

---

# Delaware Register of Regulations

---

Issue Date: April 1, 2016  
Volume 19 - Issue 10, Pages 867 - 948

---



## IN THIS ISSUE:

Regulations:  
Errata  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before March 15, 2016.

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

---

## CITATION TO THE DELAWARE REGISTER

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

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

---

## 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

---

869

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 15	4:30 p.m.
June 1	May 16	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.

---

## DIVISION OF RESEARCH STAFF

**Lori Christiansen**, Director; **Mark J. Cutrona**, Deputy Director; **Tara Donofrio**, Administrative Specialist II; **Bethany Fiske**, Assistant Registrar of Regulations; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Human Resources/Financials; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Printer; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Vaughn Wagner**, Research Analyst; **Verity Watson**, Joint Sunset Analyst; **Rochelle Yerkes**, Office Manager; **Sara Zimmerman**, Legislative Librarian.

# TABLE OF CONTENTS

---

Cumulative Tables..... 872

---

## ERRATA

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Energy and Climate

104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions..... 880

---

## PROPOSED

### DEPARTMENT OF AGRICULTURE

#### Harness Racing Commission

501 Harness Racing Rules and Regulations..... 881

### DEPARTMENT OF EDUCATION

#### Professional Standards Board

1559 Skilled and Technical Sciences Teacher..... 882

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan: Prescription Drug Supplemental Rebate Agreement..... 884

Title XIX Medicaid State Plan: Long-Term Care Facility Services - Standards for Payment of Reserved Beds During Absence from Long-Term Care Facilities..... 888

Title XIX Medicaid State Plan: Long-Term Care Facilities - Post-Eligibility Treatment of Institutionalized Individuals Personal Needs Allowance..... 893

Title XIX Medicaid State Plan: Medical Care and Other Types of Remedial Care - Services to Treat Autism Spectrum Disorder..... 898

#### Division of Public Health

4468 Delivery of Hospice Services..... 901

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Fish and Wildlife

3774 Oyster Minimum Size Limits..... 904

#### Division of Waste and Hazardous Substances

1301 Regulations Governing Solid Waste..... 905

### DEPARTMENT OF SAFETY AND HOMELAND SECURITY

#### Division of State Police

5500 Bail Enforcement Agents, Rule 2.0..... 912

### DEPARTMENT OF STATE

#### Division of Professional Regulation

1000 Board of Pilot Commissioners..... 913

1770 Respiratory Care Practice Advisory Council..... 914

2100 Board of Examiners in Optometry, Section 9.0 Telehealth..... 914

---

## FINAL

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

745 Criminal Background Check for Public School Related Employment..... 917

746 Criminal Background Check for Student Teaching..... 918

775 New Teacher Hiring Date Reporting..... 919

---

---

# TABLE OF CONTENTS

---

871

<b>Professional Standards Board</b>	
1502 Professional Growth Salary Increments.....	920
<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES</b>	
<b>Division of Public Health</b>	
4304 Delaware Medical Orders for Scope of Treatment (DMOST).....	922
<b>DEPARTMENT OF INSURANCE</b>	
<b>Office of the Commissioner</b>	
1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims .	923
1313 Arbitration of Health Insurance Disputes Between Carriers and Providers.....	924
1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers.....	925
1316 Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services.....	926
<b>DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL</b>	
<b>Division of Fish and Wildlife</b>	
3900 Wildlife- 4.0, Seasons; 23.0 Non-native/Invasive Wildlife.....	927
<b>Division of Waste and Hazardous Substances</b>	
1302 Regulations Governing Hazardous Waste.....	930
<b>DEPARTMENT OF STATE</b>	
<b>Division of Professional Regulation</b>	
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals	932
3800 Board of Dietetics/Nutrition.....	933
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Motor Vehicles</b>	
2222 School Bus Driver Qualifications and Endorsements.....	936
2225 Delaware Driving Privilege Permit and Driving Privilege Card.....	937
<b>Division of Planning and Policy</b>	
2309 Development Coordination Manual.....	938
<hr/> <b>GENERAL NOTICES</b> <hr/>	
<b>DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL</b>	
<b>Division of Energy and Climate</b>	
Director's Determination under 26 Del.C. §354(i) & (j) and 7 DE Admin. Code 104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions.....	940
<b>Division of Parks and Recreation</b>	
9201 Regulations Governing State Parks.....	943
<hr/> <b>CALENDAR OF EVENTS/HEARING NOTICES</b> <hr/>	
Dept. of Agriculture, Harness Racing Commission, Notice of Public Comment Period.....	944
Dept. of Education, Notice of Monthly Meeting.....	944
Dept. of Health and Social Services, Div. of Medicaid and Medical Assistance; Div. of Public Health, Notice of Public Comment Periods and Public Hearing.....	944-946
Dept. of Natural Resources and Environmental Control, Div. of Fish and Wildlife; Div. of Waste and Hazardous Substances, Notice of Public Comment Periods and Public Hearings.....	946-947
Dept. of Safety and Homeland Security, Div. of State Police, Notice of Public Comment Period.....	947
Dept. of State, Div. of Prof. Reg., Board of Pilot Commissioners; Resp. Care Practice Advisory Council; Board of Examiners in Optometry, Notices of Public Comment Periods and Public Hearings ...	947-948

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.).

**ADMINISTRATIVE OFFICES OF THE COURTS****Child Placement Review Board**

1401 Regulations Governing the Ivyane D.F. Davis Scholarship..... 19 DE Reg. 186 (Final)

**DELAWARE RIVER BASIN COMMISSION**

Amendments to the Rules of Practice and Procedure to Allow Each Signatory Party and the DRBC to Administer a Single Process for the Review and Adjudication of Projects ..... 19 DE Reg. 838 (Final)

**DELAWARE SOLID WASTE AUTHORITY**

501 Regulations of the Delaware Solid Waste Authority..... 19 DE Reg. 226 (Prop.)  
(Published as final 1/1/16; effective 7/1/16)..... 19 DE Reg. 613 (Final)  
502 Statewide Solid Waste Management Plan..... 19 DE Reg. 231 (Prop.)  
19 DE Reg. 616 (Final)

**DELAWARE STATE FIRE PREVENTION COMMISSION**

701 Administration and Enforcement ..... 19 DE Reg. 96 (Prop.)  
19 DE Reg. 843 (Final)  
702 Fire Protection in Building Construction..... 19 DE Reg. 97 (Prop.)  
19 DE Reg. 843 (Final)  
703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems and Fire Extinguishers..... 19 DE Reg. 97 (Prop.)  
19 DE Reg. 843 (Final)  
704 Hazardous Processes and Operations..... 19 DE Reg. 98 (Prop.)  
19 DE Reg. 843 (Final)  
705 General Fire Safety..... 19 DE Reg. 99 (Prop.)  
19 DE Reg. 843 (Final)  
706 Specific Occupancy Requirements..... 19 DE Reg. 99 (Prop.)  
19 DE Reg. 843 (Final)

