual Disabilities Standard Certificate will not actually participate in any professional development related to the certificate. Accordingly, GACEC recommended that the Department consider whether including requirements for renewal of the certificate is warranted. GACEC further commented that "educators of special education students require the most qualified and efficient educators" and recommended that Section 8.0 be removed from the regulation.

## II. FINDINGS OF FACTS

On August 6, 2020, the Professional Standards Board considered the written submittal from GACEC.

The Professional Standards Board found that the proposed subsection 6.2, which provides that the Teacher of Students with Autism or Students with Severe Intellectual Disabilities Standard Certificate is not renewed, is consistent with the statute concerning standard certificates. The statute, 14 **Del.C.** §1220(a), provides that the "Department shall issue a standard certificate to an applicant who . . . has acquired the prescribed knowledge, skill, or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students." 14 **Del.C.** Ch. 12 does not authorize the Department to renew a standard certificate once it has been issued, which is different from a continuing license that may be renewed for five years if an educator has completed 90 clock-hours of approved professional development (14 **Del.C.** §1212). The Professional Standards Board further found that it is in the process of obtaining recommendations from the Professional Development and Associated Compensation Committee to address the broader question of whether to change the current system for professional development in the future and that is the better approach rather than addressing the question piecemeal through individual regulations. In addition, the Professional Standards Board found that the proposed Section 8.0, Secretary of Education Review, is an important tool that is available for all certifications by statute (14 **Del.C.** §1224).

The Professional Standards Board determined that further changes in response to the written submittal were not necessary and voted to propose 14 **DE Admin. Code** 1573 Teacher of Students with Autism or Students with Severe Intellectual Disabilities, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1573 Teacher of Students with Autism or Students with Severe Intellectual Disabilities.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1573 Teacher of Students with Autism or Students with Severe Intellectual Disabilities subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1573 Teacher of Students with Autism or Students with Severe Intellectual Disabilities attached hereto as Exhibit "A" is hereby amended.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1573 Teacher of Students with Autism or Students with Severe Intellectual



Disabilities adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1573 Teacher of Students with Autism or Students with Severe Intellectual Disabilities in the Administrative Code of Regulations for the Department.

## V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 20<sup>th</sup> day of August, 2020.

### Department of Education

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

Approved this 20<sup>th</sup> day of August, 2020.

#### State Board of Education

/s/ Whitney Sweeney, President

Vincent Lofink (Absent)

/s/ Wali W. Rushdan, II, Vice President

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

/s/ Nina Lou Bunting

Provey Powell, Jr. (Absent)

Candace Fifer (Absent)

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

### 1573 Teacher of Students with Autism or Students with Severe Intellectual Disabilities

#### 1.0 Content

1.1 This regulation shall apply to the issuance of a ~~Standard Certificate, a Teacher of Students with Autism or Students with Severe Intellectual Disabilities Standard Certificate~~ pursuant to 14 **Del.C.** §1220(a), ~~for a Teacher of Students with Autism or Students with Severe Intellectual Disabilities. 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 autism or children with severe intellectual disabilities and for educators teaching in an Approved Program.~~

1.1.1 This Certification is required for an Educator whose primary assignment is teaching students with Autism or Severe Intellectual Disabilities in an Approved Program or in Delaware public schools.

1.1.2 This Certification is a category Standard Certificate and does not certify an Educator to practice in a particular area or teach a particular subject. A category Standard Certificate only establishes that an educator has met the prescribed education, knowledge, or skill to instruct a particular category of students. This Certification is limited to the category of students with Autism or Severe Intellectual Disabilities.

1.1.3 An Educator shall hold at least one content area Standard Certificate.

1.2 ~~Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

#### 2.0 Definitions

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

2-2 The following words and terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise:~~

**"15 Credits or the Equivalent in Professional Development"** means college credits or an equivalent number of hours with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a Regionally Accredited college or university or other Department-approved provider.

**"Approved Program"** means a program encompassing or within a public school designated by the Department and the State Board of Education as a component of the Delaware Autism Program.

**"Autism"** shall have the same meaning as provided in 14 DE Admin. Code 922, ~~§3-0~~ Section 3.0 and 14 DE Admin. Code 925, §6.6 subsection 6.6.

**"Certification"** means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.

**"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.

**"Intellectual Disability"** shall have the same meaning as provided in 14 DE Admin. Code 922, ~~§3-0~~ Section 3.0 and 14 DE Admin. Code 925, §6.12 subsection 6.12.

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

**"Major or Its Equivalent"** means a minimum of 30 semester hours of coursework in a particular content area.

**"Professional Development"** means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and perspectives and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

**"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.

**"Severe Intellectual Disability"** shall have the same meaning as provided in ~~14 DE Admin. Code 922, §3-0~~ and 14 DE Admin. Code 925, §6.12 subsection 6.12.

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

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

**"Valid and Current License or Certificate"** means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction. 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 Autism or Students with Severe Intellectual Disabilities Standard Certificate ~~as a Teacher of Students with Autism or Students with Severe Intellectual Disabilities~~ to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced ~~License; License~~ or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; ~~and, 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 licensure and holds a Valid and Current License or Certificate in teaching students with Autism or Severe Intellectual Disabilities.~~
- ~~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 Autism or Students with Severe Intellectual Disabilities 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 Requirements 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 ~~Graduating with a bachelor's or a master's degree, with a major in special education and with a concentration in autism and severe intellectual disabilities, from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, offered by a regionally accredited college or university. The state approval body shall employ the appropriate NASDTEC or NCATE specialty organization standard; or~~
- 4.1.2 ~~Graduating with a bachelor's or master's degree from a regionally accredited college or university with a major in special education; and~~
- 4.1.2.1 ~~Completion of a minimum of fifteen (15) credits from a regionally accredited college or university or their equivalent in professional development as approved by the Department, with a focus in autism and severe intellectual disabilities in the following content areas:-~~
- 4.1.2.1.1 ~~Introduction to Autism and Severe Intellectual Disabilities (three credits);~~
- 4.1.2.1.2 ~~Methods of Instruction in Academic Standards and Functional Skills (three credits);~~
- 4.1.2.1.3 ~~Functional Communication Training (three credits);~~
- 4.1.2.1.4 ~~Applied Behavior Analysis for Educators (three credits); and~~
- 4.1.2.1.5 ~~Competency-Based Practicum in Behaviorally Based Teaching Techniques (three credits)~~
- 4.1 An applicant shall have satisfied one of the following education requirements:
- 4.1.1 Obtained and currently maintain an Exceptional Needs Specialist certificate in the specialty area of Mild/Moderate Disabilities or Severe and Multiple Disabilities 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 Major or Its Equivalent in special education with a concentration in autism and severe intellectual disabilities from an educator preparation program approved or recognized by the National Council

for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or

- 4.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach students with autism and severe intellectual disabilities as provided in 14 Del.C. §§1260 - 1266; or
- 4.1.4 Satisfactorily completed a Department-approved educator preparation program to teach students with autism and severe intellectual disabilities; or
- 4.1.5 Earned a bachelor's or master's degree from a Regionally Accredited college or university with a Major or its Equivalent in special education and satisfactorily completed 15 Credits or the Equivalent in Professional Development with a focus in Autism and Severe Intellectual Disabilities in the following areas:
  - 4.1.5.1 Introduction to Autism and Severe Intellectual Disabilities (three credits);
  - 4.1.5.2 Methods of Instruction in Academic Standards and Functional Skills (three credits);
  - 4.1.5.3 Functional Communication Training (three credits);
  - 4.1.5.4 Applied Behavior Analysis for Educators (three credits); and
  - 4.1.5.5 Competency-Based Practicum in Behaviorally Based Teaching Techniques (three credits);  
or
- 4.1.6 Currently hold a Special Education Teacher of Students with Disabilities Standard Certificate (14 DE Admin. Code 1571) and satisfactorily completed 15 Credits or the Equivalent in Professional Development with a focus in teaching students with Autism and Severe Intellectual Disabilities in the areas provided in subsections 4.1.5.1 through 4.1.5.5.

## **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 The following documentation is required with the application for a Teacher of Students with Autism or Students with Severe Intellectual Disabilities Standard Certificate:
  - 5.2.1 Evidence of obtaining and maintaining an Exceptional Needs Specialist certificate from the National Board for Professional Teaching Standards, if applicable; and
  - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
    - 5.2.2.1 Electronic transcripts may be submitted by the applicant's Employing Authority or Regionally Accredited college or university; or
    - 5.2.2.2 Sealed paper transcripts may be submitted by the applicant, the applicant's Employing Authority, or the applicant's Regionally Accredited college or university.
    - 5.2.2.3 The Department will not accept copies of transcripts; and
  - 5.2.3 Evidence of completing the 15 Credits or the Equivalent in Professional Development as provided in subsections 4.1.5 and 4.1.6, if applicable; and
  - 5.2.4 Additional documentation as required by the Department.
- 5.3 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate in teaching students with Autism or Severe Intellectual Disabilities, the following documentation is required in the application for a Teacher of Students with Autism or Students with Severe Intellectual Disabilities Standard Certificate:
  - 5.3.1 An official copy of the Valid and Current License or Certificate; and
  - 5.3.2 Additional documentation as required by the Department.

## **6.0 Validity of a Standard Certificate**

- 6.1 A Teacher of Students with Autism or Students with Severe Intellectual Disabilities Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A Teacher of Students with Autism or Students with Severe Intellectual Disabilities Standard Certificate is not subject to renewal.

### **7.0 Disciplinary Action**

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

### **8.0 Secretary of Education Review**

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 Autism or Students with Severe Intellectual Disabilities 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 Autism or Students with Severe Intellectual Disabilities Standard Certificate but whose effectiveness is documented by the local school district or charter school.

