

---

# Delaware Register of Regulations

---

Issue Date: April 1, 2012

Volume 15 - Issue 10, Pages 1388 - 1517

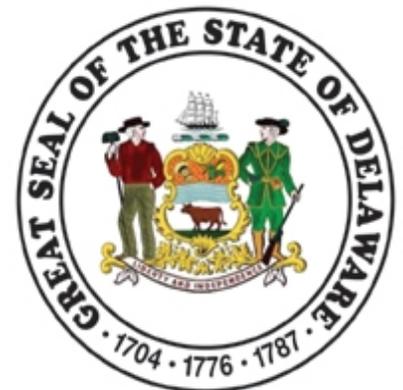
---



## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before March 15, 2012.

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

1389

## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

---

## CITATION TO THE DELAWARE REGISTER

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

15 **DE Reg.** 24-47 (07/01/11)

Refers to Volume 15, pages 24-47 of the *Delaware Register* issued on July 1, 2011.

---

## SUBSCRIPTION INFORMATION

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

---

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

---

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
May 1	April 16	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 16	4:30 p.m.
September 1	August 15	4:30 p.m.

---

## DIVISION OF RESEARCH STAFF

**Deborah A. Porter**, Interim Supervisor; **Judi Abbot**, Administrative Specialist I; **Jeffrey W. Hague**, Registrar of Regulations; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Administrative Specialist I; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Printer; **Sarah Wooten**, Joint Sunset Analyst; **Rochelle Yerkles**, Administrative Specialist II. Legislative Librarian; **Sara Zimmerman**.

---

---

# TABLE OF CONTENTS

1391

---

Cumulative Tables.....	1393
------------------------	------

---

## PROPOSED

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

750 Support Personnel Salary Supplements for Additional Training.....	1401
1001 Participation in Extra Curricular Activities.....	1404

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Long Term Care Residents Protection

3102 Long Term Care Discharge and Impartial Hearing Procedures.....	1405
---	------

#### Division of Medicaid and Medical Assistance

Diamond State Health Plan Plus - Provisions: DSSM: 14920, 17913, 20100, 20110 and 25110 .....	1408
Title XIX Medicaid State Plan, Estate Recovery and Managed Care.....	1412
Home and Community-Based Services Waiver Provisions: DSSM: 20700, 20710, 20720, 20740 and 20760.....	1414

#### Division of Public Health

4455 Delaware Regulations Governing a Detailed Plumbing Code.....	1422
4462 Public Drinking Water Systems.....	1423
State of Delaware Medical Marijuana Code.....	1424

#### Division of Social Services

DSSM: 11003.7 Child Care Subsidy Program Income Eligible Child Care.....	1435
--	------

### DEPARTMENT OF LABOR

#### Division of Industrial Affairs, Office of Workers' Compensation

1341 Workers' Compensation Regulations.....	1437
---	------

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Water Resources, Ground Discharges Section

7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.....	1439
---	------

### DEPARTMENT OF SAFETY AND HOMELAND SECURITY

#### Office of the Secretary

Regulations Governing Security Systems and Protective Services: False Alarms.....	1441
---	------

### DEPARTMENT OF STATE

#### Division of Professional Regulation

200 Board of Landscape Architecture.....	1443
2900 Real Estate Commission.....	1449
2925 Real Estate Commission Education Committee.....	1455
3600 Board of Registration of Geologists.....	1456

### EXECUTIVE DEPARTMENT

#### Office of Management and Budget

Environmentally Preferred Purchasing Policy.....	1469
Promoting, Maintaining and Controlling the Public Use of the Legislative Mall.....	1474

---

# TABLE OF CONTENTS

---

## FINAL

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Long Term Care Residents Protection

3310 Neighborhood Homes for Persons with Developmental Disabilities..... 1477

#### Division of Social Services

DSSM: TANF, General Assistance, Refugee Cash Assistance Program Relating to  
Civil Unions..... 1498

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Fish and Wildlife

3900 Wildlife..... 1505

### DEPARTMENT OF STATE

#### Division of Professional Regulation

2500 Board of Pharmacy..... 1507

3000 Board of Professional Counselors of Mental Health and Chemical Dependency  
Professionals..... 1510

---

## CALENDAR OF EVENTS/HEARING NOTICES

State Board of Education, Notice of Monthly Meeting..... 1511

Department of Health and Social Services, Division of Long Term Care Residents Protection;  
Division of Medicaid and Medical Assistance; Division of Public Health; Division of Social  
Services, Notices of Public Comment Periods..... 1511 - 1514

Department of Labor, Division of Industrial Affairs, Notice of Public Comment Period..... 1514

Department of Natural Resources and Environmental Control, Division of Water Resources;  
Notices of Public Hearing..... 1514

Department of Safety and Homeland Security, Office of the Secretary, Notice of Public  
Comment Period..... 1515

Department of State, Division of Professional Regulation, Notices of Public Hearing..... 1516 - 1517

Executive Department, Office of Management and Budget, Notices of Public Hearing..... 1517

---

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

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.).

**DELAWARE NATIONAL GUARD**

Policies and Procedures Regarding FOIA Requests..... 15 DE Reg. 813 (Final)

**DELAWARE SOLID WASTE AUTHORITY**

501 Regulations of the Delaware Solid Waste Authority..... 15 DE Reg. 6 (Prop.)  
15 DE Reg. 637 (Final)

**DELAWARE STATE HOUSING AUTHORITY**

**Office of the Director**

Policies and Procedures Regarding FOIA Requests..... 15 DE Reg. 817 (Final)

**DEPARTMENT OF AGRICULTURE**

**Harness Racing Commission**

501 Harness Racing Rules and Regulations, Subsections 7.1.4 and 8.3.5.9.4  
Subsection 8.3.7 15 DE Reg. 956 (Prop.)  
15 DE Reg. 58 (Final)

502 Delaware Standardbred Breeders' Fund Regulations..... 15 DE Reg. 255 (Prop.)  
15 DE Reg. 1322(Final)  
15 DE Reg. 638 (Final)

**Office of the Secretary**

Policies and Procedures Regarding FOIA Requests..... 15 DE Reg. 822 (Final)

**Plant Industries Section**

803 Rules and Regulations for the Control and Suppression of the White Pine  
Blister Rust..... 15 DE Reg. 185 (Prop.)

**Thoroughbred Racing Commission**

1001 Thoroughbred Racing Rules and Regulations..... 15 DE Reg. 263 (Prop.)  
15 DE Reg. 520 (Final)  
15 DE Reg. 1239(Prop.)  
1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations..... 15 DE Reg. 60 (Final)  
15 DE Reg. 1107 (Prop.)  
15 DE Reg. 1243(Prop.)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

106A Teacher Appraisal Process Delaware Performance Appraisal System  
(DPAS II) Revised..... 15 DE Reg. 21 (Prop.)  
15 DE Reg. 124 (Prop.)  
15 DE Reg. 409 (Prop.)  
15 DE Reg. 833 (Final)  
15 DE Reg. 1245(Prop.)

107A Specialist Appraisal Process Delaware Performance Appraisal System  
(DPAS II) Revised..... 15 DE Reg. 29 (Prop.)  
15 DE Reg. 132 (Prop.)  
15 DE Reg. 417 (Prop.)  
15 DE Reg. 835 (Final)  
15 DE Reg. 1254(Prop.)

108A Administrator Appraisal Process Delaware Performance Appraisal  
System (DPAS II) Revised..... 15 DE Reg. 36 (Prop.)  
15 DE Reg. 139 (Prop.)  
15 DE Reg. 424 (Prop.)

# CUMULATIVE TABLES

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	15 DE Reg. 836 (Final)
	15 DE Reg. 1259(Prop.)
245 Michael C. Ferguson Achievement Awards Scholarship.....	15 DE Reg. 265 (Prop.)
	15 DE Reg. 639 (Final)
247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars.....	15 DE Reg. 1262(Prop.)
290 Approval of Educator Preparation Programs.....	15 DE Reg. 146 (Prop.)
	15 DE Reg. 642 (Final)
505 High School Graduation Requirements and Diplomas.....	15 DE Reg. 62 (Final)
525 Requirements for Career and Technical Education Programs.....	15 DE Reg. 188 (Final)
	15 DE Reg. 718 (Prop.)
	15 DE Reg. 1147(Final)
701 Unit Count.....	15 DE Reg. 68 (Final)
775 New Teacher Hiring Date Reporting.....	15 DE Reg. 43 (Prop.)
	15 DE Reg. 337 (Final)
815 Physical Examinations and Screening.....	15 DE Reg. 432 (Prop.)
	15 DE Reg. 838 (Final)
852 Child Nutrition.....	15 DE Reg. 958 (Prop.)
885 Safe Management and Disposal of Chemicals in the Delaware Public School System.....	15 DE Reg. 586 (Prop.)
	15 DE Reg. 1002 (Final)
910 Delaware General Educational Development (GED) Endorsement.....	15 DE Reg. 592 (Prop.)
	15 DE Reg. 1008 (Final)
922 Children With Disabilities Subpart A, Purposes and Definitions.....	15 DE Reg. 339 (Final)
923 Children With Disabilities Subpart B, General Duties and Eligibility of Agencies.....	15 DE Reg. 351 (Final)
925 Children With Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	15 DE Reg. 352 (Final)
926 Children With Disabilities Subpart E, Procedural Safeguards for Parents and Children.....	15 DE Reg. 354 (Final)
927 Children With Disabilities Subpart F, Monitoring, Enforcement and Confidentiality of Information.....	15 DE Reg. 355 (Final)
928 Children With Disabilities Subpart G, Use and Administration of Funds.....	15 DE Reg. 356 (Final)
1004 Standards for School Buses Placed in Production on or After 1/1/2012..	15 DE Reg. 268 (Prop.)
1006 Delaware Interscholastic Athletic Association (DIAA).....	15 DE Reg. 69 (Final)
1007 DIAA Sportsmanship.....	15 DE Reg. 72 (Final)
1008 DIAA Junior High and Middle School Interscholastic Athletics.....	15 DE Reg. 74 (Final)
1009 DIAA High School Interscholastic Athletics.....	15 DE Reg. 75 (Final)
1104 Standards for School Buses Placed in Production on or After January 1, 2012.....	15 DE Reg. 650 (Final)
1505 Standard Certificate.....	15 DE Reg. 718 (Prop.)
	15 DE Reg. 1148(Final)
1506 Emergency Certificate.....	15 DE Reg. 728 (Prop.)
	15 DE Reg. 1150(Final)
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 826 (Final)
<b>Professional Standards Board</b>	
1598 Delaware Professional Development Standards.....	15 DE Reg. 77 (Final)
	15 DE Reg. 1109 (Prop.)
<b>DEPARTMENT OF FINANCE</b>	
<b>Division of Unclaimed Property</b>	
Practices and Procedures for Appeals of Determinations of the Audit Manager	15 DE Reg. 959 (Prop.)
	15 DE Reg. 1323(Final)
Practices and Procedures for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property.....	15 DE Reg. 965 (Prop.)

Practices and Procedures for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property.....	15 DE Reg.1330(Final)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 841 (Final)
 <b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES</b>	
<b>Division of Long Term Care Residents Protection</b>	
3201 Skilled and Intermediate Care Nursing Facilities.....	15 DE Reg. 79 (Final)
3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants.....	15 DE Reg. 192 (Final)
3225 Assisted Living Facilities (Formerly Regulation No. 63).....	15 DE Reg. 192 (Final)
3230 Rest (Residential) Home Regulations.....	15 DE Reg. 269 (Prop.)
3301 Group Home Facilities for Persons with AIDS.....	15 DE Reg.1010 (Final)
3310 Neighborhood Homes for Persons with Developmental Disabilities.....	15 DE Reg.1264(Prop.)
3315 Rest (Family) Care Homes.....	15 DE Reg. 81 (Final)
3320 Intensive Behavioral Support and Educational Residences (IBSER).....	15 DE Reg. 192 (Final)
<b>Division of Medicaid and Medical Assistance</b>	
Amendments relating to the use of respectful language as required by 78 Del. Laws, c. 180.....	15 DE Reg. 202 (Final)
Diamond State Health Plan Plus 1115 Demonstration Waiver Amendment .....	15 DE Reg. 45 (Prop.)
Reimbursement Methodology for Certain Medicaid Services.....	15 DE Reg. 734 (Prop.)
State Residency.....	15 DE Reg.1160(Final)
Title XIX Medicaid State Plan:	15 DE Reg. 46 (Prop.)
Attachment 3.1-A, Page 7, Concurrent Hospice Care for Children Under 21 Years.....	15 DE Reg. 362 (Final)
Comprehensive Medicaid Coverage of Tobacco Cessation Services for Pregnant Women and All Medicaid Beneficiaries.....	15 DE Reg. 661 (Final)
Concurrent Hospice Care for Children Under 21 Years.....	15 DE Reg. 656 (Final)
Diamond State Health Plan Plus 1115 Demonstration Waiver Amendment	15 DE Reg. 272 (Prop.)
Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Dental Services.....	15 DE Reg. 666 (Final)
Freestanding Birth Center Services.....	15 DE Reg. 968 (Prop.)
Medicaid Nonpayment and Reporting Requirements for Provider Preventable Conditions.....	15 DE Reg.1333(Final)
Medicaid Provider Screening and Enrollment.....	15 DE Reg. 274 (Prop.)
Notice of Proposed Changes to the Medicaid State Plan Governing Payments for Disproportionate Share Hospital.....	15 DE Reg. 674 (Final)
Qualified Long-Term Care Insurance Partnership Program.....	15 DE Reg. 276 (Prop.)
Section 4.17 Adjustments or Recoveries.....	15 DE Reg. 276 (Prop.)
Section 4.44 Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States.....	15 DE Reg. 664 (Final)
Tobacco Cessation Services.....	15 DE Reg. 1273(Prop.)
Title XIX of the Social Security Act, Asset Verification System.....	15 DE Reg. 1265(Prop.)

# CUMULATIVE TABLES

Title XIX of the Social Security Act, Asset Verification System.....	15 DE Reg. 845 (Final)
Program of All Inclusive Care for the Elderly (PACE).....	15 DE Reg. 437 (Prop.)
Payment Error Rate Measurement (PERM).....	15 DE Reg. 847 (Final)
Payment Error Rate Measurement (PERM).....	15 DE Reg. 448 (Prop.)
<b>DSSM</b> 14370 Coverage of Emergency Services and Labor and Delivery.....	15 DE Reg.1020 (Final)
14540 Estate Recovery Protections.....	15 DE Reg. 620 (Prop.)
14540 Estate Recovery Protections.....	15 DE Reg.1023 (Final)
14540 Estate Recovery Protections.....	15 DE Reg. 84 (Final)
<b>Division of Public Health</b>	
4202 Control of Communicable and Other Disease Conditions.....	15 DE Reg. 737 (Prop.)
4304 Pre-Hospital Advanced Care Directive.....	15 DE Reg. 1163(Final)
4402 Regulations for Adult Day Care Facilities.....	15 DE Reg. 211 (Final)
4405 Free Standing Surgical Centers.....	15 DE Reg. 220 (Final)
4405 Free Standing Surgical Centers.....	15 DE Reg. 971 (Prop.)
4406 Home Health Agencies - Aide Only (Licensure).....	15 DE Reg. 220 (Final)
4410 Skilled Home Health Agencies (Licensure).....	15 DE Reg. 220 (Final)
4447 Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation (Hand Labor).....	15 DE Reg. 154 (Prop.)
4451 Body Art Establishments.....	15 DE Reg. 521 (Final)
4451 Body Art Establishments.....	15 DE Reg. 282 (Prop.)
4453 Cosmetology and Barbering.....	15 DE Reg. 677 (Final)
4453 Cosmetology and Barbering.....	15 DE Reg. 155 (Prop.)
4457 Regulations Governing the Manufacture and Sale Of Ice .....	15 DE Reg. 526 (Final)
4457 Regulations Governing the Manufacture and Sale Of Ice .....	15 DE Reg. 156 (Prop.)
4460 Mattresses, Pillows and Bedding.....	15 DE Reg. 527 (Final)
4460 Mattresses, Pillows and Bedding.....	15 DE Reg. 156 (Prop.)
4469 Personal Assistance Services Agencies.....	15 DE Reg. 528 (Final)
4469 Personal Assistance Services Agencies.....	15 DE Reg. 220 (Final)
<b>Division of Social Services</b>	
Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal.....	15 DE Reg. 469 (Prop.)
Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal.....	15 DE Reg.1045(Final)
General Assistance, Refugee Cash Assistance Program Relating to Civil Unions.....	15 DE Reg. 1113(Prop.)
<b>DSSM</b> 2011 Benefit Restorations for Cash Assistance and Food Stamps.....	15 DE Reg. 450 (Prop.)
2027 Disqualification of Individuals Convicted of Drug Related Offenses	15 DE Reg.1025 (Final)
5000 Fair Hearing Provisions.....	15 DE Reg.1277(Prop.)
5001 Fair Hearings; General Purpose.....	15 DE Reg. 973 (Prop.)
5100 Legal Base.....	15 DE Reg.1343(Final)
5200 Statewide Fair Hearings.....	15 DE Reg. 86 (Final)
5311 Notifying Appellants and Others of Hearings.....	15 DE Reg. 86 (Final)
5312 Responding to Fair Hearing Requests.....	15 DE Reg. 971 (Prop.)
5400 Fair Hearing Requirements.....	15 DE Reg.1339(Final)
5500 Decisions by the Final Hearing Authority.....	15 DE Reg. 971 (Prop.)
5501 Corrective Payments.....	15 DE Reg.1339(Final)
5502 Public Access to Hearing Decisions.....	15 DE Reg. 86 (Final)
5600 Admission of Hearsay Evidence.....	15 DE Reg. 86 (Final)
5601 Rule of Legal Residuum.....	15 DE Reg. 973 (Prop.)
5602 Exclusionary Rules of Evidence.....	15 DE Reg.1343(Final)
5602 Exclusionary Rules of Evidence.....	15 DE Reg. 973 (Prop.)

5602 Exclusionary Rules of Evidence.....	15 DE Reg.1343(Final)
5603 Official Notice.....	15 DE Reg. 973 (Prop.)
5604 Protocol.....	15 DE Reg.1343(Final) 15 DE Reg. 973 (Prop.)
5605 Requests for Continuance.....	15 DE Reg.1343(Final) 15 DE Reg. 973 (Prop.)
5606 Recusation.....	15 DE Reg.1343(Final) 15 DE Reg. 973 (Prop.)
5607 Demeanor of Evidence.....	15 DE Reg.1343(Final) 15 DE Reg. 973 (Prop.) 15 DE Reg.1343(Final)
9076 Treatment of Income and Resources of Certain Non-Household .....Members.....	15 DE Reg. 451 (Prop.)
9093 Electronic Benefit Transfer (EBT).....	15 DE Reg. 454 (Prop.)
11002.9 Definitions and Explanation of Terms.....	15 DE Reg. 222 (Final)
11003.4 Cooperating with Child Support.....	15 DE Reg. 92 (Final)
11006.5.1 Terminating Providers.....	15 DE Reg. 223 (Final)
<b>Division of Substance Abuse and Mental Health</b>	
6002 Mental Health Patients' Grievance Procedure.....	15 DE Reg. 283 (Prop.)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 849 (Final)
 <b>DEPARTMENT OF INSURANCE</b>	
1314 Health Premium Consumer Comparison.....	15 DE Reg. 164 (Prop.) 15 DE Reg. 740 (Prop.) 15 DE Reg.1164(Final)
 <b>DEPARTMENT OF JUSTICE</b>	
<b>Division of Securities</b>	
Rules and Regulations Pursuant to the Delaware Securities Act.....	15 DE Reg. 529 (Final)
<b>Fraud and Consumer Protection Division</b>	
103 Consumer Protection Unit Administrative Enforcement Proceedings.....	15 DE Reg. 166 (Prop.)
<b>Victim's Compensation Assistance Program Advisory Council</b>	
301 Victims' Compensation Assistance Program Rules & Regulations.....	15 DE Reg. 175 (Prop.) 15 DE Reg. 678 (Final)
 <b>DEPARTMENT OF LABOR</b>	
<b>Division of Industrial Affairs</b>	
1331 Industrial Accident Board Regulations.....	15 DE Reg. 287 (Prop.) 15 DE Reg. 854 (Final)
1341 Workers' Compensation Regulations.....	15 DE Reg. 365 (Final) 15 DE Reg.1167(Final)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 856 (Final)
 <b>DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL</b>	
<b>Division of Air and Waste Management</b>	
Proposed Revision to Delaware's 2008 State Implementation Plan For Attainment of the PM <sub>2.5</sub> Annual National Ambient Air Quality Standard - Attainment Demonstration.....	15 DE Reg. 742 (Prop.) 15 DE Reg.1171(Final)
1124 Control of Volatile Organic Compound Emissions, Sections 12.0, 19.0, 20.0 and 22.0.....	15 DE Reg. 532 (Final)
1125 Requirements for Preconstruction Review.....	15 DE Reg.1169(Final)

# CUMULATIVE TABLES

1131 Low Enhanced Inspection & Maintenance Program and Plan for Implementation.....	15 DE Reg. 1278(Prop.)
1138 Emission Standards for Hazardous Air Pollutants for Source Categories.....	15 DE Reg. 176 (Prop.)
1144 Control of Stationary Generator Emissions.....	15 DE Reg. 861 (Final)
1302 Regulations Governing Hazardous Waste (RGHW).....	15 DE Reg. 303 (Prop.)
	15 DE Reg. 471 (Prop.)
	15 DE Reg. 864 (Final)
7201 Regulations Governing the Control of Water Pollution, Section 9.8 Regulations Governing the Discharges from the Application of Pesticides to Waters of the State.....	15 DE Reg.1216(Emer.)
<b>Division of Fish and Wildlife</b>	
3531 Tautog; Size Limits, Creel Limits and Seasons.....	15 DE Reg. 317 (Prop.)
	15 DE Reg.1177(Final)
3536 Fish Pot Requirements.....	15 DE Reg. 533 (Final)
3552 Spanish Mackerel Size Limit and Creel Limit.....	15 DE Reg.1280(Prop.)
3553 River Herring Creel Limit.....	15 DE Reg. 627(Prop.)
	15 DE Reg.1179(Final)
3900 Wildlife.....	15 DE Reg. 747 (Prop.)
<b>Division of Parks and Recreation</b>	
9202 Regulations Governing Natural Areas and Nature Preserves.....	15 DE Reg. 94 (Final)
<b>Division of Water Resources</b>	
7201 Regulations Governing the Control of Water Pollution, 9.5 The Concentrated Animal Feeding Operation (CAFO).....	15 DE Reg. 177 (Prop.)
	15 DE Reg. 679 (Final)
<b>Division of Watershed Stewardship</b>	
5101 Sediment and Stormwater Regulations.....	15 DE Reg.1119 (Prop.)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 864 (Final)
<b>DEPARTMENT OF SAFETY AND HOMELAND SECURITY</b>	
<b>Division of State Police</b>	
1300 Board of Examiners of Private Investigators & Private Security Agencies	15 DE Reg. 484 (Prop.)
	15 DE Reg. 766 (Prop.)
	15 DE Reg. 875 (Final)
	15 DE Reg.1181(Final)
	15 DE Reg.1281(Prop.)
5500 Bail Enforcement Agents.....	15 DE Reg. 768 (Prop.)
	15 DE Reg.1356(Final)
Regulations Governing Community Firearm Recovery Programs.....	15 DE Reg. 682 (Final)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 877 (Final)
Regulations Governing Community Firearm Recovery Programs.....	15 DE Reg. 319 (Prop.)
Regulations Governing Statewide Authorized Tamper Resistant Prescription Forms.....	15 DE Reg. 535 (Final)
	15 DE Reg.1357(Final)
Regulations Governing the Relief from Disabilities Board.....	15 DE Reg.1286(Prop.)
<b>DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES</b>	
<b>Division of Management and Support Services</b>	
501 Procedures for Drug Testing Certain Employees.....	15 DE Reg. 1047 (Final)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 881 (Final)

**DEPARTMENT OF STATE**

**Division of Professional Regulation**

**Gaming Control Board**

101 Regulations Governing Bingo .....	15 DE Reg. 48 (Prop.) 15 DE Reg. 367 (Final) 15 DE Reg. 1290(Prop.)
102 Regulations Governing Raffles.....	15 DE Reg. 50 (Prop.)
103 Regulations Governing Charitable Gambling Other Than Raffles.....	15 DE Reg. 368 (Final) 15 DE Reg. 491 (Prop.)
104 Regulations Governing Texas Hold 'Em Poker.....	15 DE Reg. 886 (Final) 15 DE Reg. 495 (Prop.)
200 Board of Landscape Architecture.....	15 DE Reg. 886 (Final) 15 DE Reg. 774 (Prop.)
300 Board of Architecture.....	15 DE Reg. 1121(Prop.)
1100 Board of Dentistry and Dental Hygiene.....	15 DE Reg. 628 (Prop.) 15 DE Reg. 777 (Prop.) 15 DE Reg. 1131(Prop.) 15 DE Reg. 1183(Final) 15 DE Reg. 1359(Final)
1400 Board of Electrical Examiners.....	15 DE Reg. 370 (Final)
1700 Board of Medical Licensure and Discipline.....	15 DE Reg. 498 (Prop.) 15 DE Reg. 537 (Final) 15 DE Reg. 1184(Final) 15 DE Reg. 1293(Prop.)
1770 Respiratory Care Practice Advisory Council.....	15 DE Reg. 52 (Prop.) 15 DE Reg. 543 (Final)
1790 Acupuncture Advisory Council.....	15 DE Reg. 1132(Prop.)
1799 Genetic Counselor Advisory Council.....	15 DE Reg. 1137(Prop.)
1900 Board of Nursing, Sections 1.0, 2.0, 3.0, 4.0, 6.0, 7.0, 9.0, 10.0, 14.0 ....	15 DE Reg. 180 (Prop.) 15 DE Reg. 545 (Final) 15 DE Reg. 53 (Prop.)
2500 Board of Pharmacy.....	15 DE Reg. 685 (Final) 15 DE Reg. 1294(Prop.) 15 DE Reg. 321 (Prop.)
Subsection 5.1.13.....	15 DE Reg. 99 (Final)
2600 Examining Board of Physical Therapists.....	15 DE Reg. 887 (Final) 15 DE Reg. 183 (Prop.)
2700 Board of Registration for Professional Land Surveyors.....	15 DE Reg. 1054 (Final) 15 DE Reg. 781 (Prop.)
2900 Real Estate Commission.....	15 DE Reg. 1361(Final)
2930 Council on Real Estate Appraisers.....	15 DE Reg. 1185(Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	15 DE Reg. 888 (Final) 15 DE Reg. 322 (Prop.) 15 DE Reg. 1055(Final) 15 DE Reg. 1294(Prop.)
3100 Board of Funeral Services.....	15 DE Reg. 1300(Prop.)
3300 Board of Veterinary Medicine.....	15 DE Reg. 793 (Prop.) 15 DE Reg. 1362(Final)
3500 Board of Examiners of Psychologists.....	15 DE Reg. 371 (Final)
3600 Board of Registration of Geologists.....	15 DE Reg. 502 (Prop.)
3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers.....	15 DE Reg. 53 (Prop.) 15 DE Reg. 373 (Final)
4400 Delaware Manufactured Home Installation Board.....	15 DE Reg. 374 (Final)
5100 Board of Cosmetology and Barbering.....	15 DE Reg. 224 (Final)
5200 Board of Examiners of Nursing Home Administrators.....	15 DE Reg. 983 (Prop.)

8500 Rules and Regulations Regarding Mandatory Information to be Supplied to the State Bureau of Identification.....	15 DE Reg. 506 (Prop.)
	15 DE Reg. 1363(Final)
8800 Boxing and Combative Sports Entertainment Rules and Regulations.....	15 DE Reg. 986 (Prop.)
	15 DE Reg. 1366(Final)
Uniform Controlled Substances Act Regulations.....	15 DE Reg. 577 (Emer.)
	15 DE Reg. 891 (Final)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 901 (Final)
<b>Office of the State Bank Commissioner</b>	
103 Freedom of Information Act Requests.....	15 DE Reg. 100 (Final)
1114 Alternative Franchise Tax.....	15 DE Reg. 1187(Final)
1201 Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 1056(Final)
<b>Public Service Commission</b>	
1009 Regulations Implementing the Water Utility Distribution System Improvement Charge (“DSIC”) & the Utility Facility Relocation Charge (“UFRC”)....	15 DE Reg. 1301(Prop.)
1202 Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 1063(Final)
3001 Rules for Certification and Regulation of Electric Suppliers.....	15 DE Reg. 102 (Final)
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standards Act.....	15 DE Reg. 508 (Prop.)
	15 DE Reg. 1308(Prop.)
<b>DEPARTMENT OF TECHNOLOGY AND INFORMATION</b>	
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 906 (Final)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Motor Vehicles</b>	
2217 Driver License and Identification Card Application Procedures for Delaware Compliant & Delaware Non-Compliant Identification Documents	15 DE Reg. 322 (Prop.)
	15 DE Reg. 687 (Final)
2287 Public Carrier Regulations.....	15 DE Reg. 55 (Prop.)
	15 DE Reg. 550 (Final)
<b>Division of Planning and Policy</b>	
2306 Crash Data Release.....	15 DE Reg. 795 (Prop.)
	15 DE Reg. 1192(Final)
2309 Standards and Regulations for Subdivision Streets and State Highway Access.....	15 DE Reg. 56 (Prop.)
	15 DE Reg. 551 (Final)
<b>Division of Transportation Solutions</b>	
2402 Delaware Manual on Uniform Traffic Control Devices.....	15 DE Reg. 106 (Final)
<b>Office of the Secretary</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 910 (Final)
<b>EXECUTIVE DEPARTMENT</b>	
<b>Delaware Economic Development Office</b>	
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 920 (Final)
<b>Office of Management and Budget</b>	
Disability Insurance Program Rules and Regulations.....	15 DE Reg. 799 (Prop.)
	15 DE Reg. 1367(Final)
Policies and Procedures Regarding FOIA Requests.....	15 DE Reg. 925 (Final)
<b>STATE EMPLOYEE BENEFIT COMMITTEE</b>	
2001 Group Health Care Insurance Eligibility and Coverage Rules.....	15 DE Reg. 225 (Final)
	15 DE Reg. 1071 (Final)

**Symbol Key**

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

**Proposed Regulations**

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

---

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

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 750

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****750 Support Personnel Salary Supplements for Additional Training****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 750 Support Personnel Salary Supplements for Additional Training to reflect the current administrative professional organizations and examinations. This regulation was reviewed as part of the five year review cycle. The Department worked with district staff as well as the Delaware State Education Association (DSEA) on the proposed changes. The salary supplements are identified in Delaware law.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **May 4, 2012** to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to support personnel salary supplements and does not directly impact student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to support personnel salary supplements and does not directly students' receiving an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to support personnel salary supplements and does not directly students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to support personnel salary supplements and does not directly students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the authority or flexibility at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements. The process employed by the schools does not change.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making and accountability remains as prior to the amendments.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation is related to support personnel salary supplements and does not directly affect the achievement of students.
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. The Department reviewed the process with the stakeholders and was cognizant of ensuring no unnecessary steps were needed by local staff or Department staff.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the State or local boards for compliance as a result of the amendments.

## 750 Support Personnel Salary Supplements for Additional Training

### 1.0 Definitions:

"**Certificate**" means a document issued by the Department of Education that verifies completion of the additional training required for a Level I, Level II or Bachelor's degree status for support personnel.

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

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

"**Support Personnel**" means an administrative secretary, financial secretary, senior secretary, secretary or clerk employed by a school district, charter school or by the Department of Education.

### 2.0 Supplements for Additional Training

An administrative secretary, financial secretary, senior secretary, secretary or clerk shall receive as salary the amount that the employee qualifies for under 14 **Del.C.** §1308 plus an annual amount for additional training as defined in 14 **Del.C.** §1309(b). The following shall be the requirements for the salary supplements defined in 14 **Del.C.** §1309(b):

#### 2.1 Professional Secretary Certificate, Level I Salary Supplement Qualifications

##### 2.1.1 Hold a high school diploma or certificate of equivalency; and

2.1.1.1 Complete sixty (60) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related areas; or

2.1.1.2 ~~Pass all six parts of the Examination for Certified Professional Secretaries administered by the Professional Secretaries International (PSI)~~ Certified Administrative Professional (CAP) examination administered by the International Association of Administrative Professionals (IAAP); or

2.1.1.3 Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option 4I or Option II, BASIC or above.

#### 2.2 Certified Secretary Certificate, Level II Salary Supplement Qualifications

- 2.2.1 Hold a high school diploma or certificate of equivalency; and
  - 2.2.1.1 Complete an associate degree in business, professional office training or, accounting from a regionally accredited post secondary institution; and have a minimum of five years successful experience as an office professional; or
  - 2.2.1.2 ~~Pass all six parts of the Examination for Certified Professional Secretaries administered by the Professional Secretaries International (PSI); the Certified Administrative Professional (CAP) examination administered by the International Association of Administrative Professionals (IAAP); complete twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional; or~~
  - 2.2.1.3 ~~Pass the Associate Professional Certificate from the Professional Standards Program (PSP), Options I or II, as administered by the National Association of Educational Office Professionals, complete twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area and have a minimum of five years successful experience as an office professional. Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option I; complete twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional; or~~
  - 2.2.1.4 Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option II which includes the completion of at least twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area; and have a minimum of five years successful experience as an office professional;

2.3 Bachelor's Degree Certificate, Level III Salary Supplement Qualifications

- 2.3.1 An individual shall hold a Bachelor's degree from a regionally accredited College.

### 3.0 Requirements for a Certificate

The Department shall issue Certificates to Support Personnel in local school districts, charter schools and in the Department of Education who have met the requirements for additional training in 2.1, 2.2 or 2.3.

### 4.0 Application Procedures

- 4.1 Applicants for a Certificate for additional training shall submit to the Department the appropriate evidence required to meet the requirements for the type of Certificate requested in 2.1, 2.2 and 2.3 as described in 4.1.1 through 4.1.3.
  - 4.1.1 Official transcripts forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.
  - 4.1.2 Evidence of passing scores on the ~~Examination for Certified Professional Secretaries administered by the Professional Secretaries International (PSI)~~ Certified Administrative Professional (CAP) examination as administered by the International Association of Administrative Professionals (IAAP) or passing scores on the Associate Professional Certificate from the Professional Standards Program (PSP), ~~Options 1 or 2 I or II~~, as administered by the National Association of Educational Office Professionals.
  - 4.1.3 Documentation of years of experience if appropriate.
  - 4.1.4 Reapplication is not required unless an applicant intends to apply for a different level of certification under 2.0.

**5.0 Denial of Certificate**

- 5.1 An applicant may be denied a Certificate for an additional training supplement upon a finding that the applicant has failed to meet the requirements set forth herein or is found to have made a materially false or misleading statement on his or her application or supporting materials.
- 5.42 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his or her designee within 10 days of the receipt of the notice of denial. The Secretary's decision shall be final.

**10 DE Reg. 1143 (01/01/07)**

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1001

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****1001 Participation in Extra Curricular Activities****A. Type of Regulatory Action Required**

Reauthorization of Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 1001 Participation in Extra Curricular Activities. The regulation was reviewed as part of the five year review cycle. It was determined no amendments were needed.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **May 4, 2012** to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to district and charter school academic eligibility criteria for participation in extra curricular activities and there are no proposed changes.
2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to district and charter school academic eligibility criteria for participation in extra curricular activities and is in place to help ensure all students receive an equitable education as it related to extra curricular activities.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to district and charter school academic eligibility criteria for participation in extra curricular activities and not specifically related to students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to district and charter school academic eligibility criteria for participation in extra curricular activities and is in place to help ensure all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? There are no proposed changes to the regulation.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? There are no proposed changes to the regulation.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? There are no proposed changes to the regulation.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There are no changes to the regulation and there is not a less burdensome method for addressing this issue.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the local school boards for compliance as there are no changes to the regulation.

### **1001 Participation in Extra Curricular Activities**

#### **1.0 Academic Eligibility Criteria**

Local school districts and charter schools shall establish their own academic eligibility criteria for participation in all extra curricular activities except for interscholastic athletics. The academic eligibility criteria for interscholastic athletics is established in 14 **DE Admin. Code** 1009.2.6 DIAA Senior High School Interscholastic Athletics, and in 14 **DE Admin. Code** 1008.2.6 DIAA Junior High and Middle School Interscholastic Athletics.

Comment: In establishing and implementing academic eligibility criteria applicable to students with disabilities, districts are reminded that some flexibility may be contemplated by Federal guidelines. See 34 CFR Sec. 104.4.

**1 DE Reg. 173 (8/1/97)**

**6 DE Reg. 279 (9/1/02)**

**10 DE Reg. 1433 (03/01/07)**

---

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

### **DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

Statutory Authority: 31 Delaware Code, Section 1124; 29 Delaware Code Section 7971(d)(1)  
(31 **Del.C.** §1124; 29 **Del.C.** §7971(d)(1))

#### **PUBLIC NOTICE**

The Division of Long Term Care Residents Protection (DLTCRP) is proposing the implementation of Regulation 3102, Long Term Care Discharge and Impartial Hearing Regulations.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 by Tuesday May, 1, 2012.

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 PROPOSED CHANGES**

##### **Background**

DLTCRP has a statutory obligation to implement regulations governing impartial hearings on discharge matters, 16 **Del.C.** §1121(18).

**Summary of Proposal**

This regulatory proposal implements regulations on the governance of impartial hearings on contested discharges from long term care facilities.

**Statutory Authority**

16 Del.C. §1124, "Staff training; issuance of regulations."

29 Del.C. §7971(d)(1), "Division of Long Term Care Residents Protection."

**3102 Long Term Care Discharge and Impartial Hearing Procedures****1.0 Appeals to challenge a discharge from a licensed facility**

- 1.1 Impartial Hearings of appeals by patients or residents to challenge a discharge from a licensed facility shall be governed by these regulations.
- 1.1.1 A patient or resident may appeal by sending a notice of appeal in writing to the Division with a copy to the facility. The notice of appeal may be filed by the patient or resident, his/her guardian or power of attorney (POA). The notice must be postmarked no later than 10 days before the effective date of discharge provided in the facility notice. The notice must also include the name of any person who will be representing the patient or resident at the hearing.
- 1.1.2 Within 5 days of the receipt of a notice of appeal the Division shall notify the facility that an appeal has been filed and that the patient or resident is not to be discharged during the time the appeal is underway.
- 1.1.3 The Division shall schedule the impartial hearing and notify all parties in writing. The impartial hearing officer shall conduct the hearing and issue a decision 30 days from the end of the actual impartial hearing.
- 1.1.4 The hearing shall be conducted by an impartial hearing officer assigned by the Division. Once assigned the hearing officer shall be responsible for:
- 1.1.4.1 Requests for postponement;
- 1.1.4.2 Requests for documents and the exchange of evidentiary material;
- 1.1.4.3 Rulings on pre-hearing matters brought forth by either party.
- 1.1.5 The hearing shall be conducted on a date, time and location that shall mutually agreed upon by the parties.
- 1.1.6 The hearing shall be conducted in an orderly manner

**2.0 Definitions**

"Date of Discharge" means the date of proposed discharge cited on the discharge notice by the facility.

"Discharge" means the movement of a patient or resident to a bed in a separately licensed facility.

