
Delaware Register of Regulations

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Volume 25 - Issue 4, Pages 309 - 431



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- Errata
- Emergency
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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, 2021.

Photo by Dr. Brian Kutner

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1900 BOARD OF NURSING

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

ERRATA

1900 Board of Nursing

***Please Note:** The final regulation for 24 **DE Admin. Code** 1900 Board of Nursing was published in the March 1, 2021 (24 **DE Reg.** 886 (03/01/21)) and did not incorporate amendments that became effective October 11, 2020 (24 **DE Reg.** 379 (10/01/20)). When the regulation was published as final again in August 2021 (25 **DE Reg.** 199 (08/01/21)), the October 2020 amendments were also not included.

This corrected version incorporates the amendments effective October 11, 2020 and March 11, 2021 as well as those published in August 2021. The effective date for the final order and regulation appearing in the August 2021 *Register* remains the same.

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

1900 Board of Nursing

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

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** 3210

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119
16 **DE Admin. Code** 3210 Nursing Homes Admitting Pediatric Residents

3210 Nursing Homes Admitting Pediatric Residents**AUTHORITY**

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

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 9 (07/01/21).

In addition, staff at nursing homes that admit pediatric residents must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 17.0.

EFFECTIVE DATE OF ORDER

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

17.0 Infection Prevention and Control

17.4 Specific Requirements for COVID-19

17.4.1 Before their start date, all new staff, vendors and volunteers must be tested in accordance with Delaware Division of Public Health Guidance.

17.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

17.4.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

17.5 The licensee shall amend their policies and procedures to include:

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

17.5.2 Staff refusals to participate in COVID-19 testing;

17.5.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.

17.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and

17.5.5 Plans to address staffing shortages and licensee demands should a COVID-19 outbreak occur.

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 17th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3210 Nursing Homes Admitting Pediatric Residents, a copy of which is hereby attached, is adopted,

pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

3210 Nursing Homes Admitting Pediatric Residents
(Break in Continuity of Sections)

17.0 Infection Prevention and Control Program

(Break in Continuity Within Section)

17.4 Specific Requirements for COVID-19

17.4.1 Before their start date, all new staff, vendors and volunteers must be tested in accordance with Delaware Division of Public Health Guidance.

17.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

17.4.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

17.5 The licensee shall amend their policies and procedures to include:

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

17.5.2 Staff refusals to participate in COVID-19 testing;

17.5.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.

17.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and

17.5.5 Plans to address staffing shortages and licensee 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:**

3210 Nursing Homes Admitting Pediatric Residents

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** 3301

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
16 **DE Admin. Code** 3301 Group Home Facilities for Persons with AIDS

3301 Group Home Facilities for Persons with AIDS

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. Code** 3301 Group Home Facilities for Persons with AIDS. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency

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

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. In addition, staff at group home facilities for persons with AIDS must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3301 Group Home Facilities for Persons with AIDS, specifically, Section 8.3 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

8.3 Infection Control

8.3.3 Specific Requirements for COVID-19

8.3.3.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

8.3.3.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

8.3.3.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

8.3.4 The licensee shall amend their policies and procedures to include:

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

8.3.4.2 Staff refusals to participate in COVID-19 testing;

8.3.4.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.

8.3.4.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and

8.3.4.5 Plans to address staffing shortages and licensee demands should a COVID-19 outbreak occur.

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 17th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3301 Group Home Facilities for Persons with AIDS, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

3301 Group Home Facilities for Persons with AIDS *(Break in Continuity of Sections)*

8.0 Services to Residents

(Break in Continuity Within Section)

8.3 Infection Control:

(Break in Continuity Within Section)

8.3.3 Specific Requirements for COVID-19

8.3.3.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

8.3.3.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

8.3.3.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

8.3.4 The licensee shall amend their policies and procedures to include:

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

8.3.4.2 Staff refusals to participate in COVID-19 testing;

8.3.4.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.

8.3.4.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and

8.3.4.5 Plans to address staffing shortages and licensee 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:**

3301 Group Home Facilities for Persons with AIDS

EMERGENCY REGULATIONS

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

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

3305 Group Homes for Persons with Mental Illness**AUTHORITY**

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. Code** 3305 Group Homes for Persons with Mental Illness. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for group homes for persons with mental illness.

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 13 (07/01/21).

In addition, staff at group homes for persons with mental illness must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 15.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3305 Group Homes for Persons with Mental Illness, specifically, Section 15.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

15.0 Infection Control**15.4 Specific Requirements for COVID-19**

15.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

- 15.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.
- 15.4.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 15.5 The licensee shall amend their policies and procedures to include:
 - 15.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
 - 15.5.2 Staff refusals to participate in COVID-19 testing;
 - 15.5.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.
 - 15.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and
 - 15.5.5 Plans to address staffing shortages and licensee demands should a COVID-19 outbreak occur.

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 17th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3305 Group Homes for Persons with Mental Illness, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

3305 Group Homes for Persons with Mental Illness (Break in Continuity of Sections)

15.0 Infection Control

(Break in Continuity Within Section)

- 15.4 Specific Requirements for COVID-19
 - 15.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.
 - 15.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.
 - 15.4.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 15.5 The licensee shall amend their policies and procedures to include:
 - 15.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.

15.5.2 Staff refusals to participate in COVID-19 testing:

15.5.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.

15.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and

15.5.5 Plans to address staffing shortages and licensee 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:**

3305 Group Homes for Persons with Mental Illness

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

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

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

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

AUTHORITY

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

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 15 (07/01/21).

In addition, staff at neighborhood homes for individuals with intellectual and/or developmental disabilities must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 11.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities, specifically, Section 11.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

11.0 Infection Control**11.4 Specific Requirements for COVID-19**

11.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

11.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

11.4.3 The facility must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

11.5 The facility shall amend their policies and procedures to include:

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

11.5.2 Staff refusals to participate in COVID-19 testing;

11.5.3 Staff refusals to authorize release of testing results or vaccination status to the facility.

11.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and

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

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 23rd day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities
(Break in Continuity of Sections)

11.0 Infection Control

(Break in Continuity Within Section)

11.4 Specific Requirements for COVID-19

11.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

11.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

11.4.3 The facility must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

11.5 The facility shall amend their policies and procedures to include:

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

11.5.2 Staff refusals to participate in COVID-19 testing;

11.5.3 Staff refusals to authorize release of testing results or vaccination status to the facility.

11.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and

11.5.5 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:**

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

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119
16 DE Admin. Code 3315 Family Care Homes

3315 Family Care Homes**AUTHORITY**

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

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 17 (07/01/21).

In addition, staff at family care homes must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 11.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3315 Family Care Homes, specifically, Section 11.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

11.0 Infection Control

11.2 Specific Requirements for COVID-19

11.2.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

11.2.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

11.2.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

11.3 The licensee shall amend their policies and procedures to include:

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

11.3.2 Staff refusals to participate in COVID-19 testing;

11.3.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.

11.3.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and

11.3.5 Plans to address staffing shortages and licensee demands should a COVID-19 outbreak occur.

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 10th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3315 Family Care Homes, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

3315 Family Care Homes
(Break in Continuity of Sections)

11.0 Infection Prevention and Control***(Break in Continuity Within Section)*****11.2 Specific Requirements for COVID-19**

11.2.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

11.2.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

11.2.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

11.3 The licensee shall amend their policies and procedures to include:

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

11.3.2 Staff refusals to participate in COVID-19 testing;

11.3.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.

11.3.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and

11.3.5 Plans to address staffing shortages and licensee 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:**

3315 Family Care Homes

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

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

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

3320 Intensive Behavioral Support and Educational Residence

AUTHORITY

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

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

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 19 (07/01/21).

In addition, staff at intensive behavioral support and educational residences must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 10.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3320 Intensive Behavioral Support and Educational Residence, specifically, Section 10.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

10.0 Infection Prevention and Control

10.4 Specific Requirements for COVID-19

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

10.5 The licensee shall amend their policies and procedures to include:

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

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 10th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3320 Intensive Behavioral Support and Educational Residence, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

3320 Intensive Behavioral Support and Educational Residence
(Break in Continuity of Sections)

10.0 Infection Prevention and Control*(Break in Continuity Within Section)***10.4 Specific Requirements for COVID-19**

10.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

10.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

10.4.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

10.5 The licensee shall amend their policies and procedures to include:

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

10.5.2 Staff refusals to participate in COVID-19 testing;

10.5.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.

10.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and

10.5.5 Plans to address staffing shortages and licensee 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:**

3320 Intensive Behavioral Support and Educational Residence

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3330

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
16 **DE Admin. Code** 3330 Regulations Governing Dialysis Centers

3330 Regulations Governing Dialysis Centers

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. Code** 3330 Regulations Governing Dialysis Centers. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for dialysis centers.

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. In addition, dialysis center staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3330 Regulations Governing Dialysis Centers, specifically, Section 6.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

6.0 Infection Prevention and Control

6.4 Specific Requirements for COVID-19

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

- 6.5 The dialysis center shall amend their policies and procedures to include:
- 6.5.1. Work exclusion and return to work protocols for staff tested positive for COVID-19.
 - 6.5.2. Staff refusals to participate in COVID-19 testing;
 - 6.5.3. Staff refusals to authorize release of testing results or vaccination status to the dialysis center;
 - 6.5.4. Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and
 - 6.5.5. Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 8th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3330 Regulations Governing Dialysis Centers, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

3330 Regulations Governing Dialysis Centers (Break in Continuity Within Section)

6.0 Infection Prevention and Control

(Break in Continuity Within Section)

- 6.4 Specific Requirements for COVID-19
- 6.4.1. Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.
 - 6.4.2. All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.
 - 6.4.3. Facilities must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 6.5 The dialysis center shall amend their policies and procedures to include:
- 6.5.1. Work exclusion and return to work protocols for staff tested positive for COVID-19.
 - 6.5.2. Staff refusals to participate in COVID-19 testing;
 - 6.5.3. Staff refusals to authorize release of testing results or vaccination status to the dialysis center;
 - 6.5.4. Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and
 - 6.5.5. 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:**

3330 Regulations Governing Dialysis Centers

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3335

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
16 **DE Admin. Code** 3335 Office-Based Surgery

3335 Office-Based Surgery

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. Code** 3335 Office-Based Surgery. 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 office-based surgery.

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. In addition, office-based surgery staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3335 Office-Based Surgery, specifically, Section 5.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

5.0 Infection Control

5.3 Specific Requirements for COVID-19

5.3.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

- 5.3.2 All staff, vendors and volunteers must be for COVID-19 tested in a manner consistent with Division of Public Health guidance.
- 5.3.3 Facilities must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 5.4 The office -based surgery shall amend their policies and procedures to include:
- 5.4.1. Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 5.4.2. Staff refusals to participate in COVID-19 testing;
- 5.4.3. Staff refusals to authorize release of testing results or vaccination status to the office-based surgery;
- 5.4.4. Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and
- 5.4.5. Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 8th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3335 Office-Based Surgery, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

3335 Office-Based Surgery *(Break in Continuity of Sections)*

5.0 Infection Control

(Break in Continuity Within Section)

- 5.3 Specific Requirements for COVID-19
- 5.3.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.
- 5.3.2 All staff, vendors and volunteers must be for COVID-19 tested in a manner consistent with Division of Public Health guidance.
- 5.3.3 Facilities must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 5.4 The office-based surgery shall amend their policies and procedures to include:
- 5.4.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 5.4.2 Staff refusals to participate in COVID-19 testing;

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- 5.4.3 Staff refusals to authorize release of testing results or vaccination status to the office-based surgery;
- 5.4.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and
- 5.4.5 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:**

3335 Office-Based Surgery

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** 3340

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
16 **DE Admin. Code** 3340 Free Standing Emergency Departments

3340 Free Standing Emergency Departments

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. Code** 3340 Free Standing Emergency Departments. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for free standing emergency departments.

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. In addition, free standing emergency department staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3340 Free Standing Emergency Departments, specifically, Section 8.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

8.0 Infection Prevention and Control**8.8 Specific Requirements for COVID-19**

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

8.9 The free standing emergency departments shall amend their policies and procedures to include:

- 8.9.1.** Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 8.9.2.** Staff refusals to participate in COVID-19 testing;
- 8.9.3.** Staff refusals to authorize release of testing results or vaccination status to the free standing emergency departments;
- 8.9.4** Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and
- 8.9.5** Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 8th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3340 Free Standing Emergency Departments, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

3340 Free Standing Emergency Departments
(Break in Continuity of Sections)

8.0 Infection Prevention and Control*(Break in Continuity Within Section)***8.8 Specific Requirements for COVID-19**

- 8.8.1** Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.
- 8.8.2** All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

- 8.8.3 Facilities must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 8.9 The free standing emergency departments shall amend their policies and procedures to include:
- 8.9.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 8.9.2 Staff refusals to participate in COVID-19 testing;
- 8.9.3 Staff refusals to authorize release of testing results or vaccination status to the free standing emergency departments;
- 8.9.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and
- 8.9.5 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:**

3340 Free Standing Emergency Departments

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
16 **DE Admin. Code** 3345 Personal Assistance Services Agencies

3345 Personal Assistance Services Agencies

AUTHORITY

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

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 21 (07/01/21).

In addition, personal assistance services agencies staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer

employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 9.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3345 Personal Assistance Services Agencies, specifically, Section 9.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

9.0 Infection Prevention and Control

9.4 Specific Requirements for COVID-19

9.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

9.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

9.4.3 Agencies must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to consumers by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

9.5 The personal assistance services agencies shall amend their policies and procedures to include:

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

9.5.2 Staff refusals to participate in COVID-19 testing;

9.5.3 Staff refusals to authorize release of testing results or vaccination status to the agency;

9.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the agency to inform infection control and prevention strategies; and

9.5.5 Plans to address staffing shortages and agency demands should a COVID-19 outbreak occur.

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 10th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3345 Personal Assistance Services Agencies, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

**3345 Personal Assistance Services Agencies
(Break in Continuity of Sections)****9.0 Infection Prevention and Control****(Break in Continuity Within Section)****9.4 Specific Requirements for COVID-19**

- 9.4.1** Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.
- 9.4.2** All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.
- 9.4.3** Agencies must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to consumers by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 9.5** The personal assistance services agencies shall amend their policies and procedures to include:
 - 9.5.1** Work exclusion and return to work protocols for staff tested positive for COVID-19.
 - 9.5.2** Staff refusals to participate in COVID-19 testing;
 - 9.5.3** Staff refusals to authorize release of testing results or vaccination status to the agency;
 - 9.5.4** Procedures to obtain staff authorizations for release of laboratory test results to the agency to inform infection control and prevention strategies; and
 - 9.5.5** Plans to address staffing shortages and agency demands should a COVID-19 outbreak occur.

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

3345 Personal Assistance Services Agencies

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
16 **DE Admin. Code** 4402 Regulations for Adult Day Care Facilities

4402 Regulations for Adult Day Care Facilities

AUTHORITY

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

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 23 (07/01/21).

In addition, adult day care facility staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 16.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 4402 Regulations for Adult Day Care Facilities, specifically, Section 16.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

16.0 Infection Control**16.4 Specific Requirements for COVID-19**

16.4.1 Before their start date, all new staff, vendors, and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

16.4.2 All staff, vendors and volunteers must be tested for COVID -19 in a manner consistent with Division of Public Health Guidance.

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

16.5 The adult day care facility shall amend their policies and procedures to include:

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

16.5.2 Staff refusals to participate in COVID-19 testing;

16.5.3 Staff refusals to authorize release of testing results or vaccination status to the adult day care facility;

16.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and

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

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 10th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4402 Regulations for Adult Day Care Facilities, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

4402 Regulations for Adult Day Care Facilities
(Break in Continuity of Sections)

16.0 Infection Control***(Break in Continuity Within Section)*****16.4 Specific Requirements for COVID-19**

16.4.1 Before their start date, all new staff, vendors, and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

16.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

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

16.5 The adult day care facility shall amend their policies and procedures to include:

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

16.5.2 Staff refusals to participate in COVID-19 testing;

16.5.3 Staff refusals to authorize release of testing results or vaccination status to the adult day care facility;

16.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and

16.5.5 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:**

4402 Regulations for Adult Day Care Facilities

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
16 **DE Admin. Code** 4403 Free Standing Birthing Centers

4403 Free Standing Birthing Centers

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. Code** 4403 Free Standing Birthing Centers. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where

an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for free standing birthing centers.

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 25 (07/01/21).

In addition, free standing birthing center staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 14.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 4403 Free Standing Birthing Centers, specifically, Section 14.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

14.0 Infection Prevention and Control

14.4 Specific Requirements for COVID-19

14.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

14.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

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

14.5 The free standing birthing center shall amend their policies and procedures to include:

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

14.5.2 Staff refusals to participate in COVID-19 testing;

14.5.3 Staff refusals to authorize release of their testing results or vaccination status to the free standing birthing center;

14.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and

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

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 10th day of August, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4403 Free Standing Birthing Centers, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

4403 Free Standing Birthing Centers *(Break in Continuity of Sections)*

14.0 Infection Prevention and Control

(Break in Continuity Within Section)

14.4 Specific Requirements for COVID-19

14.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

14.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

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

14.5 The free standing birthing center shall amend their policies and procedures to include:

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

14.5.2 Staff refusals to participate in COVID-19 testing;

14.5.3 Staff refusals to authorize release of their testing results or vaccination status to the free standing birthing center;

14.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and

14.5.5 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:**

4403 Free Standing Birthing Centers

EMERGENCY REGULATIONS

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 Del.C. §1119C & 29 Del.C. §10119)
16 DE Admin. Code 4405

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119
16 DE Admin. Code 4405 Free Standing Surgical Centers

4405 Free Standing Surgical Centers

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 DE Admin. Code 4405 Free Standing Surgical Centers. Additionally, 29 Del.C. §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del.C. §10115. Moreover, 16 Del.C. §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for free standing surgical center.