**DEPARTMENT OF AGRICULTURE****Delaware Agricultural Lands Preservation Foundation**

701 Farmland Preservation Program..... 19 DE Reg. 160 (Prop.)  
19 DE Reg. 482 (Final)

**Harness Racing Commission**

501 Harness Racing Rules and Regulations, Section 8.0..... 19 DE Reg. 10 (Prop.)  
19 DE Reg. 189 (Final)

**Standardbred Breeders' Fund**

502 Delaware Standardbred Breeders' Fund Regulations, Section 13.0 - Races..... 19 DE Reg. 161 (Prop.)  
19 DE Reg. 486 (Final)

**Thoroughbred Racing Commission**

1001 Thoroughbred Racing Rules and Regulations, Sections 10.0 and 14.0... 19 DE Reg. 454 (Prop.)  
19 DE Reg. 802 (Prop.)  
Section 15.0: Medication; Testing Procedures..... 19 DE Reg. 137 (Final)  
19 DE Reg. 354 (Prop.)  
Sections 18.0 and 19.0..... 19 DE Reg. 32 (Final)

---

# CUMULATIVE TABLES

873

---

1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations..... 19 DE Reg. 33 (Final)

## DEPARTMENT OF EDUCATION

### Office of the Secretary

103 Accountability for Schools, Districts and the State.....	19 DE Reg.	162 (Prop.)
	19 DE Reg.	234 (Prop.)
106A Teacher Appraisal Process Delaware Performance Appraisal System Revised.....	19 DE Reg.	35 (Final)
	19 DE Reg.	805 (Prop.)
107A Specialist Appraisal Process Delaware Performance Appraisal System Revised.....	19 DE Reg.	38 (Final)
	19 DE Reg.	807 (Prop.)
108A Administrator Appraisal Process Delaware Performance Appraisal System Revised.....	19 DE Reg.	35 (Final)
252 Required Educational Records and Transfer and Maintenance of Educational Records.....	19 DE Reg.	355 (Prop.)
	19 DE Reg.	618 (Final)
284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction.....	19 DE Reg.	163 (Prop.)
	19 DE Reg.	487 (Final)
286 Application Fee For Educator Licensure.....	19 DE Reg.	358 (Prop.)
	19 DE Reg.	620 (Final)
292 Post Secondary Institutions and Degree Granting Institutions of Higher Education.....	19 DE Reg.	809 (Prop.)
503 Instructional Program Requirements.....	19 DE Reg.	455 (Prop.)
	19 DE Reg.	739 (Final)
505 High School Graduation Requirements and Diplomas.....	19 DE Reg.	100 (Prop.)
	19 DE Reg.	303 (Final)
545 K to 12 School Counseling Programs.....	19 DE Reg.	102 (Prop.)
	19 DE Reg.	305 (Final)
616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings.....	19 DE Reg.	458 (Prop.)
621 District and School Emergency Preparedness Policy.....	19 DE Reg.	810 (Prop.)
745 Criminal Background Check for Public School Related Employment.....	19 DE Reg.	699 (Prop.)
746 Criminal Background Check for Student Teaching.....	19 DE Reg.	706 (Prop.)
747 Criminal Background Check for Private School and Youth Camp Related Employment.....	19 DE Reg.	710 (Prop.)
775 New Teacher Hiring Date Reporting.....	19 DE Reg.	360 (Prop.)
	19 DE Reg.	712 (Prop.)
804 Immunizations.....	19 DE Reg.	43 (Final)
811 School Health Record Keeping Requirements.....	19 DE Reg.	234 (Prop.)
	19 DE Reg.	490 (Final)
817 Medications and Treatments.....	19 DE Reg.	362 (Prop.)
	19 DE Reg.	622 (Final)
902 Gifted or Talented Education Plan.....	19 DE Reg.	48 (Final)
923 Children With Disabilities Subpart B, General Duties and Eligibility of Agencies.....	19 DE Reg.	714 (Prop.)
924 Children With Disabilities Subpart C Local Educational Agency Eligibility..	19 DE Reg.	716 (Prop.)
925 Children With Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	19 DE Reg.	718 (Prop.)
926 Children With Disabilities Subpart E Procedural Safeguards for Parents and Children.....	19 DE Reg.	721 (Prop.)
932 Military-Connected Youth.....	19 DE Reg.	459 (Prop.)
	19 DE Reg.	742 (Final)

# CUMULATIVE TABLES

1007 DIAA Sportsmanship.....	19 DE Reg. 105 (Prop.)
1008 DIAA Junior High and Middle School Interscholastic Athletics.....	19 DE Reg. 493 (Final)
	19 DE Reg. 110 (Prop.)
	19 DE Reg. 461 (Prop.)
1009 DIAA High School Interscholastic Athletics.....	19 DE Reg. 743 (Final)
	19 DE Reg. 111 (Prop.)
	19 DE Reg. 462 (Prop.)
1150 School Transportation.....	19 DE Reg. 745 (Final)
	19 DE Reg. 51 (Final)
	19 DE Reg. 112 (Prop.)
	19 DE Reg. 307 (Final)

## Professional Standards Board

1502 Professional Growth Salary Increments.....	19 DE Reg. 364 (Prop.)
	19 DE Reg. 549 (Prop.)
1506 Emergency Certificate.....	19 DE Reg. 367 (Prop.)
	19 DE Reg. 812 (Prop.)
1512 Issuance and Renewal of Advanced License.....	19 DE Reg. 495 (Final)
1513 Denial of Licenses.....	19 DE Reg. 496 (Final)
1514 Revocation, Limitation, or Suspension of Licenses.....	19 DE Reg. 498 (Final)
1522 Elementary School Counselor.....	19 DE Reg. 464 (Prop.)
1545 Secondary School Counselor.....	19 DE Reg. 466 (Prop.)
1559 Skilled and Technical Sciences Teacher.....	19 DE Reg. 237 (Prop.)
	19 DE Reg. 623 (Final)
1560 Art Teacher.....	19 DE Reg. 12 (Prop.)
	19 DE Reg. 499 (Final)
1563 Music Teacher.....	19 DE Reg. 14 (Prop.)
	19 DE Reg. 501 (Final)
1564 Physical Education Teacher.....	19 DE Reg. 15 (Prop.)
	19 DE Reg. 503 (Final)
1571 Exceptional Children Special Education Teacher.....	19 DE Reg. 17 (Prop.)
	19 DE Reg. 505 (Final)
1583 School Psychologist.....	19 DE Reg. 241 (Prop.)
	19 DE Reg. 624 (Final)
1590 Delaware Administrator Standards.....	19 DE Reg. 554 (Prop.)
	19 DE Reg. 846 (Final)
1595 Certification Programs for Leaders in Education.....	19 DE Reg. 243 (Prop.)
	19 DE Reg. 626 (Final)

## DEPARTMENT OF FINANCE

### Office of Unclaimed Property, State Escheator

Voluntary Disclosure Agreement and Escheat Examination Manual.....	19 DE Reg. 723 (Prop.)
--	------------------------

