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# Delaware Register of Regulations

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Issue Date: September 1, 2022

Volume 26 - Issue 3, Pages 143-237

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



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

*Cover Photo  
Camden, Delaware*



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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

- Governor's Executive Orders
  - Governor's Appointments
  - Agency Hearing and Meeting Notices
  - Other documents considered to be in the public interest.
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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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

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The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

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**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF AGRICULTURE****THOROUGHBRED RACING COMMISSION**Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))3 **DE Admin. Code** 1001**PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations****Summary**

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

**Comments**

A copy of the proposed regulations is being published in the September 1, 2022 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: [https://regulations.delaware.gov/register/current\\_issue.shtml](https://regulations.delaware.gov/register/current_issue.shtml).

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



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must be received on or before October 3, 2022. Written materials submitted will be available for inspection at the above address.

**Adoption of Proposed Regulation**

On or after October 3, 2022, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

**Effective Date of Amendments to Regulations**

If adopted by the Thoroughbred Racing Commission, the amendments shall take effect ten days after being published as final in the Delaware Register of Regulations.

Delaware Thoroughbred Racing Commission  
Sarah A. Crane, Executive Director

**\*Please Note:**

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

<http://regulations.delaware.gov/register/september2022/proposed/26 DE Reg 150RFA 09-01-22.pdf>

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

[1001 Thoroughbred Racing Rules and Regulations](#)

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

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

**PUBLIC NOTICE**

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

[237 Educational Support Professional of the Year](#)

**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

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

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

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before October 3, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

## C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards? The regulation does not address student achievement.
2. Will the regulation help ensure that all students receive an equitable education? The regulation is intended to continue to help ensure all students receive an equitable education.
4. Will the regulation help to ensure that all students' health and safety are adequately protected? The regulation does not address students' health and safety.
4. Will the regulation help to ensure that all students' legal rights are respected? The regulation continues to help ensure that all student's legal rights are respected.
5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation does not change the decision making at the local board and school level.
6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the regulation.
8. Will the 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 regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is an expected cost of approximately \$5,000 to the Department of Education, as well as a cost of \$2500 to each District and Charter School to implement this 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/september2022/proposed/26 DE Reg 151RFA 09-01-22.pdf>

## 237 Educational Support Professional of the Year

### 1.0 Purpose

The purpose of this regulation is to establish policies and procedures by which Educational Support Professional of the Year award funds may be used by the designated recipient pursuant to 14 Del.C. §8906D.

### 2.0 Definitions

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

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

**"Educational Support Professional of the Year Award Fund"** means a ~~\$2,500~~ \$5,000 set aside fund within the budget of the Department of Education for the award recipient to make withdrawals from as necessary ~~to fund educational materials~~ to serve educational purposes and objectives as described in 14 Del.C. §8906D.

**"Educational Support Professional of the Year Award Recipient"** or **"Recipient"** means a school employee whose position is instructional in nature or who provides other direct or indirect services to students and their parents such as paraprofessionals, instructional aides, custodial staff, secretaries, nutritional staff and school bus drivers, who is recognized for their outstanding service as described in 14 Del.C. §8903D. This designation is given at both the local school district and at the statewide level.

**3.0 Funding**

- 3.1 The Educational Support Professional of the Year Award Fund, in the amount of ~~\$2,500~~ \$5,000, shall be set aside within the budget of the Department to be used for the statewide Educational Support Professional of the Year Award Recipient's exclusive assignment and disbursement.
- 3.2 The Educational Support Professional of the Year Award Recipient shall not directly receive the funds, but may make withdrawals solely for educational purposes and to benefit students. No amount of such award shall be used for the personal benefit of the award recipient; however, in the use of such funds for educational purposes, the Recipient may be an indirect or incidental beneficiary as educational support professional of the benefited pupils.
- 3.3 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.
- 3.4 Possible use of funds includes, but is not limited to:
  - 3.4.1 Purchase of non-consumable materials and supplies (library books, audio/visual equipment, computer equipment, etc.);
  - 3.4.2 Purchase of otherwise consumable materials that are used by students (paper, notebooks, binders, pencils, etc.);
  - 3.4.3 Employment of performers or consultants (musical group, author, poet or other subject matter expert);
  - 3.4.4 Student-centered professional development for building level Educational Support Professionals; or
  - 3.4.5 Reimbursements to the recipient, not to exceed \$500, for personal expenses.
- 3.5 Materials, equipment or other items purchased with such funds shall be the property of the local school district in which the recipient is employed at the time of expenditure.
- 3.6 Invoices, purchase orders or personal reimbursement forms related to withdrawals from the Educational Support Professional of the Year Award Fund shall be retained by the local school district and shall be available for inspection as public records and subject to regular audit by the State Auditor of Accounts.

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**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**

**Ambulatory Surgical Center Services Rate**

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 regarding Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Kimberly.Xavier@delaware.gov](mailto:Kimberly.Xavier@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on October 3, 2022. Please identify in the subject line: Ambulatory Surgical Center Services Rate.

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

**SUMMARY OF PROPOSAL**

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

**Statutory Authority**

42 CFR 416 - Ambulatory Surgical Services

**Background**

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

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

**Summary of Proposal**

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

*Public Notice*

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

*Centers for Medicare and Medicaid Services Review and Approval*

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

*Provider Manuals and Communications Update*

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

**Fiscal Impact**

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/september2022/proposed/26 DE Reg 153RFA 09-01-22.pdf>

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**REIMBURSEMENT FOR FREE STANDING SURGICAL CENTER I  
AMBULATORY SURGICAL CENTER SERVICES

Delaware Medicaid uses the reimbursement methodology and formulae of the Medicare program, as described in Section 5243 of the Medicare Carriers Manual, in determining per diem rates for payment of Free Standing Surgical Centers (FSSCs) I Ambulatory Surgical Centers (ASCs). Effective April 1, 2009, Delaware Medicaid reimburses 95 percent of the Medicare calculated ASC rates for Delaware.

~~Effective October 1, 2021 an ambulatory surgical center being used for patient dental services will be reimbursed by Medicaid for such services at 50 percent of the current Medicare Outpatient Prospective Payment System (OPPS) rate for procedure codes specified by the State for these dental services.~~

Effective October 1, 2022, an ambulatory surgical center being used for patient dental services will be reimbursed by Medicaid for such services at the facility's usual and customary charge or a maximum fee for their service, whichever is lower.

Except as otherwise noted in the plan, State developed rates are the same for both government and private providers. The fee schedule of ASC rates is available on the DMAP website at the following address: <http://www.dmap.state.de.us/downloads>.

This amendment adds the reimbursement methodology for an ambulatory surgical center being used to provide dental services.

TN No. SPA# <u>21-0008</u>	Approval Date
Supersedes	
TN No. SP# <u>09-002</u>	Effective Date: <u>October 1, 2022</u>

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Medicaid Recovery Audit Contractors Program

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 regarding the Medicaid Recovery Audit Contractor (RAC) Program, specifically, to request an exception to the RAC contracting requirements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Kimberly.Xavier@delaware.gov](mailto:Kimberly.Xavier@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on October 3, 2022. Please

identify in the subject line: Medicaid Recovery Audit Contractors Program.

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 regarding the Medicaid Recovery Audit Contractor (RAC) Program, specifically, to request an exception to the RAC contracting requirements.

### **Statutory Authority**

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

### **Background**

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

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

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

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

In a letter dated December 26, 2020, the Centers for Medicare & Medicaid Services (CMS) approved an amendment modifying the State Plan to grant Delaware an exception to the RAC requirements for a 2-year period ending June 30, 2020. After careful review, the RAC requirements continue to be impractical and not cost-effective for Delaware's Medicaid program. Delaware will submit an amendment to modify the State Plan to grant Delaware an exception to the RAC requirements.

### **Summary of Proposal**

#### *Purpose*

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

#### *Summary of Proposed Changes*

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



## *Public Notice*

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

## *Centers for Medicare and Medicaid Services Review and Approval*

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

## *Provider Manuals and Communications Update*

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

## **Fiscal Impact**

There is no anticipated fiscal impact.

## **\*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/september2022/proposed/26 DE Reg 155RFA 09-01-22.pdf>

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

[Medicaid Recovery Audit Contractors Program](#)

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## **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)(t) (16 **Del.C.** §122(3)t)  
16 **DE Admin. Code** 4459

## **PUBLIC NOTICE**

### **4459 Lead Based Paints Hazards**

Pursuant to 16 **Del.C.** §122(3)(t), the Health Systems Protection Section of the Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Lead Based Paints Hazards. On September 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Lead Based Paints Hazards regulations. The revisions include updates to lead levels in dust sampling results, which have been lowered to be consistent with EPA regulations; specific regulations for interim controls; and technical corrections. The proposed regulation published in the May 2022 *Register of Regulations* (25 **DE Reg.** 1005 (05/01/22) (Prop.)) is no longer being considered in favor of the amendments presented here pursuant to 29 **Del.C.** §10118(c).

Copies of the proposed regulations are available for review in the September 1, 2022 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public



Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Monday, October 3, 2022, at:

Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov)  
Phone: (302) 744-4951

**\*Please Note:**

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

<http://regulations.delaware.gov/register/september2022/proposed/26 DE Reg 157RFA 09-01-22.pdf>

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

**4459 Lead Based Paints Hazards**

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)(t) (16 Del.C. §122(3)(t))  
16 DE Admin. Code 4459B

**PUBLIC NOTICE**

**4459B Residential Property Renovation, Repair and Painting**

Pursuant to 16 Del.C. §122(3)(t), the Health Systems Protection Section of the Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Residential Property Renovation, Repair and Painting. On September 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Residential Property Renovation, Repair and Painting regulations. The revisions include a definition of "occupant protection plan;" a requirement for certified renovators to develop an occupant protection plan prior to any lead renovation, repair, and painting work; and technical corrections.

Copies of the proposed regulations are available for review in the September 1, 2022 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them by Monday, October 3, 2022, at:

Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov)  
Phone: (302) 744-4951

**\*Please Note:**

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

<http://regulations.delaware.gov/register/september2022/proposed/26 DE Reg 158RFA 09-01-22.pdf>

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

**4459B Residential Property Renovation, Repair and Painting**

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Del.C. §512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Food Benefit Certification.  
16 DE Admin. Code 9000

### PUBLIC NOTICE

#### Food Benefit Certification

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 Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Food Benefit Certification.

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, Division of Social Services (DSS), 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Kimberly.Xavier@delaware.gov](mailto:Kimberly.Xavier@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on October 3, 2022. Please identify in the subject line: Food Benefit Certification.

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Food Benefit Certification.

#### Statutory Authority

7 CFR 273.10 (f)

#### Background

DSSM 9068 is being amended to reflect the changes from 24-month to 12-month certification periods for households in which all members are elderly or disabled, and from 12-month to 6-month certification periods for all other households participating in SNAP. DSS is shortening SNAP certification period lengths to eliminate the SNAP periodic review and to help reduce errors caused when households do not report changes in circumstances during the certification period. DSSM 9068 was also updated with current case processing procedures and DSSM 9068.1 through DSSM 9068.5 will be sunset with relevant information from these policies added to DSSM 9068.

#### Summary of Proposal

##### *Purpose*

The purpose of this proposed regulation is to sunset DSSM 9068.1 through DSSM 9068.5 and add relevant information from these policies to DSSM 9068. The proposed policy will also explain the requirements for certification periods in the Supplemental Nutrition Assistance Program (SNAP), including assigning certification periods, when the certification period begins and ends, and adjusting or terminating certification periods based on household circumstances.

##### *Summary of Proposed Changes*

Effective for services provided on and after November 11, 2022 Delaware Health and Social Services (DHSS) /Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) regarding Food Benefit Certification.

##### *Public Notice*

In accordance with the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/ DSS gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity

to provide input on the proposed regulation. Comments should be received by 4:30 p.m. on October 3, 2022.

## Fiscal Impact

DSSM 9068 is already in effect and there are no new financial responsibilities associated with the 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/september2022/proposed/26 DE Reg 159RFA 09-01-22.pdf>

## 9000 Food Stamp Program

### POLICY AMENDMENT

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

### 9068 Assigning Certification Periods for Food Benefits

#### Statutory Authority

[7 CFR 273.10(f)]

~~DSS approves eligible households for a defined number of months called a certification period. The certification period is the period of time that DSS determines a household is eligible to receive benefits.~~

~~At the end of the certification period, entitlement to food benefits expires. DSS will not issue any further food benefits until the household completes a new application, is interviewed and provides all necessary verifications.~~

~~The first month for which the household is eligible to participate starts the first month of the certification period. DSS will assign certification periods according to each household's circumstances.~~

~~The certification periods for all households shall not exceed 12 months, except households listed in DSSM 9068.2.~~

A certification period is the set amount of time that an approved household is eligible to receive food benefits.

1. DSS assigns approved food benefit households a certification period based on each household's circumstances at application and recertification.
2. DSS will assign the following certification periods to food benefit households:
  - A. A 12-month certification period will be assigned to households in which all members are elderly or disabled as defined in DSSM 9094 and have no earned income.
  - B. A 6-month certification period will be assigned to all other households.

Exception: Households certified on an expedited basis who have postponed verifications will be assigned an initial 1-month or 2-month certification period as specified in DSSM 9046.1.

3. The certification period begins the first month that a household is eligible for food benefits.

#### Examples:

- i. A household submits a food benefit application on January 10. The household is determined eligible for January. The first month of the household's certification period is January.
- ii. A household submits a food benefit application on January 28. The household is determined eligible for January, but does not receive a benefit issuance due to a prorated benefit of less than \$10.00. The first month of the household's certification period is January.

- iii. A household submits a food benefit application on January 5. The household is determined to be over income for January, but eligible beginning February. The first month of the household's certification period is February.
- 4. A household's eligibility for food benefits expires at the end of the certification period.
- 5. Households must complete the recertification process according to DSSM section 9091 and have their renewal application approved to establish a new certification period and continue receiving food benefits.
- 6. DSS may terminate a food benefit household's certification period before the assigned end date only for the following reasons:
  - A. The household becomes ineligible due to a reported change and the food benefit case is closed as required by DSSM section 9085; or
  - B. The household fails to respond to a Request for Contact during the certification period and the food benefit case is closed as required by DSSM 9085.5; or
  - C. The household requests for their food benefit case to be closed.
- 7. DSS case workers will not adjust certification period lengths unless instructed to do so by management or the Information Systems Unit (ISU).
- 8. DSS informs households of the begin and end dates of their certification periods on the food benefit approval notice.

## **9068.1 12 Month Certification Periods**

~~Assign households subject to simplified reporting, except the elderly or disabled households per DSSM 9068.2, a 12-month certification period.~~

~~Households assigned a 12-month certification period are required to complete and return an interim report in the 6<sup>th</sup> month of the certification period.~~

## **9068.2 24 Month Certification Periods for Elderly or Disabled Households**

~~Assign a 24-month certification period to households where all members are elderly or disabled and have no earned income.~~

~~Households assigned a 24-month certification period are required to complete and return an interim report in the 12<sup>th</sup> month of the certification period.~~

## **9068.3 Length of Certification Periods**

~~Assign each household the longest certification period possible based on its circumstances.~~

~~Households with unstable circumstances can be assigned a certification period consistent with their circumstances, but no less than 4 months.~~

## **9068.4 Shortening Certification Periods**

~~Households certification periods will not be terminated before the assigned certification periods end except for the following reasons:~~

- ~~- DSS receives information that the household has become ineligible, or~~
- ~~- The household fails to respond to a Request for Contact to resolve unclear information.~~

~~Households certification periods will not be shortened due to loss of cash assistance or change in employment status.~~

~~Close or adjust households benefits in response to reported changes according to DSSM 9085.~~

~~Do not use the Notice of Expiration to shorten a certification period.~~

**~~9068.5 Lengthening Certification Periods~~**

~~When needed, lengthen a household's certification period after it has been assigned as long as the total months of certification do not exceed 12 months.~~

~~Inform households whose certification is lengthened of the new certification ending date with a notice containing the same information as the notice of eligibility.~~

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**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** 1126

**REGISTER NOTICE****SAN #2018-04****DOCKET # 2022-R-A-0001****1126 Motor Vehicle Emissions Inspection Program**

## 1. TITLE OF THE REGULATIONS:

PROPOSED 7 DE ADMIN. Code 1126 Motor Vehicle Emissions Inspection Program - Sussex County

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

The purpose of this action is to amend Regulation 1126 to establish a statewide I/M program implemented in Kent, New Castle and Sussex Counties. The proposed amendments will establish identical emissions testing requirements statewide as well as exempt the first seven model years of a vehicle pursuant to House Bill 246.

## 3. POSSIBLE TERMS OF THE AGENCY ACTION:

NONE

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

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

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

PROPOSED 7 DE ADMIN. Code 1131 Motor Vehicle Emissions Inspection Program - Kent and New Castle Counties

## 6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket # 2022-R-A-0001) will be held on Thursday, September 29, 2022, 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: MVEIP. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter the event code 2339 665 6055. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC public hearings must pre-register no later than noon of 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 September 1, 2022 at [https://regulations.delaware.gov/services/current\\_issue.shtml](https://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting Marvina Cephas by phone at 302-739-9402 or by email at [Marvina.Cephas@delaware.gov](mailto:Marvina.Cephas@delaware.gov).

The Department will accept public comment through the close of business on Friday, October 14, 2022. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnreccomments>, or by U.S. mail to the following address:

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

7. PREPARED BY: Marvina Cephas [marvina.cephas@delaware.gov](mailto:marvina.cephas@delaware.gov) 302.739.9402

**\*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/september2022/proposed/26 DE Reg 162RFA 09-01-22.pdf>

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

**1126 Motor Vehicle Emissions Inspection Program**

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## DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 Del.C. §6010(a) & (c))  
7 DE Admin. Code 1131

### REGISTER NOTICE

SAN #2018-05

DOCKET # 2022-R-A-0002

### 1131 Low Enhanced Inspection and Maintenance Program

1. TITLE OF THE REGULATIONS:

7 DE ADMIN. Code 1131 Low Enhanced Inspection and Maintenance Program proposed to be amended to 7 DE ADMIN. Code 1131 Motor Vehicle Emissions Inspection Program - Kent and New Castle Counties

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

The purpose of this action is to amend Regulation 1131 to establish a statewide I/M program implemented in Kent, New Castle and Sussex Counties. The proposed amendments will establish identical emissions testing requirements statewide as well as exempt the first seven model years of a vehicle pursuant to House Bill 246.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

NONE

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. Ch. 60 § 6010 (a) and (c).

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

Proposed 7 DE ADMIN. Code 1126 Motor Vehicle Emissions Inspection Program - Sussex County

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket # 2022-R-A-0002) will be held on Thursday, September 29, 2022, 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: MVEIP. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter the event code 2339 665 6055. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC public hearings must pre-register no later than noon of 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 September 1, 2022 at [https://regulations.delaware.gov/services/current\\_issue.shtml](https://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting Marvina Cephas by phone at 302-739-9402 or by email at [Marvina.Cephas@delaware.gov](mailto:Marvina.Cephas@delaware.gov).

The Department will accept public comment through the close of business on Friday, October 14, 2022. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

7. PREPARED BY: Marvina Cephas [marvina.cephas@delaware.gov](mailto:marvina.cephas@delaware.gov) 302.739.9402

**\*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/september2022/proposed/26 DE Reg 163RFA 09-01-22.pdf>

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

**1131 Low Enhanced Inspection and Maintenance Program**

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**DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 **Del.C.** §6010(a) & (c))  
7 **DE Admin. Code** 1131

**REGISTER NOTICE**

**DOCKET # 2022-R-A-0010**

**1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)**

1. TITLE OF THE REGULATIONS:

1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)

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

The purpose of this action is to amend Delaware's approved State Implementation Plan per 40 CFR 52. Delaware is requesting that 7 **DE Admin. Code** 1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI) be struck from Delaware Administrative Code. The Department intends to correct an error that was made with regulatory amendments in 2012. The PFI was never intended to be regulatory language or included in Delaware Administrative Code. The PFI should be a stand alone document.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

NONE

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

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



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

7 DE ADMIN. Code 1126 Motor Vehicle Emissions Inspection Program  
7 DE ADMIN. Code 1131 Low Enhanced Inspection and Maintenance Program

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket # 2022-R-A-0010) will be held on Thursday, September 29, 2022, 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: MVEIP. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter the event code 2339 665 6055. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC public hearings must pre-register no later than noon of 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 September 1, 2022 at [https://regulations.delaware.gov/services/current\\_issue.shtml](https://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting Marvina Cephas by phone at 302-739-9402 or by email at [Marvina.Cephas@delaware.gov](mailto:Marvina.Cephas@delaware.gov).