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. In addition, free standing surgical center staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 DE Admin. Code 4405 Free Standing Surgical Centers, specifically, Section 8.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

8.0 Infection Prevention and Control

8.7 Specific Requirements for COVID-19

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

8.8 The FSSC shall amend their policies and procedures to include:

- 8.8.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.**

- 8.8.2 Staff refusals to participate in COVID-19 testing;
- 8.8.3 Staff refusals to authorize release of testing results or vaccination status to the FSSC;
- 8.8.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and
- 8.8.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 8th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4405 Free Standing Surgical Centers, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

4405 Free Standing Surgical Centers (Break in Continuity of Sections)

8.0 Infection Control

(Break in Continuity Within Section)

8.7 Specific Requirements for COVID-19

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

8.8 The FSSC shall amend their policies and procedures to include:

- 8.8.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 8.8.2 Staff refusals to participate in COVID-19 testing;
- 8.8.3 Staff refusals to authorize release of testing results or vaccination status to the FSSC;
- 8.8.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and
- 8.8.5 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:**

4405 Free Standing Surgical Centers

EMERGENCY REGULATIONS

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119
16 **DE Admin. Code** 4406 Home Health Agencies--Aide Only (Licensure)

4406 Home Health Agencies--Aide Only (Licensure)**AUTHORITY**

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

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 27 (07/01/21).

In addition, home health agency - aide only staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 11.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 4406 Home Health Agencies--Aide Only (Licensure), specifically, Section 11.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

11.0 Infection Control**11.4 Specific Requirements for COVID-19**

- 11.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.**
- 11.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.**

11.4.3 Agencies must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

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

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

11.5.2 Staff refusals to participate in COVID-19 testing;

11.5.3 Staff refusals to authorize release of testing results or vaccination status to the agency.

11.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the agency to inform infection control and prevention strategies; and

11.5.5 Plans to address staffing shortages and agency demands should a COVID-19 outbreak occur.

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

PETITION FOR RECOMMENDATIONS

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

ORDER

It is hereby ordered, this 10th day of August, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4406 Home Health Agencies--Aide Only (Licensure), a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

4406 Home Health Agencies--Aide Only (Licensure) (Break in Continuity of Sections)

11.0 Infection Control

(Break in Continuity Within Section)

11.4 Specific Requirements for COVID-19

11.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

11.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

11.4.3 Agencies must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

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

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

11.5.2 Staff refusals to participate in COVID-19 testing;

11.5.3 Staff refusals to authorize release of testing results or vaccination status to the agency.

EMERGENCY REGULATIONS

11.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the agency to inform infection control and prevention strategies; and

11.5.5 Plans to address staffing shortages and agency demands should a COVID-19 outbreak occur.

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

4406 Home Health Agencies--Aide Only (Licensure)

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

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

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

4407 Hospital Standards (Construction, Maintenance, and Operation)

AUTHORITY

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

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 29 (07/01/21).

In addition, hospital staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 6.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 4407 Hospital Standards (Construction, Maintenance, and Operation), specifically, Section 6.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

6.0 Infection Prevention and Control**6.4 Specific Requirements for COVID-19**

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

6.5 Hospitals shall amend their policies and procedures to include:

- 6.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 6.5.2 Staff refusals to participate in COVID-19 testing;
- 6.5.3 Staff refusals to authorize release of testing results or vaccination status to the hospital;
- 6.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and
- 6.5.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

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

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 Kathryn.Evinger@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 10th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4407 Hospital Standards (Construction, Maintenance, and Operation), a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

4407 Hospital Standards (Construction, Maintenance, and Operation)
(Break in Continuity of Sections)

6.0 Infection Prevention and Control*(Break in Continuity Within Section)***6.4 Specific Requirements for COVID-19**

- 6.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.
- 6.4.2 All staff, vendors and volunteers must be tested for COVID -19 in a manner consistent with Division of Public Health Guidance.

EMERGENCY REGULATIONS

- 6.4.3 Facilities must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 6.5 Hospitals shall amend their policies and procedures to include:
- 6.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 6.5.2 Staff refusals to participate in COVID-19 testing:
- 6.5.3 Staff refusals to authorize release of testing results or vaccination status to the hospital;
- 6.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and
- 6.5.5 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:**

4407 Hospital Standards (Construction, Maintenance, and Operation)

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119
16 DE Admin. Code 4409 Prescribed Pediatric Extended Care Centers

4409 Prescribed Pediatric Extended Care Centers (PPECC)

AUTHORITY

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

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 DE Reg. 33 (07/01/21).

In addition, prescribed pediatric extended care center staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage

vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 8.7.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 4409 Prescribed Pediatric Extended Care Centers, specifically, Section 8.7 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

8.7 Infection Control

8.7.5 Specific Requirements for COVID-19

8.7.5.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

8.7.5.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

8.7.5.3 The facility must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

8.7.6 The facility shall amend their policies and procedures to include:

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

8.7.6.2 Staff refusals to participate in COVID-19 testing;

8.7.6.3 Staff refusals to authorize release of testing results or vaccination status to the facility.

8.7.6.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and

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

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

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 Kathryn.Evinger@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 10th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4409 Prescribed Pediatric Extended Care Centers, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

EMERGENCY REGULATIONS

4409 Prescribed Pediatric Extended Care Centers (PPECC) (Break in Continuity of Sections)

8.0 Services Available

(Break in Continuity Within Section)

8.7 Infection Control

(Break in Continuity Within Section)

8.7.5 Specific Requirements for COVID-19

8.7.5.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

8.7.5.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

8.7.5.3 The facility must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

8.7.6 The facility shall amend their policies and procedures to include:

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

8.7.6.2 Staff refusals to participate in COVID-19 testing;

8.7.6.3 Staff refusals to authorize release of testing results or vaccination status to the facility.

8.7.6.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and

8.7.6.5 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:**

4409 Prescribed Pediatric Extended Care Centers (PPECC)

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119
16 DE Admin. Code 4410 Skilled Home Health Agencies (Licensure)

4410 Skilled Home Health Agencies (Licensure)

AUTHORITY

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 DE Admin. Code 4410 Skilled Home Health Agencies (Licensure). Additionally, 29 Del.C. §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment

of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for skilled home health agencies.

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative for to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 35 (07/01/21).

In addition, skilled home health agency staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 6.9.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 4410 Skilled Home Health Agencies (Licensure), specifically, Section 6.9 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

6.9 Infection Control

6.9.4 Specific Requirements for COVID-19

6.9.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

6.9.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

6.9.4.3 The agency must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

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

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

6.9.5.2. Staff refusals to participate in COVID-19 testing;

6.9.5.3. Staff refusals to authorize release of testing results or vaccination status to the agency.

6.9.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the agency to inform infection control and prevention strategies; and

6.9.5.5 Plans to address staffing shortages and agency demands should a COVID-19 outbreak occur.

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

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 Kathryn.Evinger@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 10th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4410 Skilled Home Health Agencies (Licensure), a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

4410 Skilled Home Health Agencies (Licensure)
(Break in Continuity of Sections)

6.0 Patient Care Management

(Break in Continuity Within Section)

6.9 Infection Control

(Break in Continuity Within Section)

6.9.4 Specific Requirements for COVID-19

6.9.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

6.9.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health Guidance.

6.9.4.3 The agency must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

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

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

6.9.5.2 Staff refusals to participate in COVID-19 testing;

6.9.5.3 Staff refusals to authorize release of testing results or vaccination status to the agency.

6.9.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the agency to inform infection control and prevention strategies; and

6.9.5.5 Plans to address staffing shortages and agency demands should a COVID-19 outbreak occur.

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

4410 Skilled Home Health Agencies (Licensure)

DIVISION OF HEALTH CARE QUALITY

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

EMERGENCY SECRETARY'S ORDER

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

4468 Delivery of Hospice Services

AUTHORITY

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

REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 37 (07/01/21).

In addition, hospice staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 7.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 4468 Delivery of Hospice Services, specifically, Section 7.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

7.0 **Infection Prevention and Control**

7.4 **Specific Requirements for COVID-19**

- 7.4.1** **Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.**
- 7.4.2** **All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.**

- 7.4.3 The hospice must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 7.5 The hospice shall amend their policies and procedures to include:
- 7.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 7.5.2 Staff refusals to participate in COVID-19 testing:
- 7.5.3 Staff refusals to authorize release of testing results or vaccination status to the hospice.
- 7.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the hospice to inform infection control and prevention strategies; and
- 7.5.5 Plans to address staffing shortages and hospice demands should a COVID-19 outbreak occur.

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

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 Kathryn.Evinger@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 10th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4468 Delivery of Hospice Services, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

4468 Delivery of Hospice Services (Break in Continuity of Sections)

7.0 Infection Prevention and Control

(Break in Continuity Within Section)

- 7.4 Specific Requirements for COVID-19
- 7.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.
- 7.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.
- 7.4.3 The hospice must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to patients by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 7.5 The hospice shall amend their policies and procedures to include:
- 7.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 7.5.2 Staff refusals to participate in COVID-19 testing:
- 7.5.3 Staff refusals to authorize release of testing results or vaccination status to the hospice.

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- 7.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the hospice to inform infection control and prevention strategies; and
 - 7.5.5 Plans to address staffing shortages and hospice 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:**

4468 Delivery of Hospice Services

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b) and (d), 2702(h), and 2707
(14 **Del.C.** §§122(b) and (d), 2702(h), & 2707)
14 **DE Admin. Code** 615

PUBLIC NOTICE**Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****615 School Attendance****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del. C.** §§122(b), 2702(h), and 2707 the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code 615 School Attendance**. This regulation is being amended to clarify the following: (1) to require that school district and charter school attendance policies include how families and students may access supports and resources for student absences due to social, emotional and behavioral wellness; (2) to require the school district and charter school attendance policies and available resources for addressing attendance be given to parents, guardians or caregivers when student absences exceed 10 unexcused absence; (3) to require school districts and charter schools distribute and explain the school attendance policy to all educators and support staff at the beginning of each school year; (4) to comply with HB 163 of the 151st General Assembly regarding absences due to religious observances; and (5) to comply with HB 175 of the 151st General Assembly regarding absences for the participation in civic engagements.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 1, 2021 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. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards. The amended regulation should help increase civic engagement, which may impact student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation should help improve students' health and safety, especially the socio-emotional and behavioral health of students experiencing chronic absenteeism.

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

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting, or administrative requirements or mandates on decision makers.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to the Department or local school boards for implementing this amended regulation. The Department and the school districts currently identify socio-emotional and behavioral health student supports.

***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/october2021/proposed/25 DE Reg 360RFA 10-01-21.pdf>

615 School Attendance

1.0 Required Attendance Policy

Each school district and charter school shall have an attendance policy that complies with 14 Del.C. Ch. 27 and which defines and describes the district's or charter school's rules concerning attendance for students K to 12.

2.0 Elements of Attendance Policy

2.1 The attendance policy shall include information on how families and students may access supports and resources for student absences due to social, emotional and behavioral wellness.

PROPOSED REGULATIONS

- 2.2 The attendance policy shall permit one excused absence per school year for students in grades 6 through 12 to attend civic engagements, such as visits to the United States Capitol, Delaware Legislative Hall, political or cultural significance sites, to advocate or testify on behalf of legislation, or to participate in a rally, march, or protest. The student's parent, guardian, or relative caregiver must submit a signed, written excuse which is received by the district or charter school at least three (3) days before the student's absence.
- 2.3 The attendance policy shall include how school districts and charter schools will handle absences due to religious observances, including, but not limited to, the following:
- 2.3.1 A student shall be excused for any of the following religious holidays when the school district or charter school receives a student's parent, guardian, or relative caregiver's signed, written excuse:
- Rosh Hashanah (Jewish)
 - Yom Kippur (Jewish)
 - Dussehra (Hindu)
 - Sukkot (Jewish)
 - Diwali (Hindu)
 - Birth of Bahá'u'lláh (Baha'i)
 - Sangha Day (Buddhist)
 - Maha Shivaratri (Hindu)
 - Naw- Rúz (Baha'i)
 - Holi (Hindu)
 - Ram Navami (Hindu)
 - Beginning of Ramadan (Islamic)
 - Theravada (Buddhist)
 - Laitlat Ul Qadr (Islamic)
 - Eid al-Fitr (end of Ramadan) (Islamic)
 - Vesak (Buddhist)
 - Shavuot (Jewish)
- 2.3.2 Each school district and charter school may excuse student absences on any other day not included on this list for religious or cultural observances.
- 2.3.3 A student of any school district or charter school who is absent due to a religious holiday observance shall not be deprived of any award or eligibility to compete for any award.
- 2.3.4 The attendance policy must discourage teachers from scheduling major grading events, such as tests, examinations, presentations, or project due dates on religious holidays.
- 2.3.5 A student who misses a grading event due to excused absence for observance of a religious holiday must be allowed the opportunity to take the test on an alternate day or take an alternate test or be given some other means to recover credit.
- 2.3.6 The Department of Education shall annually release a list of upcoming religious holidays for the upcoming school year and shall also keep an updated list on the Department of Education website.
- 2.3.7 The list in this regulation includes the name of the holiday to be observed. For an annual school year calendar with dates for the school year, visit the Department of Education's website. The annual calendar will be sent to all school districts and charter schools in time for school calendars creation.
- 2.3.8 Religious holidays occurring outside the standard school year are not included on this list. Holidays already included as public holidays on the State of Delaware calendar are not included on this list. All Jewish and Islamic holidays begin at sundown on the evening before the holiday. For holidays more than a day long, the date listed on the annual calendar is considered to be the time a student would be out of school. Additionally, some holidays, including those not listed here, involve fasting; so while a student may be in school, their parent/guardian may consider letting the school know the student is fasting.

2-03.0 Distribution of Attendance Policy

- 2-13.1 Each district or charter school shall distribute and explain these policies to every student at the beginning of each school year.
- 2-23.2 Each district or charter school shall distribute and explain these policies to each student enrolling or ~~enrolling~~ re-enrolling during the school year.
- 2-33.3 Each district or charter school shall post the attendance policy on its website and notify a parent, ~~guardian~~ guardian, or relative caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, ~~guardian~~ guardian, or relative caregiver upon request or when absences have exceeded ten (10) unexcused absences. This hard copy will include phone numbers to area supports and a school contact number.
- 3.4 Each district or charter school shall distribute the school's attendance policy to their educators and support staff at the beginning of each school year.

3-04.0 Reporting Requirements and Timelines

- 3-14.1 Each ~~public~~ school district or charter school shall have an electronic copy of its current attendance policy on file with the Department of Education.
- 3-24.2 Each ~~public~~ school district or charter school shall provide an electronic copy of any revised attendance policy within ninety (90) days of such ~~revision(s)~~ revisions regardless of whether said revisions were made as a result of changes to federal, state or local law, regulations, guidance or policies.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 Del.C. §122(b)(2))
14 DE Admin. Code 815

PUBLIC NOTICE

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

815 Health Examinations and Screening

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del. C. § 3003A, the Secretary of Education intends to amend 14 DE Admin. C. 815 Health Examinations and Screening. This regulation is being amended to add language regarding COVID-19 mitigation and prevention in Delaware public and private schools. Additionally, outdated language regarding health examination requirements in previous school years was removed. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 1, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected. The amended regulation specifically addresses the challenge of reducing the transmission of COVID-19 in schools and child care centers.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level. The Secretary of Education takes this action to promote student safety and a consistent approach across schools and child care centers.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers. The Secretary of Education takes this action to promote student safety and a consistent approach across schools and child care centers.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

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

***Please Note: 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/october2021/proposed/25 DE Reg 363RFA 10-01-21.pdf>

815 Health Examinations and Screening

1.0 Definitions

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

"**Delaware School Health Examination Form**" means the ~~age-appropriate~~ age-appropriate form developed by the Delaware Department of Education for documenting information from the parent, guardian or ~~Relative Caregiver~~ relative caregiver and healthcare provider on the student's health status.

"**Delaware Interscholastic Athletic Association (DIAA) Pre-Participation Physical Evaluation Form**" means the form approved by the DIAA.

"**Healthcare Provider**" means a currently licensed physician, advanced practice nurse, nurse practitioner, or physician's assistant.

"~~Health Examination or Health Evaluation~~ **Examination**" or "**Health Evaluation**" means the medical or nursing examination or evaluation and assessment of the body by a healthcare provider to determine health status and conditions.

2.0 Health Examinations

2.1 All public school students shall have two (2) health examinations, as provided in this section, that have been administered by a healthcare provider. The first health examination shall have been done within

the two (2) years prior to entry into school. ~~Beginning in school year 2012-2013, the second health examination shall be strongly recommended and not required for entering grade 9 students. Beginning in school year 2013-2014, the second health examination shall be required for entering grade 9 students.~~ The second required health examination shall be done within the two (2) years prior to entry into grade 9. Within thirty calendar days after entry, new enterers and grade 9 students who have not complied with the second health examination requirement shall have received the health examination or shall have a documented appointment with a licensed ~~health care~~ healthcare provider for the health examination. ~~For purposes of this regulation only, students entering grades 10, 11 or 12 in the 2013-2014 school year shall not be required to have the second health examination or evaluation.~~

- 2.1.1 The requirement for the health examination may be waived for students whose 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 USC §11434a) presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of health examinations.
- 2.1.2 Notwithstanding the above, a second health examination shall not be required if the first health examination is within two (2) years of entering Grade 9.
- 2.1.3 The Delaware School Health Examination Form or the DIAA Pre-Participation Physical Evaluation ~~form~~ Form may be used as documentation of the health examination. In addition, a district or charter school may accept a health examination or evaluation documentation on a form which includes, at a minimum, health history, immunizations, results on medical ~~testings~~ tests and screenings, medical diagnoses, prescribed medications and treatments, and healthcare plans.
- 2.1.4 The school nurse shall record all findings within the student's electronic medical record (see 14 **DE Admin. Code** 811) and maintain the original copy in the child's medical file.