### **5.09.0 Past Certification Certificate Recognized**

- 5-19.1 The Department shall recognize a Standard Teacher of the Autistic Child or Professional Status Certificate issued by the Department between January 1, 1982 and August 31, 2005, if otherwise valid. A teacher ~~An Educator~~ holding a Standard Teacher of the Autistic Child or a Professional Status Certificate issued between January 1, 1982 and August 31, 2005 shall be considered certified to ~~teach classes for children with autism or severe intellectual disabilities~~ instruct students with Autism or Severe Intellectual Disabilities.
- 5-29.2 The Department shall recognize a ~~Standard Certificate~~ Teacher of Students with Autism or ~~Students with Severe Intellectual Disabilities Standard Certificate~~ issued by the Department ~~between September 1, 2005 and~~ prior to the effective date of this regulation. A teacher ~~An Educator~~ holding such a Standard Certificate ~~Teacher of Students with Autism or Severe Disabilities~~ issued between October 1, 2005 and the effective date of this regulation shall be considered certified to ~~teach classes for children with autism or severe intellectual disabilities~~ instruct students with Autism or Severe Intellectual Disabilities.

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 1900 BOARD OF NURSING

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

### ORDER

#### 1900 Board of Nursing

#### FINAL ORDER ADOPTING REGULATION CHANGES

The Delaware Board of Nursing pursuant to 24 *Del. C.* § 1906(a)(1), proposed to revise its regulations. The proposed amendments seek to update the Board's regulations pertaining to APRN Education Programs in Delaware. There are currently no regulations setting forth the requirements or guidelines for such programs, so the Board is proposing new regulations to do so. The proposed changes also strike redundant or unnecessary regulations or make changes to comply with current law and practice.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the *Delaware Register of Regulations* on June 1, 2020 a public hearing was held on July 8, 2020. 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*;

There was no verbal testimony given at the public hearing on July 8, 2020, and no written comments were received by the Board during the initial thirty-day public comment period or the second fifteen-day public comment period.

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the initial 30 day written public comment period, or the public hearing.
3. 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.
4. The proposed amendments seek to update the Board's regulations pertaining to APRN Education Programs in Delaware. There are currently no regulations setting forth the requirements or guidelines for such programs, so the Board is proposing new regulations to do so. The proposed changes also strike redundant or unnecessary regulations or make changes to comply with current law and practice.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. Having received no public comment, the Board finds no reason to amend the regulations as proposed.

#### DECISION AND ORDER CONCERNING THE REGULATIONS

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

IT IS SO ORDERED this 9<sup>th</sup> day of September, 2020 by the Delaware Board of Nursing.

Ronald R. Castaldo, Ph.D., CRNA, APRN	/s/ Kimberly Hopkins, RN
Megan Williams, DNP, FNP-C, RN (absent)	/s/ Tiarra Davis, Public Member
/s/ Pamela James, RN	/s/ Carol Abdill, RN
/s/ Kenyette Walters, LPN	William Hare, Public Member (absent)
/s/ Gayle Melvin, Public Member	/s/ Marlo Silverio, RN
/s/ Sandra Glenn-Vernon, RN	/s/ Christopher Otto, RN
/s/ Danielle Gomez, RN	/s/ Prameela Kaza, Public Member

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

**1900 Board of Nursing**  
**(Break in Continuity of Sections)**

**8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Registered Nurse in the State of Delaware**

**(Break in Continuity Within Section)**

**8.19 Required Criteria for APRN Education Programs:**

**8.19.1 An APRN program administrator's qualifications must include:**

**(Break in Continuity Within Section)**

- 8.19.1.4** Current national APRN certification. Current program administrator without national certification as of ~~the effective date of this regulation~~ **October 11, 2020** are grandfathered.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the June 2020 issue of the *Register* at page 1004 (23 DE Reg. 1004). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**1900 Board of Nursing**

**DIVISION OF PROFESSIONAL REGULATION**  
**2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE**

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 Del.C. §2006(a)(1))  
**24 DE Admin. Code 2000**

**ORDER**

**2000 Board of Occupational Therapy Practice**

On March 1, 2020, the Delaware Board of Occupational Therapy Practice published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 23, Issue 9. Due to a problem with the required newspaper notice the proposed changes were re-noticed in the *Delaware Register of Regulations*, Volume 23, Issue 12. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on July 8, 2020 at a regularly scheduled meeting of the Board of Occupational Therapy Practice to receive verbal comments regarding the Board's proposed amendments to its regulations.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

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

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

No verbal testimony was provided at the public hearing. One comment was received which was pertinent to the proposed amended regulation which suggested the substitution of the word "amount" for the word "level" in subsections 1.2.5 and 1.2.6.

**Agency Response:** The Board agrees that eliminating the word "level" will reduce confusion and has made the substitution in the final Order.

## FINDINGS OF FACT AND CONCLUSIONS

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

2. There were no public comments provided to the Board during the written public comment period but written comments received shortly after were considered and adopted.

3. Pursuant to 24 Del. C. § 2006 (a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

## DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 24 Del. C. § 2006(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the *Delaware Register of Regulations* on March 1, 2020. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, pursuant to 29 Del. C. § 10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 2<sup>nd</sup> day of September, 2020

/s/ Mara B Schmittinger, Board President                      /s/ Evan Park

/s/ Angelita Mosley    /s/ Tim Parks

/s/ Elaine Smith

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

### 2000 Board of Occupational Therapy Practice

#### 1.0 Supervision/consultation Requirements for Occupational Therapy Assistants

##### *(Break in Continuity Within Section)*

##### 4.3 Minimum supervision requirements:

##### *(Break in Continuity Within Section)*

4.3.6 ~~1.2.5~~ **[Levels The amount]** of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen **[level amount]** of supervision should be reevaluated regularly for effectiveness. Special consideration should be given to experience and any changes in practice area concentrations.

4.3.7 ~~1.2.6~~ The supervising occupational therapist, in collaboration with the occupational therapy assistant, shall maintain a written supervisory plan specifying the **[level amount]** of supervision and shall document the supervision of each occupational therapy assistant. **[Levels The amount]** of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen **[level amount]** of supervision should be reevaluated regularly for effectiveness. This plan shall be reviewed at least every six months or more frequently as demands of service changes.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the March 2020 issue of the Register at page 733 (23 DE Reg. 733). Therefore, the final regulation is not**



being republished here in its entirety. A copy of the final regulation is available at:

**2000 Board of Occupational Therapy Practice**

## OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b))  
5 **DE Admin. Code** 801

### ORDER

#### 801 Application to Become a Delaware Bank Holding Company

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Regulation 801 is amended by deleting the Office of the State Bank Commissioner's old office mailing and delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner's old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

Robert A. Glen  
State Bank Commissioner

#### 801 Application to Become a Delaware Bank Holding Company 5 **Del.C.** §852

Formerly Regulation No.: ~~5-852-0002~~

Effective Date: ~~August 13, 1998~~ October 11, 2020

#### 1.0 Scope of Regulation

~~1.1~~ This regulation establishes procedures governing the creation of a Delaware bank holding company. A bank holding company with bank subsidiaries in Delaware whose operations are principally conducted within this state is required to become a Delaware bank holding company. A bank holding company is deemed to be principally conducting operations in Delaware when the total deposits of all bank subsidiaries in this State are greater than in any other state (See 5 **Del.C.** §851(3)). Except as

provided in §852(a), no bank holding company other than a Delaware bank holding company may own a Delaware bank.

## 2.0 Application

- 2.1 Notice of Intent to become a Delaware Bank Holding Company constitutes an application. Said Notice of Intent shall be filed in duplicate with the Office of the State Bank Commissioner. The Notice of Intent shall include:
- 2.1.1 Name of Applicant and address of principal office.
  - 2.1.2 The State in which the Applicant is (or will be) incorporated. If the Applicant is incorporated outside of the State of Delaware, identify the name and address of a resident of Delaware designated as the Applicant's agent for the service of any paper or notice of legal process.
  - 2.1.3 If applicable, the corporate title and the address of the bank to be acquired; the number of voting shares to be acquired; and the percentage of said shares this number represents.
  - 2.1.4 The name, address and telephone number of the person(s) to whom inquiries may be directed.
  - 2.1.5 The Notice of Intent shall include the following exhibits:
    - 2.1.5.1 A copy of the Resolution by the Board of Directors of the Applicant authorizing the establishment of a Delaware bank holding company.
    - 2.1.5.2 A description of the Applicant and the transaction.
    - 2.1.5.3 A description of the financial and managerial resources of the proposed Delaware bank holding company.
    - 2.1.5.4 The future prospects of the bank holding company and the bank whose assets or shares it will acquire, if applicable, to include a statement in narrative form of a three (3) year business plan of the Applicant for the proposed bank holding company and, if applicable, the bank to be acquired.
    - 2.1.5.5 The financial history of the Applicant:
      - 2.1.5.5.1 Provide a narrative description of the financial history of the Applicant and its bank and deposit taking non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the bank holding company maintains a bank subsidiary or, in the case of a national bank, with the Comptroller of the Currency; provided that such filings shall not be required with respect to any bank subsidiary under the jurisdiction of the Delaware State Bank Commissioner.
      - 2.1.5.5.2 Provide for the past three calendar years, copies of all Form 10-Ks.
      - 2.1.5.5.3 Describe regulatory action taken or anticipated or any agreements in lieu thereof entered into with a regulatory agency, either federal or state, with regard to any bank subsidiary within the holding company.
    - 2.1.5.6 The effects of the proposed acquisition on competition in Delaware.
    - 2.1.5.7 Describe how this transaction will better meet the needs and convenience of the public in the State of Delaware.
    - 2.1.5.8 A copy of the application filed with the Board of Governors of the Federal Reserve System to become a Bank Holding Company.

## 3.0 Publication

- 3.1 A proposed form of public notice shall be filed at the time the Notice of Intent (Application) is submitted for the Commissioner's approval. Said public notice shall include: the name and address of the Applicant, the subject matter of the application, the name and address of the bank to be acquired, and a statement indicating: a) for a period of 20 days commencing with the second date of publication, interested parties may submit written comments to the State Bank Commissioner at ~~555 E. Lockerman Street~~ 1110 Forrest Avenue, Dover, Delaware ~~49904~~ 19904; and b) the application is on

file in the Office of the State Bank Commissioner and the non-confidential portions thereof will be available for examination by interested parties during regular office hours.

- 3.2 Upon written notice from the Commissioner that the proposed public notice is satisfactory, the Applicant shall cause said public notice to be published once a week for two consecutive weeks in a newspaper of general circulation in the community in which the head office of the bank of which shares are to be acquired is located. An affidavit of publication shall be submitted to the Commissioner for the record.

#### 4.0 Additional Information

- 4.4 Upon review and consideration of the application, the Commissioner may require any additional information deemed necessary.