The Department will accept public comment through the close of business on Friday, October 14, 2022. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

7. PREPARED BY: Marvina Cephas [marvina.cephas@delaware.gov](mailto:marvina.cephas@delaware.gov) 302.739.9402

**\*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/september2022/proposed/26 DE Reg 164RFA 09-01-22.pdf>

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

[1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation \(PFI\)](#)

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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### OFFICE OF THE SECRETARY

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

#### PUBLIC NOTICE

#### **103 Regulations Governing the Delaware Large Capacity Magazine Compensation Program**

**Purpose:** In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 5, Section 6901(c), the Delaware Department of Safety and Homeland Security proposes to adopt regulations to implement the Delaware Large Capacity Magazine Prohibition Act of 2022 compensation program.

**Written Comments:** The Delaware Department of Safety and Homeland Security will receive written comments, suggestions, briefs or other written material until the close of business, 4:30 p.m., October 3, 2022. Written comments shall be submitted via e-mail to [Terry.Pepper@delaware.gov](mailto:Terry.Pepper@delaware.gov) or via the USPS to Terry Pepper, Department of Safety and Homeland Security, Office of the Secretary, 800 S Bay Road, Suite 2, Dover, Delaware 19901.

# PROPOSED REGULATIONS

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

<http://regulations.delaware.gov/register/september2022/proposed/26 DE Reg 165RFA 09-01-22.pdf>

## 103 Regulations Governing the Delaware Large Capacity Magazine Compensation Program

### **1.0 Definitions**

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

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

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

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

**"Law Enforcement Agency"** means the Delaware State Police.

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

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

### **2.0 Authorization**

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

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

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

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

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

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

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

### **3.0 Collection and Disposition of Recovered Large Capacity Magazines**

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

3.1.1 Where collected;

3.1.2 Whom collected by;

3.1.3 Who collected from;

3.1.4 The date of collection;

3.1.5 The make, model and serial number if applicable.

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

3.2.1 LCM 18 to 30 rounds: \$15.00

3.2.2 LCM 31 or greater rounds:\$25.00

3.2.3 LCM Drums: \$80.00

3.3 The law enforcement agency shall not have the discretion to pay an amount exceeding the amounts as described in subsection 3.2 during the LCMCP period.

- 3.4 Within 14 days after the conclusion of the LCMCP period, a complete list of all LCM collected shall be supplied to the Secretary containing information listed in subsection 3.1 of these regulations.
- 3.5 It shall be the responsibility of the law enforcement agency participating in the LCMCP to dispose of the LCMs collected. Disposal may include any, or a combination of the following:
- 3.5.1 Destruction in a manner causing destruction of the LCM through such methods as crushing, melting or shredding.
- 3.6 Agencies, upon destruction of weapons, shall furnish a list of all disposed LCMs to the Secretary within 14 business days.

## **4.0 General Rules**

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

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## **DEPARTMENT OF TRANSPORTATION**

### **DIVISION OF MOTOR VEHICLES**

#### **Driver Services**

Statutory Authority: 21 Delaware Code, Section 302 and 29 Delaware Code, Section 8404(8)  
(21 Del.C. §302 & 29 Del.C. §8404(8))  
2 DE Admin. Code 2203

#### **PUBLIC NOTICE**

### **2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (Formerly Reg. No. 17)**

Pursuant to the authority provided by 21 Del. C. §302 and 29 Delaware Code, Section 8404(8), the Delaware Division of Motor Vehicles (DMV), adopted the Implied Consent and Administrative Per Se Other Administrative Hearings of Record.

The Division of Motor Vehicles seeks to adopt general revisions to its existing regulation, the Implied Consent and Administrative Per Se Other Administrative Hearings of Record, to address federal requirements. These collective changes are administrative in nature and serve in part to clarify the intent of the Division as enacted through these regulations.

## Public Comment Period

DMV will take written comments on these proposed general revisions to Section 2203 of Title 2, Delaware Administrative Code, from September 1, 2022 through October 3, 2022. The public may submit their comments to:

Crystal Stump, DI Program Manager, Division of Motor Vehicles  
[crystal.stump@delaware.gov](mailto:crystal.stump@delaware.gov) or in writing to their attention,  
 Delaware Department of Transportation(DelDOT)  
 Division of Motor Vehicles  
 PO BOX 698  
 Dover, DE 19903

**\*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/september2022/proposed/26 DE Reg 167RFA 09-01-22.pdf>

## 2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (~~Formerly Reg- No. 17~~)

### 1.0 Authority

The authority to promulgate this regulation is 21 ~~Del.C. §302 and 29 Del.C. §10115~~ §302.

### 2.0 Purpose

This policy regulation establishes administrative procedures regarding the administrative hearing process for implied consent, administrative per se ~~se~~ se, and other administrative hearings of record.

### 3.0 Applicability

This policy regulation interprets the following sections found in 21 **Del.C.** §2740 through §2750 in their entirety. This policy contains procedures necessary to implement the sections referenced above and other administrative hearings of record pertaining to license revocations, suspension, ~~disqualifications~~ disqualifications, and other DMV actions or decisions.

### 4.0 Substance of Policy

- 4.1 The arresting officer shall personally issue to the defendant the original copy of the MV 529 form at the time of issuance in all cases regardless of whether a temporary license was issued as well.
- 4.2 The following documents shall be submitted to the Division of Motor Vehicles Administration Office 303 Transportation Circle PO Box 698 Dover, DE 19903 immediately following issuance of the MV 529 Official Notice and Order of Revocation and Temporary License:
  - 4.2.1 MV 529 Official Notice and Order of Revocation
  - 4.2.2 Form 333 Probable Cause and Implied Consent form
  - 4.2.3 Delaware driver's license
- 4.3 Documents referenced in subsection 4.2 above of this regulation that are not received by the Division within 30 days from the date of issuance will not be processed and no action will result against the defendant. The Division shall process all MV 529 Official Notice and Order of Revocation, where no administrative hearing is requested, within 30 days of receipt.
- 4.4 The defendant, the defendant's legal representative, or person acting on the defendant's behalf may request an administrative hearing within 15 days of the issue date on the MV 529 form. If the 15th day falls on a Saturday, Sunday, legal holiday, or any other day when the Division is not open for business the defendant will be given until the next succeeding business day to make the defendant's request. The request may be made in person at any Division of Motor Vehicles office, by mail, or by facsimile. The request for a hearing must be in written form.

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- 4.5 Failure of the defendant, the defendant's legal representative, or person acting on the defendant's behalf to request the hearing within the 15-day time period will result in a the license being immediately revoked upon processing of the MV 529 Notice and Order of Revocation by the Division for the appropriate period of time pursuant to 21 **Del.C.** §2742 & §2743.
- 4.6 A notice scheduling the hearing must be sent within 30 days of the hearing request. The scheduling notice shall be sent to the defendant, the arresting officer, and the defendant's legal representative if the Division has knowledge of the legal representative at the time the scheduling notice is sent.
- 4.7 A request for a continuance by the defendant, legal representative, or police officer will be considered as ~~outlined below~~ follows:
- 4.7.1 One continuance request will be granted to either party (defense or State) regardless of reason provided the request is received at least 1 business day prior to the hearing date.
- 4.7.2 A subsequent request for a continuance will be considered provided the request is in writing and received at least 1 business day prior to the hearing date. The request must contain travel documents, medical documents, employment documents, court documents, training documents, or other documents to support the continuance request.
- 4.7.3 ~~At~~ A continuance request made on the day of the hearing will be considered in the event of an emergency. Documentation to verify the emergency must be submitted.
- 4.7.4 Continuance requests should be made directly to the Hearing Officer of record or in the Hearing Officer's absence, to the Driver Improvement Unit, Revocation Section, Hearing Staff, Driver Improvement Manager or Driver Improvement Assistant Manager.
- 4.8 The decision of the Hearing Officer following the administrative hearing shall be rendered within 15 working days.
- 4.9 The decision of the Hearing Officer is forwarded to a Motor Vehicle Specialist in the Administration Office who in turn will send notice of the Hearing Officer's decision to the defendant, law enforcement officer and the defendant's legal representative.
- 4.10 All hearings will be ~~taped~~ recorded and the ~~tapes~~ recordings will be retained by the Hearing Officer for one (1) year should the hearing officer rule in favor of the State. However, if the ruling is in favor of the defendant, the ~~tape~~ recording does not need to be retained and may be ~~reused and/or~~ erased immediately. The hearing ~~tapes~~ recordings are considered internal working documents and will not be released to either party regardless of the Hearing Officer's decision unless directed by the Division's Deputy Attorney General or by the court. A copy of the hearing ~~tape~~ recording will be made available to an approved transcription service in the event of an appeal of a ruling against the defendant.
- 4.11 Upon receipt of an appeal a copy of all printed material shall be made available to the Deputy Attorney General representing the Division of Motor Vehicles. Contact shall be made with an approved transcription service to determine the cost of the transcript and necessary copies. Contact shall be made with the Hearing Officer to make a copy of the specific hearing being appealed. The Hearing Officer shall forward a copy of the ~~tape~~ recording to the Administration Office where the transcription service shall pick up the ~~tape~~ recording. Upon receipt of the transcription copies they shall be distributed as follows: One copy each to the defendant, the defendant's legal representative, the Deputy Attorney General, the court, and the defendant's DMV case file.
- 4.12 The appellant will be responsible for the cost of preparing the transcript of the hearing in the event of an appeal. The cost will include five (5) copies of said transcript.
- 4.13 Copies of the Hearing Officer's decision will be available to the defense and the State only upon request of an appeal of the decision.
- 4.14 The following personnel classifications are designated to hold administrative hearings for the Division of Motor Vehicles:
- 4.14.1 Chief of Driver Services
- 4.14.2 Driver Improvement Manager
- 4.14.3 Driver Improvement Assistant Manager Hearing Officer
- 4.14.4 Driver Improvement Hearing Officer

**5.0 Severability**

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

**6.0 Effective Date**

The following regulation ~~shall be~~ became effective June 11, 2006. Amendments to the regulation will become effective 10 days from the date ~~the order is signed and it is~~ they are published in its final form in the ~~Register of Regulations~~ Register of Regulations in accordance with 29 Del.C. §10118(e).

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**DIVISION OF TRANSPORTATION SOLUTIONS**

Statutory Authority: 21 Delaware Code, Section 4504 (21 Del.C. §4504)  
2 DE Admin. Code 2405

**PUBLIC NOTICE****2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual**

Pursuant to the authority provided by 21 Del. C. §4504, the Delaware Department of Transportation (DelDOT) adopted the Oversize/Overweight Vehicle Hauling Permit Policy and Procedures Manual

The Department, through its Division of Transportation Solutions seeks to adopt these revisions to address procedural changes. These collective changes are administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

**Public Comment Period**

DelDOT will take written comments on these proposed revisions to Regulation 2405 of Title 2, Delaware Administrative Code, from September 1, 2022 through October 3, 2022. The public may submit their comments to:

Jeffrey Van Horn, P.E.  
Chief of Traffic Operations  
([Jeffrey.VanHorn@delaware.gov](mailto:Jeffrey.VanHorn@delaware.gov)) or in writing to his attention,  
Delaware Department of Transportation  
Division of Transportation Solutions, Traffic Operations Section  
169 Brick Store Landing Road  
Smyrna, DE 19977

**\*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/september2022/proposed/26 DE Reg 170RFA 09-01-22.pdf>

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

**2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual**

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## Symbol Key

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

## Final Regulations

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

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

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## DEPARTMENT OF AGRICULTURE

### PLANT INDUSTRIES SECTION

Statutory Authority: 3 Delaware Code, Section 2904(a) (3 **Del.C.** §2904(a))

## ORDER

### 806 Regulations for Invasive Plants

This Order relates to the proposed Regulations for Invasive Plants ("Regulations"). The Delaware Department of Agriculture, Plant Industries Section ("Department") proposed the Regulations to clearly define the procedures, plant list maintenance, and governing measures related to the Invasive Plant Law.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, the Department provided public notice and provided an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. The Department did receive comments from the public.

The proposed Regulations were first published in the *Delaware Register of Regulations*, Volume 25, Issue 11, on May 1, 2022. After receiving comments from the public, the Department made substantive changes to the regulations which was re-proposed in the July 1, 2022 *Delaware Register of Regulations*. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was August 1, 2022.

### Summary of the Evidence and Information Submitted

There was no public hearing held and a total of eight written comments were received by the Department. Comments were generally very similar supporting changes made in the re-proposed regulations including moving a plant to the Plant Watch List, creating a process to exempt and maintain plants on the lists, and allowing more general signage for the Plant Watch List.



### Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Department with comments in writing on the proposed amendments to the Regulations. After reviewing the written comments received from the public, the Department will not make any changes to the proposed amendments to the Regulations. In the proposed amendments to the Regulations, the Department addresses several of the comments submitted by the public, by detailing the petition process to exempt specific cultivars of species listed on the Invasive Plant List.

Pursuant to 3 Del.C. §101 (2) & (3), the Department has the statutory authority to promulgate rules and regulations.

### Decision and Effective Date

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

**IT IS SO ORDERED** this 15th day of August 2022.

Michael T. Scuse  
Delaware Secretary of Agriculture

### 806 Regulations for Invasive Plants

#### 1.0 Purpose

- 1.1 The purpose of these regulations is to clarify how the Department will eradicate, repress, and prevent the spread of plant pests as authorized in Title 3, Chapter 11 of the Delaware Code.
- 1.2 The Department will work with the Delaware Native Species Commission for expertise and advice on maintaining the Invasive Plant List and Plant Watch list and review of sterility exemption.
- 1.3 The Department will be responsible for enforcement of the Invasive Plant Law during routine inspections of businesses or inspections resulting from a complaint. During inspections, the Department will survey for plants on the Invasive Plant List and ensure businesses' compliance with signage requirements for plants on the Plant Watch List.

#### 2.0 Definitions

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

"Commission" means the Delaware Native Species Commission.

"Cultivar" means a plant variety that has been produced in cultivation by selective breeding.

"Department" means the Delaware Department of Agriculture.

"Invasive plant" means any living part, cultivar, variety, species or subspecies not native to Delaware identified by the Secretary having the potential to do all of the following:

- a. Result in widespread dispersal and establishment.
- b. Out-compete other species in the same area.
- c. Exhibit rapid growth or high seed or propagule productions.
- d. Become established in natural areas in the State.

"Invasive Plant List" means the list of invasive plants maintained by the Secretary.

"Plant Watch List" means the list of potentially invasive plants maintained by the Secretary.

"Secretary" means the Secretary of the Delaware Department of Agriculture.

"Sterility" means unable to produce reproductive structures.

#### 3.0 The Invasive Plant List and Plant Watch List

- 3.1 The Invasive Plant List

- 3.1.1 Amur honeysuckle, *Lonicera maackii*
- 3.1.2 Autumn olive, *Elaeagnus umbellata*
- 3.1.3 Callery pear, *Pyrus calleryana*
- 3.1.4 Chinese wisteria, *Wisteria sinensis*
- 3.1.5 Creeping water primrose, *Ludwigia peploides subsp. glabrescens*
- 3.1.6 English ivy, *Hedera helix*
- 3.1.7 European privet, *Ligustrum vulgare*
- 3.1.8 European reed, *Phragmites australis subsp. australis*
- 3.1.9 European sweetflag, *Acorus calamus*
- 3.1.10 Garlic mustard, *Alliaria petiolata*
- 3.1.11 Hydrilla, *Hydrilla verticillata*
- 3.1.12 Japanese barberry, *Berberis thunbergii*
- 3.1.13 Japanese honeysuckle, *Lonicera japonica*
- 3.1.14 Japanese knotweed, *Fallopia japonica*
- 3.1.15 Japanese pachysandra, *Pachysandra terminalis*
- 3.1.16 Japanese stiltgrass, *Microstegium vimineum*
- 3.1.17 Lesser celandine, *Ficaria verna*
- 3.1.18 Lesser periwinkle, *Vinca minor*
- 3.1.19 Marsh dewflower, *Murdannia keisak*
- 3.1.20 Mile-a-minute weed, *Persicaria perfoliata*
- 3.1.21 Morrow's honeysuckle, *Lonicera morrowii*
- 3.1.22 Multiflora rose, *Rosa multiflora*
- 3.1.23 Norway maple, *Acer platanoides*
- 3.1.24 Orange daylily, *Hemerocallis fulva*
- 3.1.25 Oriental bittersweet, *Celastrus orbiculatus*
- 3.1.26 Parrot-feather, *Myriophyllum aquaticum*
- 3.1.27 Porcelain berry, *Ampelopsis glandulosa*
- 3.1.28 Purple loosestrife, *Lythrum salicaria*
- 3.1.29 Spotted knapweed, *Centaurea stoebe subsp. micranthos*
- 3.1.30 Tatarian honeysuckle, *Lonicera tatarica*
- 3.1.31 Tree of heaven, *Ailanthus altissima*
- 3.1.32 Water hyacinth, *Eichhornia crassipes*
- 3.1.33 Wineberry, *Rubus phoenicolasius*
- 3.1.34 Winged euonymus, *Euonymus alatus*
- 3.1.35 Yam-leaved clematis, *Clematis terniflora*
- 3.1.36 Yellow flag iris, *Iris pseudoacorus*
- 3.2 The Plant Watch List. Plants listed on the Plant Watch List must be identified with a tag, label, or sign on each plant or in the general vicinity of the plants for sale.
- 3.2.1 Creeping Jenny, *Lysimachia nummularia*

#### **4.0 Maintenance of the Invasive Plant List and Plant Watch List**

- 4.1 The Secretary shall maintain the Invasive Plant List and Plant Watch List with the advice of the Commission, so long as the Commission exists.
  - 4.1.1 Should the Department receive requests for review of plants to be added or removed from the Invasive Plant List or Plant Watch List, the Department shall submit requests to the Commission for advice, within 30 days of the request for review.

- 4.1.2 The Department and the Commission shall review any plants recommended to be added to or removed from the Invasive Plant List and Plant Watch List. The Department shall seek the advice of the Commission, or any subcommittee as designated by the Commission, to add or remove plants from the Invasive Plant List or Plant Watch List.
- 4.1.3 Should the Commission receive requests for review of plants to add or remove from the Invasive Plant List or Plant Watch List, the Commission shall provide its recommendations via email to the Secretary or during a Commission meeting within 60 days of the initial request for review. Recommendations must include, at a minimum, a detailed methodology used by the Commission to make a determination about each plant under consideration to be added to or removed from the Invasive Plant List and Plant Watch List.
- 4.1.4 The Secretary shall respond to the Commission with a decision or a request for additional information within 60 days of the date of the recommendation.
- 4.1.5 The Secretary shall initiate any required regulatory changes to the Invasive Plant List and Plant Watch List within 30 days of the date that a determination has been made.

## **5.0 Allowance for Sterility**

- 5.1 The Department recognizes that the level of sterility of a plant impacts its potential to:
  - 5.1.1 Result in widespread dispersal and establishment.
  - 5.1.2 Out-compete other species in the same area.
  - 5.1.3 Exhibit rapid growth or high seed propagule productions.
  - 5.1.4 Become established in natural areas in the State.
- 5.2 The Department reserves the right to consider cultivars of plants based on level of sterility at their point of sale or delivery into the State of Delaware. The Department may grant an exemption for cultivars of plants listed on the Invasive Plant List.
- 5.3 Persons requesting that a cultivar be exempted from the Invasive Plant List must petition the Department by submitting a Petition to Exempt a Specific Cultivar form. Persons may request that plant cultivars be exempted from the Invasive Plant List based on sterility level and seed viability and must provide an explanation and references to justify the request.
- 5.4 The Department, with advice of the Commission, will consider submitted cultivars for exemption when there is independent, peer reviewed, scientific research evaluating the invasiveness of the cultivar. Petitions require burden of proof to be held by the breeder or plant representative and leave no responsibility to the State of Delaware.
  - 5.4.1 Any requests brought to the Department for a cultivar to be exempted from the Invasive Plant List shall be submitted to the Commission via email within 30 days of the request for advice.
  - 5.4.2 The Commission shall provide recommendations via email to the Secretary within 60 days of receiving the Petition to Exempt a Specific Cultivar form. The recommendations must include, at a minimum, a detailed methodology used by the Commission to make a determination about each cultivar under consideration to be exempted from the Invasive Plant List.
  - 5.4.3 The Secretary shall respond to the Commission with a decision or a request for additional information via email within 60 days of the date of the recommendations.
  - 5.4.4 The Secretary shall initiate any required regulatory changes to the Invasive Plant List within 30 days of the date that a determination has been made, with the advice of the Commission, to exempt a cultivar from the Invasive Plant List.
- 5.5 Exemptions are conditional and subject to revocation by the Department.