Non regulatory note: See 14 **DE Admin. Code** 1008.3 and 14 **DE Admin. Code** 1009.3 for physical or health examination requirements associated with participation in sports.

3.0 Screening

- 3.1 Vision and Hearing Screening
 - 3.1.1 Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th of each school year.
 - 3.1.1.1 In addition to the screening requirements in subsection 3.1.1, screening shall also be provided to new enterers, students referred by a teacher or an administrator, and students considered for special education.
 - 3.1.1.1.1 Driver education students shall have a vision screening within a one (1) year prior to ~~of~~ their ~~in-car~~ in-car driving hours.
 - 3.1.2 The school nurse shall record the results within the student's electronic medical record and shall notify 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 USC §11434a) if the student has a suspected problem.
- 3.2 Postural and Gait Screening
 - 3.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by December ~~15th~~ 15th of each school year.
 - 3.2.2 The school nurse shall record the findings within the student's electronic medical record (see 14 **DE Admin. Code** 811) and shall notify the parents, 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 USC §11434a) if a suspected deviation has been detected.
 - 3.2.2.1 If a suspected deviation is detected, the school nurse shall refer the student for further evaluation through an ~~on-site~~ on-site follow up evaluation or a referral to the student's ~~health care~~ healthcare provider.
- 3.3 Lead Screening

PROPOSED REGULATIONS

- 3.3.1 Children who enter school at kindergarten or at age 5 or prior, shall be required to provide documentation of lead screening as per 16 **Del.C.** Ch. 26.
- 3.3.1.1 For children enrolling in kindergarten, documentation of lead screening shall be provided within sixty (60) calendar days of the date of enrollment. Failure to provide the required documentation shall result in the child's exclusion from school until the documentation is provided.
- 3.3.1.2 Exemption from this requirement may be granted for religious exemptions, per 16 **Del.C.** §2603.
- 3.3.1.3 The Childhood Lead Poisoning Prevention Act, 16 **Del.C.**, Ch. 26, requires all ~~health care~~ healthcare providers to order lead screening for children at or around the age of 12 months ~~of age~~.
- 3.3.2 The school nurse shall document the lead screening within the student's electronic medical record. See 14 **DE Admin. Code** 811.

4.0 **Reserved.**

5.0 **Reserved.**

6.0 **COVID-19 Mitigation and Prevention**

6.1 **Schools**

- 6.1.1 All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.
- 6.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.
- 6.1.3 Masks are not required in school buildings:
- 6.1.3.1 When seated at a table to eat or drink.
- 6.1.3.2 When asleep.
- 6.1.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.
- 6.1.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.
- 6.1.3.5 When outdoors.
- 6.1.3.6 When students are not in the building, except when students travel on school buses.
- 6.1.4 All schools that provide bus service to and from school shall require mask use by all students, faculty, staff, and visitors riding school buses, regardless of vaccination status.

6.2 **Child Care Facilities**

- 6.2.1 All persons or associations conducting child care as defined in 14 **Del.C.** §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.
- 6.2.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.
- 6.2.3 Masks are not required in child care facilities:
- 6.2.3.1 When seated at a table to eat or drink.
- 6.2.3.2 When asleep.
- 6.2.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.
- 6.2.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.
- 6.2.3.5 When outdoors.
- 6.2.3.6 When children are not in the building.

6.2.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(28) (14 Del.C. §122(b)(28))
14 DE Admin. Code 932

PUBLIC NOTICE

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

932 Military-Connected Youth

A. TYPE OF REGULATORY ACTION REQUIRED

Reauthorization of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §122(b)(28), the Secretary of Education seeks the consent of the State Board of Education to reauthorize 14 DE Admin. Code 932 Military-Connected Youth. This regulation is being reauthorized in keeping with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. No changes are warranted at this time, therefore it is being reauthorized.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 1, 2021 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. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the proposed regulation help improve student achievement as measured against state achievement standards? The proposed regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the reauthorized regulation help ensure that all students receive an equitable education? The proposed regulation impacts a limited number of students and will help ensure those students receive an equitable education.

3. Will the proposed regulation help to ensure that all students' health and safety are adequately protected? The proposed regulation impacts a limited number of students and will help ensure those students' health and safety are adequately protected.

4. Will the proposed regulation help to ensure that all students' legal rights are respected? The proposed regulation impacts a limited number of students and continues to help ensure that those students' legal rights are respected.

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

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

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

8. Will the proposed 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 proposed regulation is consistent with and not an impediment to the implementation of other state educational policies. The proposed regulation simply involves data gathering.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the proposed regulation.

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

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

<http://regulations.delaware.gov/register/october2021/proposed/25 DE Reg 367RFA 10-01-21.pdf>

932 Military-Connected Youth

1.0 Purpose

This regulation outlines the process for districts and charter schools to annually identify enrolled students who are "military-connected youth." This regulation is established pursuant to 14 **Del.C.** §122(b)(28).

2.0 Definitions

"Military-Connected Youth" means any student having an immediate family member, including a parent, step-parent, sibling or any other person residing in the same household, who is on active duty, serving in the reserve component, or recently retired from a branch of the United States armed forces. Such branches consist of United States Army, United States Air Force, United States Marine Corps, United States Navy, National Guard, United States Coast Guard, National Oceanic and Atmospheric Administration or the United States Public Health Service.

"Recently Retired" for the purposes of this regulation, means having left military service within 18 months prior to September 30 of the current school year; identified as a disabled veteran; or killed in action.

3.0 Data Collection and Access

- 3.1 Each district and charter school shall include a military-connected identifier as part of its annual enrollment process and student information update.
- 3.2 Each district and charter school shall identify which school personnel have access to the military-connected identifier.

4.0 Use Exemptions

- 4.1 The identification of a military-connected youth shall not be used for purposes of determining school achievement, growth or performance.
 - 4.2 The identification of a military-connected youth is not a public record under Delaware's Freedom of Information Act or any other law, and shall not be made public by any person, except as permitted under the provisions of the Family Educational Rights and Privacy Act of 1974.
-

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A (14 Del.C. §3003A)
14 DE Admin. Code 933

PUBLIC NOTICE

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

933 DELACARE: Regulations for Early Care and Education and School-Age Centers

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del. C. §3003A, the Secretary of Education intends to amend 14 DE Admin. C. 933 DELACARE: Regulations for Early Care and Education and School-Age Care. This regulation is being amended to add language regarding COVID-19 mitigation and prevention for compliance by early care and education and school-age care facilities. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 1, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected. The amended regulation specifically addresses the challenge of reducing the transmission of COVID-19 in education centers.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level. The Secretary of Education takes this action to promote student safety and a consistent approach across education centers.

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

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

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

PROPOSED REGULATIONS

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

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

***Please Note:**

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

<http://regulations.delaware.gov/register/october2021/proposed/25 DE Reg 369RFA 10-01-21.pdf>

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

933 DELACARE: Regulations for Early Care and Education and School-Age Centers

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A (14 Del.C. §3003A)
14 DE Admin. Code 934

PUBLIC NOTICE

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

934 Regulations for Family and Large Family Child Care Homes

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del. C. § 3003A, the Secretary of Education intends to amend 14 DE Admin. C. 934 Regulations for Family and Large Family Child Care Homes. This regulation is being amended to add language regarding COVID-19 mitigation and prevention for compliance by family and large family child care homes. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 1, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOeregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected. The amended regulation specifically addresses the challenge of reducing the transmission of COVID-19 in family and large family child care homes.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local

board and school level? The amended regulation does not change the decision making at the local board and school level. The Secretary of Education takes this action to promote student safety and a consistent approach across child care homes.

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

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

***Please Note:**

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

[http://regulations.delaware.gov/register/october2021/proposed/25 DE Reg 370RFA 10-01-21.pdf](http://regulations.delaware.gov/register/october2021/proposed/25%20DE%20Reg%20370RFA%2010-01-21.pdf)

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

[934 Regulations for Family and Large Family Child Care Homes](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A (14 Del.C. §3003A)
14 DE Admin. Code 938

PUBLIC NOTICE

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

[938 Regulations for Youth Camps](#)

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del. C. §3003A, the Secretary of Education intends to amend 14 DE Admin. C. 938 Regulations for Youth Camps. This regulation is being amended to add language regarding COVID-19 mitigation and prevention as it applies to youth camps. The regulation is also being edited to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 1, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of

this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected. The amended regulation specifically addresses the challenge of reducing the transmission of COVID-19 in youth camps.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level. The Secretary of Education takes this action to promote student safety and a consistent approach across youth camps.

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

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

***Please Note:**

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

<http://regulations.delaware.gov/register/october2021/proposed/25 DE Reg 371RFA 10-01-21.pdf>

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

[938 Regulations for Youth Camps](#)

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1532

PUBLIC NOTICE

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

1532 Middle Level Mathematics Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board (“Board”), acting in consultation and cooperation with the Delaware Department of Education (“Department”), developed amendments to 14 DE Admin. Code 1532 Middle Level Mathematics Teacher. The regulation concerns the requirements for a Middle Level Mathematics Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms in, and striking a defined term from, Section 2.0; clarifying the requirements for issuing a Middle Level Mathematics Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Middle Level Mathematics Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Middle Level Mathematics Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

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

C. IMPACT CRITERIA

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

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

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

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

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

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

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

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

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

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

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

<http://regulations.delaware.gov/register/october2021/proposed/25 DE Reg 373RFA 10-01-21.pdf>

1532 Middle Level Mathematics Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Middle Level Mathematics Teacher Standard Certificate pursuant to 14 **Del.C.** §1220(a), ~~for Middle Level Mathematics Teacher~~. This certification Standard Certificate is required ~~for~~ to teach mathematics courses up to and including Algebra 1 and Integrated Math 1 in grades 6, 7 and 8 in a Middle Level Delaware public school. Notwithstanding the above requirement, the Secondary Mathematics 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 Mathematics Teacher 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.~~ The Middle Level Mathematics Teacher Standard Certificate may be used to teach Algebra 1 and Integrated Math 1 at the high school level.

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.

“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.

“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 Mathematics Teacher Standard Certificate ~~as a Middle Level Mathematics 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; ~~2003~~ and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for an educator’s license in Delaware and presents proof of a Valid and Current License or Certificate as a middle level mathematics teacher issued by another state or jurisdiction.
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Middle Level Mathematics 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 Mathematics (ETS Test # 5169) a Passing Score of 165.~~
- 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 Mathematics certificate from the National Board for Professional Teaching Standards; or

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- 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in middle level mathematics 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 mathematics as provided in 14 Del.C. §§1260 – 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in middle mathematics education.
- 4.1.2 The applicant shall have achieved a minimum score on one of the following examinations:
 - 4.1.2.1 A minimum score of 155 on the Praxis Subject Assessment – Middle School Mathematics (ETS Test Code # 5164).
 - 4.1.2.2 A minimum score of 165 on the Praxis Subject Assessment – Middle School Mathematics (ETS Test Code # 5169); or
- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a minimum score on the Praxis Subject Assessment 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 Mathematics Teacher Standard Certificate:
 - 5.2.1 Evidence of obtaining and maintaining a Mathematics 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 Subject Assessment 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 Mathematics Teacher Standard Certificate:
 - 5.3.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and
 - 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate as a middle level mathematics teacher, the following documentation is required in the application for a Middle Level Mathematics 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 Mathematics 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 Mathematics Teacher Standard Certificate is not subject to renewal.

7.0 Disciplinary Action

- 7.1 An Educator's Middle Level Mathematics 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 Mathematics Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

- 8.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Middle Level Mathematics 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 Mathematics Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.
- 8.1.1 For school districts, requests shall be approved by the superintendent of the school district.
- 8.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

9.0 Past Certificate Recognized

The Department shall recognize a Middle Level Mathematics 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 mathematics and Algebra 1 and Integrated Math 1 at either the middle or secondary school level.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1539

PUBLIC NOTICE

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

1539 Health Education Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1539 Health Education Teacher. The regulation concerns the requirements for a Health Education Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Health Education Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Health

Education Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Health Education Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

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

C. IMPACT CRITERIA

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

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

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

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

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

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

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

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

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

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

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

[http://regulations.delaware.gov/register/october2021/proposed/25 DE Reg 377RFA 10-01-21.pdf](http://regulations.delaware.gov/register/october2021/proposed/25%20DE%20Reg%20377RFA%2010-01-21.pdf)

1539 Health Education Teacher

1.0 Content

- 4-1 This regulation shall apply to the issuance of a ~~Standard Certificate~~, Health Education Teacher Standard Certificate pursuant to 14 ~~Del.C. §1220(a)~~, for ~~Health Education Teacher~~. This ~~certification Standard Certificate~~ is required for all ~~Health Education Teachers~~ health education teachers in Delaware public schools.
- 4-2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2-1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2-2 The following ~~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.

"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.

"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 Health Education Teacher Standard Standard Certificate as a ~~Health Education Teacher~~ to an educator applicant who has met the following:

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- 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; 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
- 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and Has met the requirements for an educator's license in Delaware and presents proof of a Valid and Current License or Certificate as a health education teacher issued by another state or jurisdiction.~~
- 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~

3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Health 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 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:~~
 - 4.1.1.1 ~~Health Education (ETS Test # 5551) a Passing Score of 162; or~~
 - 4.1.1.2 ~~Health and Physical Education: Content Knowledge (ETS Test # 5857) a Passing Score of 160.~~
- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
 - 4.1.1 The applicant shall have satisfied one of the following education requirements:
 - 4.1.1.1 Obtained and currently maintain a Health Education certificate from the National Board for Professional Teaching Standards; or
 - 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in health 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 health education as provided in 14 Del.C. §§1260 – 1266; or
 - 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in health education; or
 - 4.1.1.5 If the applicant is applying for an Initial License after the applicant completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school as provided in subsection 4.1.3.1 of 14 DE Admin. Code 1510, earned a bachelor's degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 college credits or an equivalent number of hours in professional development with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department related to health education of which at least six credits focus on pedagogy.
 - 4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the 15 credits or the equivalent number of hours in professional development subject to the Department's approval.
 - 4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the 15 credits or the equivalent number of hours in professional

development in consultation with the Department and subject to the Department's approval.

4.1.1.5.3 For the purpose of subsection 4.1.1.5, professional development means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants' attitudes, insights, and perspectives and ultimately results in improved professional practice.

4.1.1.5.4 Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:

4.1.1.5.4.1 Relevant courses from a Regionally Accredited college or university in health education are not available to the applicant online or in the applicant's county of residence; and

4.1.1.5.4.2 The activity is grounded in research and current best practices as judged by the Department's content specialist in health education; and

4.1.1.5.4.3 The activity is documented by the provider to provide knowledge and skills that are required for the health education certification; and

4.1.1.5.4.4 The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

4.1.2 The applicant shall have achieved the minimum score on one of the following examinations:

4.1.2.1 A minimum score of 162 on the Praxis Subject Assessment – Health Education (ETS Test Code # 5551); or

4.1.2.2 A minimum score of 160 on the Praxis Subject Assessment – Health and Physical Education – Content Knowledge (ETS Test Code # 5857).

4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved the minimum score on an examination as provided in subsection 4.1.2.

5.0 Application Requirements

5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.

5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Health Education Teacher Standard Certificate:

5.2.1 Evidence of obtaining and maintaining a Health Education certificate from the National Board for Professional Teaching Standards, if applicable; and

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

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

5.2.2.2 Sealed paper transcripts may be submitted.

5.2.2.3 The Department will not accept copies of transcripts; and

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

5.2.4 An experience form, completed in full and signed by the applicant, if applicable; and

5.2.5 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and

5.2.6 Additional documentation as required by the Department.

5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Health Education Teacher Standard Certificate:

5.3.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and

5.3.2 Additional documentation as required by the Department.

PROPOSED REGULATIONS

5.4 For applicants who have met the requirements for licensure as an educator in Delaware and hold a Valid and Current License or Certificate in health education from another state or jurisdiction, the following documentation is required in the application for a Health Education Teacher Standard Certificate:

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

5.4.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

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

6.2 A Health Education Teacher Standard Certificate is not subject to renewal.

7.0 Disciplinary Action

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

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

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

8.0 Secretary of Education Review

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

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

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

9.0 Past Certificate Recognized

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 122(3)p (16 Del.C. §122(3)p)
16 DE Admin. Code 4405

PUBLIC NOTICE

4405 Free Standing Surgical Centers

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 1, Section 122(3)(p), Delaware Health and Social Services (DHSS)/ Division of Health Care Quality (DHCQ) is proposing regulations governing Free Standing Surgical Centers.

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 by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on November 1, 2021. Please identify in the subject line: Regulations Governing Free Standing Surgical Centers.

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 Free Standing Surgical Centers.

Statutory Authority

16 Del.C. §122(3)(p)

Background

As more services are being provided in the community setting, it is necessary to ensure outpatient surgical services are provided in accordance with recognized standards of practice.

Summary of Proposal

Summary of Proposed Changes

The Division of Health Care Quality plans to publish the "proposed" amendments to the regulations governing free standing surgical centers and hold them out for public comment per Delaware law. The purpose of this proposed amendment is to update the requirements to be consistent with federal requirements and nationally recognized standards of practice to ensure patients receive safe and quality care from a free standing surgical center. In addition, technical changes were made to update the licensure language.

Lastly, rapid and widespread transmission of COVID-19 significantly impacted many vulnerable individuals receiving healthcare services throughout the community. While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, free standing surgical center staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations.

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 1, 2021.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/october2021/proposed/25 DE Reg 383RFA 10-01-21.pdf>

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

[4405 Free Standing Surgical Centers](#)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE**Program of All-Inclusive Care for the Elderly (PACE)**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 Del. C. § 512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan to incorporate the current version of the Program of All-Inclusive Care for the Elderly (PACE) State Plan Amendment preprint.