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### Division of Long Term Care Residents Protection

3325 Financial Capability Reporting.....	19 DE Reg. 52 (Final)
--	-----------------------

### Division of Medicaid and Medical Assistance

Hippotherapy.....	19 DE Reg. 164 (Prop.)
	19 DE Reg. 513 (Final)
Private Duty Nursing Services.....	19 DE Reg. 245 (Prop.)
	19 DE Reg. 507 (Final)
Reimbursement Methodology for Home Health Services.....	19 DE Reg. 253 (Prop.)
	19 DE Reg. 627 (Final)
Reimbursement Methodology for State Plan Personal Care Services.....	19 DE Reg. 258 (Prop.)
	19 DE Reg. 632 (Final)
Title XIX Medicaid State Plan, Attachment 3.1-A, Introductory Page 1 (Telemedicine).....	19 DE Reg. 20 (Prop.)
	19 DE Reg. 191 (Final)



Title XIX Medicaid State Plan - Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services - Inpatient Psychiatric Hospital Services for Individuals Under Age 21.....	19 DE Reg. 380 (Prop.) 19 DE Reg. 763 (Final)
Title XIX Medicaid State Plan - Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services - Mental Health Services.....	19 DE Reg. 373 (Prop.) 19 DE Reg. 754 (Final)
Title XIX Medicaid State Plan - Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services - Substance Use Disorder Services.....	19 DE Reg. 377 (Prop.) 19 DE Reg. 759 (Final)
Title XIX Medicaid State Plan, Multi-State Purchasing Pool Supplemental Drug Rebate Agreement (SRA).....	19 DE Reg. 57 (Final)
Title XIX Medicaid State Plan - Pharmaceutical Services Reimbursement - 340B Drug Products.....	19 DE Reg. 369 (Prop.) 19 DE Reg. 748 (Final) 19 DE Reg. 800 (Errata)
Title XIX Medicaid State Plan, State Plan Rehabilitative Services - Coverage and Reimbursement for Community Support Services.....	19 DE Reg. 60 (Final)
<b>Division of Public Health</b>	
4304 Medical Orders for Life-Sustaining Treatment or Pre-Hospital Advance Care Directives..... (Published as final 1/1/16, effective 4/1/16).....	19 DE Reg. 388 (Prop.) 19 DE Reg. 637 (Final)
4406 Home Health Agencies--Aide Only (Licensure).....	19 DE Reg. 388 (Prop.) 19 DE Reg. 847 (Final)
4410 Skilled Home Health Agencies (Licensure).....	19 DE Reg. 391 (Prop.) 19 DE Reg. 641 (Final)
4452 Clean Indoor Air Act.....	19 DE Reg. 849 (Final) 19 DE Reg. 169 (Prop.)
4455 Delaware Regulations Governing a Detailed Plumbing Code.....	19 DE Reg. 407 (Final) 19 DE Reg. 138 (Final)
4462 Public Drinking Water Systems.....	19 DE Reg. 22 (Prop.) 19 DE Reg. 114 (Prop.) 19 DE Reg. 172 (Prop.)
4464 Public Swimming Pools.....	19 DE Reg. 517 (Final) 19 DE Reg. 115 (Prop.) 19 DE Reg. 309 (Final)
4465 Delaware Radiation Control Regulations, Part D: Standards for Protection Against Radiation; Part J: Notices, Instructions and Reports to Workers; Inspections.....	19 DE Reg. 140 (Final)
4469 Personal Assistance Services Agencies.....	19 DE Reg. 392 (Prop.) 19 DE Reg. 852 (Final)
4470 State of Delaware Medical Marijuana Code.....	19 DE Reg. 91 (Emer.) 19 DE Reg. 116 (Prop.) 19 DE Reg. 409 (Final)
<b>DEPARTMENT OF INSURANCE</b>	
<b>Office of the Commissioner</b>	
504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants.....	19 DE Reg. 262 (Prop.) 19 DE Reg. 525 (Final)
602 Motor Vehicle Physical Damage Appraisers.....	19 DE Reg. 561 (Prop.) 19 DE Reg. 817 (Prop.)
606 Proof of Automobile Insurance.....	19 DE Reg. 173 (Prop.) 19 DE Reg. 414 (Final)
1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities.....	19 DE Reg. 263 (Prop.) 19 DE Reg. 526 (Final)

1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims.....	19 DE Reg. 564 (Prop.)
1313 Arbitration of Health Insurance Disputes Between Carriers and Providers	19 DE Reg. 564 (Prop.)
1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers	19 DE Reg. 569 (Prop.)
1316 Arbitration of Health Insurance Disputes Between Carriers and Non-Network Providers of Emergency Care Services.....	19 DE Reg. 573 (Prop.)
1409 Insurance Coverage for Telemedicine and Telehealth.....	19 DE Reg. 469 (Prop.)
	19 DE Reg. 768 (Final)
1801 Registration of Insurance Holding Companies.....	19 DE Reg. 396 (Prop.)
	19 DE Reg. 642 (Final)

**DEPARTMENT OF JUSTICE****Fraud and Consumer Protection Division**

104 Privacy Policies For Commercial Online Sites, Services, and Applications .....	19 DE Reg. 578 (Prop.)
--	------------------------

**DEPARTMENT OF LABOR****Division of Industrial Affairs**

1101 Apprenticeship and Training Regulations.....	19 DE Reg. 194 (Final)
1322 Prevailing Wage Regulations.....	19 DE Reg. 415 (Final)

**Office of Workers' Compensation**

1341 Workers' Compensation Regulations.....	19 DE Reg. 175 (Prop.)
1341 Workers' Compensation Regulations.....	19 DE Reg. 416 (Final)

**Division of Unemployment Insurance**

1202 Unemployment Insurance Regulations.....	19 DE Reg. 64 (Final)
	19 DE Reg. 820 (Prop.)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****Division of Air Quality**

1124 Control of Volatile Organic Compound Emissions.....	19 DE Reg. 199 (Final)
1138 Emission Standards for Hazardous Air Pollutants for Source Categories.	19 DE Reg. 23 (Prop.)
	19 DE Reg. 311 (Final)
1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products.....	19 DE Reg. 25 (Prop.)
	19 DE Reg. 770 (Final)

**Division of Energy and Climate**

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions.....	19 DE Reg. 270 (Prop.)
	19 DE Reg. 397 (Prop.)
(Renumbered to 104 in the final).....	19 DE Reg. 643 (Final)

**Division of Fish and Wildlife**

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.....	19 DE Reg. 92 (Emer.)
	19 DE Reg. 121 (Prop.)
	19 DE Reg. 313 (Final)
3542 Tilefish.....	19 DE Reg. 401 (Prop.)
	19 DE Reg. 649 (Final)
3711 Conch Minimum Size Limits.....	19 DE Reg. 315 (Final)
3712 Commercial Conch Dredge Licenses [Commercial Conch Season].....	19 DE Reg. 315 (Final)
3900 Wildlife: Section 4.0 Seasons; Section 23.0 Non-native/Invasive Wildlife	19 DE Reg. 176 (Prop.)
	19 DE Reg. 583 (Prop.)