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 29 Delaware Code, Section 7528  
(14 **Del.C.** §122(b) & 29 **Del.C.** §7528)  
14 **DE Admin. Code** 401

### REGULATORY IMPLEMENTING ORDER

#### 401 Major Capital Improvement Program

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

Pursuant to 14 **Del.C.** §122(b) and 29 **Del.C.** §7528, the Secretary of Education intends to amend 14 **DE Admin. Code** 401 Major Capital Improvement Program. This amendment is needed due to changes in the threshold amount for Major Capital Improvement Program. Additionally, this regulation is being edited 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 July 1, 2022. The Department of Education did not receive any written comments concerning the proposed amendments.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 401 Major Capital Improvement Program in order to make changes in the threshold amount for Major Capital Improvement Program. Additionally, this regulation is being edited 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** 401 Major Capital Improvement Program. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 401 Major Capital Improvement Program attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 401 Major Capital Improvement Program 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** 401 Major Capital Improvement Program amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 401 Major Capital Improvement Program 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 8, 2022. 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 8th day of August 2022.  
**Department of Education**

Mark A. Holodick, Ed.D., Secretary of Education  
Approved this 8th day of August 2022

## 401 Major Capital Improvement Program

## 1.0 Purpose and Definitions

- 1.1 The Major Capital Improvement Program consists of one or more construction projects having a cost of ~~\$750,000~~ \$1,000,000 or more.
- 1.1.1 The Secretary of Education may annually review the current cost per square foot for construction and make necessary adjustments as required.
- 1.1.2 Multiple projects may be considered together to form a single Major Capital Improvement Program project. The consolidation of Major Capital Improvement Program projects should be for one location.
- 1.1.3 All Major Capital Improvement Program projects shall use standard bid and contract documents as developed by the Office of Management and Budget, Division of Facilities Management.
- 1.1.3.1 Local school districts may enhance the standard bid and contract documents with additional contractual or project specific requirements as long as the enhancements do not diminish and are not in conflict with the provisions of the standard documents.
- 1.1.3.2 The Department of Education, in consultation with the Office of Management and Budget, Division of Facilities Management shall approve any modifications or changes to the provisions of the standard bid and contract documents before a local school district may use or enhance the modified documents.

## 1.2 Definitions

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

**“Certificate of Necessity”** means a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project. The Certificate of Necessity authorizes the local school district to hold a referendum for the Major Capital Improvement Program identified, if required.

**“Certificate of Occupancy”** means a document issued by a local code enforcement official or office attesting that a Facility meets building codes and is fit for human occupancy.

**“Change Orders”** means documents that change the construction contract and are negotiated between the owner and contractor to correct design omissions, address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.

**“Completion of Construction”** means the local school district, with the concurrence of the architect, accepts the facility as complete, meaning that all punch list items are resolved, release of liens has been received, and funds held in retainage have been released.

**“Design Development Plans”** means documents that denote mechanical functions, placement of windows and doors, pedestrian traffic circulation both interior and exterior, utilities, service areas and structure. Design Development Plans are at a 40% to 60% completion stage.

**“Educational Specifications”** means documents which explain how the educational spaces relate to the educational programs as well as the requirements of an educational Facility to house and implement the educational philosophy and institutional program.

**“Facility”** means a long-lived capital asset including, but not limited to, school buildings; athletic buildings; athletic fields and appurtenances; playgrounds; maintenance, operations and storage structures; office buildings and all other buildings and capital assets associated with the operation and management of a local school district or school system.

**“Final Construction Plans”** means documents that show the complete Facility design including mechanical, electrical, water, sewer, site plans, storm water conveyance and structural systems, complete bid documents and specifications.

**“Schematic Design Plans”** means documents that present a proposed Facility in its earliest stages denoting the approximate size and relationship of areas to each other. Detailed utilities or mechanical functions are not typically shown at this stage.

“Signed and Sealed Plans” means design documents that have the architect’s or engineer’s professional seal and signature affixed.

## 2.0 Certificates of Necessity

- 2.1 Local school districts shall submit local school board approved projects to the Department of Education by August 31 of each fiscal year to be considered for a Certificate of Necessity and capital funding in the following fiscal year.
- 2.2 Local school district submissions for a Certificate of Necessity shall provide an equity statement that identifies the demographic information (e.g. race, Low Income, English Learner) of the students who are expected to attend the new school, use a new facility, or benefit from an approved Major Capital Project and how the Major Capital Project impacts equitable distributions of new and renovated buildings throughout the school district.
- 2.3 The Certificate of Necessity shall be quoted in the advertisement for the referendum.
- 2.4 Projects proposing the construction of a new Facility or for an addition to an existing Facility shall be issued a separate Certificate of Necessity. Funds issued for the construction of a new Facility or for an addition to an existing Facility shall not be transferred to projects in a separate Certificate of Necessity.
- 2.5 Additions and renovations to existing Facilities that are done in connection with other renovations may be issued a single Certificate of Necessity. However, when such a multiple project Certificate of Necessity is issued, it shall identify each Facility in the program and describe the work to be done at that Facility including the state and local share of the total cost for that work. Funds may be transferred between projects issued under the same Certificate of Necessity in accordance with Section 8.0 of this regulation.
- 2.6 The Department of Education will complete and forward the Certificate of Necessity to the local school district superintendent for that superintendent’s signature.
- 2.7 A copy of the final Certificate of Necessity will be returned to the local school district within ten ~~(10)~~ working days following final approval by the Department of Education.

## 3.0 Procedures for Approval of a Site for School Construction

- 3.1 The local school board shall forward all prospective sites to the Office of State Planning Coordination for consideration and comment through the Planning Land Use Service (PLUS) review process.
- 3.2 Local school districts shall notify the Department of Education in writing to schedule a site review when they propose to purchase a site for school purposes; when they propose to use a currently owned site for school purposes; or when they propose to obtain a site through donation, gift or condemnation. Depending on the outcome of the PLUS review process, the Department of Education may conduct a site review.
- 3.3 The acquisition of lands for school construction shall comply with 29 **Del.C.** §7525.

## 4.0 Approval of Educational Specifications, Schematic Design Plans, Design Development Plans, and Construction Drawings

- 4.1 Educational Specifications shall be approved by the local school board and forwarded to the Department of Education for informational purposes. The Department of Education may provide comments on Educational Specifications at its discretion.
- 4.2 All Schematic Design Plans, Design Development Plans and Final Construction Drawings shall be approved by the local school board and the Department of Education. The Department of Education requires one ~~(4)~~ set of each, including a signed and sealed Final Construction Drawings and specifications.
- 4.3 The local school district must involve all applicable state, local and municipal regulatory agencies in reviewing Final Construction Drawings before the start of construction. Copies of all applicable state, local and municipal agency approvals shall be maintained in the local school district construction files. Required state agency approvals are noted in the *State of Delaware School Construction Technical Assistance Manual*, which is available on the Department of Education’s website.

- 4.4 Major Capital Improvement Program projects that do not include structural changes or wall modifications such as, but not limited to, window replacement, HVAC, electrical or plumbing infrastructure upgrades do not require submission of construction specifications or plans to the Department of Education.

#### **5.0 Notification, Start and Completion of Construction, and Certificate of Occupancy**

- 5.1 The local school district shall submit to the Department of Education and the Office of Management and Budget a construction schedule, showing start dates, intermediate stages, and final completion dates.
- 5.2 The local school district shall notify the Department of Education, Office of Management and Budget and Insurance Coverage Office at the completion of construction.
- 5.3 The local school district shall record capital assets in accordance with the *State of Delaware Budget and Accounting Manual*.
- 5.4 The local school district shall notify the Department of Education, Division of Accounting, State Auditor, and Office of Management and Budget upon approval of occupancy.
- 5.5 Local school districts shall submit to the Department of Education a copy of the electronic files in a format approved by the Department of Education. Electronic files shall be submitted no later than thirty (30) calendar days after the completion of any major renovation, addition to an existing Facility, new school or replacement school.

#### **6.0 Purchase Orders**

All purchase orders for Major Capital Improvement Program projects shall be approved by the Department of Education and Office of Management and Budget before submission to the Division of Accounting.

#### **7.0 Change Orders**

- 7.1 All Change Orders must be agreed upon by the architect, local school district and contractor, and shall be forwarded to the Department of Education.
- 7.1.1 Submission of a Change Order must include the following documents:
- 7.1.1.1 A completed purchase order as applicable and following the local school board approved change order approval and authorization process and procedure;
  - 7.1.1.2 Local school board of education minutes identifying and approving the changes;
  - 7.1.1.3 American Institute of Architects (AIA) document G701-Change Order Form; and
  - 7.1.1.4 Correspondence which gives a breakdown in materials, mark-up, and other expenses.

#### **8.0 Percentage of Funds Transferable Between Projects within a Certificate of Necessity**

- 8.1 Local school districts may request the transfer of funds between projects during the bidding and construction process in writing to the Department of Education. Acceptability of the transfer of funds will meet the following criteria:
- 8.1.1 No project may have any portion of its funding moved to another project without the approval of the Secretary of the Department of Education, the Director of the Office of Management and Budget and the Controller General.
  - 8.1.2 No project may have any funding added to its initial funding without the approval of the Secretary of the Department of Education, the Director of the Office of Management and Budget and the Controller General.
  - 8.1.3 No transfer of funds shall be executed between projects authorized through and by separate Certificates of Necessity.



## 9.0 Educational Technology

All school facilities being constructed or renovated under the Major Capital Improvement Program shall include wiring for technology that meets the current Department of Technology and Information Wiring Standards, and is appropriate to the grade level and educational requirements of the Facility type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds when no other technology funds are available.

## 10.0 Playground Construction

All playgrounds constructed or renovated pursuant to a Major Capital Improvement Program project shall comply with the most current editions of the American Society of Testing Materials (ASTM) Designation F-1487 and the Consumer Products Safety Commission (CPSC) Publication Number 325.

## 11.0 Administration of the New School

An administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The state portion of salary and benefits may be paid from Major Capital Improvement Program funding.

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 29 Delaware Code, Section 7528  
(14 Del.C. §122(b) & 29 Del.C. §7528)  
14 DE Admin. Code 405

### REGULATORY IMPLEMENTING ORDER

### 405 Minor Capital Improvement Program

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(b) and 29 Del.C. §7528, the Secretary of Education intends to amend 14 DE Admin. Code 405 Minor Capital Improvement Program. This amendment is needed due to changes in the threshold amount for Minor Capital Improvement Programs. This regulation is also being edited 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 July 1, 2022. The Department of Education did not receive any written comments concerning the proposed amendments.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 405 Minor Capital Improvement Program in order to make changes in the threshold amount for Minor Capital Improvement Program. Additionally, this regulation is being edited 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 405 Minor Capital Improvement Program. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 405 Minor Capital Improvement Program attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 405 Minor Capital Improvement Program 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** 405 Minor Capital Improvement Program amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 405 Minor Capital Improvement Program 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 8, 2022. 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 8th day of August 2022.  
**Department of Education**

Mark A. Holodick, Ed.D., Secretary of Education  
Approved this 8th day of August 2022

#### **405 Minor Capital Improvement Program**

##### **1.0 Minor Capital Improvement Program Purpose**

The Minor Capital Improvement Program's primary purpose is to keep real property assets in their original condition of completeness and efficiency on a scheduled basis. It is not for increasing the plant inventory or changing its composition. Minor Capital Improvement Program projects cost less than \$750,000 unless the project is for roof repair \$1,000,000 and the underlying assets should carry a life expectancy of 10 years or more. In addition, roof, window and door replacements, paving projects, generator replacements, floor replacements, HVAC replacements, and plumbing replacements will be considered minor capital improvements, however, this does not exempt capitalization of these projects in accordance with the Budget and Accounting Policy Manual, Chapter 13 Asset Management, Section 13.10.1 Construction Work in Process (CWIP). The Minor Capital Improvement Program shall be reviewed annually by the school district and should be comprised of work necessary for good maintenance practice.

##### **2.0 Definitions**

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

**"Career Technical Program Equipment"** means either a movable or fixed unit but not a built-in unit. In addition, the equipment shall retain its original shape and appearance with use, be nonexpendable, and represent an investment which makes it feasible and advisable to capitalize and not lose its identity through incorporation into a different or more complex unit. Computers and computer peripheral equipment may be purchased using Minor Capital Improvement Vocational Education Equipment Replacement Funds provided such equipment purchased with such funds is used in a vocational education setting for the service life of said equipment.

**"Minor Capital Improvement Program"** means a program which provides for the planned and programmed maintenance and repair of the school plant.

##### **3.0 Use of Funds**

- 3.1 The expenditure of Minor Capital Improvement Program funds are authorized for the following areas, including but not limited to: maintenance and maintenance equipment, repairs, inspections, testing, maintenance agreements and service contracts related to: roofs, heating systems, ventilation and air conditioning systems, plumbing and water systems, electrical systems, windows, doors, floors, ceilings, masonry, structural built-in equipment, painting, fire suppression and life safety systems, security systems installation and maintenance, school grounds, athletic facilities and playgrounds, as

well as renovations, alterations and modernizations that do not require major structural changes. Maintenance equipment may include specialized vehicles for maintaining buildings and grounds and attachments or accessories for general purpose vehicles where the attachments or accessories are for maintenance of buildings and grounds.

- 3.2 Funds allocated for a specific project shall be used only for that project. Program funds may not be used for the following: motorized vehicles not identified in subsection 3.1, routine janitorial supplies, new construction that increases the area of a building or extends any of its component systems, site improvements that add to or extend the existing roadways or sidewalks, surfacing a non-surfaced area for parking, completing major construction projects or specific items omitted or deleted from major construction projects or floor space allocated according to formula and used otherwise.

## 4.0 Invoices

Invoices shall be approved by the Department of Education and the Office of Management and Budget before submission to the Division of Accounting for processing. Payments may be made as the project progresses or after work has been completed and accepted, as warranted by the nature and scope of the individual project or projects.

## 5.0 Career Technical Program Equipment Replacement Requests

- 5.1 Replacement of Career Technical Program Equipment may be accomplished using Minor Capital Improvement Vocational Education Replacement Funds.
- 5.2 To replace Career Technical Program Equipment, the equipment must have a unit cost of \$500 or more, be obsolete or more than five (~~5~~) years old, and be purchased with state or local funds.
- 5.3 Funds shall be allocated based on the percentage of a district's Vocational Division II Units to the total of such units of all participating districts. This percentage is applied to the total funds available in a given year for Career Technical Program Equipment. Allocations for technical school districts do not require a local match.

## 6.0 Purchase Orders

- 6.1 Minor Capital Improvement Program project purchase orders shall be reviewed and approved by the Department of Education and the Office of Management and Budget before submission to the Division of Accounting.
- 6.2 Funds may be expended as long as the appropriation is active and continuing as authorized through legislation, usually a three (~~3~~) year period. Appropriations may be accumulated over those three (~~3~~) years and expended for a major replacement when a sufficient balance is attained. Funds unexpended when the appropriation expires shall revert to the state unless properly continued through legislation and Office of Management and Budget requirements.

## 7.0 Temporary Employees

Workers may be hired under the Minor Capital Improvement Program provided they are temporary hires and directly involved in the planning, constructing, or record maintenance of the construction project.

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# FINAL REGULATIONS

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## OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 1006

### ORDER

#### 1006 Delaware Interscholastic Athletic Association (DIAA)

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

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes to repeal 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). The regulation provides DIAA Board of Directors' procedural rules concerning conflicts of interest, committees, the executive director's responsibilities, amending regulations, reporting violations of interscholastic athletic regulations, game protests, the DIAA Board's investigative procedure, waiver requests, and appeals to the DIAA Board. In addition, the regulation sets forth the process for becoming a DIAA member school, the annual membership fees, and requirements for heads of DIAA member schools. Many of the sections of this regulation are proposed to be repealed because they will be incorporated into new regulations. Specifically, Sections 2.0 and 5.0 and subsection 7.1 will be incorporated into a new regulation, 14 **DE Admin. Code** 1024 Member Schools. Subsection 3.1 and 7.2, Sections 4.0, 6.0, 8.0, 9.0, and 10.0, and the last sentence of Section 11.0 will be incorporated into a new regulation, 14 **DE Admin. Code** 1020 DIAA Board Procedures. Subsection 3.2 will be incorporated into a new regulation, 14 **DE Admin. Code** 1021 DIAA Committees. Subsection 1.1 will not be incorporated into a new regulation because the DIAA Board is statutorily empowered to implement the regulations governing interscholastic regulations (14 **Del.C.** §§304(3)-(5)), and the language that is being repealed is not consistent with the statute and is not necessary. The first four sentences of Section 11.0 will not be incorporated into a new regulation because that language is in a statute (14 **Del.C.** §312) and is not necessary in a regulation.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2022. The DIAA Board of Directors did not receive any written submittals concerning the proposed repeal.

#### II. FINDINGS OF FACTS

On August 11, 2022, the DIAA Board of Directors proposed 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA), in the form attached hereto as Exhibit A, for repeal by the Department subject to the State Board of Education's approval.

The Department finds that the proposed repeal of the regulation is necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to repeal 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA).

#### III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to repeal 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) subject to the State Board of Education's approval. On August 12, 2022, the State Board of Education approved the repeal of 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303, 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA), attached hereto as Exhibit A, is hereby repealed.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) repealed hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) in the Administrative Code of Regulations for the Department.

## V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 12th day of August, 2022.

### Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of August, 2022.

### State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

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

**\*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 June 2022 issue of the *Register* at page 1069 (25 DE Reg. 1069). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1006 Delaware Interscholastic Athletic Association (DIAA)**

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## OFFICE OF THE SECRETARY

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

14 DE Admin. Code 1008

## ORDER

### 1008 DIAA Junior High and Middle School Interscholastic Athletics

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

Pursuant to 14 Del.C. §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes to repeal certain sections of 14 DE Admin. Code 1008 DIAA Junior High and Middle School Interscholastic Athletics. The regulation applies to interscholastic athletics at the middle school level. The following sections of this regulation are proposed to be repealed because they will be incorporated into new regulations. Section 3.0 will be incorporated into 14 DE Admin. Code 1034. Section 4.0 will be incorporated into 14 DE Admin. Code 1035. Subsection 5.1 will be incorporated into 14 DE Admin. Code 1024. Subsection 5.2 will be incorporated into 14 DE Admin. Code 1035. Section 6.0 will be incorporated into 14 DE Admin. Code 1040. Subsections 7.1 through 7.4 will be incorporated into 14 DE Admin. Code 1042. Subsection 7.6 will be incorporated into 14 DE Admin. Code 1040. Subsection 8.1 will be incorporated into 14 DE Admin. Code 1024. Subsections 8.2 through 8.4 will be incorporated into 14 DE Admin. Code 1043. Subsection 7.5 will not be incorporated into a new regulation because the Board found that student teachers would fall under the requirements for certified, emergency, or volunteer coaches, so a separate subsection is not necessary.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2022. The DIAA Board of Directors did not receive any written submittals concerning the proposed repeal of the sections.

## II. FINDINGS OF FACTS

On August 11, 2022, the DIAA Board of Directors proposed the above-referenced sections of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics, in the form attached hereto as Exhibit A, for repeal by the Department subject to the State Board of Education's approval.

The Department finds that the proposed repeal of the above-referenced sections of the regulation is necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to repeal the above-referenced sections of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics.

## III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to repeal the above-referenced sections of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics subject to the State Board of Education's approval. On August 12, 2022, the State Board of Education approved the repeal of the above-referenced sections of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303, the above-referenced sections of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics, attached hereto as Exhibit A, are hereby repealed.

## IV. TEXT AND CITATION

The text of the above-referenced sections of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics repealed hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics in the Administrative Code of Regulations for the Department.

## V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 12th day of August, 2022.

**Department of Education**

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of August, 2022.