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 Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on November 1, 2021. Please identify in the subject line: Program of All-Inclusive Care for the Elderly (PACE)

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan to incorporate the current version of the Program of All-Inclusive Care for the Elderly (PACE) State Plan Amendment preprint.

Statutory Authority

42 CFR 460

Background

The Centers for Medicare & Medicaid Services (CMS) advised states to no longer use the Upper Payment Limit (UPL) when drafting rates for the Program of All-Inclusive Care for the Elderly (PACE). States are required to use the Amount that Would Otherwise be Paid (AWOP) and submit a SPA indicating compliance.

Summary of Proposal*Purpose*

The proposed amendment is to incorporate the current version of the Program of All-Inclusive Care for the Elderly (PACE) State Plan Amendment preprint.

Summary of Proposed Changes

Effective for services provided on and after December 11, 2021 DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to incorporate the current version of the Program of All-Inclusive Care for the Elderly (PACE) State Plan Amendment preprint.

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, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments should be received by 4:30 p.m. on November 1, 2021.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

There is no anticipated fiscal impact.

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

<http://regulations.delaware.gov/register/october2021/proposed/25 DE Reg 384RFA 10-01-21.pdf>

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

<http://regulations.delaware.gov/register/october2021/proposed/Supp 2 3.1-A Page 1 PACE.pdf>

<http://regulations.delaware.gov/register/october2021/proposed/Supp 2 3.1-A Page 2 PACE.pdf>

<http://regulations.delaware.gov/register/october2021/proposed/Supp 2 3.1-A Page 3 PACE.pdf>

<http://regulations.delaware.gov/register/october2021/proposed/Supp 2 3.1-A Page 4 PACE.pdf>

<http://regulations.delaware.gov/register/october2021/proposed/Supp 2 3.1-A Page 5 PACE.pdf>

<http://regulations.delaware.gov/register/october2021/proposed/Supp 2 3.1-A Page 6 PACE.pdf>

<http://regulations.delaware.gov/register/october2021/proposed/CMS Pre-Print Pages PACE.pdf>

PROPOSED REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c); (7 **Del.C.** §6010(a) & (c))
7 **DE Admin. Code** 1102

REGISTER NOTICE**SAN #2021-05****1102 Permits**

1. TITLE OF THE REGULATIONS:

7 **DE Admin. Code** 1102 "Permits".

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

The Division of Air Quality of the Department of Natural Resources and Environmental Control (DNREC) is proposing to amend 7 **DE Admin. Code** 1102, subsections 12.3.2 and 12.4.2 for public notice publication requirements for general permits. In 2016, US Environmental Protection Agency (EPA) issued a final rule which updated the list of contents to be identified in the public notices for Title V facilities. The Division is proposing to amend the public notice requirements in 7 **DE Admin. Code** 1102, to ensure consistency with the wording of EPA's final rule and 7 **DE Admin. Code** 1130 Title V public notice requirements.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Ch. 60, Section 6010 (a) and (c).

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

None.

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket # 2021-R-A-0010) will be held on Wednesday, October 27, 2021 beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrechearings>. If prompted for a password, please use DAQRegs. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 179 845 2350. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The proposed amendments may be inspected online starting October 1, 2021 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Taylor Englert by phone at 302-739-9402 or by email at Taylor.Englert@delaware.gov.

The Department will accept public comment through the close of business on Thursday, November 11, 2021. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

Lisa Vest, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Taylor Englert
Division of Air Quality-DNREC
100 W. Water Street, Suite 6A, Dover, DE 19904
Phone: (302)739-9402; email: Taylor.Englert@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/october2021/proposed/25 DE Reg 386RFA 10-01-21.pdf>

1102 Permits

(Break in Continuity of Sections)

06/11/2006 xx/xx/xxxx

12.0 Public Participation

(Break in Continuity Within Section)

- 12.3 For each permit application requesting to make the terms and conditions in a permit to effectively limit potential to emit to avoid applicability of a federal standard, regulation, or other federal requirement, the Department shall provide for public participation and comment by:

(Break in Continuity Within Section)

- 12.3.2 Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and the name, address, and telephone number of a person (or an email or Web site address) from whom interested persons may obtain additional information, and (4) the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).

(Break in Continuity Within Section)

- 12.4 For each permit application requesting to allow the terms and conditions of a construction permit to transfer to a 7 DE Admin. Code 1130 permit via the administrative permit amendment process specified in 7 DE Admin. Code 1130, the Department shall provide for public participation and comment by:

(Break in Continuity Within Section)

- 12.4.2 Advertising in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State: 1) the fact that the application has been received, the identity of the affected facility, and the city or town in which the facility is located, 2) a brief description of the nature of the application, to include the activity or activities involved in the permit action and the emissions or the change in emission involved, and 3) the name, address and telephone number of a Department representative with responsibility for the permitting action, the place at which a copy of the public file may be inspected, and the name, address, and telephone number of a person (or an email or Web site address) from whom interested persons may obtain additional information, and (4) the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).

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

1102 Permits

PROPOSED REGULATIONS

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c); (7 **Del.C.** §6010(a) & (c))
7 **DE Admin. Code** 1103

REGISTER NOTICE

SAN #2021-06

1103 Ambient Air Quality Standards

1. TITLE OF THE REGULATIONS:

7 **DE Admin. Code** 1103 "Ambient Air Quality Standards".

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

The Division of Air Quality of the Department of Natural Resources and Environmental Control (DNREC) is proposing to amend 7 **DE Admin. Code** 1103, Section 6.0 to update the ambient air quality standard for ground level ozone. On December 23, 2020, the U.S. Environmental Protection Agency (EPA) issued a final rule to retain the primary and secondary ozone National Ambient Air Quality Standards (NAAQS). The standards, established in 2015, are set at 0.070 parts per million (ppm). Currently, the primary and secondary ozone standards in 7 **DE Admin. Code** 1103, Section 6.0 are 0.075 ppm. This action will amend the current ozone standards in 7 **DE Admin. Code** 1103 to 0.070 ppm.

In addition, this action will update Code of Federal Regulations (CFR) reference dates for all NAAQS in 7 **DE Admin Code** 1103, and will remove 7 **DE Admin. Code** 1103, subsections 4.2 (SO₂ 24-hour primary standard) and 4.3 (SO₂ annual primary standard), as EPA revoked these two standards in 2010.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Ch. 60, Section 6010 (a) and (c).

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

None.

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket # 2021-R-A-0011) will be held on Wednesday, October 27, 2021 beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrechearings>. If prompted for a password, please use DAQRegs. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 179 845 2350. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnreccomments> or by telephone at 302-739-9295.

The proposed amendments may be inspected online starting October 1, 2021 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Taylor Englert by phone at 302-739-9402 or by email at Taylor.Englert@delaware.gov.

The Department will accept public comment through the close of business on Thursday, November 11, 2021. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnreccomments>, or by U.S. mail to the following address:

Lisa Vest, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:
Taylor Englert
Division of Air Quality-DNREC
100 W. Water Street, Suite 6A, Dover, DE 19904
Phone: (302)739-9402; email: Taylor.Englert@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/october2021/proposed/25 DE Reg 388RFA 10-01-21.pdf>

1103 Ambient Air Quality Standards

01/11/2014 xx/xx/xxxx

1.0 General Provisions

- 1.1 Air quality standards are required to assure that ambient air quality shall be consistent with established criteria and shall serve to effectively and reasonably manage the air resources of the State of Delaware.
 - 1.1.1 Primary air quality standards provide public health protection, including protecting the health of sensitive populations such as asthmatics, children, and the elderly.
 - 1.1.2 Secondary air quality standards provide public welfare protection, including protection against decreased visibility and damage to crops, animals, vegetation, and buildings.
- 1.2 At such time as additional pertinent information becomes available with respect to applicable air quality criteria, recommendations shall be incorporated and the air quality standards shall be subject to revisions.
- 1.3 The absence of a specific ambient air quality standard shall not preclude actions by the Department to control contaminants to assure protection, safety, welfare, and comfort of the people of the State of Delaware.
- 1.4 Air quality standards are defined by frequency distribution presentations and arithmetic averages. The characteristic parameters describing the frequency distribution are the geometric mean and 99th percentile.
 - 1.4.1 The geometric mean is defined as the Nth root of the product of N numbers. Assuming a log-normal cumulative frequency distribution, the 50th percentile value will be equal to the geometric mean.
 - 1.4.2 The arithmetic average mean is defined as the sum of a set of values divided by the number of values.
 - 1.4.3 The 99th percentile for a group of numbers is defined as that value which is exceeded by one percent of the numbers.
- 1.5 The ambient air quality values stated herein shall apply to all areas outside a source property line.
- 1.6 The sampling and analytical procedures and techniques employed to determine ambient air concentrations of contaminants shall be consistent with methods which result in a representative evaluation of the prevailing conditions. The following methods shall be used directly or employed as reference standards against which other methods may be calibrated;
 - 1.6.1 Ambient concentrations of total suspended particulates shall be determined by the reference high volume method in accordance with 40 CFR, Part 50, Appendix B, Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method), ~~April 22, 1983~~ July 1, 2019.
 - 1.6.2 Ambient concentrations of sulfur dioxide shall be determined by the reference or equivalent method in accordance with 40 CFR, Part 50, Appendix A-1, Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), ~~June 22, 2010~~ July 1, 2019, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), ~~June 22, 2010~~ July 1, 2019.

- 1.6.3 Ambient concentrations of carbon monoxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix C, Measurement Principle and Calibration Procedure for the Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry), ~~August 31, 2011~~ July 1, 2019.
- 1.6.4 Ambient concentrations of ozone corrected for interferences due to nitrogen oxides and sulfur dioxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix D, Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere, ~~July 18, 1997~~ July 1, 2019.
- 1.6.5 Ambient concentrations of methane and non-methane hydrocarbons shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix E, ~~June 29, 1979~~ July 1, 2019.
- 1.6.6 Ambient concentrations of nitrogen dioxide shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix F, Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence), ~~January 20, 1983~~ July 1, 2019.
- 1.6.7 Ambient concentrations of hydrogen sulfide shall be determined by gas chromatographic separation - flame photometric detection.
- 1.6.8 Ambient concentrations of lead shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix ~~G~~ R, Reference Method for the Determination of Lead in Total Suspended Particulate Matter, ~~August 2, 2013~~ July 1, 2019.
- 1.6.9 Ambient concentrations of PM₁₀ particulate shall be determined by a reference method in accordance with 40 CFR, Part 50, Appendix J, Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere, ~~August 7, 1987~~ July 1, 2019, or an equivalent method.
- 1.6.10 Ambient concentrations of PM_{2.5} particulate shall be determined by the reference method based on 40 CFR, Part 50, Appendix L, Reference Method for the Determination of Fine Particulate Matter as PM_{2.5} in the Atmosphere, ~~October 17, 2006~~ July 1, 2019.
- 1.7 Air quality standards are expressed in metric units with the approximate equivalent volumetric units in parentheses. The standard conditions for air ambient monitoring is 760 mm. Hg and 25°C. The formula to convert metric units to parts per million (ppm) is:

$$\text{ppm(vol)} = \frac{\mu\text{g/m}^3 \times 0.024465}{\text{MW}} \quad \text{or} \quad \frac{\text{mg/m}^3 \times 24.465 \times 10^{-6}}{\text{MW}}$$

where MW is molecular weight of the contaminant being measured.

02/01/1981

2.0 General Restrictions

No person shall cause the air quality standards specified in this Regulation to be exceeded.

02/01/1981

3.0 Suspended Particulates

- 3.1 The Primary Ambient Air Quality Standards for Particulate Matter are:
- 3.1.1 An annual geometric mean of 75 micrograms per cubic meter not to be exceeded, based upon 24 hour average concentrations.
- 3.1.2 A value of 260 micrograms per cubic meter not to be exceeded more than once per year, based upon 24 hour average concentrations.
- 3.2 The Secondary Ambient Air Quality Standards for Particulate Matter are:
- 3.2.1 An annual geometric mean of 60 micrograms per cubic meter as a guideline for achieving the secondary standard based upon 24 hour average concentrations.

- 3.2.2 A value of 150 micrograms per cubic meter not to be exceeded more than once per year, based upon 24 hour average concentrations.

01/11/2014 xx/xx/xxxx

4.0 Sulfur Dioxide

- 4.1 The national primary 1-hour air quality standard for oxides of sulfur is 75 parts per billion (ppb) measured in the ambient air as sulfur dioxide. The 1-hour ambient air quality standard is met when the three-year average of the annual (99th percentile) of the daily maximum 1-hour average concentration is less than or equal to 75 ppb.
- 4.1.1 Compliance with the national primary 1-hour air quality standard is determined in accordance with 40 CFR Part 50 Appendix T, Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide), ~~June 23, 2010~~ July 1, 2019.
- 4.1.2 The national primary 1-hour air quality standard for oxides of sulfur is set forth in 40 CFR Part 50.17, National Primary Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide), ~~June 22, 2010~~ July 1, 2019.
- 4.2 ~~The 24-hour primary national ambient air quality standard for oxides of sulfur is 0.14 parts per million (ppm), not to be exceeded more than once per calendar year. Reserved.~~
- 4.2.1 ~~Compliance with the national 24-hour primary ambient air quality standard for oxides of sulfur is determined in accordance with 40 CFR Part 50, Appendix A-1, Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), June 22, 2010, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), June 22, 2010.~~
- 4.2.2 ~~The national primary 24-hour ambient air quality standard for sulfur oxides is set forth in 40 CFR Part 50.4, National Primary Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide), June 22, 2010.~~
- 4.3 ~~The national primary annual ambient air quality standard for sulfur oxides of 0.030 parts per million (ppm), annual arithmetic mean, shall not be exceeded. Reserved.~~
- 4.3.1 ~~Compliance with the national annual primary ambient air quality standard for oxides of sulfur is determined in accordance with 40 CFR Part 50, Appendix A-1, Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), June 22, 2010, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), June 22, 2010.~~
- 4.3.2 ~~The national primary annual ambient air quality standard for sulfur oxides is set forth in 40 CFR Part 50.4, National Primary Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide), June 22, 2010.~~
- 4.4 The national secondary 3-hour ambient air quality standard for sulfur oxides is 0.5 parts per million (ppm), not to be exceeded more than once per calendar year.
- 4.4.1 Compliance with the national secondary 3-hour ambient air quality standard for oxides of sulfur is determined in accordance with 40 CFR Part 50, Appendix A-1, Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), ~~June 22, 2010~~ July 1, 2019, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), ~~June 22, 2010~~ July 1, 2019.
- 4.4.2 The national secondary 3-hour ambient air quality standard for sulfur oxides is set forth in 40 CFR Part 50.5, National Secondary Ambient Air Quality Standard for Sulfur Oxides (Sulfur Dioxide), ~~May 22, 1996~~ July 1, 2019.

~~02/01/1981~~ xx/xx/xxxx

5.0 Carbon Monoxide

- 5.1 The average concentration of carbon monoxide taken over any consecutive eight hours shall not exceed a value of 10 milligrams per cubic meter (9 ppm) more than once per year, as set forth in 40 CFR Part 50.8, National primary ambient air quality standards for carbon monoxide, July 1, 2019.
- 5.2 The average concentration of carbon monoxide taken over any one hour period shall not exceed 40 milligrams per cubic meter (35 ppm) more than once per year, as set forth in 40 CFR Part 50.8, National primary ambient air quality standards for carbon monoxide, July 1, 2019.

~~01/11/2014~~ xx/xx/xxxx

6.0 Ozone

- 6.1 The 1-hour primary and secondary national ambient air quality standard for ozone is 235 $\mu\text{g}/\text{m}^3$ (0.12 ppm). The primary and secondary ozone ambient air quality standards are met when the number of days per calendar year with maximum hourly average concentrations above 235 $\mu\text{g}/\text{m}^3$ (0.12 ppm) is equal to or less than 1, as determined by 40 CFR Part 50, Appendix H, Interpretation of the 1-hour Primary and Secondary National Ambient Air Quality Standards for Ozone, ~~July 18, 1997~~ July 1, 2019. The 1-hour primary and secondary national ambient air quality standards are set forth in 40 CFR Part 50.9, National 1-hour Primary and Secondary Ambient Air Quality Standards for Ozone, ~~May 14, 2012~~ July 1, 2019.
- 6.2 The 8-hour primary and secondary national ambient air quality standard for ozone is ~~0.075~~ 0.070 parts per million (ppm). The primary and secondary ozone ambient air quality standards are met when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to ~~0.075 ppb~~ 0.070 ppm, as determined in accordance with 40 CFR Part 50, Appendix P U, Interpretation of the Primary and Secondary Air quality Standards for Ozone, ~~May 27, 2008~~ July 1, 2019. The 8-hour primary and secondary ozone standards are set forth in 40 CFR Part ~~50.15~~ 50.19, National Primary and Secondary Air Standards for Ozone, ~~May 27, 2008~~ July 1, 2019.

02/01/1981

7.0 Hydrocarbons

- 7.1 The hydrocarbons standard in 7.2 of this regulation is for use as a guide in devising implementation plans to achieve the ozone standard.
- 7.2 The average concentration of hydrocarbons, exclusive of methane, taken over a three hour period from 6 to 9 a.m., local time, shall not exceed 160 micrograms per cubic meter (0.24 ppm) more than once per year.