**Division of Parks and Recreation**

9201 Regulations Governing State Parks.....	19 DE Reg. 471 (Prop.)
	19 DE Reg. 854 (Final)

**Division of Waste and Hazardous Substances**

1301 Regulations Governing Solid Waste (DRGSW).....	19 DE Reg. 422 (Final)
(DRGSW) - Scrap Tires.....	19 DE Reg. 418 (Final)
1302 Regulations Governing Hazardous Waste.....	19 DE Reg. 181 (Prop.)

1351 Underground Storage Tank Systems.....	19 DE Reg. 584 (Prop.)
	19 DE Reg. 402 (Prop.)
1375 Regulations Governing Hazardous Substance Cleanup.....	19 DE Reg. 773 (Final)
	19 DE Reg. 65 (Final)
<b>Division of Watershed Stewardship</b>	
5101 Sediment and Stormwater Regulations.....	19 DE Reg. 472 (Prop.)
5102 Regulation Governing Beach Protection and the Use of Beaches.....	19 DE Reg. 274 (Prop.)
<b>Division of Water</b>	
7301 Regulations Governing the Construction and Use of Wells.....	19 DE Reg. 587 (Prop.)
<b>DEPARTMENT OF SAFETY AND HOMELAND SECURITY</b>	
<b>Division of State Police</b>	
1300 Board of Examiners of Private Investigators & Private Security Agencies	19 DE Reg. 202 (Final)
2400 Board of Examiners of Constables, Rules 3.0 and 5.0.....	19 DE Reg. 425 (Final)
Rules 4.0 & 9.0.....	19 DE Reg. 404 (Prop.)
(Rule 9.0 published as final 1/1/16, effective 2/11/16).....	19 DE Reg. 652 (Final)
Rule 7.0.....	19 DE Reg. 426 (Final)
5500 Bail Enforcement Agents, Rules 1.0, 4.0 and 6.0.....	19 DE Reg. 318 (Final)
<b>Office of the Alcoholic Beverage Control Commissioner</b>	
202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel, Restaurant and Dinner Theater.....	19 DE Reg. 858 (Final)
Alcoholic Beverage Control Regulations.....	19 DE Reg. 406 (Prop.)
	19 DE Reg. 775 (Final)
<b>DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES</b>	
<b>Division of Family Services</b>	
101 Rules for Early Care and Education and School-Age Centers.....	19 DE Reg. 6 (Emer.)
<b>Division of Prevention and Behavioral Health Services</b>	
Qualifications for Juvenile Mental Health Screeners.....	19 DE Reg. 473 (Prop.)
	19 DE Reg. 778 (Final)
<b>Office of Child Care Licensing</b>	
301 Criminal History Record Checks for Child Care Persons.....	19 DE Reg. 821 (Prop.)
302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons.....	19 DE Reg. 822 (Prop.)
<b>DEPARTMENT OF STATE</b>	
<b>Division of Professional Regulation</b>	
100 Board of Accountancy.....	19 DE Reg. 68 (Final)
	19 DE Reg. 658 (Final)
300 Board of Architects.....	19 DE Reg. 124 (Prop.)
	19 DE Reg. 275 (Prop.)
500 Board of Podiatry.....	19 DE Reg. 659 (Final)
	19 DE Reg. 427 (Final)
1100 Board of Dentistry and Dental Hygiene.....	19 DE Reg. 724 (Prop.)
Section 10.0, Practical (Clinical) Examination.....	19 DE Reg. 431 (Final)
1400 Board of Electrical Examiners.....	19 DE Reg. 141 (Final)
1725 Polysomnography Advisory Council.....	19 DE Reg. 69 (Final)
	19 DE Reg. 184 (Prop.)
	19 DE Reg. 780 (Final)
1799 Genetic Counselor Advisory Council.....	19 DE Reg. 725 (Prop.)
1900 Board of Nursing, Sections 2.0, 3.0, 4.0, 5.0 & 9.0.....	19 DE Reg. 125 (Prop.)
	19 DE Reg. 432 (Final)
2000 Board of Occupational Therapy Practice.....	19 DE Reg. 276 (Prop.)
2100 Board of Examiners in Optometry.....	19 DE Reg. 26 (Prop.)
	19 DE Reg. 204 (Final)
2500 Board of Pharmacy.....	19 DE Reg. 26 (Prop.)

# CUMULATIVE TABLES

subsection 3.8.....	19 DE Reg. 125 (Prop.)
2500 Board of Pharmacy, Sections 5.0 and 10.0.....	19 DE Reg. 660 (Final)
	19 DE Reg. 282 (Prop.)
2500 Board of Pharmacy, Section 5.0.....	19 DE Reg. 661 (Final)
	19 DE Reg. 860 (Final)
2700 Board of Registration for Professional Land Surveyors.....	19 DE Reg. 142 (Final)
	19 DE Reg. 589 (Prop.)
2925 Real Estate Commission Education Committee.....	19 DE Reg. 727 (Prop.)
2930 Council on Real Estate Appraisers.....	19 DE Reg. 70 (Final)
	19 DE Reg. 592 (Prop.)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	19 DE Reg. 283 (Prop.)
	19 DE Reg. 592 (Prop.)
	19 DE Reg. 663 (Final)
3300 Board of Veterinary Medicine.....	19 DE Reg. 827 (Prop.)
3500 Board of Examiners of Psychologists.....	19 DE Reg. 319 (Final)
3600 Board of Geologists.....	19 DE Reg. 827 (Prop.)
3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.....	19 DE Reg. 284 (Prop.)
3800 Board of Dietetics/Nutrition.....	19 DE Reg. 27 (Prop.)
4100 Board of Home Inspectors, Sections 4.0, 9.0 and 10.0.....	19 DE Reg. 184 (Prop.)
	19 DE Reg. 664 (Final)
5200 Board of Examiners of Nursing Home Administrators, Section 5.0, Programs for Continuing Education Credits.....	19 DE Reg. 479 (Prop.)
Uniform Controlled Substances Act Regulations.....	19 DE Reg. 27 (Prop.)
	19 DE Reg. 834 (Prop.)
<b>Public Service Commission</b>	
1202 Policies and Procedures Regarding FOIA Requests.....	19 DE Reg. 434 (Final)
3001 Rules for Certification and Regulation of Electric Suppliers (Docket No. 49)	19 DE Reg. 595 (Prop.)
3007 Electric Service Reliability and Quality Standards.....	19 DE Reg. 126 (Prop.)
4002 Regulations Governing Payphone Service Providers in Delaware (Docket No. 12), Repeal of.....	19 DE Reg. 71 (Final)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Maintenance and Operations</b>	
2601 Outdoor Advertising.....	19 DE Reg. 728 (Prop.)
<b>Division of Motor Vehicles</b>	
2222 School Bus Driver Qualifications and Endorsements.....	19 DE Reg. 597 (Prop.)
2225 Delaware Driving Privilege Permit and Driving Privilege Card.....	19 DE Reg. 603 (Prop.)
2261 Changing of License Plate Numbers and Establishing a Fee for Such Change.....	19 DE Reg. 527 (Final)
2266 Vehicle Document Fees.....	19 DE Reg. 836 (Prop.)
2289 Transportation Network Companies.....	19 DE Reg. 731 (Prop.)
<b>Division of Planning and Policy</b>	
2309 Development Coordination Manual.....	19 DE Reg. 73 (Final)
	19 DE Reg. 322 (Final)
	19 DE Reg. 737 (Prop.)
<b>Division of Transportation Solutions</b>	
2401 Utilities Manual Regulations.....	19 DE Reg. 612 (Prop.)
2402 Delaware Manual in Uniform Traffic Control Devices.....	19 DE Reg. 76 (Final)
2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	19 DE Reg. 134 (Prop.)
	19 DE Reg. 324 (Final)
<b>Office of the Secretary</b>	
Pedestrian Accessibility Standards.....	19 DE Reg. 480 (Prop.)
<b>EXECUTIVE DEPARTMENT</b>	
<b>Office of Management and Budget</b>	