**State Board of Education**

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

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

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

**\*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 June 2022 issue of the *Register* at page 1070 (25 DE Reg. 1070). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1008 DIAA Junior High and Middle School Interscholastic Athletics**

## OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 1009

### CORRECTED ORDER\*

#### 1009 DIAA High School Interscholastic Athletics

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

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes to repeal certain sections of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics. The regulation applies to interscholastic athletics at the high school level. The following sections of this regulation are proposed to be repealed because they will be incorporated into new regulations. Section 3.0 will be incorporated into 14 **DE Admin. Code** 1034. Section 4.0 will be incorporated into 14 **DE Admin. Code** 1035. Subsection 5.1 will be incorporated into 14 **DE Admin. Code** 1024. Subsection 5.2 will be incorporated into 14 **DE Admin. Code** 1035. Section 6.0 will be incorporated into 14 **DE Admin. Code** 1040. Subsections 7.1 through 7.4 will be incorporated into 14 **DE Admin. Code** 1042. Subsection 7.6 will be incorporated into 14 **DE Admin. Code** 1040. Subsection 8.1 will be incorporated into 14 **DE Admin. Code** 1024. Subsections 8.2 through 8.4 will be incorporated into 14 **DE Admin. Code** 1043. Subsection 7.5 will not be incorporated into a new regulation because the Board found that student teachers would fall under the requirements for certified, emergency, or volunteer coaches, so a separate subsection is not necessary.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2022. The DIAA Board of Directors did not receive any written submittals concerning the proposed repeal of the sections.

#### II. FINDINGS OF FACTS

On August 11, 2022, the DIAA Board of Directors proposed the above-referenced sections of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics, in the form attached hereto as Exhibit A, for repeal by the Department subject to the State Board of Education's approval.

The Department finds that the proposed repeal of the above-referenced sections of the regulation is necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to repeal the above-referenced sections of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics.

#### III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to repeal the above-referenced sections of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics subject to the State Board of Education's approval. On August 12, 2022, the State Board of Education approved the repeal of the above-referenced sections of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303, the above-referenced sections of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics, attached hereto as Exhibit A, are hereby repealed.

#### IV. TEXT AND CITATION

The text of the above-referenced sections of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics repealed hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics in the Administrative Code of Regulations for the Department.



## V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 12th day of August, 2022.

## Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of August, 2022.

## State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

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

\* There is an error in the title of the regulation on page 1 of the original order. The title is listed as "DIAA Junior High and Middle School Interscholastic Athletics." The correct title of the regulation is "DIAA High School Interscholastic Athletics."

**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 June 2022 issue of the *Register* at page 1071 (25 DE Reg. 1071). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1009 DIAA High School Interscholastic Athletics**

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303 and 29 Delaware Code, Section 10113(b)(2) (14 **Del.C.** §§122(b)(15) & 303 and 29 **Del.C.** §10113(b)(2))

## ORDER

## 1020 DIAA Board Procedures

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§122(b)(15) and 303 and 29 **Del.C.** §10113(b)(2), the Delaware Interscholastic Athletic Association ("DIAA") Board of Directors proposes the adoption of 14 **DE Admin. Code** 1020 DIAA Board Procedures. The proposed regulation sets forth rules of practice and procedure of the DIAA Board of Directors. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating defined terms from 14 **DE Admin. Code** 1006 into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing sections from 14 **DE Admin. Code** 1006 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsection 3.1; proposed Section 4.0 is formerly Section 4.0; proposed Section 5.0 is based on Section 6.0 but it has been revised to reflect the current practice; proposed Section 6.0 is formerly subsection 7.2; proposed Section 7.0 is formerly subsection 7.2.2 and Section 8.0 and has been revised to reflect the current practice; and proposed Sections 9.0, 10.0, and 11.0 are formerly Sections 9.0, 10.0, and 11.0, respectively. Proposed Section 8.0 is new and is based on the hearing procedures used in hearings on waiver requests. It sets forth the hearing procedures for hearings that do not involve requests for waivers of the



regulations.

The adoption of this regulation is exempt from the requirement of public notice and comment and is adopted informally in accordance with 29 **Del.C.** §10113(b)(2).

## **II. FINDINGS OF FACTS**

On August 11, 2022, the DIAA Board of Directors proposed 14 **DE Admin. Code** 1020 DIAA Board Procedures, in the form attached hereto as Exhibit A, to the Department to adopt informally pursuant to 29 **Del.C.** §10113(b)(2).

The Department finds that the proposed regulation relates to interscholastic athletics at the middle and high school levels and is necessary to implement 14 **Del.C.** Ch. 3. The Department further finds that the proposed regulation sets forth rules of practice and procedure of the DIAA Board of Directors. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1020 DIAA Board Procedures.

## **III. DECISION TO ADOPT THE REGULATION**

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1020 DIAA Board Procedures. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303 and 29 **Del.C.** §10113(b)(2), 14 **DE Admin. Code** 1020 DIAA Board Procedures, attached hereto as Exhibit A, is hereby adopted.

## **IV. TEXT AND CITATION**

The text of 14 **DE Admin. Code** 1020 DIAA Board Procedures adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1020 DIAA Board Procedures in the Administrative Code of Regulations for the Department.

## **V. EFFECTIVE DATE OF ORDER**

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

**IT IS SO ORDERED** the 12th day of August, 2022.

### **Department of Education**

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of August, 2022.

### **1020 DIAA Board Procedures**

#### **1.0 Applicability**

In accordance with 14 **Del.C.** §303, this regulation sets forth procedural rules for the DIAA Board of Directors.

#### **2.0 Definitions**

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

**"Board"** means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 **Del.C.** ch. 3.

**"Department"** means the Delaware Department of Education established pursuant to 14 **Del.C.** §101.

**"DIAA"** means the Delaware Interscholastic Athletic Association established pursuant to 14 **Del.C.** §301.

**"Executive Director"** means the Executive Director of the Delaware Interscholastic Athletic Association.

**"Member School"** means a full or associate member school of the DIAA.

**3.0 Conflicts of Interest**

- 3.1 Any member of the Board who may be directly affected or whose school or school district may be directly affected by a potential decision related to an appeal or waiver request shall recuse from consideration of the matter and shall not vote on that appeal or waiver request.
- 3.2 The Chairperson of the Board is responsible for maintaining the integrity of the decision-making process.

**4.0 Responsibilities of the Executive Director**

- 4.1 The Executive Director shall interpret the rules and regulations and may grant waivers of rules and regulations. Any waiver granted shall be temporary and shall be subject to review and approval by the Board. All decisions or actions as noted above shall be documented and shall be a part of any hearing or appeal procedure.
- 4.2 The Executive Director may decide issues between meetings of the Board. The Executive Director shall initiate a review of or fully investigate an alleged violation of the regulations that the Executive Director has seen, heard or read about, or which has been reported to him/her. The Executive Director may also refer investigations to committees referenced in 14 DE Admin. Code 1021 DIAA Committees or employ special investigators as necessary to conduct such investigations. Subsequent action by the Executive Director may include an official reprimand, placement on probation, a fine, the imposing of sanctions, or the suspension from participation for a designated period of time of a student athlete, team, coach, or official to ensure the necessary, orderly, and proper conduct of interscholastic competition.
- 4.3 The Executive Director shall carry on the business of the Board and DIAA between meetings. Waiver requests decided by the Executive Director shall be temporary and shall be subject to review and final approval by the Board. No school or individual shall be penalized in any case in which the Board reverses an earlier ruling of the Executive Director. In addition, the Executive Director shall administer the daily operation of DIAA.
- 4.4 In the event that the Executive Director is unavailable to perform the Executive Director's duties due to a conflict of interest or otherwise, and a matter requires immediate action, the Executive Director may delegate the matter to a subordinate in the DIAA Office, the Sportsmanship Committee or another applicable committee, or to the Board's Chairperson or Vice Chairperson. In such a case, the action shall be treated as the action of the Executive Director under the regulations.
- 4.5 In the event the Executive Director position is vacant, the Board may refer the Executive Director's responsibilities to a designee or designees, subject to the Department's approval and supervision, until the position is filled.

**5.0 Adopting, Amending, and Repealing Regulations**

- 5.1 Pursuant to 14 Del.C. § 303, the Board, working in consultation and cooperation with the Department, develops regulations relating to middle and secondary school interscholastic athletics.
- 5.2 The Board may initiate the process for adopting a new regulation or amending or repealing an existing regulation on its own or after receiving a written request.
- 5.2.1 Requests for the Board to adopt, amend, or repeal a regulation shall be submitted in writing to the DIAA Office. In order for a request to be considered complete, the request must include the applicable regulation or regulations; the specific request that is being made; who would be impacted by the request; the position of those who would be impacted by the request; and the requester's name, mailing address, phone number, and email address.
- 5.2.2 A complete request will be placed on a future agenda of the Board, as determined by the Board's Chairperson.
- 5.2.3 The requester may appear before the Board to present the request.
- 5.3 The Board may refer a regulation to the DIAA Rules and Regulations Committee to issue a recommendation to the Board.

- 5.4 The Board may request the Executive Director obtain information to aid in its decision whether to adopt, amend, or repeal a regulation.
- 5.5 The Board may consider any recommendations made by the DIAA Rules and Regulations Committee and any information obtained by the Executive Director in deciding whether to adopt, amend, or repeal a regulation.
- 5.6 The Board follows Delaware's Administrative Procedures Act when it decides to adopt, amend, or repeal a regulation (29 Del.C. §§10111 - 10119).
- 5.7 Once a regulation has been adopted, amended, or repealed, the Executive Director shall provide notice to Member Schools.

## **6.0 Protests**

All protests involving game competition that are allowable as defined in the NFHS (name of sport) Rule Book, and deemed by the Executive Director to be the responsibility of DIAA, and not a local conference, shall be heard by a three-person protest panel. This panel will include the Executive Director, the Board's Chairperson or Vice Chairperson, and the State Tournament Director of the given sport. Protests must be submitted in writing within 48 hours of the conclusion of the contest or earlier if required by NFHS rules. The decisions of the DIAA protest panel may not be appealed to the Board.

## **7.0 Complaints Alleging Violations of Regulations**

- 7.1 Any allegation that a Member School, student athlete, coach, administrator, official, or spectator violated a regulation relating to middle and secondary school interscholastic athletics shall be submitted to the DIAA Office in writing in the form of a complaint. A written complaint will not be processed unless it is complete. In order to be considered complete, the written complaint shall include the regulation that is alleged to have been violated; specific details of the alleged violation, including who violated the regulation and the date the violation occurred; and the complainant's contact information (i.e., name, address, phone number, and email address). DIAA will not address written complaints submitted by an anonymous person or source but the individual may contact the Executive Director specific to the assertion of the violation of the regulation.
- 7.2 After a written complaint is received, the DIAA Office will contact the complainant concerning the alleged violation and conduct a preliminary investigation, the purpose of which is to help the Executive Director determine whether to refer the complaint to the Board for a hearing.
- 7.3 If an allegation is made against a Member School, and a preliminary investigation has been conducted, the DIAA Office will forward the written complaint to the Member School, which will provide a written response to the complaint. For the purpose of this subsection, a written response includes a self-report under Section 6.0 of 14 DE Admin. Code 1024 DIAA Member Schools.
- 7.4 The Executive Director will review the complaint, the preliminary investigation results, and, if applicable, the Member School's written response to the complete and determine whether to close the complaint or refer the complaint to the Board or the Sportsmanship Committee.
- 7.5 If the complaint is referred to the Board, a hearing before the Board will be scheduled and the procedures in Section 8.0 of this regulation will be followed. If the complaint is referred to the Sportsmanship Committee, a hearing before the Sportsmanship Committee will be scheduled.
- 7.6 Based on the evidence presented at the hearing, the Board or the Sportsmanship Committee will determine whether a violation of a regulation has occurred and what penalties are appropriate to impose.

## **8.0 Hearing Procedures for Non-Waiver Matters**

- 8.1 If a hearing before the Board is scheduled, the DIAA Office will provide written notice of the date, time, and location of the hearing to the applicable individuals.
- 8.2 The Board may permit opening and closing statements.

- 8.3 The Board may take testimony, hear proof, and receive exhibits into evidence at a hearing. Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.
- 8.4 Testimony shall be under oath or affirmation. The Board may administer oaths to witnesses.
- 8.5 Any person who testifies as a witness shall also be subject to cross examination by the other party and questions from the Board.
- 8.6 Any document introduced into evidence at a hearing shall be marked by the Board and shall be made a part of the record of the matter. The Board will not accept or consider documents that are submitted after the hearing, as such documents are outside of the record.
- 8.7 Any request by the Board for additional information shall be promptly supplied.
- 8.8 The Board shall consider the entire record of the case in reaching its final decision. Unless otherwise provided, the Board's decision shall be effective immediately.
- 8.8 The Board's decision will be incorporated into a written order, which is signed by the Board and sent to the individuals who were notified of the hearing.
- 8.9 An individual may be represented by an attorney at a hearing. The attorney representing the individual shall notify the Executive Director of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be admitted pro hac vice in accordance with Rule 72 of the Rules of the Supreme Court of the State of Delaware.

## **9.0 Waiver of DIAA Rules and Regulations**

### **9.1 General Hearing Procedures and Rules**

- 9.1.1 The Board has the authority to set aside the effect of any athletic rule or regulation, subject to any limitations set forth in the specific rule or regulation, when the affected party establishes by the preponderance of the evidence, all of the following conditions:
- 9.1.1.1 In the case of eligibility waiver requests, there exists a hardship as defined by subsection 9.2.1;
- 9.1.1.2 Strict enforcement of the rule in the particular case will not serve to accomplish the purpose of the rule;
- 9.1.1.3 The spirit of the rule being waived will not be offended or compromised;
- 9.1.1.4 The principle of educational balance over athletics will not be offended or compromised; and
- 9.1.1.5 The waiver will not result in a safety risk to teammates or competitors.
- 9.1.2 Waivers are exceptional and extraordinary relief from the athletic rules and regulations. Ignorance of any rule or regulation alone, whether by the student athlete, the student athlete's family or school, or other affected party shall not be sufficient reason for waiving a rule. The burden of proof rests on the applicant to show extenuating circumstances warranting waiver.
- 9.1.3 The waiver request shall contain all facts pertaining to the case, including sufficient information to make it possible for DIAA to reach a decision. If a waiver request does not include all of the required documentation, it will be deemed incomplete and will not be processed by DIAA.
- 9.1.3.1 For a waiver request of an eligibility rule, the required documentation is set forth in subsection 9.2.2.2.
- 9.1.3.2 For a waiver request of a non-eligibility rule, the required documentation is set forth in subsections 9.3.2 and 9.3.4.
- 9.1.4 All requests for a waiver, with all documentation complete, must be received by the Executive Director at least 30 calendar days before the next regularly scheduled meeting of the Board.
- 9.1.5 For requests for a waiver of an eligibility rule, the Executive Director will decide whether to grant a waiver, as provided in subsection 4.3, based on the waiver request and documentation submitted with the request.
- 9.1.5.1 If the Executive Director decides to grant a waiver under subsections 4.3 and 9.1.5, the waiver is temporary and subject to the Board's approval. The Executive Director will send

written notice of the decision to grant a waiver to the applicant, including when the Board will consider the matter. The applicant may attend the Board's meeting but is not required to do so.

9.1.5.2 If the Board ratifies the Executive Director's decision to grant a waiver of an eligibility rule, the student athlete will remain eligible to participate as outlined in the Executive Director's written notice provided that the student athlete complies with all other eligibility rules.

9.1.5.3 If the Board does not ratify the Executive Director's decision to grant a waiver of an eligibility rule, the student will no longer be eligible to participate as outlined in Executive Director's written notice and an evidentiary hearing before the Board will be scheduled.

9.1.6 If the Executive Director does not grant a waiver or the Board does not approve the Executive Director's decision to grant a waiver, a hearing before the Board will be scheduled.

9.1.6.1 The Board may permit opening and closing statements.

9.1.6.2 The Board may take testimony, hear proof, and receive exhibits into evidence at a hearing. Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

9.1.6.3 Testimony shall be under oath or affirmation. The Board may administer oaths to witnesses.

9.1.6.4 Any person who testifies as a witness shall also be subject to cross examination by the other party and questions from the Board.

9.1.6.5 The applicant's opportunity to submit documents to the Board for consideration is with the applicant's waiver request and at the applicant's hearing. Any document introduced into evidence at a hearing shall be marked by the Board and shall be made a part of the record of the matter. The Board will not accept or consider documents that are submitted after the hearing, as such documents are outside of the record.

9.1.6.6 Any request by the Board for additional information shall be promptly supplied by the applicant.

9.1.7 The Board shall consider the entire record of the case in reaching its final decision. Unless otherwise provided, the Board's decision on a waiver request shall be effective immediately.

9.1.8 The Board's decision will be incorporated into a written order, which is signed by the Board and sent to the applicant within 20 days of the hearing.

9.1.9 An applicant may be represented by an attorney. The attorney representing an applicant shall notify the Executive Director of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be admitted pro hac vice in accordance with Rule 72 of the Rules of the Supreme Court of the State of Delaware.

## 9.2 Eligibility Rule Waiver Requests

9.2.1 Unless specifically defined in the eligibility rule in question, "hardship" means a hardship peculiar to the student athlete caused by unforeseen events beyond the election, control, or creation of the student athlete, his or her family, and his or her school, which deprive him or her of all or part of one of his or her opportunities to participate in a particular sports season. Ignorance of any rule alone, whether by the student athlete, his or her family, or his or her school, shall not be sufficient reason for waiving a rule. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

9.2.2 All eligibility hardship waiver requests shall be processed on forms approved by the Board and in accordance with the following procedures:

9.2.2.1 A request for a waiver of the eligibility rules must be directed by the student athlete to the involved Member School's Principal, Headmaster, or the Principal or Headmaster's designee who shall then file a written request stating the full particulars of the case and the reasons felt by the student athlete or the school, or both, for granting the waiver.

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- 9.2.2.1.1 All requests for eligibility rule waivers must be signed by the Principal or Headmaster of the school requesting the waiver and must include a letter from the Principal or Headmaster indicating whether the school supports the waiver request.
- 9.2.2.1.2 The school shall submit a waiver request form when requested by individual student athletes. The Board, however, may take into consideration the school's position on the waiver request when rendering its decision.
- 9.2.2.2 To aid the Board in making an informed decision, the waiver request shall include the student athlete's:
- 9.2.2.2.1 Official transcripts from the sixth grade through the current school year and most recent report card or grade report (if the most recent grades are not included on the transcript);
- 9.2.2.2.2 Attendance records for the last two years;
- 9.2.2.2.3 A letter from the Principal or Headmaster of the school requesting the waiver either supporting or not supporting the waiver request;
- 9.2.2.2.4 A letter from the student athlete, the student athlete's parent, guardian, or Relative Caregiver, or both explaining in detail the circumstances for requesting a waiver;
- 9.2.2.2.5 Documentation of withdrawal from a school (if applicable);
- 9.2.2.2.6 Documentation of acceptance in a school, such as an acceptance letter from a nonpublic school (if applicable);
- 9.2.2.2.7 School District Choice Enrollment Program documents that show the date of withdrawal and the date of enrollment (if applicable);
- 9.2.2.2.8 School calendar;
- 9.2.2.2.9 Any documentation specifically required by the rule;
- 9.2.2.2.10 Medical records (if applicable);
- 9.2.2.2.11 Legal documentation (if applicable);
- 9.2.2.2.12 IEPs (if applicable);
- 9.2.2.2.13 Any documentation or evidence to substantiate a hardship exists;
- 9.2.2.2.14 For waiver requests of the Junior High and Middle School Transfer Rule and High School Transfer Rule, documentation of official withdrawal from the sending school and official registration in or acceptance to the receiving school. In addition, the student athlete is required to obtain a certification from the sending and receiving schools that the student athlete transferred for the reasons indicated on the student athlete's waiver request form and that the student athlete's transfer was not motivated by an athletic purpose. If the student athlete is unable to obtain a certification from the sending school, the receiving school, or both schools, the student athlete may submit a written statement explaining why the student athlete is unable to obtain the certification.
- 9.2.3 An appearance by the student athlete and the student athlete's parent, guardian or Relative Caregiver before the Board is mandatory. An appearance by a school representative is strongly encouraged.
- 9.3 Waiver Requests of Non eligibility Rules
- 9.3.1 The Principal or Headmaster of a Member School, or any other individual may request a waiver of a rule or regulation not directly related to student eligibility when special circumstances arise that, in the Principal or Headmaster's opinion, or in the opinion of the individual, call for relief from, or modification of the effects of the rule or regulation.
- 9.3.2 All requests for non eligibility waivers must be in writing, signed by the Principal or Headmaster, or other individual.
- 9.3.3 An appearance by the applicant requesting the non eligibility waiver is optional. If the Principal or Headmaster or the Principal or Headmaster's designee or other individual requesting the non eligibility waiver chooses to appear before the Board the individual must notify the Executive

Director of the individual's intent to do so at the time the request for waiver is filed. Otherwise, the individual may attend the meeting but may not be permitted to address the Board.