~~01/11/2014~~ xx/xx/xxxx

8.0 Nitrogen Dioxide

- 8.1 The national primary and secondary air quality standards for oxides of nitrogen (nitrogen dioxide indicator) are as follows:
- 8.1.1 The primary 1-hour air quality standard for oxides of nitrogen is 100 parts per billion (ppb), 1-hour average concentration, measured in the ambient air as nitrogen dioxide. Compliance with the 1-hour standard is demonstrated when the three-year average of the 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 ppb, as determined with 40 CFR Part 50, Appendix S, Interpretation of the Primary Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide), ~~February 9, 2010.~~ July 1, 2019
- 8.1.2 The primary annual air quality standard for oxides of nitrogen is 53 parts per billion (ppb), annual average concentration, measured in the ambient air as nitrogen dioxide. The primary annual air quality standard is demonstrated when the average annual concentration in a calendar year is less than or equal to 53 ppb, as determined with 40 CFR Part 50, Appendix S, Interpretation of the

Primary Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide), ~~February 9, 2010~~ July 1, 2019.

- 8.1.3 The secondary annual air quality standard for oxides of nitrogen is 53 parts per billion (ppb), annual arithmetic mean concentration, measured in the ambient air as nitrogen dioxide. The secondary ambient air quality standard is demonstrated when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm. To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.
- 8.2 The primary and secondary air quality standards for nitrogen dioxide are as set forth in 40 CFR Part 50.11, ~~February 9, 2010~~ July 1, 2019.

02/01/1981

9.0 Hydrogen Sulfide

- 9.1 The average concentration of hydrogen sulfide taken over any consecutive three minutes shall not exceed 0.06 ppm.
- 9.2 The average concentration of hydrogen sulfide taken over any consecutive 60 minutes shall not exceed 0.03 ppm.

~~01/11/2014~~ xx/xx/xxxx

10.0 Lead

The national primary and secondary ambient air quality standard for lead (Pb) and its compounds are 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), arithmetic mean concentration over a 3-month period measured in the ambient air as Pb. The national primary and secondary air quality standards are set forth in 40 CFR Part 50.16, National Primary and Secondary Ambient Air Quality Standards for Lead ~~November 12, 2008~~ July 1, 2019.

~~01/11/2014~~ xx/xx/xxxx

11.0 PM₁₀ and PM_{2.5} Particulates

- 11.1 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM₁₀ are:
- 11.1.1 The primary and secondary air quality standards for PM₁₀ are 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), 24 hour average concentration. The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu\text{g}/\text{m}^3$, as determined in accordance with 40 CFR, Part 50, Appendix K, Interpretation of the National Ambient Air Quality Standards for Particulate Matter, ~~October 17, 2006~~ July 1, 2019, is equal to or less than one. The national primary and secondary air quality standards are set forth in 40 CFR Part 50.6, National Primary and Secondary Ambient Air Quality Standards for PM₁₀, July 1, 2019.
- 11.1.2 Reserved
- 11.2 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM_{2.5} are:
- 11.2.1 The 24-hour primary and secondary air quality standard is 35 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) 24-hour average concentration. The 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, Interpretation of the National Ambient Air Quality Standards for PM_{2.5} ~~January 15, 2013~~, July 1, 2019, is less than or equal to 35 $\mu\text{g}/\text{m}^3$. The national 24-hour primary and secondary air quality standards are set forth in 40 CFR Part 50.13, National Primary and Secondary Air Quality Standards for PM_{2.5} ~~October 17, 2006~~, July 1, 2019.

PROPOSED REGULATIONS

- 11.2.2 The primary annual air quality standard is 12.0 micrograms per cubic meter (mg/m^3) annual arithmetic mean concentration. The annual primary $\text{PM}_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, Interpretation of the National Ambient Air Quality Standards for $\text{PM}_{2.5}$, ~~January 15, 2013~~ July 1, 2019, is less than or equal to $12.0 \mu\text{g}/\text{m}^3$. The national annual primary and secondary air quality standards are set forth in 40 CFR Part 50.18, National Primary and Secondary Air Quality Standards for $\text{PM}_{2.5}$, ~~January 15, 2013~~ July 1, 2019.
- 11.2.3 The secondary annual air quality standard is 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) annual arithmetic mean concentration. The annual secondary $\text{PM}_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, Interpretation of the National Ambient Air Quality Standards for $\text{PM}_{2.5}$, ~~January 15, 2013~~ July 1, 2019, is less than or equal to $15.0 \mu\text{g}/\text{m}^3$. The national annual primary and secondary air quality standards are set forth in 40 CFR Part 50.13, National Primary and Secondary Air Quality Standards for $\text{PM}_{2.5}$, ~~October 17, 2006~~ July 1, 2019.

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 **Del.C.** § 6010(a) & (c))
7 **DE Admin. Code** 1130

REGISTER NOTICE SAN #2021-04

1130 Title V State Operating Permit Program

1. TITLE OF THE REGULATIONS:

7 **DE Admin. Code** 1130 "Title V State Operating Permit Program".

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

The Division of Air Quality of the Department of Natural Resources and Environmental Control (DNREC) is proposing to amend 7 **DE Admin. Code** 1130 in the following aspects:

- a) Amendment of 7 **DE Admin. Code** 1130, Section 7.0 "Permit Issuance, Renewal, Reopenings, and Revisions", subsection 7.10.2 regarding public notice publication requirements. The Environmental Protection Agency (EPA) issued a final rule in 2016 which updated the list of contents to be identified in the public notice for Title V permits. The proposed amendments are to revise the public notice requirements in 1130, to ensure consistency with the specific wording of EPA's final rule.
- b) Amendment of 7 **DE Admin. Code** 1130, Section 6.0 "Permit Contents", to update affirmative defense requirements. 7 **DE Admin. Code** 1130 is based on 40 CFR Part 70, which outlines requirements for state operating permit programs. Subsection 6.7 of 1130 includes guidance on claiming affirmative defenses for emission exceedances for emergencies and malfunctions. The Division is proposing to remove the term "malfunction" from 7 **DE Admin. Code** 1130, to maintain consistency with the current federal requirements.
- c) Amendment of 7 **DE Admin. Code** 1130, Section 2.0 "Definitions", Table 2-1 to update the list of greenhouse gases (GHG) and their global warming potential (GWP) values. EPA issued a final rule in 2013 that revised the GWP values of 23 of the 32 compounds listed in Table 2-1. EPA issued an additional final rule in 2014 that added 30 new compounds to the list of GHG. Accordingly, this action will revise 7 **DE Admin. Code** 1130 Table 2-1 to update the GWP values and to include the new GHG compounds as provided in the above two EPA final rules.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Ch. 60, Section 6010 (a) and (c).

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

None.

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket # 2021-R-A-0009) will be held on Wednesday, October 27, 2021 beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrechearings>. If prompted for a password, please use DAQRegs. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 179 845 2350. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The proposed amendments may be inspected online starting October 1, 2021 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Taylor Englert by phone at 302-739-9402 or by email at Taylor.Englert@delaware.gov.

The Department will accept public comment through the close of business on Thursday, November 11, 2021. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

Lisa Vest, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Taylor Englert
Division of Air Quality-DNREC
100 W. Water Street, Suite 6A, Dover, DE 19904
Phone: (302)739-9402; email: Taylor.Englert@delaware.gov

***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/october2021/proposed/25 DE Reg 394RFA 10-01-21.pdf>

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

[1130 Title V State Operating Permit Program](#)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1900 BOARD OF NURSING

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

PUBLIC NOTICE**1900 Board of Nursing**

The Delaware Board of Nursing, pursuant to 24 Del. C. § 1904(c), proposes to revise its regulations to clarify

PROPOSED REGULATIONS

what percentage of a nursing course's clinical experience may be through simulation; clarify who may go inactive and the procedure to do; and amends the advanced practice registered nurse regulations in order to comply with changes to the law, which among other changes, eliminate the collaborative agreement and independent practice application requirements and change the make-up of the APRN committee.

The Board will hold a public hearing on the proposed regulation changes on November 10, 2021 at 9:15 a.m. in the 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 November 29, 2021 pursuant to 29 Del. C. § 10118(a).

***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/october2021/proposed/25 DE Reg 395RFA 10-01-21.pdf>

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

1900 Board of Nursing

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))
26 DE Admin. Code 3001

PUBLIC NOTICE

3001 Rules for Certification and Regulation of Electric Suppliers

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

PSC REGULATION DOCKET NO. 49

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

**PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE
PUBLIC SERVICE COMMISSION'S RULES REGARDING
COMMUNITY ENERGY GENERATING FACILITIES**

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

On September 17, 2021, the Governor of the State of Delaware signed into law Senate Bill 2, which removes certain barriers to the adoption of community-based solar photovoltaic systems in Delaware and establishes a regulatory process to be implemented by the Public Service Commission relating to community-owned energy

generating facilities ("CEFs"). Senate Bill 2 instructs the Commission to promulgate regulations: (1) to provide for customers participating in a CEF to be credited on their electric bills for the customers' subscribed percentage of generation produced by the CEF; and (2) to provide consumer protections for customers of CEFs. Under Senate Bill 2, the new regulations will apply only to CEFs located in the service territory of -- and serving only the customers of -- a Commission-regulated electric distribution company, which at this time consists only of Delmarva Power & Light Company ("Delmarva").

By Order No. 9883 dated September 15, 2021 (the "Order"), the Commission now proposes to revise its *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 *Del. Admin. C.* § 3001 ("Supplier Rules") to reflect the Senate Bill 2 amendments and to govern the process by which CEFs may obtain (1) a Certificate to Operate from the Commission and (2) permission to interconnect to Delmarva's electric distribution system.

The text of the revised *Supplier Rules* is attached to the Order. The Order and related exhibits are reproduced in the October 1, 2021 edition of the *Delaware Register of Regulations* and may also be reviewed online at the Commission's website at www.depsc.delaware.gov. You may also obtain a paper copy of the Orders at the Commission's Dover office for a fee of \$0.25 per page.

The Commission will conduct a public hearing on the revised *Supplier Rules* on Wednesday, November 17, 2021, beginning at 1:00 PM, in accordance with 26 *Del. C.* § 209(a). Based on Governor John Carney's Declaration of a Public Health Emergency, effective July 13, 2021, the hearing will be conducted via teleconference. All persons who wish to be heard by the Commission should call in toll free 1-866-299-7945, access code 5979551#. Interested parties may file written comments, suggestions, briefs, compilations of data, or other materials concerning the Amendments. Such material may be submitted to the Commission on or before December 2, 2021, by email to dimitar.kozhuharov@delaware.gov or at the following address:

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

To be considered at the November 17, 2021 hearing, however, written materials must be submitted on or before November 1, 2021.

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

ORDER NO. 9883

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

PSC REGULATION DOCKET NO. 49

AND NOW, this 15th day of September 2021, the Delaware Public Service Commission ("Commission") determines and orders as follows:

WHEREAS, on September 17, 2021, the Governor of the State of Delaware is scheduled to sign into law Senate Bill 2, which will amend the *Renewable Energy Portfolio Standards Act* at §§ 352 and 360 of Title 26 of the

PROPOSED REGULATIONS

Delaware Code and the *Electric Utility Restructuring Act of 1999* at §§ 1001 and 1014 of Title 26 to accelerate the adoption of community-based solar photovoltaic systems in Delaware and to establish a regulatory process to be implemented by the Commission relating to community-owned energy generating facilities ("CEFs"); and

WHEREAS, Senate Bill 2 instructs the Commission to promulgate regulations: (1) to provide for customers participating in a CEF to be credited on their electric bills for the customers' subscribed percentage of generation produced by the CEF; and (2) in consultation with the Consumer Protection Unit of the Delaware Department of Justice ("CPU"), to provide consumer protections for customers of CEFs; and

WHEREAS, Senate Bill 2 directs the Commission to open a rulemaking docket to consider such regulations by August 1, 2021, and to promulgate such regulations no later than March 11, 2022, unless such deadline is extended by law; and

WHEREAS, on July 14, 2021, by Order No. 9842, the Commission reopened the above captioned docket and directed Commission Staff ("Staff") to draft amendments to its *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 *Del. Admin. C.* § 3001 ("*Supplier Rules*"), in compliance with the new requirements set forth by Senate Bill 2; and

WHEREAS, Staff drafted such amendments, circulated them to those stakeholders who participated in the drafting of Senate Bill 2, including the CPU, Delaware Division of the Public Advocate, Delmarva Power & Light Company, Department of Natural Resources and Environmental Control, Sierra Club, Delaware Solar Energy Coalition, Caesar Rodney Institute, Delaware Municipal Electric Corporation, Delaware Electric Cooperative, Delaware Sustainable Energy Utility, and Coalition for Community Solar Access; and

WHEREAS, Staff reviewed the comments it received on the draft amendments, met on several occasions with various stakeholders, made certain changes to the draft amendments based on the comments and meetings, and now recommends that the Commission issue the attached proposed amendments to the *Supplier Rules* for publication in the *Delaware Register of Regulations*;

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

1. That, for the reasons set forth above, and pursuant to 26 *Del. C.* §§ 209 and 1014(f)(1) and 29 *Del. C.* § 10114, the Commission proposes to revise its *Supplier Rules*, which were last revised by PSC Order No. 9020 (February 2, 2017) and published at 20 DE Reg. 827, for the limited purpose of compliance with Senate Bill 2, relating to community-owned energy generating facilities. A redlined version of the proposed amendments is attached to this Order as Exhibit "A."

2. That, pursuant to 29 *Del. C.* § 10115(a), the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the October 1, 2021 edition of the *Delaware Register of Regulations*.

3. That, pursuant to 29 *Del. C.* § 10115(b), the Secretary shall cause the form of public notice attached as Exhibit "B" to be published in two-column format, outlined in black, in the *Delaware State News* and *The News Journal* newspapers on or before October 1, 2021. In addition, the Secretary shall mail a copy of this Order, with its exhibits, to the Division of the Public Advocate and to all persons or entities who have made written requests for advance notice of this Commission's rule-making proceedings. The Secretary shall file a certification of the completion of these tasks by October 15, 2021.

4. That, pursuant to 26 *Del. C.* § 209(a), the Commission will hold a public hearing on the proposed amendments on Wednesday, November 17, 2021, beginning at 1:00 PM. The Commission will conduct the meeting as set forth in the attached form of public notice, which may be modified by Staff to reflect whether the hearing will be conducted remotely or in-person. Interested persons or entities may submit written suggestions, compilations of data, briefs, or other written materials concerning these proposed amendments on or before December 2, 2021¹. **To be considered at the November 17, 2021 hearing, however, written materials must be submitted on or before November 1, 2021.**

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

1. 29 *Del. C.* § 10118(a) requires that the opportunity for public comment be extended for a minimum of 15 days after the final public hearing on a proposed regulation.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chairman

/s/ Joann T. Conaway, Commissioner

/s/ Harold Gray, Commissioner

Manubhai C. Karia, Commissioner (absent)

/s/ Kim F. Drexler, Commissioner

ATTEST: Matthew Hartigan, Acting Secretary

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

***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/october2021/proposed/25 DE Reg 396RFA 10-01-21.pdf](http://regulations.delaware.gov/register/october2021/proposed/25%20DE%20Reg%20396RFA%2010-01-21.pdf)

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

3001 Rules for Certification and Regulation of Electric Suppliers

OFFICE OF THE STATE TREASURER

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, (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, 2021.

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 will increase to 25% the allowable investment limits for private placement securities (Rule 144A securities) held in liquidity accounts.

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/october2021/proposed/25 DE Reg 399RFA 10-01-21.pdf>

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds (Break in Continuity of Sections)

6.0 Liquidity Accounts

(Break in Continuity Within Section)

- 6.3 **Permissible Investments and Percentage of Account Limitations.** State Funds held in Liquidity Accounts can be invested solely in the types of securities set out in this subsection 6.3. Each Liquidity 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 6.3, measured as a percentage of the total Liquidity Account value of State Funds under such manager's discretion.

(Break in Continuity Within Section)

6.3.4 Corporate Debt Instruments

(Break in Continuity Within Section)

- 6.3.4.2 Percentage Limit: 50% in total; 25% in all non-domestic corporations; 25% in any one industry; 5% in any one issuer. Notwithstanding the foregoing, absent written permission from OST and prior Board approval, private placement securities otherwise authorized under subsections 6.3.4.1 and 11.1.7 may not exceed 25% of any Liquidity Account.

(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)

- 11.1.7 Invest in securities with legal or contractual restrictions on resale or for which no readily available market exists (except for repurchase agreements or variable rate master demand notes as provided herein and, if authorized under applicable U.S. Securities and Exchange Commission

rules and regulations, ~~144a~~ 144A private placements considered not to be illiquid, but, instead, readily marketable by issuing dealers);

***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](#)

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, Sections 122, 8901E, and 8906E(a) (14 **Del.C.** §§122, 8901E & 8906E(a))

REGULATORY IMPLEMENTING ORDER**239 Behavioral Health Professional of the Year****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §8901E and §8906E(a), the Secretary of Education intends to create 14 **DE Admin. Code** 239 Behavioral Health Professional of the Year. This new regulation responds to House Bill 35 of the 151st General Assembly, which requires the Department of Education to establish guidance concerning how Behavioral Health Professional of the Year Award funds may be used by the award recipient.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on August 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on August 1, 2021, in the form hereto attached as Exhibit "A". No comments were received, however the Department did clarify the term "social worker," by adding the word "school" in front of it. This was done in Section 2.0 Definitions.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 239 Behavioral Health Professional of the Year in response to House Bill 35 of the 151st General Assembly which requires the Department of Education to establish guidance concerning how Behavioral Health Professional of the Year Award funds may be used by the award recipient.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 239 Behavioral Health Professional of the Year. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 239

Behavioral Health Professional of the Year attached hereto as *Exhibit "B"* is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 239 Behavioral Health Professional of the Year hereby created 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** 239 Behavioral Health Professional of the Year created hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 239 Behavioral Health Professional of the Year in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 14, 2021. 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 14th day of September 2021.

Department of Education

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

Approved this 14th day of September 2021

239 Behavioral Health Professional of the Year

1.0 Purpose

The purpose of this regulation is to establish policies and procedures by which the Behavioral Health Professional of the Year award funds may be used by the designated recipient pursuant to 14 **Del.C.** §8901E.