"Division" means the Division of Long Term Care Residents Protection of the Delaware Department of Health and Social Services.

"Party" means each person or agency named or joined in an agency proceeding as a party, or properly seeking and entitled as of right to be admitted as a party to the agency proceeding.

**3.0 Notice of Discharge**

- 3.1 When a facility intends to discharge a patient or resident the patient or resident shall receive at least 30 days notice of the proposed action. A copy of the notice is to be mailed or e-mailed to the Division and to the State Long Term Care Ombudsperson (16 Del.C. §1134). The notice shall include:
- 3.1.1 The reason for the discharge;
- 3.1.2 The effective date of the discharge;

- 3.1.3 The location to which the patient or resident is to be discharged;
- 3.1.4 A statement that the patient or resident has the right to appeal the action;
- 3.1.5 The name and address of the Division to which the appeal must be filed;
- 3.1.6 The name and address of the State Long Term Care Ombudsperson;
- 3.1.7 A discharge plan that contains how the patient or resident's physical and mental conditions will be managed following discharge;
- 3.1.8 If the facility is for patients or residents with developmental disabilities, the mailing address and of the agency responsible for the protection and advocacy of individuals with developmental established under Part C of the Developmentally Disabilities Assistance and Bill of Rights Act;
- 3.1.9 If the facility is for patients or residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of persons with mental illness established under the Protection and Advocacy for Individual with Mental Illness Act.

## **4.0** Opportunities of Parties

- 4.1 Each party shall have the opportunity for the following:
  - 4.1.1 To examine all documents submitted prior to the hearing;
  - 4.1.2 To present the case by him/herself or with /the aid of an attorney or representative;
  - 4.1.3 To introduce and question witnesses;
  - 4.1.4 To submit evidence;
  - 4.1.5 To advance arguments w/o interference;
  - 4.1.6 To question or refute testimony or evidence;
  - 4.1.7 To be provided with interpreters or mechanical devices to overcome language or communication challenges;
  - 4.1.8 To withdraw the hearing request at any time.

## **5.0** Manner of Proceedings

- 5.1 The facility shall present first, the patient or resident second;
- 5.2 Each party shall be given the opportunity for rebuttal;
- 5.3 Each party shall have the opportunity to make closing remarks without rebuttal;
- 5.4 Electronic audio recordings shall be made of the hearings. Written transcriptions of the recordings shall be produced at the expense of the requesting party.

## **6.0** Role of Hearing Officer

- 6.1 Runs the hearing;
- 6.2 Make all rulings on the admissibility of evidence;
- 6.3 May question witnesses;
- 6.4 Limit unduly lengthy remarks;
- 6.5 Direct parties to produce evidence;
- 6.6 Make judgments on the relevance, reliability, and competence of evidence introduced;
- 6.7 May seek an outside medical evaluation
- 6.8 The decision of the hearing officer is the final ruling by the Department.

## **7.0** Standard of Proof

The facility shall have the burden of proof by a preponderance of evidence.

## **8.0** Confidentiality of Proceedings and decision

- 8.1 Dissemination of hearing officer decisions and information presented at the hearing shall be limited as follows:

---

# PROPOSED REGULATIONS

---

- 8.1.1 The parties involved in the hearing, including the hearing officer and staff:
- 8.1.2 The Long Term Care Ombudsman
- 8.1.3 The Medicaid Fraud Control Unit of the Department of Justice.
- 8.1.4 Rights protection agencies otherwise entitled under applicable federal or state law

## 9.0 Appeal of decision

The decision of the hearing officer may be appealed on the record to Superior Court. Appeals of hearing officer decisions are governed by the Administrative Procedures Act, Title 29, Chapter 101.

---

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

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

#### **PUBLIC NOTICE**

#### **Diamond State Health Plan Plus**

#### **Various Related Policies in the Division of Social Services Manual**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to amend policies in the Division of Social Services Manual (DSSM) related to the implementation of Diamond State Health Plan Plus.

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 Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2012.

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 proposal described below amends policies in the Division of Social Services Manual (DSSM) related to the implementation of Diamond State Health Plan Plus.

#### **Statutory Authority**

- 42 U.S.C. §1315, *Demonstration projects*
- Social Security Act §1115, *Demonstration projects*

#### **Background**

Section 1115 of the Social Security Act provides the Secretary of Health and Human Services broad authority to authorize experimental, pilot, or demonstration projects likely to assist in promoting the objectives of the Medicaid statute. Flexibility under Section 1115 is sufficiently broad to allow states to test substantially new ideas of policy merit. These projects are intended to demonstrate and evaluate a policy or approach that has not been demonstrated on a widespread basis. Some states expand eligibility to individuals not otherwise eligible under the Medicaid program, provide services that are not typically covered, or use innovative service delivery systems.

Under a waiver authority of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Using

savings achieved under managed care, Delaware expanded Medicaid health coverage to additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Effective April 1, 2012, the Division of Medicaid and Medical Assistance (DMMA) implements its 1115 Demonstration Waiver to integrate primary, acute and long-term care (LTC) services for the elderly and persons with physical disabilities into the Diamond State Health Plan (DSHP) statewide program under the name "Diamond State Health Plan Plus."

## Summary of Proposal

DMMA is leveraging the existing DSHP 1115 demonstration waiver by expanding it to include full-benefit dual eligibles, individuals receiving institutional LTC (excluding the developmentally disabled population), and individuals enrolled in DMMA's Elderly and Disabled and AIDS section 1915(c) waivers.

The purpose of this regulatory action is to inform the public of policy revisions and additions to the Division of Social Services Manual (DSSM) to reflect the expansion of the Managed Care program to include full-benefit dual eligibles and Long Term Care Medicaid.

The proposed changes affect the following policy sections:

**DSSM 14920 *Enrollment in Managed Care***

DSSM 14920.1, *Retroactive Coverage Limitations*

DSSM 17913, *Premium Requirements*

DSSM 20100, *Long Term Care Introduction*

ADDED:

DSSM 20110, *Managed Care Enrollment Requirements*

DSSM 25110, *Managed Care Enrollment Requirements*

## Fiscal Impact Statement

The proposed regulation imposes no increase in cost on the General Fund.

## DMMA PROPOSED REGULATION #12-09

### REVISIONS:

#### 14900 Enrollment In Managed Care

On May 17, 1995, Delaware received approval from the Centers for Medicare and Medicaid Services (CMS) for a Section 1115 Demonstration Waiver that is known as the Diamond State Health Plan. The basic idea behind this initiative is to use managed care principles and a strong quality assurance program to revamp the way health care is delivered to Delaware's most vulnerable populations. The Diamond State Health Plan is designed to provide a basic set of health care benefits to current Medicaid beneficiaries as well as uninsured individuals in Delaware who have income at or below 100% of the Federal Poverty Level (FPL). The demonstration waiver will mainstream certain Medicaid recipients into managed care to increase and improve access to medical services while improving cost effectiveness and slowing the rate of growth in health care costs.

#### Program Expansions

Effective July 1, 2002, a ~~Medicaid-only~~ State operated managed care organization, Diamond State Partners, is was implemented. Eligible individuals may enroll in either the Diamond State Health Plan or Diamond State Partners.

Effective April 1, 2012, the Diamond State Health Plan is expanded to include Long Term Care Medicaid and other full-benefit dual eligibles. This Long Term Care Managed Care Program is called Diamond State Health Plan Plus. Long Term Care Medicaid recipients and other full-benefit dual eligibles must enroll in Diamond State Health Plan Plus.

**Managed Care Eligibility**

The majority of the Medicaid population receiving ~~non-institutional~~ Medicaid services will be enrolled into the Diamond State Health Plan, Diamond State Health Plan Plus, or Diamond State Partners. The following individuals cannot enroll in Diamond State Health Plan, Diamond State Health Plan Plus, or Diamond State Partners:

- a. Individuals entitled to or eligible ~~to enroll in~~ for a Medicare Savings Program (QMB, SLMB);
- b. Individuals residing in ~~an nursing facility or~~ intermediate care facility for the ~~mentally retarded~~ developmentally disabled (ICF/MR);
- c. Individuals covered under the ~~home and community based waivers~~ Developmentally Disabled waiver program;
- d. Individuals that choose to participate in the Program of All-inclusive Care for the Elderly (PACE);
- ~~e. non~~ Non lawful and non qualified non citizens (aliens);
- e. ~~individuals who have Military Health Insurance For Active Duty, Retired Military, and their dependents~~
- f. Individuals eligible under the Breast and Cervical Cancer Treatment Group;
- g. Presumptively eligible pregnant women;
- h. Individuals ~~eligible under Medicaid for Workers with Disabilities~~ in need of only the 30-Day Acute Care Hospital program.

**(Break in Continuity of Sections)****14920 Retroactive Coverage**

The agency must make eligibility for Medicaid effective no later than the third month before the month of application if the individual:

- received Medicaid services, at any time during that period, of a type covered under the plan; and
- would have been eligible for Medicaid at the time he received the services if he had applied (or someone had applied for him, regardless of whether the individual is alive when application for Medicaid is made).

Effective April 1, 2012, those that may be found eligible for retroactive Medicaid coverage include:

- a. Individuals entitled to or eligible for a Medicare Savings Program (excluding QMB);
- b. Individuals residing in a nursing facility;
- c. Individuals residing in an intermediate care facility for the developmentally disabled (ICF/MR);
- d. Individuals in need of only the 30-day Acute Care Hospital Program;
- e. Women eligible under the Breast and Cervical Cancer Treatment Group;
- f. Individuals eligible under the Medicaid for Worker's with Disabilities Group.

**14920.1 Retroactive Coverage Limitations**

Effective January 1, 1996, retroactive Medicaid coverage is NOT available to any individual who, in the month of application, is eligible for enrollment under the *Diamond State Health Plan* or *Diamond State Partners*.

~~Individuals who are excluded from the *Diamond State Health Plan* or *Diamond State Partners* may be found eligible for retroactive Medicaid coverage. These individuals include:~~

- a. ~~those entitled to or eligible to enroll in Medicare,~~
- b. ~~those receiving long term care services (nursing facility and the home and community based waivers),~~
- e. ~~those living out of state but considered Delaware residents, such as a child placed out of state by DSCYF, and~~
- d. ~~individuals who have coverage under Military Health Insurance For Active Duty, Retired Military, and their dependents~~

Effective April 1, 2012, retroactive Medicaid coverage is not available to most individuals who, in the month of application, are eligible for enrollment under the Diamond State Health Plan Plus.

See DSSM 14920 for eligibility groups that may be found eligible for retroactive Medicaid coverage.

---

*(Break in Continuity of Sections)***17913 Premium Requirements**

Individuals with countable income over 100% FPL are required to pay a monthly premium to receive coverage. Countable income is the same amount that is used to determine eligibility.

When a husband and wife are both MWD eligible, a monthly premium is assessed on each spouse.

The monthly premium will be based on a sliding scale as follows:

Percentage of FPL	Monthly Premium
101-125%	\$25
126-150%	\$35
151-175%	\$45
176-200%	\$60
201-225%	\$75
226-250%	\$90
251-275%	\$105

Exception to sliding scale: An individual or couple whose adjusted gross annual income (as determined under the IRS statute) exceeds \$90,008 must pay the highest premium amount listed on the sliding scale. This adjusted gross annual income amount will increase each year by the COLA.

A premium is assessed the month an individual is added for coverage including any months of retroactive eligibility. Eligibility for a month is contingent upon the payment of the premium.

Payments that are less than one month's premium will not be accepted.

A monthly premium notice for ongoing coverage will be sent to the individual. The premium is due by the 15th of the month for the next month's coverage. ~~When the premium is not received by the date due, action will be taken to terminate eligibility under MWD. If the premium is received by the last day of the month, eligibility under MWD will be reinstated.~~

Coverage will be cancelled when the individual is in arrears for two premium payments. The coverage will end the last day of the month when the second payment is due. If one premium payment is received by the last day of the cancellation month, coverage will be reinstated.

Coverage continues pending a fair hearing decision if the fair hearing request is filed within the timely notice period, even if the individual is not paying premiums that are due.

**17914 Managed Care Enrollment Requirements**

Individuals who are found eligible must enroll with a managed care organization. The Health Benefits Manager (enrollment broker) will be responsible for the enrollment process.

*(Break in Continuity of Sections)***20100 Long Term Care Introduction**

~~There are three major programs~~ Programs under Long Term Care (LTC) Medicaid include:

- ~~• Nursing Facility Program~~
- ~~• Long Term Acute Care Program~~
- ~~• HCBS Waiver~~
- ~~• Elderly and Disabled Waiver~~
- ~~• AIDS/HIV Waiver~~
- ~~• Mental Retardation Waiver~~
- ~~• Assisted Living Waiver~~
- Diamond State Health Plan Plus
  - Nursing Facility Program

# PROPOSED REGULATIONS

- Long Term Care Community Services
- Program of All-inclusive Care for the Elderly (PACE)
- Developmentally Disabled Waiver
- Long Term Acute Care Program

Common to all three long term care programs is the ~~need~~ requirement to be medically and financially eligible. A description of each program and eligibility criteria follows.

## **20110 Managed Care Enrollment Requirements**

Individuals who are found eligible must enroll with a managed care organization. The Health Benefits Manager (enrollment broker) will be responsible for the enrollment process.

*(Break in Continuity of Sections)*

## **25110 Managed Care Enrollment Requirements**

Individuals who are found eligible must enroll with a managed care organization. The Health Benefits Manager (enrollment broker) will be responsible for the enrollment process.

---

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Title XIX Medicaid State Plan, Estate Recovery and Managed Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Delaware Medicaid State Plan regarding Estate Recovery and Managed Care. This regulatory action identifies capitation payments to managed care organizations as an additional Delaware Medicaid expenditure to be included in estate recovery.

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 Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2012.

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 proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan regarding Estate Recovery and Managed Care. This regulatory action identifies capitation payments to managed care organizations as an additional Delaware Medicaid expenditure to be included in estate recovery.

#### **Statutory Authority**

- Section 1917 of the Social Security Act, Liens, Adjustments and Recoveries, and Transfers of Assets;
- 42 CFR §433.36, Liens and Recoveries;
- State Medicaid Manual, Section 3810, Medicaid Estate Recoveries; and,

- Title 25, Delaware Code, Chapter 50, Liens and Estate Recoveries.

## Background

Under the estate recoveries provisions in the Omnibus Budget Reconciliation Act (OBRA) of 1993 and §1917(b) of the Social Security Act, states must recover certain Medicaid benefits correctly on behalf of an individual. Beneficiaries are notified of the Medicaid estate recovery program during their initial application for Medicaid eligibility and annual redetermination process. Federal law provides protections to ensure adequate notice to clients, prevention of undue hardship, and cost effectiveness under a state's recovery program.

For individuals age 55 or older, States are required to seek recovery of payments from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services. States have the option of recovering payments for all other Medicaid services provided to these individuals. States are also required to establish procedures, under standards specified by the HHS Secretary for waiving estate recovery when recovery would cause an undue hardship.

### *State Medicaid Manual*

Section 3810(A)(6) of the State Medicaid Manual states that when a Medicaid beneficiary, permanently institutionalized, or age 55 or older, is enrolled (either voluntarily or mandatorily) in a managed care organization and services are provided by the managed care organization that are included under the State's plan for estate recovery, the Medicaid agency must seek adjustment or recovery from the individual's estate for the premium payments in its claim against the estate. When the beneficiary enrolls in the managed care organization, the Medicaid agency must provide a separate notice to the beneficiary that explains that the premium payments made to the managed care organization are included either in whole or in part in the claim against the estate.

## Summary of Proposal

Delaware Medicaid is moving its Long Term Care program under a Managed Care Organization. Estate Recovery will be required to recover monthly Long Term Care capitated payments made to the Managed Care Organizations as opposed to monthly Nursing Home rates set per facility.

As such, the proposed amendment updates current regulations regarding Medicaid estate recovery carried out by the Division of Medicaid and Medical Assistance (DMMA). The Medicaid State plan will be amended at Attachment 4.17-A, Page 4, Liens and Adjustments or Recoveries to require that the amount subject to recovery shall include a capitation payment made by the Delaware Medical Assistance Program to a managed care organization on behalf of the deceased recipient. This regulatory action is based upon language provided by the federal Medicaid agency, the Centers for Medicare and Medicaid Services (CMS), in its guidance document publication titled "State Medicaid Manual."

When a Medicaid beneficiary is enrolled in a managed care organization and services are provided by the managed care organization that are included under the Medicaid State Plan, the State shall seek adjustment or recovery from the individual's estate for the capitation payments in the State's claim against the estate. When the individual enrolls in the managed care organization, the State shall provide a separate notice to the individual that explains that the capitation payments made to the managed care organization are included in whole in the claim against the estate. The State shall recover from the individual's estate the total capitation rate for the period the individual was enrolled in the managed care organization.

The provisions of this state plan amendment are subject to approval by CMS.

## Fiscal Impact Statement

The proposed plan amendment imposes no increase in cost on the General Fund.

## DMMA PROPOSED REGULATION #12-11

### REVISION:

Revision: HCFA-PM-95-3

(MB)

ATTACHMENT 4.17-A

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

Liens and Adjustments or Recoveries Continued

7. The State uses the following collection procedures (include specific elements contained in the advance action notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

The Delaware Health and Social Services (DHSS) notifies the client in advance by distributing a pamphlet to the client, guardian, and/or responsible party, outlining estate recovery procedures, at the time of application to all applicants for long-term care services.

All persons receiving or applying for Long Term Care Medicaid Services are advised in writing about the estate recovery policy of DHSS at the time of application and redetermination, via the ERL1.DOC form titled, "Recovery and Lien Policy". This form outlines the following:

- Explanation of estate recovery, including citations of the federal and state authority;
- Defines long-term care;
- Describes the circumstances under which DHSS will file a claim;
- Describes the circumstances under which DHSS will file a lien;
- Defines what a lien is explains that the lien will not lead to loss of ownership;
- Describes what constitutes undue hardship. Exclusion and hardship waiver conditions are listed on page 2 of this form titled, "Request for Exclusion or Hardship Waiver";
- Specifies which Medicaid payments DHSS will seek to recover; and,
- Notifies the applicant, guardian, and/or responsible party of appeal procedures, specifically stating, "If you are dissatisfied with any decision made by the Division of Medicaid and Medical Assistance (DMMA), you have the right to request an appeal of the decision by requesting a fair hearing. You must submit a written request to the local DHSS office within 90 days of the action".

DHSS exempts from estate recovery all Medicare Savings Program cost sharing benefits with dates of service on or after January 1, 2010 for qualified dual eligibles age 55 and over, but otherwise DHSS shall seek estate recovery after the client's death of the maximum recoverable amount to be defined as the total of funds disbursed or incurred by DHSS (including Federal matching dollars) during the time an individual, age 55 and over, receives long-term care services paid for by DHSS including the total capitation rate for the period the beneficiary was enrolled in the managed care organization (MCO).

Collections efforts will include written notification to the executor, guardian, and/or responsible party of the client's long-term care balance owed via a claim summary report. If a lien was placed on the client's property upon entry to the long-term care institution, DHSS will place a recovery claim against the proceeds from the sale of the property. DHSS will also pursue obtaining any residual funds remaining in a trust to offset any balance owed DHSS. Upon request, DHSS will work with heirs of the estate who voluntarily wish to satisfy the recovery claim on a case-by-case basis offering mutually agreed upon payment schedules if necessary. Additionally, when the maximum recoverable amount cannot be collected DHSS may agree to accept partial recoveries.

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

16 DE Admin. Code 20700

**PUBLIC NOTICE****Home and Community-Based Services Waivers**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to amend policies in the Division of Social Services Manual (DSSM) regarding *Home and Community-Based Services Waivers*.

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 Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2012.

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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Home and Community-Based Services Waivers.

### Statutory Authority

- 42 U.S.C. §1315, *Demonstration projects*
- Social Security Act §1115, *Demonstration projects*
- 42 CFR §435.217, *Individuals receiving home and community-based services*

### Background

Section 1115 of the Social Security Act provides the Secretary of Health and Human Services broad authority to authorize experimental, pilot, or demonstration projects likely to assist in promoting the objectives of the Medicaid statute. Flexibility under Section 1115 is sufficiently broad to allow states to test substantially new ideas of policy merit. These projects are intended to demonstrate and evaluate a policy or approach that has not been demonstrated on a widespread basis. Some states expand eligibility to individuals not otherwise eligible under the Medicaid program, provide services that are not typically covered, or use innovative service delivery systems.

Under a waiver authority of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Using savings achieved under managed care, Delaware expanded Medicaid health coverage to additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Effective April 1, 2012, the Division of Medicaid and Medical Assistance (DMMA) implements its 1115 Demonstration Waiver to integrate primary, acute and long-term care (LTC) services for the elderly and persons with physical disabilities into the Diamond State Health Plan (DSHP) statewide program under the name "Diamond State Health Plan Plus."

### Summary of Proposal

The proposed policy revisions in the Division of Social Services Manual (DSSM) identify the elimination of some of the 1915(c) home and community-based services waivers and the incorporation of them into Long Term Care Managed Care. In December 2010, three 1915(c) waivers: Elderly/Disabled Waiver, ABI Waiver, Assisted Living Waiver; were consolidated into one Elderly and Disabled Waiver. These changes were never reflected in policy.

As of April 1, 2012, the consolidated Elderly and Disabled Waiver, as well as the AIDS/HIV waiver will be moved to an 1115 Waiver and incorporated into a Managed Care Program.

This regulatory action also proposes to increase the daily living needs allowance of those individuals residing in the community. In supporting community based care, the daily living needs allowance for these individuals increases to be equal to their total income, including income that is deposited into a Miller Trust.

The proposed changes affect the following policy sections:

DSSM 20700, *Home and Community-Based Services*  
 DSSM 20700.1, *Division of Mental Retardation*  
 DSSM 20700.2, *Home and Community-Based Waiver for the Elderly and Disabled*  
 DSSM 20700.3, *Home and Community-Based Waiver for Individuals with AIDS/HIV*  
 DSSM 20700.4 through DSSM 20700.4.8, *Assisted Living Waiver*  
 DSSM 20700.5 through DSSM 20700.5.J, *Acquired Brain Injury Medicaid Waiver Program*  
 ADDED:

DSSM 20710, *Long Term Care Community Services*  
 DSSM 20720, *Patient Pay Calculation*  
 DSSM 20720.1, *Daily Living Needs*  
 DSSM 20720.4, *Patient Pay Amount*  
 DSSM 20740, *Hospitalization*  
 DSSM 20760, *Redetermination.*

## Fiscal Impact Statement

The proposed regulation imposes no increase in cost on the General Fund.

## DMMA PROPOSED REGULATION #12-10

### REVISIONS:

## 20700 Home and Community Based Services

### Federal Regulation - 42 CFR 435.217

#### 1115 Social Security Act (42 U.S.C. 1315)

Individuals who are eligible to receive home and community based services, under a special waiver granted to the State's Medicaid program by the Centers for Medicare and Medicaid Services (CMS) are also eligible for the increased financial standard that is used for individuals in nursing facilities-

~~These are individuals who would need to be in an institution if the special Medicaid community services were not available. They are also individuals who may not be eligible for SSI or SSP while living in the community because of excess income.~~

~~Delaware currently has a waiver for the mentally retarded (effective 7/1/83), the elderly and disabled (effective 7/1/86) and (effective 1/1/91) persons with Acquired Immune Deficiency Syndrome (AIDS) or other HIV Related Disease (HRD). The Assisted Living Waiver which is a program of community based residential services became effective October 1, 1998.~~

~~Medicaid eligibility under any HCBS waiver is not established until services under the HCBS waiver begin.~~

Effective April 1, 2012, all Home and Community Based Waiver programs, except for the Division of Developmental Disabilities Services Waiver, are incorporated into Diamond State Health Plan Plus, a managed care program. See section DSSM 14900 for additional information regarding this program.

#### 20700.1 ~~Division of Mental Retardation Waiver~~ Developmental Disabilities Services Waiver

1. Only clients of the Division of Developmental Disabilities Services (DDDS) are eligible for this Waiver.
2. Individuals must be medically eligible.

Initial medical eligibility is determined by DDDS staff. The DDDS Intake Coordinator makes a preliminary determination for each applicant for initial eligibility. Once an individual is placed in a residential facility, the ~~social~~ DDDS Social Service Benefits Administrator sends all waiver requests to the ~~Medicaid~~ Division of Medicaid & Medical Assistance Medical Review Team (MRT) for review. Based on the information provided on the comprehensive Medical Report (MAP-25), Social Evaluation

Form, Cost Projection Data Sheet and the level Level of Care (LOC) form, the MRT will either concur with the initial decision to approve or deny the applicant for an ICF/MR level of care.

~~3-~~ The MRT signs off on all forms sent by the DDDS Social Service Benefits Administrator.

~~3.~~ Individuals must be financially eligible.

If the client is not already Medicaid eligible as an SSI recipient, DDDS submits an application to the appropriate Long Term Care Unit for financial eligibility determination. Eligibility determination is made by using financial criteria applied to those institutionalized and receiving Medicaid.

#### **20700.2 Home and Community Based Waiver for the Elderly and Disabled**

~~1.~~ The Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) determines medical eligibility for this waiver through their Pre Admission Screening unit (PAS).

~~2.~~ DSAAPD PAS must assure that the applicant is in need of nursing home (i.e., skilled nursing facility (SNF), or intermediate care facility (ICF) as defined by DSS/Medicaid.

~~3.~~ The Long Term Care Financial Unit will determine eligibility using criteria in section 20103.

Effective April 1, 2012, this waiver program is incorporated into the Diamond State Health Plan Plus and referred to as Long Term Care Community Services. See DSSM 20710.

#### **20700.3 Home and Community Based Waiver for Individuals with AIDS/HIV**

~~1.~~ All cases will be referred to the DSS Pre Admission Screening Unit for initial medical eligibility.

~~2.~~ The DSS PAS Units must assure that the applicant has a diagnosis of AIDS or HIV with at least two or more chronic related medical conditions to HIV/AIDS that would contribute to increased hospitalizations and be in need of institutional care.

~~3.~~ Eligibility Determination

~~The Long Term Care Financial Units will determine eligibility by using criteria in section 20103.~~

~~4.~~ Once the medical and financial eligibility is completed, the financial eligibility worker will notify the Medicaid Waiver Administrator of financial eligibility and send the level of care packet to the case management agency and MRT for processing of a care plan for initial eligibility. Once the care plan information is completed, the case management agency sends documentation to the MRT for review and final approval.

~~Once medical and financial eligibility is completed, the financial eligibility worker will call the Medicaid Waiver Administrator to determine if a slot is available in the AIDS Waiver.~~

Effective April 1, 2012 this waiver program is incorporated into the Diamond State Health Plan Plus and referred to as Long Term Care Community Services. See DSSM 20710.

#### **20700.4 Assisted Living Waiver**

~~The Assisted Living Medicaid Waiver Program (ALMWP) provides community based residential services. The program is administered by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The program is funded by Delaware Medicaid and state general funds. It is targeted to older persons and adults with physical disabilities who need assistance with the Activities of Daily Living (ADL) AND meet Medicaid nursing facility admission criteria.~~

Effective April 1, 2012 this waiver program is incorporated into the Diamond State Health Plan Plus and referred to as Long Term Care Community Services. See DSSM 20710.

#### **~~20700.4.1 ELIGIBILITY CRITERIA~~**

~~To be eligible for this program, individuals must:~~

- ~~◆ Be a resident of the State of Delaware~~
- ~~◆ Be eighteen years of age or older;~~
- ~~◆ Meet the Financial and Medical criteria for DSS Long Term Care Institutionalized Services~~
- ~~◆ Meet Assisted Living Program criteria as determined by DSAAPD~~

Medical eligibility is determined by Pre Admission Screening Units of either DSS or DSAAPD.

Financial eligibility is determined by the DSS Long Term Care Financial Units.

Program eligibility is determined by DSAAPD. An individual **must** meet the following criteria:

Have need of an assisted living services on a regular weekly basis; **AND**

Be able to be maintained safely in the assisted living agency with the provision of the ALMWP services. Safety concerns must be brought to resolution through a mutually agreed upon Managed Risk Agreement.

If the financial eligibility determination period has expired, and the individual has been unable to obtain placement in a suitable and acceptable assisted living facility, the application will be denied.

#### **20700.4.2 NUMBER OF RECIPIENTS**

There is a maximum number of individuals who may be served under the Assisted Living Medicaid Waiver each fiscal year. The total unduplicated number of recipients served under the program within the year cannot exceed the maximum number as approved by the Centers for Medicare and Medicaid Services (CMS). DSAAPD monitors the number of individuals receiving ALWP services so the maximum number will not be exceeded.

#### **20700.4.3 COST EFFECTIVE REQUIREMENT**

In order for an individual to be eligible for the Assisted Living Program, the individual's cost of care cannot exceed the cost of their care if the same individual was institutionalized. An average monthly cost for institutionalized individuals is used to determine the amount that may be spent on Assisted Living eligibles. A DSAAPD worker determines the cost effectiveness.

#### **20700.4.4 DAYS APPROPRIATE FOR BILLING**

The assisted living provider may **NOT** bill MEDICAID for room and board. The assisted living provider may bill for services for any day that the recipient is present in the facility for any part of the day. The assisted living provider may **NOT** bill for any day that the consumer is absent from the facility for the entire day.

#### **20700.4.5 ILLNESS OR HOSPITALIZATION**

The assisted living provider shall **NOT** provide services for an individual that has been bedridden for 14 consecutive days unless a physician certifies that the consumer's needs may be safely met by the service agreement.

There are no Medicaid bed hold days for hospitalization.

#### **20700.4.6 APPROVAL**

Upon approval the Medicaid Financial Unit will send a notice of acceptance to the applicant or his representative, and ALMWP provider. The notice to the provider will include patient pay amount, amount to be protected for medical insurance and personal needs, effective date of Medicaid coverage, and Medicaid recipient's billing ID number.

#### **20700.4.7 POST ELIGIBILITY BUDGETING**

See DSSM section **20720** for Patient Pay Calculation policy. If the consumer has income under the Adult Foster Care standard, there will be no patient pay amount.

Collection of the patient pay amount from the consumer or his representative is the responsibility of the assisted living provider.

#### **20700.4.8 ASSISTED LIVING SERVICES**

Assisted living services include the following:

Personal services assistance with the activities of daily living (ADL)

Nursing services

Meal services

Social/emotional services

Assistance with instrumental activities of daily living (IADL)

## 20700.5 Acquired Brain Injury Medicaid Waiver Program

### ~~DSSM POL 20700.5 ACQUIRED BRAIN INJURY MEDICAID WAIVER~~

~~20700.5.A Acquired Brain Injury (ABI) Medicaid Waiver Defined~~

~~20700.5.B ABI Eligibility Criteria~~

~~20700.5.C ABI Program Eligibility~~

~~20700.5.D ABI Number of Participants~~

~~20700.5.E ABI Cost Effectiveness Requirement~~

~~20700.5.F ABI Notification of Approval~~

~~20700.5.G ABI Post Eligibility Budgeting~~

~~20700.5.H ABI Billing of Appropriate Days~~

~~20700.5.I ABI Program Absences Due to Hospitalization~~

~~20700.5.J ABI Medicaid Waiver Program Services~~

Effective April 1, 2012 this waiver program is incorporated into the Diamond State Health Plan Plus and referred to as Long Term Care Community Services. See DSSM 20710.

### ~~DSSM POL 20700.5.A ABI MEDICAID WAIVER DEFINED~~

- ~~1. The Acquired Brain Injury (ABI) waiver program is a home and community based services program funded by the Division of Medicaid and Medical Assistance (DMMA).~~
- ~~2. The ABI waiver is operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD).~~
- ~~3. This waiver is targeted to individuals with an acquired brain injury aged 18 years of age and above.~~
- ~~4. The individual must meet Medicaid criteria for nursing home admission.~~
- ~~5. The earliest implementation for the ABI waiver is December 1, 2007.~~

### ~~DSSM POL 20700.5.B ABI ELIGIBILITY CRITERIA~~

- ~~1. The individual must be a Delaware Resident.~~
- ~~2. The individual must meet the financial and medical criteria for the DMMA Long Term Care Medicaid Program.~~
- ~~3. Medical eligibility is determined by the DSAAPD Pre Admission Screening Unit. DSAAPD also accepts Long Term Care medical eligibility determinations performed by the DMMA Pre Admission Screening Unit.~~
- ~~4. Financial eligibility is determined by the DMMA.~~
- ~~5. The individual must meet program eligibility guidelines (see DSSM 20700.5.C).~~

### ~~DSSM POL 20700.5.C ABI PROGRAM ELIGIBILITY~~

- ~~1. The individual must have an injury to the brain which is not hereditary or congenital, degenerative, or induced by birth trauma.~~
- ~~2. The individual must have a need of at least one enhanced ABI waiver service in addition to case management.~~
- ~~3. The individual must have a physical, cognitive, and/or behavioral symptom of an ABI, which requires supervised and/or supportive care.~~
- ~~4. The individual must be at risk of placement or currently residing in a nursing facility.~~
- ~~5. The individual must have completed or no longer benefit from intensive inpatient, post trauma or rehabilitation program(s).~~
- ~~6. The individual must accept and maintain case management services.~~

### ~~DSSM POL 20700.5.D ABI NUMBER OF PARTICIPANTS~~

- ~~1. There is a maximum number of participants who may be served under the ABI waiver program each year.~~

~~2. The total unduplicated number cannot exceed the maximum number approved by the Centers for Medicare and Medicaid Services (CMS).~~

~~3. The DSAAPD will monitor the number of participants.~~

**~~DSSM POL 20700.5.E ABI COST EFFECTIVENESS REQUIREMENT~~**

~~1. The cost of care for an ABI waiver recipient cannot exceed the cost of care if institutionalized.~~

~~2. The cost of care is determined on an aggregate basis which considers all ABI waiver recipients.~~

~~3. An average monthly cost for institutionalization is used to determine the amount that may be spent on an ABI waiver recipient's care.~~

~~4. The DSAAPD determines cost effectiveness.~~

**~~DSSM POL 20700.5.F ABI NOTIFICATION OF APPROVAL~~**

~~1. The DMMA will send a notice of Medicaid approval.~~

~~2. The notice will be sent to the applicant or representative.~~

~~3. If the recipient is in an Assisted Living facility a notice of approval will also be sent to the provider.~~

~~4. The notice to the provider will include the effective date of Medicaid coverage the patient pay amount, and the Medicaid identification number.~~

**~~DSSM POL 20700.5.G ABI POST ELIGIBILITY BUDGETING~~**

~~1. DSSM policies 20720 and 20995.1 will be followed to calculate patient pay amount.~~

~~2. Persons residing in an Assisted Living facility will have a personal needs allowance equal to the current Adult Foster Care Rate.~~

~~3. Persons who are in a community based setting will have an income needs allowance equal to 250% of the Federal Benefit Rate.~~

~~4. Collection of the patient pay amount is the responsibility of the provider.~~

**~~DSSM POL 20700.5.H ABI BILLING OF APPROPRIATE DAYS~~**

~~1. The waiver provider may not bill for any day the individual is absent from the program, excluding case management services. (Case management services are billed monthly, and are still utilized up to 30 days of hospitalization.)~~

~~2. The waiver provider may bill for services rendered to the individual.~~

~~3. Assisted Living providers may not bill Medicaid for room and board.~~

**~~DSSM POL 20700.5.I ABI PROGRAM ABSENCES DUE TO HOSPITALIZATION~~**

~~1. ABI waiver services will terminate upon the 31<sup>st</sup> day of hospitalization.~~

~~2. There are no Medicaid bed hold days for hospitalization.~~

~~3. The DMMA will redetermine financial eligibility for continued Medicaid coverage.~~

**~~DSSM POL 20700.5.J ABI MEDICAID WAIVER PROGRAM SERVICES~~**

~~1. ABI waiver services will include:~~

~~Case Management~~

~~Assisted Living and Enhanced Assisted Living~~

~~Day Habilitation~~

~~Cognitive Services~~

~~Adult Day Services (Level I—Basic & Level II—Enhanced)~~

~~Personal Care~~

~~Respite Care~~

~~Personal Emergency Response System~~

~~2. Residents of an Assisted Living facility will receive services in accordance with the Division of Long Term Care Residents Protection regulation codified at 16 ~~DE Admin. Code~~ 3225.~~

*(Break in Continuity of Sections)*

---

## **20710 Long Term Care Community Services**

### 1. Individuals must be medically eligible.

The Division of Medicaid & Medical Assistance (DMMA) Pre-Admission Screening (PAS) Unit determines medical eligibility.

The applicant must be in need of nursing facility level of care as defined by DMMA.

See DSSM 20102 for additional information on Medical eligibility.

### 2. Individuals must be technically and financially eligible

The DMMA Long Term Care Financial Unit determines eligibility using criteria in DSSM 20103.

### 3. Individuals must choose a managed care organization once eligibility has been determined.

## **20720 Patient Pay Calculation**

~~There are allowable deductions from the monthly income. These are deducted to determine the recipient's share of his/her cost of care.~~

This policy applies to all individuals receiving Medicaid through the Division of Developmental Disabilities Services (DDDS) Waiver and the Long Term Care Community Services Program.

### 1. The Medicaid recipient's total income will be used in the post eligibility treatment of income.

This includes income that is counted for eligibility and income that is excluded for eligibility.

### 2. Allowable deductions are given based on an individual's circumstance.

Not all deductions will apply to all individuals.

### 3. Any amount of income remaining after allowable deductions is the patient pay amount.

This amount must be paid on a monthly basis as indicated below:

For DDDS Waiver recipients, the patient pay amount is paid to the Division of Developmental Disabilities.

Individuals residing in an Assisted Living Facility will make their patient pay amount directly to the Assisted Living Facility.

The following deductions from the Medicaid recipient's total gross income should be taken in the following order:

### **20720.1 Daily Living Needs**

~~Effective 4/1/94 an allowance of 150% of the Federal Poverty Level will be protected for the Elderly and Disabled (E/D) Waiver. Effective 5/1/95 the E/D Waiver personal needs allowance was changed from the Adult Foster Care limit to the special income level for institutionalized individuals. The special income level is the current income standard.~~

~~Effective 8/1/95, the personal needs amount for the HIV/AIDS Waiver will be the current income standard (250% of the SSI income level).~~

~~An amount equal to the current Adult Foster Care (AFC) rate is protected for the DDDS Waivers. The AFC rates are based on the current SSI income level plus \$140.00.~~

Individuals receiving Medicaid under the Division of Developmentally Disabled Services (DDDS) Waiver are allowed a deduction equal to the current Adult Foster Care (AFC) rate. The AFC rate is based on the current SSI income level plus \$140.00.

Individuals receiving Medicaid under the Long Term Care Community Services program and are residing in an Assisted Living Facility are given a deduction based on the Adult Foster Care rate less an amount payable for room and board.

Individuals receiving Medicaid under the Long Term Care Community Services program are allowed an amount equal to their total income including income that is placed in a Miller Trust.

### **20720.4 Patient Pay Amount**

Any amount remaining after the above calculations will be paid to the provider by the Waiver recipient.