9.3.4 If the waiver requested would affect more than one Member School, the applicant shall provide the position of the other affected Member Schools on the waiver request in their written application. The failure to provide this information may result in a delay in the Board's consideration of the waiver request.

## 9.4 Exceptions to Playing Rules for Student Athletes

9.4.1 Notwithstanding subsection 9.1.1, a student athlete who requests an exception to a playing rule that has been adopted by the Board shall establish the following four conditions by a preponderance of the evidence:

9.4.1.1 The student athlete has special needs or unique or extenuating circumstances;

9.4.1.2 The requested exception will not fundamentally alter the sport;

9.4.1.3 The requested exception will not heighten risk to the student athlete or others; and

9.4.1.4 The requested exception will not place opponents at a disadvantage.

9.4.2 The request shall be on the form approved by the Board and it shall include:

9.4.2.1 The playing rule or rules at issue;

9.4.2.2 The exception that the student athlete requests; and

9.4.2.3 Documentation to support the four conditions in subsection 9.4.1.

9.4.3 An appearance by the student athlete and the student athlete's parent, guardian, or Relative Caregiver before the Board is mandatory. An appearance by a school representative is strongly encouraged.

## 10.0 Appeal Procedure to the Board

10.1 Decisions of the Executive Director or Sportsmanship Committee, with the exception of those to uphold or rescind the suspension resulting from a game ejection, may be appealed de novo to the Board.

### 10.1.1 Initiation of an Appeal to the Board

10.1.1.1 Whenever a right of appeal of a decision to the Board is provided, an aggrieved person who is under the regulatory authority of DIAA and who has, in fact, suffered a direct injury due to the decision, may initiate an appeal by filing a Notice of Appeal with the Executive Director. The notice shall be in writing, shall be signed by the person making the request (or by the party's authorized representative), and shall be delivered to the Executive Director by certified mail.

10.1.1.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

10.1.1.3 The notice of appeal shall be filed within a reasonable time after the controversy arises, but in no event shall a notice be filed more than thirty calendar days after the appellant's receipt of written notice that official action has been taken by the Executive Director or other authorized person or body.

10.1.1.3.1 Notwithstanding the above, the notice of appeal shall be served ten calendar days after appellant's receipt of written notice that official action has been taken by the Executive Director or the Sportsmanship Committee pursuant to 14 **DE Admin. Code** 1023 Sportsmanship.

10.1.1.4 A copy of the notice of appeal shall be delivered to all other parties to the proceeding at the same time it is sent to the Executive Director. A copy of any other paper or document filed with DIAA shall also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

10.1.1.5 Upon receipt of an adequately detailed notice of appeal, the Executive Director shall place the appeal on the next meeting agenda of DIAA.

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# FINAL REGULATIONS

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- 10.1.1.6 An appeal shall not stay the decision of the Executive Director, the Sportsmanship Committee, or any other subordinate.
- 10.1.2 Record of Prior Proceedings
- 10.1.2.1 If proceedings were previously held on the matters complained of in the notice, the committee which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Director.
- 10.1.2.2 The record shall contain any written decision, a copy of the rule or regulation involved, any minutes of the meetings at which a disputed action was taken, a verbatim transcript of the hearing conducted by the party below, and all exhibits presented at the agency.
- 10.1.2.3 The record shall be filed with the Executive Director within ten calendar days of the date the Executive Director notifies the committee that the notice was filed, unless directed otherwise. A copy of the record shall be sent to the appellant when it is submitted to the Executive Director.
- 10.1.3 Board Hearing Procedures for Appeals
- 10.1.3.1 Record Review
- 10.1.3.1.1 If a hearing was previously held on the matters complained of in the notice, the parties to the proceeding before the Board may agree to submit the matter to the Board on the existing record without the presentation of additional evidence. The parties shall inform the Executive Director in writing of their agreement to submit the matter to the Board on the existing record no later than ten calendar days after the notice was filed.
- 10.1.3.1.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The written statements shall be filed no later than ten calendar days before the consideration date, unless otherwise directed.
- 10.1.3.1.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen minutes per side with an additional 5 minutes for rebuttal.
- 10.1.3.1.4 If the parties agree to submit the matter for decision on the existing record, the Board's decision shall be based on the existing record, the written statements and oral argument, if any.
- 10.1.3.2 Evidentiary Hearings
- 10.1.3.2.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the Board otherwise decides to receive additional evidence.
- 10.1.3.2.2 The Chairperson or designee shall be the hearing officer. The hearing officer shall conduct the hearing and make rulings on the admissibility of evidence.
- 10.1.3.2.3 The Board may continue, adjourn, or postpone a hearing for good cause on motion of a party or upon its own motion.
- 10.1.3.2.4 Objections to the admission of evidence shall be brief and shall state the grounds for such objections. Objections with regard to the form of question will not be considered.
- 10.1.3.2.5 The hearing will proceed with the appellant first presenting its evidence and case. The responding party may then present its case. The appellant will have an opportunity to present rebuttal evidence.
- 10.1.3.2.6 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the Board.



- 10.1.3.2.7 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the Board.
- 10.1.3.2.8 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.
- 10.1.3.2.9 Any party to a proceeding before the Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.
- 10.1.3.2.10 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.
- 10.1.3.2.11 Any document introduced into evidence at the hearing shall be marked by the Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the Board members present for the hearing unless otherwise directed.
- 10.1.3.2.12 DIAA shall provide a stenographic reporter at a hearing at its own expense.
- 10.1.3.2.13 The Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty calendar days of the hearing.

## **11.0 Appeals to State Board of Education**

An appeal shall not stay the decision of the Board.

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15), 303, and 304(2) and 29 Delaware Code, Section 10113(b)(2) (14 **Del.C.** §§122(b)(15), 303, & 304(2) and 29 **Del.C.** §10113(b)(2))

### ORDER

#### 1021 DIAA Committees

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

Pursuant to 14 **Del.C.** §§122(b)(15), 303, and 304(2) and 29 **Del.C.** §10113(b)(2), the Delaware Interscholastic Athletic Association ("DIAA") Board of Directors proposes the adoption of 14 **DE Admin. Code** 1021 DIAA Committees. The proposed regulation sets forth rules of practice and procedure of the concerning the DIAA Board of Directors' committees. The DIAA Board of Directors is simultaneously proposing to repeal existing subsection 3.2 from 14 **DE Admin. Code** 1006 and incorporate it into this new regulation. In addition, the DIAA Board of Directors proposes to add two committees (boys' volleyball and classification), increase the number of members of the Student-Athlete Advisory Subcommittee, specify the composition for sports committees, and increase the length of the term by one year.

The adoption of this regulation is exempt from the requirement of public notice and comment and is adopted informally in accordance with 29 **Del.C.** §10113(b)(2).

#### II. FINDINGS OF FACTS

On August 11, 2022, the DIAA Board of Directors proposed 14 **DE Admin. Code** 1021 DIAA Committees, in the form attached hereto as Exhibit A, to the Department to adopt informally pursuant to 29 **Del.C.** §10113(b)(2).

The Department finds that the proposed regulation relates to interscholastic athletics at the middle and high school levels and is necessary to implement 14 **Del.C.** Ch. 3. The Department further finds that the proposed regulation sets forth rules of practice and procedure of the DIAA Board of Directors' committees. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1021 DIAA Committees.

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# FINAL REGULATIONS

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## III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1021 DIAA Committees. Therefore, pursuant to 14 **Del.C.** §§122(b)(15), 303, and 304(2) and 29 **Del. C.** §10113(b)(2), 14 **DE Admin. Code** 1021 DIAA Committees, attached hereto as Exhibit A, is hereby adopted.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1021 DIAA Committees adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1021 DIAA Committees in the Administrative Code of Regulations for the Department.

## V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 12th day of August, 2022.

### **Department of Education**

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of August, 2022.

### **1021 DIAA Committees**

#### **1.0 Content**

This regulation sets forth the process for an individual to be appointed or removed as a member of one of the 26 standing committees or another committee established by the Delaware Interscholastic Athletic Association's Board of Directors pursuant to 14 **Del.C.** §304(2). In addition, this regulation outlines committees' reporting requirements to the Board.

#### **2.0 Definitions**

The following word and term, when used in this regulation, shall have the following meaning:

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 **Del.C.** ch. 3.

"Department" means the Delaware Department of Education established pursuant to 14 **Del.C.** §101.

"DIAA" means the Delaware Interscholastic Athletic Association established pursuant to 14 **Del.C.** §301.

#### **3.0 Standing Committees**

3.1 The Board has established the following standing committees:

3.1.1 The recognized sport committees are:

- 3.1.1.1 Baseball Committee
- 3.1.1.2 Boys' Basketball Committee
- 3.1.1.3 Boys' Lacrosse Committee
- 3.1.1.4 Boys' Soccer Committee
- 3.1.1.5 Boys' Volleyball Committee
- 3.1.1.6 Cross Country Committee
- 3.1.1.7 Field Hockey Committee
- 3.1.1.8 Football Committee
- 3.1.1.9 Girls' Basketball Committee

- 3.1.1.10 Girls' Lacrosse Committee
- 3.1.1.11 Girls' Soccer Committee
- 3.1.1.12 Girls' Volleyball Committee
- 3.1.1.13 Golf Committee
- 3.1.1.14 Softball Committee
- 3.1.1.15 Swimming and Diving Committee
- 3.1.1.16 Tennis Committee
- 3.1.1.17 Track and Field Committee
- 3.1.1.18 Wrestling Committee

3.1.2 The other committees are:

- 3.1.2.1 Classification Committee
- 3.1.2.2 Officials Committee
- 3.1.2.3 Rules and Regulations Committee
- 3.1.2.4 Scheduling Committee
- 3.1.2.5 Sports Medicine Advisory Committee
- 3.1.2.6 Sportsmanship Committee
- 3.1.2.7 Student-Athlete Development Committee and Student-Athlete Advisory Subcommittee
- 3.1.2.8 Unified Sports® Committee

3.2 The Board may appoint additional committees to assist in the performance of its duties.

## **4.0** **Committee and Subcommittee Membership**

- 4.1 Committees shall consist of no less than 10 and no more than 15 committee members in addition to one current Board member. The Student-Athlete Advisory Subcommittee shall consist of no less than 10 and no more than 21 subcommittee members.
- 4.2 Committee members shall have expertise in the committee's subject matter.
- 4.3 Committee membership shall be geographically representative of the DIAA Member Schools located within all three counties and may include administrators, athletic directors, coaches, local school board members, officials, public members, licensed physicians and sports medicine professionals, school staff, state interpreters, coaches' association representatives, and mental health professionals.
  - 4.3.1 Each committee shall include a current Board member as a member of the committee.
  - 4.3.2 Each recognized sport committee, as provided in subsection 3.1.1, shall consist of the following:
    - 4.3.2.1 At least one athletic director;
    - 4.3.2.2 One representative each from the Blue Hen, Diamond State, Henlopen, and Independent Conferences;
    - 4.3.2.3 One non-conference representative;
    - 4.3.2.4 One coaches' association representative;
    - 4.3.2.5 One officials' association representative from each DIAA-recognized association in the applicable sport; and
    - 4.3.2.6 At least one public member.
  - 4.3.3 The Student-Athlete Development Committee shall also include school counselors, mental health professionals, and school climate or student discipline personnel.
- 4.4 The Student-Athlete Advisory Subcommittee shall be comprised of student-athletes only and shall be geographically representative of the three counties.
- 4.5 The Executive Director shall make a call for applications to fill vacancies on committees. Prospective and current committee members shall submit a DIAA Committee Application to the DIAA Office. The Executive Director and the committee's chairperson shall review the applications and make recommendations to the Board for approval and appointment or reappointment.

- 4.6 Except for the Sports Medicine Advisory Committee, each committee shall elect a chairperson, vice chairperson, and secretary annually. The Sports Medicine Advisory Committee shall elect a chairperson, vice chairperson, and secretary every two years.
- 4.6.1 The committee chairperson shall preside over all meetings of the committee.
- 4.6.2 The committee's vice chairperson shall serve in the capacity of the committee's chairperson in the chairperson's absence.
- 4.7 The Executive Director shall make a call for applications to fill vacancies on the Student-Athlete Advisory Subcommittee. Prospective and current subcommittee members shall submit a DIAA Committee Application to the DIAA Office. The Student-Athlete Development Committee shall review the applications and appoint or reappoint members.
- 4.8 Committee and subcommittee members shall serve staggered four-year terms.
- 4.9 Committee members who miss three consecutive meetings shall be reported to the Board, which may appoint replacement committee members.
- 4.10 Members of the Student-Athlete Advisory Subcommittee who miss three consecutive meetings shall be reported to the Student-Athlete Development Committee, which may appoint replacement subcommittee members.
- 4.11 The Board may remove a committee member whose actions are contradictory to the committee's purpose or DIAA's purpose or are in violation of applicable law. In such case, the Board shall appoint a replacement committee member.
- 4.12 The Student-Athlete Development Committee may remove a member of the Student-Athlete Advisory Subcommittee whose actions are contradictory to the subcommittee's purpose or DIAA's purpose or are in violation of applicable law. In such case, the Student-Athlete Development Committee shall appoint a replacement subcommittee member.

## **5.0 Committee Reports and Recommendations**

- 5.1 The recognized sport committees, as provided in subsection 3.1.1, shall provide a report to the Board at the conclusion of the state tournament for their sport. The other committees, as provided in subsection 3.1.2, shall provide a progress report to the Board after each meeting.
- 5.2 Committees shall submit the report in writing to the DIAA Office or designate at least one committee member to deliver the report in writing at the Board's next regularly scheduled meeting.
- 5.3 Recommendations to the Board from committees shall be submitted in writing to the DIAA Office at least one week prior to the Board's next regularly scheduled meeting. The committee shall designate at least one committee member to attend the Board's meeting and present the committee's recommendation to the Board.

## **6.0 Administrative Assistance from DIAA Office**

The Executive Director and the Coordinator of Interscholastic Athletics shall provide administrative assistance to the committees before, during, and after committee meetings subject to the Department's approval and supervision.

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15), 303, and 304(1) (14 **Del.C.** §§122(b)(15), 303 & 304(1))

### ORDER

#### 1024 DIAA Member Schools

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

Pursuant to 14 **Del.C.** §§122(b)(15), 303(a)-(b), and 304(1), the Delaware Interscholastic Athletic Association ("DIAA") Board of Directors, acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1024 DIAA Member Schools. The regulation concerns the requirements for DIAA Member Schools. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating defined terms from existing regulations into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing sections from 14 **DE Admin. Code** 1006, 14 **DE Admin. Code** 1008, and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsections 2.1 and 2.2 of 14 **DE Admin. Code** 1006; proposed Section 4.0 is formerly subsection 2.3 of 14 **DE Admin. Code** 1006 and includes a proposed new change in subsection 4.1.2; proposed Section 5.0 is formerly subsection 2.5 of 14 **DE Admin. Code** 1006; proposed Section 6.0 is formerly subsection 7.1 of 14 **DE Admin. Code** 1006; proposed Section 7.0 is formerly subsection 8.1 in 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 8.0 is formerly subsection 5.1 in 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 9.0 is formerly subsection 2.4 of 14 **DE Admin. Code** 1006; and proposed Section 10.0 is formerly Section 5.0 of 14 **DE Admin. Code** 1006.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2022. The DIAA Board of Directors did not receive any written submittals concerning the proposed regulation.

#### II. FINDINGS OF FACTS

On August 11, 2022, the DIAA Board of Directors proposed 14 **DE Admin. Code** 1024 DIAA Member Schools, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation relates to interscholastic athletics at the middle and high school levels and is necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1024 DIAA Member Schools.

#### III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1024 DIAA Member Schools subject to the State Board of Education's approval. On August 12, 2022, the State Board of Education approved the adoption of 14 **DE Admin. Code** 1024 DIAA Member Schools. Therefore, pursuant to 14 **Del.C.** §§122(b)(15), 303(a)-(b), and 304(1), 14 **DE Admin. Code** 1024 DIAA Member Schools, attached hereto as Exhibit A, is hereby adopted.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1024 DIAA Member Schools adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1024 DIAA Member Schools in the Administrative Code of Regulations for the Department.

#### V. EFFECTIVE DATE OF ORDER

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

*Regulations.*

IT IS SO ORDERED the 12th day of August, 2022.

**Department of Education**

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of August, 2022.

**State Board of Education**

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

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

**\*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 June 2022 issue of the *Register* at page 1072 (25 DE Reg. 1072). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1024 DIAA Member Schools**

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**OFFICE OF THE SECRETARY**

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

**ORDER**

**1034 DIAA Health and Safety Requirements**

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

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA") Board of Directors, acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements. The regulation provides health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles in accordance with 14 **Del.C.** §301. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating defined terms from existing regulations into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing subsections from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsection 3.1 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 4.0 is formerly subsection 3.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 5.0 is formerly subsection 3.3 of 14 **DE Admin. Code** 1009; proposed Section 6.0 is formerly subsection 3.3 of 14 **DE Admin. Code** 1008; and proposed Section 7.0 is formerly subsection 3.4 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009. In addition, subsections 3.1.1 and 3.1.2, which concern physical examinations, and Section 8.0, which requires certain certifications for individuals who oversee Workouts, Conditioning Programs, Open Gym Programs, and Informal Instruction, are new.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2022. The DIAA Board of Directors received written submittals from William Knowles, Kelly Stafford, Julie Moyer Knowles, Ed.D. DPT ATC, and Bill Schultz concerning the proposed regulation. Mr. Knowles commented that "a full time athletic trainer is needed at every high school in this state." Ms. Stafford, who is the President of the Delaware Athletic

Trainers' Association ("DATA"), commented that DATA urges consideration of including "appropriate coverage by a qualified healthcare practitioner for moderate and high risk high school sports to help ensure all students' health and safety are adequately protected." Dr. Knowles commented that "only home football games require a qualified healthcare provider . . . to be present" and to add the requirement that a qualified healthcare provider be present for high school practices and home games in collision sports with higher significant injury rates; all home games in contact sports; and all other activities when at-risk conditions exist. Mr. Schultz, who is President of the Henlopen Conference, commented there would be a cost to require volunteer coaches to have CPR/AED and first aid certification.

## II. FINDINGS OF FACTS

On August 11, 2022, the DIAA Board of Directors considered the written submittals. Three of the comments concern Section 7.0, which is based on existing language in 14 **DE Admin. Code** §§ 1008 and 1009 and requires a qualified healthcare professional to be present at all interscholastic football games. The DIAA Board of Directors discussed that a legislative change may be necessary and that there would be financial implications for Member Schools. In addition, the DIAA Board of Directors noted that there is a shortage of athletic trainers and a pipeline issue might need to be addressed. The DIAA Board of Directors also noted that the DIAA Sports Medicine Advisory Committee has been researching the matter and is working on finalizing its recommendation to the DIAA Board. Regarding Mr. Schultz's comment concerning proposed Section 8.0, which requires CPR/AED and first aid certifications for individuals who oversee Workouts, Conditioning Programs, Open Gym Programs, and Informal Instruction, the DIAA Board found that CPR certification is currently required for coaches and it requested that the DIAA Office provide the Board with an accounting. The DIAA Board of Directors decided not to make changes as a result of the written submittals at this time and proposed 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation relates to interscholastic athletics at the middle and high school levels and is necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements.

## III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements subject to the State Board of Education's approval. On August 12, 2022, the State Board of Education approved the adoption of 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303, 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements, attached hereto as Exhibit A, is hereby adopted.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements in the Administrative Code of Regulations for the Department.

## V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 12th day of August, 2022.

### Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of August, 2022.

## State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

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

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

\*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 June 2022 issue of the *Register* at page 1078 (25 DE Reg. 1078). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1034 DIAA Health and Safety Requirements**

## OFFICE OF THE SECRETARY

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

## ORDER

**1035 In-Season Athletic Activities and Contact**

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA") Board of Directors, acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1035 In-Season Athletic Activities and Contact. The regulation sets forth the requirements for athletic activities and contact during the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating new and existing defined terms into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing subsections from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsection 4.1 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 4.0 is formerly subsection 4.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 5.0 is formerly subsection 4.3 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; and proposed Section 6.0 is formerly subsection 5.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009. In addition, subsection 5.4, which concerns student athletes participating on a nonschool team or in a nonschool event, is new.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2022. The DIAA Board of Directors did not receive any written submittals concerning the proposed regulation.