2.0 Definitions

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

"Behavioral Health Professional of the Year Award Fund" means a \$5000 fund set aside within the budget of the Department of Education for the award recipient to make withdrawals from as necessary to fund educational purposes and objectives as described in 14 **Del.C.** Ch. 89E.

"Behavioral Health Professional of the Year Award Recipient" or "Recipient" means a school employee whose position is health care practitioner or social or human services provider who offers services for the purpose of improving an individual's mental health, such as school counselors, [school] social workers, licensed clinical social workers, school psychologists and school nurses as described in 14 **Del.C.** Ch. 89E. This designation is given at both the local school district and at the statewide level.

"Department" means the Delaware Department of Education.

3.0 Funding

3.1 The Behavioral Health Professional of the Year Award Fund, in the amount of \$5,000 shall be set aside within the budget of the Department to be used by the statewide Behavioral Health Professional of the Year Award Recipient for educational purposes or objectives benefiting pupils.

3.1.1 The Behavioral Health Professional of the Year Award Recipient shall not directly receive the funds or use them for personal benefit, however, the Recipient may be an indirect or incidental beneficiary as the Behavioral Health Professional of the benefited pupils.

3.1.2 In order to withdraw funds, the Recipient shall present to the superintendent of the local school district a plan for utilization of the award in order to avoid wasteful duplication of materials or violation of school district policy.

3.1.3 Possible use of funds includes, but is not limited to:

- 3.1.3.1 Purchase of non-consumable materials and supplies (library books, audio visual equipment, crossing signs, computer equipment and programs, musical instruments, specialized furniture);
- 3.1.3.2 Purchase of otherwise consumable materials that are used by students (paper, notebooks, binders, pens, pencils, paints, instruments, wood and metal);
- 3.1.3.3 Employment of performers or consultants (touring companies of a dramatic nature or musical group, visiting artist, poet, author or other subject matter expert);
- 3.1.3.4 Student-centered professional development for building level Behavioral Health Professionals; or
- 3.1.3.5 Reimbursements to the recipient, not to exceed \$500, for personal expenses.
- 3.1.4 Materials, equipment or other durable items purchased with such funds shall be the property of the local school district or charter school in which the recipient is employed at the time of expenditure.
- 3.1.5 Invoices, purchase orders or personal reimbursement forms related to withdrawals from the Behavioral Health Professional of the Year Award Fund shall be retained by the local school district or charter school and shall be available for inspection as public records and subject to regular audit by the State Auditor of Accounts.
- 3.1.6 In the event that all funds set aside for an award recipient have not been completely expended by that recipient at the time when a subsequent award is granted, the remainder of the former recipient's award shall not revert, but shall remain set aside in the name of the former recipient until such time as it is totally expended or the recipient becomes deceased or leaves the State of Delaware.
- 3.1.7 The Behavioral Health Professional of the Year Award Fund shall be distinct from, and in addition to, the range of awards at the school district or charter school level.
- 3.2 School districts shall fund the \$2,000 personal award, including other employment costs, to the person chosen district Behavioral Health Professional of the Year. The specific charter school which employs the chosen overall charter school Behavioral Health Professional of the Year shall fund the \$2,000 personal award, including other employment costs. Additionally, the Department of Education will set aside a \$3,000 personal award, including other employment costs, to the statewide Behavioral Health Professional of the Year.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 525

REGULATORY IMPLEMENTING ORDER

525 Requirements for Career and Technical Education Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del. C. §122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 525 Requirements for Career and Technical Education Programs. This regulation is being amended to align with the current FY2019-2023 Workforce Innovation and Opportunities Act (WIOA) Combined State Plan which includes the state plan for the Strengthening Career and Technical Education for the 21st Century Act of 2019 ("Perkins V").

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on July 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on July 1, 2021, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 525 Requirements for Career and Technical Education Programs in order to align with the current FY2019-2023 Workforce Innovation and

Opportunities Act (WIOA) Combined State Plan which includes the state plan for the Strengthening Career and Technical Education for the 21st Century Act of 2019 ("Perkins V").

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs 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** 525 Requirements for Career and Technical Education Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs 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 August 19, 2021. 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 19th day of August 2021.

Department of Education

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

Approved this 19th day of August 2021

State Board of Education

/s/ Whitney Sweeney, President

/s/ Shawn Brittingham, Vice President

/s/ Candace Fifer

/s/ Vincent Lofink

Audrey J. Noble, Ph.D. (Absent)

/s/ Provey Powell, Jr.

/s/ Wali W. Rushdan, II

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

***Please note that no changes were made to the regulation as originally proposed and published in the July 2021 issue of the *Register* at page 40 (25 DE Reg. 40). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

525 Requirements for Career and Technical Education Programs

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) and 29 Delaware Code, Section 10113(b)(2) (14 **Del.C.** §122(a) & 29 **Del.C.** §10113(b)(2))

14 **DE Admin. Code** 701

REGULATORY IMPLEMENTING ORDER

701 Unit Count

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del. C.** §122 (a), the Secretary of Education intends to amend 14 **DE Admin. Code** 701 Unit

Count. Under the provisions of 29 **Del.C.** §10113(b)(2), subsection 4.1.2 is being amended to correct a subsection referenced within 14 **DE Admin. Code** 915. Also subsection 6.2.1.3 is being amended to correct an internal subsection reference.

The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §10113(b)(2).

II. FINDINGS OF FACTS

The Secretary finds that the proposed amendment to subsection 4.1.2 corrects a subsection referenced within 14 **DE Admin. Code** 915, and that an amendment to subsection 6.2.1.3 corrects an internal subsection reference.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 701 Unit Count. Therefore, pursuant to 14 **Del.C.** §122(a), 14 **DE Admin. Code** 701 Unit Count attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 701 Unit Count adopted hereby shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 701 Unit Count in the *Administrative Code of Regulations* for the Department of Education.

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 *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of September 2021.

Department of Education

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

Approved this 15th day of September 2021

701 Unit Count

1.0 Forms and Record Keeping

- 1.1 All information submitted through the unit count process shall be on forms provided by the Department of Education or in such other format as may be acceptable to the Department.
- 1.2 Each school shall maintain September enrollment records in a manner which allows for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three (3) years.
- 1.3 Records to substantiate students with disabilities included in the enrollment count shall contain a student Individualized Education Program (IEP) in effect during the last week of school in September and eligibility documentation. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are identified as a child with a disability determined to be eligible for special education and related services under 14 **DE Admin. Code** 925.

2.0 Special Situations Regarding Enrollment

- 2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.

- 2.2 Students with disabilities included in the special education unit count under the placement provisions of Transfer Students or Change of Placement shall meet the evaluation and placement requirements found in 14 **DE Admin. Code** 925.
- 2.3 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

3.0 Accounting for Students Not in Attendance the Last Ten Days in September

- 3.1 For students not in attendance at school during the last 10 school days of September during which students are required to be in attendance, the following information shall be on file to substantiate their inclusion in the enrollment count:
 - 3.1.1 Reason for absence, usually medical, and date of last direct contact with student or parent.
 - 3.1.2 Reason to believe that student will be returning to school prior to November 1.
 - 3.1.3 District and charter schools enrolling an intra-state transfer student during the last 10 school days of September during which students are required to be in attendance shall first determine if the student is currently obligated under a choice agreement or first-year charter agreement before enrolling the student. If an agreement exists, "good cause" pursuant to 14 **Del.C.** §402 and §506(d) respectively must be determined before the receiving district or charter school can enroll the student. District and charter schools enrolling an in state transfer student during the last 10 school days of September shall notify the student's previous district or charter school of such enrollment no later than the last student attendance day of September. The notification shall be by fax with a follow up letter to the previous district or charter school's unit count coordinator's office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district or charter school is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district or charter school enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district or charter school's enrollment and unit count. Copies of the fax transmittals and follow up letters shall be on file to substantiate the student's inclusion in the receiving district or charter school's enrollment and unit count.

4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

- 4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:
 - 4.1.1 Delaware Adolescent Program, Inc. (DAPI):
 - 4.1.1.1 Students enrolled in DAPI shall be counted in the enrollment of the sending school.
 - 4.1.1.2 Students shall receive the level of special education service as defined by the current IEP.
 - 4.1.1.3 If a student was enrolled the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
 - 4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three (3) traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In school Credit Program (14 **DE Admin. Code** 915, subsection ~~2-4~~ 2.2) and students in the Advanced Placement Program shall be enrolled and attend at least one (1) full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.
 - 4.1.3 Temporary problem, usually medical, which precludes school attendance prior to November 1.
 - 4.1.4 Supportive Instruction (Homebound)
 - 4.1.4.1 Students receiving supportive instruction (homebound) pursuant to 14 **DE Admin. Code** 930 qualify for inclusion in the unit count.

- 4.1.4.2 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a special education student if, in the child's placement immediately preceding the homebound placement, the child had an IEP in effect during the last week of school in September.
- 4.1.5 Department of Services for Children, Youth and Their Families or Department of Correction Facilities: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1.
- 4.1.6 Consortium Discipline Alternative Program:
 - 4.1.6.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school pursuant to 14 **DE Admin. Code** 611.
 - 4.1.6.2 Students shall receive the level of special education service as defined by the current IEP.
 - 4.1.6.3 If a student was enrolled in the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
- 4.1.7 Except as provided in Section 5.0 and 7.0, all pre-kindergarten children with disabilities shall be counted in the Preschool Pre-K to 12 Intensive Special Education (Intensive) or Pre-K to 12 Complex Special Education (Complex) units.
- 4.1.8 Students enrolled in residential facilities as of the last day of September are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.
- 4.1.9 Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects taken by most students.
- 4.1.10 Special education services include students who have been found eligible for special education and related services under 14 **DE Admin. Code** 925, Section 6.0 and have an IEP in effect during the last week of school in September. Students with disabilities must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in 14 **DE Admin. Code** 925.
- 4.1.11 A maximum of 900 minutes of career and technical education time per week per student shall be credited toward the career and technical education unit determination. However, units shall be counted on the basis of one (1) unit for each 30 students for students enrolled in the New Castle County Votech School District, the POLYTECH School District and the Sussex Technical School District.

5.0 Programs and Situations that Do Not Qualify for the Unit Count

- 5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:
 - 5.1.1 Students who have not attended school during the last 10 days of September.
 - 5.1.2 Students who are enrolled in General Education Development (GED) programs.
 - 5.1.3 Students who are enrolled in other than Department of Education approved programs.
 - 5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the district or charter school unless that district or charter school operates the facility's instructional program; otherwise the student must be treated as a withdrawal.
 - 5.1.5 Students enrolled in a homeschool as defined in 14 **Del.C.** §2703A.

6.0 Nontraditional High School Schedules

- 6.1 For unit count purposes, if a career technical student in a school utilizing nontraditional schedules receives, during the course of the year, the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a career technical student receives a minimum of 300 minutes of instruction per week.

6.1.1 The following exemplifies a situation with the required minimum minutes and hours for a full time career technical student and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the year:

Fall and Spring Career Technical= 300 minutes per week
Spring and Fall Career Technical= 1500 minutes per week
1800 /2 = 900 minutes per week

6.2 For unit count purposes, a district shall meet the following criteria to include selected students participating in a district's Distance Education/Twilight Program in the September 30 unit count:

6.2.1 For purposes of this section, a Distance Education/Twilight Program shall mean a district approved credit bearing program as follows:

6.2.1.1 Students must be currently suspended indefinitely or expelled by the district and enrolled in the district's alternative placement program; or

6.2.1.2 Students with disabilities enrolled in the district's Distance Education/Twilight Program for credit recovery only must be receiving services as decided upon by the IEP team and reflected in the IEP on-site; or

6.2.1.3 The inclusion of students with non-behavior issues and not special education in the unit count can only be included if there is not a break in educational service and they meet the entry criteria of the program and the additional criteria outlined in subsections ~~6.2.4 through 6.2.11~~ 6.2.2 through 6.2.9;

6.2.2 Students and their parents or guardians must attend a mandatory program orientation session provided by the district staff. A sign in sheet and signed agreement will be kept on file and serve as sufficient evidence to meet this requirement.

6.2.3 Students must be enrolled for a minimum of three (3) courses.

6.2.4 Students must be required to complete a minimum number of hours of active engagement each week that they are enrolled in the program. The minimum number of hours should not be less than three (3) hours per week.

6.2.5 Students must be enrolled in eSchoolPLUS, the statewide pupil accounting system.

6.2.6 The district must keep records on file for the school year of the unit count on work completed and time spent working on the educational program for each enrolled student. The district must submit a sample to the Department of Education that may serve as sufficient evidence to meet this requirement.

6.2.7 The district must provide evidence of staff monitoring the progress of each student and providing feedback to participating students and their parents or guardians.

6.2.8 The district must show evidence on how progress of students enrolled in the program is incorporated into their academic record for meeting the district's graduation requirements.

6.2.9 An audit file containing information listed in subsection 6.2 and its subsections must be maintained on all students participating in the program and must be presented upon request to the Department of Education or the State Auditor's Office.

7.0 Charter Schools

Funding for charter schools is limited to students lawfully enrolled in such grades K through 12 as the charter school may be approved to operate. Charter schools shall not include any Pre-K students in their enrollment for unit count purposes. This section shall not be interpreted to authorize any charter school to enroll Pre-K students.

8.0 Unit Adjustments After Audit

If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. Another eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving

special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 Del.C. §122(b)(2))
14 DE Admin. Code 815

REGULATORY IMPLEMENTING ORDER

815 Health Examinations and Screening

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del. C. §122(b)(2), the Secretary of Education intends to amend 14 DE Admin. Code 815 Health Examinations and Screening. This amendment is needed to: (1) clarify that children enrolling in first grade that have not provided documentation of lead screening when enrolled in kindergarten must provide such documentation within sixty calendar days of the date of enrollment, or they can be excluded from school until the documentation is presented, (2) update and expand definitions regarding the health examinations and screenings, and (3) add language referencing homeless, foster care, military family youth. Grammatical changes were also made 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, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on August 1, 2021, in the form hereto attached as *Exhibit "A"*. Two comments were received which were pertinent to the proposed amendments which suggested the Department consider the following:

(1) The regulation still states "lead screening," which could mean a lead blood test or a questionnaire-type screening. Clarification is needed on exactly what is being required.

Response: The Department clarified the definition of lead screening as the term is defined in 16 Del.C. Chapter 26.

(2) The reference to "documentation of a lead screening *shall* be provided" and "failure to provide the required documentation *shall* result in the child's exclusion", specifically the word "shall" should be further defined as either "must" or "optional."

Response: Per the *Delaware Administrative Code Drafting and Style Manual* the word "shall" is to be used in regulations "in the imperative sense to express a duty or obligation to act." The Department uses the word "shall" throughout all its regulations to mean "must," or when something is required. It is used correctly throughout this regulation. Further clarification was made for the word "documentation" in reference to the results of the lead screening, where needed throughout the regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 815 Health Examinations and Screening in order to (1) clarify that children enrolling in first grade that have not provided documentation of lead screening when enrolled in kindergarten must provide such documentation within sixty calendar days of the date of enrollment, or they can be excluded from school until the documentation is presented, (2) update and expand definitions regarding the health examinations and screenings, and (3) add language referencing homeless, foster care, military family youth. Grammatical changes were also made 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 815 Health Examinations and Screening. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 815 Health Examinations and Screening attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 815 Health Examinations and Screening 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** 815 Health Examinations and Screening amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 815 Health Examinations and Screening 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 14, 2021. 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 14th day of September 2021.
Department of Education

Susan S. Bunting, Ed.D., Secretary of Education
Approved this 14th day of September 2021

815 Health Examinations and Screening

1.0 Definitions

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

"**Delaware School Health Examination Form**" means the ~~age-appropriate~~ age-appropriate form developed by the Delaware Department of Education or a substantially similar form for documenting information from the parent, guardian or Relative Caregiver and healthcare provider on the student's health status.

"**Delaware Interscholastic Athletic Association (DIAA) Pre-Participation Physical Evaluation**" means the form approved by the DIAA.

"**Health Examination**" means the medical examination done by a Healthcare Provider to determine health status and conditions.

"**Healthcare Provider**" means a currently licensed physician, advanced practice ~~nurse, nurse practitioner,~~ nurse or physician's assistant.

~~"Health Examination or Health Evaluation" means the medical or nursing examination or evaluation and assessment of the body by a healthcare provider to determine health status and conditions.~~

["Lead Screening" means a capillary blood lead test, including where a drop of blood is taken from a finger or heel of the foot (16 Del.C. Ch. 26).]

"**School Enterer**" means any child between birth and twenty (20) years inclusive enrolling and attending a Delaware public school district or public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states or territories, and children entering from non-public schools.

"**Screenings**" means the vision, hearing, **[and]** postural gait ~~[, and lead]~~ screening performed by the school nurse or other qualified healthcare professional.