~~Patient pay amount will be included on the HCBS referral form forwarded to the HCBS Case Manager. The Case Manager notifies the recipient of the patient pay amount.~~

~~For DDDS Waiver recipients, any amount remaining will be paid to DDDS. Patient pay amount will be included on the budget sheet forwarded to the DDDS Waiver Administrator.~~

**20740 Hospitalization**

~~Hospitalization exceeding 30 consecutive days for the Elderly and Disabled Waiver and the AIDS Waiver and 14 consecutive days for the MR Waiver.~~

~~HCBS Case Manager notifies the Financial Unit that Waiver services are terminated. Medicaid case remains open while the patient is hospitalized and no patient pay to hospital is required for the month of admission to the Hospital.~~

**20760 Redetermination**

A redetermination of eligibility must be performed annually.

Medical eligibility is redetermined by the Managed Care Organization.

Financial eligibility is redetermined by the Division of Medicaid & Medical Assistance (DMMA).

---

**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 7903 (16 Del.C., §7903)  
16 DE Admin. Code 4455

**PUBLIC NOTICE****Regulations Governing a Detailed Plumbing Code**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, is proposing revisions to the State of Delaware Regulations Governing A Detailed Plumbing Code. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. On April 1, 2012, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

**NOTICE OF PUBLIC HEARING**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed Regulations 4455 Governing a Detailed Plumbing Code. Delaware law requires the Division of Public Health to adopt and enforce the most recent version of the International Plumbing Code (IPC) within one calendar year of its issuance, in conformity with the basic plumbing principles provided in Title 16 of the Delaware Code. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

The public hearing will be held on April 25, 2012 at 2:30 p.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the April 1, 2012 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Plumbing Permitting and Inspection Program at (302) 856-5123.

---

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by April 20, 2012. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by April 30, 2010 to:

Deborah Harvey, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Fax (302) 739-6659

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

**4455 Delaware Regulations Governing a Detailed Plumbing Code**

---

## DIVISION OF PUBLIC HEALTH

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

### PUBLIC NOTICE

#### 4462 Public Drinking Water Systems

The Health Systems Protection Section, Office of Drinking Water, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed State of Delaware Regulations Governing Public Drinking Water Systems. Amendments include the adoption of four new EPA regulations: the Long Term 2 Enhanced Surface Water Treatment Rule (LT2), the Stage 2 Disinfectant/Disinfection Byproducts Rule (Stage 2 DBP), the Ground Water Rule (GWR), and the Lead/Copper Rule Short Term Revisions (LCR STR) as well as makes technical corrections to previously adopted federal regulations. In addition, there are several proposed changes to Delaware-specific requirements. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

The public hearing will be held on April 25, 2012 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the April 1, 2012 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Drinking Water at (302) 741- 8630.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by April 20, 2012. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by April 30, 2012 to:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700  
Fax: (302) 739-6659

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

**4462 Public Drinking Water Systems**

---

**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Chapter 49A  
(16 Del.C. Ch. 49A)

**PUBLIC NOTICE**

**State of Delaware Medical Marijuana Code**

Senate Bill 17, signed into law in May 2011, creates the Delaware Medical Marijuana Act. The Department of Health and Social Services is proposing regulations which establish the regulation of the Delaware Medical Marijuana Act to be hereby known as the State of Delaware Medical Marijuana Code. On April 1, 2012, the Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, plans to publish as proposed regulations governing the State of Delaware Medical Marijuana Act and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the April 1, 2012 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Health Systems Protection Section at 302-744-4705.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Monday, April 30, 2012 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700  
Fax (302) 739-6659

**Rules and Regulations Governing the Delaware Medical Use of Marijuana**

**Preamble:**

The Secretary of Delaware Health and Social Services adopts these Regulations in response to the authority vested in the Secretary by 16 Delaware Code Chapter 49A. The Delaware Health and Social Services Medical Marijuana Act. These Regulations establish the standards for the procedures for issuing a certificate of registration to qualified patients and primary caregivers. These Regulations provide a system of permitting and inspection, as well as governing confidentiality, payments of fees, and enforcement of these rules.

**Purpose:**

These Regulations shall be liberally construed and applied to promote their underlying purpose of protecting the public's health.

**1.0 State of Delaware Medical Marijuana Code**

These Regulations shall hereby be known as the "State of Delaware Medical Marijuana Code."

---

## 2.0 Definitions

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

**“Adulterated”** means made impure or inferior by adding extraneous ingredients. Goods that are prepared in food establishments that are licensed facilities in response to 16 **Del.C.** §122(3)(u) and 16 **Del.C.** §134, and that contain marijuana for medical use by a registered patient, are not considered to be adulterated.

**“Advisory board”** means a nine member committee established, chaired, and appointed by the General Assembly of Delaware to evaluate and make recommendations to the state legislature and the Department.

**“Applicant”** means any person applying to participate in the Delaware Office of Medical Marijuana Program, hereinafter OMMP.

**“Cardholder”** means a registered patient or a registered designated caregiver who has been issued and possesses a valid registry identification card.

**“Debilitating medical condition”** means a chronic or debilitating disease, medical condition or symptom listed in these rules and as defined in 16 **Del.C.** §4902A(3) that qualifies for the medical use of marijuana by a registered patient.

**“Department”** means the Delaware Department of Health and Social Services.

**“Designated caregiver”** means a person who:

- (a) is at least 21 years of age
- (b) has agreed to assist with a patient’s medical use of marijuana
- (c) has not been convicted of an excluded felony offense; and
- (d) assists no more than five qualifying patients with their medical use of marijuana

**“Excluded felony offense”** means:

- (a) a violent crime defined in 11 **Del.C.** §4201(c), that was classified as a felony in the jurisdiction where the person was convicted; or
- (b) a violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted, not including:
  - (1) an offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed 10 or more years earlier; or
  - (2) an offense that consisted of conduct for which this chapter would likely have prevented a conviction, but the conduct either occurred prior to the enactment of this chapter or was prosecuted by an authority other than the state of Delaware.

**“Incidental amount of marijuana”** means marijuana seeds, stalks and roots of the plant that are not included when calculating the allowable amounts of marijuana specified in these rules. This includes the weight of any non-marijuana ingredients combined with marijuana, such as ingredients added to prepare a topical ointment, food or drink.

**“Marijuana”** means the same as defined in 16 **Del.C.** §4701 (23).

**“Marijuana paraphernalia”** is limited to equipment, products and materials that are ordinarily used in planting, propagating, cultivating, growing, harvesting, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body. It includes:

- (a) Scales and balances used or intended for use in weighing or measuring marijuana;
- (b) Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (c) Envelopes and other containers used or intended for use in packaging small quantities of marijuana for medical use;
- (d) Containers and other objects used or intended for use in storing medical marijuana;  
and

## PROPOSED REGULATIONS

- (e) Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana into the human body, including but not limited to:
- (1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
  - (2) Water pipes;
  - (3) Carburetion tubes and devices;
  - (4) Smoking and carburetion masks;
  - (5) Roach clips, meaning objects used to hold burning marijuana cigarettes that have become too small or too short to be held in the hand;
  - (6) Chamber pipes;
  - (7) Carburetor pipes;
  - (8) Electric pipes;
  - (9) Air-driven pipes;
  - (10) Chillums;
  - (11) Bongs designed for marijuana and not for cocaine; or
  - (12) Ice pipes or chillers.

**“Medical use”** means the acquisition, possession, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient’s debilitating medical condition or symptoms associated with the registered patient’s debilitating medical condition.

**“Onsite assessment”** means a visit by an employee of the Department for the purpose of ensuring compliance with the requirements of these rules.

**“Physician”** means a properly licensed physician subject to 24 **Del.C.** Chs. 17 and 19, except as otherwise provided in this subsection. If the qualifying patient’s debilitating medical condition is post-traumatic stress disorder, the physician must also be a licensed psychiatrist. In relation to a visiting qualifying patient, “physician” means a person who is licensed with authority to prescribe drugs to humans and who may issue a written certification or its equivalent in the state of the patient’s residence.

**“Qualifying patient”** means a person who has been diagnosed by a physician as having a debilitating medical condition.

**“Registry identification card”** means a document issued by the Department that identifies a person as a registered patient or registered designated caregiver.

**“Tincture”** means a mixture created from a concentrated extract of marijuana.

**“Topical treatment”** means a mixture or extract of marijuana made into a balm, lotion, ointment or rubbing alcohol solution, that is applied transcutaneously.

**“Usable amount of medical marijuana for medical use”** means six ounces or less of usable marijuana as defined below.

**“Usable marijuana”** means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the weight of any non-marijuana ingredients combined with marijuana, such as ingredients added to prepare a topical administration, food, or drink.

**“Verification system”** means a phone or web-based system established and maintained by the Department that is available to law enforcement personnel and compassion center agents on a twenty-four-hour basis for verification of registry identification cards.

**“Visiting qualifying patient”** means a patient who:

- (a) has been diagnosed with a debilitating medical condition;
- (b) possesses a valid registry identification card, or its equivalent, that was issued pursuant to the laws of another state, district, territory, commonwealth, insular possession of the United States or country recognized by the United States that allows the person to use marijuana for medical purposes in the jurisdiction of issuance; and

- (c) is not a resident of Delaware or who has been a resident of Delaware for less than 30 days.

**“Written certification”** means a document dated and signed by a physician, stating that in the physician’s opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient’s debilitating medical condition or symptoms associated with the debilitating medical condition. A written certification shall be made only in the course of a bona fide physician-patient relationship where the qualifying patient is under the physician’s care for her or his primary care or for her or his debilitating condition after the physician has completed an assessment of the qualifying patient’s medical history and current medical condition. The bona fide physician-patient relationship may not be limited to authorization for the patient to use medical marijuana or consultation for that purpose. The written certification shall specify the qualifying patient’s debilitating medical condition.

### **3.0 Qualifying Patient Identification Card Application Requirements**

- 3.1 The Department shall issue a registry identification card to an applicant for the purpose of participating in the medical marijuana program upon the written certification of the applicant’s Physician, supporting application documents and a non-refundable application fee with a personal check or a cashier’s check made out to “State of Delaware, Medical Marijuana Program.” The following information shall be provided in the participant enrollment form submitted to the Department in order for a registry identification card to be obtained and processed.
- 3.2 An attached original written certification for patient eligibility form shall contain:
- 3.2.1 the name, address and telephone number of the applicant’s Physician;
  - 3.2.2 the Physician’s clinical licensure;
  - 3.2.3 the patient applicant’s name and date of birth;
  - 3.2.4 the medical justification for the Physician’s certification of the patient’s debilitating medical condition;
  - 3.2.5 the Physician’s signature and date;
  - 3.2.6 the name, address and date of birth of the applicant;
  - 3.2.7 the name, address and date of birth of the applicant’s primary caregiver(s), if any;
  - 3.2.8 a reasonable xerographic copy of the applicant’s Delaware driver’s license or comparable State of Delaware or federal issued photo identification card verifying Delaware residence; State of Delaware issued identification card must be available for inspection/verification.
  - 3.2.9 the length of time the applicant has been under the care of the Physician providing the medical provider certification for patient eligibility;
  - 3.2.10 the applicant’s signature and date; and
  - 3.2.11 a signed consent for release of medical information related to the patient’s debilitating medical condition, on a form provided by the medical marijuana program.

### **4.0 Designated Caregiver Registry Identification Card Application Requirements**

- 4.1 The Department shall issue a registry identification card to a primary caregiver applicant for the purpose of managing the well-being of one to five qualified patients, including themselves if caregiver is a qualified patient, in response to the requirements of this rule upon the completion and approval of the primary caregiver application form, available from the medical marijuana program, and a non-refundable application fee, in the form of a personal check or a cashier’s check made out to “State of Delaware, Medical Marijuana Program”. In order for a registry identification card to be obtained and processed, the following information shall be submitted to the medical marijuana program:
- 4.1.1 birth certificate verifying that the applicant is at least (21) years of age;
  - 4.1.2 a reasonable xerographic copy of the applicant’s Delaware license or comparable State of Delaware or federal issued photo identification card verifying Delaware residence; State of Delaware issued identification card must be available for inspection/verification.

---

# PROPOSED REGULATIONS

---

- 4.1.3 written approval by the qualified patient(s) and the qualified patient(s)' Physician(s) authorizing responsibility for managing the well-being of a qualified patient(s) with respect to the use of marijuana;
- 4.1.4 the name(s), address(es), telephone number(s) and date of birth of the qualified patient(s);
- 4.1.5 the name, address and telephone number for each of the qualified patient's Physicians;
- 4.1.6 the name, address, telephone number of the applicant; and
- 4.1.7 the applicant's signature and date.
- 4.2 Designated caregiver application requirements:
  - 4.2.1 Criminal history screening requirements:
    - 4.2.1.1 All designated caregiver applicants are required to consent to a nationwide and statewide criminal history screening background check. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall be paid by the primary caregiver applicant.
    - 4.2.1.2 Individuals convicted of an excluded felony offense, as described in the definitions Section 2.0, and 16 Del.C. §4902A(7) are prohibited from serving as a designated caregiver. The applicant and qualified patient shall be notified by registered mail of his or her disqualification from being a designated caregiver.

## **5.0 Registry Identification Cards**

- 5.1 Department inquiry:
  - 5.1.1 The Department may verify information on each application and accompanying documentation by the following methods:
    - 5.1.1.1 contacting each applicant by telephone, mail, or if proof of identity is uncertain, the Department shall require a face-to-face meeting and the production of additional identification materials
    - 5.1.1.2 contacting the Delaware Division of Professional Regulation to verify that the Physician is licensed to practice medicine in Delaware and is in good standing; and
    - 5.1.1.3 contacting the Physician to obtain further documentation that the applicant's medical diagnosis and medical condition qualify the applicant for enrollment in the medical use marijuana program.
  - 5.1.2 Upon verification of the information contained in an application submitted in response to this subsection, the Department shall approve or deny an application within 45 calendar days of receipt.
- 5.2 Department registry identification card: The Department shall issue a registry identification card within 30 calendar days of approving an application. A registry identification card shall contain a 10-digit alphanumeric identification, maintained by the Department, which identifies the qualified patient or primary caregiver. Unless renewed at an earlier date, suspended or revoked, or if the physician stated in the written certification that the qualifying patient would benefit from marijuana until a specified earlier date, a registry identification card shall be valid for a period of 1 year from the date of issuance and shall expire at midnight on the day indicated on the registry identification card as the expiration date.
- 5.3 Supplemental requirement:
  - 5.3.1 A registered qualifying patient or registered designated caregiver who possesses a registry identification card shall notify the Department of any change in the person's name, address, qualified patient's Physician status, qualified patient's designated caregiver status, or change in status of the qualified patient's debilitating medical condition, within 10 calendar days of the change. An extension shall be granted by the medical marijuana program upon the showing of good cause.
  - 5.3.2 Before a registered qualifying patient changes his or her designated caregiver, the qualifying patient must notify the Department in writing.

- 5.3.3 If a cardholder loses his or her registry identification card, he or she shall notify the Department in writing within 10 days of becoming aware the card has been lost. Upon notification, the Department shall issue a new registry identification card. Unless documentation in the initial application has changed, the qualified patient or designated caregiver shall not be required to submit a new application.
- 5.3.4 When a cardholder notifies the Department of items listed in Section 5.3 but remains eligible, the Department shall issue the cardholder a new registry identification card with a new random 10-digit alphanumeric identification number within 10 days of receiving the updated information and the cardholder shall pay a \$20 fee. If the person notifying the Department is a registered qualifying patient, the Department shall also issue his or her registered designated caregiver, if any, a new registry identification card within 10 days of receiving the updated information.
- 5.3.5 If a registered qualifying patient ceases to be a registered qualifying patient or changes his or her registered designated caregiver, the Department shall promptly notify the designated caregiver by legal process server. The registered designated caregiver's protections under this chapter as to that qualifying patient shall expire 15 days after notification by the Department.
- 5.3.6 A cardholder who fails to make a notification to the Department that is required by Section 5.3 is subject to a civil infraction, punishable by a penalty of no more than \$150.00 shall result in the immediate revocation of the registry identification card and all lawful privileges provided under the act.
- 5.3.7 If the registered qualifying patient's certifying physician notifies the Department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the physician no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the card shall become null and void. However, the registered qualifying patient shall have 15 days to dispose of his or her marijuana.
- 5.4 Registry identification card application denial: The DHSS Secretary or designee shall deny an application if the applicant fails to provide the information required, if the Department determines that the information provided is false, or if the patient does not have a debilitating medical condition eligible for enrollment in the program, as determined by the DHSS Secretary. A person whose application has been denied shall not reapply for 6 months from the date of the denial, unless otherwise authorized by the Department, and is prohibited from all lawful privileges provided by this rule and act.
- 5.4.1 The Department shall deny an application or renewal of a qualifying patient's registry identification card if the applicant:
- 5.4.1.1 did not provide the required information and materials;
  - 5.4.1.2 previously had a registry identification card revoked; or
  - 5.4.1.3 provided false or falsified information.
- 5.4.2 The Department shall deny an application or renewal for a designated caregiver chosen by a qualifying patient whose registry identification card was granted if:
- 5.4.2.1 the designated caregiver does not meet the requirements of Section 4.2;
  - 5.4.2.2 the applicant did not provide the information required;
  - 5.4.2.3 the designated caregiver previously had a registry identification card revoked; or
  - 5.4.2.4 the applicant or the designated caregiver provides false or falsified information.
- 5.4.3 The Department shall notify the qualifying patient who has designated someone to serve as his or her designated caregiver if a registry identification card will not be issued to the designated caregiver.
- 5.4.4 Denial of an application or renewal is considered a final Department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.
- 5.5 Registry identification card renewal application: Each registry identification card issued by the Department is valid in accordance to Section 5.2. A qualified patient or primary caregiver shall apply for a registry identification card renewal no less than 45 calendar days prior to the expiration date of the existing registry identification card in order to prevent interruption of possession of a valid (unexpired) registry identification card.

- 5.6 Non-transferable registration of registry identification card: A registry identification card shall not be transferred, by assignment or otherwise, to other persons or locations. Any attempt shall result in the immediate revocation of the registry identification card and all lawful privileges provided by this rule and act.
- 5.7 Automatic expiration of registry identification card by administrative withdrawal: Upon request the qualified patient or designated caregiver shall discontinue the medical marijuana program by an administrative withdrawal. A qualified patient or designated caregiver that intends to seek an administrative withdrawal shall notify the licensing authority in writing no less than 30 calendar days prior to withdrawal.

**6.0 Registration and Operation of Compassion Centers**

- 6.1 General Requirements for Operation of a Compassion Center. RESERVED
- 6.2 Security Requirements: RESERVED
- 6.3 Operations Manual. RESERVED
- 6.4 Required Training. RESERVED
- 6.5 Personnel Records. RESERVED
- 6.6 Application for Operation of Compassion Center. RESERVED
- 6.7 Complete Application Required. RESERVED
- 6.8 Compassion Center Application Review Criteria. RESERVED
- 6.9 Issuance of Registration Certificate Authorizing Operation of a Compassion Center. RESERVED
- 6.10 Registry Identification Cards for Principal Officers, Board Members, Agents, Volunteers or Employees of a Compassion Center. RESERVED
- 6.11 Expiration Date. RESERVED
- 6.12 Expiration, Termination or Renewal of a Registration Certificate Authorizing Operation of a Compassion Center. RESERVED
- 6.13 Non-transferable Registration Certificate Authorizing Operation of a Compassion Center. RESERVED
- 6.14 Maximum Amount of Usable Marijuana to be Dispensed. RESERVED
- 6.15 Inspection. RESERVED

**7.0 Registration and Operation of Testing Facility Centers**

- 7.1 General Requirements for Operation of a Testing Facility Center. RESERVED
- 7.2 Security Requirements: RESERVED
- 7.3 Operations Manual. RESERVED
- 7.4 Required Training. RESERVED
- 7.5 Personnel Records. RESERVED
- 7.6 Application for Operation of Testing Facility Center. RESERVED
- 7.7 Complete Application Required. RESERVED
- 7.8 Testing Facility Center Application Review Criteria. RESERVED
- 7.9 Issuance of Registration Certificate Authorizing Operation of a Testing Facility Center. RESERVED
- 7.10 Registry Identification Cards for Principal Officers, Board Members, Agents, Volunteers or Employees of a Testing Facility Center. RESERVED
- 7.11 Expiration Date. RESERVED
- 7.12 Expiration, Termination or Renewal of a Registration Certificate Authorizing Operation of a Testing Facility Center. RESERVED
- 7.13 Non-transferable Registration Certificate Authorizing Operation of a Testing Facility Center. RESERVED
- 7.14 Inspection. RESERVED

---

## **8.0 Monitoring and Corrective Actions**

### 8.1 Monitoring:

- 8.1.1 The Department or its designee may perform on-site assessments of a qualified patient or primary caregiver to determine compliance with these rules. The Department may enter the premises of a qualified patient or primary caregiver during business hours for purposes of monitoring and compliance. Twenty-four (24) hours' notice will be provided to the qualified patient or primary caregiver prior to an on-site assessment except when the Department has a reasonable suspicion to believe that providing notice will result in the destruction of evidence or that providing such notice will impede the Department's ability to enforce these Regulations.
- 8.1.2 All qualified patients or primary caregivers shall provide the Department or the Department's designee immediate access to any material and information necessary for determining compliance with these requirements.
- 8.1.3 Failure by the qualified patient or primary caregiver to provide the Department access to the premises or information may result in action up to and including the revocation of the qualified patient or primary caregiver registry identification card and referral to state law enforcement.
- 8.1.4 Any failure to adhere to these rules, documented by the Department during monitoring, may result in sanction(s), including suspension, revocation, non-renewal or denial of licensure and referral to state or local law enforcement.
- 8.1.5 The Department shall refer credible criminal complaints against a qualified patient or primary a caregiver to the appropriate Delaware state or appropriate local authorities.

### 8.2 Corrective action:

- 8.2.1 If violations of these requirements are cited as a result of monitoring, the qualified patient or primary caregiver shall be provided with an official written report of the findings following the monitoring visit.
- 8.2.2 Unless otherwise specified by the Department, the qualified patient or primary caregiver shall correct the violation within 5 calendar days of receipt of the official written report citing the violation(s).
- 8.2.3 The violation shall not be deemed corrected until the Department verifies in writing after receiving notice of the corrective action that the corrective action is satisfactory.
- 8.2.4 If the violation has not been corrected, the Department may issue a notice of contemplated action to revoke the qualified patient's or designated caregiver's registry identification card.
- 8.2.5 Suspension of registry identification card without prior hearing: In accordance with the 16 Delaware Code Chapter 49A, if immediate action is required to protect the health and safety of the general public, the Department may suspend the qualified patient or designated caregiver registry identification card without notice.
  - 8.2.5.1 A qualified patient or primary caregiver whose registry identification card has been summarily suspended is entitled to a record review not later than 30 calendar days after the registry identification card was summarily suspended.
  - 8.2.5.2 The record review requested subsequent to a summary suspension shall be conducted by the Department.
  - 8.2.5.3 The Department shall conduct the record review on the summary suspension by reviewing all documents submitted by both card holder and the Department.
  - 8.2.5.4 The sole issue at a record review on a summary suspension is whether the card holder's registry identification card shall remain suspended pending a final adjudicatory hearing and ruling.
  - 8.2.5.5 A card holder given notice of summary suspension by the division may submit a written request for a record review. To be effective, the written request shall:
    - 8.2.5.5.1 be made within 30 calendar days, as determined by the postmark, from the date of the notice issued by the Department;
    - 8.2.5.5.2 be properly addressed to the medical marijuana program;

---

# PROPOSED REGULATIONS

---

- 8.2.5.5.3 state the applicant's name, address, and telephone number(s);
  - 8.2.5.5.4 provide a brief narrative rebutting the circumstances of the suspension, and
  - 8.2.5.5.5 additional documentation must be included with the request for a record review.
- 8.3 Summary Suspension, Revocation and Appeal Process:
  - 8.3.1 Participation in the medical marijuana program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from:
    - 8.3.1.1 criminal prosecution or civil penalties for activities not authorized in this rule and act;
    - 8.3.1.2 liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of marijuana; or
    - 8.3.1.3 criminal prosecution or civil penalty for possession, distribution or transfers of marijuana or use of marijuana:
      - 8.3.1.3.1 in a school bus or public vehicle;
      - 8.3.1.3.2 on school grounds or property;
      - 8.3.1.3.3 in the workplace of the qualified patient's or primary caregiver's employment;
      - 8.3.1.3.4 at a public park, recreation center, youth center or other public place;
      - 8.3.1.3.5 to a person not approved by the Department pursuant to this rule;
      - 8.3.1.3.6 outside Delaware or attempts to obtain or transport marijuana from outside Delaware;
        - or
        - 8.3.1.3.7 that exceeds the allotted amount of usable medical use marijuana.
  - 8.3.2 Revocation of registry identification card: Violation of any provision of this rule may result in either the summary suspension of the qualified patient's or primary caregiver's registry identification card, or a notice of contemplated action to suspend or revoke the qualified patient's or primary caregiver's registry identification card, and all lawful privileges under the act.
  - 8.3.3 Grounds for revocation or suspension of registry identification card, denial of renewal application for registry identification card. A registry identification card may be revoked or suspended, and a renewal application may be denied for:
    - 8.3.3.1 failure to comply with any provisions of these requirements;
    - 8.3.3.2 failure to allow a monitoring visit by authorized representatives of the Department;
    - 8.3.3.3 the discovery of repeated violations of these requirements during monitoring visits.
- 8.4 Request for hearing: A qualified patient or primary caregiver whose registry identification card has been summarily suspended, or who has received a notice of contemplated action to suspend or revoke, may request a hearing, in addition to a request for a record review, for the purpose of review of such action. The appellant shall file the request for hearing within 30 calendar days of the date the action is taken or the notice of contemplated action is received. The request shall include the following:
  - 8.4.1 a statement of the facts relevant to the review of the action;
  - 8.4.2 a statement of the provision of the act and the rules promulgated under the act that are relevant to the review of the action;
  - 8.4.3 a statement of the arguments that the appellant considers relevant to the review of the action; and
  - 8.4.4 any other evidence considered relevant.
- 8.5 Hearing process:
  - 8.5.1 All formal adjudicatory hearings held in response to these Regulations shall be conducted by a hearing officer duly appointed by the DHSS Secretary.
  - 8.5.2 Except for telephonic hearings, hearings shall be conducted in Dover or, upon written request by an aggrieved person, in the place or area affected.
  - 8.5.3 All hearings held pursuant to this section shall be open to the public.
  - 8.5.4 The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter. The decision as to the type of recording shall be at the discretion of the Department.

- 8.5.5 Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.
- 8.5.6 The Department shall schedule and hold the hearing as soon as practicable, however; in any event no later than 60 calendar days from the date the Department receives the appellant's request for hearing. The hearing officer shall extend the 60 day time period upon motion for good cause shown or the parties shall extend the 60 day time period by mutual agreement. The Department shall issue notice of hearing, not less than 20 days prior to the hearing, which shall include:
- 8.5.6.1 a statement of the time, place and nature of the hearing;
  - 8.5.6.2 a statement of the legal authority and jurisdiction under which the hearing is to be held;
  - 8.5.6.3 a short and plain statement of the matters of fact and law asserted;
  - 8.5.6.4 notice to any other parties to give prompt notice of issues controverted in fact or law; and
  - 8.5.6.5 all necessary telephone numbers if a telephonic hearing shall be conducted.
- 8.6 All parties shall be given the opportunity to respond and present evidence and argument on all relevant issues.
- 8.7 Record of proceeding: The record of the proceeding shall include the following:
- 8.7.1 all pleadings, motions and intermediate rulings;
  - 8.7.2 evidence received or considered;
  - 8.7.3 a statement of matters officially noticed;
  - 8.7.4 questions and offers of proof, objections and rulings thereon;
  - 8.7.5 proposed findings and conclusions; and
  - 8.7.6 any action recommended by the hearing officer.
- 8.8 A party may request a transcription of the proceedings. The party requesting the transcript shall endure the cost of transcription.
- 8.9 Procedures and evidence:
- 8.9.1 Any party shall be represented by a person licensed to practice law in Delaware or an individual appellant may represent him or herself.
  - 8.9.2 The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence shall be admitted and such evidence shall be sufficient in itself to support a finding if the evidence is reliable, regardless of the existence of any statutory or common law rule that shall make admission of such evidence improper in a civil action. Irrelevant, immaterial or unduly repetitious evidence shall be excluded at a party's request or on the hearing officer's own initiative.
  - 8.9.3 Documentary evidence shall be received in evidence in the form of true copies of the original.
  - 8.9.4 Documentary and other physical evidence shall be authenticated or identified by any reasonable means that shows that the matter in question is what the proponent claims it to be.
  - 8.9.5 The experience, technical competence and specialized knowledge of the hearing officer, the Department or the Department's staff shall be used in the evaluation of evidence.
  - 8.9.6 Evidence on which the hearing officer shall base his or her decision is limited to the following:
    - 8.9.6.1 all evidence, including any records, investigation reports and documents in the Department's possession of which the Department desires to avail itself as evidence in making a decision that is offered and made a part of the record of the proceeding; and
    - 8.9.6.2 testimony and exhibits introduced by the parties.
  - 8.9.7 The record shall include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.
  - 8.9.8 A party to a hearing shall submit to the hearing officer, and to all other parties to the hearing, all documents to be introduced at the hearing no later than five business days from the scheduled hearing date to insure the hearing officer and other parties receive the documents prior to the hearing.
  - 8.9.9 The Department may choose to:
-

---

**PROPOSED REGULATIONS**

---

- 8.9.9.1 issue subpoenas for witnesses and other sources of evidence, either on the agency's initiative or at the request of any party; and
- 8.9.9.2 administer oaths to witnesses; limit unduly repetitive proof, rebuttal and cross-examination.
- 8.10 Conduct of proceeding: Unless the hearing officer reasonably determines a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule. The following procedures shall apply:
  - 8.10.1 the appellant shall present an opening statement on the merits and the appellee shall make a statement of the defense or reserve the statement until presentation of that party's case;
  - 8.10.2 after the opening statements, if made, the appellant shall present its case in chief in support of the appellant's petition;
  - 8.10.3 upon the conclusion of the appellant's case, the appellee shall present its case in defense;
  - 8.10.4 upon conclusion of the appellee's case, the appellant shall present rebuttal evidence;
  - 8.10.5 after presentation of the evidence by the parties, the appellant shall present a closing argument; the appellee then shall present its closing argument and the appellant shall present a rebuttal argument; and
  - 8.10.6 thereafter, the matter shall be submitted for recommendation by the hearing officer.
- 8.11 Burden of proof: The appellant bears the burden of showing by a preponderance of the evidence that the decision made by the Department or an agent of the Department shall be reversed or modified.
- 8.12 Continuances: The hearing officer shall not grant a continuance except for good cause shown. A motion to continue a hearing shall be made at least 10 calendar days before the hearing date.
- 8.13 Telephonic hearings:
  - 8.13.1 Any party requesting a telephonic hearing shall do so within 10 business days of the date of the notice. Immediately after the parties agree to conduct the hearing by telephone, notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.
  - 8.13.2 Any party that has agreed to a telephonic hearing, but subsequently requests an in-person hearing shall do so in writing to the hearing officer no later than 10 calendar days before the scheduled date of the hearing. The decision to grant or deny the request for an in-person hearing shall be at the discretion of the hearing officer for good cause shown. The hearing officer's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. Should the hearing officer grant the request, the hearing shall be rescheduled to a time convenient for all parties. Should the hearing officer deny the request, the telephonic hearing shall proceed as scheduled.
  - 8.13.3 The location or locations of the parties during the hearing shall have a speaker telephone and facsimile machine available so that all shall hear the proceedings and documents shall be transmitted between witnesses and the hearing officer.
  - 8.13.4 The appellee shall initiate the telephone call. The appellant is responsible for ensuring the telephone number to the appellant's location for the telephonic hearing is accurate and the appellant is available at said telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the petitioner to a default judgment.
  - 8.13.5 The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing officer.
- 8.14 Recommended action and final decision:
  - 8.14.1 At the request of the hearing officer or upon motion by either party granted by the hearing officer, and before the hearing officer recommends action by the secretary, the parties shall submit briefs including findings of fact and conclusions of law for consideration by the hearing officer. The hearing officer holds the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing officer. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law.

Should the hearing officer request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing officer has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than 45 calendar days from the date of continuance.

- 8.14.2 No more than 30 calendar days after completion of the hearing, the hearing officer shall prepare a written decision containing recommendation of action to be taken by the secretary. The recommendation shall propose to sustain, modify or reverse the initial decision of the Department or the Department's agent.
- 8.14.3 The secretary shall accept, reject or modify the hearing officer's recommendation no later than 10 calendar days after receipt of the hearing officer's recommendation. The final decision or order shall be issued in writing and shall include:
- 8.14.3.1 a brief summary of the evidence.
  - 8.14.3.2 a statement of findings of fact based upon the evidence.
  - 8.14.3.3 conclusions and the reasons thereof, on all material issues of fact, law or discretion involved.
  - 8.14.3.4 any other conclusions required by law of the Department, and
  - 8.14.3.5 a concise statement of the Department's specific determination or action taken to sustain, modify or reverse the initial decision of the Department or the Department's agent.
  - 8.14.3.6 Service shall be made by registered or certified mail.
- 8.14.4 The final decision or order shall be public information and shall become a part of the record.

## **9.0 Severability**

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

---

### **DIVISION OF SOCIAL SERVICES**

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

#### **PUBLIC NOTICE**

#### **DSSM: 11003.7 Child Care Subsidy Program Income Eligible Child Care**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, Income Eligible Child Care.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by April 30, 2012.

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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, Income Eligible Child Care.

### Statutory Authority

45 CFR §98.20, A child's eligibility for child care services

### Summary of Proposed Changes

DSSM 11003.7, ~~Income Eligible Child Care~~ **RESERVED**: This regulatory action removes this policy as most of the content is no longer relevant. What is relevant is redundant and is covered in the following sections of the Division of Social Services Manual (DSSM):

- DSSM 11002.4, Persons Eligible
- DSSM 11002.6.2, Federal Law/Regulation
- DSSM 11002.8, Seamless Services
- DSSM 11003, Eligibility Requirements and,
- DSSM 11003.6, Income Limits.

### DSS PROPOSED REGULATION #12-12

#### REVISION:

#### 11003.7 ~~Income Eligible Child Care~~ **RESERVED**

~~DSS provides child care to families who are financially eligible to receive care because the family's gross income is equal to or under 200 percent of the federal poverty level and they have a need for care as outlined below. These families are considered income eligible. DSS has two funding streams, CCDF and SSBG, that cover income eligible individuals.~~

~~DSS programmed the DCIS II Child Care Sub system to identify the need and include all the child care needs into one category, Category 31. DSS also programmed the DCIS II Child Care Sub system so that it could make the policy distinctions needed to make payments from the appropriate funding source for each child in care. Though Case Managers will not have to make these distinctions, it is helpful to know them.~~

~~They are:~~

- ~~1. CCDF Child Care will include:
 
  - a. ~~parents/caretakers who need child care to accept or keep a job, and/or~~
  - b. ~~participate in education or training as outlined in section 11003.7.4 and 11003.7.5, or~~
  - c. ~~children who receive or need to receive protective services.~~
  - d. ~~parents/caretakers who are homeless and need care to accept or keep a job or participate in education or training as outlined in section 11003.7.4 and 11003.7.5.~~~~

~~It will also include parents/caretakers who need care because of a special needs child. It will always coincide with the parent/caretaker's need to work or participate in education or training. It will not include parents/caretakers who have a special need or other adult household member who has a special need.~~

- ~~2. SSBG Child Care will include:
 
  - a. ~~parents/caretakers who need child care to accept or keep a job,~~
  - b. ~~parents/caretakers who need child care to participate in education or training as outlined in section 11003.7.4 and 11003.7.5,~~
  - c. ~~parents/caretakers whose only need is a special need child or special needs adult household member,~~~~

- ~~d. children who need protective services, or~~
- ~~e. parents/caretakers who are homeless.~~

**9 DE Reg. 572 (10/01/05)**

---

**DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS**

**Office of Workers' Compensation**

Statutory Authority: 19 Delaware Code, Sections 2322B, C, E, and F (19 **Del.C.** §§2322B, C, E, and F)

**19 DE Admin Code 1341**

**PUBLIC NOTICE**

**1341 Workers' Compensation Regulations**

The Secretary of Labor, in accordance with 19 **Del.C.** §§2322 F, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System (HCPS). These proposals 1) clarify that although an operating surgeon certified in the HCPS may request preauthorization for surgery, the surgeon is not obligated to preauthorize each surgery performed; and 2) add the claimant's attorney of record to the list of entities who receive a copy of the utilization review determination.

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on May 14, 2012, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be at the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

**1341 Workers' Compensation Regulations**

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

**5.0 Utilization Review**

- 5.1 Pursuant to chapter 101, title 29 of the **Delaware Code**, the Department of Labor has developed a utilization review program with the intent of providing reference for employers, insurance carriers, and health care providers for evaluation of health care and charges. The intended purpose of utilization review services is to provide prompt resolution of issues related to treatment and/or compliance with the health care payment system or practice guidelines for those claims which have been acknowledged to be compensable, without the employer or its insurance carrier obtaining legal representation, or incurring the costs associated with legal involvement in the utilization review process.
- 5.2 An employer or insurance carrier may engage in utilization review to evaluate the quality, reasonableness and/or necessity of proposed or provided health care services for acknowledged compensable claims. Any person conducting a utilization review program for workers' compensation shall be required to contract with the Office of Workers' Compensation once every two (2) years and certify compliance with Workers' Compensation Utilization Management Standards or Health

Utilization Management Standards of Utilization Review Accreditation Council ("URAC") sufficient to achieve URAC accreditation or submit evidence of accreditation by URAC.

- 5.3 At this time, Utilization Review is limited to health care recommendations subject to practice guidelines developed by the HCAP.
- 5.4 An employer or insurance carrier may request utilization review by complying with all the terms and conditions set forth on the forms attached hereto. Upon completion and submission of the forms, information package and medical records package by the employer or insurance carrier, the designated utilization review company will review treatment to determine if it is in compliance with the practice guidelines developed by the Health Care Advisory Panel and adopted and implemented by the Department of Labor. (See Appendix A)
- 5.4.1 The utilization review company shall be randomly selected by the Department of Labor. The utilization review company first assigned to the case will remain with that case throughout its duration. The Department of Labor will collect all documentation required to be submitted pursuant to the utilization review process and send such documentation for review to the utilization review company.
- 5.4.2 If the claim is denied by an employer or insurance carrier for non-compliance with any applicable Practice Guideline, only the first bill for such treatment, and not all subsequent bills for the same service, need be denied and referred to utilization review.
- 5.4.3 In the instance of a compensable claim where the treatment is outside the applicable Practice Guideline for which the health care provider requests pre-authorization but the employer/carrier advises that it does not pre-authorize treatment, such response should be interpreted as tantamount to a denial of such treatment so that the claimant may file a Petition with the IAB to determine whether the treatment is compensable.
- 5.4.4 In the instance of a compensable claim in which open surgery is recommended by the health care provider and stated by him/her to be within the applicable Practice Guideline, the following procedure shall may be followed by the operating surgeon to facilitate resolution of payment for such treatment: The operating surgeon must specify the particular surgery to be performed and must certify in writing that: (a) the surgery is causally related to the work accident, and (b) the surgery is within the Practice Guideline, with specific reference to the Practice Guideline provision relied upon.
- 5.4.4.1 The information set forth above must be set forth by the operating surgeon in a separate written report, not through a copy of office notes and/or records. The employer/carrier must within 30 days from receipt of the above either accept/pre-authorize or deny such treatment. If the treatment is denied as non-compliant with the Practice Guidelines, it must be referred to Utilization Review within 15 days of date of denial in accordance with §2322F(h)(j). If the treatment is denied as not causally related to the compensable work accident, the claimant may file a Petition with the Industrial Accident Board to determine whether the treatment is compensable. If the employer/carrier neither accepts/pre-authorizes nor denies the treatment within the 30-day period referenced above, then the treatment will be deemed compensable if performed.
- 5.4.5 All past, prospective and concurrent health care decisions must be reviewed and a Utilization Review determination made no later than three (3) working days from receipt of the aforementioned information by the company performing the review, for emergency care, but no later than 15 calendar days from receipt of the aforementioned information by the company performing the review.
- 5.5 If a party disagrees with the findings following utilization review, a petition may be filed with the Industrial Accident Board for *de novo* review.
- 5.5.1 The decision of the utilization review company shall be forwarded by the Department of Labor, by Certified Mail, Return Receipt Requested, to the claimant, the claimant's attorney of record, the health care provider in question, and the employer or its insurance carrier. A decision of the utilization review company shall be final and conclusive between the parties unless within 45 days

from the date of receipt of the utilization review decision any interested party files a petition with the Industrial Accident Board for de novo review.