#### 5.0 Confidential Information

- 5.4 An Applicant may request that specific information included in the Notice of Intent be treated as confidential. Any information or exhibits of which the applicant claims the designation of confidential shall be segregated at the end of the application as a separate exhibit designated as "confidential". The Commissioner, in his sole discretion, shall determine whether any or all of the information for which the "confidential" designation is requested by the Applicant meets the criteria for confidentiality set forth in 29 Del.C. §10112(b)(4). All portions of the Notice of Intent which the Commissioner does not designate as "confidential" shall be made available for public inspection and copying in the manner provided by law with the exception of the copy of the Application filed with the Federal Reserve.

#### 6.0 Fees

- 6.4 The Notice of Intent (Application) shall be accompanied by a filing fee in the amount of five thousand seven hundred and fifty dollars (\$5,750.00) for the use of the State and a non-refundable processing fee in the amount of one thousand one hundred and fifty dollars (\$1,150.00). Checks shall be made payable to the Office of the State Bank Commissioner.

#### 7.0 Hearing

- 7.4 If, after the twenty (20) day comment period, the Commissioner determines a public hearing should be conducted, such determination shall be made within ten (10) days after the conclusion of the 20-day comment period. Notice fixing the time, place and date for the holding of a hearing on the application shall be published at least twenty (20) days prior to the day it is to be held. The hearing shall be conducted in accordance with Chapter 101 of Title 29 of the **Delaware Code**.

#### 8.0 Findings and Decision of the Commissioner

- 8.4 The Findings and Decision approving or disapproving the Application will be issued in accordance with Chapter 101 of Title 29, **Delaware Code**.
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## OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code 1101

### ORDER

#### **1101 Election to Be Treated for Tax Purposes as a “Subsidiary Corporation” of a Delaware Chartered Banking Organization or Trust Company, National Bank Having its Principal Office in Delaware, or Out-of-State Bank That Operates a Resulting Branch in Delaware**

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Regulation 801 is amended by deleting the Office of the State Bank Commissioner’s old office mailing and delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner’s old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

Robert A. Glen  
State Bank Commissioner

#### **1101 Election to Be Treated for Tax Purposes as a “Subsidiary Corporation” of a Delaware Chartered Banking Organization or Trust Company, National Bank Having its Principal Office in Delaware, or Out-of-State Bank That Operates a Resulting Branch in Delaware** 5 Del.C. §1101(f), §1101A(c)(3)

Effective Date: ~~December 11, 2006~~ October 11, 2020

#### **1.0 Purpose**

- 1.1 Pursuant to 5 Del.C. §1101(f) and §1101A(c)(3), certain corporations may elect to be treated as a “subsidiary corporation” of a Delaware chartered banking organization or trust company, a national bank having its principal office in Delaware, or an out-of-state bank that operates a resulting branch in Delaware. If a valid election is made, the electing corporation will be taxable on a consolidated basis with its deemed parent Delaware chartered banking organization or trust company, national bank having its principal office in Delaware, or out-of-state bank that operates a resulting branch in

Delaware, and the electing corporation will be exempt from Delaware state corporation income taxes and occupational license taxes (as provided in 5 **Del.C.** §1109).

## 2.0 Who May Elect

- 2.1 A corporation may make the election only if it meets the following two tests:
- 2.1.1 Ownership test: Eighty percent (80%) of the total combined voting power of all classes of voting stock of the electing corporation ("Electing Corporation") is owned by an out-of-state bank that operates a resulting branch in Delaware or, directly or indirectly, by a bank holding company ("Qualifying Entity") that also, directly or indirectly, owns all of the stock of a Delaware chartered banking organization or trust company, a national bank located in Delaware or an out-of-state bank that operates a resulting branch in Delaware ("Deemed Parent"). For purposes of determining ownership of the voting power of an Electing Corporation, non-voting stock convertible into voting stock shall be treated as having been so converted.
- 2.1.2 In order to determine if this test is met, Question 5 on the election form must be completed. In Column A of Question 5, list each class of stock or property right which has voting rights or can be converted into stock with voting rights. In Column B, state the percentage of the Electing Corporation's total voting power of that particular class of stock (assuming full conversion). In Column C, state the percentage of each respective class that the Qualifying Entity owns. If each figure in Column C is at least 80%, then this first test is met and Column D need not be completed. If not, Column D should be calculated by multiplying Column B times Column C. The sum of the figures in Column D must be at least equal to 80%. The ownership test must be met at all times during the taxable year for which the election is made.
- 2.2 Employment Test: The Electing Corporation, together with its affiliates (defined by 5 **Del.C.** §773(1)), employs by or before the end of the taxable year following the taxable year in which the election was made at least 200 persons in Delaware.

## 3.0 Where to File

- ~~3.1~~ The original of the election form must be filed with the State Bank Commissioner, ~~555 E. Lockerman Street, Suite 240~~ 1110 Forrest Avenue, Dover, Delaware 19904 ~~19904~~, and a copy must be filed with the Delaware Division of Revenue, 820 N. French Street, Wilmington, Delaware 19801.

## 4.0 When to Make the Election

- ~~4.1~~ The election must be made and filed before the first day of the fourth month of the Electing Corporation's taxable year, except that, (1) in the case of a corporation that is newly formed or acquired by the Qualifying Entity, the election may be made and filed within 90 days of such formation or acquisition, and such later election shall not be subject to the payment of any additional tax under 5 **Del.C.** §1104(c) for underpayment of estimated tax or installment for periods before the date of such election, and (2) with the approval of the Commissioner, a later election may be made, subject to the payment of any additional tax for underpayment of estimated tax or installment as provided in 5 **Del.C.** §1104(c) and applicable regulations of the Commissioner.

## 5.0 Supplemental Reporting Requirements

- 5.1 Once an election has been made under 5 **Del.C.** §1101(f) or §1101A(c)(3) for any Electing Corporation, and so long as the same remains in effect, each Estimated Franchise Tax Report under Regulation 1104 or 1111 or 1114 and each Final Franchise Tax Report under Regulation 1105 or 1112 or 1114 filed by the Deemed Parent shall indicate on the first page thereof the name of each Electing Corporation whose income and expenses are consolidated with that of the Deemed Parent. In addition, each such consolidated Report filed by the Deemed Parent shall have attached to it separate Reports completed on an individual non-consolidated basis for each Electing Corporation (complete such attachments only to the extent necessary to calculate estimated or final taxable income).

- 5.2 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form must be completed each year for each Electing Corporation and attached to the Final Franchise Tax Report of the Deemed Parent.

**6.0 Termination of Election**

- 6.1 Once an election is made, it remains in effect until terminated (a) by notice of voluntary termination delivered to the State Bank Commissioner, with a copy to the Delaware Division of Revenue, at any time during the Electing Corporation's taxable year (which termination shall be effective as of the first day of such taxable year), or (b) by failure to meet the ownership test and the employment test referenced in section 2.1.1 and 2.2 hereof. If either test is first failed at any time during the first six months of any taxable year, the termination shall relate back to the first day of such taxable year. If either test is failed at any time during the second six months of any taxable year, the termination shall relate forward to the first day of the succeeding taxable year. However, an Electing Corporation shall have the allowable time period referenced in Section 2.2 initially to meet the employment test.
- 6.2 If an election is terminated, the Deemed Parent shall file an amended Estimated and/or Final Franchise Tax Report for the year for which the election was originally made, which Estimated and/or Final Franchise Tax Report shall eliminate the income and expenses of the Electing Corporation. Any resulting reduction in bank franchise taxes can be utilized by the Deemed Parent as credit (without interest) against its future bank franchise tax liability.

**7.0 Taxable Year**

- 7.4 The "taxable year" of an Electing Corporation shall end on the same date as the taxable year of the Deemed Parent (as determined for federal income tax reporting purposes), unless a different taxable year is approved by the State Bank Commissioner.

**1101A.pdf Election to be Treated as a Subsidiary Corporation Under 5 Del.C §1101(f) or §1101A(c)(3)**  
<http://regulations.delaware.gov/register/october2020/final/1101A.pdf>

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**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code 1104

**ORDER****1104 Estimated Franchise Tax Report**

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Regulation 801 is amended by deleting the Office of the State Bank Commissioner's old office mailing and delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner's old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

Robert A. Glen  
State Bank Commissioner

**1104 Estimated Franchise Tax Report**  
5 Del.C. Ch. 11

Effective Date: ~~February 11, 2017~~ October 11, 2020

**1.0** This report shall be completed by any banking organization (other than a resulting branch in this State of an out-of-state bank, as defined in §1101(a) of Title 5 of the Delaware Code) or trust company with an estimated tax liability in excess of \$10,000 in a given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 1103.

**1104A.pdf Estimated Franchise Tax Report**  
<http://regulations.delaware.gov/register/october2020/final/1104A.pdf>

**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code 1105

**ORDER**

**1105 Final Franchise Tax Report**

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Regulation 801 is amended by deleting the Office of the State Bank Commissioner's old office mailing and delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner's old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

Robert A. Glen  
State Bank Commissioner

**1105 Final Franchise Tax Report**  
5 Del.C. Ch. 11

Effective Date: ~~February 11, 2017~~ October 11, 2020

This report shall be completed by all banking organizations (other than resulting branches in this State of out-of-state banks, as defined in §1101(a) of Title 5 of the Delaware Code) and trust companies and submitted to the Office of the State Bank Commissioner on or before January 30; provided, however, that a banking organization may submit this report to the Office of the State Bank Commissioner on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 1103.

**1105A.pdf Final Franchise Tax Report**  
<http://regulations.delaware.gov/register/october2020/final/1105A.pdf>

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**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code 1107

**ORDER**

**1107 Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware**

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Regulation 801 is amended by deleting the Office of the State Bank Commissioner’s old office mailing and delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner’s old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...



“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

Robert A. Glen  
State Bank Commissioner

**1107 Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware**  
5 Del.C. Ch. 11

Effective Date: ~~February 11, 2017~~ October 11, 2020

This report shall be completed by any federal savings bank not headquartered in this State but maintaining branches in this State with an estimated tax liability in excess of \$10,000 in any given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 1106.