2.0 Health Examinations

- 2.1 All public school students shall have two health examinations, as provided in this section, that have been administered by a healthcare provider. ~~The first health examination shall have been done within the two years prior to entry into school. Beginning in school year 2012-2013, the second health examination shall be strongly recommended and not required for entering grade 9 students. Beginning in school year 2013-2014, the second health examination shall be required for entering grade 9 students. The required health examination shall be done within the two years prior to entry into grade 9. Within thirty calendar days after entry, new enterers and grade 9 students who have not complied~~

~~with the second health examination requirement shall have received the health examination or shall have a documented appointment with a licensed health care provider for the health examination. For purposes of this regulation only, students entering grades 10, 11 or 12 in the 2013-2014 school year shall not be required to have the second health examination or evaluation.~~

- 2.1.1 The first health examination shall have been done within the two years prior to enrollment into a Delaware public school.
- 2.1.1.1 Within thirty (30) calendar days after enrollment, any public school student who has not complied with the health examination requirement shall have received the health examination or shall have a documented appointment with a healthcare provider for the health examination. If this documentation is not provided within this thirty (30) calendar days, the student shall be excluded from school until this documentation is received.
- 2.1.2 The second required health examination shall be done within the two years prior to entry into grade 9.
- 2.1.2.1 Within thirty (30) calendar days after entry, any grade 9 student who has not complied with the second health examination requirement shall have received the health examination or shall have a documented appointment with a healthcare provider for the health examination. If this documentation is not provided within these thirty (30) calendar days, the student shall be excluded from school until this documentation is received.
- 2.1.3 Notwithstanding subsections 2.1.1.1 and 2.1.2.1, all students must meet the requirements under **14 DE Admin. Code 804** Immunizations.
- ~~2.1.4~~2.1.4 The requirement for the health examination may be waived for students whose parent, guardian or ~~Relative Caregiver~~ relative caregiver as defined in 14 Del.C. §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of health examinations.
- ~~2.1.22~~2.1.5 Notwithstanding the above, a second health examination shall not be required if the first health examination is within two years of entering Grade 9.
- ~~2.1.32~~2.1.6 The Delaware School Health Examination Form or the DIAA Pre-Participation Physical Evaluation form may be used as documentation of the health examination. In addition, a district or charter school may accept a health examination or evaluation documentation on a form which includes, at a minimum, health history, immunizations, results ~~on~~ of medical ~~testings~~ tests and screenings, medical diagnoses, prescribed medications and treatments, and healthcare plans.
- ~~2.1.42~~2.1.7 The school nurse shall record all findings within the student's electronic ~~medical~~ health record (see **14 DE Admin. Code 811**) and maintain the original copy in the child's medical file.

Non regulatory note: See **14 DE Admin. Code 1008.3** and **14 DE Admin. Code 1009.3** for physical or health examination requirements associated with participation in sports.

3.0 Screening

- 3.1 Vision and Hearing Screening
- 3.1.1 Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th of each school year.
- 3.1.1.1 In addition to the screening requirements in subsection 3.1.1, screening shall also be provided to ~~new~~ school enterers, students referred by a teacher or an administrator, and students considered for special education.
- 3.1.1.1.1 Driver education students shall have a vision screening within a year prior to their ~~in~~ in-car driving hours.
- 3.1.2 The school nurse shall record the results within the student's electronic ~~medical~~ health record (see **14 DE Admin. Code 811**) and shall notify the parent, guardian or ~~Relative Caregiver~~ relative caregiver as defined in 14 Del.C. §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if the student has a suspected problem.

- 3.2 Postural and Gait Screening
- 3.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by December 15th.
- 3.2.2 The school nurse shall record the findings within the student's electronic ~~medical~~ health record (see 14 **DE Admin. Code** 811) and shall notify the parents, guardian or ~~Relative Caregiver~~ relative caregiver as defined in 14 Del.C. §202(f), or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if a suspected deviation has been detected.
- 3.2.2.1 If a suspected deviation is detected, the school nurse shall refer the student for further evaluation through an ~~on-site~~ onsite follow up evaluation or a referral to the student's ~~health-care~~ healthcare provider.
- 3.3 Lead Screening
- 3.3.1 ~~Children who enter school~~ School enterers at kindergarten or at age 5 or prior, shall be required to provide documentation **[of the results]** of lead screening as per 16 **Del.C.** Ch. 26.
- 3.3.1.1 For ~~children enrolling~~ school enterers in kindergarten, documentation of lead screening shall be provided within sixty (60) calendar days of the date of enrollment. Failure to provide the required documentation shall result in the child's exclusion from school until the documentation is provided.
- 3.3.1.2 Exemption from this requirement may be granted for religious exemptions, per 16 **Del.C.** §2603.
- 3.3.1.3 The Childhood Lead Poisoning Prevention Act, 16 **Del.C.**, Ch. 26, requires all ~~health-care~~ healthcare providers to order lead screening for children at or around the age of 12 months of age.
- 3.3.1.4 For school year 2021-2022, children entering first grade, who did not provide documentation of [the results of] lead screening when enrolling in kindergarten for the 2020-2021 school year, shall provide such documentation within sixty (60) calendar days of the date of the beginning of the 2021-2022 school year. Failure to provide the required documentation shall result in the child's exclusion from school until documentation is provided.
- 3.3.2 The school nurse shall document the lead screening within the student's electronic medical record. See 14 **DE Admin. Code** 811.

4.0 Health Records

If the student is at risk of exclusion because of not meeting the health examinations or immunization documentation requirements, the school nurse may contact the previous Delaware public school nurse to obtain health examinations and immunization records.

5.0 Special Considerations

- 5.1 School districts and charter schools shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment and participation of identified special populations.
- 5.1.1 Homeless Children and Youth - The federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11301 et seq., requires immediate enrollment and entry to school, even if students are unable to produce immunization or other medical records. The Delaware public school nurse and the LEA Homeless Education Liaison at the enrolling school shall work together to obtain the necessary immunization records as soon as possible. If a student has not had immunizations, the school nurse and LEA Homeless Education Liaison shall assist homeless children and youth in meeting the immunization requirements.
- 5.1.2 Youth in Foster Care – The federal Elementary and Secondary Education Act of 1965. Section 1111(g)(1)(E) requires that when a determination is made that it is not in a youth in foster care's best interest to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment. The enrolling

school shall immediately contact the school last attended by any such child to obtain relevant academic and other records. The school nurse and LEA foster care liaison at the enrolling school shall work together to obtain the necessary immunization records as soon as possible.

- 5.1.3 Military-Connected Youth - In accordance with the provisions of 14 Del.C. Ch. 1, Subchapter III-A Interstate Compact on Education For Children of Military Families (MIC3) and its enabling regulation, a school enterer or secondary school student who is subject to MIC3 shall be allowed thirty (30) calendar days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, to obtain or to initiate a series of immunizations required by this regulation. The Delaware public school nurse of the enrolling school shall work with the parent or guardian of the school enterer to obtain the necessary immunization records as soon as possible.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Streamline Application

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES
IN THE MATTER OF

REVISION OF THE REGULATION
OF DELAWARE'S
TITLE XIX MEDICAID STATE PLAN
ATTACHMENT S94

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Delaware Title XIX Medicaid State Plan regarding the Streamline Application, specifically, to include questions for the justice involved population and retroactive eligibility. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del. C. § 10114 and its authority as prescribed by 31 Del. C. § 512.

The Department published its notice of proposed regulation changes pursuant to 29 Del. C. § 10115 in the March 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2021 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 11, 2021 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Delaware Title XIX Medicaid State Plan regarding the Streamline Application, specifically, to include questions for the justice involved population and retroactive eligibility.

Background

On December 4, 2018, Delaware Governor John Carney signed Executive Order 27. This executive order established The Delaware Correctional Reentry Commission (DCRC) with the objective of effectively coordinating services for the recently released, strengthening data sharing among state agencies, and improving the availability of programming prior to an inmates release in hopes of reducing recidivism.

In June 2018, DMMA, in collaboration with other state agencies, such as the Delaware Division of Mental Health and Substance Abuse, the Division of Social Services, and the Department of Corrections, held the first Justice Involved Individuals Steering Committee meeting, to develop a plan to facilitate access to covered Medicaid services for eligible individuals immediately upon release from a correctional institution.

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

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

The changes to the streamline application are to reflect changes to include questions for the justice involved population and retroactive eligibility.

Statutory Authority

45 CFR § 155.405

Purpose

The purpose of this proposed regulation is to include questions for the justice involved population and retroactive eligibility changes to the Medicaid Streamline Application.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on March 31, 2021.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: There were two endorsements of the regulation.

Agency Response: DMMA appreciates the support.

Comment: One commenter indicated that the "link" to Appendix B-2013 was broken.

Agency Response: The link does not work from the PDF document; however, it is working from the HTML version of the document. The URL information (in both the PDF and HTML) is correct and therefore can be cut and

pasted into a browser to reach the document.

Comment: One commenter suggested that the term "Food Benefits" should also include the terms SNAP and Food Stamps so that applicants know that the Department means SNAP here. The term Food Benefits may not be known to applicants. The terms SNAP and Food Stamps are well known in the community.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter questioned who could utilize the Benefit Application Form 100 Justice Involved and Retro Changes. "In light of the recent changes made by the federal government regarding the "public charge" rule, the advice given about the effects of applying for benefits on immigration status needs to be updated. The consequences of the public charge rule are complicated and the explanation here is insufficient. This paragraph must be entirely rewritten. In its current form, it will confuse and mislead immigrant applicants and mixed status families."

Agency Response: DMMA removed the change and reverted to the previous language.

Comment: One commenter requested additional information be provided to explain emergency food benefits.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter requested DMMA reword *Complete this section for legal alien applicants only* to provide clarity.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter suggested rewriting the question *Do applicants have eligible immigration status?* The commenter suggested, "asking for the information in this manner will lead to confusion and inaccurate responses."

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter asked that the question about benefits from another state be narrowed.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter suggested removing the question, Drug felony after August 22, 1996 as Delaware does not have a felony drug ban.

Agency Response: This section has been removed from the applications.

Comment: One commenter requested additional context be added to the question about *Medical Bills within the last three months*.

Agency Response: DMMA updated the wording to clarify which months DMMA is requesting information.

Comment: The application fails to inform applicants who may have previously been eligible for Medicaid (but lost coverage and are reapplying) that they may also be eligible for three calendar months before the previous application.

Agency Response: The process is separate from the regular application process. Potentially impacted individuals received communication from the division informing them if they were approved for Medicaid, from August 1, 2019 - June 30, 2020, they may be able to get help with bills and were given instruction on how to contact the division.

Comment: The application provides no context for the question *Foster Care at age 18* and will confuse applicants regarding why this information is requested. The application needs to explain the purpose of requesting this information.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter suggested that section related to incarceration be clarified. The commenter noted, "the section could cause extreme confusion for families regarding who is included in the household for various benefits."

Agency Response: DMMA will take that into consideration in discussions with CMS.

Comment: One commenter asked DMMA to clarify the question, *Does anyone in your household have any vehicles (don't include your car)?*

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter requested the Medical Expenses section, "be clarified to explain that it calls for

ONGOING medical expenses rather than previous bills."

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter requested the term "non-lawful aliens," be changed within the Penalties section.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter requested removing the section providing for a lifetime ban from cash if "Any member of your household is convicted of a felony for having, using, or selling controlled substances."

Agency Response: This section has been removed from the applications.

Comment: One commenter requested replacing the term Food Supplement Program with Food Benefits (SNAP/ Food Stamps).

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter suggested that in the section *Certifications and Signatures*, the certification regarding alien status is inaccurate and will lead to confusion.

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commuter requested changes to the section *For Person Who Cannot Speak English*. "It fails to set out the Department's legal obligation to provide translation or interpretation. It improperly implies that the applicant must use a family member or other person to translate the application. It fails to inform LEP applicants that they are entitled to such services from the Department and how to access them."

Agency Response: This section was outside of the proposed changes. The application was previously published for public comment in 2013 and was approved by CMS.

Comment: One commenter suggested revision and clarification of the "Public Charge" statement.

Agency Response: DMMA reverted to the previous language.

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

- Community Legal Aid Society, Inc.
- Governor's Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the March 2021 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 *Del.C.* §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding the Streamline Application, specifically, to include questions for the justice involved population and retroactive eligibility, is adopted and shall be final effective October 11, 2021.

9/14/2021

Date of Signature

Molly K. Magarik, MS
Cabinet Secretary, DHSS

Appendix A 08-2013 Health Coverage from Jobs

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

<http://regulations.delaware.gov/register/october2021/final/Appendix A 08-2013 Health Coverage from Jobs.pdf>

Appendix B 08-2013 American Indian or Alaska Native Family Member AIAN

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

<http://regulations.delaware.gov/register/october2021/final/Appendix B 08-2013 American Indian or Alaska Native Family Member AIAN.pdf>

Appendix C 01-2014 Assisting With Applications

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

<http://regulations.delaware.gov/register/october2021/final/Appendix C 01-2014 Assisting With Applications.pdf>

Benefit Application Form 100 Justice Involved and Retro Changes

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

<http://regulations.delaware.gov/register/october2021/final/Benefit Application Form 100 Justice Involved and Retro Changes.pdf>

CCADP 1

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

<http://regulations.delaware.gov/register/october2021/final/CCADP 1.pdf>

CCADP 2

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

<http://regulations.delaware.gov/register/october2021/final/CCADP 2.pdf>

Draft CMS Submission

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

<http://regulations.delaware.gov/register/october2021/final/Draft CMS Submission.pdf>

Health Coverage - Family Justice Involved and Retro

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

<http://regulations.delaware.gov/register/october2021/final/Health Coverage - Family Justice Involved and Retro.pdf>

Health Coverage - Short Form Justice Involved and Retro

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

[http://regulations.delaware.gov/register/october2021/final/Health Coverage - Short Form Justice Involved and Retro.pdf](http://regulations.delaware.gov/register/october2021/final/Health%20Coverage%20-%20Short%20Form%20Justice%20Involved%20and%20Retro.pdf)

LTC Application 03-2020 Revised

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

[http://regulations.delaware.gov/register/october2021/final/LTC Application 03-2020 Revised.pdf](http://regulations.delaware.gov/register/october2021/final/LTC%20Application%2003-2020%20Revised.pdf)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Adult Dental

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES |
IN THE MATTER OF

REVISION OF THE REGULATION |
OF DELAWARE'S |
ALTERNATIVE BENEFIT PLAN (ABP) |
SECTION ABP1, ABP2a, ABP3, ABP4, APB5, APB7, APB8, APB10, APB11 |

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Alternative Benefit Plan (ABP) regarding Dental Services, specifically, to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid. The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the August 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2021 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 11, 2021 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Alternative Benefit Plan (ABP) regarding Dental Services, specifically, to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid.

Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) Assurance (42 CFR 440.345)

The State assures that there will be full access to EPSDT services (42 CFR 440.345) for individuals under 21 years of age through the adoption of a benchmark plan which will mirror the State's current Medicaid State Plan benefits, including the provision of the EPSDT benefit. EPSDT services include all medically necessary, federally allowed services for individuals under age 21 regardless of their avenue of Medicaid eligibility. As such, newly eligible adults under age 21 will automatically be covered for EPSDT services. These services are covered both as

fee-for-service benefits and through the State's Managed Care delivery system. EPSDT services are described in the managed care organization (MCO) member handbooks. The State's Diamond State Health Plan 1115 Demonstration Waiver and MCO contracts require coverage of EPSDT medical services. Children's dental services are covered as FFS. The State will alert providers about the continuity of EPSDT services for qualifying newly eligible individuals through its periodic provider alerts and newsletters.

Background

Senate Substitute No. 1 for Senate Bill No. 92 was signed by the Governor of Delaware on August 6, 2019 and provided dental services for adult Medicaid Recipients. The effective date of the Act was April 1, 2020. The adult dental benefit offers basic dental services to eligible adults 21 and over. The Centers for Medicare and Medicaid Services approved Delaware State Plan Amendment (SPA) 20-0001 which amends Title XIX Medicaid State Plan to add adult dental services with an effective date of October 1, 2020.

Under section 1937 of the Social Security Act, states have the flexibility to design an ABP entirely based on commercial market benefits or the state's approved Medicaid state plan, or a combination of both. When a state designs its ABP benefit package to be the same benefits or richer benefits than the state's approved Medicaid state plan, the state has achieved alignment between the ABP benefit package and the state's approved underlying Medicaid state plan. To date, most states have chosen the path of aligning their ABP benefit package fully or in part with the state's approved Medicaid state plan. ABPs must be kept in full or partial alignment with the state's approved underlying state plan on an ongoing basis.

Statutory Authority

- 42 CFR 440.100, Dental Services
- Section 1937 of the Social Security Act, State Flexibility in Benefit Packages

Purpose

The purpose of this proposed regulation is to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on August 31, 2021.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received related to this change.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Alternative Benefit Plan (ABP) regarding Dental Services, specifically, to add adult dental services to the ABP and to maintain the State's assurance that the ABP matches regular Medicaid is adopted and shall be final effective October 11, 2021.

9/10/2021

Date of Signature

Molly K. Magarik, MS
Cabinet Secretary, DHSS

***Please Note: Due to the formatting requirements of ABP5 of the regulation, it is being attached here as a PDF document:**

[http://regulations.delaware.gov/register/october2021/final/ABP5 Dental MARKED UP.pdf](http://regulations.delaware.gov/register/october2021/final/ABP5%20Dental%20MARKED%20UP.pdf)

***Please Note: Due to the size and formatting of the Alternative Benefit Plan, it is being attached here as a series of PDF documents:**

[http://regulations.delaware.gov/register/october2021/final/ABP1 Dental.pdf](http://regulations.delaware.gov/register/october2021/final/ABP1%20Dental.pdf)
[http://regulations.delaware.gov/register/october2021/final/ABP2a Dental.pdf](http://regulations.delaware.gov/register/october2021/final/ABP2a%20Dental.pdf)
[http://regulations.delaware.gov/register/october2021/final/ABP3 Dental.pdf](http://regulations.delaware.gov/register/october2021/final/ABP3%20Dental.pdf)
[http://regulations.delaware.gov/register/october2021/final/ABP4 Dental.pdf](http://regulations.delaware.gov/register/october2021/final/ABP4%20Dental.pdf)
[http://regulations.delaware.gov/register/october2021/final/ABP5 Dental.pdf](http://regulations.delaware.gov/register/october2021/final/ABP5%20Dental.pdf)
[http://regulations.delaware.gov/register/october2021/final/ABP7 Dental.pdf](http://regulations.delaware.gov/register/october2021/final/ABP7%20Dental.pdf)
[http://regulations.delaware.gov/register/october2021/final/ABP8 Dental.pdf](http://regulations.delaware.gov/register/october2021/final/ABP8%20Dental.pdf)
[http://regulations.delaware.gov/register/october2021/final/ABP10 Dental.pdf](http://regulations.delaware.gov/register/october2021/final/ABP10%20Dental.pdf)
[http://regulations.delaware.gov/register/october2021/final/ABP11 Dental.pdf](http://regulations.delaware.gov/register/october2021/final/ABP11%20Dental.pdf)

GENERAL NOTICES

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

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

PUBLIC NOTICE

Targeted Case Management for Individuals with Intellectual and Developmental Disabilities Meeting Delaware DDDS Criteria Living in Their Own Home or the Family Home

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is providing a public notice related to changes to the reimbursement methodology for Targeted Case Management for *Individuals Who Meet Delaware DDDS Eligibility Criteria Living in their Own Home or their family's home*.