- 5.6 If there are no current practice guidelines applicable to the health care provided, a party may file a petition with the Industrial Accident Board seeking a determination of the appropriateness of treatment.

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

**1341 Workers' Compensation Regulations**

---

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF WATER RESOURCES

#### Ground Water Discharges Section

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)  
7 DE Admin. Code 7101

**REGISTER NOTICE SAN #2008-29**

#### 1. Title Of The Regulations:

7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems

#### 2. Brief Synopsis Of The Subject, Substance And Issues:

Substantial revisions to the *Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems* (On-site regulations) are proposed to incorporate the *Guidance and Regulations Governing the Land Treatment of Wastes* spray irrigation regulatory language. The on-site regulations have been revised to address large system site investigations, hydrogeological investigations, design considerations, operation and maintenance practices, updating of individual on-site wastewater treatment and disposal system design criteria, establishment of new licensees and inspection protocols, and to establish performance standards for small on-site systems utilizing alternative technologies and all large systems.

#### 3. Possible Terms Of The Agency Action:

There is no sunset date for this regulation.

#### 4. Statutory Basis Or Legal Authority To Act:

Title 7, Delaware Code, Chapter 60, Environmental Control

#### 5. Other Regulations That May Be Affected By The Proposal:

Upon the effective date of revised regulations, the *Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds*, effective November 11, 2008, Sections 6.0, 7.0 and 8.0, may be affected.

#### 6. Notice Of Public Comment:

The Department of Natural Resources and Environmental Control (DNREC) Division of Water will conduct a public hearing on the proposed revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, to address the proposed changes that have occurred over the past three years as a result of discussions, public workshops, committee meetings and literature searches.

The public hearing on this proposed revision of Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems will be held Thursday, May 3, 2012, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation revisions may be inspected at the following locations:

Department of Natural Resources and Environmental Control  
89 Kings Highway  
Dover, DE 19901

Department of Natural Resources and Environmental Control  
20653 DuPont Blvd, Unit 5  
Georgetown, DE 19947

The proposed regulation revisions may be inspected on the DNREC Division of Water, Groundwater Discharges Section website:

<http://www.dnrec.delaware.gov/wr/Information/GWDInfo/Pages/GWDS%20Design%20Install%20Operate%20Info%20For%20Proposed%20Wastewater%20Treatment%20Regulations.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Jack Hayes, DNREC Division of Water, Groundwater Discharges Section, 89 Kings Highway, Dover, DE 19901, (302) 739-9948, [John.Hayes@state.de.us](mailto:John.Hayes@state.de.us).

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, as designated by the hearing officer at this hearing, to Jack Hayes and/or statements and testimony may be presented either orally or in writing at the May 3, 2012 public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Jack Hayes  
DNREC – Division of Water  
Groundwater Discharges Section  
89 Kings Highway  
Dover, DE 19901

**7. Prepared By:**

Jack Hayes (302) 739-9948 March 15, 2012 [John.Hayes@state.de.us](mailto:John.Hayes@state.de.us)

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

**7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems**

---

---

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY OFFICE OF THE SECRETARY

Statutory Authority: 24 Delaware Code, Chapter 12, Subchapter II, Section 1229 (24 Del.C. §1229)

### PUBLIC NOTICE

#### Regulations Governing Security Systems and Protective Services: False Alarms

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

Promulgation of Rules and Regulations pursuant to 24 Del.C. §1229.

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

The Department of Safety and Homeland Security hereby promulgates rules and regulations relating to the enforcement of civil penalties for false alarms pursuant to 24 Del.C. §1229.

The Department solicits and will consider timely filed written comments from interested individuals and groups concerning these proposed regulations. The deadline for the filing of such written comments will be thirty days after the proposed regulations are published in the Delaware Register of Regulations, or by May 1, 2012. Any such submissions should be mailed or hand delivered to Elizabeth Olsen at: Department of Safety and Homeland Security, Public Safety Building, Suite 220, 303 Transportation Circle, P.O. Box 818, Dover, DE 19903, on or before the deadline stated above.

#### Regulations Governing Security Systems and Protective Services: False Alarms

##### 1.0 Purpose.

- 1.1 To encourage security system users and security businesses to properly and responsibly use and maintain the operational effectiveness of security systems.
- 1.2 To improve the reliability of security systems.
- 1.3 To reduce or eliminate false alarms.
- 1.4 To provide for the enforcement of civil penalties against security system users who violate the provisions under 24 Del.C. Ch. 12, Subch. II
- 1.5 To provide a process of appeal for security system users who elect to contest an alleged violation of 24 Del.C. Ch. 12, Subch. II

##### 2.0 Scope and Applicability.

- 2.1 Authority. These regulations are promulgated pursuant to 24 Del.C. §1229. These regulations shall be known as "Regulations Governing Security Systems and Protective Devices: False Alarms".
- 2.2 Applicability. These regulations apply to security system users as defined by 24 Del.C. §1222(22), security businesses as defined by 24 Del.C. §1222(16) and any third party vendor contracted with the State of Delaware to administer the provisions under 24 Del.C. Ch. 12, Subch. II.

##### 3.0 Definitions.

"Security System Administrator" means the Delaware State Police, State Bureau of Identification, or "SBI" pursuant to 24 Del.C. §1222(18).

**4.0 Fines.**

A security system user in violation of 24 Del.C. §1227 shall be subject to a civil assessment in accordance with the penalty schedule under 24 Del.C. §1228.

**5.0 Determination of Violation.**

- 5.1 The third party vendor contracted with the State, in coordination with the security system administrator, shall determine whether a violation under 24 Del.C. §1227 has occurred. If a determination is made that a violation has occurred, a Notice of Violation shall be sent to the address of the security system user whose security system caused the false alarms.
- 5.2 There shall be a rebuttable presumption that an alarm is false if law enforcement responding to the alarm do not discover any evidence of unauthorized entry, criminal activity, or other emergency after following normal police procedures in investigating the incident.
- 5.3 A security system user may rebut the presumption that an alarm is false pursuant to 24 Del.C. §1222(7)(a)-(d).

**6.0 Notice of Violation Content.**

- 6.1 A Notice of Violation shall contain:
- 6.1.1 A civil violation number;
- 6.1.2 The name and address of the registered security system user whose security system caused the false alarms violation;
- 6.1.3 The registration number of the security system involved in the violation;
- 6.1.4 The violation charges;
- 6.1.5 The location/address where the violation occurred;
- 6.1.6 The dates and times of the violation;
- 6.1.7 The date of the notice of violation is mailed;
- 6.1.8 The amount of the civil assessment imposed and the date by which the civil assessment must be paid;
- 6.1.9 The name of the payee;
- 6.1.10 The address where the civil assessment must be sent;
- 6.1.11 Information advising the security system owner regarding the manner, time and place by which liability as alleged in the Notice of Violation may be contested;
- 6.1.12 A warning that the failure to pay the civil assessment or contest the liability within 30 days of the mailing of the Notice of Violation is deemed to be an admission as to liability which will result in a judgment being entered against the security system user named in the Notice of Violation;
- 6.1.13 Notice concerning the person's ability to contest the violation within 30 days from the date that the Notice of Violation has been sent to the security system user.

**7.0 Payment of Civil Assessment.**

- 7.1 A person electing to pay the civil assessment imposed pursuant to 24 Del. C. § 1228 shall do so within 30 days to the entity at the address so designated on the Notice of Violation.
- 7.2 Failure to pay the civil assessment within 30 days of the date of the mailing of the Notice of Violation shall be an admission of liability, which will result in a judgment being entered against the security system user so named on the Notice of Violation.
- 7.3 Returned checks shall be assessed a reasonable returned check fee not to exceed administrative costs. The security system administrator shall determine the amount to be assessed against the security system user for a returned check.

---

## **8.0 Procedures to Contest a Violation.**

- 8.1 A security system user may request an administrative hearing in accordance with 24 Del. C. § 1229(c) to rebut the presumption that the alarm(s) were false pursuant to 24 Del. C. § 1222(7).
- 8.2 A security system user electing to contest the violation must request an administrative hearing in writing to the entity and address specified in the Notice of Violation within 30 days the date the Notice of Violation was sent to the security system user.
- 8.3 If the request for an administrative hearing is not made within 30 days from the date the Notice of Violation was sent to the security system user, the security system user waives his or her right to contest the violation.
- 8.4 An administrative hearing shall be held by the third party vendor or entity as designated by the security system administrator within 30 days from the receipt of a request for an administrative hearing from the security system user.
- 8.5 The third party vendor or entity so designated by the security system administrator shall issue a decision as soon as practicable, but no later than 30 days from the date of the administrative hearing.
- 8.6 A security system user may request an appeal of the decision of the initial hearing to the security system administrator within 15 days from the date the decision has been sent to the security system user. The security system user shall also send a copy of his or her request for a second hearing to the entity so designated on the Notice of Violation.
- 8.7 A second hearing shall be held by the security system administrator within 15 days from the date the request for a second hearing has been sent to the security system administrator.
- 8.8 Appeal of the Final Administrative Decision.
  - 8.8.1 Either party may elect to appeal the final administrative decision to the Justice of the Peace Court, which shall have exclusive jurisdiction.
  - 8.8.2 An appeal of the final administrative decision must be made in writing to the Justice of the Peace court within 30 days from the date of the administrative decision.
  - 8.8.3 A security system user electing to file an appeal to the Justice of the Peace court shall also file a copy of his or her appeal of the final administrative decision to the entity and address noted on the Notice of Violation within 30 days from the date of the administrative decision.
  - 8.8.4 An appeal to the Justice of the Peace court shall be the final right of appeal.

## **9.0 Failure to Pay Civil Penalty.**

If the security system user does not pay a civil assessment within 30 days of the Notice of Violation being sent to the security system user, or does not successfully contest a violation, the security system administrator, or its designee, may pursue a civil action, including seeking judgment and execution on a judgment against the security system user.

---

## **DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 205 (24 Del.C., §205)  
24 DE Admin. Code 200

### PUBLIC NOTICE

### **200 Board of Landscape Architecture**

The Delaware Board of Landscape Architecture in accordance with 24 Del.C. §205 has proposed amendments to Rules 1.0, 4.0, 7.0, 8.0 and 11.0. The proposed revisions to the rules are an attempt to better organize and clearly establish the standards governing Landscape Architects in the State of Delaware concerning applying for

licensure, issuance of a license, continuing education, inactive status and crimes that are substantially related to the practice of Landscape Architects.

A public hearing will be held on May 10, 2012, at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Jessica Williams, Administrative Assistant for the Delaware Board of Landscape Architects, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

## 200 Board of Landscape Architecture

### 1.0 Filing of Applications for Written Examination

- 1.1 ~~Persons seeking licensure pursuant to 24 Del.C. §206 shall submit an application for written examination on a form prescribed by the Board to the Board's office at the Division of Professional Regulation (the "Division") along with the application fee established by the Division. Applicants for written examination shall be filed in such office of the Board no later than twelve (12) weeks prior to the opening date of the examination. Prior to seeking licensure, applicants must have passed all sections of the national examination administered by the Council of Landscape Architectural Registration Board "CLARB".~~
- 1.2 Applicants seeking licensure pursuant to 24 Del.C. §206(a)(1) shall have graduated from a school or college of landscape architecture approved or accredited by the ~~national Council of Landscape Architectural Registration Boards,~~ the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects.
- 1.3 For purposes of 24 Del.C. §206(a)(~~3~~2), courses in landscape architecture shall have been taken at a school or college of landscape architecture approved or accredited by the ~~national Council of Landscape Architectural Registration Boards,~~ the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects.
- 1.4 ~~Each applicant must submit documentary evidence, as more fully described on the application form, to show the Board that the applicant is clearly eligible to sit for the examination under 24 Del.C. §206. Upon successfully passing all required sections of the national exam as administered by CLARB, applicants will then submit a completed application to the Division of Professional Regulation.~~
- 1.5 The Board shall not consider an application for ~~written examination~~ licensure until all items described in sections 1.1, ~~and 1.2, 1.3, 1.4, and 4.0~~ of ~~this~~ the rules have been submitted to the Board's office.
- 1.6 The Board reserves the right to retain as a permanent part of the application any or all documents submitted.
- 1.7 The examination shall be the Council of Landscape Architectural Registration Board's ("CLARB") current ~~uniform~~ national examination. CLARB establishes a passing score for each ~~uniform~~ section of the national examination.

Statutory Authority: 24 Del.C. §§206, 207

5 DE Reg. 821 (10/01/01)

*(Break in Continuity of Sections)*

### 4.0 Issuance of Licenses; proof of professional experience.

- 4.1 An applicant who has taken and passed the national examination, as administered by CLARB, must still demonstrate that he or she has met the professional experience requirements set forth in 24 Del.C. §206 and 24 Del.C. §210 before a license will be issued.
  - 4.1.1 An applicant who does not have a degree but has 2 years of acceptable courses in landscape architecture taken from a school or college of landscape architecture approved or accredited by the American Society of Landscape Architectural Accreditation Board, or other legitimate national

association of landscape architects in accordance with 24 Del.C. §206(2). Must also demonstrate at least 4 years of professional experience in the practice of landscape architecture acceptable to the Board under the direct supervision of a licensed landscape architect.

4.1.2 An applicant with a degree from a school or college of landscape architecture accredited by the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects must demonstrate at least 2 years of professional experience in the practice of landscape architecture acceptable to the Board under the direct supervision of a licensed landscape architect.

4.2 Only one license shall be issued to a licensed landscape architect, except for a duplicate issued to replace a lost or destroyed license.

*(Break in Continuity of Sections)*

## 7.0 Continuing Education as a Condition of Biennial Renewal

7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new and relevant skills and knowledge.

7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs or self-directed activities approved by the Board.

7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.

7.1.2 All courses, seminars, sessions and programs are acceptable for continuing education credit if sponsored by organizations listed in Rule 7.1.3. All other continuing education credits will be reviewed at the time of renewal. All self-directed activities for continuing education credit allowed by rule 7.6 must be pre-approved and submitted by the licensee ~~60 days~~ 6 months prior to license renewal prior to the activity on the form provided in 7.3 and 7.4.

7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the **Delaware Code** and contain elements which will assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.

7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education credit:

7.1.3.1 LA CES<sup>TM</sup> - Landscape Architecture Continuing Education System<sup>TM</sup>

7.1.3.2 American Society of Landscape Architects (National and local/chapter levels)

7.1.3.23 Council of Landscape Architectural Registration Boards

7.1.3.4 American Planning Association

7.1.3.5 American Institute of Certified Planners

7.1.3.6 Delaware Department of Natural Resources (DNREC) Division of Soil and Water Conservation, seminars or educational programs dealing with sediment erosion and control

7.1.4 ~~Erroneous or false information attested to by the licensee shall constitute grounds for denial of license renewal.~~ Self-directed Activities: The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the

## PROPOSED REGULATIONS

practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.

- 7.1.4.1 The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.
- ~~7.3-4~~ 7.2 Each licensed landscape architect shall complete, biennially, 20 units of continuing education as a condition of license renewal.
- ~~7.2~~ Effective Date: ~~The Board shall commence requiring continuing education as a condition of renewal of a license for the license year commencing on February 1, 1995. The licensee shall be required to successfully complete twenty (20) hours of continuing education within the previous two calendar years (example: February 1, 1993 through January 31, 1995).~~
- ~~7.3-3~~ The continuing education period will be from ~~October 31st~~ February 1 to ~~November 1st~~ January 31 of each biennial licensing period.
- 7.4 Documentation: Each licensee must retain copies of all supporting materials documenting proof of continuing education compliance for submission to the Board upon request. Supporting materials include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board reserves its right to request additional information and/or documentation to verify continuing education compliance.
- ~~7.35~~ Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Rule ~~6~~7.0.
- ~~7.35.1~~ Attestation may be completed electronically. ~~if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~
- ~~7.35.2~~ Licensees selected for random post renewal audit will be required to supplement the attestation with attendance verification pursuant to Rule ~~6-3~~ 7.9.
- 7.5.3 Each licensed landscape architect shall complete, biennially, 20 units of continuing education as a condition of license renewal.
- ~~7.56~~ Hardship: The Board will consider any reasonable special request from individual licensees for continuing education credits and procedures. The Board may, in individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.
- ~~7.6~~ Self-directed Activities: ~~For renewal periods beginning February 1, 2001, the following rules regarding self-directed activity shall apply. The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2)-year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.~~
- ~~7.6.1~~ The Board may, upon request, review and approve credit for self directed activities in a given biennial licensing period. A licensee must obtain pre approval of the Board prior to undertaking the self directed activity in order to assure continuing education credit for the activity. Any self directed activity submitted for approval must include a written proposal outlining the scope of the activity,

~~the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.~~

- 7.7 Exemptions: New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth herein for their first renewal period.

Statutory Authority: 24 Del.C. §205(12).

- 7.8 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage, determined by the Board, of the licensees to be audited. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.

- 7.9 Documentation and Audit by the Board. When a licensee whose name or number appears on the audit list applies for renewal, the Board shall obtain documentation from the licensee showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board reserves the right to request additional information and/or documentation to verify continuing education compliance.

- 7.9.1 The Board shall attempt to verify the CEUs shown on the documentation provided by the licensee. The Board shall then review the documentation and verification. Upon completion of the review, the Board shall decide whether the licensee's CEU's meet the requirements of these rules and regulations. The licensee shall sign and seal all verification documentation with a Board approved seal.

- 7.10 Board Review. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered grounds for disciplinary action pursuant to 24 Del.C. §231(a)(6). The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 fine.

- 7.11 Non-compliance – Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must accompany the renewal application. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEU's. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board.

- 7.12 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

5 DE Reg. 446 (08/01/01)

8 DE Reg. 1431 (04/01/05)

11 DE Reg. 347 (09/01/07)

*(Break in Continuity of Sections)*

**11.0 Crimes substantially related to the practice of architecture**

- 11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of landscape architecture in the State of Delaware without regard to the place of conviction:
- 11.1.1 Conspiracy in the first degree. 11 **Del.C.** §513.
  - 11.1.2 Aggravated Menacing. 11 **Del.C.** §602(b).
  - 11.1.3 Reckless endangering in the first degree. 11 **Del.C.** §604.
  - 11.1.4 Abuse of a pregnant female in the second degree. 11 **Del. C.** §605.
  - 11.1.5 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.
  - 11.1.6 Assault in the second degree. 11 **Del.C.** §612.
  - 11.1.7 Assault in the first degree. 11 **Del.C.** §613.
  - 11.1.8 Terroristic threatening; felony. 11 **Del.C.** §621.
  - 11.1.9 Vehicular homicide in the first degree. 11 **Del.C.** §630A.
  - 11.1.10 Manslaughter. 11 **Del.C.** §632.
  - 11.1.10~~1~~ Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.
  - 11.1.14~~2~~ Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
  - 11.1.12~~3~~ Murder in the second degree. 11 **Del.C.** §635.
  - 11.1.13~~4~~ Murder in the first degree. 11 **Del.C.** §636.
  - 11.1.14~~5~~ Unlawful sexual contact in the second degree. 11 **Del.C.** §768.
  - 11.1.15~~6~~ Unlawful sexual contact in the first degree. 11 **Del.C.** §769.
  - 11.1.16~~7~~ Rape in the fourth degree. 11 **Del.C.** §770.
  - 11.1.17~~8~~ Rape in the third degree. 11 **Del.C.** §771.
  - 11.1.18~~9~~ Rape in the second degree. 11 **Del.C.** §772.
  - 11.1.19~~20~~ Rape in the first degree. 11 **Del.C.** §773.
  - 11.1.20~~1~~ Sexual extortion. 11 **Del.C.** §776.
  - 11.1.24~~2~~ Continuous sexual abuse of a child. 11 **Del.C.** §778.
  - 11.1.22~~3~~ Female genital mutilation. 11 **Del.C.** §780.
  - 11.1.23~~4~~ Unlawful imprisonment in the first degree. 11 **Del.C.** §782.
  - 11.1.24~~5~~ Kidnapping in the second degree. 11 **Del.C.** §783.
  - 11.1.25~~6~~ Kidnapping in the first degree. 11 **Del.C.** §783A.
  - 11.1.26~~7~~ Arson in the second degree. 11 **Del.C.** §802.
  - 11.1.27~~8~~ Arson in the first degree. 11 **Del.C.** §803.
  - 11.1.28~~9~~ Burglary in the second degree. 11 **Del.C.** §825.
  - 11.1.29~~30~~ Burglary in the first degree. 11 **Del.C.** §826.
  - 11.1.30~~1~~ Robbery in the second degree. 11 **Del.C.** §831.
  - 11.1.34~~2~~ Robbery in the first degree. 11 **Del.C.** §832.
  - 11.1.32~~3~~ Carjacking in the second degree. 11 **Del.C.** §835.
  - 11.1.33~~4~~ Carjacking in the first degree. 11 **Del.C.** §836.
  - 11.1.34~~5~~ Theft. 11 **Del.C.** §841.
  - 11.1.35~~6~~ Theft; false pretenses. 11 **Del.C.** §843
  - 11.1.36~~7~~ Extortion. 11 **Del. C.** §846.
  - 11.1.37~~8~~ Identity theft. 11 **Del.C.** §854.
  - 11.1.38~~9~~ Forgery. 11 **Del.C.** §861.
  - 11.1.39~~40~~ Tampering with public records in the first degree. 11 **Del.C.** §876.
  - 11.1.40~~1~~ Issuing a false certificate. 11 **Del.C.** §878.
  - 11.1.44~~2~~ Bribery 11 **Del.C.** §881.

- 11.1.423 Receiving a bribe 11 **Del.C.** §882.  
11.1.434 Criminal impersonation of a police officer. 11 **Del.C.** §907B.  
11.1.445 Insurance fraud. 11 **Del.C.** §913.  
11.1.456 Dealing in children. 11 **Del.C.** §1100.  
11.1.467 Endangering the welfare of a child. 11 **Del.C.** §1102.  
11.1.478 Sexual exploitation of a child. 11 **Del.C.** §1108.  
11.1.489 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.  
11.1.4950 Possession of child pornography. 11 **Del.C.** §1111.  
11.1.501 Felony Bribery. 11 **Del.C.** §1201.  
11.1.542 Felony Receiving a Bribe. 11 **Del.C.** §1203.  
11.1.523 Perjury in the second degree. 11 **Del.C.** §1222.  
11.1.534 Perjury in the first degree. 11 **Del.C.** §1223.  
11.1.545 Terroristic threatening of public officials or public servants. 11 **Del. C.** §1240.  
11.1.556 Unlawfully dealing with a dangerous weapon. 11 **Del.C.** §1445.  
11.1.567 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.  
11.1.578 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.  
11.1.589 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.  
11.1.5960 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458.  
11.1.601 Criminal Penalties, Organized Crime and Racketeering. 11 **Del.C.** §1504.  
11.1.642 Victim or Witness intimidation. 11 **Del.C.** §§3532 and 3533.  
11.1.63 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).  
11.1.64 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** §4752(a) and (b).  
11.1.65 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).
- 11.2 Crimes substantially related to the practice of landscape architecture shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.
- 5 DE Reg. 446 (08/01/01)**  
**8 DE Reg. 1431 (04/01/05)**  
**11 DE Reg. 347 (09/01/07)**

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

**200 Board of Landscape Architecture**

---

**DIVISION OF PROFESSIONAL REGULATION**  
**Real Estate Commission**

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

**PUBLIC NOTICE**  
**2900 Real Estate Commission**

Pursuant to 24 Del.C. §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations.

A public hearing will be held on May 10, 2012 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

The Commission has proposed revisions to Rule 13.0, pertaining to continuing education requirements. Specifically, pursuant to the revisions, 21 hours of continuing education will be required for each licensure renewal period. Currently, the Commission requires 15 hours. The revised rules state that the required hours must be taken in specified subject matters, or modules. In addition, new licensees, other than licensees already licensed in another state, will be required to take 12 hours of continuing education relevant to the skills required for new practitioners. Those 12 hours will be applied to the required 21 hours and pro-rated accordingly. These new continuing education requirements will serve to enhance the skills and competence of licensees and in this way protect the interests of the public.

Finally, the Commission proposes revisions to certain rules addressing administrative issues, such as the availability of the licensure application on-line.

The Commission will consider promulgating the proposed rules and regulations at its regularly scheduled meeting following the public hearing.

### **2900 Real Estate Commission**

#### **1.0 Introduction**

##### **1.1 Authority [24 Del.C. §2906(a)(1)]**

- 1.1.1 Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission is authorized and empowered and hereby adopts these Rules and Regulations.
- 1.1.2 Pursuant to the Administrative Procedure Act, 29 **Del.C.** Ch. 101, the Commission reserves the right to make any amendments, modifications or additions to the Rules and Regulations that, in its discretion, are necessary or desirable.
- 1.1.3 The Commission reserves the right to grant exceptions to the requirements of the Rules and Regulations upon a showing of good cause by the party requesting such exception, provided such exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 29.
- 1.1.4 The Commission's Rules and Regulations are available on the Division of Professional Regulation's website, [www.dpr.delaware.gov](http://www.dpr.delaware.gov).

##### **1.2 Applicability**

- 1.2.1 The Commission's Rules and Regulations are applicable to all current Licensees and to all applicants for licensure.

##### **1.3 Broker's Responsibilities [24 Del.C. §§2902(a)(2), 2902(a)(11), 2919(d)]**

- 1.3.1 It is the responsibility of the employing Broker to insure that his or her Licensees comply with the Commission's Rules and Regulations. Every Broker is responsible for making certain that all of his or her Salespersons and Associate Brokers are currently licensed, make timely application for license renewal, and meet the Commission's continuing education requirements. The Broker shall maintain copies of continuing education certificates for his or her Salespersons and Associate Brokers for at least three years after the conclusion of each renewal period. A Broker's failure to meet these responsibilities may result in a civil fine against the Broker of up to \$1,000.00 per violation.
- 1.3.2 Each office location shall be under the direction of a Broker, who shall provide complete and adequate supervision of that office. A Broker shall apply for and obtain a license in his or her name for each office and for each branch office. An application for an additional license shall state the location of the branch office and the name of the Designated On-Site Supervisor, who shall be a Delaware Licensee and who shall be in charge of managing the branch office on a full time basis. For new office applications submitted after February 3, 2012, pursuant to 29 **Del.C.** §2919(d), the

Designated On-Site Supervisor shall be a Licensee with a minimum of five (5) years of continuous Real Estate Services experience, which shall be documented on the office application.

- 1.3.3 Where an unforeseen event, such as a resignation or termination from employment, death, emergency, illness, call to military service or training, or a sanction imposed by the Commission, causes or necessitates the removal of the sole licensed Broker in an office, a written request shall be submitted to the Division of Professional Regulation for substitution of another Broker for said office on a temporary basis.
- 1.3.4 The employment of a Designated On-Site Supervisor, sales manager, administrative manager, trainer, or other similar administrator shall not relieve the Broker of the responsibilities contained and defined in these Rules and Regulations.
- 1.3.5 The failure of any Licensee to comply with the provisions of 24 **Del.C.** Ch. 29 and the Commission's Rules and Regulations may also result in disciplinary action against his or her Broker's license.

**15 DE Reg. 1185 (02/01/12)**

## **2.0 Requirements for Obtaining a Salesperson's License [24 Del.C. §2907]**

The Commission shall consider any Salesperson applicant who meets the requirements of 24 **Del.C.** §2907(b) and the requirements of this Rule:

- 2.1 Has successfully completed the accredited Salesperson pre-licensing course through an approved course provider, as set forth in the Commission's Real Estate Education Guidelines.
- 2.2 Has passed in no more than 3 attempts, both the general and State portions of the Salesperson real estate examination, through the approved professional testing service.
  - 2.2.1 ~~The testing service will provide the applicant with an original licensure application for use in making application for licensure.~~ The applicant shall obtain an original licensure application from the Division of Professional Regulation's website, [www.dpr.delaware.gov](http://www.dpr.delaware.gov), for use in making application for licensure.
  - 2.2.2 An applicant shall retake the Salesperson pre-licensing course if the applicant is unable to pass the applicable portion(s) of the examination in 3 or less attempts.
- 2.3 Has submitted the licensure application within 12 months of completing the Salesperson pre-licensing course. If the application is not submitted within 12 months of completing the Salesperson pre-licensing course, the applicant shall submit proof of completion of continuing education, pro-rated pursuant to the pro-ration requirements of Rule 13.2.2.
  - 2.3.1 The licensure application shall be complete and notarized and include the following:
    - 2.3.1.1 A copy of the original school certificate(s) provided at course completion by the approved course provider(s).
    - 2.3.1.2 If the applicant is currently licensed in another jurisdiction, ~~a copy of that license and or~~ has ever been licensed in another jurisdiction, a licensure history provided by the each licensing jurisdiction dated within 30 days of the application.
    - 2.3.1.3 Written acceptance by a sponsoring Broker.
- 2.4 Applicants should refer to the Commission website for information on approved pre-licensing courses, course providers, fees, the professional testing service and testing application instructions. <http://dpr.delaware.gov/boards/realestate/index.shtml>.

**5 DE Reg. 1387 (1/01/02)**

**15 DE Reg. 1185 (02/01/12)**

## **3.0 Requirements for Obtaining an Associate Broker's License [24 Del.C. §2907]**

The Commission shall consider any Associate Broker applicant who meets the requirements of 24 **Del.C.** §2907(c) and the requirements of this Rule:

- 3.1 Has been actively licensed in Delaware or another jurisdiction for 5 continuous years immediately preceding application.

---

**PROPOSED REGULATIONS**

---

- 3.1.1 Licensure shall be considered continuous even where the license has been renewed late, as long as the late renewal occurs within 60 days of the expiration date.
- 3.2 Has successfully completed the accredited Broker pre-licensing course through an approved course provider as set forth in the Commission's Real Estate Education Guidelines.
- 3.2.1 If the applicant is actively licensed as a Broker in another jurisdiction, Broker pre-licensing course hours completed in that jurisdiction may be used towards the course hour requirement.
- 3.3 Has passed in no more than 3 attempts, both the general and State portions of the Broker real estate examination through the approved professional testing service.
- 3.3.1 ~~The testing service will provide the applicant with an original licensure application for use in making application for licensure.~~ The applicant shall obtain an original licensure application from the Division of Professional Regulation's website, [www.dpr.delaware.gov](http://www.dpr.delaware.gov), for use in making application for licensure.
- 3.3.2 An applicant shall retake the Broker pre-licensing course if the applicant is unable to pass the applicable portion(s) of the examination in 3 or less attempts.
- 3.4 Has submitted the application within 12 months of completing the Broker pre-licensing course. Pre-licensing courses included in Rule 3.2.1 are exempt from this 12 month requirement. If the application is not submitted within 12 months of completing the Broker pre-licensing course, the applicant shall submit proof of completion of continuing education, pro-rated pursuant to the pro-ration requirements of Rule 13.2.2.
- 3.4.1 The licensure application shall be complete and notarized and include the following:
- 3.4.1.1 A copy of the original school certificate(s) provided at course completion by the approved course provider(s).
- 3.4.1.2 If the applicant is currently licensed in another jurisdiction, ~~a copy of that license and a or~~ has ever been licensed in another jurisdiction, licensure history provided by ~~the~~ each licensing jurisdiction dated within 30 days of the application.
- 3.4.1.3 Written acceptance by a sponsoring Broker.
- 3.4.1.4 The Guaranty Fund fee shall not be required if the applicant has already paid the fee when obtaining their Salesperson license.
- 3.4.1.5 A list of at least thirty sale or lease transactions completed by the applicant in a licensed capacity within the 5 years immediately preceding application. Upon approval of the Commission, the thirty transactions may include real estate services performed for an employer, while licensed, during the 5 years immediately preceding application. If the applicant, as a designated agent or team leader, has directly supervised licensees who completed the transactions, then the transactions completed by those supervised licensees may be a part of this list. The list of transactions shall be signed by the Broker(s) who supervised the transactions.
- 3.4.1.5.1 The list shall contain the sale or lease completion date, property address, purchaser/lessee name, seller/lessor name, specify if completed by the applicant or designated agent subordinates and be signed by the applicant.
- 3.4.1.5.2 Time share and property management transactions are not considered as eligible sale or lease transactions.
- 3.5 Applications shall include the applicable fees as described in 24 **Del.C.** §2907(g) as a financial prerequisite for licensure.
- 3.6 Applicants should refer to the Commission website for information on approved pre-licensing courses, course providers, fees, the professional testing service and testing application instructions. <http://dpr.delaware.gov/boards/realestate/index.shtml>.

**4 DE Reg. 846 (11/01/00)**

**5 DE Reg. 1387 (1/01/02)**

**15 DE Reg. 1185 (02/01/12)**

---

*(Break in Continuity of Sections)*

## 11.0 Renewal of Licenses [24 Del.C. §2910]

- 11.1 All licenses shall be renewed biennially. Licenses shall expire on April 30 of each even numbered year. A Licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed sixty days with submission of a late fee. The failure of the Commission to give, or the failure of the Licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.
- 11.2 As a condition of renewal, all Licensees shall be required to satisfy the continuing education requirements set forth in Rule ~~44-0~~ 13.0 and pay the renewal fee.
- 11.3 A Licensee shall not practice Real Estate Services after a license has expired.
- 11.4 License renewal shall be completed online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov).

**15 DE Reg. 1185 (02/01/12)**

## 12.0 Reinstatement of Licenses [24 Del.C. §2910]

- 12.1 A license expired for more than sixty days shall be reinstated only after the Licensee pays the necessary fees and passes any examinations required by the Commission and provides proof of completion of the required continuing education. If the Licensee fails to apply for renewal within 6 months of the expiration date, the Licensee shall be required to take the state portion of the examination. If the Licensee fails to apply for renewal before the next renewal period commences (two years), the Licensee shall be required to pass both the state and the general portions of the examination.
- 12.2 No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the revocation of the license. Such person shall then fulfill the following requirements: he or she shall attend and pass the applicable real estate course for Salespersons or Brokers; take and pass the Commission's applicable examination for Salespersons or Brokers; and any other criteria established by the Commission. Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2) years. Nothing contained herein shall require the Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application. Where a person's license has been permanently revoked by the Commission, the person is not eligible for issuance of a new license at any time.

**15 DE Reg. 1185 (02/01/12)**

## 13.0 Continuing Education [24 Del.C. §§2909(a)(7), 2910(d)]

- 13.1 Effective until the license renewal period ~~ending April 30, 2012~~, beginning May 1, 2012, Licensees shall meet the following CE requirements:
  - ~~43.1.1 Each Salesperson licensee shall complete three (3) hours in the salesperson's core course, three hours in legislative update relating to Delaware and Federal law, and nine (9) hours in elective credits.~~
  - ~~43.1.2 Each Broker and Associate Broker licensee shall complete six (6) hours in the broker's core course and nine (9) hours in elective credits.~~
  - 13.1.1 During each licensure renewal period, Licensees shall complete the following twenty-one (21) hours of CE:
    - 13.1.1.1 Three (3) hours in agency and fair housing (Module 1).
    - 13.1.1.2 Three (3) hours in professional standards (Module 2).
    - 13.1.1.3 Three (3) hours in real estate documents (Module 3).
    - 13.1.1.4 Three (3) hours in office management (Module 4).
    - 13.1.1.5 Three (3) hours in legislative issues (Module 5).
    - 13.1.1.6 Three (3) hours in practices of real estate (Module 6).

---

**PROPOSED REGULATIONS**

---

- 13.1.1.7 Three (3) hours in elective courses (Module 7).
- 13.1.2 New licensees, other than new Licensees previously licensed in another state, shall complete the following twelve (12) hours of CE during the first twelve months of licensure. These twelve (12) hours of CE will be applied to the total amount of required CE hours pursuant to the pro-ration schedule in Rule 13.2:
- 13.1.2.1 Three (3) hours in professional standards.
- 13.1.2.2 Three (3) hours in agreement of sale and buyer representation.
- 13.1.2.3 Three (3) hours in real estate documents and seller representation.
- 13.1.2.4 Three (3) hours in real estate professionalism.
- 13.2 CE hours shall be prorated in accordance with the following schedule:
- 13.2.1 For new Licensees:
- 13.2.1.1 No continuing education is required for fewer than six months of licensure.
- 13.2.1.2 Six (6) hours of continuing education are required after at least six months but less than twelve months of licensure.
- ~~13.2.1.3 Fifteen (15) hours of continuing education are required after twelve months of licensure, in compliance with the requirements of Rule 13.1.~~
- 13.2.1.3 The twelve (12) hours of continuing education set forth in Rule 13.1.2 are required after at least twelve months but less than twenty-four months of licensure.
- 13.2.1.4 Twenty-one (21) hours of continuing education are required after twenty-four months of licensure, consisting of: the twelve (12) hours of CE set forth in Rule 13.1.2, three (3) hours in agency and fair housing (Module 1), three (3) hours in legislative issues (Module 5) and three (3) hours in practices of real estate (Module 6).
- 13.2.2 For persons who have successfully completed the pre-licensing course but who have not yet made application:
- 13.2.2.1 ~~Six (6)~~ Twelve (12) hours of continuing education are required more than twelve months but less than eighteen months after course completion.
- 13.2.2.2 ~~Fifteen (15)~~ Twenty-one (21) hours of continuing education are required more than eighteen months after course completion, in compliance with the requirements of Rule 13.1.1.
- 13.2.2.3 For more than eighteen months after course completion, ~~fifteen~~ Twenty-one (21) hours of CE are required for each biennial renewal period, in compliance with the requirements of Rule 13.1.1.
- 13.3 At the time of renewal, the Licensee shall attest to completion of the required CE. Attestation shall be completed electronically.
- 13.3.1 The Licensee's attestation as to completion of CE does not relieve the Broker of his or her duty to ensure that the Licensee has completed the required CE during the licensure renewal period. Each Broker shall maintain copies of CE certificates for his or her Salespersons and Associate Brokers for at least three years after the conclusion of each renewal period.
- 13.3.2 Licensees selected for random audit are required to supplement the attestation with attendance verification as provided in Rule 13.3.6.
- 13.3.3 Random audits shall be performed by the Commission to ensure compliance with the CE requirements.
- 13.3.4 The Commission shall notify Licensees within sixty (60) days after June 30 of each biennial renewal period that they have been selected for audit.
- 13.3.5 Licensees selected for random audit shall be required to submit verification within twenty (20) business days of receipt of notification of selection for audit.
- 13.3.6 Verification shall include such information necessary for the Commission to assess whether the course meets the CE requirements in Rule 13.0. While course brochures may be used to verify CE hours, they are not considered to be acceptable proof for use of verification of course attendance. Verification shall include the official certificate of completion, as provided by the course provider.