---

Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act.....	19 <b>DE Reg.</b> 289 (Prop.) 19 <b>DE Reg.</b> 528 (Final)
<b>Division of Facilities Management</b>	
4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	19 <b>DE Reg.</b> 207 (Final)
<b>Statewide Benefits Office</b>	
2007 Disability Insurance Program Rules and Regulations.....	19 <b>DE Reg.</b> 78 (Final)

---

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF ENERGY AND CLIMATE**

Statutory Authority: 26 Delaware Code, Section 354(i) and (j) (26 **Del.C.** §354(i) & (j))  
7 **DE Admin. Code** 104

**104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions****Amendment to Secretary's Order No.: 2015-EC-0047**

**\*Please Note:** The Secretary's Order that approved *104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions*, published in the January 2016 issue of the *Delaware Register of Regulations* (19 DE Reg. 643), contained a typographical error. The Department's statutory authority for promulgating the regulation was incorrectly cited as 7 **Del.C.** §§6006, 6010. The paragraph containing the error is reprinted below with the citation corrected. The correct statutory authority for the regulation is 29 **Del.C.** §8003. The final regulation was also published in the January 2016 issue of the *Delaware Register of Regulations* (19 DE Reg. 646). The effective date of the final regulations remains the same.

**Secretary's Order No.: 2015-EC-0047****104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions****Date of Issuance: December 15, 2015****Effective Date of the Amendment: January 11, 2016**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to ~~7 **Del.C.** §§6006, 6010~~ 29 **Del.C.** §8003, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

David S. Small, Secretary  
Date: March 24, 2016.

---

**Symbol Key**

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

**Proposed Regulations**

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

---

**DEPARTMENT OF AGRICULTURE****HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005 (3 **Del.C.** §10005)  
3 DE Admin. Code 501

**PUBLIC NOTICE****501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the Qualifying Days Rule, reference 7.1.3.3.2 and 7.1.3.3.3.

On March 3, 2016, the DHRC Rules Committee approved rule amendments related to qualifying days and voted to send the proposed rule change to the full Commission for review. After discussion and public input, the DHRC voted to approve this rule amendment on March 10, 2016 at its regular, monthly meeting. Subsequent to a 30-day comment period from April 1 to May 9, 2016 and noticed in the *Register of Regulations*, the DHRC will finalize the regulations on May 10, 2016 during its regularly scheduled monthly meeting. The DHRC monthly meetings are public and noticed on the state meeting notice website. Those meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00 am. Written comments must be received by COB May 9, 2016. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

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

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 881RFA 04-01-16.pdf>

**501 Harness Racing Rules and Regulations**  
*(Break in Continuity of Sections)***7.0 Rules of the Race**

## 7.1 Declarations and Drawing

# PROPOSED REGULATIONS

*(Break in Continuity Within Section)*

7.1.3 Qualifying Races

*(Break in Continuity Within Section)*

- 7.1.3.3 At all extended pari-mutuel meetings declarations for overnight events shall be governed by the following:

*(Break in Continuity Within Section)*

- 7.1.3.3.2 Any horse that fails to race within ~~thirty (30)~~ sixty (60) days of its last start must go a qualifying race as set forth in a) 7.1.3.3.1 above. ~~However, at any race meeting this period can be extended up to sixty (60) days upon receiving approval of the Commission.~~ The time period allowed shall be calculated from the date of the last race to and including the date of ~~declaration~~ the next race. Horses entered and in to go in a race or races which are canceled due to no fault of their own, shall be considered to have raced in that race, and no start shall be counted for date preference purposes.

- 7.1.3.3.3 When a horse has raced at a chartered meeting and then gone to meetings where the races are not chartered the information from the uncharted lines may be summarized including each start and consolidated in favor of chartered lines to include a chartered line within the last ~~thirty (30)~~ sixty (60) days before the horse is permitted to race. The consolidated line shall carry date, place, time, driver, finish, track condition and distance.

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

**501 Harness Racing Rules and Regulations**

## DEPARTMENT OF EDUCATION

### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))  
14 **DE Admin. Code** 1559

#### PUBLIC NOTICE

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

#### 1559 Skilled and Technical Sciences Teacher

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1559 Skilled and Technical Sciences Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This Skilled and Technical Sciences Teacher regulation is being amended to expand the definition of Career and Technical Education programs and to help create opportunities for all students to pursue a career and college readiness instructional program. This regulation sets forth the requirements for a Skilled and Technical Sciences Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, May 2, 2016 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the



above address or may be viewed at the Professional Standards Board Business Office.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** §1205 requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

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

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 882RFA 04-01-16.pdf>

**1559 Skilled and Technical Sciences Teacher**  
*(Break in Continuity of Sections)*

**2.0 Definitions**

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

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

*(Break in Continuity Within Section)*

**“Work Experience”** means full time employment or work training experience in the specific Skilled and Technical Sciences career area of certification. An educator may substitute an Associate’s degree in the specific Skilled and Technical Sciences career area of certification for a maximum of ~~one~~ two

# PROPOSED REGULATIONS

years of work experience or a Bachelor's degree in the specific Skilled and Technical Sciences career area of certification for a maximum of ~~two~~ four years of work experience.