**1107A.pdf Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware**  
<http://regulations.delaware.gov/register/october2020/final/1107A.pdf>

**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code 1108

**ORDER**

**1108 Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware**

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Regulation 801 is amended by deleting the Office of the State Bank Commissioner's old office mailing and delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner's old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

Robert A. Glen  
State Bank Commissioner

## **1108 Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware** 5 Del.C. Ch. 11

Effective Date: ~~February 11, 2017~~ October 11, 2020

This report shall be completed by any federal savings bank not headquartered in this State but maintaining branches in this State and submitted to the Office of the State Bank Commissioner on or before January 30. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 1106.

**1108A.pdf Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware**  
<http://regulations.delaware.gov/register/october2020/final/1108A.pdf>

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### **OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code 1111

#### **ORDER**

#### **1111 Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks**

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Regulation 801 is amended by deleting the Office of the State Bank Commissioner’s old office mailing and delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner’s old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

Robert A. Glen  
State Bank Commissioner

**1111 Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks**  
5 Del.C. Ch. 11

Effective Date: ~~February 11, 2017~~ October 11, 2020

This report shall be completed by the resulting branch(es) in this State of an out of state bank with an estimated tax liability in excess of \$10,000 in a given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 1110.

**1111A.pdf Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks**  
<http://regulations.delaware.gov/register/october2020/final/1111A.pdf>

**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code 1112

**ORDER**

**1112 Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks**

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Regulation 801 is amended by deleting the Office of the State Bank Commissioner's old office mailing and delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner's old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

Robert A. Glen  
State Bank Commissioner

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## 1112 Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks 5 Del.C. Ch. 11

Effective Date: ~~February 11, 2017~~ October 11, 2020

This report shall be completed by all resulting branch(es) in this state of out-of-state banks and submitted to the Office of the State Bank Commissioner on or before January 30; provided, however, that a resulting branch of an out-of-state bank may submit this report to the Office of the State Bank Commissioner on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filings its Report of Condition and Income. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 1110.

**1112A.pdf Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks**  
<http://regulations.delaware.gov/register/october2020/final/1112A.pdf>

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### OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code 1113

#### ORDER

#### **1113 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30**

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Regulation 801 is amended by deleting the Office of the State Bank Commissioner's old office mailing and delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner's old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

Robert A. Glen  
State Bank Commissioner

**1113 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30**

Effective Date: ~~February 11, 2017~~ October 11, 2020

**1.0 Qualifications for Election**

Pursuant to 5 Del.C. §1101(e) and §1101A(c)(2), a subsidiary corporation of a banking organization or trust company may elect to be taxed in accordance with Chapter 19 of Title 30 if the subsidiary is not itself a banking organization or trust company, if the subsidiary is not described in §1902(b)(8) of Title 30, and if the subsidiary is not engaged in the sale, distribution, underwriting of, or dealing in, securities.

**2.0 Effect**

If a valid election is made, the electing subsidiary shall not be considered a subsidiary corporation of its parent banking organization or trust company for the purposes of Chapter 11 of Title 5, and the income of the electing subsidiary shall be excluded from the taxable income of its parent banking organization or trust company for the tax year involved.

**3.0 Filing**

An electing subsidiary shall make this election by filing the original of Form A under this regulation with the State Bank Commissioner; ~~555 E. Lockerman Street, Suite 240;~~ 1110 Forrest Avenue; Dover, DE, ~~19904~~ 19904 and a copy with the Delaware Division of Revenue; 820 N. French Street; Wilmington, DE 19801.

**4.0 Reporting Requirements**

Every year, an electing subsidiary shall file with the State Bank Commissioner on or before the date that its Delaware State Income Tax Return is due (1) Form B under this regulation, and (2) a copy of its Delaware State Income Return as filed with the Delaware Division of Revenue.

**5.0 Termination of Election**

An election under this regulation remains in effect until terminated. An electing subsidiary may terminate its election by filing a notice to that effect with the State Bank Commissioner and the Delaware Division of Revenue.

**1113A.pdf FORM A Election of a Subsidiary Corporation to be Taxed in Accordance with Chapter 19 of Title 30 and FORM B Annual Report of a Subsidiary Corporation Electing to be Taxed in Accordance with Chapter 19 of Title 30**

<http://regulations.delaware.gov/register/october2020/final/1113A.pdf>

**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code 1114

**ORDER****1114 Alternative Franchise Tax**

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Regulation 801 is amended by deleting the Office of the State Bank Commissioner's old office mailing and

delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner's old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

Robert A. Glen  
State Bank Commissioner

## 1114 Alternative Franchise Tax Chapter 11 of Title 5 of the Delaware Code

Effective Date: ~~February 11, 2017~~ October 11, 2020

**1.0** This regulation applies to banking organizations and trust companies, other than federal savings banks not headquartered in this State but maintaining branches in this State, that annually elect to pay an alternative franchise tax pursuant to Section 1101A of Title 5 of the **Delaware Code**. The election to pay the alternative franchise tax is made by filing an original final alternative franchise tax return on the due date, or an amended return within 180 days of the due date of the original return.

### 2.0 Definitions

“**Bank**” means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

“**Banking organization**” means:

- A bank or bank and trust company organized and existing under the laws of this State;
- A national bank, including a federal savings bank, with its principal office in this State;
- An Edge Act corporation organized pursuant to § 25(a) of the Federal Reserve Act, 12 U.S.C. § 611 et seq. (an “Edge Act Corporation”), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an “Agreement Corporation”), and maintaining an office in this State;
- A federal branch or agency licensed pursuant to § 4 and § 5 of the International Banking Act of 1978, 12 U.S.C. § 3101 et seq., to maintain an office in this State;
- A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5 of the **Delaware Code**, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5 of the **Delaware Code**; or
- A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

“**International Banking Facility**” means a set of asset and liability accounts, segregated on the books and records of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

**“International Banking Transaction”** shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to Section 771 of Title 5 of the **Delaware Code** or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

- The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
- The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
- The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
- The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;
- The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to an Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or
- The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

**“National Bank”** means a banking association organized under the authority of the United States and having a principal place of business in this State.

**“Net Operating Income Before Taxes”** means all pre-tax net income from the operations of a banking organization or trust company, including extraordinary items and other adjustments, computed in accordance with principles used by the Federal Financial Institutions Examination Council or other appropriate federal authority.

**“Out-of-state bank”** has the same meaning as in Section 795 of Title 5 of the **Delaware Code**, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. § 21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

**“Resulting branch in this State of an out-of-state bank”** has the same meaning as in Section 1101(a) of Title 5 of the **Delaware Code**, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the **Delaware Code**, and, in addition, a branch office in this State of an out-of-state bank.

**“Securities Business”** means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.

**“Trust Company”** means a trust company or corporation doing a trust company business which has a principal place of business in this State.

### 3.0 Instructions for Filing the Estimated Alternative Franchise Tax Return

- 3.1 A banking organization or trust company whose alternative franchise tax liability for the current year is estimated to exceed \$10,000 should file an estimated alternative franchise tax return with the State Bank Commissioner, instead of the estimated franchise tax report in Regulation No. 1104 or No. 1111, and pay estimated alternative franchise tax:
- 3.2 Filing. The estimated alternative franchise tax return shall be filed with the State Bank Commissioner on the first day of March of the current year. Filing an estimated tax return for a particular taxation method is not a mandatory election of that particular method. Additional tax due that results from the underpayment of estimated taxes will be computed on the basis of the final method properly chosen.
- 3.3 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated alternative franchise tax

return required by subsection 3.2, or an estimated franchise tax report pursuant to Regulation No. 1104 or No. 1111, unless the State Bank Commissioner is satisfied that such failure was not willful.

- 3.4 Form. The estimated alternative franchise tax return is contained in this regulation as Form 1114E.
- 3.5 Rounding. All amounts shall be rounded to the nearest dollar.
- 3.6 Calculation of estimated alternative franchise tax. The total estimated alternative franchise tax shall be calculated as follows:
  - 3.6.1 The estimated net operating income before taxes of the banking organization or trust company;
  - 3.6.2 Plus the estimated net operating income before taxes of any corporation(s) making an election as provided in Regulation No. 1101;
  - 3.6.3 Less any deductions set forth in Section 1101A(c)(1) of Title 5 of the Delaware Code;
  - 3.6.4 Less the estimated net operating income before taxes of any subsidiary corporation(s) and Edge Act corporation(s) making an election as provided in Regulation No. 1113;
  - 3.6.5 Apportion the entire net income to the State of Delaware in accordance with Section 1101A(c)(6) of Title 5 of the Delaware Code (attach Schedule 1 – Apportionment Percentage Calculation Worksheet [apportionment percentage shall be rounded to the nearest tenth of a percent]);
  - 3.6.6 Multiply the elective income tax base by the rate of taxation set forth in Section 1101A(c)(7) of Title 5 of the Delaware Code;
  - 3.6.7 Plus the estimated location benefit tax liability calculated in accordance with Section 1101A(d) of Title 5 of the Delaware Code, (attach Schedule 2 – Location Benefit Tax Calculation Worksheet);
  - 3.6.8 Adjust the subtotal estimated alternative franchise tax for applicable employment tax credits pursuant to Section 1105 of Title 5 of the Delaware Code, calculated in accordance with Regulation No. 1109;
  - 3.6.9 Adjust the subtotal estimated alternative franchise tax for TravelLink tax credits calculated in accordance with Department of Transportation (DelDOT) TravelLink tax credit reporting requirements;
  - 3.6.10 Adjust the subtotal estimated alternative franchise tax for Historic Preservation Tax Credits calculated in accordance with Chapter 18 of Title 30 of the Delaware Code and the regulations thereunder.
  - 3.6.11 Adjust the subtotal estimated alternative franchise tax for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].
- 3.7 Payment of estimated alternative franchise tax. The estimated alternative franchise tax liability shall be due and payable as follows:
  - 3.7.1 40% due on or before June 1 of the current taxable year;
  - 3.7.2 20% due on or before September 1 of the current taxable year;
  - 3.7.3 20% due on or before December 1 of the current taxable year.

#### **4.0 Instructions for Filing the Final Alternative Franchise Tax Return**

- 4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization or trust company and the final alternative franchise tax return, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30; provided, however, that a banking organization may file this return on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income. A banking organization or trust company whose original final franchise tax report was filed pursuant to Regulation No. 1105 or No. 1112 may elect to pay the alternative franchise tax pursuant to Section 1101A of Title 5 of the Delaware Code by filing an amended final alternative franchise tax return, as provided in this regulation, within 180 days of the due date of the original return.
- 4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final alternative franchise tax return



required by subsection 4.1, or the final franchise tax report in Regulation No. 1105 or No. 1112, unless the State Bank Commissioner is satisfied that such failure was not willful.