- 13.3.7 The Commission shall review all documentation submitted by Licensees pursuant to the continuing education audit. If the Commission determines that the Licensee has met the continuing education requirements, his or her license shall remain in effect. If the Commission determines that the Licensee has not met the continuing education requirements, the Licensee shall be notified and a hearing may be held pursuant to the Administrative Procedure Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying noncompliance with the continuing education requirements. Unjustified noncompliance with the continuing education requirements set forth in these Rules and Regulations shall constitute a violation of 24 **Del.C.** §2912(a)(9) and the Licensee may be subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §2914.
- 13.3.8 Licensees who renew their licenses under the late renewal provision shall be audited for CE completion. These Licensees shall submit documents that evidence satisfactory completion of their CE requirements for the prior licensure period.
- 13.4 Definition of Acceptable Continuing Education Credits:
- 13.4.1 All CE activities shall be pre-approved by the Commission, pursuant to the Commission's Real Estate Education Guidelines.
- 13.4.2 Activities shall be a minimum of one (1) hour and delivered in one (1) hour increments.
- 13.5 The Commission may waive or postpone all or part of the continuing education requirements of these Rules and Regulations if a Licensee submits a written request for a waiver and provides evidence to the satisfaction of the Commission of an illness, injury, financial hardship, family hardship, or other similar extenuating circumstance which precluded the Licensee's completion of the requirements. Application for waiver or postponement shall be made in writing to the Commission and shall be received by the Commission no later than 60 days prior to the biennial license renewal date.
- 13.6 The Commission may appoint a committee to assist in the Commission's educational objectives.
- 13.7 Members of the Real Estate Commission who attend at least eighty percent (80%) of Commission meetings during a biennial licensure period may receive one hour of CE for each Commission meeting attended and said hour may be applied to any CE required for licensure renewal.

**15 DE Reg. 1185 (02/01/12)**

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

**2900 Real Estate Commission**

---

**DIVISION OF PROFESSIONAL REGULATION**

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

**PUBLIC NOTICE**

**2925 Real Estate Commission Education Committee**

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

A public hearing will be held on May 10, 2012 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

The Commission has proposed extensive revisions to the Guidelines. The Guidelines have been amended to include information previously contained only in an "Appendix" posted on the Commission's website. The

amendments ensure that pre-licensing and continuing education standards are properly and fully set forth in rules promulgated and adopted by the Commission. The amended Guidelines explain new continuing education standards, which will be set forth in further detail in the Commission's rules and regulations. Specifically, pursuant to the proposed revisions, continuing education offerings must fall into one of seven different modules, or, for new licensees, one of four different modules.

In a new Rule 11.0, procedures are detailed for addressing course providers who receive negative evaluations from course attendees. This new Rule is intended to ensure quality in the provision of education to prospective and current licensees.

The Commission will consider promulgating the proposed revisions to the Guidelines at its regularly scheduled meeting following the public hearing.

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

**2925 Real Estate Commission Education Committee**

---

## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 3606(a)(1) (24 **Del.C.** §3606(a)(1))  
24 **DE Admin. Code** 3600

### PUBLIC NOTICE

#### 3600 Board of Registration of Geologists

The Delaware Board of Geologists pursuant to 24 **Del.C.** §3606(a)(1) proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to update the rules by adding provisions concerning a lapsed license, creating an inactive status, adding online courses and web seminars to CEU list and adding to the list of automatically approved course work for CEU requirements. The revisions also add to the list of crimes substantially related to the practice of geology and makes numerous grammatical changes.

The Board will hold a public hearing on the proposed rule change on May 4, 2012 at 10 00 am., Second floor conference room B, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written comments should be sent to Sandra Wagner, Administrator of the Delaware Board of Geologists, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904.

#### 3600 Board of Registration of Geologists

### 1.0 Definitions

“**Board**” shall mean the State Board of Geologists established in 24 **Del. C.**, ~~Ch. 36~~, §3603.

“**Continuing Education Unit**” shall mean one contact hour (60 minutes), subject to the Board's review.

“**Five Years of Experience**” shall mean:

Experience acquired in geological work as described in the 24 **Del.C.**, ~~Ch. 36~~, §3602 (5) and (6) and after completion of academic requirements as stated in §3608(a)(1). The Board may discount experience obtained more than ten (10) years prior to the submission of an application. Part-time experience will be granted proportional to full-time credit. Three (3) of the five (5) years of experience must be in a position of responsible charge as defined below.

Experience references must be provided by a person knowledgeable and having a background of geological work.

The Board will only consider years of experience documented by references.

“**Geologist**” shall mean a person who is qualified to practice professional geology including specialists in its various subdisciplines.

“**Practice of Geology**” shall mean any service or creative work, the adequate performance of which requires geologic education, training and experience in the application of the principles, theories, laws and body of knowledge encompassed in the science of geology. This may take the form of, but is not limited to, consultation, research, investigation, evaluation, mapping, sampling, planning of geologic projects and embracing such geological services or work in connection with any public or private utilities, structures, roads, buildings, processes, works or projects. A person shall be construed to practice geology, who by verbal claim, sign, advertisement or in any other way represents himself or herself to be a geologist, or who holds ~~himself or herself~~ him/herself out as able to perform or who does perform geologic services or work.

“**Responsible Charge**” shall mean the individual control and direction, by the use of initiative, skill and individual judgment, of the practice of geology.

## **2.0 Procedures for Licensure**

### **2.1 Application - Initial Licensure**

An applicant who is applying for licensure as a geologist shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** §3608. The applicant must submit the following documentation:

#### **2.1.1 An application for licensure, which shall include:**

- 2.1.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** §3608(a)(1).
- 2.1.1.2 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from an agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board.
- 2.1.1.3 Five professional references on forms provided by the Board. The references must attest that the Applicant has completed at least five (5) years of work experience in Geologic work satisfactory to the Board. A minimum of three (3) years of work experience must be in a responsible position.
- 2.1.1.4 Evidence that the applicant has achieved the passing score on all parts of the written, standardized examination administered by the National Association of State Boards of Geology (ASBOG), or its successor.
- 2.1.1.5 Letters of good standing from all jurisdictions in which the applicant is licensed or registered.

### **2.2 Application - By Reciprocity**

An applicant who is applying for licensure as a geologist by reciprocity shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** §3609. The applicant must submit the following documentation:

#### **2.2.1 An application for licensure, which shall include:**

- 2.2.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** §3608(a)(1).
- 2.2.1.2 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from an agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board.
- 2.2.1.3 Evidence that the applicant is currently licensed or certified in the jurisdiction from which he/she is applying and the applicant has practiced for a minimum of two (2) years after licensure in the jurisdiction from which he/she is applying including two (2) professional references on forms provided by the Board. An applicant may not obtain reciprocity on a

lapsed or expired license or certification. The references must attest that the Applicant has completed at least two (2) years of work experience in geologic work satisfactory to the Board. The required two years of geologic work experience attested to by the referees must have been performed in the jurisdiction from which the applicant is seeking reciprocity.

2.2.1.4 Evidence that the applicant has achieved the passing score on all parts of the written, standardized examination administered by the National Association of State Boards of Geology (ASBOG), or its successor.

2.2.1.4.1 Applicants, who were originally licensed in another jurisdiction after June 17, 1998, will be required to have a passing score (70%) on each part of the ASBOG examination.

2.2.1.5 Letters of good standing from all jurisdictions in which the applicant is licensed or registered.

**11 DE Reg. 349 (09/01/07)**

**13 DE Reg. 682 (11/01/09)**

### 3.0 Stamp/Seal Requirements

- 3.1 The stamp or seal authorized by the Delaware State Board of Geologists shall be of the design shown here and shall not be less than one and one-half (1 ½) inches in diameter. It may be purchased by the licensee from any convenient source.
- 3.2 All reports, drawings, maps, or similar technical submissions involving the practice of geology that have been prepared, or reviewed and approved, by a licensed geologist and that will become a matter of public record, or relied upon by any person, within this state for geological purposes, shall be impressed with the stamp or seal. The stamp or seal will indicate that the licensee has accepted responsibility for the work.
- 3.3 Any licensee who affixes, or allows to be affixed, his/her seal or name to a document or report is responsible for all work contained therein regardless of whether such work has been performed by the geologist or a subordinate.
- 3.4 No person shall stamp or seal any plans, reports, specifications, plats or similar technical submissions with the stamp or seal of a geologist or in any manner use the title "geologist," unless such person is duly licensed in compliance with 24 **DeI.C.** Ch. 36.
- 3.5 No person shall stamp or seal any plans, specifications, plats, reports, or a similar document with the stamp or seal of a licensed geologist if his/her license has been suspended, revoked or has expired.
- 3.6 Computer files of reports, drawings or similar technical work involving the practice of geology and that will become a matter of public record or relied upon by any person shall include the following statement:

This submission is made in compliance with 24 **DeI.C.**, Ch. 36 by (name) \_\_\_\_\_, P.G., DE license number \_\_\_\_ on this date \_\_\_\_\_.



**4.0 Licensing Exemption**

- 4.1 Any person who claims exemption from the provisions of 24 ~~Del.C. Ch. 36~~ under §3617(a), shall be entitled to such exemption so long as his/her remuneration from the practice of geology is solely related to a teaching function. If such remuneration is processed through his/her academic unit, it shall be considered prima facie evidence of the fact that such work is related to his/her teaching. Any person claiming such exemption shall, in a conspicuous manner at the conclusion of any report or study bearing his/ her name, include the statement:

"I hereby claim exemption from the requirements of 24 ~~Del.C. Ch. 36~~ (Delaware Professional Geologist Act) and am not subject to the provisions of that Act and the standards and regulations adopted pursuant thereto."

Such a disclaimer shall not be required on reports or studies submitted solely to refereed professional journals for publications.

Any other geologic work, including consulting, not directly related to educational activities, shall not be considered exempt.

**5.0 Issuance and Renewal of License**

- 5.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 ~~Del.C. Ch. 36~~.
- 5.2 Renewal may be effected by:
- 5.2.1 Filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. Beginning in 2006, license renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov);
  - 5.2.2 Providing other information as may be required by the Board to ascertain the licensee's good standing;
  - 5.2.3 Attesting on the renewal application to the completing of continuing education as required by Rule 6.0;
  - 5.2.4 Payment of fees as determined by the Division of Professional Regulation.
- 5.3 Failure of a licensee to renew his/her license shall cause his/her license to ~~expire~~ lapse. A geologist whose license has ~~expired~~ lapsed may renew his/her license within ~~one year~~ three months after the expiration date upon fulfilling items 5.2.1 - 5.2.4 above, after providing a notarized letter certifying that he/she has not practiced geology in Delaware while his/her license has expired, and paying the renewal fee and a late fee which shall be 50% of the renewal fee.
- 5.3.1 Late or lapsed license renewals shall be audited for satisfactory completion of the continuing education requirement.
  - 5.3.2 No geologist shall practice geology in the State of Delaware during the period of time that his/her license is lapsed.
- 5.4 ~~No geologist will be permitted to renew his/her license once the one year period has expired. Failure of a licensee to renew his/her lapsed license within the three (3) month period in item 5.3 above shall cause his/her license to expire.~~
- 5.4.1 A geologist whose license has expired may re-apply under the same conditions that govern applicants for new licensure under 24 ~~Del.C. Ch. 36~~, provide a notarized letter certifying that he/she has not practiced geology in Delaware while his/her license has been expired, paying the application fee and a late fee which shall be 50% of the renewal fee.
  - 5.4.2 Reapplication for expired licenses shall be audited for satisfactory completion of the continuing education requirement.
- 5.5 ~~The former licensee may re-apply under the same conditions that govern applicants for licensure under 24 ~~Del.C. Ch. 36~~.~~

5.6 No geologist shall practice geology in the State of Delaware during the period of time that his/her Delaware license has expired.

5.6 Inactive Status

5.6.1 A licensee may request to be placed on inactive status by the Board for a period of no more than (2) years. Within the two (2) year inactive period an inactive licensee may reactivate their license and re-enter active practice after completion of items 5.2.1, 5.2.2, and 5.2.4 above, after providing a notarized letter certifying that he/she has not practiced geology in Delaware while his/her license has been inactive, and the continuing education requirements described below.

5.6.1.1 Inactive status for one (1) year or less: 12 CE hours and will automatically be audited.

5.6.1.2 Inactive status for more than one (1) year: 24 CE hours and will automatically be audited.

5.6.2 A license not reactivated within the two (2) year inactive period will lapse. A geologist whose license has lapsed may renew his/her license within three (3) months upon fulfilling items in 5.3 above.

5.7 No geologist shall practice geology in the State of Delaware during the period of time that his/her Delaware license is inactive.

**10 DE Reg. 567 (09/01/06)**

**6.0 Continuing Education**

6.1 The Board will require continuing education as a condition of license renewal.

6.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Rule 6.0.

6.1.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.

6.1.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.3.

6.2 Licenses are renewed biennially (every two years on the even year) on September 30 (e.g. September 30, 2006, 2008). Continuing education (CE) reporting periods run concurrently with the biennial licensing period.

6.3 Each licensed geologist shall complete, biennially, 24 units of continuing education as a condition of license renewal. The licensee is responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the Board for random post renewal audit and verification purposes. A continuing education unit is equivalent to one contact hour (60 minutes), subject to the Board's review. The preparing of original lectures, seminars, or workshops in geology or related subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

6.4 A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. "Hardship" may include, but is not limited to, disability; illness; extended absence from the jurisdiction; or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.

6.5 Continuing education shall be prorated for new licensees in the following manner:

6.5.1 If at the time of renewal, a licensee has been licensed for less than one (1) year, no continuing education is required; if he/she has been licensed for more than one (1) year, but less than two (2) years, twelve (12) of the twenty-four (24) hours will be required; if he/she has been licensed for two (2) years or more the full twenty-four (24) hours is required.

6.6 In his/her personal records, each licensee must keep proof of attendance for each activity for which the licensee is requesting credit. If the Board conducts an audit of a licensee's CE records, the Board will require the licensee to complete a CE log provided by the Board and submit the licensee's documentation of attendance to the CE event listed on the CE log. Failure to submit proof of attendance during an audit will result in loss of CE credit for that event.

- 
- 6.7 Continuing education must be in a field related to Geology. Approval will be at the discretion of the Board. CEUs earned in excess of the required credits for the two- (2) year period may not be carried over to the next biennial period.
- 6.8 Categories of Continuing Education & Maximum Credit Allowed:
- 6.8.1 Courses/Workshops – 24 CEUs Total
    - Academic – 24 CEUs
    - Professional Development – 24 CEUs
    - Documentation – Proof of Completion
  - 6.8.2 Professional Activities – 12 CEUs Total
    - Meetings – 12 CEUs
    - Field Trips – 12 CEUs
    - Documentation – Proof of Attendance and Duration
  - 6.8.3 Peer Reviewed Publications– 12 CEUs Total
    - Composition – 12 CEUs
    - Review – 12 CEUs
    - Documentation – Proof of Participation
  - 6.8.4 Presentations/Seminars – 12 CEUs Total
    - Presentation – 12 CEUs (1 hour prep time per hour presented)
    - Attendance – 12 CEUs
    - Documentation – Proof of Attendance and Duration
  - 6.8.5 Research/Grants – 12 CEUs Total
    - Documentation – Proof of Submission
  - 6.8.6 Specialty Certifications – 12 CEUs Total
    - Documentation – Proof of Completion
  - 6.8.7 ~~Home Study Courses~~ Online courses and Web seminars – 12 CEUs Total
    - Documentation – Proof of Completion
  - 6.8.8 Teaching – 12 CEUs Total
    - Documentation – Verification from Sponsoring Institution
  - 6.8.9 Service on a Geological Professional Society, Geological Institution Board/Committee or Geological State Board – 6 CEUs Total
    - Documentation – Proof of Appointment
  - 6.8.10 Regulatory Based Activities – 12 CEUs Total
    - Certifications/Training – 12 CEUs Total
    - Documentation – Proof of Completion
  - 6.8.11 For any of the above activities, when it is possible to claim credit in more than one category, the licensee may claim credit for the same time period in only one category.
- 6.9 Automatic Approval for course work sponsored by the following Professional Societies:
- 6.9.1 American Association of Petroleum Geologists (AAPG)
  - 6.9.2 American Association of Stratigraphic Palynologists (AASP)
  - 6.9.3 American Geological Institute (AGI)
  - 6.9.4 American Geophysical Union (AGU)
  - 6.9.5 American Institute of Hydrology (AIH)
  - 6.9.6 American Institute of Professional Geologists (AIPG)
  - 6.9.7 Association of American State Geologists (AASG)
  - 6.9.8 Association of Earth Science Editors (AESE)
  - 6.9.9 Association of Engineering Geologists (AEG)
  - 6.9.10 Association of Ground Water Scientists & Engineers (AGWSE)

- 6.9.11 Association of Women Geoscientists (AWG)
  - 6.9.12 Clay Mineral Society (CMS)
  - 6.9.13 Council for Undergraduate Research-Geology Div. (CUR)
  - 6.9.14 Geologic Society of America (GSA)
  - 6.9.15 Geoscience Information Society (GIS)
  - 6.9.16 International Association of Hydrogeologists/US National Committee (IAH)
  - 6.9.17 Mineralogical Society of America (MSA)
  - 6.9.18 National Association of Black Geologists and Geophysicists (NABGG)
  - 6.9.19 National Association of Geoscience Teachers (NAGT)
  - 6.9.20 National Association of State Boards of Geology (ASBOG)
  - 6.9.21 National Earth Science Teachers Association (NESTA)
  - 6.9.22 National Speleological Society (NSS)
  - 6.9.23 Paleontological Research Institution (PRI)
  - 6.9.24 Paleontological Society (PS)
  - 6.9.25 Seismological Society of America (SSA)
  - 6.9.26 Society of Economic Geologists (SEG)
  - 6.9.27 Society of Exploration Geophysicists (SEG)
  - 6.9.28 Society of Independent Professional Earth Scientists (SIPES)
  - 6.9.29 Society for Mining, Metallurgy, and Exploration, Inc. (SME)
  - 6.9.30 Society for Organic Petrology (TSOP)
  - 6.9.31 Society for Sedimentary Geology (SEPM)
  - 6.9.32 Society of Vertebrate Paleontology (SVP)
  - 6.9.33 Soil Science Society of America (SSSA)
  - 6.9.34 National Ground Water Association (NGWA)
  - 6.9.34<sup>5</sup> Other professional or educational organizations as approved periodically by the Board.
- 6.10 Courses not pre-approved by the Board may be submitted for review and approval throughout the biennial licensing period.
- Note: Since regulation 6.9 provides the list of sponsors that are automatically approved by the Board for any course work used for Continuing Education units (CEU) towards the total of 24 CEUs in the biennial license period, please note that regulation 6.10, allowing for pre-approval of courses for CEUs, only pertains to courses NOT offered by a sponsor listed in the list provided in regulation 6.9. Furthermore, one CEU = one contact hour.
- 6.11 Audit. Each biennium, the Division of Professional Regulation shall select from the list of potential renewal licensees a percentage, determined by the Board, which shall be selected by random method. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 6.12 Documentation and Audit by the Board. When a licensee whose name or number appears on the audit list applies for renewal, the Board shall obtain documentation from the licensee showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with attendance verification. The Board shall attempt to verify the CEUs shown on the documentation provided by the licensee. The Board shall then review the documentation and verification. Upon completion of the review, the Board shall decide whether the licensee's CEU's meet the requirements of these rules and regulations. The licensee shall sign and seal all verification documentation with a Board approved seal.
- 6.13 Board Review. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will

be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered misconduct in the practice of geology, pursuant to 24 **Del.C.** §3612(a)(7). The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 monetary penalty; however, the Board may impose any of the additional penalties specified in 24 **Del.C.** §3612.

- 6.14 Noncompliance - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must accompany the renewal application. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEU's. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board.
- 6.15 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

**7 DE Reg. 1342 (4/1/04)**

**10 DE Reg. 567 (09/01/06)**

**11 DE Reg. 349 (09/01/07)**

**13 DE Reg. 682 (11/01/09)**

## **7.0 ASBOG Examination**

- 7.1 An applicant wishing to sit for any portion for the ASBOG examination required for a license as a Geologist shall make application in writing, on forms provided by the Board.
- 7.1.1 An applicant wishing to sit for the ASBOG Fundamentals of Geology (FG) Exam may do so provided they meet the minimum educational requirements set forth in 24 **Del.C.** §3608(a)(1). To apply, the applicant must fill out the request to sit for the fundamentals application and submit their transcripts [to date] to the Board for approval. Once taken, the applicants score will be held on file indefinitely by ASBOG.
- 7.1.2 An applicant wishing to sit for the ASBOG Practice of Geology (PG) exam must have acquired five (5) years of professional work experience as defined in Rule 1.0 and must submit a full application for licensure to the Board for review. Approval to sit for the PG exam will be dependant upon the applicant providing sufficient evidence, satisfactory, to the Board that he/she meets the qualifications for licensure set forth in 24 **Del.C.** §3608.
- 7.2 An applicant for licensure must have satisfactorily passed each part of the ASBOG examination with a scaled score of not less than 70%.
- 7.3 An applicant's approval to sit for either part of the ASBOG exam shall be valid for a period not to exceed two years.

**9 DE Reg. 456 (9/1/05)**

## **8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

- 8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of the Division of Professional Regulation or his/her designate of the report. If the Director of the Division of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's ~~designate or designates~~ designee(s).
- 8.2 The chairperson of the regulatory Board or that chairperson's ~~designate or designates~~ designee(s) shall, within seven (7) days of receipt of the report, contact the individual in question and inform him/

- her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within thirty (30) days following notification to the professional by the participating Board chairperson or that chairperson's ~~designate or designates~~ designee(s).
- 8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's ~~designate or designates~~ designee(s) or the Director of the Division of Professional Regulation or his/her ~~designate~~ designee may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her ~~designate~~ designee and the chairperson of the participating Board or that chairperson's ~~designate~~ designee for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's ~~designate or designates~~ designee(s) or the Director of the Division of Professional Regulation or his/her ~~designate~~ designee in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's ~~designate or designates~~ designee(s) shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 10.8 of this section.
- 8.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- 8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's ~~designate or designates~~ designee(s) or to the Director of the Division of Professional Regulation or his/her ~~designate~~ designee at such intervals as required by the chairperson of the participating Board or that chairperson's ~~designate or designates~~ designee(s) or the Director of the Division of Professional Regulation or his/her ~~designate~~ designee, and such person making such report will not be liable when such reports are made in good faith and without malice.
- 8.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 8.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 8.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her ~~designate or designates~~ designee(s) or to the Director of the Division of Professional Regulation or his/her

~~designate~~ designee by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

- 8.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 8.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 8.8 The participating Board's chairperson, his/her ~~designate or designates~~ designee(s) or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 8.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 8.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 8.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 8.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

**11 DE Reg. 349 (09/01/07)**

**9.0 Crimes substantially related to the practice of geology:**

- 9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of geology in the State of Delaware without regard to the place of conviction:
- 9.1.1 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.
- 9.1.2 Assault in the first degree. 11 **Del.C.** §613.
- 9.1.3 Assault by abuse or neglect. 11 **Del.C.** §615.
- 9.1.4 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
- 9.1.5 Murder in the second degree. 11 **Del.C.** §635.
- 9.1.6 Murder in the first degree. 11 **Del.C.** §636.
- 9.1.7 Manslaughter. 11 **Del.C.** § 632.
- 9.1.78 Rape in the third degree. 11 **Del.C.** §771.
- 9.1.89 Rape in the second degree. 11 **Del.C.** §772.
- 9.1.910 Rape in the first degree. 11 **Del.C.** §773.
- 9.1.101 Continuous sexual abuse of a child. 11 **Del.C.** §778.
- 9.1.142 Dangerous crime against a child. 11 **Del.C.** §779.
- 9.1.123 Kidnapping in the first degree. 11 **Del.C.** §783A.
- 9.1.134 Burglary in the first degree. 11 **Del.C.** §826.
- 9.1.145 Robbery in the first degree. 11 **Del.C.** §832.
- 9.1.156 Carjacking in the first degree. 11 **Del.C.** §836.
- 9.1.167 Identity theft. 11 **Del.C.** §854.

- 9.1.178 Forgery; felony. 11 **Del.C.** §861.
- 9.1.189 Possession of forgery devices. 11 **Del.C.** §862.
- 9.1.1920 Tampering with public records in the first degree. 11 **Del.C.** §876.
- 9.1.201 Offering a false instrument for filing. 11 **Del.C.** §877.
- 9.1.242 Issuing a false certificate. 11 **Del.C.** §878.
- 9.1.223 Unlawful use of credit card; felony. 11 **Del.C.** §903.
- 9.1.234 Reencoder and scanning devices. 11 **Del.C.** §903A.
- 9.1.245 Criminal impersonation. 11 **Del.C.** §907
- 9.1.256 Criminal impersonation, accident related. 11 **Del.C.** §907A.
- 9.1.267 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
- 9.1.278 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 9.1.289 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 9.1.2930 Bribery. 11 **Del.C.** §1201.
- 9.1.301 Receiving a bribe. 11 **Del.C.** §1203.
- 9.1.342 Improper influence. 11 **Del.C.** §1207.
- 9.1.323 Official misconduct. 11 **Del.C.** §1211.
- 9.1.334 Profiteering. 11 **Del.C.** §1212.
- 9.1.345 Perjury in the second degree. 11 **Del.C.** §1222.
- 9.1.356 Perjury in the first degree. 11 **Del.C.** §1223.
- 9.1.367 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240.
- 9.1.378 Bribing a witness. 11 **Del.C.** §1261.
- 9.1.389 Bribe receiving by a witness. 11 **Del.C.** §1262.
- 9.1.3940 Tampering with a witness. 11 **Del.C.** §1263.
- 9.1.401 Bribing a juror. 11 **Del.C.** §1264.
- 9.1.442 Bribe receiving by a juror. 11 **Del.C.** §1265.
- 9.1.423 Tampering with physical evidence. 11 **Del.C.** §1269.
- 9.1.434 Escape after conviction; Class B felony. 11 **Del.C.** §1253.
- 9.1.445 Assault in a detention facility; Class B felony. 11 **Del.C.** §1254.
- 9.1.456 Hate Crimes; Class A or B felony. 11 **Del.C.** §1304.
- 9.1.467 Adulteration; Class A felony. 11 **Del.C.** §1339.
- 9.1.478 Possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447.
- 9.1.489 Possession of a firearm during the commission of a felony. 11 **Del.C.** §1447A.
- 9.1.4950 Wearing body armor during the commission of a felony. 11 **Del.C.** §1449.
- 9.1.501 Organized crime and racketeering. 11 **Del.C.** §1504.
- 9.1.542 Victim or witness intimidation. 11 **Del.C.** §§3532 & 3533.
- 9.1.523 Prohibited acts A [delivery/manufacture/possession with intent to deliver narcotics (death); Class B. 16 **Del.C.** §4751.
- 9.1.534 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §47513A.
- 9.2 Crimes substantially related to the practice of geology shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**8 DE Reg. 1105 (2/1/05)**

**10.0 Code of Ethics**

10.1 General Provisions:

- 
- 10.1.1 A geologist shall be guided by the highest standards of ethics, honesty, integrity, fairness, personal honor, and professional conduct.
  - 10.1.2 A geologist shall not knowingly permit the publication or use of his/her work or name in association with any unsound or illegitimate venture.
  - 10.1.3 A geologist shall not give a professional opinion or make a report without being as completely informed as might be reasonably expected considering the purpose for which the opinion or report is desired. All assumptions on which the results of the report or opinion are based shall be set forth in the report or opinion.
  - 10.1.4 A geologist shall be as objective as possible in any opinion, report or other communication he/ she makes which will be used to induce participation in a venture. He/she shall not make sensational, exaggerated, or unwarranted statements. He/she shall not misrepresent data, omit relevant data, or fail to mention the lack of data that might affect the results or conclusions of such opinion, report or communication.
  - 10.1.5 A geologist shall not falsely or maliciously attempt to injure the reputation or business of another geologist.
  - 10.1.6 A geologist shall freely give credit for work done by others. A geologist shall not knowingly accept credit rightfully due to others or otherwise indulge in plagiarism in oral and written communications.
  - 10.1.7 A geologist, having knowledge of the unethical or incompetent practice of another geologist, shall avoid association with that geologist in professional work. If a geologist acquires tangible evidence of the unethical or incompetent practice of another geologist, he/she shall submit the evidence to the Board.
  - 10.1.8 A geologist shall not use the provisions of 24 **Del.C.**, Ch. 36 or the Board's regulations to maliciously prosecute, harass or otherwise burden another geologist with unfounded or false charges.
  - 10.1.9 A geologist shall endeavor to cooperate with others in the profession in encouraging the ethical dissemination of geological knowledge especially when it is in the public interest.
  - 10.1.10 A geologist shall not engage in conduct that involves fraud, dishonesty, deceit or misrepresentation either directly or through the action of others.
  - 10.1.11 A geologist shall not discriminate against any person on the basis of race, creed, sex or national origin.
  - 10.1.12 A geologist shall not aid any person in the unauthorized practice of geology.
  - 10.1.13 A geologist shall not practice geology in a jurisdiction where that practice would violate the standards applicable to geologists in the jurisdiction.
- 10.2 Provisions Concerning Monetary Matters
- 10.2.1 A geologist having, or expecting to have, any interest in a project or property on which he/she performs work, must make full disclosure of the interest to all parties concerned with the project or property.
  - 10.2.2 A geologist's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
    - 10.2.2.1 the time and labor required, the novelty and difficulty of the work involved, and the skill requisite to perform the service properly;
    - 10.2.2.2 the likelihood, if apparent to the client or employer, that the acceptance of the particular employment will preclude other employment of the geologist;
    - 10.2.2.3 the fee customarily charged in the area for similar geological services;
    - 10.2.2.4 the total value of the project and the results obtained;
    - 10.2.2.5 the time limitations imposed by the client or by the circumstances;
    - 10.2.2.6 the nature and length of the professional relationship with the client;
    - 10.2.2.7 the experience, reputation, and ability of the geologist or geologists performing the service; and

- 10.2.2.8 whether the fee is fixed or contingent.
- 10.2.3 When the geologist has not regularly performed services for the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing services.
- 10.2.4 A fee may be contingent on the outcome of a project for which geological services are rendered, except for a project where a contingent fee is prohibited by law or professional ethics. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined.
- 10.2.5 A division of fee between geologist and other professionals who are not associated may be made only if:
- 10.2.5.1 the division is in proportion to the services performed by each geologist or professional or, by written agreement with the client. Each geologist or professional assumes joint responsibility for the services performed;
  - 10.2.5.2 the client is advised of and does not object to the participation of the geologist and/or other professionals involved; and
  - 10.2.5.3 the total fee is reasonable.
- 10.2.6 A geologist shall not accept a concealed fee for referring an employer or client to a specialist or for recommending geological services other than his/her own. A geologist who engages or advises a client or employer to engage collateral services shall use his/her best judgment to ensure the collateral services are used prudently and economically.
- 10.3 Provisions Concerning The Relationship With The Client
- 10.3.1 A geologist shall not undertake, or offer to undertake, any type of work with which he/she is not familiar or competent by reason of lack of training or experience unless he/she makes full disclosure of his/her lack of training or experience to the appropriate parties prior to undertaking the work.
- 10.3.2 A geologist shall protect to the fullest extent the employer or client's interest, so far, as is consistent with the public welfare and professional obligations and ethics.
- 10.3.3 A geologist who finds that an obligation to an employer or client conflicts with professional obligations or ethics should have the objectionable conditions changed or terminate the services.
- 10.3.4 A geologist shall not use either directly or indirectly any proprietary information which is developed or acquired as a result of working for an employer or client in any way that conflicts with the employer's or client's interest and without the consent of the employer or client.
- 10.3.5 A geologist who has worked or performed a service for any employer or client shall not use the information peculiar to that employment and which is gained in such employment for his/her own personal profit unless he/she is given written permission to do so or until the employer, client, or their successor's interest in such information has changed in such a way that the information is valueless to him/her or of no further interest to him/her.
- 10.3.6 A geologist shall not divulge confidential information. This does not relieve a licensed geologist from the duty to report conditions required by law or regulation.
- 10.3.7 A geologist retained by a client shall not accept, without the client's consent, an engagement by another if there is a possibility of a conflict between the interest of the two clients.
- 10.3.8 A geologist shall advise an employer or client to retain, and cooperate with, other experts and specialists whenever the employer's or client's interests are best served by such services.
- 10.3.9 A geologist shall not terminate services to an employer or client when it will cause immediate jeopardy to the employer's or client's interests. The geologist shall attempt to give due notice of termination; however, the geologist may terminate services under any of the following circumstances:
- 10.3.9.1 failure to receive compensation or good evidence indicating compensation will not be received for services performed;
  - 10.3.9.2 when continued employment will result in a violation of 24 **Del.C.**, Ch. 36 or other illegality;

10.3.9.3 when continued employment will result in sickness or injury to the geologist or his/her dependents.

10.3.10 A geologist shall not use ~~or abuse drugs, narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician~~ illegal drugs. A geologist shall also not abuse alcoholic beverages, drugs, narcotics, controlled substances with or without a prescription such that it impairs his/ her ability to perform his/her work.

**11 DE Reg. 349 (09/01/07)**

**13 DE Reg. 682 (11/01/09)**

---

**EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET**

**STATEWIDE BENEFITS OFFICE**

29 Delaware Code, Section 6303A(16) and 6913 (29 **Del.C.** §§6303A and 6913)

**PUBLIC NOTICE**

**Environmentally Preferred Purchasing Policy**

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Director of the Office of Management and Budget is proposing to adopt a regulation setting forth the State of Delaware Environmentally Preferred Purchasing Policy.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on May 2, 2012 at 11:00 a.m. at the Office of Management and Budget, Haslet Building, room 219, 122 William Penn St., Dover, DE 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Robert Scoglietti, Delaware Office of Management and Budget, 122 William Penn Street, Dover, DE, 19901. Written comments must be received on or before May 1, 2012. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the address of the Delaware Office of Management and Budget set forth above.

**Environmentally Preferred Purchasing Policy**

**1.0 Purpose**

The purpose of this Regulation is to set forth the policy and procedures for establishing environmentally preferred purchasing standards.

**2.0 Enabling Legislation**

Pursuant to 29 **Del.C.** §6301A, the Office was established. The Office has authority to make regulations pursuant to 29 **Del.C.** §6303A(16) and 6913. The Regulation is established in compliance with 29 **Del.C.** §6913 and Executive Order 18 (February 17, 2010).

**3.0 Definitions**

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

“**Biodegradable**” means capable of being broken down by microorganisms into simple, stable compounds such as carbon dioxide and water.

**“Chlorine Free Products Association”** means an independent not-for-profit accreditation & standard setting organization, whose primary purpose is to promote Total Chlorine Free policies, programs, and technologies throughout the world.

**“Composting”** means the conversion of organic material to compost by microorganisms. Compost is organic material that can be used as a soil amendment or as a medium to grow plants. Composting reducing the organic portion of garbage include yard trimmings, leave and food scrapes.

**“Director”** means the Director of the Delaware Office of Management and Budget.

**“DNREC”** means the State of Delaware Department of Natural Resources and Environmental Control.

**“DTI”** means the State of Delaware Department Technology and Information.

**“Electronic Product Environmental Assessment Tool (EPEAT)”** means a system that helps the purchaser evaluate, compare and select electronic products based on their environmental attributes. The system currently covers desktop and laptop computers, thin clients, workstations and computer monitors.

**“Energy Star”** means EPA’s energy efficiency product labeling program.

**“Energy Efficient”** means a product that is in the upper 25 percent of energy efficiency for all similar products, or that is at least 10 percent more efficient than the minimum level that meets Federal standards.

**“Environmental Performance”** means considerations including the use of renewable resources, improved energy and water efficiency, the reduction of air contaminants and greenhouse gas emissions, increased reuse and recycling, and the reduction of hazardous waste and toxic pollutants.

**“Environmentally Preferred”** means products and services that have a less or reduced effect on human health and the environment over the life cycle of the products and services when compared with competing products or services that serve the same purpose.

**“Forest Stewardship Council”** means an independent, non-governmental, not-for-profit organization established to promote the responsible management of the world’s forests.

**“Green Guard”**: The GREENGUARD Environmental Institute (GEI) is an industry-independent, not-for-profit organization that oversees the GREENGUARD Certification programs. As an ANSI Accredited Standards Developer, GEI establishes acceptable product standards for building materials, interior furnishings, cleaners, electronics and children’s products. The GREENGUARD Environmental Institute also establishes building standards designed to protect the health of occupants through the control of mold, moisture and indoor pollutants.

**“Green Seal”** means an independent, non-profit environmental labeling organization.

**“GSS”** means the Delaware Office of Management and Budget, Government Support Services.

**“Hardscape”** means part of the building’s grounds made with hard materials such as patios, retaining walls and walkways.

**“Green Building Council (LEED)”** means an internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using strategies aimed at improving performance across all the metrics that matter most: energy savings, water efficiency, CO<sub>2</sub> emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts

**“Heat-Island Effect”** means warmer temperatures in urban areas compared to the adjacent rural areas as a result of solar energy retention on constructed surfaces such as streets, sidewalks, parking lots and buildings.

**“Impervious”** means surfaces that do not permit the passage of liquids.

**“Integrated Pest Management (IPM)”** means an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices and use of resistant varieties.

**“Life-cycle Cost analysis”** means the study of the costs associated with a product through its life cycle – from acquisition to its end-of-life management.

**“Office”** means the Delaware Office of Management and Budget.

“Permeable” means the permitting of liquids to pass through.

“Post-Consumer Material” means a finished material which would normally be disposed of as a solid waste, having reached its intended end-use and completed its life cycle as a consumer item, and does not include manufacturing or converting wastes.

“Recycled Content” means the percentage of recovered material, including pre-consumer and post-consumer materials, in a product that otherwise would have been discarded.

“Reused Product” means any product designed to be used many times for the same or other purposes without additional processing except for specific requirements such as cleaning, painting or minor repairs.

“Source Reduction” means products that result in a net reduction in the generation of waste compared to their previous or alternate version and includes durable, reusable, and remanufactured products.

“State” means the State of Delaware.

“Surfactant” means an agent that, when dissolved in water, works to loosen dirt to allow cleaning agents better removal of dirt from surfaces.

“Sustainable” means the needs of the present are met without compromising the ability of future generations to meet their own needs.

“EPA” means the U.S. Environmental Protection Agency a federal agency that leads the nation’s environmental science, research, education and regulation efforts to protect human health and the environment.

“Water-Saving Products” means products that are in the upper 25 percent of water conservation for all similar products, or at least 10 percent more water conserving than the minimum level that meets the Federal standards.