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

**1559 Skilled and Technical Sciences Teacher**

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

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

### PUBLIC NOTICE

#### Prescription Drug Supplemental Rebate Agreement

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance proposed to amend the Title XIX Medicaid State Plan regarding the State's Prescription Drug Supplemental Rebate Agreement, specifically, *to amend Delaware's supplemental drug rebate agreement and place Delaware in "The Sovereign State Drug Consortium (SSDC)" Medicaid multi-state purchasing pool.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 2, 2016. Please identify in the subject line: Prescription Drug Supplemental Rebate Agreement.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the State's Prescription Drug Supplemental Rebate Agreement, specifically, *to amend Delaware's supplemental drug rebate agreement and place Delaware in "The Sovereign State Drug Consortium (SSDC)" Medicaid multi-state purchasing pool.*

#### Statutory Authority

- 1927(a)(1), 1927 (a)(4) of the Social Security Act and 42 U.S.C. §13966-8, *authorizes state to enter directly into separate or supplemental rebate agreements with manufacturers*
- 1927(b)(3)(D) of the Social Security Act, *confidentiality of information disclosed by manufacturers or wholesalers*
- 1927(d)(1)(A) of the Social Security Act, *prior authorization on covered outpatient drug*
- 1927(d)(5) of the Social Security Act, *requirements of prior authorization programs*
- 1902(a)(19) of the Social Security Act, *care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- 42 U.S.C. §256b, *imposes ceilings on prices drug manufacturers may charge for medications sold to specified health care facilities*

#### Background

Under the Medicaid program, states may provide coverage of outpatient drugs as an optional service under

section 1905(a)(12) of the Social Security Act (the Act). Section 1903(a) of the Act provides for Federal Financial Participation (FFP) in state expenditures for these drugs. In general, in order for payment to be made available under section 1903 for covered outpatient drugs, manufacturers must enter into a Medicaid drug rebate agreement as set forth in section 1927(a) of the Act. Section 1927 of the Act provides specific requirements for rebate agreements, drug pricing submission and confidentiality requirements, the formulas for calculating rebate payments, and requirements for states for covered outpatient drugs.

#### *Medicaid Supplemental Drug Rebate Agreements*

The federal Omnibus Budget Reconciliation Act of 1990, section 4401 added §1927 to the Social Security Act. Section 1927 provides that states may enter separate or supplemental drug rebate agreements as long as such agreements achieve drug rebates equal to or greater than the drug rebates set forth in the Secretary's national rebate agreement with drug manufacturers, which is published at 56 F.R. 7049 (1991). Specifically, the drug rebate statute, at section 1927(a)(1) of the Social Security Act (Act), provides that "the Secretary may authorize a State to enter directly into agreements with a manufacturer." Also, section 1927(a)(4) of the Act provides that any drug rebate agreement between a state and drug manufacturers and in effect on November 5, 1990, may constitute a rebate agreement in compliance with the statute if the Centers for Medicare and Medicaid Services (CMS) determines that any such agreement "provides for rebates that are at least as large as the rebates otherwise required under this section." CMS accordingly believes that Congress intended that states that seek CMS approval under section 1927(a)(1) to enter directly into agreements with manufacturers must ensure that any such agreement will achieve drug rebates that are at least equal to the rebates set forth in the Secretary's rebate agreements with manufacturers. Currently, prescription drug manufacturers are required to enter into a rebate agreement.

Section 1927(d)(1)(A) of the Act permits states to subject any covered outpatient drug to a requirement of prior authorization as long as the state complies with the requirements set forth in section 1927(d)(5). A prior authorization program used to negotiate drug discounts for the Medicaid program is consistent with those provisions as well as the paramount purpose of the drug rebate provisions which is to reduce the costs to the Medicaid program for prescription drugs.

### **Summary of Proposal**

#### *Rationale and Justifications*

Supplemental rebate agreements are unique to each state. The Centers for Medicare and Medicaid Services (CMS) authorized the Delaware Division of Medicaid and Medical Assistance (DMMA)'s April 7, 2005, December 20, 2005, and December 10, 2013 versions of the "Delaware State Supplemental Rebate Agreement." These versions of the rebate agreement placed Delaware in Therapeutic Optimum Programs (TOP\$) Medicaid multi-state purchasing pool. These agreements were effective for drugs dispensed prior to July 1, 2016.

The administration of the TOP\$ Medicaid multi-state purchasing pool has since changed. This change has caused costs to increase, and made DMMA's ability to administer the drug rebate program more difficult. The Sovereign State Drug Consortium (SSDC) Medicaid multi-state purchasing pool provides states with more options and control when negotiating supplemental rebate rates, and allows for easier administration of the drug rebate program.

#### *Purpose*

To add language to the Medicaid State Plan regarding CMS's authorization for DMMA to enter into "The Sovereign States Drug Consortium (SSDC)" Medicaid multi-state purchasing pool and to provide clarification on the state's policies for the supplemental rebate program.

#### *Summary of Proposed Changes*

This SPA action addresses the need to ensure that DMMA is able to efficiently and cost effectively administer the supplemental drug rebate program.

If implemented as proposed, plan amendment will accomplish the following, effective July 1, 2016:

CMS will authorize DMMA to enter into "The Sovereign States Drug Consortium (SSDC)" Medicaid multi-State purchasing pool. The supplemental rebate agreement submitted to CMS on July 1, 2016 will amend the December 10, 2013 version of the "Delaware State Supplemental Drug Rebate Agreement" authorized under Transmittal Number SPA #15-001. CMS will authorize this amended

# PROPOSED REGULATIONS

version of the "Delaware State Supplemental Drug Rebate Agreement." This agreement and will apply to drugs paid for beginning July 1, 2016.

The agency's proposal involves no change in the definition of those eligible to receive pharmaceutical services, and the Medicaid prescribed drugs benefit available to eligible recipients remains the same. In addition, the agency's proposal involves no change to providers' current practices.

## *Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to Delaware's decision amend the state's supplemental drug rebate agreement and place Delaware in "The Sovereign State Drug Consortium (SSDC)" Medicaid multi-state purchasing pool. Comments must be received by 4:30 p.m. on Monday May 2, 2016.

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

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

## *Provider Manuals Update*

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

## **Fiscal Impact Statement**

The proposed amendment is an administrative change being implemented to more efficiently and effectively administer the State's Supplemental Drug Rebate Program. Therefore, there is no impact on the General Fund.

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

**<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 884RFA 04-01-16.pdf>**

## **DMMA PROPOSED REGULATION #16-005a REVISION**

Attachment 3.1-A  
Page 5 Addendum  
Continued 1

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

### LIMITATIONS ON AMOUNT, DURATION, AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

#### **12.c Prescribed Drugs Continued: Prior Authorization Continued**

- k. potential for abuse, misuse and diversion

- l. experimental use opportunity, and
- m. cost effectiveness relative to similar therapies

The recommendations of the Drug Utilization Review (DUR) Board shall constitute interpretive guidelines to be used in the determination whether to grant or deny prior authorization of a prescription drug. The makeup and membership authority for the DUR Board complies with 42 U.S.C. s1396r-8.

- 3. A request for prior authorization for covered outpatient drugs is processed within 24 hours of receipt of a completed prior authorization request from a prescribing provider by telephone, mail or electronic communication. A 72-hour supply of medically necessary covered drugs is provided in an emergency situation as mandated and pursuant to 42 United States Code s1396r-8.