## II. FINDINGS OF FACTS

On August 11, 2022, the DIAA Board of Directors proposed 14 **DE Admin. Code** 1035 In-Season Athletic Activities and Contact, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation relates to interscholastic athletics at the middle and high school levels and is necessary to implement 14 Del.C. Ch. 3. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1035 In-Season Athletic Activities and Contact.

## III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1035



In-Season Athletic Activities and Contact subject to the State Board of Education's approval. On August 12, 2022, the State Board of Education approved the adoption of 14 **DE Admin. Code** 1035 In-Season Athletic Activities and Contact. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303, 14 **DE Admin. Code** 1035 In-Season Athletic Activities and Contact, attached hereto as Exhibit A, is hereby adopted.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1035 In-Season Athletic Activities and Contact adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1035 In-Season Athletic Activities and Contact in the Administrative Code of Regulations for the Department.

#### V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 12th day of August, 2022.

#### Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of August, 2022.

#### State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

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

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

**\*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 June 2022 issue of the *Register* at page 1082 (25 DE Reg. 1082). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1035 In-Season Athletic Activities and Contact**

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#### OFFICE OF THE SECRETARY

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

#### ORDER

**1040 Out-of-Season and Summer Athletic Activities and Contact**

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

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact.

On June 28, 2018, through Senate Concurrent Resolution No. 79, the General Assembly directed the

Department, with DIAA's assistance, to promulgate regulations that permit coaches to coach student athletes out-of-season with restrictions that minimize the risk of unethical activity. In October 2018, the Board voted to amend 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 to allow coaches to have instructional contact with student athletes if certain requirements were met and the amendment went into effect on June 2, 2019.

Thereafter, the Board sought recommendations from its Sports Medicine Advisory Committee and Rules and Regulations Committee as it continued to work on drafting amendments to the regulations that would allow instructional contact with student athletes out-of-season during the school year. On May 1, 2021, the Board proposed amendments to 14 **DE Admin. Code** 1009. In addition, the Board held a public hearing concerning the proposed amendments on June 17, 2021. At the public hearing, the Board heard from Trina Leclerc, Jennifer Mayer, and Bill Schultz. In addition, the Board received one written submittal from Ms. Leclerc. Ms. Leclerc commented that the parameters for out-of-season coaching in the school setting make it difficult to enforce. Ms. Leclerc also commented that she supports the implementation of the portion of the proposed regulation that allows DIAA school coaches to coach their student athletes in the private organization in any capacity and that there should be a requirement that the activity be affiliated with a national organization that monitors and regulates the activity. Ms. Leclerc further commented that she does not favor private lessons or exclusive school team events which allow coaches to be paid and that fair compensation of school coaches who choose to coach outside the school setting has the potential benefit to all student athletes from a variety of different schools and backgrounds. Jennifer Mayer, a coach and athletic director, commented about managing and enforcing the proposed requirement that school-sponsored informal instruction be limited to a maximum of four hours per week per student. Bill Schultz, an athletic director, commented that the proposed requirement that the maximum number of students participating in school-sponsored informal instruction be limited to a percentage of the traditional number of student athletes on the field of play or court at one time forces a coach or coaching staff to make decisions based on who they think are the best athletes.

On July 14, 2021, the Board considered the public comments received and voted to withdraw the proposed amendments to 14 **DE Admin. Code** 1009 and to develop further amendments to the proposed section that concerned out-of-season and summer athletic activities and contact. Since July 2021, DIAA has worked with the Public Integrity Commission to develop a regulation for out-of-season and summer athletic activities and contact that is consistent with the State's ethics law. Also, the Board sought further recommendations from the DIAA Rules and Regulations Committee.

On May 12, 2022, the Board voted to propose a new regulation that provides the requirements for athletic activities and contact out-of-season, during the period of time from the end of the season until the next official starting practice date for a particular sport, and in the summer, during the period of time from the last scheduled date for DIAA spring sport championships to August 1st for both the middle and high school levels. The proposed regulation includes specifying the content and purpose of the regulation in Section 1.0; incorporating new and existing defined terms into Section 2.0; specifying the requirements for open gym programs in Section 3.0; specifying the requirements for individual and team workouts and conditioning programs in Section 4.0; specifying the requirements for school-sponsored informal instruction in Section 5.0; adding a section concerning noninstructional meetings in Section 6.0; specifying the requirements for school camps and clinics in Section 7.0; specifying the requirements for commercial camps and clinics in Section 8.0; specifying the requirements for nonschool athletic activities, programs, and teams in Section 9.0; and adding a section concerning violations and penalties in Section 10.0. The proposed regulation, 14 **DE Admin. Code** 1040, is intended to replace Section 6.0 and subsection 7.6 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009. As a result, the Board is simultaneously proposing to repeal Section 6.0 and subsection 7.6 from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2022. The DIAA Board of Directors received written submittals from Bob Beron, Dave Collins, Lauren DiSabatino, Mike Judy, Trina Leclerc, Brendan McCormick, Christopher Muscara, Justin Romano, and Bill Schultz concerning the proposed regulation. Several of the individuals commented that the limitation on the number of student athletes in subsections 8.3.2.7 and 9.3.2.6 should be removed because it could result in a coach working with the best student athletes only and limit opportunities for student athletes. Although one individual commented that the "restrictions on the number of hours/times in a day or week reflects a clear misunderstanding or lack of knowledge of a travel sport environment during the school year," some of the individuals commented that they supported the restrictions on the amount of contact allowed in subsections 8.3.2.5 and 9.3.2.5. In addition, it was suggested that the DIAA Board allow in-season practices and competitions to overlap with informal instruction for schools that do not have

multiple indoor areas or fields. One commenter noted that the numbers in the chart for baseball and softball do not match and questioned how the numbers for cross country and wrestling were calculated.

## II. FINDINGS OF FACTS

On August 11, 2022, the DIAA Board of Directors considered the written submittals. The DIAA Board of Directors discussed that the proposed regulation provides more opportunities for student athletes to have instructional contact with their school coach than the current regulation. In addition, the DIAA Board discussed how often entire teams participate with their school coach in commercial camps and clinics. The DIAA Board also discussed the need to keep data in order to follow the impacts of the proposed regulation once it is implemented. The DIAA Board found that there was a technical error in the number of student athletes for softball in the charts in subsections 8.3.2.7 and 9.3.2.6. The number did not match baseball, which has the same number of student athletes on the field. As a result, the DIAA Board amended the charts to correct the error. In accordance with 29 **Del.C.** §10118(c), the DIAA Board's Chairperson determined that the correction was a nonsubstantive change that did not require the DIAA Board to repropose the regulation. The DIAA Board of Directors decided not to make further changes as a result of the written submittals at this time and proposed 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation relates to interscholastic athletics at the middle and high school levels and is necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact.

## III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact subject to the State Board of Education's approval. On August 12, 2022, the State Board of Education approved the adoption of 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303, 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact, attached hereto as Exhibit A, is hereby adopted.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact in the Administrative Code of Regulations for the Department.

## V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 12th day of August, 2022.

### Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of August, 2022

### State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

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/s/ Candice Fifer

/s/ Deborah Stevens

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

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

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

**1040 Out-of-Season and Summer Athletic Activities and Contact**

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### OFFICE OF THE SECRETARY

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

### ORDER

### 1042 Coaches

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

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA") Board of Directors, acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1042 Coaches. The regulation provides certain requirements for coaches at DIAA Member Schools. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating new and existing defined terms into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing sections from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsection 7.1 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 4.0 is formerly subsection 7.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 5.0 is formerly subsection 7.3 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; and proposed Section 6.0 is formerly subsection 7.4 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009. In addition, the proposed regulation adds the requirement that certified and emergency coaches hold current AED and first aid certification to subsections 3.3 and 4.2; adds the requirement that volunteer coaches hold current CPR, AED, and first aid certification to subsection 5.2; and replaces "Heads Up Football Training" with "certified football" in Section 6.0.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2022. The DIAA Board of Directors received a written submittal from Bill Schultz concerning the proposed regulation. Mr. Schultz, who is President of the Henlopen Conference, commented there would be a cost to require volunteer coaches to have CPR/AED and first aid certification.

#### II. FINDINGS OF FACTS

On August 11, 2022, the DIAA Board of Directors considered the written submittal, which concerned adding the requirements that certified and emergency coaches hold current AED and first aid certification to subsections 3.3 and 4.2 and that volunteer coaches hold current CPR, AED, and first aid certification to subsection 5.2. The DIAA Board of Directors found that CPR certification is currently required for coaches. Additionally, the DIAA Board requested that the DIAA Office provide it with an accounting. The DIAA Board of Directors decided not to make changes as a result of the written submittal at this time and proposed 14 **DE Admin. Code** 1042 Coaches, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation relates to interscholastic athletics at the middle and high school levels and is necessary to implement 14 **Del.C. Ch.** 3. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1042 Coaches.

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## III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1042 Coaches subject to the State Board of Education's approval. On August 12, 2022, the State Board of Education approved the adoption of 14 **DE Admin. Code** 1042 Coaches. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303, 14 **DE Admin. Code** 1042 Coaches, attached hereto as Exhibit A, is hereby adopted.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1042 Coaches adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1042 Coaches in the Administrative Code of Regulations for the Department.

## V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 12th day of August, 2022.

### Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of August, 2022.

### State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

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

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

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

## 1042 Coaches

### **1.0 Content**

In accordance with 14 **Del.C.** §303(b), this regulation sets forth requirements for certified, emergency, and volunteer coaches at the middle and high school levels. Additional requirements for coaches are set forth in other interscholastic athletic regulations, including 14 **DE Admin. Code** 1023 Sportsmanship, 14 **DE Admin. Code** 1035 In-Season Athletic Activities and Contact, and 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact.

### **2.0 Definitions**

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

"**Board**" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 **Del.C.** Ch. 3.

"**Competition**" means a contest between schools in which student athletes compete.

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

"**Member School**" means a full or associate member school of the DIAA.

"**School Day**" or "**School Days**" means actual school attendance days during the regular academic school year including a partial day that students are in attendance at school for instructional purposes as

adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.

**"Unified Sports"** means a co-ed program that combines an approximately equal number of students with and without autism or intellectual disabilities on a sports team for training and interscholastic competition.

### **3.0 Certified Coaches**

- 3.1 Only those professional employees certified by the Department and whose salary is paid by the State or local board of education, or in the case of charter and nonpublic schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district. The terms of employment shall be for the regular school year and the professional assignment shall be no less than half of the School Day, exclusive of coaching duties.
- 3.2 All middle school head coaches and high school varsity head coaches (or the junior varsity head coach, if the school does not sponsor a varsity team) shall be required to attend the DIAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DIAA office. A Member School shall be assessed a \$50.00 fine and the coach shall be placed on probation if the coach fails to attend the DIAA rules clinic or pass the open book rules examination in the coach's respective sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Board.
- 3.3 Certified coaches at all levels of competition shall hold a current certification in adult CPR, AED, and first aid.
- 3.4 Certified coaches at all levels of competition shall complete the NFHS' "Concussion in Sports" course online through [NFHSLearn.com](https://www.nfhslearn.com) every two years.
- 3.5 Certified coaches of Unified Sports shall complete the NFHS' "Unified Sports®" course online through [NFHSLearn.com](https://www.nfhslearn.com) every two years.

### **4.0 Emergency Coaches**

- 4.1 An emergency coach shall be defined as an individual who is either not certified by the Department, or is certified by the Department but is not employed for the regular school year or whose professional assignment is less than half of the School Day. An individual who meets the requirements of a certified coach but whose professional assignment is located in a different school or district than their coaching assignment shall not be considered an emergency coach.
- 4.2 Emergency coaches at all levels of competition shall hold a current certification in adult CPR, AED, and first aid.
- 4.3 Emergency coaches at all levels of competition shall complete the NFHS' "Concussion in Sports" course online through [NFHSLearn.com](https://www.nfhslearn.com) every two years.
- 4.4 Emergency coaches of Unified Sports shall complete the NFHS' "Unified Sports®" course online through [NFHSLearn.com](https://www.nfhslearn.com) every two years.
- 4.5 Emergency coaches may be employed provided the local governing body adheres to the following procedures:
  - 4.5.1 The employing board of education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.
  - 4.5.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing board of education may be hired as an emergency coach.
  - 4.5.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:
    - 4.5.3.1 Emergency coaches must be officially appointed by the local board of education. The Superintendent or designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local board of education.

4.5.3.2 The emergency coaches' coaching salary must be paid exclusively by the local board of education.

## **5.0 Volunteer Coaches**

- 5.1 In addition to the members of the school's regular coaching staff, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school, who have been approved by that school's local governing body, and who are supervised by a certified or emergency coach. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.
- 5.2 Volunteer coaches at all levels of competition shall hold a current certification in adult CPR, AED, and first aid.
- 5.3 Volunteer coaches at all levels of competition shall complete the NFHS' "Concussion in Sports" course online through [NFHSLearn.com](https://www.nfhslearn.com) every two years.
- 5.4 Volunteer coaches of Unified Sports shall complete the NFHS' "Unified Sports®" course online through [NFHSLearn.com](https://www.nfhslearn.com) every two years.

## **6.0 Football Coaches**

All football coaches (including certified, emergency, and volunteer coaches) at all levels of competition shall annually complete certified football training.

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### OFFICE OF THE SECRETARY

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

### ORDER

**1043 Officials**

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

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA") Board of Directors, acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1043 Officials. The regulation provides requirements for DIAA-recognized officials' associations, requirements for officials who officiate at DIAA Member Schools, and the fees for officiating contests and competitions. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating new and existing defined terms into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing sections from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsection 8.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; proposed Section 4.0 is formerly subsection 8.3 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009; and proposed Section 5.0 is formerly subsection 8.4 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009. In addition, the proposed regulation increases the fees for officiating contests and competitions for the 2022-23 school year, adds a travel fee, and specifies the fees for officiating scrimmages, based on a request the DIAA Board of Directors received from the Delaware Association of Athletic Directors ("DAAD") and that was presented to the Board by DAAD and Delaware Interscholastic Officials Committee.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2022. The DIAA Board of Directors received a written submittal from Michael Hart concerning the proposed regulation. Mr. Hart, who is DAAD's Executive Director, commented that the proposed regulation includes the officials' fees for one year but the DIAA Board of Directors approved a plan that addresses fees through the 2026-27 school year.

## II. FINDINGS OF FACTS

On August 11, 2022, the DIAA Board of Directors considered the written submittal. The proposed regulation specifies that the amounts set forth in Section 5.0 are in effect during the 2022-23 school year. Based on DAAD's request, the amounts would remain the same for the following school year (2023-24) and would not increase until the 2024-25 school year. The DIAA Board of Directors decided not to make changes as a result of the written submittal at this time and proposed 14 **DE Admin. Code** 1043 Officials, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation relates to interscholastic athletics at the middle and high school levels and is necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1043 Officials.

## III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1043 Officials subject to the State Board of Education's approval. On August 12, 2022, the State Board of Education approved the adoption of 14 **DE Admin. Code** 1043 Officials. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303, 14 **DE Admin. Code** 1043 Officials, attached hereto as Exhibit A, is hereby adopted.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1043 Officials adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1043 Officials in the Administrative Code of Regulations for the Department.

## V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 12th day of August, 2022.

### Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of August, 2022.

### State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

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

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

**\*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 June 2022 issue of the *Register* at page 1094 (25 DE Reg. 1094). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1043 Officials**



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## 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** 3355

### ORDER

#### **3355 Free Standing Surgical Centers**

#### **Nature of The Proceedings**

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt revised Regulations Governing Free Standing Surgical Centers. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Chapter 101 and authority as prescribed by 16 **Del.C.**, Section 122 (3)(p).

On July 1, 2022 (Volume 26, Issue 1), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by August 1, 2022, after which time the DHSS would review information, factual evidence and public comment to the proposed regulations.

No written comments were received during the public comment period.

#### **Summary of Proposal**

Effective September 1, 2022, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Free Standing Surgical Centers.

#### **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.

#### **Statutory Authority**

16 **Del.C.** §122(3)(p)

#### **Purpose**

The purpose of the amendment is to update the requirements to be consistent with nationally recognized standards of practice to ensure patients receive safe and quality care from a free standing surgical center.

#### **Fiscal Impact**

N/A

#### **Findings of Fact:**

The Department finds that the proposed regulation, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulation Governing Free Standing Surgical Centers are adopted and shall become effective September 11, 2022, after publication of the final regulations in the *Delaware Register of Regulations*.

8/12/2022

Date

Molly K. Magarik, Secretary, DHSS

\*Please note that no changes were made to the regulation as originally proposed and published in the July 2022 issue of the *Register* at page 31 (26 DE Reg. 31). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**3355 Free Standing Surgical Centers**

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

16 **DE Admin. Code** 14120 and 60000

**ORDER**

**Incarcerated Individuals Medicaid Program**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Division of Social Services Manual (DSSM) regarding the Incarcerated Individuals Medicaid Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the June 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 1, 2022 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after November 11, 2022 DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM) regarding the Incarcerated Individuals Medicaid Program.

**Background**

Centers for Medicare & Medicaid Services (CMS) issued guidance to states on Medicaid eligibility for incarcerated individuals and those being released back into the community. Facilitating enrollment in Medicaid, and supporting access to services following incarceration, has the potential to make a significant difference in the health of this population and the eligible individuals' ability to obtain health services that can promote their wellbeing.

**Statutory Authority**

Patient Protection and Affordable Care Act (ACA, P.L.111-148, as amended)

**Purpose**

The purpose of this proposed regulation is to define the Incarcerated Individuals Medicaid Program.

*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on July 1, 2022.

*Centers for Medicare and Medicaid Services Review and Approval*

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

## *Provider Manuals and Communications Update*

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

## **Fiscal Impact Statement**

There is no anticipated fiscal impact.

## **Summary of Comments Received with Agency Response and Explanation of Changes**

DMMA received the following comments:

**Comment:** The SCPD Council strongly supports these regulations as they promote health and well-being and support a successful transition to post-incarceration life.

**Response:** DMMA appreciates the support.

**Comment:** Council supports these regulations as they promote health and well-being and assist with a successful transition to post-incarceration life. Permitting Medicaid enrollment while the individual is incarcerated which would take effect after he or she is released, would remove one barrier an inmate would face when released and enable the person to obtain health services more easily."

**Response:** DMMA appreciates the support.

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

## FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding the Incarcerated Individuals Medicaid Program, is adopted and shall be final effective October 11, 2022.

8/12/2022

\_\_\_\_\_  
Date of Signature

Molly K. Magarik, Secretary, DHSS

## **14000 Medicaid General Eligibility Requirements**

### **14120 Inmate of a Public Institution**

#### Statutory Authority

Patient Protection and Affordable Care Act (ACA, P.L.111-148, as amended)

~~An individual who is an inmate of a public institution is not eligible.~~

Inmates of a public institution who are held involuntarily may be enrolled in Medicaid if otherwise eligible, but Medicaid may not provide coverage for most services while the individual is detained. The inmate may be eligible

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for Medicaid coverage of services as an inpatient in a medical institution if admitted to the medical institution for more than 24 hours.

An inmate of a public institution is a person who is living in a public institution. A public institution is a facility that is under the responsibility of a governmental unit or over which a governmental unit exercises administrative control. This control can exist when a facility is actually an organizational part of a governmental unit or when a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates. Administrative control can also exist when a governmental unit is responsible for the ongoing daily activities of a facility; for example, when facility staff members are government employees or when a government unit, board, or officer has final authority to hire and fire employees. Privately supported institutions that are not under the control of a governmental unit do not meet the definition of a public institution.

An individual is an inmate and is not eligible when he or she is serving time for a criminal offense or is confined involuntarily awaiting trial, criminal proceedings, penal dispositions, or other involuntary detention determinations and is living in:

- a. State or Federal prison
- b. jail
- c. a detention facility
- d. a wilderness camp under government control
- e. a halfway house under government control
- f. any penal facility

The following individuals are not inmates of a public institution and may be eligible:

1. An individual who is voluntarily living in a public institution after his or her case has been adjudicated and other living arrangements are being made (such as transfer to a community residence).
2. An individual who is sent to a privately supported institution as an alternative to a detention or prison sentence.
3. Infants living with the inmate in the public institution.
4. Parolees.
5. Probationers.
6. Individuals living in a halfway house that is not under governmental control.