“WaterSense” means a partnership program sponsored by EPA, to help Americans save water and protect the environment.

## **4.0 Third Party Certification**

- 4.1 To prevent unsubstantiated claims of environmental benefit or reduced impact, any product deemed to be approved or considered under this policy shall be certified by an independent 3<sup>rd</sup> party entity. Such certifications shall be recognized by the U.S. EPA Design for the Environment (DfE) Formulator Program or recognized by the State, DNREC or DTI as consistent with environmental goals with claims verified through independent 3<sup>rd</sup> party certification. These certifications include, but not limited to: [Chlorine Free Products Association](#), [EcoLogo](#), [EnergyStar](#), [EPEAT](#), [Forest Stewardship Council](#), [Green-e](#), [Green Guard](#), [Green Seal](#), [Green Building Council \(LEED\)](#), and [Environmental Choice](#)
- 4.2 The costs of any certification required under this Regulation shall be solely at the expense of the vendor/supplier and no costs above the product/services price shall be permitted.
- 4.3 Suppliers may still seek environmentally preferable recognition for products that are not so certified or recognized by the above certifications by submitting an affidavit from a certified laboratory stating that the products meet or exceed the performance and health and environmental criteria and demonstrating a cost benefit of these products over established certified products.

## **5.0 Source Reduction**

- 5.1 Wherever feasible, transition to environmentally and health-friendly products and services shall occur in a manner that avoids wasting of existing inventories, accommodates establishment of supply chains for new products, enables the training of personnel in appropriate work practices, and allows the phase-out of products and practices inconsistent with this Regulation.
- 5.2 Purchase products that are durable, long lasting, reusable or refillable.
- 5.3 Purchase remanufactured products such as toner cartridges, tires, furniture, equipment and automotive parts, but without reducing safety, quality, effectiveness or the warranty that supports the original product.

- 5.4 Consider short-term and long-term costs in comparing product choices. This includes an evaluation of the total costs expected during the time the product is owned including, but not limited to, acquisition, extended warranties, operation, maintenance and end-of-life management.
- 5.5 Request vendors reduce packaging or use the minimum amount necessary for product protection.
- 5.6 Require that surplus or outdated electronic equipment, including but not limited to, computers, monitors, printers and copiers, be designated for reuse or recycled under the requirement of 29 **Del.C.** §7002(b).

#### **6.0 Recycled-content Products**

- 6.1 Apply, as a general rule, the 5 percent price preference for purchasing recycled-content products as specified in 29 **Del.C.** §6938. Specify and purchase products that contain the highest percentage of post-consumer recycled-content practicable.
- 6.2 Specify that all printed materials (e.g., reports, brochures, letters, forms, business cards) that are purchased or produced must be printed on recycled-content paper and contain a statement on the material that the paper contains recycled-content. The statement should also indicate the percentage of post-consumer recycled content it contains.
- 6.3 Specify and purchase recycled-content transportation products such as signs, traffic cones, barricades, parking stops and delineators.
- 6.4 Specify the use of recycled, reusable, or reground materials for paved constructions projects.

#### **7.0 Energy And Water Savings**

- 7.1 Purchase energy efficient equipment with the most up-to-date, economically feasible and proven energy efficiency functions. This includes, but is not limited to, high-efficiency heating and cooling equipment, high-efficiency motors and equipments controls.
- 7.2 Purchase appliances and equipment that meets or exceeds the EPA's EnergyStar standards and have the EnergyStar label ([www.energystar.gov](http://www.energystar.gov)) as specified in 29 **Del.C.** §6939.
- 7.3 Replace non-energy efficient lighting, including interior and exterior lightning, street lighting and traffic signal lights with energy-efficient equipment and bulbs.
- 7.4 Replace incandescent light bulbs with compact fluorescent or light emitting diode (LED) bulbs when the incandescent bulbs need to be replaced.
- 7.5 Purchase water-saving products, including but not limited to, high-performance fixtures like low-flow, waterless urinals, tankless water heaters, low-flow faucets and aerators as well as faucets with motion-activated sensors. When possible, purchase products receiving EPA's WaterSense designation ([www.epa.gov/WaterSense](http://www.epa.gov/WaterSense)).

#### **8.0 Pollution Prevention And Toxics Reduction**

- 8.1 When procuring or contracting for cleaning services, require such contracted services to use environmentally preferable cleaning products and services, wherever practical. All chemical cleaning products and services purchased should conform to Green Seal, EcoLogo standards, Environmental Choice, or other 3<sup>rd</sup> party certification standards which are recognized by the U.S. EPA Design for the Environment (DfE) Formulator Program.
- 8.2 For purposes of this policy, "cleaning product" does not include any disinfectant, disinfecting cleaner, sanitizer or any other antimicrobial product regulated by the Federal Insecticide, Fungicide and Rodenticide Act, 7 USC 136 *et seq.*
- 8.3 Products shall not be toxic or highly toxic as defined by the OSHA Hazard Communication Standard, (29 CFR 1910.1200). Require that all surfactants and detergents be biodegradable and not contain phosphates.
- 8.4 Products and services should not include any ingredients recognized as carcinogenic by the EPA.

- 8.5 Purchase building products, such as paint, carpet, adhesives, furniture and casework, with the lowest amount of volatile organic compounds (VOCs), highest recycled content, and low or no urea formaldehyde.
- 8.6 Purchase paper products that are unbleached or that are processed without chlorine or chlorine derivatives.
- 8.7 Purchase soy-based ink for printing. Include the use of soy-based ink in printing contracts.
- 8.8 Purchase rechargeable instead of single use batteries.
- 8.9 Do not purchase products that use polyvinyl chloride (PVC) such as, but not limited to, office binders, furniture, flooring and medical supplies.
- 8.10 Specify that desktop computers, notebooks and monitors purchased or leased meet, at a minimum, the bronze standard of the Electronic Product Environmental Assessment Tool (EPEAT) criteria ([www.epeat.net](http://www.epeat.net)).
- 8.11 As a practice in Integrated Pest Management, purchase chemical controls only as a last resort. Purchase and use pesticides only after monitoring indicates they are needed and treatments are designed with the goal of removing only the target organism.

## **9.0 Green Landscaping**

- 9.1 Purchase environmentally friendly landscape services that includes design, construction, renovation and maintenance. These services may include grasscycling, composting and the reduction of hazardous products.
- 9.2 Purchase recycled-content materials when constructing hardscape and landscape structures.
- 9.3 Reduce water used for irrigation by purchasing plants that are native to the area and drought-tolerant that require minimal or no watering once established.
- 9.4 Reduce water pollution and heat-island effect by reducing the amount of impervious surfaces in the landscape. Permeable substitutes such as pervious concrete or pavers are preferred for walkways, patios, driveways and low-volume traffic areas.

## **10.0 End-of-life Management**

- 10.1 Require that all surplus or outdated equipment/facilities/materials be identified as surplus, and, as required by 29 Del.C. §7002, be considered to have no remaining useful life and available for disposal.
- 10.2 Focus on in-state reuse by State agencies, towns, municipalities and other State supported agencies to avoid duplicate procurement and encourage reuse of resources throughout every level of State government.
- 10.3 Preplan projects with one-time contracting to remove items considered surplus property and deliver to other state agencies or sell to the general public.
- 10.4 Consider buying material that at the end-of-life can be reutilized as-is or recycled, such as aluminum signs, metal fencing and metal shelving.

## **11.0 Agricultural Products**

- 11.1 Procurement of Agricultural Goods and Services shall consider the environmental impact as follows:
  - 11.1.1 Above threshold spend shall allow points of the total award that considers:
    - 11.1.1.1 Reduced fuel consumed to reach market/ Agency recipient.
    - 11.1.1.2 Products and/or Services that are provided by Agricultural Businesses which are certified for Best Management Practices(BMP), Good Food Handling Practices(GHP) and Good Agricultural Practices (GAP) through the Delaware Department of Agriculture or surrounding State's equivalent program.
    - 11.1.1.3 The consideration given for environmental impact shall not exceed 10% of the total points awarded or costs of the goods/ services.

---

# PROPOSED REGULATIONS

---

11.1.1.4 Fruit and vegetable consumption is an important component of a balanced diet consistent with the *Dietary Guidelines for Americans* and the Food Guide Pyramid. In order to maximize the nutritional value and reduce the use of carbon fuels, fresh produce to support the Farm to School Initiative should be required to be delivered within 2 days of harvest.

11.2 Under Threshold.

11.2.1 State Agencies shall obtain 3 quotes from local distributors, one of which must be a Delaware vendor, supplier or farmer to reduce the impact of transportation to market and the consumption of fossil fuels.

11.3 If a product or service is available by an agricultural business that is certified by the Delaware Department of Agriculture for Best Management Practices(BMP), Good Food Handling Practices(GHP) and Good Agricultural Practices (GAP) or an equivalent surrounding states program, they shall receive consideration equal to 10% of the total decision criteria.

## **12.0 Implementation**

12.1 GSS will oversee the statewide implementation of this Regulation.

12.2 GSS will establish an Environmentally Preferable Purchasing (EPP) Workgroup of no less than seven members to be selected from State agencies that will meet at least quarterly. The State GSS Director will chair the workgroup. The mission of the workgroup will be to enhance and facilitate the coordination and implementation of this Regulation as follows.

12.2.1 Identify immediate priorities, establish a process for identifying additional priorities and set deadlines for implementation.

12.2.2 Develop and implement an education and outreach program on this Regulation that may include workshops, conferences training, media events and electronic newsletters

12.2.3 Research and recommend recycled-content products for consideration on State contracts.

12.2.4 Develop, implement and assist State agencies in tracking their environmentally preferred purchasing progress.

12.2.5 Review and revise, if necessary, the standards of this Regulation on at least an annual basis.

12.3 The procurement solicitations for goods and services shall afford prospective vendors with an opportunity to quote prices for environmentally preferred products and non-preferred products, leaving the opportunity to purchase the preferred products to the State agency's discretion.

12.4 New purchasing contracts for the purchase of such products or cleaning services shall include an appropriate requirement consistent with this Regulation and guidelines provided by the Office.

12.5 This Regulation will become effective 10 days after being published as a final regulation.

---

## **OFFICE OF MANAGEMENT AND BUDGET**

29 Delaware Code, Sections 6303A and 6307A (29 **Del.C.** §§6303A & 6307A)

### **PUBLIC NOTICE**

#### **Promoting, Maintaining and Controlling the Public Use of the Legislative Mall**

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Director of the Office of Management and Budget is proposing to adopt a regulation setting forth the State of Delaware Environmentally Preferred Purchasing Policy.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on May 2, 2012 at 11:00 a.m. at the Office of Management and Budget, Haslet Building, room 219, 122 William Penn St., Dover, DE 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Robert

---

Scoglietti, Delaware Office of Management and Budget, 122 William Penn Street, Dover, DE, 19901. Written comments must be received on or before May 1, 2012. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the address of the Delaware Office of Management and Budget set forth above.

## **Promoting, Maintaining and Controlling the Public Use of the Legislative Mall**

### **1.0 Purpose**

The purpose of this Regulation is to establish rules and procedures to help promote, maintain and control the public use of the Legislative Mall.

### **2.0 Enabling Legislation**

Pursuant to 29 Del.C. §§6301A and 6307A, the Office and Facilities Management were established. The Office has authority to make regulations pursuant to 29 Del.C. §6303A(16).

### **3.0 Definitions**

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

“**Environmental Health Field Services**” means the State of Delaware Department of Health and Social Services, Division of Public Health, Environmental Health Field Services.

“**Facilities Management**” means the State of Delaware Office of Management and Budget, Division of Facilities Management.

“**Miss Utility**” means Miss Utility of Delaware.

“**Office**” means the State of Delaware Office of Management and Budget.

“**State**” means the State of Delaware.

### **4.0 Request Procedure**

4.1 Upon receiving a request to use Legislative Mall, Facilities Management will issue a tentative reservation letter detailing the rules and regulations governing use of the property. Reservations are not considered final until all required paperwork is filed with Facilities Management prior to the event. Permission to utilize the area cannot be assigned or transferred without prior written approval from Facilities Management.

4.2 Facilities Management approval only grants permission to utilize the property; it is the responsibility of the event sponsor to obtain all necessary permits required by the City of Dover and other governmental agencies.

### **5.0 Approval To Use Legislative Mall Is Subject To The Following Conditions:**

5.1 The event sponsor must provide satisfactory evidence of a minimum of \$1,000,000 (one million dollars) liability insurance coverage listing Facilities Management, as the certificate holder on the policy binder for the event (copy of document must be supplied to Facilities Management prior to the event).

5.2 The event sponsor must execute an indemnification and save harmless agreement to ensure that the State and Facilities Management shall accrue no liability for damage or injury to persons or property occurring on State premises.

5.3 The event sponsor must contact the City of Dover Police Department [(302) 736-7111] and the City of Dover Fire Marshal's Office [(302) 736-7010] to obtain the necessary permits and file the same.

5.4 If food will be prepared and/or served at the event, the event sponsor must contact Environmental Health Field Services [(302) 744-1220] to obtain any necessary permits.

---

## PROPOSED REGULATIONS

---

- 5.5 Contact the City of Dover Police Department and the Delaware Capitol Police [(302) 739-3200] to ensure the availability of police for traffic, noise and crowd control.
- 5.6 Contact the City of Dover Police Department to coordinate any necessary street closings.
- 5.7 No street closure of Legislative Avenue can take place without the written approval of Debby Porter, Legislative Council, at (302) 744-4387.
- 5.8 Tent supports or other ground penetrations are not permitted within 20 feet of the outside perimeter of Legislative Mall. It is the responsibility of the event coordinator to contact Miss Utility [(800) 282-8555] to have utilities that are not the responsibility of Facilities Management located and marked.
- 5.9 Only open-sided "Event" tents will be allowed to be erected for any single event and will be subject to approval of placement by Facilities Management.
- 5.10 No individuals may sleep or camp on Legislative Mall.
- 5.11 Any event related signage must be placed in a location that is approved by Facilities Management.
- 5.12 All signage must be removed by the end of the day of the event, before 11:59 p.m.
- 5.13 The grounds must be left in good repair and free of litter upon departure.
- 5.14 Vehicles and/or trailers of any type will not be permitted on grassy areas or sidewalks without the express permission of Facilities Management.
- 5.15 The use of paint or other permanent substances to mark streets, parking lots, grass, etc. is prohibited.
- 5.16 The use of tape, wire, nails, etc. to adhere signs, balloons or other materials to street lights, trees, benches, signs, buildings, etc. is prohibited.
- 5.17 Open fires are not permitted. All barbecue grills must remain curbside.
- 5.18 The serving and/or consumption of alcoholic beverages is not permitted.
- 5.19 The State of Delaware is not responsible for personal items and possessions on the Legislative Mall property. Unattended personal property is subject to removal by the Facilities Management or law enforcement.

### **6.0 Effective Date**

This Regulation will become effective 10 days after being published as a final regulation.

---

**Symbol Key**

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

**Final Regulations**

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

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

---

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**Statutory Authority: 16 Delaware Code, Section 1101 (16 **Del.C.** §1101)**ORDER****3310 Neighborhood Homes for Persons with Developmental Disabilities****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding the Assisted Living Facilities. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code**, Section 10114, with authority prescribed by 29 **Delaware Code**, Section 7971.

The Department published its notice of proposed regulatory change pursuant to 29 **Delaware Code** Section 10115 in the January 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2012, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSED CHANGE**

The changes will promote person centered care in these residential settings. Additionally, the revision establishes performance standards that are definitive and that can be used across providers to measure their performance.

**Statutory Authority**

29 **Del.C.** Chapter 79, §7971, Division of Long Term Care Residents Protection  
16 **Del.C.** Chapter 11, §1101, Nursing Facilities and Similar Facilities

## Background

DLTCRP and DDDS identified the need to revise the regulations to promote person centered care in these residential settings. Additionally, the revision establishes performance standards that are definitive and that can be used across providers to measure their performance.

## Summary of Proposal

This regulatory proposal essentially re-writes the regulations in particular; Provider Performance Standards; Person's Services and Supports; Staff Stability and Competency; and Safety and Sanitation. The extent of changes also required extensive revisions to the Definitions.

The Governor's Advisory Council for Exceptional Citizens (GACEC), the State Council for Persons with Disabilities (SCPD) and Autism Delaware commented on the proposed revisions.

Several comments were received regarding the following sections:

4.2.1, 4.2.5, 4.3.2, 4.5.1, 4.5.2, 4.6.4, 4.6.2.5, 4.6.6

*Response: The above listed sections were erroneously included in the regulations proposed in the December 2011 Register. They have been deleted. The comments addressing those sections will not be addressed herein unless they also impacted another section.*

Several comments were received regarding the definitions in the regulation.

*Response: The Division modified the definitions of the following in section 2;*

Advocate                      Choice                      Co-mingling of Funds

Incident                      Neighborhood Homes      Service Provider

Several comments were received regarding term clarification, grammar and typographical errors at sections 2.0, 3.9, and 3.10.

*Response: The Division corrected the language in those sections.*

A comment was made regarding a neighborhood home being limited to a stand-alone house and this would exclude neighborhood homes from being established in townhouses or apartments.

*Response: The term "stand-alone" used herein refers to a residence that is individually licensed and not a part of another facility, not to the type of structure, e.g. detached house, semi-detached house or townhouse. So, the term stand-alone is not exclusionary of those types of structures.*

A comment was made suggesting simpler language in section 3.9.

*Response: The regulation was amended*

A comment was made regarding a clarification to section 3.10.

*Response: The regulation was amended*

A comment was made that the use of the terms "services" and "service provider" were inconsistent at section 4.1.3.3.

*Response: The Division does not consider the use of the terms to be inconsistent.*

A comment was made that the provider should be required to comply with the Patient's Bill of Rights.

*Response: That requirement was added at 4.2.3.5.*

A comment was made to include legal representative or advocate to section 4.2.8.1.

*Response: That section has been renumbered to 4.2.3.1 and the language was added.*

A comment was made regarding adding the word "conspicuous" to section 4.2.8.4.

*Response; That section has been renumbered to 4.2.3.4 and the language was added.*

A comment was made regarding the requirement at 4.3.7.4 that a three day supply of medication be kept on hand and that in a weather emergency that supply could be exhausted.

*Response: Medicaid will only pay for a 3 day supply, DDDS will take this concern under consideration.*

A comment was made regarding the requirement to keep medication in the original container in Section 4.3.10.

*Response: That section has been renumbered 4.3.6.1 and has been amended.*

A comment was made regarding the timetables in sections 4.6.6.4 and 4.6.6.5.

*Response: Those sections have been renumbered 4.6.1.5 and 4.6.1.6. A profile plan is written prior to the individual moving into services. During the first 30 days to 45 days, assessments are completed on the individual in his/her new setting. Assessments are reviewed and preparation is made for the meeting that is held at 60 days. The ELP plan is then developed with the ISP plans in the next 60 days. During this 90 day period, the individual is receiving services through the profile plan.*

A comment was made regarding the omission of employment in a community setting at section 4.6.10.

*Response; That section has been renumbered 4.6.5 and the language was added.*

A comment was made regarding the food supply required at section 4.7.6.7.

*Response: The section has been renumbered 4.7.4.5 and requires a three day supply of perishable food, in addition to a three day supply of non-perishable food to be available.*

A comment was made to add the term "assistive technology" to section 4.8.10.4

*Response: That section has been renumbered 4.8.9.4 and the term was added.*

A comment was made to require a sanitizing cycle on dishwashers at section 6.4.

*Response: The regulation was amended.*

A comment was made that square footage in bedrooms should be increased at section 8.4.

*Response: The regulation was amended.*

A comment was made that the term handicapped should be modified in section 9.5.

*Response: The term was actually used in section 9.4. It has been modified.*

A comment was made regarding staff assignments during emergencies in section 10.6.

*Response: The regulation was amended*

A general comment was made regarding a central list of all regulations and policies not being available.

*Response: The Division will post policies and regulations on their website.*

## FINDINGS OF FACT:

The Department finds that the proposed changes set forth in the December 2011 *Register of Regulations* should be adopted, subject to the withdrawal and the modification set forth above which are not substantive.

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3301 Neighborhood Home for Individuals with Developmental Disabilities, with the withdrawal and the modification indicated herein, is adopted and shall be final effective April 1, 2012.

Rita Landgraf, Cabinet Secretary  
Dept. of Health and Social Services  
March 19, 2012

## 3310 Neighborhood Homes for Persons with Developmental Disabilities

### 1.0 Purpose

The following regulations are designed specifically for Neighborhood Homes, for five or fewer individuals with developmental disabilities, which are licensed by the Division of Long Term Care Residents Protection. These homes are distinct from Rest (Family care) Homes where three or fewer persons live in a home with care and supervision provided by persons who also reside on the premises.

These regulations address the minimum acceptable level of living conditions and supports for individuals in Neighborhood Homes. The purpose of these regulations is to provide a sequence of expectations for services rendered by the Neighborhood Home provider and a system for Neighborhood Home providers to be accountable to the Division of Long Term Care Residents Protection (DLTRCP) and the Division of Developmental Disabilities Services (DDDS).

### 2.0 Definitions

"Advocate" - [An advocate can include the guardian and/or the person who knows the individual best. An advocate can be a guardian, legal representative, or knowledgeable person who seeks to promote the person's best interest.]

"Assessment" The process of gathering information [to describe what has been learned about a person, and what others need to know or to do to support the person in attaining a healthy, safe and meaningful life] as part of the Essential Life style Planning process, including securing information about the individual's strengths, capacities, needs, preferences, and desired outcomes, health status and risk factors].

# FINAL REGULATIONS

**“Choice”** The process by which people make selections from an array of options [which are within the context of Division of Developmental Disabilities Services (DDDS) policies and all applicable state and federal laws and regulations intended to safeguard the individual and the rights of others].

**“Co-mingling of funds”**- Co-mingling of individual funds are funds that are blended into a “pool” of other program participants and/or [contacted contractual] provider [agency] funds.

**“[Essential Lifestyle Plan (ELP) Plan of Care (POC)]”** - A comprehensive document that specifies the individual’s [desired outcomes,] needs, [goals,] and preferences, and identifies the strategies to address each. [Through the Plan of Care, the individual exercises choice and control over services and supports through which risks are assessed and planned for. The Plan of Care identifies the services and supports that an individual needs in order to live successfully in the community. The ELP indicates who developed and participated in the process, the timing of the plan and how and when it is updated, including updates in response to changing circumstances and needs. The ELP includes information from assessments conducted prior to the planning meeting. The ELP identifies how the individual/family/advocate is informed of services under the waiver and how the process ensures that the plan addresses the individual’s desired outcomes, needs, preferences and identified health/safety needs. The plan addresses the coordination of services and supports and assigns responsibility for the monitoring and oversight of all components of the individual’s plan.]

**“Evaluation”** An assessment process performed by professionals, according to standardized procedures, that incorporates the use, when possible, of standardized tests and measures in addition to informal and observational measures.

**“Guardian”** – A legal relationship in which the person has been authorized to make decision for another person who has been determined by a court to be incompetent to manage his/her affairs and/or property.

**“General Event”** – Any event involving an individual receiving services which causes or could cause injury which has serious impact on the individual or others. A reportable General Event could include, but is not limited to: potential violations of an individual’s rights; an explained or unexplained injury; accidents requiring non-routine first aid or outside medical attention; an individual’s unauthorized absence, the involvement or potential involvement of the legal system/law enforcement; actions of an individual which is generally viewed as unacceptable social behavior in a community setting; significant destruction of property, any situation which necessitates an emergency restrictive procedure; events which could have an adverse impact on the individual or services; any situation which necessitates the use of a medical restraint; any deviation from a physician’s plan of treatment; Errors related to the documentation of a physician’s treatment plan; life-threatening or allergic reactions by an individual to medical treatment; the death of an individual regardless of cause.

**“General Event Report (GER)”** – The online incident reporting module which also includes the EMBIS (Emergency Medical and Behavioral Intervention Strategies) report, as required by the DDDS Behavior Support Policy. ]

**“Health Related Protection (HRP)”** – Any material or mechanical device, or equipment used to restrict the normal movement of an individual so as to prevent a fall or injury. Examples of mechanical restraints, which may be used as a health related protection may include (but not be limited to): bed rails, seat belt, bed enclosure system, etc.

**“Human Rights Committee (HRC)”** A body of individuals composed of impartial members with no direct affiliation with the Division of Developmental Disabilities Services (DDDS), and whose role is to serve as a monitoring agent to safeguard the rights and personal dignity of persons served by DDDS.

**“Incident”** An occurrence or event, a record of which must be maintained in provider’s files, that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors and omissions in medication/treatment. (Also see Reportable Incident)]

**“Individual”** - Term used throughout these regulations that [~~identify~~ identifies] someone receiving services and supports [~~through the DDDS~~].

**“Individual Outcome and Support Assessment (IOSA)”**- The DDDS assessment tool utilized to identify an individual’s preferences, needs for and satisfaction with services regarding: Living Options, Community Membership, Relationships/Social Network, Work, Health, Safety, and Organizational Support.

**“Neighborhood Home”** - A stand alone house [~~providing residential and support services to 5 or fewer individuals~~ within the community that serves up to 5 individuals with developmental disabilities] in a single-family home setting. These homes are licensed by the Division of Long Term Care Residents Protection pursuant to 16 Del.C. §1101 and must meet minimum acceptable standards for living conditions and supports.

**“Outcomes”** - The results and/or goals of the services and supports that people receive. A major emphasis of outcome based service provision is the facilitation of individual choice in defining success and satisfaction.

**“Peer Review of Behavioral Intervention Strategies (PROBIS)”**- The DDDS approved peer review committee charged with the review of Behavior and/or Mental Health Support Strategies, excluding positive behavior supports.

**“Physical Environment”** - Those locations in which the individual lives, works, recreates or receives services.

**“Reportable Incident”** - An occurrence or event which must be reported at once to the Division of Developmental Disabilities Services (DDDS) and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation. Reportable incident also includes an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; [~~and~~] significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident’s health and safety[; and incidents of physical altercations between 2 or more individuals in a residential or day program setting]. DDDS will forward the report to the Division of Long Term Care Residents Protection (DLTCRP). (Also see Incident.)

**“Rights Restriction”** - The limitation, disruption or constraint of a person’s freedom to engage in activities generally allowed to others in society. Such is permissible only on a case-by-case basis and when there has been due process, official approval received and the need for such documented.

**“Safety”**- The absence of recognizable hazards in the design, construction and maintenance of any component of the physical environment including equipment and the establishment of procedures to evaluate and to reduce risks of physical harm.

**“Sanitation”**- The promotion of hygiene and prevention of disease by the maintenance of uncontaminated conditions.

**“Screening”** - The initial part of the assessment process which is of limited scope and intensity and is designed to determine whether further evaluation or other intervention is indicated.

**“Service provider”** - A person or organization [~~contracted~~ under contract] with the DDDS, which is responsible for the provision of specific selected services and supports for the individual.

**“Support”** - A broad term used to refer to those methods designed to help an individual achieve a meaningful life and to function to his/her fullest capacity.

### **3.0 Licensing and General Requirements**

3.1 When a Neighborhood Home pursuant to these regulations plans any structural alteration, one copy of properly prepared plans and specifications for the entire home shall be submitted to the Division of Long Term Care Residents Protection (DLTCRP). The Neighborhood Home shall receive written approval of the plans before any work is begun.

3.2 Separate licenses are required for separate homes, regardless of their proximity, even though operated by the same Neighborhood Home provider.

A license shall not be transferred from one provider to another or from one location to another.

- 3.3 The license shall be conspicuously posted in the Neighborhood Home.
- 3.4 All applications for renewal of licenses shall be filed with DLTCRP at least thirty days prior to expiration. Licenses shall be issued by DLTCRP for a period not to exceed one year (12 months) from the date they are issued.
- 3.5 All required records maintained by the Neighborhood Home shall be open to inspection by the authorized representatives of DLTCRP and DDDS.
- 3.6 The term "Neighborhood Home" shall not be used as part of the name of any program in this State unless the home is licensed under these regulations.
- 3.7 No Neighborhood Home provider shall adopt rules that conflict with these regulations.
- 3.8 DLTCRP shall be notified in writing of any changes in the ownership or management of a Neighborhood Home.
- 3.9 Each Neighborhood Home provider shall provide ~~[with the admission agreement, to all persons or their family member/guardian,]~~ a complete statement ~~[enumerating listing]~~ all charges for services, materials and equipment ~~[which that]~~ shall, or may be, furnished to the person during the period of residency ~~[as part of the admission agreement to all individuals/family/guardian/advocate].~~
- 3.10 Each Neighborhood Home provider shall provide ~~[make known, in writing, the refund and prepayment policy a written statement]~~ at the time of admission~~[, and in the case of third party payment, an exact statement of responsibility in the event of retroactive denial]~~ that includes the refund and prepayment policy; and clarifies responsibility in the event of a retroactive denial in the case of a third party payment].
- 3.11 Each Neighborhood Home [service] provider shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

14 DE Reg. 1360 (06/01/11)

#### 4.0 Individual Process to Support Outcomes and Provider Performance Expectations

##### Part I- Individual Process to Support Outcomes

#### 4.1 Choice

~~[4.1.1 Choice is the opportunity to select from a variety of options. Some choices are basic like what to eat, when to go to bed, or what to do for fun; while others are major life choices such as where and with whom to live, where to work and how to express one's faith. All of these choices are important and belong to the individual. Individual's choices often change over time. The choices and decisions we make about our lives are shaped by opportunities, experiences, and personal priorities.]~~

~~4.1.2 Service providers must take the time to really listen to individuals. Not everyone can easily express their choices in words. Some individuals communicate in other ways, such as gestures, expressions, or through their actions. Service providers may need to help individuals understand their options and the consequences of their choices and decisions. Some individuals are reluctant to make choices and look to their friends, family, and support providers to decide. They may need support and experience to feel more comfortable making their own choices.]~~

~~4.1.[31][The Plan of Care- Essential Lifestyle Plan] contains documentation that the individual was supported to make informed choice about his/her service providers.~~

- 4.1.[31].1 The individual/family/advocate indicates that opportunities were given regarding choice of providers.
- 4.1.[31].2 Documentation is present to indicate that the individual was informed of his/her right to choose among [authorized] service providers.
- 4.1.[31].3 If the individual expresses a need for a change in services, documentation is present that efforts are being made to support the individual in making an informed choice of a new service provider.

4.1.~~[32]~~ The individual's lifestyle, personal activities, routines and **[programming supports]** is based on personal choice.

4.1.~~[32]~~.1 The individual is supported to make choices in all areas of his/her life.

4.1.~~[32]~~.2 Individual/family/advocate reports that the plan reflects what is important to the individual.

## 4.2 Rights, Respect, and Freedom From Harm

~~4.2.1 **Citizens of the United States have legal rights. Some of these rights are protected by our nation's Bill of Rights. Examples of these rights include: freedom of speech, due process, freedom of religion, and the right to privacy, among others. Individuals also have basic liberties. Individuals can move about freely, have private time and space, and keep their own personal possessions. Individuals can choose when and with whom they share personal information. Sometimes individuals need support to enjoy their freedom and exercise their rights.**~~

~~4.2.2 **All individuals deserve to be treated with respect and dignity. Every individual matters and should be valued. Individual differences should be recognized and valued.**~~

~~4.2.3 **All individuals should be free from abuse and neglect. Individuals who have experienced abuse or neglect may feel the effects of physical and emotional harm for a long time. Individuals should also be safe in their environments and have the needed supports in place to ensure personal safety.**~~

~~4.2.4 **Through a thorough planning process, individuals should be supported to understand and exercise their rights and responsibilities as citizens. Supports should be crafted to:**~~

~~4.2.4.1 **protect individual's rights.**~~

~~4.2.4.2 **help individuals identify areas in which they are vulnerable, and**~~

~~4.2.4.3 **identify where they would like to further explore the exercise of their rights, as they wish.**~~

~~4.2.5 **Service providers are required to support specific policies and procedures established to facilitate people's exercise of their rights, and to also endeavor to protect the individual's rights from either violation or restriction without due process.]**~~

4.2.~~[61]~~ The individual is treated as a valued and respected individual

4.2.~~[61]~~.1 The individual is treated in a respectful and dignified manner.

4.2.~~[61]~~.2 If the individual/family/advocate has a complaint, the service provider addresses the concern in a timely manner.

4.2.~~[61]~~.3 The individual decides when and with whom to share personal information.

4.2.~~[61]~~.4 The individual is free from unnecessary restraints/restrictions. **[Surveillance cameras/monitors are prohibited in private areas such as bedrooms and bathrooms unless the individual has extraordinary circumstances that deem constant monitoring. The use of cameras needs approval by PROBIS and HRC with final approval by the DDDS director/designee.]**

4.2.~~[61]~~.5 The individual has access to all areas of his/her environment.

4.2.~~[72]~~ The individual is free from physical and emotional harm.

4.2.~~[72]~~.1 The individual's incidents and accidents are reported and followed up as appropriate.

4.2.~~[72]~~.2 The Policy Memorandum 46 (PM46) policy for reporting abuse, assault, attempted suicide, mistreatment, neglect, financial exploitation and significant injury is followed.

4.2.~~[83]~~ The individual is supported to exercise his/her rights and responsibilities.

4.2.~~[83]~~.1 The individual's rights and responsibilities are reviewed with the individual/guardian, **[legal representative or advocate]** at least annually.

4.2.~~[83]~~.2 If the individual has a rights restriction, DDDS policy and procedures are followed.

4.2.~~[83]~~.3 The Individual Rights Complaint Policy is posted within the residence and the individual/family/advocate has access to the Individual Rights Complaint form.

4.2.~~[83]~~.4 The Patient's Bill of Rights (Title 16) is posted **[in a conspicuous location]** within the residence **[to ensure easy access by individuals served].**

**4.2.3.5 The service provider complies with the Patient's Bill of Rights (Title 16).]**

~~4.2.[94]~~ The service provider completes all required documentation per the DDS Behavioral/Mental Health/Health Related Protection policies.

~~4.2.[94].1~~ Peer Review of Behavior Intervention Strategies (PROBIS), Human Rights Committee (HRC), and Health Related Protection (HRP) reviews are completed per policy.

~~4.2.[94].2~~ Consents are obtained annually, as otherwise specified, or whenever a change occurs.

~~4.2.[94].3~~ The Individual's Rights Restriction form is completed and reviewed at least annually by HRC or whenever additional rights are restricted.

~~4.2.[405]~~ The service provider safeguards and maintains records regarding the funds of individuals receiving services, follows the DDS Individual Funds policy, and supports the individual's efforts towards independence/self-management of those funds.

~~4.2.[405].1~~ The individual has access to his/her funds.

~~4.2.[405].2~~ The individual is supported to manage his/her funds to the greatest extent possible.

~~4.2.[405].3~~ The individual's Personal Spending Record (PSR) is reviewed as outlined by DDS policy to ensure that the individual's money is safeguarded.

~~4.2.[405].4~~ Authorizations for expenditures are present as required by policy.

~~4.2.[405].5~~ Documentation is present for expenditures as required by policy.

~~4.2.[405].6~~ Discrepancies in the individual's funds are addressed in a timely manner.

~~4.2.[405].7~~ The individual's funds are not co-mingled.

~~4.2.[405].8~~ The individual's funds are kept in a secure manner.

~~4.2.[405].9~~ Resource and personal spending issues effecting eligibility for services are handled immediately.

**4.3 Health and Wellness**

~~**4.3.1 Health and wellness is important to everyone but may mean something different to each individual. Individuals need access to quality health care. Individuals need to see doctors and other health professionals when they are ill. Medical care is also necessary when people are healthy. Individuals need routine check ups, medical screenings, and immunizations to stay in good health.**~~

~~**4.3.2 Individuals make many decisions that affect their health. Many decisions carry significant risks. Some decisions are about the type of medical treatment. Individuals must decide what medications to take or when to have surgery. Other decisions are about how to live—what to eat and how much—to exercise regularly—to smoke or not, etc. Individuals should know the risks and potential benefits of each decision. They should be supported to make informed decisions on these matters.**~~

~~**4.3.3 Service providers are expected to:**~~

~~**4.3.3.1 Help individuals gather the facts necessary to make informed decisions.**~~

~~**4.3.3.2 Help individuals to schedule and get to appointments.**~~

~~**4.3.3.3 Know and understand individuals' medical issues, being sensitive to each individual's expression of symptoms. Individuals may need support to take their medicine or follow other prescribed treatments.**~~

~~**4.3.3.4 Service providers need to promote the exercise of healthy life styles while still respecting choice and self-determination.**~~

~~**4.3.3.5 Service providers need to document any obstacles to obtaining needed health care and actions that are being taken to address the concerns.]**~~

~~4.3.[41]~~ The individual receives routine medical/mental health care services, including preventative health screenings as indicated.

~~4.3.[41].1~~ Lab work is completed in a timely manner: as ordered or within 5 working days of receipt of order.

- 4.3.[41].2 Necessary screenings/appointments are scheduled within 5 working days of receipt of order or per doctor's order.
- 4.3.[41].3 The service provider advocates for any other screenings when indicated by the individual's needs.
- 4.3.[41].4 The individual receives all required medical and mental health care.
- 4.3.[41].5 If the individual is not receiving needed health care services, documentation is present that indicates what is being done by the service provider(s) to address the specific issue.
- 4.3.[52] Each individual's health and immunization history shall be updated continuously.
  - 4.3.[52].1 Documentation is present to indicate that the individual's current health and immunization history is updated on a continuous basis.
- 4.3.[63] Individuals receive PPD screenings as mandated.
  - 4.3.[63].1 Service Providers shall have on file the results of tuberculin testing performed on all individuals at the beginning of his/her service by DDDS (referenced as newly placed individuals) and following the discovery by the service provider of a new case.
  - 4.3.[63].2 All newly placed individuals shall have a baseline two-step tuberculin skin test (TST) or single Interferon Gamma Release Assay (IGRA) or TB blood test such as Quanti FERON. The service provider shall provide employee documentation of their baseline test.
  - 4.3.[63].3 For newly placed individuals with a negative TST or IGRA no annual evaluation is required unless the category of risk changes as determined by the Division of Public Health. Any required subsequent testing according to risk category shall be in accordance with the recommendations of the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.
  - 4.3.[63].4 If any of the baseline tests listed above are positive, the newly placed individual shall receive one chest x-ray to rule out active disease, be offered treatment for latent TB (LTBI) infection and shall be evaluated annually for signs and symptoms of active TB if they cannot provide documentation of completion of treatment for LTBI.
  - 4.3.[63].5 Service Providers shall establish policies for TB risk assessment for any individual having a positive skin test but negative x-ray. The service provider has available an annual statement from a licensed health care professional that indicates the individual has exhibited no signs or symptoms of active TB.
- 4.3.[74] The individual receives medication as ordered.
  - 4.3.[74].1 Annual/current orders are present for all medications.
  - 4.3.[74].2 Non-routine medications are obtained immediately upon receipt of Physician's order.
  - 4.3.[74].3 Medication labels and Medication Administration Records match the Physician's Orders for the medication.
  - 4.3.[74].4 A three-day supply of medications is available at all times.
  - 4.3.[74].5 PRN medications have protocols for how/when the medication should be given.
  - 4.3.[74].6 A supply of over-the-counter medication (SMOs) shall be stocked at each home. However, the use of such medications must be authorized by the individual's physician in writing, and their use documented in the medication record and in the individual's active file.
- [4.3.4.7 The individual's family/guardian/advocate is notified promptly when a new medication is prescribed.]**
- 4.3.[85] The individual's medication regimen is managed according to the DDDS Assistance with Self-Administration of Medication (AWSAM) curriculum.
  - 4.3.[85].1 Medication shall be taken exactly as indicated on the label.
  - 4.3.[85].2 A medication record shall be maintained for each individual. The record shall show the name and strength of each medication being taken by the individual.
  - 4.3.[85].3 Each dose administered shall be recorded by date, time and initials of person or persons assisting.
  - 4.3.[85].4 Medication errors are addressed immediately.