- 4.3 Form. The final alternative franchise tax return is contained in this regulation as Form 1114F.
- 4.4 Rounding. All amounts shall be rounded to the nearest dollar.
- 4.5 Calculation of final alternative franchise tax. The total final alternative franchise tax shall be calculated as follows:
- 4.5.1 The net operating income before taxes of the banking organization or trust company, (attach a statement of net income that is filed with an appropriate financial regulatory agency);
  - 4.5.2 Plus the net operating income before taxes of any corporation(s) making an election as provided in Regulation No. 1101, (attach Regulation 1101 form – Election To Be Treated As A Subsidiary Corporation Under Sections 1101(f) or 1101A(c)(3) of Title 5 of the Delaware Code and a separate report of income for each electing corporation);
  - 4.5.3 Less any deductions set forth in Section 1101A(c)(1) of Title 5 of the Delaware Code;
  - 4.5.4 Less the net operating income before taxes of any subsidiary corporation(s) and Edge Act corporation(s) making an election as provided in Regulation No. 1113;
  - 4.5.5 Apportion the entire net income to the State of Delaware in accordance with Section 1101A(c)(6) of Title 5 of the Delaware Code (attach Schedule 1 – Apportionment Percentage Calculation Worksheet [apportionment percentage shall be rounded to the nearest tenth of a percent]);
  - 4.5.6 Multiply the elective income tax base by the rate of taxation set forth in Section 1101A(c)(7) of Title 5 of the Delaware Code;
  - 4.5.7 Plus the location benefit tax liability calculated in accordance with Section 1101A(d) of Title 5 of the Delaware Code, computed as of December 31 of the year prior to the year for which alternative franchise tax is paid (attach Schedule 2 – Location Benefit Tax Calculation Worksheet);
  - 4.5.8 Adjust the subtotal alternative franchise tax for applicable employment tax credits pursuant to Section 1105 of Title 5 of the Delaware Code calculated in accordance with Regulation No. 1109, (attach Employment Tax Credit Calculation Worksheet);
  - 4.5.9 Adjust the subtotal alternative franchise tax for Travelink tax credits calculated in accordance with Department of Transportation (DelDOT) Travelink tax credit reporting requirements, (attach DelDOT approval and calculation worksheet);
  - 4.5.10 Adjust the subtotal alternative franchise tax for Historic Preservation Tax Credits calculated in accordance with Chapter 18 of Title 30 of the Delaware Code and the regulations thereunder, (attach a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with Section 1105(g) of Title 5 of the Delaware Code, and if the credits have been transferred, sold or assigned to the taxpayer by another person, also attach a Certificate of Transfer in accordance with Section 1814(c) of Title 30 of the Delaware Code);
  - 4.5.11 Adjust the subtotal alternative franchise tax for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].

## 5.0 Payment of Final Alternative Franchise Tax

- 5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable to the State of Delaware and directed to the Office of the State Bank Commissioner.
- 5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final alternative franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated alternative franchise tax or installment. If the final alternative franchise tax is not paid by March 1, a penalty for late payment of the final alternative franchise tax shall be assessed.

**6.0 Additional Tax Due to Underpayment of Estimated Alternative Franchise Tax or Installment**

- 6.1 In the case of any underpayment of alternative estimated franchise tax or an installment of estimated alternative tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:
- 6.1.1 The amount of the estimated alternative franchise tax or installment payment which would be required to be made if the estimated alternative tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year; over
- 6.1.2 The amount, if any, of the estimated alternative tax or installment paid on or before the last date prescribed for payment.
- 6.2 The period of the underpayment shall run from the date the estimated alternative franchise tax or installment was required to be paid to the earlier of the date when such estimated alternative tax or installment is paid or the date of the final payment of tax for the year;
- 6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated alternative franchise tax or any installment shall not be imposed if the total amount of all payments of estimated alternative tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated alternative tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

**7.0 Penalty - Late Payment of Final Alternative Franchise Tax**

- 7-1 In the case of a late payment of final alternative franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

**8.0 Election to be listed as a "Subsidiary Corporation"**

- 8.1 Regulation No. 1101 shall apply to elections to be treated as a subsidiary corporation pursuant to Section 1101A(c)(3) of Title 5 of the **Delaware Code**.
- 8.2 Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to Section 1101A(c)(3) of Title 5 of the **Delaware Code** and has filed with the State Bank Commissioner the required election form in accordance with Regulation No. 1101 shall provide a report of income for each electing corporation as of December 31 of each year to be submitted in conjunction with the final alternative franchise tax return due January 30; provided, however, that a banking organization may file this return on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income.
- 8.3 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 1101 must be completed each year for each Electing Corporation and submitted with the final alternative franchise tax return.

**9.0 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30**

- 9-4 Regulation No. 1113 shall apply to elections to be taxed in accordance with Chapter 19 of Title 30 pursuant to Section 1101A(c)(2) of Title 5 of the Delaware Code.

**10.0 Election by an Edge Act Corporation to be Taxed in Accordance with Chapter 19 of Title 30**

- 40-4 Regulation No. 1113 shall apply to elections to be taxed in accordance with Chapter 19 of Title 30 pursuant to Section 1101A(c)(4) of Title 5 of the **Delaware Code**.

**11.0 Instructions for Filing an Amendment to the Final Alternative Franchise Tax Return**

- 44.4 Filing. To amend a previously filed final alternative franchise tax return, or to elect the alternative franchise tax method as provided in Section 1101A(a) of Title 5 of the Delaware Code, place a check mark (✓) in the box provided on Form 1114F and complete the return in accordance with Section 4 of this regulation. Attach a complete copy of the original filing along with a statement of explanation for all changes.

**1114A.pdf Form 1114E - Estimated Alternative Franchise Tax Return and Form 1114F Final Alternative Franchise Tax Return**

<http://regulations.delaware.gov/register/october2020/final/1114A.pdf>

**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))  
8 DE Admin. Code 1201

**ORDER****1201 Policies and Procedures Regarding FOIA Requests**

IT IS HEREBY ORDERED, this 10<sup>th</sup> day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Regulation 801 is amended by deleting the Office of the State Bank Commissioner's old office mailing and delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner's old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

Robert A. Glen  
State Bank Commissioner

**1201 Policies and Procedures Regarding FOIA Requests**

Effective date: ~~January 11, 2012~~ October 11, 2020

## 1.0 Purpose

The purpose of this regulation is to set forth the rules and procedures for responding to requests from the public for Public Records under Title 29, Chapter 100 of the **Delaware Code**, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

## 2.0 Definitions

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

“**Agency**” means Office of the State Bank Commissioner.

“**Commissioner**” means the State Bank Commissioner for the State of Delaware.

“**FOIA**” means the Freedom of Information Act as established pursuant to Title 29, Chapter 100 of the **Delaware Code**.

“**FOIA Coordinator**” shall mean the person designated by the Commissioner to receive and process FOIA Requests.

“**FOIA Request**” or “**Request**” means a request to inspect or copy Public Records pursuant to 29 **Del.C.** §10003 and in accordance with this regulation.

“**FOIA Request Form**” means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

“**Non-Custodial Records**” shall have the meaning set forth in ~~Section~~ subsection 3.6.

“**Public Record**” shall have the meaning set forth in 29 **Del.C.** §10002.

“**Requesting Party**” shall mean the party filing a FOIA Request.

## 3.0 Records Request, Response Procedures and Access

### 3.1 Form of Request

3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with this regulation. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with this regulation shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency’s website, or from the office or website of any state agency.

3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such as the types of records, dates, parties to correspondence, and subject matter of the requested records.

### 3.2 Method of Filing Request

3.2.1 FOIA Requests may be made by mail or in person to the FOIA Coordinator at the Office of the State Bank Commissioner; ~~555 East Lockerman Street~~ 1110 Forrest Avenue, Dover, Delaware ~~19904~~ 19904; by email to the Agency through the contact link on its website; by fax at 302-739-3609; or via the online request form on the Agency’s home page at <http://www.banking.delaware.gov/>.

### 3.3 FOIA Coordinator

3.3.1 The Commissioner shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency’s responses thereto. The FOIA Coordinator shall be

identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder.

3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.

3.3.3 In addition to the foregoing responsibilities, beginning on January 1, 2012, the FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to § subsection 3.4; the date of the Agency's response pursuant to § subsection 3.4 (including the reasons for any extension pursuant to § subsection 3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to §§ subsections 3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to § subsection 3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.

#### 3.4 Agency Response to Requests

3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after its receipt, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

#### 3.5 Requests for Email

3.5.1 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort. If the Agency determines that it cannot fulfill all or any portion of such request, the Agency shall promptly request that the Department of Technology and Information ("DTI") provide the email records to the Agency. Upon receipt from DTI, the Agency may review the email records in accordance with § subsection 3.7 hereunder.

3.5.2 Before requesting DTI to provide email records, the Agency shall provide a written cost estimate from DTI to the Requesting Party, listing all charges expected to be incurred by DTI in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

#### 3.6 Requests for Other Non-Custodial Records

3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with § subsection 3.7 of this regulation by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.

3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

## 3.7 Review by Agency

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

## 3.8 Hours of Review

3.8.1 The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

## 4.0 Fees

### 4.1 Photocopying Fees

4.1.1 In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:

4.1.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (*i.e.*, \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".

4.1.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:

18" x 22":	\$2.00 per sheet
24" x 36":	\$3.00 per sheet
Documents larger than 24" x 36":	\$1.00 per square foot

4.1.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.

### 4.2 Administrative Fees

4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without ~~limitation~~, limitation: (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.

4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid

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employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under ~~this Section 4~~ Section 4.0, including copying fees.

4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.

4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.

4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

4.5 Payment

4.5.1 The Agency may require all fees to be paid prior to any service being performed under this regulation.

4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records under this regulation.