### **60000 Incarcerated Individuals Medicaid Program**

#### Statutory Authority

Patient Protection and Affordable Care Act (ACA, P.L.111-148, as amended)

Inmates of a public institution who are held involuntarily may be enrolled in Medicaid, but Medicaid may not provide coverage for most services while the individual is detained. The inmate coverage exclusion applies to all Medicaid services provided to inmates, EXCEPT inpatient services provided in a medical institution.

Medicaid regulations, 42 CFR 435.1009, limit payment for services for individuals residing in correctional institutions. Medicaid statute requires coverage of inpatient services for the incarcerated individual if he/she is admitted to a medical institution for 24 hours or more, per 42 USC § 1396d(a)(31)(A).

Incarcerated individuals who apply for Medicaid may be required to enroll with a Managed Care Organization (MCO). Enrollment with an MCO while incarcerated allows for a smooth transition to full Medicaid benefits when the inmate is released from jail or prison if the inmate remains eligible for Medicaid after released.

## **60100 Incarcerated Individuals Definitions**

Inmate - an individual of any age who is in custody and held involuntarily in a public institution under the operation of law enforcement authorities. Regardless of the label attached to any particular custody status, an important consideration of whether an individual is an "inmate" is the individual's legal ability to exercise personal freedom.

Inmate of a Public Institution- Federal law defines an inmate of a public institution as "a person living in a public institution."

Public Institution - Federal Law defines a public institution as "an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. A public institution includes a correctional institution."

(See DSSM section 14120 for additional institution definitions)

## **60200 Inmate residence**

An inmate is considered a resident of the state in which the crime was committed. This information will be obtained from the Medicaid application.

For an inmate incarcerated by their home state but sent to an out of state public institution for any reason, including the home state not having capacity to house the individual, the home state remains the state of residence.

Individuals who have committed a crime outside of their home state and are placed in a correctional institution in and by the state in which the crime was committed are considered be residents of that state while incarcerated.

## **60300 Financial Eligibility and Household Composition**

Financial Eligibility is determined based on modified adjusted gross income (MAGI) eligibility rules, or non-MAGI eligibility rules, depending on the individual's circumstances.

There are no special rules or exceptions for incarcerated individuals. Follow income eligibility rules and household composition under section 16000 of the DSSM.

Exception: Incarcerated individuals are not considered parents/caretaker relatives for Medicaid purposes. However, an incarcerated individual can still file taxes and claim dependents which would be counted in the incarcerated individual's household size for Medicaid purposes.

## **60400 Application and Redetermination**

Regulations under DSSM Sections 14000 apply to incarcerated individuals applying for Medicaid. With the following exceptions:

1. Incarcerated Medicaid eligibility is effective the first day of the month if the individual was eligible at any time during that month provided the individual was an Incarcerated Delaware resident on the first of the month. If not a Delaware resident on the first of the month, Medicaid will be effective the date the individual became an Incarcerated Delaware resident.
2. An inmate may designate an individual as an authorized representative (see DSSM section 14100.1) to act on his or her behalf in matters related to eligibility and enrollment. An authorized representative may NOT enroll an inmate in Medicaid without his or her consent.

An annual renewal of eligibility is required for incarcerated individuals, there are no special rules or exclusions. See DSSM Section 14100.6

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

## ORDER

## Targeted Case Management Services

## NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Targeted Case Management (TCM). 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 July 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 1, 2022. at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after July 1, 2022 Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) proposes to amend Title XIX Medicaid State Plan regarding Targeted Case Management (TCM).

**Background**

In 2017, Delaware added Targeted Case Management (TCM) as an optional Medicaid State Plan Service. At that time, Delaware added two distinct Medicaid target groups comprised of individuals who meet the Delaware DDS eligibility criteria at 16 DE Admin. Code 2100, *Division of Developmental Disabilities Services (DDDS) Eligibility Criteria* and who live in specified settings:

1. individuals living in their own home or family home
2. individuals authorized to receive Residential Habilitation in a provider managed residential setting under the DDS Lifespan Medicaid Home and Community Based Waiver

Since that time Delaware has established TCM rates for five years using a cost-based rate with cost reconciliation 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 current retrospective rate methodology with carry forward adjustment with a prospective fee schedule rate methodology.

**Proposed Changes to the Reimbursement Methodology**

Effective for dates of service on or after July 1, 2022, Delaware proposes to replace the current retrospective rate structure with carry forward adjustment with a prospective market-based fee schedule rate structure. The new proposed rates will be based on rate assumptions for each component of the rate, instead of historical costs like the current methodology. The new methodology will use wage data from the Bureau of Labor Statistics for the applicable labor market, provider experience and stakeholder feedback to develop a set of rate assumptions. CMS refers to this rate development methodology as a "build-up" approach in its 2017 presentation "Cost Factors and Rate Assumptions Template Training". The proposed change will standardize the reimbursement methodology for both target groups. Whereas the current methodology establishes a separate rate for each provider within a target

group, the proposed methodology will compute a single fee schedule rate for each target group. This rate will be paid to all providers serving individuals within that target group, i.e., living in the family home or in a provider-managed residential setting. The rate for each target group will be re-based, and the methodology and all the assumptions will be reviewed, at least every five years. In between re-basing years, the fee schedule rate for each target group will be inflated using the CPI-U inflation index.

Under the proposed methodology, the State will consider the following key cost components necessary to complete all contractually required activities or deliverables:

- Staff wages
- Employee benefits and other employee-related expenses
- Program Support Costs
- Administrative Overhead
- Staff to Client Ratio

At any time during the five-year period, revaluation of the rate is considered as warranted based on provider inquiries or service access considerations.

DDDS expects the proposed change in the reimbursement methodology will result in a more stable and predictable rate structure that will better reflect the dynamics of the labor market and ensure that the state has the requisite provider capacity to ensure beneficiary access to TCM services.

### Statutory Authority

- 42 CFR §440.169(b), Targeted Case management services
- 42 CFR §441.18, Case management services, specific requirements
- 42 CFR §447.205, Public notice of changes in statewide methods and standards for setting payment rates
- §1915(g) of the Social Security Act, location and comparability of case management services

### Purpose

The purpose of this proposed regulation is to amend the provider qualifications and the reimbursement methodology to enable DDDS to increase provider capacity so that DDDS can maintain desired case load ratios for both target groups and to pay a rate for each target group that incorporates all program components and assures an adequate supply of TCM providers.

### Summary of Proposed Changes

Effective for dates of service on or after July 1, 2022, DDDS proposes to amend the provider qualifications and the reimbursement methodology for both target groups.

### *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on August 1, 2022.

### *Centers for Medicare and Medicaid Services Review and Approval*

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

### *Provider Manuals and Communications Update*

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

[medicaid.dhss.delaware.gov/provider](https://medicaid.dhss.delaware.gov/provider)

### **Fiscal Impact Statement**

The fiscal note for the reimbursement change is based on historical data for the program trended forward to the rate period using the CPI because the new rate methodology will be a prospective fee schedule.

The following fiscal impact is projected because of the proposed change in reimbursement methodology:

	Federal Fiscal Year 2022	Federal Fiscal Year 2023
General (State) funds	\$ 27,086	\$ 124,651
Federal funds	\$ 47,988	\$ 175,641

### **No Comments Were Received In Response to the Proposed Changes**

#### FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Targeted Case Management (TCM) is adopted and shall be final effective September 11, 2022.

8/12/2022

\_\_\_\_\_  
Date of Signature

Molly K. Magarik, Secretary, DHSS

**\*Please note that no changes were made to the regulation as originally proposed and published in the July 2022 issue of the *Register* at page 32 (26 DE Reg. 32). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Targeted Case Management Services**

### **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

#### **ORDER**

#### **Third Party Liability**

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend to amend Title XIX Medicaid State Plan regarding third party liability. 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 June 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 1, 2022 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### **SUMMARY OF PROPOSAL**

Effective for services provided on and after September 1, 2022 DHSS/DMMA proposes to amend Delaware Health and Social Services (DHSS)/Division of Medicaid regarding third party liability.



## **Background**

Effective February 9, 2018, the Bipartisan Budget Act (BBA) of 2018 amended section 1902(a)(25)(E) of the Social Security Act to require states to use standard coordination of benefits cost avoidance instead of "pay and chase" when processing claims for prenatal services, including labor and delivery and postpartum care. Therefore, if the State Medicaid Agency (SMA) has determined that a third party is likely liable for a prenatal claim, it must reject, but not deny, the claim and return it back to the provider noting the third party that Medicaid believes to be legally responsible for payment. If, after the provider bills the liable third party and a balance remains, or the claim is denied payment for a substantive reason, the provider can submit a claim to the SMA for payment of the balance up to the maximum Medicaid payment amount established for the service in the state plan. Additionally, effective October 1, 2019, the BBA of 2018 amended section 1902(a)(25)(E) of the Act, to require a state to make payments without regard to third party liability for pediatric preventive services unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for 90 days. Additionally, because 1902(a)(25)(E) of the Act now applies to CHIP, states should follow the same policies in their CHIP programs.

## **Statutory Authority**

Federal Budget Legislation Bipartisan Budget Act of 2018 - Third Party Liability 42 CFR 433.136

## **Purpose**

The purpose of this proposed regulation is to require states to use standard coordination of benefits cost avoidance instead of "pay and chase" when processing claims for prenatal and pediatric preventive services.

## *Summary of Proposed Changes*

Effective for services provided on and after September 1, 2022 DHSS/DMMA proposes to amend Delaware Health and Social Services (DHSS)/Division of Medicaid regarding third party liability.

## *Public Notice*

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 1, 2022.

## *Centers for Medicare and Medicaid Services Review and Approval*

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

## *Provider Manuals and Communications Update*

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

## **Fiscal Impact Statement**

There is no anticipated fiscal impact.

## **No Comments Were Received In Response to the Proposed Regulation**

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2022 *Register of Regulations* should

be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding third party liability and shall be final effective September 11, 2022.

8/15/2022

Date of Signature

Molly Magarik, Secretary, DHSS

\*Please note that no changes were made to the regulation as originally proposed and published in the June 2022 issue of the *Register* at page 1103 (25 DE Reg. 1103). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Third Party Liability**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1 (7 Del.C. §§901(c) & d) & 903(e)(2)a.1)  
7 DE Admin. Code 3541

Secretary's Order No.: 2022-F-0015

RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1,  
to Amend 7 DE Admin. Code 3541: *Atlantic Sharks*

Date of Issuance: August 03, 2022

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website

**3541 Atlantic Sharks**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del. C. §903(e)(2)a.1 and all other relevant statutory authority, the following findings of fact based on the reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 Del.C. Ch. 101 (which sets forth the standardized procedures whereby a state agency shall promulgate regulations), the Department also has the statutory authority under 7 Del. C. §903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 Del.C. Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by, and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the Atlantic States Marine Fisheries Commission ("ASMFC"), the *Atlantic Coastal Fisheries Cooperative Management Act*, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 Del. C. §903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the Delaware *Register of Regulations*. The final regulation becomes effective 48 hours after the Department has published the aforementioned public notice on its website, as mandated by 7 Del. C. §903(e)(2)a.2.

## Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3541: *Atlantic Sharks* to reduce fishing mortality on Shortfin Mako Shark by adopting mandatory management measures approved by the ASMFC's Coastal Sharks Management Board to remain compliant with the Interstate Fishery Management Plan for Atlantic Coastal Sharks. Specifically, this order prohibits the possession of Shortfin Mako Shark. The 2019 International Commission for the Conservation of Atlantic Tunas ("ICCAT") stock assessment determined that North Atlantic Shortfin Mako Shark were overfished, overfishing was occurring, and more action needed to be taken to help the population rebuild. The ICCAT management authority includes highly migratory sharks, such as the Shortfin Mako Shark, in addition to the tunas. In response and consistent with the 2021 ICCAT recommendation (Rec. 21-09), the National Marine Fisheries Service amended the 2006 Consolidated Atlantic Highly Migratory Species Fisheries Management Plan and adopted this final rule for Shortfin Mako Shark to reduce fishing mortality and expedite rebuilding the Shortfin Mako Shark population. The ASMFC's Coastal Sharks Board, in accordance with Addendum V to the Interstate Fishery Management Plan for Atlantic Coastal Sharks adopted this specific, non-optional, management measure for state waters to provide consistency with federal measures as part of ongoing efforts to rebuild the North Atlantic Shortfin Mako Shark stock.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3541: *Atlantic Sharks*, pursuant to 7 Del. C. §§901 (c & d) and 903(e)(2)a.1. This specific management measure is required by action taken by the ASMFC Coastal Sharks Management Board.

## ORDER

In accordance with 7 Del. C. §903(e)(2)a.1, it is hereby ordered, this 3rd day of Aug., 2022 that the above referenced amendments to 7 DE Admin. Code 3541: *Atlantic Sharks*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 Del. C. §903(e)(2)a.2.

Shawn M. Garvin  
Secretary

## 3541 Atlantic Sharks (Break in Continuity of Sections)

### 10.0 Recreational Size Limits

- 10.1 It is unlawful to possess without a valid commercial foodfishing license any non-prohibited shark from among those species in the management unit that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes), except as provided in 10.2, 10.3, and 10.4.
- 10.2 It is unlawful to possess without a valid commercial food fishing license any hammerhead species that measures less than 78 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes).
- 10.3 It is unlawful to possess ~~without a valid commercial foodfishing license~~ any male shortfin mako that ~~measures less than 71 inches fork length (tip of snout to indentation between dorsal and ventral tail lobes) or any female shortfin mako that measures less than 83 inches fork length.~~
- 10.4 Smoothhound, bonnethead, Atlantic sharpnose, blacknose, and finetooth sharks are exempt from size limits.

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

**3541 Atlantic Sharks**

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# FINAL REGULATIONS

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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Section 8404(a)(14) and (c) (11 **Del.C.** §8404(a)(14) and (c))  
1 **DE Admin. Code** 801

### ORDER

#### 801 Regulations of the Delaware Council on Police Training

#### NATURE OF THE PROCEEDINGS

At 25 **DE Reg.** 673 (01/01/22), the Council on Police Training (COPT), pursuant to 11 Del. C. §8404 (a)(14) and (c), published notice of intent to adopt regulations to propose an amendment to 801 Regulations of the Delaware Council on Police Training to establish Mandatory Standards for Use of Body Worn Cameras (the "Mandatory Standards"). The proposed amendments, which were voted on during a public meeting of the COPT, on November 17, 2021, sought to add these mandatory standards to COPT's existing Regulation 801. The proposed amendments were published in the Register Regulations and provided for a public comment period through January 31, 2022. At the same time, the COPT submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed addition to Regulation 801, as required by 29 **Del.C.** Ch. 104. The COPT solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

#### SUMMARY OF THE EVIDENCE

The COPT received public comments from the Delaware Department of Justice, the Governor's Advisory Council for Exceptional Citizens, and the State Council for Persons with Disabilities. Those comments were first considered by a COPT-appointed subcommittee and then by the full COPT at a public meeting held April 12, 2022. After considering the comments and the recommendations made by the subcommittee, COPT voted unanimously to further amend the regulations pertaining to the Mandatory Standards and to re-open a public comment period. These further amendments included (1) adding language to the definition of School Resource Officers; (2) adding additional considerations for such officers; (3) adding an additional circumstance allowing an officer not to activate a body worn camera; and (4) adding additional considerations of releasing body worn camera videos of use-of-force incidents involving death or serious bodily injury.

At 25 **DE Reg.** 1111 (June 1, 2022), the COPT re-published the amended Mandatory Standards and re-submitted a Regulatory Flexibility Analysis and Impact Statement. The COPT also solicited written comments from the public for thirty (30) days as required by 29 **Del.C.** §10118(a). COPT received four sets of comments, three that were identical and asked that the COPT consider making hemp an exemption to the drug testing for COPT certification. Smart Justice supplied the fourth set of comments. As discussed during the Council meeting, these comments largely addressed topics either covered by the substance of the proposed regulations, were issues that have been vetted, or were concerned matters that are better addressed through policy (e.g., the suggestion to make BWC policies publicly available).

COPT considered all public comments at its publicly scheduled quarterly meeting on August 12, 2022 and voted not to further amend the Mandatory Standards or Regulation 801 based on these comments, as COPT determined that it should move forward only with respect to the regulations as they pertained to body-worn-cameras.

#### FINDINGS OF FACT

The public was given the required notice of the Council's intention to adopt the Mandatory Standards and was given the opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for the Mandatory Standards was submitted. The only comments received did not concern the Mandatory Standards or were otherwise considered and rejected for further amendments. Thus, the COPT finds that the Mandatory Standards should be adopted as submitted.

#### EFFECTIVE DATE OF THE ORDER

The actions hereinabove referred to were taken by the COPT pursuant to 11 Del. C. §8404 (a)(14) and (c). The

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

## ORDER

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Council on Police Training does hereby ORDER this 12th day of August, 2022, that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

**IT IS SO ORDERD**, this 12th day of August, 2022.

### COUNCIL ON POLICE TRAINING

/s/ Nathaniel McQueen, Jr.  
Chair

/s/ Bob Irwin,  
Attorney General/Proxy

/s/ Mr. Lew Killmer  
Delaware League Governments

/s/ Insp. Charles Emory  
Chief of Police, Wilmington  
Police Department/Proxy

/s/ Captain Daniel Rogers  
Chief of the New Castle County Police/Proxy

/s/ William West,  
Mayor, City of Georgetown

/s/ Franklin Cooke, Jr.  
Representative Franklin Cooke, Jr.  
Chair of the Public Safety Committee  
of the House of Representatives

Senator Marie Pinkney (absent)  
Corrections and Public Safety Committee

/s/ Lt. Andrew Rubin  
Chief of Police, Newark Police Department/Proxy

/s/ Major Sean Moriarty,  
Superintendent of State Police/Proxy

/s/ Chief Thomas A. Johnson Jr.  
Chief of Police, Dover Police Department

/s/ Robin Christiansen,  
Mayor, City of Dover

/s/ Patrick Ogden  
Chair of Police Chiefs' Council/Proxy

Department of Education (absent)

/s/ Mr. William Collick  
Public Appointee

not yet appointed  
Public Appointee

**\*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 June 2022 issue of the *Register* at page 1111 (25 DE Reg. 1111). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**801 Regulations of the Delaware Council on Police Training**

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### DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Sections 2014 and 8404(a)(14) and (c) (11 Del.C. §2014 and §8404(a)(14))  
1 DE Admin. Code 801

## ORDER

**801 Regulations of the Delaware Council on Police Training**

### NATURE OF THE PROCEEDINGS

At 25 DE Reg. 839 (03/01/22), the Council on Police Training (COPT), pursuant to 11 Del. C. §§2014 and 8404

(a)(14), published notice of intent to adopt regulations to amendments to 801 Regulations of the Delaware Council on Police Training to establish mandatory standards relating to electronic recordings of custodial interrogations, as required by 11 *Del. C.* §2104. The COPT also proposed to add another section to Regulation 801 pertaining to qualification standards for the use of less lethal weapons and ammunition. The proposed amendments were voted on during a public meeting of the COPT on January 11, 2022. The proposed amendments were published in the Register Regulations and provided for a public comment period through March 31, 2022. At the same time, the COPT submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed addition to Regulation 801, as required by 29 **Del.C.** Ch. 104.

#### SUMMARY OF THE EVIDENCE

The proposed amendments to add mandatory standards for custodial interrogations are being made as required by 11 *Del. C.* §2104. The COPT did not receive public comments on the proposed amendments.

COPT considered the proposed regulations at its publicly scheduled quarterly meeting on August 12, 2022 and voted to require that they be published as final in the Register of Regulations.

#### FINDINGS OF FACT

The public was given the required notice of the Council's intention to adopt the proposed amendments and was given the opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for the Mandatory Standards was submitted. The COPT finds that the proposed amendments to Regulation 801, setting forth mandatory standards for custodial interrogations and setting qualifications for less lethal weapons and ammunition, are appropriate and necessary and should be adopted as submitted.

#### EFFECTIVE DATE OF THE ORDER

The actions hereinabove referred to were taken by the COPT pursuant to 11 *Del. C.* §§2104 and 8404(a)(14). The effective date of this Order shall be ten (10) days from the date of this Order is published in the *Register of Regulations*.