# FINAL REGULATIONS

- 4.3.~~[85]~~.5 Accurately maintained count sheets are present for all controlled substances and other medications not secured in bubble packs. (Standard SMOs do not need to be counted.)
- 4.3.~~[85]~~.6 Side effects sheets are present for all medication the individual receives.
- ~~[4.3.8.7]~~ **A count sheet for controlled substances shall be maintained for each shift.**
- 4.3.~~[96]~~ Medication is stored and disposed of as required by State and Federal policies.
- 4.3.~~[96]~~.1 Medication is in the original container and properly labeled **[except for medications for individuals approved for self-administration of medication. Those medications may be stored in weekly dose containers.]**
- 4.3.~~[96]~~.2 Medications to be applied externally shall be distinguishable from medications to be taken internally by means of packaging, labeling and segregation within storage areas.
- 4.3.~~[96]~~.3 Medication shall be stored and locked under proper conditions of temperature, light, humidity and ventilation. Room temperature acceptable for medication storage is between 59 and 86 degrees Fahrenheit.
- 4.3.~~[96]~~.4 Medications requiring refrigeration shall be kept in a separate locked box within the refrigerator. A temperature monitoring device shall be used and the temperature shall be maintained between 36 and 42 degrees Fahrenheit.
- 4.3.~~[96]~~.5 Discontinued and outdated medications and containers with illegible or missing labels shall be promptly disposed of in a safe manner.
- 4.3.~~[96]~~.6 Controlled substances shall be double locked.
- 4.3.~~[407]~~ Individuals are supported to participate in Assistance with Self- Administration or to self-medicate to the best of his/her ability and interest.
- 4.3.~~[407]~~.1 Individuals receiving medication shall be instructed in self-administration to the limit of their understanding. The service provider shall also include instruction in the purpose, dosage and possible side effects of the prescribed medication to the limit of the individual's understanding.
- 4.3.~~[407]~~.2 Assessments for self-medication are completed at least annually or more often, if needed, for individuals who desire to self-medicate.
- 4.3.~~[448]~~ The individual's nutritional needs are met.
- 4.3.~~[448]~~.1 The individual has a nutrition assessment completed upon initiation of services.
- 4.3.~~[448]~~.2 The individual has a nutritional re-assessment when deemed necessary.
- 4.3.~~[448]~~.3 Medically prescribed diets are monitored by nurse/dietitian.
- 4.3.~~[448]~~.4 Food is served **[in a manner that is medically indicated]** according to prescribed diets as applicable to the individual's needs.]
- 4.3.~~[448]~~.5 Individuals are offered a balanced diet, healthy choices, and are supported to participate in food selection and preparation across settings.
- 4.3.~~[448]~~.6 Records of food served are maintained by the service provider for three months.
- 4.4 Relationships and Community Membership
- ~~[4.4.1]~~ **Individuals living in the community should have access to a full array of community based services and supports. Their person-centered plans should reflect a thorough planning process that documents the services and supports needed for the individual to have an inclusive community life that does not rely solely on paid services. Such planning should also include consideration for mutual caring and emotional support. Services and supports designed to facilitate community access and inclusion helps individuals to:**
- 4.4.1.1 **cultivate relationships,**
- 4.4.1.2 **discover preferences,**
- 4.4.1.3 **engage in the pursuit of new interests,**
- 4.4.1.4 **learn new things,**
- 4.4.1.5 **make informed decisions,**
- 4.4.1.6 **develop valued social roles, and**

~~4.4.1.7 meaningfully contribute to the life of their chosen communities.]~~

4.4.~~[21]~~ The individual has relationships he or she chooses, is supported to maintain existing relationships, and experiences opportunities to develop new relationships as desired.

4.4.~~[21].1~~ The individual indicates that he/she has valued relationships.

4.4.~~[21].2~~ The service provider supports the individual in learning about, developing new, and/or maintaining existing relationships.

4.4.~~[32]~~ The individual has opportunities to participate in activities at home, at work, in the community and during leisure time that he/she chooses.

4.4.~~[32].1~~ The individual indicates that he/she participates in activities of his/her choice.

4.4.~~[32].2~~ Documentation indicates that the individual is participating in chosen activities.

4.4.~~[32].3~~ Activities are offered at a frequency that the individual chooses.

4.4.~~[32].4~~ The service provider addresses any of the individual's concerns regarding activities, relationships and community membership.

4.5 Assistive Technology

~~[4.5.1 According to the Federal Register (August 19, 1991, p. 41272) Assistive Technology means an item, piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.~~

~~4.5.2 Such interventions may include an array of mechanical, electronic, and computer based equipment, non-mechanical and non-electronic aids, specialized instructional materials, services, and strategies that individuals with disabilities can choose to use in order to:~~

~~4.5.2.1 Enhance independence.~~

~~4.5.2.2 Increase environmental access.~~

~~4.5.2.3 Support meaningful community participation.~~

~~4.5.2.4 Assist with learning.~~

~~4.5.2.5 Enable full and competitive employment possibilities.~~

~~4.5.2.6 Facilitate the attainment of personal outcomes, including an improved quality of life.]~~

4.5.~~[31]~~ The individual has assistive technology to maximize independence.

4.5.~~[31].1~~ Individuals who use adaptive, corrective, mobility, orthotic, prosthetic, communication or other assistive devices or supports shall receive instruction in their proper use and shall receive professional assessments annually or as otherwise prescribed, to ascertain the continued applicability and fitness of those devices or supports.

4.5.~~[31].2~~ The individual has access to his/her equipment.

4.5.~~[31].3~~ The individual is supported to be as independent as possible in the use of his/her equipment.

4.5.~~[31].4~~ If the individual is not using ordered assistive technology, a documented plan is developed to facilitate resolution of the issue. A re-assessment and/or discontinue order shall be obtained if it is determined that the current device is no longer feasible for the individual.

4.5.~~[31].5~~ When needed, interpreters are used to support the individual in communication.

4.5.~~[42]~~ The individual's adaptive or assistive devices or supports shall be clean and in good repair [at all times.]

4.5.~~[42].1~~ The individual's equipment is in good repair.

4.5.~~[42].2~~ The individual's equipment is clean.

4.5.~~[42].3~~ Alternative arrangements are in place in order to prevent the individual from going without needed supports during [repair or cleaning periods of repair, replacement, cleaning or foreseeable loss.

4.5.2.4 The individual's Essential Lifestyle Plan reflects what provider of service is responsible for the continued upkeep of the adaptive or assistive device.]

## 4.6 Individual Planning and Implementation

- ~~4.6.1 Developing a plan of care helps to create action steps designed to support an individual in attaining his/her hopes and dreams. The plan will establish the direction an individual wants to go, determine the supports needed to get there, and identify who will support the individuals to reach his or her dreams.~~
- ~~4.6.2 A good planning process helps to organize and use natural supports like family, friends, and trusted acquaintances. Identifying formal community supports and services to help the individuals achieve what is important to him or her may also be necessary. The plan may focus on developing personal competencies and skills, or identifying the supports needed for an individual to:~~
- ~~4.6.2.1 learn how to live on his/her own or live more independently.~~
  - ~~4.6.2.2 find the right job.~~
  - ~~4.6.2.3 make friends.~~
  - ~~4.6.2.4 take the bus around town.~~
  - ~~4.6.2.5 pursue a hobby or leisure interest, and create opportunities to experience a wider range of options from which to develop preferences.~~
- ~~4.6.3 When individuals receive a variety of experiences and opportunities to try new things, they get to increase their preferences, and develop enriched hopes and dreams. We all need to feel that we have a degree of control over, and are making progress towards our goals. Recognizing and celebrating our accomplishments give us the strength and determination to take risks and pursue new challenges.~~
- ~~4.6.4 The Division of Developmental Disabilities Services affirms that employment and meaningful participation in their communities is an important part of the lives of the individuals it serves. Further, the Division believes that employment in the community should be the first service option considered for individuals.~~
- ~~4.6.5 Following the development of the plan of care, each service provider is expected to routinely monitor, evaluate, and document the implementation of services/supports according to the criteria established within the Plan of Care. Examples of criteria for evaluating the success of supports/services include:~~
- ~~4.6.5.1 the individual's satisfaction with the supports/services.~~
  - ~~4.6.5.2 progress towards the attainment of goals, determining whether the provision of supports/services are consistent with the individual's choices as documented in the plan of care.]~~
- 4.6.~~61~~ Upon initiation of services, an ~~[Plan of Care~~ Essential Lifestyle Plan] that documents an individual's needs, preferences, and his/ her selected supports and services are developed for ~~[and with]~~ the individual.
- 4.6.~~61~~.1 The individual's profile [plan] with needed information to serve the individual is present at initiation of services.
  - 4.6.~~61~~.2 Prior to the development of the ~~[Plan of Care (POC)~~ Essential Lifestyle Plan (ELP)], documentation is present that needs and preferences indicated in the individual's profile are being addressed by the service provider.
  - 4.6.~~61~~.3 ~~[An assessment of the individual's desired outcomes is completed within 30 days of initiation of services.~~ All necessary assessments, including an assessment of the individual's desired outcomes, are completed within 30 days of initiation of services and are accessible for purposes of program planning.
- 4.6.1.4 A community based work assessment is completed upon initiation of services by the day service provider and is accessible for the purposes of program planning.]
- 4.6.~~6.41.5~~ The ~~[POC~~ ELP] meeting is held within 60 days of initiation of services.
- 4.6.~~6.41.6~~ The ~~[POC~~ ELP] is implemented within 90 days of the initiation of services.

- 4.6.[72] The Plan of Care is developed in accordance with DDS policies and procedures.
- 4.6.[72].1 The individual/family/advocate and personally selected stakeholders have the opportunity to participate in the development of the plan to the extent that the individual wishes.
  - 4.6.[72].2 Meetings to develop or update the **[POC ELP]** are held at times and locations selected by the individual.
  - 4.6.[72].3 The **[POC ELP]** includes all services and supports that the individual chooses and/or needs.
  - 4.6.[72].4 The **[POC ELP]** has administrative/designee **[oversight and ]** approval. ~~[prior to implementation.]~~
  - 4.6.[72].5 Responsibilities for the provision of services and supports are defined.
  - 4.6.[72].6 Upon development of the plan, documentation reflects that the plan was shared with all service providers and that they have reviewed the current plan.
- [4.6.2.7 The ELP is shared with the individual/family/guardian/advocate.]**
- 4.6.[83] The individual's services and supports provided are aligned with his/her needs as defined in the **[Plan of Care Essential Lifestyle Plan]**
- 4.6.[83].1 Services and/or supports to address the needs of the individual are clearly defined within the **[POC ELP]**.
  - 4.6.[83].2 For individuals who use adaptive, corrective, mobility, orthotic, prosthetic, communication or other assistive devices or supports, the individual's **[POC ELP]** shall specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support.
- 4.6.[94] The individual's services and supports provided are aligned with his/her preferences as defined in the **[Plan of Care Essential Lifestyle Plan]**.
- 4.6.[94].1 Services and/or supports to address the individual's preferences are clearly defined within the **[POC ELP]**.
  - 4.6.[94].2 Preferences which may take long-term planning shall be included within the **[POC ELP]** and evidence present that the team is making efforts to support the individual in achieving his/her desires.
- 4.6.[405] The ~~**[Plan of Care Essential Lifestyle Plan]**~~ addresses efforts to support the individual's advancement towards meaningful participation and/or employment in their communities.
- 4.6.[405].1 If the individual who has community employment indicates a desire to increase his hours of employment, the **[POC ELP]** should reflect goals for increasing the number of hours of employment.
  - 4.6.[405].2 If the individual is not working in a community setting and expresses a desire to work **[in a community setting]**, the **[POC ELP]** should reflect that efforts are being made to achieve employment **[in a community setting.]**
  - 4.6.[405].3 If an individual is not working in a community setting, a community based work assessment should be completed **[upon the individual's request and/or at least]** every three years to determine if employment within the community would be a viable option for the individual.
  - 4.6.[405].4 If an individual expresses a desire not to work, the **[POC ELP]** reflects that the individual is given opportunities for meaningful community participation.
- [4.6.5.5 If an individual expresses a desire to retire, the ELP reflects that efforts are being made to achieve the individual's expressed desire to retire.]**
- 4.6.[446] The individual's ~~**[Plan of Care Essential Lifestyle Plan]**~~ is reviewed and revised before the annual review date.
- 4.6.[446].1 All necessary assessments, including an assessment of the individual's desired outcomes are completed prior to the annual **[POC ELP]** meeting and assessable for purposes of program planning.

# FINAL REGULATIONS

- 4.6.~~[146]~~.2 The individual's ~~[POC ELP]~~ meeting is held within at least 365 days of the previous meeting.
- 4.6.~~[127]~~The ~~[Plan of Care Essential Lifestyle Plan]~~ indicates that services and supports are revised when an individual's needs and/or preferences change.
- 4.6.~~[127]~~.1 All components of the ~~[POC ELP]~~ are present for implementation within 30 days of the meeting.
- 4.6.~~[127]~~.2 Documentation reflects ongoing revision as necessary.
- 4.6.~~[138]~~Services are delivered in accordance with the ~~[service plan Essential Life style Pla n]~~ with regard to scope, amount and duration/frequency.
- 4.6.~~[138]~~.1 Scope- All components of service delivery are specified in the plan.
- 4.6.~~[138]~~.2 Amount- Number of units of services is specified in the plan (i.e. daily, hourly, ½ hour, etc.).
- 4.6.~~[138]~~.3 Duration- How long services are to be delivered is specified in the plan (i.e. 1 month, 6 months, 1 year, etc.).
- 4.6.~~[138]~~.4 Frequency- Services are being delivered as often as indicated in the plan (i.e. 3 times a day, 3 times a week, etc.).
- 4.6.~~[149]~~The individual's State Case Manager visits the individual for the purpose of reviewing the ~~[POC ELP]~~ on at least a monthly basis.
- 4.6.~~[149]~~.1 Documentation is present that the State Case Manager has visited the individual at least monthly, ~~[has face to face communication,]~~ and ~~[has]~~ reviewed ~~[all components of]~~ the ~~[POC ELP]~~ to ensure services are adequate and there are no changes in the individual's needs or status.
- 4.6.~~[1510]~~The individual's Residential Service Provider Program Coordinator completes at least monthly reviews of the implementation of the individual ~~[Plan of Care Essential Lifestyle Plan]~~.
- 4.6.~~[1510]~~.1Documentation is present that the Residential Service Provider Program Coordinator has visited the individual at least monthly, has face to face communication, and completed at least a monthly review of the implementation of all components of the individual's ~~[POC ELP]~~.
- 4.6.~~[1611]~~Each service provider shall monitor, review, analyze, and observe all components of the individual's ~~[Plan of Care Essential Lifestyle Plan]~~ where they provide service and document information on the individual's plan on a frequency indicated in the ~~[POC ELP]~~.
- 4.6.~~[1611]~~.1The service provider's ongoing documentation reflects ~~[all]~~ areas where the service provider has responsibility.
- 4.6.~~[1611]~~.2There is ~~[documented]~~ evidence that the applicable service provider has observed and monitored the implementation of the individual's plan on an ongoing basis.
- 4.6.~~[1712]~~Based on the ongoing monitoring of the plan, the service provider has taken any needed action, or is in the process of taking action on components of the plan where they have responsibility.
- 4.6.~~[1712]~~.1The individual's concerns/issues with the plan have been addressed with the individual/family/~~[guardian advocate]~~ in a timely manner.
- 4.6.~~[1712]~~.2The applicable service provider has shared concerns with the individual's other service providers as necessary to ensure ongoing service provision.
- 4.6.~~[1712]~~.3Any needed action, based on ongoing monitoring of the plan, is taken by the service provider.

## Part II - Provider Performance Expectations

### 4.7 Qualified Service Providers

- ~~[4.7.1 Service Providers are entrusted with supporting people who are often vulnerable in society. They receive public funds to provide services and are expected to function well as both an agent of high quality service delivery and as a fiscally sound business. Service~~

~~providers must have a strong infrastructure that incorporates a values base consistent with DDDS, contemporary understanding of the field of developmental disabilities and an ability to translate that understanding into practice. Additionally, the service provider must adhere to sound business principles and be fiscally solvent.]~~

- 4.7.~~[21]~~ The service provider is delivering services in accordance with the DDDS Contract and the individual's Plan of Care.
- 4.7.~~[21]~~.1 The services that are provided by the service provider meet the operational definitions as outlined by DDDS.
- 4.7.~~[21]~~.2 Any billing of services should accurately reflect the type, scope, duration and amount of service delivered by the service provider.
- 4.7.~~[32]~~ The service provider shall comply with all applicable DHSS and DDDS policies.
- 4.7.~~[32]~~.1 Policies are available to service provider staff.
- 4.7.~~[32]~~.2 The service provider follows DDDS and DHSS policies and procedures.
- 4.7.~~[32]~~.3 Staff demonstrate knowledge of applicable policies and procedures.
- 4.7.~~[43]~~ The service provider supports growth and change to continually improve services to individuals.
- 4.7.~~[43]~~.1 The service provider has polices that support self-determination principles and DDDS philosophy.
- 4.7.~~[43]~~.2 The service provider actively solicits and uses input from individuals.
- 4.7.~~[43]~~.3 The service provider has an internal quality management system and submits semi-annual agency performance reports to DDDS.
- 4.7.~~[54]~~ The service provider is in compliance with major environmental/safety standards.
- 4.7.~~[54]~~.1 Accessible- accommodations are present to assure the individual's access to support and service environments.
- 4.7.~~[54]~~.2 Safe- service and support environments are free of safety hazards.
- 4.7.~~[54]~~.3 Sanitary- service and support areas are maintained in sanitary condition.
- 4.7.~~[54]~~.4 Home like- service and support areas are personalized to display the choices and interests of the individual and create a comfortable home like environment.
- 4.7.~~[54]~~.5 Food supplies are provided in adequate quantities- at least a three day supply of food **[in addition to a 3 day supply of non-perishable food,]** is available in residential sites at all times.
- 4.7.~~[54]~~.6 Food is stored in a safe and sanitary environment.
- 4.7.~~[65]~~ Service providers have adequate procedures and plans for emergencies, disaster-fire drills and evacuation needs.
- 4.7.~~[65]~~.1 Emergency/Disaster Plans present/updated.
- 4.7.~~[65]~~.2 Fire drills completed per site requirement (Residential- once per shift per quarter, Facility Based Day Services- once per quarter).
- 4.7.~~[65]~~.3 Fire Suppression Equipment if present.
- 4.7.~~[65]~~.4 Emergency numbers available.
- 4.7.~~[65]~~.5 Staff demonstrate knowledge of emergency procedures.
- 4.7.~~[65]~~.6 Evacuation/Relocation Plans present. **[The Eme rgency/Relocation Plan ref lects knowledge of the resources that will identify accessible emergency shelters.**
- 4.7.5.7 **A supply of oxygen and battery packs are available as deemed necessary.]**
- 4.7.~~[6-75.8]~~ **Non-perishable food and capacity to store 1 gallon of potable water per person per day for at least a 72-hour period is present.**
- [4.7.5.9 An emergency supply of medications is available.]**
- 4.7.~~[76]~~ The individual has accessible, well-maintained transportation available.
- 4.7.~~[76]~~.1 The transportation system operated by, or under contract to, the home shall meet local and state licensing, inspection, insurance, and capacity requirements.

- 4.7.~~[76]~~.2 Vehicles used to transport service persons shall be equipped with a seat belt for each person and a means of communication. Vehicles used to transport individuals with physical impairments shall be adapted to their needs.
- 4.7.~~[76]~~.3 Emergency transportation shall be available on a 24-hour basis
- 4.7.~~[76]~~.4 The service provider shall provide or arrange transportation for a individual's routine medical and dental care.
- 4.7.~~[76]~~.5 Fire Suppression Equipment is present.
- 4.7.~~[76]~~.6 First Aid Supplies are present.
- 4.7.~~[76]~~.7 The vehicle is in good repair.
- 4.7.~~[76]~~.8 Emergency information is present.
- 4.7.~~[76]~~.9 Wheelchair lifts, ramps, etc. are safe and operate properly.

4.8 Staff Stability and Competency

~~[4.8.1 Direct support professionals are the cornerstone of quality service delivery. Individuals and their families form relationships with these staff and often suffer when services are interrupted by frequent turnover or a lack of competency. Service providers that routinely perform well respect the role of direct support professionals and provide them with the necessary training and supports to do their jobs well. This in turn results in higher quality outcomes and a more active community life for people.]~~

4.8.~~[21]~~ The service provider abides by all DHSS/DDDS background screening policies and applicable State of Delaware Laws.

- 4.8.~~[21]~~.1 Federal and State Criminal background checks are completed per contract requirements on staff.
- 4.8.~~[21]~~.2 Adult registry check is completed on staff, per contract requirements.
- 4.8.~~[21]~~.3 Child registry check is completed on staff, per contract requirements.

4.8.~~[32]~~ Ten -step Drug testing is completed on staff (per service provider contract) that includes the following:

- 4.8.~~[32]~~.1 Marijuana/cannabis
- 4.8.~~[32]~~.2 Cocaine
- 4.8.~~[32]~~.3 Opiates including heroin
- 4.8.~~[32]~~.4 Phencyclidine (PCP)
- 4.8.~~[32]~~.5 Amphetamines
- 4.8.~~[32]~~.6 Barbiturates
- 4.8.~~[32]~~.7 Benzodiazepine
- 4.8.~~[32]~~.8 Methadone
- 4.8.~~[32]~~.9 Methaqualone
- 4.8.~~[32]~~.10 Propoxyphene

4.8.~~[43]~~ Drivers of vehicles shall have valid and appropriate driver's licenses.

4.8.~~[54]~~ All personnel required by Delaware State law to practice with a professional license have provided legal documentation of current, authorized licenses.

4.8.~~[65]~~ The service provider shall have policies and procedures for infection control as it pertains to individuals, staff, and visitors. Upon confirmation of reportable disease the Division of Public Health shall be notified.

4.8.~~[76]~~ Service providers shall comply with the following PPD screening requirements:

- 4.8.~~[76]~~.1 All service providers shall have on file the results of tuberculin testing performed on all new employees and following the discovery of a new case.
- 4.8.~~[76]~~.2 All employees on hire shall have a baseline two-step tuberculin skin test (TST) or single Interferon Gamma Release Assay (IGRA) or TB blood test such as Quanti FERON. The Service Provider shall provide employee documentation of their baseline test.

- 4.8.[76].3 For employees with a negative TST or IGRA no annual evaluation is required unless the category of risk changes as determined by the Division of Public Health. Any required subsequent testing according to risk category shall be in accordance with the recommendations of the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.
- 4.8.[76].4 If any of the baseline tests listed above are positive, the employee shall receive one chest x-ray to rule out active disease, be offered treatment for latent TB (LTBI) infection and shall be evaluated annually for signs and symptoms of active TB if they cannot provide documentation of completion of treatment for LTBI.
- 4.8.[76].5 Service providers shall establish policies for TB risk assessment for any employee having a positive skin test but negative x-ray. The service provider has available an annual statement from a licensed health care professional that indicates the employee has exhibited no signs or symptoms of active TB.
- 4.8.[87] Orientation and training shall be provided by providers to staff in accordance to the training policy of DDS and shall be documented, continuously updated and made available upon request.
  - 4.8.[87].1 There is documentation that all staff have been trained according to the DDS training policy.
  - 4.8.[87].2 Service providers who have successfully completed a Board of Nursing approved Assistance with Self-Administration of Medication (AWSAM) training program may assist individuals in the taking of medication.
    - 4.8.[87].2.1 Documentation is present to substantiate that each staff person assisting with medications has completed the required supervised medication assistance sessions prior to independently assisting individuals.
    - 4.8.[87].2.2 Staff are observed to assist the individual with medications according to the AWSAM curriculum.
    - 4.8.[87].2.3 Staff whose medication certification is expired shall not assist with medications.
- 4.8.[98] There is documentation present that staff have other needed training to support the individual's health and wellness including specialized behavioral and health support plans.
  - 4.8.[98].1 Staff are provided specialized training according to the individual's needs.
  - 4.8.[98].2 Training is updated as needed.
- 4.8.[409] Staff demonstrate competency and knowledge of the individual's programming.
  - 4.8.[409].1 Staff reflect knowledge of DDS and DHSS policies and procedures as indicated by staff response to questions and observation.
  - 4.8.[409].2 Staff reflect knowledge of the individual's programming, needs and preferences as indicated by staff response to questions and observations related to the implementation of the individual's plan of care.
  - 4.8.[409].3 Staff treat the individual with dignity and respect.
  - 4.8.[409].4 The staff demonstrate an understanding of when the individual should use adaptive equipment **[or assistive technology]**.
- 4.9 Individuals' Records
  - 4.9.1 A cumulative record containing all information and documents related to supporting and providing services to the individual shall be maintained chronologically for each individual.
  - 4.9.2 The record shall be readily accessible to those who require such access in order to provide services as described in the individual's support plan.
  - 4.9.3 All information concerning an individual served, including information contained in an automated data bank, is confidential; and access shall be limited to staff who need to see the record, or to **[individuals persons]** specifically authorized by the individual or legally qualified representatives.
  - 4.9.4 Entries in an individual's record referring to actions with another individual shall be coded in such a way as to protect the confidentiality of the individuals served.

- 4.9.5 The service provider shall be responsible for the safekeeping of each individual's record and for securing it against loss, destruction, or use by unauthorized persons as evidenced by policies and practices.
- 4.9.6 ~~Incident reports~~ **General Event Reports ( GER)**, with adequate documentation, shall be completed for each ~~incident~~ **general event**. Adequate documentation shall consist of the name of the individual(s) involved; the date, time and place of the ~~incident~~ **general event**; a description of the ~~incident~~ **general event**; a list of other parties involved, including witnesses; the nature of any injuries; individual outcome; and follow-up action, including notification of the individual's family or guardian, attending physician and DDDS or law enforcement authorities when appropriate. ~~Incident reports~~ **General Event Reports ( GERs)** shall be kept on file by the service provider. Reportable incidents shall be communicated immediately to the Division of Developmental Disabilities Services.

## **5.0 Environment**

- 5.1 Neighborhood Home providers shall ensure a home-like environment for each licensed home. Functional arrangement of rooms, furnishings, and decor shall be compatible with the need for accessibility.
- 5.2 Furniture and furnishings shall be safe, comfortable, and in good repair and shall resemble those in homes in the local community, to the extent compatible with persons' choice and the physical needs of the people living in the home. To the extent possible, personal furniture shall be chosen by individuals.
- 5.3 Heating apparatus shall not constitute a burn, smoke or carbon monoxide hazard to persons served or their support staff.
- 5.4 Temperature, humidity, ventilation, and light in all living and sleeping quarters shall be maintained to provide a comfortable atmosphere.
- 5.5 Homes serving persons with physical challenges shall be accessible to those persons with physical challenges according to the appropriate American National Standards Institute (ANSI) Standards and all other federal and state standards.
- 5.6 Protective or security features such as fences and security windows may be used only when justified on the basis of the needs of persons served and shall preserve as normal an appearance as possible.
- 5.7 Use of security or observational devices shall constitute a restrictive procedure and require consent and review by the human rights committee. The need for such devices shall be documented in the person's behavior support plan.
- 5.8 Homes shall be sanitary, free of offensive odors, insects and uncontrolled pests. Exterminator services shall be required upon evidence of any infestation.
- 5.9 Waste and garbage shall be stored, transferred, and disposed of in a manner that does not create a nuisance, or permit the transmission of disease. Litter shall not be permitted to accumulate on the premises.
- 5.10 Stairways, ramps, walkways and open-sided porches shall have adequate lighting and handrails for safety. Non-skid surfaces shall be used when slippery surfaces present a hazard.
- 5.11 All stairways, hallways, doorways and walkways shall be kept free and clear of obstructions at all times.
- 5.12 Mirrors shall be furnished in bedrooms and bathrooms, including mirrors that are accessible by persons who use wheelchairs.
- 5.13 Each home shall provide storage space for both in season and out of season clothing and storage space for personal items to include, minimally, closet space and four drawers in a chest of drawers.
- 5.14 Each home shall contain a clothes washer and dryer that are accessible to people unless people use commercial laundromats or are being supported to do so.
- 5.15 Basement space may be used for activities for people in the home if there is a minimum of two (2) fire exits.
- 5.16 If a bedroom is below grade level, it must have a window that

- 5.16.1 Is usable as a second means of escape by the person(s) occupying the room; and  
5.16.2 Is no more than 36 inches (measured to the window sill) above the floor as required under the Health Care Occupancy Chapter of the Life Safety Code.

## **6.0 Kitchen Facilities**

- 6.1 There shall be at least one refrigerator and one freezing unit, in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 41 degrees F. or below.  
6.2 Dry or staple food items shall be stored at least four inches above the floor in a ventilated room that is not subject to waste water back flow or to contamination by condensation or leakage.  
6.3 There shall be at least one four-burner range and one oven (or combination thereof), which is in proper working order.  
6.4 There shall be a dishwasher for performing dishwashing. [The dishwasher must either have a sanitizing cycle or the home must use a dishwasher detergent with bleach.]  
6.5 There shall be at least one operable window or exhaust system for removal of smoke, odors, and fumes in the cooking area.  
6.6 There shall be three day supply of food in each home at all times as posted on the menus. Opened foods that are to be stored shall immediately be dated with the date that the foods were opened.

## **7.0 Safety and Sanitation**

- 7.1 The Neighborhood Home's program shall comply with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, sanitation and plumbing.  
7.2 The service provider shall maintain records and reports of periodic fire safety, health, sanitation, and environmental inspections required by local and state laws and regulations. The provider shall document actions taken to correct deficiencies noted in these reports.  
7.3 The service provider shall prepare written policies that outline maintenance (including electrical maintenance) and cleaning procedures, storage of cleaning materials and/or pesticides and other toxic materials.  
7.4 Hot water at shower, bathing and hand washing facilities shall not exceed 115 degrees F.  
7.5 There shall be adequate, safe and separate areas of storage of:  
7.5.1 Food items;  
7.5.2 Cleaning agents, disinfectants and polishes;  
7.5.3 Poisons, chemicals and pesticides;  
7.5.4 Eating, serving and cooking utensils;  
7.5.5 Clean and dirty linen.  
7.6 Firearms shall be prohibited on the premises of the Neighborhood Home.  
7.7 Active attention shall be directed to avoiding hazards to the individuals supported, such as dangerous substances, sharp objects, unprotected electrical outlets, slippery floors or stairs, exposed heating devices, scalding water or broken glass. However, individuals shall be prepared for and progressively exposed to routine risks that are likely to be encountered in normal environments.

## **8.0 Bedrooms**

- 8.1 Rooms or other areas of the Neighborhood Home that are not ordinarily sleeping rooms may not be used for sleeping purposes.  
8.2 Sleeping rooms shall have an outside window and must provide for quiet and privacy. Adequate electrical outlets shall be conveniently located in each room with at least one (1) light fixture switch at the entrance to the bedroom.  
8.3 Bedrooms shall have walls that extend from floor to ceiling, and shall accommodate no more than two individuals.

- 8.4 Multi-bed bedrooms shall provide at least 75 square feet per individual. [Neighborhood homes licensed subsequent to the implementation of the regulations shall provide at least 80 square feet per person.]
- 8.5 Single-bed bedrooms shall contain at least 100 square feet.
- 8.6 Bedrooms shall contain space, as needed, for bedside assistance and to accommodate the use and storage of mobility devices and prosthetic equipment.
- 8.7 Each individual shall have a bed suitable for his or her physical stature and condition.
- 8.8 Mattresses, bedding and pillows shall be clean and provide comfort and sufficient support and warmth.
- 8.9 The use of hospital-type beds, plastic or other materials to keep beds and pillows dry, flat pillows or the absence of pillows or other departures from normalcy shall be justified in each case in the individual's record and reviewed at least annually.
- 8.10 There shall be a sturdy bedside stand, chair, a desk or table, and reading light for the individual.
- 8.11 Each bedroom window shall have a window treatment that closes for privacy.
- 8.12 Individuals shall be encouraged, and assisted as needed, to decorate their bedrooms as they choose.

## **9.0 Bathrooms**

- 9.1 There shall be private toilet facilities with a shower or tub in good repair in each home. These facilities shall be accessible to the individual according to his/her needs and shall facilitate maximum independence.
- 9.2 Traffic to and from any room shall not be through a bedroom or bathroom except where a bathroom opens directly off the room it serves.
- 9.3 There shall be at least one (1) window or mechanical ventilation to the outside of the bathroom.
- 9.4 Toilets, bathing and toileting appliances shall be equipped for use by physically **[handicapped challenged]** individuals, as dictated by such individuals' needs.
- 9.5 There shall be at least one (1) toilet of appropriate size for each four (4) individuals. Each toilet shall be equipped with a toilet seat and toilet tissue.
- 9.6 There shall be at least one (1) wash basin for each four (4) individuals.
- 9.7 There shall be at least one (1) tub or shower for each four (4) individual.
- 9.8 Wash basins shall be available in or immediately adjacent to bathrooms and/or toilet rooms.
- 9.9 Shower and tub areas shall be equipped with substantial hand-grip bars and slip-resistant floor surfaces.

## **10.0 Emergencies and Disasters**

- 10.1 Fire safety in Neighborhood Homes shall comply with the rules and regulations of the State Fire Prevention Commission or the appropriate local jurisdiction. All applications for a license or renewal of a license shall include a letter certifying compliance by the Fire Marshal with jurisdiction. Notification of non-compliance with the applicable rules and regulations shall be grounds for revocation of a license.
- 10.2 The home shall have a minimum of two means of egress.
- 10.3 The home shall have an adequate number of UL approved smoke detectors in working order.
- 10.3.1 In a single level home, a minimum of one smoke detector shall be placed between the bedroom area and the remainder of the home.
- 10.3.2 In a multi-story home, a minimum of one smoke detector shall be on each level. On levels which have bedrooms, the detector shall be placed between the bedroom area and the remainder of the home.
- 10.4 There shall be at least one functional two and one-half to five pound ABC fire extinguisher on each floor of living space in the home that is readily accessible, visible and mounted on the wall. Inspections shall be completed by the service company or as regulated by the Fire Marshal. Each extinguisher shall be checked annually.

- 10.5 The service provider shall have written procedures for meeting all emergencies and disasters such as fire, severe weather, and missing individuals; and such procedures shall be communicated to all staff.
- 10.6 The procedures shall assign [~~specific personnel~~ **staff on duty**] to specific tasks and responsibilities.
- 10.7 The procedures shall contain instructions related to the use of alarm and signal systems. Provisions shall be made to alert individuals living in the home according to their abilities, and these provisions shall be included in the procedures.
- 10.8 Evacuation routes and the location of fire-fighting equipment shall be posted in areas used by the public as required by the applicable fire safety regulations. The number and placement of postings are otherwise dictated by building use and configuration and by the needs of individuals and staff.
- 10.9 The service provider shall maintain an adequate communication system to ensure that on and off-duty personnel and local fire and safety authorities are notified promptly in the event of an emergency or disaster.
- 10.10 The telephone numbers of the nearest poison control center and the nearest source of emergency medical services shall be posted.
- 10.11 Provisions shall be made for emergency auxiliary heat and lighting by means of alternate sources of electric power, alternate fuels, and stand-by equipment, or arrangements with neighbors, other agencies or community resources.

## **11.0 Evacuation Drills**

- 11.1 Drills shall be held quarterly for each shift with one drill per calendar month. Evacuation drills shall be held on different days, at different times, including times when individuals are asleep.
- 11.2 The location of egress during these evacuation drills shall be varied, with window evacuation procedures discussed as an alternative, if not practiced.
- 11.3 During drills, individuals shall be evacuated with staff assistance to the designated safe area outside of the home.
- 11.4 As evidenced by evacuation drill reports that are maintained by the Neighborhood Home, drills shall assure that all individuals and staff are familiar with the evacuation requirements and procedures. Any problems individuals have evacuating a building during a drill shall result in a written plan of specific corrective action(s) to be taken.
- 11.5 Individuals who are unable to achieve the exit schedule prescribed by the Life/Safety Code with available assistance shall be either relocated or provided with additional assistance.

## **12.0 Waivers of Standards**

- 12.1 Specific standards may be waived by the Division of Long Term Care Residents Protection provided that each of the following conditions is met:
  - 12.1.1 Strict enforcement of the standard would result in unreasonable hardship on the provider.
  - 12.1.2 The waiver is in accordance with the particular needs of the individual.
  - 12.1.3 A waiver must not adversely affect the health, safety, welfare, or rights of any individual.
  - 12.1.4 Individuals may be informed of the waiver request and asked for input, as appropriate.
- 12.2 The request for a waiver must be made to the Division of Long Term Care Residents Protection in writing by the service provider with substantial detail justifying the request. The Division of Long Term Care Residents Protection will inform the service provider of its decision within 30 days of receipt of the written request.
- 12.3 A waiver granted by the Division of Long Term Care Residents Protection is not transferable to another Neighborhood Home provider in the event of a change in ownership.
- 12.4 A waiver shall be granted for a period up to the term of the license.

**13.0 Severability**

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

7 DE Reg. 505 (10/1/03)

14 DE Reg. 1360 (06/01/11)

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)  
16 DE Admin. Code 5100

**ORDER****DSSM: TANF, General Assistance, Refugee Cash Assistance Program Relating to Civil Unions****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding *Civil Unions*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the February 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 1, 2012, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The proposed amends related policies in the Division of Social Services Manual (DSSM) regarding *Civil Unions*.

**Statutory Authority**

146<sup>th</sup> General Assembly, Senate Bill #30, *An Act to Amend Title 13 of the Delaware Code Relating to Civil Unions*

**Background**

Signed into law by the Governor on May 11, 2011, Senate Bill #30 is an Act that creates the recognized legal relationship of civil union in Delaware for eligible persons. This Act further recognizes as civil unions for all purposes under Delaware law legal unions between two persons of the same sex entered into in jurisdictions outside of Delaware provided that such union and the parties thereto meet the Delaware eligibility requirements to enter into a civil union in the State of Delaware. Parties who enter into a lawful civil union in Delaware, or whose legal union is recognized as a civil union under Delaware law, will have all of the same rights, benefits, protections and responsibilities as married persons under Delaware law. It is not the intent of the Delaware General Assembly to revise the definition or eligibility requirements of marriage under Delaware law or to require any religious institution to perform solemnizations of civil unions.

**Summary of Proposal**

The purpose of the proposal is to clarify Division of Social Services (DSS) policies for the Temporary Assistance for Needy Families (TANF), General Assistance (GA), and Refugee Cash Assistance (RCA) programs to ensure the rights and responsibilities of parties to a civil union are consistent and equal to partners in marriage. Parties to a civil union have the same eligibility and responsibilities as partners in a marriage when applying for, or participating in, Delaware's Cash Assistance programs.