4.6 Waiver of Fees Pursuant to Prior Policy  
Omitted

4.7 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

## 5.0 Applicability

To the extent any provision in this regulation conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

## 6.0 Agency-Specific Provisions

6.1 Documents which the Commissioner and any of the employees who work for the Commissioner are bound to keep confidential and are prohibited from disclosing pursuant to 5 Del.C. §125 are not public records for FOIA purposes and are not subject to inspection or disclosure under FOIA.

6.2 Documents constituting "confidential supervisory information" as defined by 5 Del.C. §145 are not public records for FOIA purposes and are not subject to inspection or disclosure under FOIA.

## 7.0 Effective Date

This regulation shall become effective on January 11, 2012.

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## PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 315(d) (26 Del.C. §315(d))

ORDER NO. 9627

### 8003 Natural Gas Service Reliability and System Planning Standards

IN THE MATTER OF THE PETITION OF THE  
PUBLIC SERVICE COMMISSION STAFF AND  
DELAWARE DIVISION OF THE PUBLIC  
ADVOCATE TO ESTABLISH A REGULATION  
FOR DISTRIBUTION SYSTEM INVESTMENT  
PLANS FOR DELAWARE ELECTRIC AND  
NATURAL GAS UTILITIES (Filed July 2, 2018)

PSC DOCKET NO. 18-0935

**AND NOW**, this 19<sup>th</sup> day of August 2020, the Public Service Commission (“Commission”) determines and orders the following:

**WHEREAS**, on June 14, 2018, Governor John Carney signed into law Senate Substitute No. 1 for Senate Bill 80, which established a Distribution System Improvement Charge (“DSIC”) for electric and natural gas companies in Delaware; and

**WHEREAS**, on April 14, 2018, the Commission Staff (“Staff”), the Delaware Division of the Public Advocate (“DPA”), and Delmarva Power & Light Company (“Delmarva”) executed a Memorandum of Understanding (“MOU”) providing that:

Delmarva Power, the Public Advocate and Commission Staff agree to work together to develop a proposal to submit to the Commission concerning enhanced distribution system planning. Delmarva, DPA and Staff will work in good faith to provide recommendations and to submit any proposals for review and approval to the Commission by September 1, 2019. The first meeting will take place by July 31, 2018. In addition, by no later than March 31, 2019, Delmarva, DPA and Staff will provide the Commission with an update on their progress.

and;

**WHEREAS**, on May 1, 2018, Chesapeake Utilities Corporation (“Chesapeake”) agreed to participate in the meetings among Delmarva, the DPA, and Staff in a good faith effort to recommend to the Commission some form of distribution planning for Chesapeake that will be tied to its DSIC applications; and

**WHEREAS**, on July 2, 2019, Staff and the DPA jointly filed a petition requesting the Commission to open a docket to examine electric and natural gas utilities’ distribution infrastructure spending and establish regulations for distribution system planning to apply to all electric, natural gas, and Class A water utilities; and

**WHEREAS**, in Order No. 9242 (July 10, 2018), the Commission directed Staff to commence duly noticed working group meetings for interested stakeholders (including Delmarva and Chesapeake) and to provide recommendations and proposed regulations for the Commission’s review and approval; and

**WHEREAS**, on August 13, 2019, the DPA filed an unopposed motion to extend the deadline for submitting proposed natural gas distribution planning regulations to the date of the Commission’s second meeting in January 2020, which the Commission granted in Order No. 9444 dated August 20, 2019; and

**WHEREAS**, on December 17, 2019, the DPA filed an unopposed motion to further extend the deadline for submitting natural gas distribution planning regulations from January 2020 to April 22, 2020, which granted in Order No. 9529 dated January 8, 2020; and

**WHEREAS**, on April 14, 2020, Staff and the DPA jointly filed a motion (“Joint Motion”) requesting the Commission to enter an order approving publication of proposed distribution planning regulations for natural gas utilities in the *Delaware Register of Regulations* and providing Delmarva and Chesapeake, as well as any other interested persons, 30 days under the Administrative Procedure Act to submit comments to the Commission on the proposed regulations; and

**WHEREAS**, on April 21, 2020, Delmarva submitted a letter concerning the proposed distribution planning regulations for natural gas utilities; specifically, Delmarva stated that Section 4.3 should provide that the



Commission “may,” as opposed to shall,” establish the “benchmarks” which, according to Delmarva, would give the Commission latitude and flexibility to determine whether a benchmark is appropriate after the Commission evaluates the data and understands the cost needed to comply with the new metrics; and

**WHEREAS**, at its regularly scheduled meeting on April 22, 2020, the Commission considered the Motion and heard from representatives of Staff, the DPA, and the natural gas utilities; and

**WHEREAS**, the Commission conducted its deliberations on the Motion in open session and unanimously voted to enter Order No. 9570 which: (i) approved for publication the proposed regulations attached to the Joint Motion; (ii) pursuant to 29 *Del. C.* §§ 1133 and 10115(a), directed the Commission Secretary to transmit to the Registrar of Regulations for publication in the June 2020 *Register of Regulations* a copy of Order No. 9570 and the proposed regulations; (iii) directed publication of the Commission-approved Notice of Proposed Rulemaking (“Notice”) in the *News Journal*, the *Delaware State News*, and the *Cape Gazette* by June 1, 2020, as well as submission of the Notice to the Delaware Registrar of Regulations for publication on June 1, 2020 in the *Delaware Register of Regulations*; and (iv) pursuant to 29 *Del. C.* §§ 10115(a) and 10116, providing persons or entities the opportunity to submit written comments on or before Wednesday, July 1, 2020; and

**WHEREAS**, on July 1, 2020, Delmarva submitted written comments, again arguing that Section 4.3 of the proposed regulations should provide that the Commission “may,” as opposed to “shall,” establish benchmarks; and

**WHEREAS**, in the proposed regulation, Section 4.3 provides that a Gas Distribution Company (“GDC”) shall report its Annual Outage Rate (“AOR”) and the Average Outage Duration (“AOD”) to the Commission over a three-year reporting period; thereafter, at the end of the reporting period, “the Commission shall establish AOR and AOD Benchmarks for each GDC[;]” and

**WHEREAS**, at its regularly scheduled meeting on July 29, 2020, the Commission considered whether to accept Delmarva’s proposed change, without hearing additional public comment; and

**WHEREAS**, regarding Delmarva’s argument concerning Section 4.3 and “may” versus “shall” in the context of the aforementioned benchmarks, the Commission determines that “shall” is a necessary term in ensuring this Commission’s stewardship in enhancing distribution system planning; moreover, “shall” creates increased and improved value and quality by virtue of the certainty of enhanced distribution system planning; and

**WHEREAS**, the Commission finds that mandating the setting of benchmarks further ensures that no GDC will fail to adhere to the parameters set for AOR or AOD; and

**WHEREAS**, the Commission determines that including “shall” in Section 4.3 is consistent with the word “will” as previously approved concerning this Commission’s setting metrics for the electric regulations in this same docket – with no objection from Delmarva; likewise, the consistency between “will” and “shall” in the policies and procedures embraced in these regulations must be retained and promulgated;

**NOW, THEREFORE, BY THE AFFIRMATIVE VOTE OF NO FEWER  
THAN THREE COMMISSIONERS, IT IS HEREBY ORDERED:**

1. The Commission finds and determines that Final Proposed Regulation 8003 attached hereto as “Exhibit A” contains no substantive changes to the Proposed Regulations approved for publication in the *Delaware Register of Regulations* under Commission Order No. 9570 dated April 22, 2020.

2. There is no requirement to re-propose Final Proposed Regulation 8003 because there were no substantive changes; accordingly, the public comment period shall not be extended by 15 days under 29 *Del. C.* § 10118(a) and Final Proposed Regulation 8003 is not subject to the notice requirements of 29 *Del. C.* § 10115.

3. Final Proposed Regulation 8003 is hereby approved as final, and the Commission Secretary is directed to publish the Final Proposed Regulation 8003 in the *Delaware Register of Regulations*, with an effective date of not less than 10 days from the date this Order has been published in the *Register of Regulations*.

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

**BY ORDER OF THE COMMISSION:**

/s/ Dallas Winslow, Chairman

/s/ Manubhai C. Karia, Commissioner

/s/ Joann T. Conaway, Commissioner

/s/ K. F. Drexler, Commissioner

/s/ Harold B. Gray, Commissioner

ATTEST: Donna Nickerson, Secretary

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

**8003 Natural Gas Service Reliability and System Planning Standards**

**EFFECTIVE DATE: [October 11, 2020]**

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the June 2020 issue of the *Register* at page 1004 (23 DE Reg. 1004). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**8003 Natural Gas Service Reliability and System Planning Standards**

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## DEPARTMENT OF TRANSPORTATION

### DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 302 and 29 Delaware Code, Section 8404(8)  
(21 Del.C. §302 & 29 Del.C. §8404(8))  
2 DE Admin. Code 2222

### ORDER

#### **2222 School Bus Driver Qualifications and Endorsements**

Pursuant to the authority provided by 21 *Del.C.* §302(a), the Division of Motor Vehicles is promulgating regulations for the administrative procedures for the issuance, renewal, removal, and reinstatement of the school bus (S) endorsement on a Delaware commercial driver license. The Division of Motor Vehicles (DMV) uses this regulation to initiate program requirements.

#### **Findings of Fact and Conclusions of Law**

1. The public was given notice and the opportunity to provide comments in writing concerning the proposed revisions
2. The proposed revisions are useful and proper, and the Department believes that the adoption of these regulations is appropriate.

#### **Decision and Effective Date**

Based on the provision of Delaware law and the record of this docket, I hereby adopt the School Bus Driver Qualifications and Endorsements as set forth in the version attached, to be effective October 11, 2020.

It is so ordered on this 14th day of September 2020.

Jennifer Cohan, Secretary  
Delaware Department of Transportation

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2020 issue of the *Register* at page 129 (24 DE Reg. 129). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2222 School Bus Driver Qualifications and Endorsements**

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# FINAL REGULATIONS

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## DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 29 Delaware Code, Section 8404(8) (29 Del.C. §8404(8))  
2 DE Admin. Code 2404

### ORDER

#### 2404 Delaware Traffic Calming Design Manual

Pursuant to the authority provided by 29 Del. C. §8408(8), the Delaware Department of Transportation ("DelDOT") hereby issues this Order. The proposed change was published in the *Delaware Register of Regulations* on June 1, 2020 (Vol. 23, Issue 12). Following notice and opportunity for public comment on the proposed change, DelDOT makes the following Findings and Conclusions:

#### Summary of Evidence and Information Submitted

1. DelDOT received no written information pertaining to the proposed change.
2. DelDOT current operating procedures supports the repeal of this regulation.