#### ORDER

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Council on Police Training does hereby ORDER this 12th day of August, 2022, that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

**IT IS SO ORDERD**, this 12th day of August, 2022.

#### COUNCIL ON POLICE TRAINING

/s/ Nathaniel McQueen, Jr.  
Chair

/s/ Bob Irwin,  
Attorney General/Proxy

/s/ Mr. Lew Killmer  
Delaware League Governments

/s/ Insp. Charles Emory  
Chief of Police, Wilmington  
Police Department/Proxy

/s/ Captain Daniel Rogers  
Chief of the New Castle County Police/Proxy

/s/ William West,  
Mayor, City of Georgetown

/s/ Lt. Andrew Rubin  
Chief of Police, Newark Police Department/Proxy

/s/ Major Sean Moriarty,  
Superintendent of State Police/Proxy

/s/ Chief Thomas A. Johnson Jr.  
Chief of Police, Dover Police Department

/s/ Robin Christiansen,  
Mayor, City of Dover

/s/ Patrick Ogden  
Chair of Police Chiefs' Council/Proxy

Department of Education (absent)

/s/ Franklin Cooke, Jr.  
Representative Franklin Cooke, Jr.  
Chair of the Public Safety Committee  
of the House of Representatives

/s/ Mr. William Collick  
Public Appointee

Senator Marie Pinkney (absent)  
Corrections and Public Safety Committee

not yet appointed  
Public Appointee

**\*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 March 2022 issue of the *Register* at page 839 (25 DE Reg. 839). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**801 Regulations of the Delaware Council on Police Training**



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# GENERAL NOTICES

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### NOTICE OF PUBLIC COMMENT

#### Proposed Payment Rate Updates for Substance Use Disorder Services

Notice of Public Comment: Proposed Payment Rate Updates for Substance Use Disorder Services, Effective January 1, 2023

\*\*Note: This is a reprint of the general notice published in August, available at: <https://regulations.delaware.gov/register/august2022/general/26%20DE%20Reg%20127%2008-01-22.pdf>

**Background.** In October of 2019, Delaware's Division of Medicaid and Medical Assistance (DMMA) was one of 15 states nationally to be awarded a planning grant from the Centers for Medicare and Medicaid Services (CMS) under section 1003 of the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act. DMMA was also one of five state Medicaid agencies to be awarded the SUPPORT Act Demonstration Project, which is a 36-month initiative that began September 30, 2021, and runs through September 30, 2024.

DMMA is using this funding to increase the treatment capacity of Medicaid providers to deliver substance use disorder (SUD) treatment and recovery services. As part of this work, DMMA has conducted a comprehensive assessment of the existing SUD payment rates and the underlying costs associated with delivering SUD services across different levels of care. Based on this research and feedback collected from stakeholders, DMMA is proposing to update payment rates for selected SUD services. For details about previous iterations of the draft rate models and underlying assumptions, please see the "*Medicaid SUD Rate Study*" section of DMMA's SUPPORT Act Planning Grant and Demonstration Project webpage, available at: [https://dhss.delaware.gov/dhss/dmma/sud\\_initiatives.html](https://dhss.delaware.gov/dhss/dmma/sud_initiatives.html).

**Notice of Public Comment.** DMMA is announcing the publication of final draft payment rates for selected adult SUD services, effective January 1, 2023 (see Appendix I) DMMA is not proposing any changes to the underlying reimbursement methodology as currently outlined in the Delaware Medicaid State Plan, and therefore public participation requirements are not required. However, Delaware is publishing the draft rates to ensure all interested stakeholders have the opportunity to review and comment on the proposed rates before they are finalized. The assumptions that informed development of the updated rate found here [SEE LINK TO PDF OF EXCEL DOCUMENT]. **The draft rates will be available for public review and comment for 15 days beginning September 1st through September 15th, 2022.**

**\*Please note: Due to the size and formatting of the Excel document, it is attached as a PDF document:** [http://regulations.delaware.gov/register/september2022/general/SUD\\_Rate\\_Models\\_2022JUN22\\_for\\_Public\\_Notice\\_PDF\\_8.4.2022.pdf](http://regulations.delaware.gov/register/september2022/general/SUD_Rate_Models_2022JUN22_for_Public_Notice_PDF_8.4.2022.pdf)

DMMA plans to institute proposed rate changes within the Medicaid fee-for-service (FFS) program and plans to raise managed care organizations' (MCOs') capitation payments in alignment with these specific Medicaid FFS rate changes; however, DMMA does not mandate how the MCOs subsequently pay providers. DMMA intends to monitor the MCOs to assess how or if their payments to providers change in relation to the FFS changes. DMMA plans to use a portion of Delaware's enhanced federal match for home- and community-based services (HCBS) to fund rate increases through at least July 2023, and rate changes are thus contingent upon CMS' approval. Details about this funding is available at: <https://dhss.delaware.gov/dhss/arpa/hcbs.html>.

Comments will be accepted from the general public during this time period, including providers, provider associations, advocacy groups, consumers, and other interested stakeholders in the state. Comments may be



provided directly to [jacob.bowling@delaware.gov](mailto:jacob.bowling@delaware.gov); respondents must include their name, title, and organizational affiliation (if any). Responses to individual questions and comments will not be provided; however, DMMA will review and consider all comments and make any modifications to the proposed rates that are deemed necessary. Comments must be submitted no later than September 15th, 2022.

*This project is supported by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services (HHS) as part of a financial assistance award totaling \$3,693,864 with 100 percent funded by CMS/HHS. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by CMS/HHS, or the U.S. Government.*

**\*Please note: Due to the size and formatting of Appendix I, it is being attached as a PDF document:**

**<http://regulations.delaware.gov/register/september2022/general/Appendix I for Rate Study Notice.pdf>**

Stephen Groff  
Director  
Division of Medicaid and Medical Assistance

8/11/2022 | 12:59 PM EDT  
Date

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## 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))

#### REGISTER NOTICE

#### DOCKET # 2022-R-A-0010

#### **Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)**

1. TITLE OF THE REGULATIONS:

Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)

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

The purpose of this action is to amend Delaware's approved State Implementation Plan per 40 CFR 52. The proposed amendments establish consistent emissions testing requirements statewide as well as exempt the first seven model years of a vehicle pursuant to House Bill 246. The Department used the EPA's Motor Vehicle Emission Simulator (MOVES) to create the input/output files to estimate the emission in the State Implementation Plan (SIP). The calculations demonstrate that emissions meet the Performance Standards.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

NONE

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

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

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

7 DE ADMIN. Code 1126 Motor Vehicle Emissions Inspection Program - Sussex County  
7 DE ADMIN. Code 1131 Low Enhanced Inspection and Maintenance Program

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket # 2022-R-A-0010) will be held on Thursday, September 29, 2022, 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/>

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## GENERAL NOTICES

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[dnrehearings](#). If prompted for a password, please use: MVEIP. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter the event code 2339 665 6055. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC public hearings must pre-register no later than noon of 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 September 1, 2022 at [https://regulations.delaware.gov/services/current\\_issue.shtml](https://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting Marvina Cephas by phone at 302-739-9402 or by email at [Marvina.Cephas@delaware.gov](mailto:Marvina.Cephas@delaware.gov). The MOVES input/output files may be requested from Marvina Cephas at the contact information provided.

The Department will accept public comment through the close of business on Friday, October 14, 2022. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

7. PREPARED BY: Marvina Cephas [marvina.cephas@delaware.gov](mailto:marvina.cephas@delaware.gov) 302.739.9402

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### DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 4006(h) and (i) (7 **Del.C.** §4006(h) & (i))

#### NOTICE

#### 5101 Sediment and Stormwater Regulations

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship Sediment and Stormwater Program has released a revised regulatory guidance document for public review. The document supports Regulation No. 5101 Sediment and Stormwater Regulations, as set forth at 7 *Del.C.* §4006(h) and (i).

The revised regulatory guidance document is DNREC Approved Stormwater Management Structures.

The DNREC Sediment and Stormwater Program hereby provides notice of the revised regulatory guidance document, pursuant to 7 *Del.C.* §4006(i), which incorporates the provisions of 7 *Del.C.* §6004. A public hearing will NOT be held unless the Secretary receives a meritorious request for a hearing within 15 days of date of this notice, ending September 16, 2022. A request for a public hearing shall be in writing and show familiarity with the regulatory guidance document and provide a reasoned statement of the regulatory guidance document's probable impact.

This document may be reviewed under the Engineering tab at the following link: <https://dnrec.alpha.delaware.gov/watershed-stewardship/sediment-stormwater/resources/>

Questions regarding the revised regulatory guidance document may be directed to Elaine Webb, [elaine.webb@delaware.gov](mailto:elaine.webb@delaware.gov).

PREPARED BY:  
Elaine Z. Webb  
(302) 739-9921  
[elaine.webb@delaware.gov](mailto:elaine.webb@delaware.gov)

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**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF TRANSPORTATION SOLUTIONS**  
**Bridge & Structures Section**

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

**NOTICE**

**Senate Bill 89 as amended by Senate Amendment 1 - Bridge 3818 038**

August 11, 2022

Yvette Smallwood  
Registrar of Regulations  
411 Legislative Avenue  
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* § 4505(d)(1), Notice is hereby given by the Delaware Department of Transportation, Bridge & Structures Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent load restrictions for the safe movement of traffic in the area:

Bridge 3818 038 that carries S038 Cods Road over Slaughter Creek south of Slaughter Beach for the following permanent load restrictions:

S335: 3 Axle Single Unit Vehicle at 24 tons  
S437: 4 Axle Single Unit Vehicle at 23 tons  
SU5: 5 Axle Single Unit Vehicle at 30 tons  
SU6: 6 Axle Single Unit Vehicle at 28 tons  
SU7: 7 Axle Single Unit Vehicle at 29 tons

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

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# GENERAL NOTICES

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Thank you,  
Jason Hastings  
Chief of Bridge & Structures

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## DIVISION OF TRANSPORTATION SOLUTIONS

### Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

#### NOTICE

#### **Senate Bill 89 as amended by Senate Amendment 1 - South Old Mill Road (K355)**

July 13, 2022

Yvette Smallwood  
Registrar of Regulations  
411 Legislative Avenue  
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on South Old Mill Road Road (K355) between Rising Sun Road (K29) and DE10 W Lebanon Road (K356)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,  
Peter Haag  
Chief of Traffic Engineering

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**DELAWARE RIVER BASIN COMMISSION**  
**PUBLIC NOTICE**

The Delaware River Basin Commission will hold its quarterly business meeting on **Thursday, September 8, 2022** commencing at **10:30 a.m.** The business meeting will be conducted remotely. Details about the remote platform and an agenda will be posted on the Commission's website, [www.drbc.gov](http://www.drbc.gov), at least 10 days prior to the meeting date.

For additional information, please visit the DRBC website at [www.drbc.gov](http://www.drbc.gov) or contact Patricia Hausler at [patricia.hausler@drbc.gov](mailto:patricia.hausler@drbc.gov).

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

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

**Comments**

A copy of the proposed regulations is being published in the September 1, 2022 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: [https://regulations.delaware.gov/register/current\\_issue.shtml](https://regulations.delaware.gov/register/current_issue.shtml).

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before October 3, 2022. Written materials submitted will be available for inspection at the above address.

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**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

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

Meeting information can be accessed via the public meeting calendar.

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

The next meeting is scheduled for September 15, 2022.

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

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meeting calendar.

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

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

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

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Ambulatory Surgical Center Services Rate**

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 regarding Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Kimberly.Xavier@delaware.gov](mailto:Kimberly.Xavier@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on October 3, 2022. Please identify in the subject line: Ambulatory Surgical Center Services Rate.

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

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Medicaid Recovery Audit Contractors Program**

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 regarding the Medicaid Recovery Audit Contractor (RAC) Program, specifically, to request an exception to the RAC contracting requirements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Kimberly.Xavier@delaware.gov](mailto:Kimberly.Xavier@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on October 3, 2022. Please identify in the subject line: Medicaid Recovery Audit Contractors Program.

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

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**DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****4459 Lead Based Paints Hazards**

Pursuant to 16 **Del.C.** §122(3)(t), the Health Systems Protection Section of the Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Lead Based Paints Hazards. On September 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Lead Based Paints Hazards regulations. The revisions include updates to lead levels in dust sampling results, which

have been lowered to be consistent with EPA regulations; specific regulations for interim controls; and technical corrections. The proposed regulation published in the May 2022 *Register of Regulations* (25 **DE Reg.** 1005 (05/01/22) (Prop.)) is no longer being considered in favor of the amendments presented here pursuant to 29 **Del.C.** §10118(c).

Copies of the proposed regulations are available for review in the September 1, 2022 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Monday, October 3, 2022, at:

Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov)  
Phone: (302) 744-4951

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### **DIVISION OF PUBLIC HEALTH**

#### **PUBLIC NOTICE**

#### **4459B Residential Property Renovation, Repair and Painting**

Pursuant to 16 **Del.C.** §122(3)(t), the Health Systems Protection Section of the Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Residential Property Renovation, Repair and Painting. On September 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Residential Property Renovation, Repair and Painting regulations. The revisions include a definition of "occupant protection plan;" a requirement for certified renovators to develop an occupant protection plan prior to any lead renovation, repair, and painting work; and technical corrections.

Copies of the proposed regulations are available for review in the September 1, 2022 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them by Monday, October 3, 2022, at:

Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov)  
Phone: (302) 744-4951

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### **DIVISION OF SOCIAL SERVICES**

#### **PUBLIC NOTICE**

#### **Food Benefit Certification**

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 Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Food Benefit Certification.

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, Division of Social Services (DSS), 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Kimberly.Xavier@delaware.gov](mailto:Kimberly.Xavier@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on October 3, 2022. Please identify in the subject line: Food Benefit Certification.

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



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

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF AIR QUALITY****PUBLIC NOTICE****1126 Motor Vehicle Emissions Inspection Program****1. TITLE OF THE REGULATIONS:**

PROPOSED 7 DE ADMIN. Code 1126 Motor Vehicle Emissions Inspection Program - Sussex County

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

The purpose of this action is to amend Regulation 1126 to establish a statewide I/M program implemented in Kent, New Castle and Sussex Counties. The proposed amendments will establish identical emissions testing requirements statewide as well as exempt the first seven model years of a vehicle pursuant to House Bill 246.

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

NONE

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

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

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

PROPOSED 7 DE ADMIN. Code 1131 Motor Vehicle Emissions Inspection Program - Kent and New Castle Counties

**6. NOTICE OF PUBLIC COMMENT:**

A virtual public hearing (Docket # 2022-R-A-0001) will be held on Thursday, September 29, 2022, 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: MVEIP. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter the event code 2339 665 6055. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC public hearings must pre-register no later than noon of 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 September 1, 2022 at [https://regulations.delaware.gov/services/current\\_issue.shtml](https://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting Marvina Cephas by phone at 302-739-9402 or by email at [Marvina.Cephas@delaware.gov](mailto:Marvina.Cephas@delaware.gov).

The Department will accept public comment through the close of business on Friday, October 14, 2022. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

**7. PREPARED BY: Marvina Cephas [marvina.cephas@delaware.gov](mailto:marvina.cephas@delaware.gov) 302.739.9402**



**DIVISION OF AIR QUALITY****PUBLIC NOTICE****1131 Low Enhanced Inspection and Maintenance Program****1. TITLE OF THE REGULATIONS:**

7 DE ADMIN. Code 1131 Low Enhanced Inspection and Maintenance Program proposed to be amended to 7 DE ADMIN. Code 1131 Motor Vehicle Emissions Inspection Program - Kent and New Castle Counties

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

The purpose of this action is to amend Regulation 1131 to establish a statewide I/M program implemented in Kent, New Castle and Sussex Counties. The proposed amendments will establish identical emissions testing requirements statewide as well as exempt the first seven model years of a vehicle pursuant to House Bill 246.

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

NONE

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

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

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

Proposed 7 DE ADMIN. Code 1126 Motor Vehicle Emissions Inspection Program - Sussex County

**6. NOTICE OF PUBLIC COMMENT:**

A virtual public hearing (Docket # 2022-R-A-0002) will be held on Thursday, September 29, 2022, 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: MVEIP. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter the event code 2339 665 6055. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC public hearings must pre-register no later than noon of 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 September 1, 2022 at [https://regulations.delaware.gov/services/current\\_issue.shtml](https://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting Marvina Cephas by phone at 302-739-9402 or by email at [Marvina.Cephas@delaware.gov](mailto:Marvina.Cephas@delaware.gov).

The Department will accept public comment through the close of business on Friday, October 14, 2022. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

**7. PREPARED BY: Marvina Cephas [marvina.cephas@delaware.gov](mailto:marvina.cephas@delaware.gov) 302.739.9402**

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**DIVISION OF AIR QUALITY****PUBLIC NOTICE****1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)****1. TITLE OF THE REGULATIONS:**

1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)

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

The purpose of this action is to amend Delaware's approved State Implementation Plan per 40 CFR 52. Delaware is requesting that 7 **DE Admin. Code** 1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI) be struck from Delaware Administrative Code. The Department intends to correct an error that was made with regulatory amendments in 2012. The PFI was never intended to be regulatory language or included in Delaware Administrative Code. The PFI should be a stand alone document.

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

NONE

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

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

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

7 DE ADMIN. Code 1126 Motor Vehicle Emissions Inspection Program

7 DE ADMIN. Code 1131 Low Enhanced Inspection and Maintenance Program

**6. NOTICE OF PUBLIC COMMENT:**

A virtual public hearing (Docket # 2022-R-A-0010) will be held on Thursday, September 29, 2022, 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: MVEIP. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter the event code 2339 665 6055. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC public hearings must pre-register no later than noon of 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 September 1, 2022 at [https://regulations.delaware.gov/services/current\\_issue.shtml](https://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting Marvina Cephas by phone at 302-739-9402 or by email at [Marvina.Cephas@delaware.gov](mailto:Marvina.Cephas@delaware.gov).

The Department will accept public comment through the close of business on Friday, October 14, 2022. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY****OFFICE OF THE SECRETARY****PUBLIC NOTICE****103 Regulations Governing the Delaware Large Capacity Magazine Compensation Program**

**Purpose:** In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 5, Section 6901(c), the Delaware Department of Safety and Homeland Security proposes to adopt regulations to implement the Delaware Large Capacity Magazine Prohibition Act of 2022 compensation program.

**Written Comments:** The Delaware Department of Safety and Homeland Security will receive written comments, suggestions, briefs or other written material until the close of business, 4:30 p.m., October 3, 2022. Written comments shall be submitted via e-mail to [Terry.Pepper@delaware.gov](mailto:Terry.Pepper@delaware.gov) or via the USPS to Terry Pepper, Department of Safety and Homeland Security, Office of the Secretary, 800 S Bay Road, Suite 2, Dover, Delaware 19901.

**DEPARTMENT OF TRANSPORTATION  
DIVISION OF MOTOR VEHICLES****PUBLIC NOTICE****2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (Formerly Reg. No. 17)**

Pursuant to the authority provided by 21 *Del. C.* §302 and 29 Delaware Code, Section 8404(8), the Delaware Division of Motor Vehicles (DMV), adopted the Implied Consent and Administrative Per Se Other Administrative Hearings of Record.

The Division of Motor Vehicles seeks to adopt general revisions to its existing regulation, the Implied Consent and Administrative Per Se Other Administrative Hearings of Record, to address federal requirements. These collective changes are administrative in nature and serve in part to clarify the intent of the Division as enacted through these regulations.

**Public Comment Period**

DMV will take written comments on these proposed general revisions to Section 2203 of Title 2, Delaware Administrative Code, from September 1, 2022 through October 3, 2022. The public may submit their comments to:

Crystal Stump, DI Program Manager, Division of Motor Vehicles  
([crystal.stump@delaware.gov](mailto:crystal.stump@delaware.gov)) or in writing to their attention,  
Delaware Department of Transportation (DelDOT)  
Division of Motor Vehicles  
PO BOX 698  
Dover, DE 19903

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**DIVISION OF TRANSPORTATION SOLUTIONS****PUBLIC NOTICE****2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual**

Pursuant to the authority provided by 21 *Del. C.* §4504, the Delaware Department of Transportation (DelDOT) adopted the Oversize/Overweight Vehicle Hauling Permit Policy and Procedures Manual

The Department, through its Division of Transportation Solutions seeks to adopt these revisions to address procedural changes. These collective changes are administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

**Public Comment Period**

DelDOT will take written comments on these proposed revisions to Regulation 2405 of Title 2, Delaware Administrative Code, from September 1, 2022 through October 3, 2022. The public may submit their comments to:

Jeffrey Van Horn, P.E.  
Chief of Traffic Operations  
([Jeffrey.VanHorn@delaware.gov](mailto:Jeffrey.VanHorn@delaware.gov)) or in writing to his attention,  
Delaware Department of Transportation  
Division of Transportation Solutions, Traffic Operations Section  
169 Brick Store Landing Road  
Smyrna, DE 19977