### **Preferred Drug Lists with Prior Authorization**

A process is established which utilized a preferred drug list (PDL) for selected therapeutic classes. Drugs in those classes that are not included on the PDL shall require prior authorization. A Pharmaceutical & Therapeutics (P&T) Committee, comprised of pharmacists, physicians, and community members, appointed by the Secretary, Delaware Health & Social Services, selects drugs for the PDL.

Delaware will participate in a multi-state pooling program that will negotiate supplemental rebates in addition to the federal rebates provided for in Title XIX of the Social Security Act.

### **Drug Supplemental Rebate Agreements**

~~The Centers for Medicare and Medicaid Services (CMS) has authorized a rebate agreement between the State and a drug manufacturer that provides supplemental rebates for drugs provided to the Delaware Medicaid program as follows:~~

- ~~• CMS has authorized the state of Delaware to enter into The State of Delaware Department of Health and Social Services supplemental drug rebate agreement. This supplemental drug rebate agreement was submitted to CMS on April 7, 2005 and has been authorized by CMS.~~
- ~~• CMS has authorized the State of Delaware to enter into "The Optimal PDL Solution (TOP\$) State Supplemental Drug Rebate Agreement, a Medicaid multi-state pooling program. The amendment to the Supplemental Drug Rebate Agreement was submitted to CMS on December 20, 2005 and CMS has authorized the State of Delaware to enter into the "TOP\$ Medicaid Program Participation Agreement".~~

Certain covered products in accordance with Section 1927 of the Social Security Act may not be among the baseline preferred drugs identified by the State of Delaware's Drug Utilization Review (DUR) Board and/or the Pharmacy and Therapeutics (P & T) Committee for various therapeutic classes. The state may negotiate supplemental rebate agreements that would reclassify any drug not designated as preferred in the baseline listing for as long as the agreement is in effect.

### **DMMA PROPOSED REGULATION #16-005b REVISION**

Attachment 3.1-A  
Page 5 Addendum  
Continued 2

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

### LIMITATIONS ON AMOUNT, DURATION, AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

#### **12.c Prescribed Drugs Continued:**

##### **Drug Supplemental Rebate Agreements Continued**

- ~~• A supplemental rebate agreement submitted to CMS on December 10, 2013 amended the December 20, 2005 version of the "State of Delaware TOP\$SM The Optimal PDL \$solution ("TOP\$")~~

# PROPOSED REGULATIONS

~~State Supplemental Rebate Agreement" authorized under Transmittal Number SP 412, has been authorized by CMS.~~

- ~~• Pharmaceutical manufacturers are allowed to audit utilization rates;~~
- ~~• Compliance with the reporting requirements for state utilization information and restrictions to coverage;~~
- ~~• The unit rebate amount is confidential and cannot be disclosed for purposes other than rebate invoicing and verification; and,~~
- ~~• Rebate agreements between the state and a pharmaceutical manufacturer that are separate from the drug rebate agreements of Section 1927 are authorized by the Centers for Medicare and Medicaid Services. The state reports rebates from separate agreements to the Secretary for Health and Human Services. The state will remit the federal portion of any state supplemental rebates collected.~~
- ~~• Participation in the TOP\$ multi-state rebate program will not limit the state's ability to submit a SPA to authorize the implementation of a state-specific supplemental rebate agreement.~~
- ~~• Supplemental rebate agreements would apply to the drug benefit, both fee-for-service and those paid by contracted managed care organizations (MCOs).~~

Supplemental rebate agreements are unique to each state. The Centers for Medicare and Medicaid Services (CMS) has authorized the April 7, 2005, December 20, 2005, and December 10, 2013 versions of the "Delaware State Supplemental Rebate Agreement." These agreements were effective for drugs dispensed prior to July 1, 2016.

CMS has authorized Delaware to enter into "The Sovereign States Drug Consortium (SSDC)" Medicaid multi-State purchasing pool. The supplemental rebate agreement submitted to CMS on July 1, 2016 amends the December 10, 2013 version of the "Delaware State Supplemental Drug Rebate Agreement" authorized under Transmittal Number SPA #15-001. CMS has authorized this amended version of the "Delaware State Supplemental Drug Rebate Agreement" and the January 1, 2015 addendum to this agreement, entitled "Sovereign States Drug Consortium, Addendum to Member States Agreements". This agreement and the Addendum apply to drugs dispensed beginning July 1, 2016.

In addition the State has the following policies for the supplemental rebate program for the Medicaid population:

1. Funds received from supplemental rebate agreements will be reported to CMS. The state will remit the federal portion of any supplemental rebates collected.
2. Manufacturers with supplemental rebate agreements are allowed to audit utilization data.
3. The unit rebate amount is confidential and cannot be disclosed in accordance with Section 1927(b)(3)(D) of the Social Security Act.
4. The State of Delaware's Division of Medicaid and Medical Assistance (DMMA) may require prior authorization for covered outpatient drugs. Non-preferred drugs are available with prior authorization.
5. The prior authorization process for covered outpatient drugs will conform to the provisions of section 1927(d)(5) of the Social Security Act.

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

## Long-Term Care Facility Services - Standards for Payment of Reserved Beds During Absence from Long-Term Care Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM)

regarding Standards for Payment of Reserved Beds during Absence from Long-Term Care Facilities, specifically, *standards for payment of reserved beds during absence from Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)*.

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 Kimberly Xavier, Planning, Policy and Quality 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 May 2, 2016.

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

## SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Standards for Payment of Reserved Beds during Absence from Long-Term Care Facilities, specifically, *standards for payment of reserved beds during absence from Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)*.

### Statutory Authority

- §1919(c)(2)(D) of the Social Security Act, *Notice of bed hold policy and readmission*
- 42 CFR §440.40, *Payment for reserving beds in institutions*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- 42 CFR §483.12, *Admission, transfer and discharge rights*

### Background

Under Medicaid payment regulations in 42 CFR §447.40, Federal Financial Participation (FFP) is available if a state plan includes provision for bed-reservation payments during a recipient's temporary absence from an inpatient facility, as follows:

#### *Payments for Reserving Beds in Institutions*

- (a) The Medicaid agency may make payments to reserve a bed during a beneficiary's temporary absence from an inpatient facility, if-
  - (1) The state plan provides for such payments and specifies any limitations on the policy; and
  - (2) Absences for purposes other than required hospitalization (which cannot be anticipated and planned) are included in the patient's plan of care.
- (b) An agency that pays for reserved beds in an inpatient facility may pay less for a reserved bed than an occupied bed if there is a cost differential between the two beds (Section 1102 of the Social Security Act).

To satisfy Medicaid nursing facility requirements for participation in §1919(c)(2)(D) (i) - (ii) of the Act and in 42 CFR §483.12(b)(1)-(2), a nursing facility must tell the residents departing for hospitalization or therapeutic leave about the state's bed-reservation payment policy. This information must be in writing and must specify the number of days the state Medicaid covers, if any, and the nursing facility's policies regarding bed-reservation periods.