Purpose

The purpose of this posting is to provide public notice and receive public input for consideration regarding a proposed change to the reimbursement methodology for Targeted Case Management for *Individuals Who Meet Delaware DDDS Eligibility Criteria Living in their Own Home or their family's home*.

Overview

Delaware added Targeted Case Management (TCM) for individuals with intellectual and developmental disabilities, autism or Prader-Willi Syndrome who were determined to meet the DDDS eligibility criteria at 16 DE Admin. Code 2100 *Division of Developmental Disabilities Services (DDDS) Eligibility Criteria*. Delaware added two distinct target groups of individuals meeting Delaware DDDS eligibility criteria: individuals living in their home or family home and individuals authorized to receive Residential Habilitation. Since that time Delaware has established TCM rates for five years using the methodology approved by CMS in 2017. Because TCM was a new Medicaid service at that time, the initial rates were established based largely on budgeted cost data and assumptions of Medicaid eligibility and service utilization. The currently approved methodology uses a carry forward adjustment to compensate for differences between estimated and actual costs from the prior period used in the TCM rate calculation. The carry forward adjustment, combined with changes to the service delivery model that have been implemented over time, have resulted in wide swings in the annual TCM rates, despite the actual allowable cost per unit of service being relatively stable after the initial startup phase. These swings make the rates unpredictable and are likely to discourage current and prospective providers from doing business with Delaware Medicaid as a provider of Targeted Case Management. The current reimbursement method relies on prior year costs and limits the state's ability to incorporate demographic, programmatic and policy changes that impact program costs as they occur. To that end, Delaware proposes to replace the retrospective rate structure using the carry forward adjustment with a prospective negotiated rate structure.

The anticipated fiscal note related to this proposed change is \$0, as this change is not expected to increase or decrease the annual aggregate expenditures for TCM but, rather, will smooth out the rates from year to year.

Proposed Changes to the Reimbursement Methodology

Under this proposed methodology, each provider shall negotiate a rate with DDDS based on allowable, appropriately allocated costs from financial records in accordance with the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements (Uniform Guidance). Each negotiated rate is for five years, with annual adjustments for inflation based on the CMS Market Basket Inflation Index for each fiscal year beginning on July 1. If mutually agreeable, changes in the established rate may be made during the five years in the event of unforeseen policy changes that cause an increase in program costs that exceed 5%.

Under the proposed methodology, in developing the rate per unit of service, allowable costs that may be included in the negotiated rate will continue to include the following cost categories:

- Salaries
- Employment Related Expenses

- Program Related Expenses
- Program Transportation Expenses (not to include transportation of consumers)
- General and Administrative Expenses

The current TCM SPA language limits General and Administrative cost to 12%. Under the proposed methodology, General and Administrative cost will be either: the provider's federally approved indirect cost rate (ICR), if one exists, the 10% de minimus rate applied to Modified Total Direct Cost (MTDC) or an overhead rate negotiated with the provider that must be supported with documentation.

The total allowable costs, including General and Administrative expenses, are then divided by 90% of the total number of units of service to compute a reimbursement rate. The results of applying the utilization rate to the total allowable costs creates the basis for the negotiated unit rate. At this point, other factors that may affect the rate can be negotiated between the DDDS and the vendor as needed.

Once all costs are determined and the 90% utilization rate has been applied, results from a statistically valid time study are applied to determine the proportion of total costs that represent targeted case management, administrative case management, state funded and unallowable costs.

Providers will still be required to submit cost reports to enable DDDS to monitor trends and changes and to complete a time study as specified by the State.

Public Comment Submission Process

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period to allow all stakeholders an opportunity to provide input on the proposed changes to the reimbursement methodology for Targeted Case Management for individuals who meet Delaware DDDS eligibility criteria and live in their own home or their family's home. The comment period ends on October 31, 2021.

Comments and input may be submitted in the following ways:

By email: Nicole.M.Cunningham@delaware.gov

By fax: 302-255-4413 to the attention of Nicole Cunningham

By mail: Nicole Cunningham
Division of Medicaid and Medical Assistance
Planning and Policy Unit
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720-0906

This notice shall appear for one (1) day only. Please identify in the subject line: TCM Reimbursement Methodology.

Stephen M. Groff
Director
Division of Medicaid and Medical Assistance

9/16/2021 | 4:09 AM EDT

Date

GENERAL NOTICES

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 OF NEW HEARING DATE AND EXTENDED COMMENT PERIOD

902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]

Summary

The Commissioner of the Delaware Department of Insurance is extending until November 10, 2021, the comment period for the third re-proposal of amendments to Regulation 902 - Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]. Notice of the third re-proposal of amendments to Regulation 902 was published in the August 1, 2021 *Register of Regulations* at 25 **DE Reg.** 156 (08/01/2021).

As described in the third re-proposal, the Department has determined to revise proposed new subparagraph 3.2 to clarify that:

- The four percent of claims found to be a violative general business practice must fall within the same category of prohibited practices as listed in subsection 3.1 of the regulation;
- The violative general business practice must also fall within the same 12-month period;
- The presumption applies under all of 18 **Del.C.** §2304(16); and
- The presumption does not apply to health care claims to which Regulation 1310 applies.

The Department also proposes to add new subsection 3.3 to clarify that the presumption that a general business practice violation occurred does not, in and of itself, create an additional and separate general business practice violation.

The Department also proposes to add new subsection 3.4 to set forth a procedure that an insurer may follow to rebut the presumption that a violative general business practice has occurred. This proposed new subsection is modeled after a similar provision in the Code of Maryland Regulations at COMAR 31.15.07.09.

The Department proposes to add new subsection 3.5 that limits the cause of action afforded under the regulation to enforcement actions conducted by the Commissioner. Proposed new subsection 3.6 excepts from regulation under Section 3.0 those health care general business practice violations that are otherwise regulated by 18 **DE Admin. Code** 1310.

Public Comment

The Department is holding a virtual public hearing and a simultaneous in-person meeting on the proposed amendments to Regulation 902 on **Tuesday, October 26, 2021 at 10:00 a.m.** The hearing will be facilitated through Microsoft Teams Meeting as follows:

Join on your computer or mobile app

https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F%2Fmeetup-join%2F19%3Ameeting_NDBjMTfKjctM2JiYS00YTJILWE5OGUtZjZiZDRjMTk5Y2Mw%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%25228c09e569-51c5-4dee-abb2-8b99c32a4396%2522%252c%2522Oid%2522%253a%2522c35eb0e1-3e8a-4ac7-86be-43ca4a7af9b4%2522%257d%26CT%3D1631712739365%26OR%3DOutlook-Body%26CID%3D00DDD0D0-659F-479A-992C-24023DA3C584%26anon%3Dtrue&type=meetup-join&deeplinkId=9bd3218b-9ac8-4865-961f-5f5f513c634f&directDI=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true

Join with a video conferencing device

979352250@t.plcm.vc

Video Conference ID: 118 603 174 9

Or call in (audio only)

+1 302-504-8986,,910040336# United States, Wilmington

Phone Conference ID: 910 040 336#

The proposed amendments can be found at <https://regulations.delaware.gov/register/august2021/proposed/25%20DE%20Reg%20156%2008-01-21.htm> and may also be viewed on the Department of Insurance website at <https://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 10th day of November, 2021. Any such requests and any questions concerning connecting to the public hearing should be directed to:

Regulatory Specialist/Legal Unit
Delaware Department of Insurance
ATTN: Reg. 902/Docket 4259-2020
1351 West North Street, Suite 101
Dover, DE 19904
(302) 674-7300
Email: DOI-Legal@delaware.gov

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

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

Meeting information can be accessed via the [public meeting calendar](#).

[Meeting materials available on the State Board of Education's eBoard site](#). (If you are having technical difficulties accessing the site, please try a different browser.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF HEALTH CARE QUALITY

PUBLIC NOTICE

4405 Free Standing Surgical Centers

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 1, Section 122(3)(p), Delaware Health and Social Services (DHSS)/ Division of Health Care Quality (DHCQ) is proposing regulations governing Free Standing Surgical Centers.

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 by email to Corinna.Getchell@Delaware.gov or by fax to 302-292-3931 by 4:30 p.m. on November 1, 2021. Please identify in the subject line: Regulations Governing Free Standing Surgical Centers.

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 Free Standing Surgical Centers.

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 1, 2021.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Program of All-Inclusive Care for the Elderly (PACE)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan to incorporate the current version of the Program of All-Inclusive Care for the Elderly (PACE) State Plan Amendment preprint.

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 Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on November 1, 2021. Please identify in the subject line: Program of All-Inclusive Care for the Elderly (PACE)

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR QUALITY****PUBLIC NOTICE****1102 Permits**

The Division of Air Quality of the Department of Natural Resources and Environmental Control (DNREC) is proposing to amend 7 **DE Admin. Code** 1102, subsections 12.3.2 and 12.4.2 for public notice publication requirements for general permits. In 2016, US Environmental Protection Agency (EPA) issued a final rule which updated the list of contents to be identified in the public notices for Title V facilities. The Division is proposing to amend the public notice requirements in 7 **DE Admin. Code** 1102, to ensure consistency with the wording of EPA's final rule and 7 **DE Admin. Code** 1130 Title V public notice requirements.

A virtual public hearing (Docket # 2021-R-A-0010) will be held on Wednesday, October 27, 2021 beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use DAQRegs. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 179 845 2350. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The proposed amendments may be inspected online starting October 1, 2021 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Taylor Englert by phone at 302-739-9402 or by email at Taylor.Englert@delaware.gov.

The Department will accept public comment through the close of business on Thursday, November 11, 2021. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

Lisa Vest, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway, Dover, DE 19901

DIVISION OF AIR QUALITY**PUBLIC NOTICE****1103 Ambient Air Quality Standards**

The Division of Air Quality of the Department of Natural Resources and Environmental Control (DNREC) is proposing to amend 7 **DE Admin. Code** 1103, Section 6.0 to update the ambient air quality standard for ground level ozone. On December 23, 2020, the U.S. Environmental Protection Agency (EPA) issued a final rule to retain the primary and secondary ozone National Ambient Air Quality Standards (NAAQS). The standards, established in 2015, are set at 0.070 parts per million (ppm). Currently, the primary and secondary ozone standards in 7 **DE Admin. Code** 1103, Section 6.0 are 0.075 ppm. This action will amend the current ozone standards in 7 **DE Admin. Code** 1103 to 0.070 ppm.

In addition, this action will update Code of Federal Regulations (CFR) reference dates for all NAAQS in 7 **DE Admin Code** 1103, and will remove 7 **DE Admin. Code** 1103, subsections 4.2 (SO₂ 24-hour primary standard) and 4.3 (SO₂ annual primary standard), as EPA revoked these two standards in 2010.

A virtual public hearing (Docket # 2021-R-A-0011) will be held on Wednesday, October 27, 2021 beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use DAQRegs. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 179 845 2350. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The proposed amendments may be inspected online starting October 1, 2021 at <http://>

regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Taylor Englert by phone at 302-739-9402 or by email at Taylor.Englert@delaware.gov.

The Department will accept public comment through the close of business on Thursday, November 11, 2021. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnreccomments>, or by U.S. mail to the following address:

Lisa Vest, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway, Dover, DE 19901

DIVISION OF AIR QUALITY
PUBLIC NOTICE

1130 Title V State Operating Permit Program

The Division of Air Quality of the Department of Natural Resources and Environmental Control (DNREC) is proposing to amend 7 **DE Admin. Code** 1130 in the following aspects:

- a) Amendment of 7 **DE Admin. Code** 1130, Section 7.0 "Permit Issuance, Renewal, Reopenings, and Revisions", subsection 7.10.2 regarding public notice publication requirements. The Environmental Protection Agency (EPA) issued a final rule in 2016 which updated the list of contents to be identified in the public notice for Title V permits. The proposed amendments are to revise the public notice requirements in 1130, to ensure consistency with the specific wording of EPA's final rule.
- b) Amendment of 7 **DE Admin. Code** 1130, Section 6.0 "Permit Contents", to update affirmative defense requirements. 7 **DE Admin. Code** 1130 is based on 40 CFR Part 70, which outlines requirements for state operating permit programs. Subsection 6.7 of 1130 includes guidance on claiming affirmative defenses for emission exceedances for emergencies and malfunctions. The Division is proposing to remove the term "malfunction" from 7 **DE Admin. Code** 1130, to maintain consistency with the current federal requirements.
- c) Amendment of 7 **DE Admin. Code** 1130, Section 2.0 "Definitions", Table 2-1 to update the list of greenhouse gases (GHG) and their global warming potential (GWP) values. EPA issued a final rule in 2013 that revised the GWP values of 23 of the 32 compounds listed in Table 2-1. EPA issued an additional final rule in 2014 that added 30 new compounds to the list of GHG. Accordingly, this action will revise 7 **DE Admin. Code** 1130 Table 2-1 to update the GWP values and to include the new GHG compounds as provided in the above two EPA final rules.

A virtual public hearing (Docket # 2021-R-A-0009) will be held on Wednesday, October 27, 2021 beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use DAQRegs. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 179 845 2350. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnreccomments> or by telephone at 302-739-9295.

The proposed amendments may be inspected online starting October 1, 2021 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Taylor Englert by phone at 302-739-9402 or by email at Taylor.Englert@delaware.gov.

The Department will accept public comment through the close of business on Thursday, November 11, 2021. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnreccomments>, or by U.S. mail to the following address:

Lisa Vest, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway, Dover, DE 19901

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 Board of Accountancy
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The proposed rules are designed to implement the Revised Accountancy statute. A public hearing was originally scheduled for September 22 at 9:30 a.m. in the second-floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The original *Register* notice was published on August 1, 2021, in Volume 25, Issue 2 of the *Register* beginning at page 160. The September 22, 2021, public hearing could not go forward due to the lack of publication of required newspaper notices. A rescheduled public hearing will occur at the Board's meeting on November 17, 2021, where members of the public can offer comments on the proposed amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until December 2, 2021, in accordance with 29 **Del.C.** §10118(a).

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 clarify what percentage of a nursing course's clinical experience may be through simulation; clarify who may go inactive and the procedure to do; and amends the advanced practice registered nurse regulations in order to comply with changes to the law, which among other changes, eliminate the collaborative agreement and independent practice application requirements and change the make-up of the APRN committee.

The Board will hold a public hearing on the proposed regulation changes on November 10, 2021 at 9:15 a.m. in the 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 November 29, 2021 pursuant to 29 Del. C. § 10118(a).

PUBLIC SERVICE COMMISSION
PUBLIC NOTICE
3001 Rules for Certification and Regulation of Electric Suppliers

On September 17, 2021, the Governor of the State of Delaware signed into law Senate Bill 2, which removes certain barriers to the adoption of community-based solar photovoltaic systems in Delaware and establishes a regulatory process to be implemented by the Public Service Commission relating to community-owned energy generating facilities ("CEFs"). Senate Bill 2 instructs the Commission to promulgate regulations: (1) to provide for customers participating in a CEF to be credited on their electric bills for the customers' subscribed percentage of generation produced by the CEF; and (2) to provide consumer protections for customers of CEFs. Under Senate Bill 2, the new regulations will apply only to CEFs located in the service territory of -- and serving only the customers of -- a Commission-regulated electric distribution company, which at this time consists only of Delmarva Power & Light Company ("Delmarva").

By Order No. 9883 dated September 15, 2021 (the "Order"), the Commission now proposes to revise its *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 *Del. Admin. C.* § 3001 ("Supplier Rules") to reflect the Senate Bill 2 amendments and to govern the process by which CEFs may obtain (1) a Certificate to Operate from the Commission and (2) permission to interconnect to Delmarva's electric distribution system.

The text of the revised *Supplier Rules* is attached to the Order. The Order and related exhibits are reproduced in the October 1, 2021 edition of the *Delaware Register of Regulations* and may also be reviewed online at the

Commission's website at www.depsc.delaware.gov. You may also obtain a paper copy of the Orders at the Commission's Dover office for a fee of \$0.25 per page.

The Commission will conduct a public hearing on the revised *Supplier Rules* on Wednesday, November 17, 2021, beginning at 1:00 PM, in accordance with 26 *Del. C.* § 209(a). Based on Governor John Carney's Declaration of a Public Health Emergency, effective July 13, 2021, the hearing will be conducted via teleconference. All persons who wish to be heard by the Commission should call in toll free 1-866-299-7945, access code 5979551#. Interested parties may file written comments, suggestions, briefs, compilations of data, or other materials concerning the Amendments. Such material may be submitted to the Commission on or before December 2, 2021, by email to dimitar.kozhuharov@delaware.gov or at the following address:

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

To be considered at the November 17, 2021 hearing, however, written materials must be submitted on or before November 1, 2021.

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

OFFICE OF THE STATE TREASURER
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, (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, 2021.

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 will increase to 25% the allowable investment limits for private placement securities (Rule 144A securities) held in liquidity accounts.

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.