#### Findings of Fact

3. The public was given notice and the opportunity to provide comments in writing on the proposed amendments. No written comments were received.
4. DelDOT finds that the elimination of this regulation is in the best interest of the State of Delaware for the reasons described in paragraph 2.

#### Decision and Effective Date

5. Based on the provision of Delaware law and the record of this docket, DelDOT hereby rescinds the Delaware Traffic Calming Design Manual regulation, as set forth in the version attached hereto, to be effective October 11, 2020.

It is so ordered on this 10<sup>th</sup> day of September 2020.  
Jennifer Cohan, Secretary  
Delaware Department of Transportation

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2020 issue of the *Register* at page 1007 (23 DE Reg. 1007). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2404 Delaware Traffic Calming Design Manual**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 42 C.F.R. §402, Subpart A

#### PUBLIC NOTICE AND NOTICE OF PUBLIC HEARINGS

#### TANF State Plan Amendment

Delaware Health and Social Services (DHSS)/Division of Social Services is providing a public notice related to the State's plan to comply with Federal regulations governing the Temporary Assistance for Needy Families (TANF) program.

#### Purpose

The purpose of this posting is to provide public notice and receive public input for consideration regarding Delaware's Amended TANF State Plan that is effective from October 1, 2017 to September 30, 2020.

#### Overview

The TANF State Plan is a comprehensive statement submitted by Delaware Division of Social Services describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Social Security Act, the regulations in subtitle A of §402 of this title, and other applicable official issuances of the U.S. Department of Health and Human Services. The State Plan contains all information necessary for the Administration for Children and Families to determine whether the plan can be approved as a basis for Federal financial participation in the State program.

The Division of Social Services amended the TANF State Plan effective from October 1, 2017 to September 30, 2020 to include program adjustments related to the COVID-19 public health emergency and the provision that Delaware may medically exempt TANF clients and place them in a solely state funded program.

A copy of the plan can be found at <https://www.dhss.delaware.gov/dhss/dss/pubs.html>.

#### Public Comment Submission Process

DHSS gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the TANF State Plan Amendment. The comment period begins on October 1, 2020 and ends on October 31, 2020.

Comments and input may be submitted in the following ways:

By email: [Janneen.Boyce@delaware.gov](mailto:Janneen.Boyce@delaware.gov)

By fax: 302-255-4425 to the attention of Janneen Boyce

By mail: Janneen Boyce  
Division of Social Services  
Policy & Program Development Unit  
1901 North DuPont Highway  
P.O. Box 906  
New Castle, Delaware 19720-0906

Please identify in the subject line: TANF State Plan Amendment

This notice shall appear for one (1) day only in the following newspapers:

- *The News Journal*
- *Delaware State News*

Ray Fitzgerald  
Director  
Division of Social Services

September 11, 2020

Date

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**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 42 C.F.R. §402, Subpart A

**PUBLIC NOTICE AND NOTICE OF PUBLIC HEARINGS**

**TANF State Plan Amendment**

Delaware Health and Social Services (DHSS)/Division of Social Services is providing a public notice related to the State's plan to comply with Federal regulations governing the Temporary Assistance for Needy Families (TANF) program.

**Purpose**

The purpose of this posting is to provide public notice and receive public input for consideration regarding Delaware's Amended TANF State Plan that is effective from October 1, 2020 to September 30, 2022.

**Overview**

The TANF State Plan is a comprehensive statement submitted by Delaware Division of Social Services describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Social Security Act, the regulations in subtitle A of §402 of this title, and other applicable official issuances of the U.S. Department of Health and Human Services. The State Plan contains all information necessary for the Administration for Children and Families to determine whether the plan can be approved as a basis for Federal financial participation in the State program.

A copy of the plan can be found at <https://www.dhss.delaware.gov/dhss/dss/pubs.html>.

**Public Comment Submission Process**

DHSS gives public notice and provides an open comment period for forty-five (45) days to allow all stakeholders an opportunity to provide input on the TANF State Plan Amendment. The comment period begins on October 1, 2020 and ends on November 15, 2020.

Comments and input may be submitted in the following ways:

By email: [Janneen.Boyce@delaware.gov](mailto:Janneen.Boyce@delaware.gov)

By fax: 302-255-4425 to the attention of Janneen Boyce

By mail: Janneen Boyce  
Division of Social Services  
Policy & Program Development Unit  
1901 North DuPont Highway  
P.O. Box 906  
New Castle, Delaware 19720-0906

Please identify in the subject line: TANF State Plan Amendment

This notice shall appear for one (1) day only in the following newspapers:

- *The News Journal*
- *Delaware State News*

September 11, 2020

Ray Fitzgerald

Date

Director

Division of Social Services

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6010(c) (7 **Del.C.** §§6010(a) & 6010(c))

#### REGISTER NOTICE

**SAN # 2018-07**

**State Implementation Plan (SIP) revision for the regulatory amendments to 7 DE Admin. Code 1124 Section 26.0 "Gasoline Dispensing Facility Stage I Vapor Recovery" and Section 36.0 "Vapor Emission Control at Gasoline Dispensing Facilities."**

#### 1. TITLE OF THE REGULATIONS:

State Implementation Plan (SIP) revision for the regulatory amendments to 7 **DE Admin. Code** 1124 Section 26.0 "Gasoline Dispensing Facility Stage I Vapor Recovery" and Section 36.0 "Vapor Emission Control at Gasoline Dispensing Facilities."

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

The Division of Air Quality (AQ), within the Department of Natural Resources and Environmental Control, will submit to US Environmental Protection Agency (EPA) a revision to Delaware State Implementation Plan (SIP), entitled "Decommissioning Stage II Vapor Recovery Systems and Requiring Stage I Enhanced Vapor Recovery Systems at Gasoline Dispensing Facilities." In the SIP revision, AQ (1) analyzes the regulatory impacts of the regulatory amendments to 7 **DE Admin. Code** 1124 Section 26.0 and Section 36.0 on Delaware's emissions of volatile organic compounds, and (2) demonstrates that the above regulatory amendments meet the anti-backsliding requirements of the federal Clean Air Act Sections 182(b)(2) and 110(l).

The proposed version of the SIP revision and the proposed regulatory amendments to 7 **DE Admin. Code** 1124 Section 26.0 and Section 36.0 were published in *Delaware Register of Regulations* on December 1, 2019. All notification and noticing requirements concerning the proposed SIP revision and regulatory amendments were met by the Department. Proper notice of the public hearing and adequate public review period were provided as required by law. On July 1, 2020, the final regulatory amendments to 7 **DE Admin. Code** 1124 Section 26.0 and Section 36.0 were published, under the Department Secretary's Order No. 2020-A-0017, in *Delaware Register of Regulations*. The SIP revision being published today is the final version under the same secretary's order. After publication, this final SIP version will be submitted to EPA for approval.

#### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

#### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Ch. 60, Sections 6010(a) and 6010(c).

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

None.

**6. NOTICE OF PUBLIC COMMENT:**

A public hearing was held on January 08, 2020, beginning at 6:00 pm, in DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The comment period was open to the public for 15 days after the public hearing.

**7. PREPARED BY:**

Frank F. Gao, Ph.D., P.E.  
Division of Air Quality-DNREC  
715 Grantham Lane, New Castle, DE 19720  
Phone: (302)739-9402; email: [Frank.Gao@delaware.gov](mailto:Frank.Gao@delaware.gov)

**\*Please Note: Due to the size of the SIP, it is not being published here. A PDF version is available at the following location:**

[DNREC DE VAPOR SIP - Final.pdf](#)

[http://regulations.delaware.gov/register/october2020/general/DNREC DE VAPOR SIP - Final.pdf](http://regulations.delaware.gov/register/october2020/general/DNREC%20DE%20VAPOR%20SIP%20-%20Final.pdf)

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**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

On March 12, 2020, Governor Carney issued a declaration of a state of emergency for the state of Delaware due to a public health threat. The State of Emergency allows all public meetings of executive branch public bodies, including the SBE, to be conducted electronically, either by means of telephone conference call or video-conference call.

In accordance with the State of Emergency, the State Board of Education is currently holding meetings electronically. The meeting information can be accessed via the public meeting calendar (<https://publicmeetings.delaware.gov/Search?q=&AnyAll=Any&AgencyID=22&StartDateInclusive=2020-08-01>). Members of the public can join the meeting via the web or telephone.

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

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF HEALTH CARE QUALITY**  
**PUBLIC NOTICE****3201 Skilled and Intermediate Care Nursing Facilities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Skilled and Intermediate Care Nursing Facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov) or by fax to 302-292-3931 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Regulations Governing Skilled and Intermediate Care Nursing Facilities.

The action concerning the determination of whether to adopt the proposed regulations 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.

The purpose of this notice is to advise the public that Delaware Health and Social Services / Division of Health Care Quality is proposing regulations governing Skilled and Intermediate Care Nursing Facilities.

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Skilled and Intermediate Care Nursing Facilities and hold them out for public comment per Delaware law. The amendments update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for assisted living facilities.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services / Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on November 2, 2020.

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**DIVISION OF HEALTH CARE QUALITY**  
**PUBLIC NOTICE**  
**3225 Assisted Living Facilities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Assisted

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Living Facilities.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov) or by fax to 302-292-3931 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Regulations Governing Assisted Living Facilities.

The action concerning the determination of whether to adopt the proposed regulations 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.

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Assisted Living Facilities and hold them out for public comment per Delaware law. The amendments update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for assisted living facilities.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services / Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on November 2, 2020.

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**DIVISION OF HEALTH CARE QUALITY**  
**PUBLIC NOTICE**  
**3230 Rest (Residential) Home Regulations**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Health Care Quality (DHCQ) is proposing regulations governing Rest (Residential) Home.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Division of Health Care Quality, 261 Chapman Road, Suite 200, Newark, Delaware 19702, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov) or by fax to 302-292-3931 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Regulations Governing Rest (Residential) Home.

The action concerning the determination of whether to adopt the proposed regulations 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.