The proposed changes affect the following policy sections:

**DSSM 3004, *Caretakers in TANF Families***

DSSM 3028.2, *Optional Composition of Assistance Units*

DSSM 4001, *Family Budget Group*

DSSM 4005.3, *Step-Parent Income in the TANF Program*

DSSM 4005.5, *Income of a Spouse in the GA Program*

DSSM 8025, *Family Budget Group*

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

No public comments were received.

However, further analysis by Division staff resulted in a grammatical change to the rule as proposed at *DSSM 3028.2, item 3*. Also, at *DSSM 4001, item 2* and *DSSM 8025, item 2*, the following text should have been underlined as new text:

who do not have. Bracketed-bold type indicates the changes.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the February 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding *Civil Unions* is adopted and shall be final effective April 10, 2012.

Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REGULATION #12-13  
REVISIONS:**

**3004 Caretakers in TANF Families**

Assistance is provided to needy families. A family is one or more children living with a specified relative, guardian, or custodian (adult acting in loco parentis).

Specified relative is defined as:

- Any relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child. The degree of relationship is as follows: a parent (1st degree), grandparent (2nd degree), sibling (2nd degree), great-grandparent (3rd degree), uncle or aunt (3rd degree), nephew or niece (3rd degree), great-great-grandparent (4th degree), great-uncle or aunt (4th degree), first cousin (4th degree), great-great-great-grandparent (5th degree), great-great uncle or aunt (5th degree), or a first cousin once removed (5th degree).
- Any other persons named in the above groups whose relationship to one of the child's parents is established by legal adoption;
- The spouse of any person named in the above groups even though the marriage terminated by death or divorce;
- A party to a civil union of any person named in the above groups even if the civil union terminated by death or dissolution.

For the purposes of the TANF program a guardian is defined as:

- An adult providing an appropriate supportive living arrangement who has been appointed as guardian of the child(ren) in his/her care by an authorized court, or
- an adult who has received the consent and approval to exercise the day-to-day care, custody, and control of the child(ren) in his/her care by the Delaware Division of Family Services or any agency or court licensed or authorized to place children in a nonrelated home.

A custodian or an adult acting *in loco parentis* ("in the place of a parent") is defined as:

An adult who provides an appropriate supportive living arrangement for the child(ren) in his/her care, and who has:

- intentionally taken over the duties of a parent and is responsible for exercising the day-to-day care, custody, and control of the child(ren),
- accepted the legal responsibility of caring for the child,
- been referred to the Delaware Division of Family Services for purposes of determining suitability of the adult to act *in loco parentis* and the dependency of the child(ren).

Adults acting in loco parentis are required to acknowledge their acceptance of the legal responsibility for the child(ren) in their care and their intentional acceptance of the day-to-day care, custody, and control of the child(ren) in their care. This acknowledgement must be in writing and on a Division of Social Services approved form.

The Division of Family Services (DFS), within the Department of Services for Children, Youth, and Their Families (DSCYF) must approve the living arrangement of a custodian and the children they are caring for by the next redetermination. If verification of consent and approval by DFS is not provided by the next redetermination, TANF payments should be stopped.

#### Paternity Establishment:

When a child lives with both the natural father and the mother but paternity has not been legally established, refer the parents to the Division of Child Support Enforcement (DCSE) for a voluntary acknowledgement of paternity. If the alleged father is unwilling to complete the voluntary acknowledgement of paternity, DSS will consider the child deprived of the care and support of his/her father. Refer the case to DCSE for follow-up on establishing paternity.

When a child lives with the natural father, but paternity has not been legally established, have the father complete a declaration of natural relationship document. Obtain one additional document from the documents listed below to support the natural father's claim of relationship.

- Social Security Administration records;
- Hospital, clinic, or Public Health Records;
- Department of Services to Children, Youth, and Their Families records;
- Census Bureau records;
- Income Tax records specifying the relationship;
- Insurance policies which specify the relationship;
- Military or veterans records which specify the relationship Statement from a minister, priest, or rabbi;
- Family bible, Baptismal Certificate or other family records (such as wills, deeds), written in ink and not altered which specify the relationship;
- Statement of physician or midwife who attended the birth and remembers the names of the people involved;
- Other government or local agency records, newspaper records, or local histories which specify the relationship;
- A Declaration of Natural Relationship signed by the mother or other maternal relative;
- If none of the above documents are available, a declaration of Natural Relationship signed by a knowledgeable person.

When a child lives with a relative of the natural father, but paternity has not been legally established, have the relative complete a Declaration of Natural Relationship document. Obtain one additional document from the documents listed above to support the relative's claim of relationship.

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

### 3028.2 Optional Composition of Assistance Units

1. In TANF the dependent child, and if residing in the home and otherwise eligible, the child's blood-related or adoptive minor siblings, and the child's natural or adoptive parent(s) must be included in the unit. When both parents of the dependent child are in the home, both parents must be included in the unit regardless of their marital status. In a case where paternity has not been legally established, the putative father must acknowledge paternity as a condition of eligibility.

A non-parent needy caretaker relative may be included in the unit if the caretaker so chooses.

The needy legal spouse of a caretaker relative may be included in the unit only if the caretaker is the natural or adoptive parent of the child(ren), and the caretaker is incapacitated or is the principal wage earner and qualifies as an unemployed parent.

2. In TANF married/civil union couple cases, where each adult has children from previous relationships that are eligible for TANF, include the family in one TANF unit. If the couple has children in common who are also eligible for TANF, include these children in the unit also.
3. In TANF married, civil union, or unmarried couple cases where each adult has children from previous relationships who are eligible for TANF, they have the option of being in one assistance unit or two separate assistance units. If the unit fails financially, a separate assistance unit may be established for the child(ren) of the previous relationships.  
~~For example, EXAMPLE:~~ A couple each have a child from previous relationships. Initially, we place all the family members into one TANF assistance unit. Income from ~~[the] male partner's~~ Partner A's job makes the family ineligible for TANF. We have the option of placing ~~the female partner~~ Partner B and his or her child from a previous relationship into a TANF assistance unit. In this scenario, if the couple were married/in a civil union, a step-parent situation would exist. If the couple were not married/in a civil union, eligibility is based solely on the information from ~~[the] female partner~~ Partner B and his or her child.
4. When a couple, ~~married or unmarried~~, has a child in common and each partner has a child from a previous relationship, the couple, the child in common, and the other children will initially be placed in one TANF assistance unit. The siblings keep this as one assistance unit.  
~~Example:~~ A couple each have a child from previous relationships. Initially, we place all the family members into one TANF assistance unit. Income from the male partner's job makes the family ineligible for TANF. We have the option of placing the female partner and his or her child from a previous relationship into a TANF assistance unit. In this scenario, if the couple were married a step-parent situation would exist. If the couple were not married, eligibility is based solely on the information from the female partner and his or her child.
5. A pregnant woman, with no other children, may receive TANF beginning on the first day of the month that her child is expected to be born, if the woman meets all other technical and financial eligibility requirements, and her expected due date has been verified by a physician. The child is added to the unit, and a supplemental grant is effective the date of its birth if the birth is reported within five (5) days. If the birth is not reported within five (5) days, the child is added to the unit and the grant is effective as of the date of the report. The child's father, if he is otherwise eligible, is also added using these guidelines. Procedures for completing supplemental applications for newborns are outlined in DSSM 2000.6.  
 (See DSSM 4010 ~~for budgeting instructions~~ Determining Financial Eligibility and Grant Amounts for Pregnant Women in TANF and GA)  
 A pregnant woman who plans to place her child for adoption is eligible for TANF beginning the 1st day of the month her child is due, assuming she meets all other eligibility requirements. If she still plans to terminate her parental rights after the child is born, the child cannot be added to the assistance unit and the child is not eligible for Medicaid. In this instance, the TANF case is closed at the end of the month that the birth occurs.
6. If a child receiving SSI is the only child in the home, the child's caretaker relative can receive TANF if the child is deprived of parental care. The caretaker's needy legal spouse can receive TANF if the caretaker is the child's natural or adoptive parent and the caretaker is incapacitated or qualifies as an unemployed parent.
7. For GA eligible adults, include the adult. The adult's spouse or UMP is also included if the spouse or partner also meets a condition of unemployability.
8. A woman who has a verified pregnancy and receives a GA check the month she delivers her child is eligible for TANF that month for herself and her child if she reports the birth to DSS, and she meets all other TANF technical and financial eligibility requirements.  
 The TANF grant is effective the date of the child's birth if the birth is reported within five (5) days.  
 The TANF grant is effective the date of the report if the birth is not reported within five (5) days.

If the pregnancy had not been verified, the TANF grant is effective the date the birth is verified.

*(Break in Continuity of Sections)*

**4001 Family Budget Group**

Assume there is no income.

Family budget group is the total number of persons whose needs and income are budgeted together. This will always include the following:

1. Married and civil union couples if they live together and are both eligible for a grant.
2. ~~Unmarried couples~~ Couples who do not have legally recognized marriages/civil unions but who live together as husband and wife or spouses and are both eligible for a grant.

NOTE: In GA, couples will be considered as living together as husband and wife if:

- a. They say they are ~~married~~, joined by a civil union or marriage even if the marriage/civil union cannot be verified, or
  - b. They are recognized as parties to a civil union, spouses, or husband and wife in the community, or
  - c. One partner uses the other's last name, or
  - d. They state they intend to marry/join in a civil union, or
  - e. They jointly hold resources.
3. Parents and their eligible children.

Family budget groups will consist of more than one assistance unit when all budget group members are not placed in the same assistance unit. In those instances, the need standard for the family cannot exceed the TANF need standard for the budget group size as specified in Section 4007.2. (See DSSM 3028 for a definition of an assistance unit)

In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's needs and income and those of his/her children are always budgeted together. The needs and income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

- A. Assistance would be denied to any of the recipients by maintaining separate budget groups.
- B. The caretaker understands the implications of combining the budget groups (i.e., lower assistance payments.) and chooses to have his/her needs and income and those of his/her children considered with the needs and income of any other children in the home.

*(Break in Continuity of Sections)*

**4005.3 Step-Parent Income in the TANF Program**

In the TANF Program, a step-parent through marriage or civil union who resides with his/her step-children is considered responsible for supporting those children. A portion of the step-parent's income is used to determine the step-children's financial eligibility and the amount of assistance the children receive. To determine the amount of the step-parent's income that is deemed to the assistance unit, follow the steps listed below:

NOTE: The assistance unit must include the step-child, the step-child's natural or adoptive parent, and siblings who are also living in the home and who are otherwise eligible.

1. Determine the step-parent's gross income.
2. Deduct \$90.00 from earned income.
3. Deduct the TANF standard of need (See DSSM 4007.2) for the family size that includes the step-parent and those individuals who
  - a. live in the step-parent's home
  - b. are the step-parent's dependents for income tax purposes
  - c. are not members of the TANF assistance unit because of a sanction.

(These individuals cannot include a person who is removed from the TANF unit because he/she failed without good cause to cooperate with DCSE or the First Step Program and is being sanctioned.)

4. Deduct amounts paid by the step-parent to individuals who are not living in the home, but who are claimed as dependents for income tax purposes.
5. Deduct child support or alimony payments made to individuals not living in the home.

The remainder is unearned income used to determine the assistance unit's financial eligibility and grant amount.

Summary - Total Income

- \$90.00 from earned income
- Standard of Need
- Payments to dependents

Countable Income

The resources of a step-parent are not considered in determining the financial eligibility of the assistance unit. Resources held jointly by the step-parent and the step-parent's spouse are considered available in their entirety to both partners. If the spouse is a member of the assistance unit, these resources are considered in determining the unit's eligibility.

Step-parent budgeting is only used to determine the financial eligibility or benefit level of a step-child when the step-child's natural parent resides in the home. Stepparent income is not used to determine financial eligibility or benefit levels when the step-child's natural parent does not reside in the home.

**NOTE:** If the step-parent is included as a member of the TANF unit, his/her income is budgeted in accordance with rules governing the income of TANF applicants and recipients.

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

**4005.5 Income of a ~~Minor Parent's Parent of Legal Guardian Spouse~~ in the GA Program**

This policy applies to GA applicants and recipients who are married/party to a civil union and live with their spouse.

To determine GA financial eligibility and grant amounts for unemployable adults where the GA eligible person resides with a spouse who has income but is not also technically eligible for a grant.

1. Determine the spouse's gross unearned income.
2. Determine the spouse's gross earned income.
3. Deduct \$50 for work expenses from the spouse's earned income.
4. Add amounts from Step 1 and Step 3 to determine the spouse's countable income.
5. Compare the sum in Step 4 to the GA Standard of Need for two people.
6. If income exceeds the standard, the GA case is financially ineligible.
7. If income is less than the standard, the GA case is financially eligible. To determine the grant amount, subtract the income from the GA Standard of Need for two. The grant equals the difference, if the difference is less than the GA Standard of Need for one person. The grant equals the GA standard if one of the differences is equal to or greater than that amount.

**EXAMPLES:**

1. Spouse of GA eligible has \$200 countable income.  
\$200 is greater than \$166 - Case is ineligible.
  
2. Spouse has \$130 countable income.  
\$130 is less than \$166 - Case is eligible.  
\$166 minus \$130 = \$36 = GA grant.
  
3. Spouse has \$30 countable income.

\$30 is less than \$166  
 \$166 minus \$30 = \$136

4. GA grant = \$123 (maximum for one person)

#### DCIS Instructions

~~The spouse's countable income and the grant amount must be determined manually. If the grant is to be reduced by the spouse's income (as in Example #2), the amount that equals the difference between the GA Standard of Need for one and the grant to be issued is entered as PA only unearned income on the TD.~~

~~EXAMPLE (using #2 above): \$123 (GA S/N) — \$36 (GA grant) = \$87 (amount entered as PA only unearned income).~~

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

#### **8025 Family Budget Group**

Family budget group is the total number of persons whose needs and income are budgeted together. This will always include the following:

1. Married and civil union couples if they live together and are both eligible for a grant.
2. ~~Unmarried couples~~ Couples who do not have legally recognized marriages/civil unions but who live together as husband and wife or spouses and are both eligible for a grant.

NOTE: In RCA, couples will be considered as living together as husband and wife if:

- a. They say they are ~~married~~, joined by a civil union or marriage even if the marriage/civil union cannot be verified, or
  - b. They are recognized as parties to a civil union, spouses, or husband and wife in the community, or
  - c. One partner uses the other's last name, or
  - d. They state they intend to marry/join in a civil union, or
  - e. They jointly hold resources.
3. Parents and their eligible children.

Family budget groups will consist of more than one assistance unit when all budget group members are not placed in the same assistance unit. In those instances, the need standard for the family cannot exceed the RCA need standard for the budget group size as specified in Section 8031.1 (See DSSM 8021)

In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's needs and income and those of his/her children are always budgeted together. The needs and income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

1. Assistance would be denied to any of the recipients by maintaining separate budget groups.
2. The caretaker understands the implications of combining the budget groups (i.e., lower assistance payments, increased Medicaid coverage, etc.) and chooses to have his/her needs and income and those of his/her children considered with the needs and income of any other children in the home.

---

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

Statutory Authority: 7 Delaware Code, Section 901(b) and 903(e)(2)a (7 **Del.C.** §901(b) §903(e)(2)a))  
**7 DE Admin. Code 3900**

**Secretary's Order No.: 2012-F-0011**

**Date of Issuance: March 15, 2012**

**Effective Date of the Amendment: April 11, 2012**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

### **Background and Procedural History**

This Order considers proposed regulations to amend 7 **DE Admin. Code** 3900, *Delaware Regulations Governing Wildlife*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2011-14. The Department published its initial proposed regulation Amendments in the December 1, 2011 *Delaware Register of Regulations*, and held a public hearing on January 25, 2012.

It should be noted that, subsequent to the publication of the initial proposed regulatory amendments (but prior to the time of the aforementioned public hearing), there were certain sections of these proposed amendments that, upon further consideration and review by the Department, were determined to be too vague, or needed additional clarifying language to the final regulation, and therefore the Department desired to obtain further input from hunters and trappers regarding those matters prior to finalization of that regulatory language. Thus, the Department has withdrawn the proposed amendments to those Sections, and will revisit those sections at a later date. Accordingly, the Department *revised* its initially proposed regulation Amendments to 7 **DE Admin. Code** 3900 to properly reflect said revisions, and the *revised* proposed amendments were then thoroughly vetted to the public at the public hearing on January 25, 2012. No further substantive comment was received by the Department subsequent to the holding of said public hearing, and thus no additional revisions have been made to the proposed *revised* regulation Amendments. It should also be noted that, at the time of the public hearing held on January 25, 2012, the Department thoroughly answered questions from members of the public who attended this hearing, to the satisfaction of those in attendance that night.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 3, 2012 (Report). The Report recommends certain findings and the adoption of the proposed *revised* Amendments as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the *revised* proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed *revised* Amendments. Throughout the regulatory development process regarding this promulgation, the Department received public comment, as noted in the Report, and the same were fully addressed by Department staff in a thorough and balanced manner, accurately reflecting the information as contained in the public hearing record which was developed in this matter.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these *revised* Amendments. With the adoption of this Order, Delaware will (1) allow revolvers and single shot pistols for red fox hunting; (2) increase the legal snapping turtle size to 11 inches and revise trap placement, require trap marking, and require a free annual turtle trapping permit; (3) define weather conditions that will allow for a 7-day or 14-day extension to the muskrat trapping season; (4) allow crossbows for turkey hunting, allow 7 and 7 ½ shot in duplex or triplex loads for turkey hunting, and open selected public lands for youth turkey

hunting day; (5) revise current regulatory language related to the importation of deer carcasses from states with Chronic Wasting Disease; (6) prohibit collection of any wildlife species from a state wildlife area without a permit from the Department's Fish and Wildlife Division Director; (7) make it unlawful to fish in any Division managed pond except in accordance with conditions set forth on area maps and signs; (8) make it unlawful to possess, consume, or be under the influence of alcoholic beverages, liquors, or drugs while hunting or in the possession of firearms when on lands administered by the Division; (9) change the name of the "Hunter and Trapper Identification Number" to the "Hunter and Trapper License Exempt Number"; (10) shorten the length of the quail hunting season; and (11) correct current typographical and duplicative errors present in the existing regulatory language, and as well as provide additional clarifying language to aid in the public's overall understanding of the existing regulatory language.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these *revised* proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on both the initial proposed Amendments, as well as the proposed *revised* Amendments, including at the public hearing held on January 25, 2012;
- 3.) The Department held a public hearing on January 25, 2012 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) provide additional hunter opportunities for the public with the inclusion of revolvers and single shot pistols for red fox hunting; (2) extend the muskrat trapping season by up to 7 or 14 days (dependent upon the weather conditions), thus enabling trappers to check their traps, etc., despite the potential harshness of winter weather conditions; (3) provide clarifications to the Department's existing regulations to promote a greater understanding of the same to hunters; (4) provide additional turkey hunter opportunities for the public with the inclusion of crossbows and the opening of selected public lands for youth turkey hunting day; (5) ensure the safety of the public in Delaware while hunting by making it unlawful to possess, consume, or be under the influence of alcoholic beverages, liquors, or drugs while hunting or in the possession of firearms when on lands administered by the Division; and lastly, because (6) the amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2011 issue of the *Register* at page 747 (15 DE Reg. 747). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3900 Wildlife**

**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))  
24 **DE Admin. Code** 2500

**ORDER****2500 Board of Pharmacy**

Pursuant to 29 **Del.C.** § 10113(b)(4) and 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy issues this Order adopting the following amendment to the Board's Rules to correct a technical error in the previously published rule. Specifically, pursuant to 29 **Del.C.** §10113(b)(4), regulation 3.9 of the Board of Pharmacy must be changed without prior publication as it incorrectly states wording on signage must be three inches instead of three-quarter inches in height. This was the result of a scrivener's error prior to submission for publication that must be corrected.

**SUMMARY OF THE EVIDENCE**

1. Rule 3.9 now states "A conspicuous sign with letters not less than three inches in height, reading "patients may request the lot numbers and expiration dating for their dispensed medication at the time of prescription drop-off" or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned-off section where it can be seen by the public."

2. The Board proposed the following change to its regulations (additions are underlined, removals are stricken through):

3.9 A conspicuous sign with letters not less than three-quarter inches in height, reading "patients may request the lot numbers and expiration dating for their dispensed medication at the time of prescription drop-off" or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned-off section where it can be seen by the public.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on April 1, 2012.

IT IS SO ORDERED this 15th day of March, 2012

Geoffrey Christ, RPh, J. D., President

**2500 Board of Pharmacy****(Break in Continuity of Sections)****3.0 Pharmacy Requirements****3.1 Pharmacist in Charge**

3.1.1 Application for permit to operate a pharmacy in the State of Delaware must be on a form approved by the Board. The form shall include the statement to be signed by the pharmacist in charge, "I understand that I am responsible for conducting and managing the prescription department in compliance with applicable State and Federal laws."

3.1.2 The Board interprets the responsibilities of the Pharmacist-in-Charge to include, but not be limited to the following:

3.1.2.1 Maintain necessary pharmaceutical equipment and reference texts in accordance with the State Board of Pharmacy requirements.

- 3.1.2.2 Maintain records required by the Uniform Controlled Substances Act and other relevant State and Federal regulations.
- 3.1.2.3 Maintain proper security of particular pharmacy operation during and after normal business hours.
- 3.1.2.4 Establish procedures within operation that maintain standard of practice as it relates to the dispensing of pharmaceuticals and refusal to dispense pharmaceuticals based on the religious, moral, or ethical beliefs of the dispensing pharmacist. These procedures shall include proper supervision of supportive personnel and delegation of authority to another pharmacist when not on duty.
- 3.1.2.5 The pharmacist on duty is directly responsible for his own actions.
- 3.1.2.6 Notify the Board of Pharmacy in writing within 10 days of termination as pharmacist-in-charge.
- 3.2 Owner's Affidavit. The owner or owners and, in the case of a corporation, an authorized official of the corporation must present an affidavit properly notarized containing the statement, "I hereby swear or affirm that the foregoing statements are correct and do hereby agree to abide by the pharmacy laws of the State of Delaware and to all rules and regulations of the Delaware State Board of Pharmacy." The Board must be notified within 10 days of change of ownership.
- 3.3 Equipment and Reference Materials.
  - 3.3.1 Equipment: Each pharmacy shall have all equipment appropriate to the individual pharmacy practice and to the care of the patients served.
    - 3.3.1.1 All equipment must be clean and must be maintained in such a manner that allows the pharmacist to accurately weigh, measure and compound ingredients.
    - 3.3.1.2 Equipment may include such things as prescription scale, metric graduates, mortars and pestles, filter paper, spatulas, funnel, stirring rod, ointment slab or papers, distilled water, and prescription/physician order files.
  - 3.3.2 References: Each pharmacy shall maintain a library of the latest edition and supplements of current reference sources, either hard copy or electronically accessible, appropriate to the individual pharmacy practice and to the care of the patients served. References must:
    - 3.3.2.1 Provide information on the therapeutic use, dosing, pharmacology, adverse effects, and interactions of drugs dispensed.
    - 3.3.2.2 Provide information helpful in the counseling of patients on the use of drugs dispensed.
    - 3.3.2.3 Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.
    - 3.3.2.4 Include a listing of therapeutic equivalents for drugs dispensed.
    - 3.3.2.5 Include current Delaware and Federal laws and regulations governing pharmacy and controlled substances.
    - 3.3.2.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.
- 3.4 Physical Facilities. Have sufficient size, space, sanitation, and environmental control for adequate distribution, dispensing and storage of drugs and devices. Such facilities shall include:
  - 3.4.1 A dispensing area of adequate size and space for proper compounding, dispensing and storage of drugs and devices, to ensure the safety and well being of the public and pharmacy personnel.
  - 3.4.2 Sufficient environmental control, i.e. lighting, ventilation, heating and cooling to maintain the integrity of drugs and devices. The area in which drugs and devices are stored shall be accurately monitored using control devices to maintain room temperature between 59 degrees and 86 degrees Fahrenheit.
  - 3.4.3 The pharmacy department or prescription area must contain a sink with hot and cold running water. It must be large enough to accommodate the equipment appropriate to the individual pharmacy practice.

- 3.4.4 Suitable refrigeration with appropriate monitoring device. Refrigerators and freezers (where required) will be maintained within the USP/NF range:  
Refrigerator - 36 degrees to 46 degrees Fahrenheit  
Freezer - Minus 13 degrees to plus 14 degrees Fahrenheit.
- 3.5 Building Standards. An application to operate a new pharmacy must include (3) copies of floor plans drawn to scale of the proposed prescription department. The floor plans must include the following:
- 3.5.1 The requirements listed in §2533(e).
- 3.5.2 An area which assures patient privacy will be provided to facilitate counseling. This area must afford the patient privacy from auditory detection by any unauthorized person or persons. An area partitioned by a 5 foot divider on 2 sides with a minimum of 9 square feet would satisfy this requirement in most settings.
- 3.5.3 The floor plans shall include the location of the sink, all doors, storage room, approved Schedule II controlled substance safe or cabinet, and the method of securing the prescription department from floor to ceiling, when the prescription department is closed and the remainder of the store is open.
- 3.5.4 The floor plans must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of Controlled Substances.
- 3.5.5 The above requirements shall also apply for any remodeling or change of location of the prescription department. The pharmacist-in-charge or applicant for permit must submit the floor plans requirements to the Delaware Board of Pharmacy and the Office of Narcotics and Dangerous Drugs prior to any construction and at least 15 days prior to the next scheduled Board of Pharmacy meeting for its review.
- 3.6 Security. When the pharmacist is not physically present and the operation is open for business, the pharmacy department shall be physically or electronically secured from floor to ceiling. The partitioned off section required by 24 Del.C. §2533 must be five feet high measured from the floor. A conspicuous sign with letters not less than three inches in height, reading "PRESCRIPTION LABORATORY TEMPORARILY CLOSED, NO PROFESSIONAL SERVICES RENDERED," or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned off section where it can be seen by the public.
- 3.7 Board Interview. Applicants for permit to operate a pharmacy in the State of Delaware must appear before the Board for an interview. The owner or authorized official must be present in addition to the pharmacist-in-charge. Whenever there is a change of pharmacist-in-charge, if that person has never held that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming the position.
- 3.8 Technician Support. At all times that the pharmacy department is open for business, there shall be at least one technician immediately available in the facility to assist in the pharmacy at the pharmacist's request. A schedule of technician support shall be readily available to the pharmacists at all times.
- 3.9 A conspicuous sign with letters not less than three-quarter inches in height, reading "patients may request the lot numbers and expiration dating for their dispensed medication at the time of prescription drop-off" or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned-off section where it can be seen by the public.

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

**2500 Board of Pharmacy**

---

**FINAL REGULATIONS**

---

**DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))  
24 **DE Admin. Code** 3000

**ORDER****3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals**

Pursuant to 29 **Del.C.** §10118 and 24 **Del.C.** §3006(A)(1), the Delaware Board of Professional Counselors of Mental Health and Chemical Dependency issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on January 25, 2012, the Board makes the following findings and conclusions:

**SUMMARY OF THE EVIDENCE**

1. The Board posted public notice of the proposed amendments in the December 1, 2011 *Register of Regulations* and in the *Delaware News Journal* and *Delaware State News*. The Board proposed to rework its regulations to be consistent with the Association of Marital and Family Therapy Regulatory Board's requirements for License for marriage and Family Therapists.
2. The Board received no written comments during the month of December 2011. The Board held a public hearing on January 25, 2012 and received no public comments.
3. The Board proposed to add language to make the passing score for the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) the passing score acceptable for licensure.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

4. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's Rules. No public comment was received and therefore no further revision of the rules need be considered.

5. There being no public comment to consider, the Board hereby adopts the regulation changes as originally published on December 1, 2011.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on April 1, 2012.

IT IS SO ORDERED this 22<sup>nd</sup> day of February, 2012, by the Board of Mental Health and Chemical Dependency Professionals of the State of Delaware.

Lisa Ritchie, President	Tracey Frazier, LCDP
Ruth Banta, Public Member	Julius Mullen, Ph.D., LPCMH
Daniel Cooper, LPCMH	William Northery, Ph.D., LMFT
Robert Doyle III, Public Member	Elizabeth Vassas, Public Member
Greg Drevno, LPCMH	

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2011 issue of the *Register* at page 789 (15 DE Reg. 789). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals**

---

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

The State Board of Education will hold its monthly meeting on Thursday, April 19, 2012 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****PUBLIC NOTICE**

The Delaware Department of Health and Social Services will submit its annual grant application under Part C of the Individuals with Disabilities Education Improvement Act of 2004. The application will be available until April 16, 2012.

Please contact the Part C Birth to Three office at 302-255-9134 (call collect from Kent and Sussex) to secure a copy of the application or e-mail [Inita.joyner@state.de.us](mailto:Inita.joyner@state.de.us). Send your written comments to Part C/Birth to Three, DMS/DHSS, 2nd floor, Main Building, Suite 249, 1901 N. DuPont Hwy, New Castle, DE 19720 or fax to 302-255-4407.

**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION****3102 Long Term Care Discharge and Impartial Hearing Procedures****PUBLIC NOTICE**

The Division of Long Term Care Residents Protection (DLTCRP) is proposing the implementation of Regulation 3102, Long Term Care Discharge and Impartial Hearing Regulations.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 by Tuesday May, 1, 2012.

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****Diamond State Health Plan Plus****Various Related Policies in the Division of Social Services Manual****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to amend policies in the Division of Social Services Manual (DSSM) related to the implementation of Diamond State Health Plan Plus.

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 Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2012.

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**Home and Community-Based Services Waivers**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to amend policies in the Division of Social Services Manual (DSSM) regarding *Home and Community-Based Services Waivers*.

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 Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2012.

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

**DIVISION OF PUBLIC HEALTH**  
**Regulations Governing a Detailed Plumbing Code**  
**PUBLIC NOTICE**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, is proposing revisions to the State of Delaware Regulations Governing A Detailed Plumbing Code. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. On April 1, 2012, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed Regulations 4455 Governing a Detailed Plumbing Code. Delaware law requires the Division of Public Health to adopt and enforce the most recent version of the International Plumbing Code (IPC) within one calendar year of its issuance, in conformity with the basic plumbing principles provided in Title 16 of the Delaware Code. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

The public hearing will be held on April 25, 2012 at 2:30 p.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the April 1, 2012 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Plumbing Permitting and Inspection Program at (302) 856-5123.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by April 20, 2012. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by April 30, 2012 to:

Deborah Harvey, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Fax (302) 739-6659

**DIVISION OF PUBLIC HEALTH**  
**4462 Public Drinking Water Systems**  
**PUBLIC NOTICE**

The Health Systems Protection Section, Office of Drinking Water, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed State of Delaware Regulations Governing Public Drinking Water Systems. Amendments include the adoption of four new EPA regulations: the Long Term 2 Enhanced Surface Water Treatment Rule (LT2), the Stage 2 Disinfectant/Disinfection Byproducts Rule (Stage 2 DBP), the Ground Water Rule (GWR), and the Lead/Copper Rule Short Term Revisions (LCR STR) as well as makes technical corrections to previously adopted federal regulations. In addition, there are several proposed changes to Delaware-specific requirements. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

The public hearing will be held on April 25, 2012 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the April 1, 2012 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Drinking Water at (302) 741- 8630.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by April 20, 2012. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by April 30, 2012 to:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700  
Fax: (302) 739-6659

**DIVISION OF PUBLIC HEALTH**  
**State of Delaware Medical Marijuana Code**  
**PUBLIC NOTICE**

Senate Bill 17, signed into law in May 2011, creates the Delaware Medical Marijuana Act. The Department of Health and Social Services is proposing regulations which establish the regulation of the Delaware Medical Marijuana Act to be hereby known as the State of Delaware Medical Marijuana Code. On April 1, 2012, the Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, plans to publish as proposed regulations governing the State of Delaware Medical Marijuana Act and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the April 1, 2012 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Health Systems Protection Section at 302-744-4705.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Monday, April 30, 2012 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700  
Fax (302) 739-6659

---

**CALENDAR OF EVENTS/HEARING NOTICES**

---

**DIVISION OF SOCIAL SERVICES****Child Care Subsidy Program Income Eligible Child Care****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, Income Eligible Child Care.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by April 30, 2012.

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

**DEPARTMENT OF LABOR****DIVISION OF INDUSTRIAL AFFAIRS****Office of Workers' Compensation****1341 Workers' Compensation Regulations****PUBLIC NOTICE**

The Secretary of Labor, in accordance with 19 Del.C. §§2322 F, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System (HCPS). These proposals 1) clarify that although an operating surgeon certified in the HCPS may request preauthorization for surgery, the surgeon is not obligated to preauthorize each surgery performed; and 2) add the claimant's attorney of record to the list of entities who receive a copy of the utilization review determination.

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on May 14, 2012, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be at the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF WATER RESOURCES****Surface Water Discharges Section****7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems****PUBLIC NOTICE**

Substantial revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems (On-site regulations) are proposed to incorporate the Guidance and Regulations Governing the Land Treatment of Wastes spray irrigation regulatory language. The on-site regulations have been revised to address large system site investigations, hydrogeological investigations, design

considerations, operation and maintenance practices, updating of individual on-site wastewater treatment and disposal system design criteria, establishment of new licensees and inspection protocols, and to establish performance standards for small on-site systems utilizing alternative technologies and all large systems.

Upon the effective date of revised regulations, the *Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds*, effective November 11, 2008, Sections 6.0, 7.0 and 8.0, may be affected.

The Department of Natural Resources and Environmental Control (DNREC) Division of Water will conduct a public hearing on the proposed revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, to address the proposed changes that have occurred over the past three years as a result of discussions, public workshops, committee meetings and literature searches.

The public hearing on this proposed revision of Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems will be held Thursday, May 3, 2012, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation revisions may be inspected at the following locations:

Department of Natural Resources and Environmental Control  
89 Kings Highway  
Dover, DE 19901

Department of Natural Resources and Environmental Control  
20653 DuPont Blvd, Unit 5  
Georgetown, DE 19947

The proposed regulation revisions may be inspected on the DNREC Division of Water, Groundwater Discharges Section website:

<http://www.dnrec.delaware.gov/wr/Information/GWDInfo/Pages/GWDS%20Design%20Install%20Operate%20Info%20For%20Proposed%20Wastewater%20Treatment%20Regulations.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Jack Hayes, DNREC Division of Water, Groundwater Discharges Section, 89 Kings Highway, Dover, DE 19901, (302) 739-9948, [John.Hayes@state.de.us](mailto:John.Hayes@state.de.us).

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, as designated by the hearing officer at this hearing, to Jack Hayes and/or statements and testimony may be presented either orally or in writing at the May 3, 2012 public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Jack Hayes  
DNREC – Division of Water  
Groundwater Discharges Section  
89 Kings Highway  
Dover, DE 19901

## **DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

### **OFFICE OF THE SECRETARY**

#### **Regulations Governing Security Systems and Protective Services: False Alarms**

#### **PUBLIC NOTICE**

The Department of Safety and Homeland Security hereby promulgates rules and regulations relating to the

enforcement of civil penalties for false alarms pursuant to 24 **Del.C.** §1229.

The Department solicits and will consider timely filed written comments from interested individuals and groups concerning these proposed regulations. The deadline for the filing of such written comments will be thirty days after the proposed regulations are published in the Delaware Register of Regulations, or by May 1, 2012. Any such submissions should be mailed or hand delivered to Elizabeth Olsen at: Department of Safety and Homeland Security, Public Safety Building, Suite 220, 303 Transportation Circle, P.O. Box 818, Dover, DE 19903, on or before the deadline stated above.

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**200 Board of Landscape Architecture**  
**PUBLIC NOTICE**

The Delaware Board of Landscape Architects in accordance with 24 **Del.C.** §205 has proposed amendments to Rules 1.0, 4.0, 7.0, 8.0 and 11.0. The proposed revisions to the rules are an attempt to better organize and clearly establish the standards governing Landscape Architects in the State of Delaware concerning applying for licensure, issuance of a license, continuing education, inactive status and crimes that are substantially related to the practice of Landscape Architects.

A public hearing will be held on May 10, 2012, at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Jessica Williams, Administrative Assistant for the Delaware Board of Landscape Architects, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

**DIVISION OF PROFESSIONAL REGULATION**  
**Real Estate Commission Education Committee**  
**PUBLIC NOTICE**

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

A public hearing will be held on May 10, 2012 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

The Commission has proposed extensive revisions to the Guidelines. The Guidelines have been amended to include information previously contained only in an "Appendix" posted on the Commission's website. The amendments ensure that pre-licensing and continuing education standards are properly and fully set forth in rules promulgated and adopted by the Commission. The amended Guidelines explain new continuing education standards, which will be set forth in further detail in the Commission's rules and regulations. Specifically, pursuant to the proposed revisions, continuing education offerings must fall into one of seven different modules, or, for new licensees, one of four different modules.

In a new Rule 11.0, procedures are detailed for addressing course providers who receive negative evaluations from course attendees. This new Rule is intended to ensure quality in the provision of education to prospective and current licensees.

The Commission will consider promulgating the proposed revisions to the Guidelines at its regularly scheduled meeting following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION**  
**3600 Board of Registration of Geologists**  
**PUBLIC NOTICE**

The Delaware Board of Geologists pursuant to 24 **Del.C.** §3606(a)(1) proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to update the rules by adding provisions concerning a lapsed license, creating an inactive status, adding online courses and web seminars to CEU list and adding to the list of automatically approved course work for CEU requirements. The revisions also add to the list of crimes substantially related to the practice of geology and makes numerous grammatical changes.

The Board will hold a public hearing on the proposed rule change on May 4, 2012 at 10 00 am., Second floor conference room B, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904. Written comments should be sent to Sandra Wagner, Administrator of the Delaware Board of Geologists, Cannon Building, 861 Silver Lake Blvd., Dover DE 19904.

**EXECUTIVE DEPARTMENT**  
**OFFICE OF MANAGEMENT AND BUDGET**

**Environmentally Preferred Purchasing Policy**  
**PUBLIC NOTICE**

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Director of the Office of Management and Budget is proposing to adopt a regulation setting forth the State of Delaware Environmentally Preferred Purchasing Policy.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on May 2, 2012 at 11:00 a.m. at the Office of Management and Budget, Haslet Building, room 219, 122 William Penn St., Dover, DE 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Robert Scoglietti, Delaware Office of Management and Budget, 122 William Penn Street, Dover, DE, 19901. Written comments must be received on or before May 1, 2012. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the address of the Delaware Office of Management and Budget set forth above.

**OFFICE OF MANAGEMENT AND BUDGET**  
**Promoting, Maintaining and Controlling the Public Use of the Legislative Mall**  
**PUBLIC NOTICE**

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Director of the Office of Management and Budget is proposing to adopt a regulation setting forth the State of Delaware Environmentally Preferred Purchasing Policy.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on May 2, 2012 at 11:00 a.m. at the Office of Management and Budget, Haslet Building, room 219, 122 William Penn St., Dover, DE 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Robert Scoglietti, Delaware Office of Management and Budget, 122 William Penn Street, Dover, DE, 19901. Written comments must be received on or before May 1, 2012. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the address of the Delaware Office of Management and Budget set forth above.