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing Rest (Residential) Home and hold them out for public comment per Delaware law. The amendments update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for assisted living facilities.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services / Division of Health Care Quality gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on November 2, 2020.

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**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE**  
**4462 Public Drinking Water Systems**

Pursuant to 16 **Del.C.** §122(3)(c), Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems. On October 1, 2020, the Division of Public Health plans to publish as "proposed" revisions to the Public Drinking Water Systems regulations. The revisions include:

- EPA-required corrections for specific rule primacy;
- Fluoride requirements for systems required to provide fluoride under Delaware law;
- Definitions and a new chapter for cross-connections; and
- Minor clarifications and technical changes.

Copies of the proposed regulations are available for review in the October 1, 2020 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Monday, November 2, 2020, at:

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

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**  
**Defining Family Size For Child Care**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Child Care Subsidy Program, specifically, to define family size for child care.

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, Policy and Quality Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: Defining Family Size for Child Care.

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

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**  
**POC – Changing Providers And Charging Fees**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to update policy related to changing child care providers and charging fees to Purchase of Care (POC) families.

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, Policy and Quality Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on November 2, 2020. Please identify in the subject line: POC – Changing Providers and Charging Fees.

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.

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## DEPARTMENT OF INSURANCE

### OFFICE OF THE COMMISSIONER

#### PUBLIC NOTICE

#### 902 Prohibited Unfair Claim Settlement Practices

In the May 1, 2020 edition of the *Register of Regulations*, the Department published a proposal to update and clarify requirements concerning prohibited unfair claim settlement practices that are set forth in Regulation 902 (see 23 DE Reg. 920 (05/01/2020)). In that proposal, the Department proposed adding new subsection 3.1.14, which included a failure to promptly settle a claim as required under Regulation 903 as an unfair claim settlement practice. The Department also took the opportunity of the proposal to make grammatical and formatting edits throughout the regulation.

Upon further review, the Department determined not to proceed with proposed new subsection 3.1.14 and withdrew that proposal, as violations of Regulation 903 are already a defined unfair claims settlement practice.

Instead, the Department proposed to add new subsection 3.2, which would have specifically provided that three instances of an insurer's commission of a prohibited claim settlement practice within a 36-month period, as listed in subsection 1.2.1 (to be recodified at subsection 3.1), shall give rise to a rebuttable presumption that the insurer is in violation of this regulation and 18 Del. C. §2304(16)f. This first re-proposal was published in the June 1, 2020 edition of the *Register of Regulations* (see 23 DE Reg. 997 (06/01/2020)). The Department again took the opportunity of the re-proposal to make grammatical and formatting edits throughout the regulation.

The Department received several comments from insurance industry-related stakeholders, many of whom expressed surprise that the Department would propose such an amendment because the commenters were not aware of any negative market conduct trends in Delaware that would have led the Department to take such action.

One commenter objected that proposed new subsection 3.2 would discourage informal resolution of market conduct exam findings, "emphatically discourage self-reporting and self-remediation of claims processing errors or violations, even if unintentional and harmless to policyholders, and . . . would unfairly expose insurers to bad faith actions that are, on the merits, unfounded, based on a 'general practices' presumption of just three violations over 36 months.

Other commenters opined that proposed new subsection 3.2 makes Delaware's regulation exceed the expectations set forth in the 2008 National Association of Insurance Commissioners (NAIC) Model Unfair Claims Settlement Act. In that Act, the NAIC discussed defining "general business practice" but chose not to define it, instead opting to establish a statistically based benchmark error rate of seven percent for auditing claim practices and 10 percent for other trade practices. These commenters went on to opine that Delaware would be the only state in the nation to set numeric limits on numbers of claims over a specified time that would trigger the rebuttable presumption of an unfair trade practice.

The commenters also pointed out that, in their opinion, the specific number of claims (3) over a set time period (36 months) is unfair and untenable for companies that process thousands of claims per month, further stating that while some of the Department's regulations understandably contain "three strikes" provisions, those provisions are relegated to the health care arena. These commenters concluded that three claims in three years does not rise to the level of an unfair business practice; unfair business practice should be reserved for systemic violations, not for a mistake made due to human error.

On re-proposal, the Department has determined to revise proposed new subsection 3.2 to provide that:

An insurer's commission of prohibited unfair claim settlement practices listed in subsection 3.1 of this regulation in four percent or more of claims sampled by the Department during any investigation or examination of the insurer, shall give rise to a rebuttable presumption that the insurer is in violation of this regulation and 18 Del. C. §2304(16)f.

The Delaware Code authority for the regulation and the proposed amendments is 18 Del.C. §§311 and 2312.

The Department has determined to hold a virtual public hearing on the proposed amendments to Regulation 902 on **October 22, 2020 at 9:00 a.m.** The hearing will be facilitated through WebEx at <https://stateofdelaware.webex.com/stateofdelaware/j.php?MTID=mcb66b1d7794ffd79b6a2b963bb23bb43> meeting number (access code): 173 669 0005 and meeting password: Fp7rW3juew9.

Holding a virtual public meeting is specifically permitted by Paragraph 5 of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat issued by Governor John Carney on March 12, 2020 and extended monthly thereafter (see <https://governor.delaware.gov/health-soe/> for the complete list of modifications and extensions).

The proposed amendments appear below and may also be viewed on the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 6<sup>th</sup> day of November 2020. Any such requests and any questions concerning connecting to the public hearing should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
ATTN: Docket 4259-2020  
1351 West North Street, Suite 101  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@delaware.gov](mailto:Leslie.Ledogar@delaware.gov)

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF WASTE AND HAZARDOUS SUBSTANCES WASTE MANAGEMENT SECTION**

#### **PUBLIC NOTICE**

#### **1301 Regulations Governing Solid Waste**

To provide greater environmental protection and to reduce human health risks, the Compliance and Permitting Section (CAPS) proposes to modify the DRGSW to adopt regulations to clarify the State's Single Use Plastic Bag Ban and At Store Recycling Program.

A virtual public hearing on the proposed amendments to DRGSW (Docket # 2020-R-WH-0025) will be held on **Wednesday, October 21, 2020, beginning at 6:00 PM**. A web link to the virtual hearing will be posted on the DNREC Public Hearings site at <https://de.gov/dnrehearings>. To access the audio-only portion of the virtual hearing, dial in at 1-408-418-9388 and enter event code 173 830 4476. Closed-captioning 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 using the weblink posted on the DNREC Public Hearings site at <https://de.gov/dnrehearings> or by contacting Adam Schlachter.

The proposed amendments may be inspected online as of October 1, 2020 at [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or in-person by appointment only by contacting contact Adam Schlachter by phone at 302-739-9403; or by email at [Adam.Schlachter@delaware.gov](mailto:Adam.Schlachter@delaware.gov).

The hearing record will remain open for at least 15 days following the date of the hearing. The Department will accept public comment through the close of business on Thursday, November 5, 2020 and comments pertaining to the above regulations will be accepted in written form via:

Email: [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov)

Online Form: <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>

or via USPS to the following address:

Theresa Newman, Hearing Officer  
DNREC - Office of the Secretary  
89 Kings Highway  
Dover, DE 19901

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1900 BOARD OF NURSING**  
**PUBLIC NOTICE**

The Delaware Board of Nursing, pursuant to 24 *Del. C.* § 1904(c), proposes to revise its regulations to add failing to practice nursing without discrimination to the list of examples of unprofessional conduct.

The Board will hold a public hearing on the proposed regulation changes on November 18, 2020 at 9:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until December 3, 2020 pursuant to 29 *Del. C.* § 10118(a).

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**DIVISION OF PROFESSIONAL REGULATION**  
**2925 REAL ESTATE COMMISSION EDUCATION COMMITTEE**  
**PUBLIC NOTICE**

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

Specifically, Section 4.0 has been revised to state that prelicensing education and continuing education may be delivered in a traditional classroom setting or by distance learning, which may be asynchronous or synchronous. Asynchronous learning is "distance learning without the opportunity for real time interaction between the instructor and students." Synchronous learning is "distance learning that happens in real time where there is the opportunity for direct interaction between the instructor and students." The proposed revisions outline the requirements for each method of instruction. Inclusion of synchronous learning in Section 4.0 will expand educational opportunities for applicants and for licensees without compromising professional standards. This proposal strikes the current Section 4.0, including the amendment in subsection 4.5, which was adopted by emergency regulation as published in Register of Regulations on August 1, 2020, Volume 24, Issue 2.

A public hearing will be held on November 12, 2020 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at [danielle.cross@delaware.gov](mailto:danielle.cross@delaware.gov).

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be **November 30, 2020**. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

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**DIVISION OF PROFESSIONAL REGULATION**  
**3800 BOARD OF DIETETICS/NUTRITION**  
**PUBLIC NOTICE**

The Delaware Board of Dietetics/Nutrition, pursuant to 24 **Del.C.** §3805(1), proposes to revise its regulations. The proposed amendments to the regulations seek to wholly amend the continuing education requirements for renewal to more closely align with the requirements of Commission on Dietetic Registration thus expanding the ways in which a licensee can obtain continuing professional education. In addition, the changes clarify the time a licensee may remain on inactive status and the procedures required to reactivate a license.

The Board will hold a public hearing on the proposed rule change on November 13, 2020 at 1:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Danielle Ridgway, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 30, 2020.

**OFFICE OF THE STATE TREASURER**  
**on behalf of the**  
**CASH MANAGEMENT POLICY BOARD**  
**PUBLIC NOTICE**

**1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds**

In accordance with the procedures set forth in 29 *Del. C.* Ch. 11, subch. III, and 29 *Del. C.*, ch. 101, the Cash Management Policy Board (the "Board") is proposing to amend previously adopted regulations governing the deposit and investment of State funds, as permitted by 29 *Del. C.* § 2716.

Members of the public may receive a copy of the proposed regulations at no charge by U.S. mail by writing, emailing or calling Mr. Jordan Seemans at the Office of the State Treasurer ("OST"), 820 N. French St., Suite 201, Wilmington, Delaware 19801, [Jordan.W.Seemans@delaware.gov](mailto:Jordan.W.Seemans@delaware.gov), (302) 577-4211. Members of the public may present written comments on the proposed regulations by submitting such written comments to Mr. Seemans at the address above. Written comments must be received on or before November 1, 2020.

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