If a Medicaid eligible resident's absence from the nursing facility exceeds the bed-reservation period in the state plan, §1919(c)(2)(D)(iii) of the Act and 42 CFR §483.12(b)(3) guarantee the resident readmission to the facility immediately upon the first availability of a bed in a semi-private room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

In Delaware, if a Medicaid recipient is hospitalized for a short period of time and is expected to return to the facility, Medicaid reimbursement is available for no more than seven (7) days within any thirty-day period. The thirty-day count begins with the first day of hospitalization. If payments are suspended because recipient remains hospitalized more than seven (7) days and the thirty-day count expires, a new thirty-day count starts with readmission to the long-term care facility.

### Summary of Proposal

## *Rationale and Justifications*

The Medicaid State Plan and the Division of Social Services Manual (DSSM) requires the Delaware Medical Assistance Program (DMAP) to make payments to long-term care (LTC) facilities to ensure a bed is reserved for a Medicaid recipient who is temporarily absent from the LTC facility due to hospitalization or leave of absence. Currently, bed-reservation payments are limited to seven (7) days per hospitalization in any thirty-day period.

DMMA recognizes the unique role that the Mary Campbell Center and Stockley Center, both of which are Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID), fulfill in serving a very vulnerable population. Given the distinct challenges faced by these LTC facilities in serving this population, it was determined that the additional protection of an extended bed-reservation payment period of fourteen (14) days is necessary in order to sustain services for this population of recipients.

## *Purpose*

This amendment to the State Plan and DSSM adds a provision that allows DMAP to extend the bed-reservation payments from seven (7) days to fourteen (14) days in any thirty-day period for individuals residing in an ICF/IID long-term care facility.

## *Summary of Proposed Changes*

Effective for services provided on and after July 1, 2016 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 4.19-C of the Medicaid State Plan to add a provision to the long-term care bed-reservation reimbursement policy to make payments for reserving beds in ICF/IID for fourteen (14) days per hospitalization for acute conditions in any thirty-day period.

Also effective for services provided on and after July 1, 2016, DMMA proposes to make changes to policy section 20650, Temporary Absence from Nursing Facility for Hospitalization, and its sub-sections of the Division of Social Services Manual (DSSM) to reflect the proposed changes to the State Plan.

## *Public Notice*

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the coverage and payment methodology for reservation of beds in ICF/IID long-term care facilities. Comments must be received by 4:30 p.m. on Monday May 2, 2016.

## *CMS Review and Approval*

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

## *Provider Manual Update*

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

## **Fiscal Impact Statement**

The following represents the potential increase in expenditures if bed-reservation payments for individuals residing in an ICF/IID are increased from seven (7) days to fourteen (14) days in any thirty-day period effective July 1, 2016. The following fiscal impact is projected:

	Federal Fiscal Year 2016 <sup>1</sup>	Federal Fiscal Year 2017
General (State) Funds	\$6,250	\$25,000



---

Federal Funds	\$7,587	\$29,585
---------------	---------	----------

1. Represents July - September 2016

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

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 888RFA 04-01-16.pdf>

## DMMA PROPOSED REGULATION #16-006a

### REVISIONS:

ATTACHMENT 4.19-C

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE  
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES  
Standards for Payment of Reserved Beds During Absence from Long-Term Care Facilities

42 CFR 447.40

Payment will be made for reserving beds in long-term care (LTC) facilities for recipients during their temporary absence for the following purposes:

4. ~~For periods of hospitalization for acute conditions up to 7 days per hospitalization in a 30-day period.~~
  1. Hospitalization for acute conditions:
    - a. For periods of hospitalization for acute conditions up to fourteen (14) days per hospitalization in any thirty-day period for individuals residing in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID).
    - b. For periods of hospitalization for acute conditions up to seven (7) days per hospitalization in a thirty-day period for individuals residing in all other LTC facilities.
5. ~~2. For leaves of absence up to 48~~ eighteen (18) days per calendar year as provided for in the recipient's plan of care.
6. ~~The 18-day leave of absence may be waived as follows:~~
  3. If a recipient's physical condition is being negatively impacted by ~~their~~ his or her emotional need to be in a family setting, prior approval may be obtained for a waiver of the ~~18-day~~ eighteen-day leave of absence limitation (for other than acute care hospitalization) from the Title XIX Medical Consultant in order to allow the patient more time to visit with his or her family, as long as such absences are provided for in the recipient's written plan of care.  
To obtain approval, a written request must be submitted by the ~~nursing home~~ long-term care facility to the ~~Nursing Home~~ Long-Term Care Coordinator and must include:
    1. ~~a. reason~~ Reason for the request;
    2. ~~b. medical~~ Medical summary;
    3. ~~c. statement~~ Statement from the ~~nursing home's~~ LTC facility's medical director regarding the medical necessity of the patient being absent from the ~~home~~ facility in excess of ~~48~~ eighteen (18) days per year;
    4. ~~d. anticipated~~ Anticipated frequency of absence; and
    - e. Number of days the recipient was absent from the LTC facility during the previous six-month period.

The number of days waived must fall within a six-month period.

Any request for a waiver after the six-month limit must be resubmitted and approved for payment to be continued.

## DMMA PROPOSED REGULATION #16-006b REVISION:

### **20650 Temporary Absence from ~~Nursing a Long-Term Care~~ Facility** 42 CFR §447.40

~~If a recipient is hospitalized for a short period of time and is expected to return to the facility, payment to the facility may continue for a period of not more than 7 days provided the nursing facility agrees to hold the bed for the resident. Medicaid reimbursement is available for no more than seven (7) days within any 30 day period. The 30-day count begins with the first day of hospitalization. If payments are suspended because recipient remains hospitalized more than seven (7) days and the 30 day count expires, a new 30 day count starts with readmission to the nursing facility. In other words DMMA will not pay 7 days out of every 30 days for people who remain in the hospital for weeks at a time.~~

Payment will be made for reserving beds in long-term care (LTC) facilities for Medicaid recipients during their temporary absence for the following purposes:

20650.1 Temporary Absence from a Long-Term Care Facility for Acute Hospitalization

20650.2 Temporary Absence from a Long-Term Care Facility for Reasons Other Than Hospitalization

#### **20650.1 Temporary Absence from a Long-Term Care Facility for Acute Hospitalization**

20650.1.1 Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)

If a recipient is hospitalized for a short period of time and is expected to return to the facility, payment to the facility may continue for a period of not more than fourteen (14) days provided the ICF/IID agrees to hold the bed for the resident. Medicaid reimbursement is available for no more than fourteen (14) days within any thirty-day period. The thirty-day count begins with the first day of hospitalization. If payments are suspended because recipient remains hospitalized more than fourteen (14) days and the thirty-day count expires, a new thirty-day count starts with readmission to the ICF/IID. In other words DMMA will not pay fourteen (14) days out of every thirty (30) days for people who remain in the hospital for weeks at a time.

20650.1.2 Other Long-Term Care Facilities

If a recipient is hospitalized for a short period of time and is expected to return to the facility, payment to the facility may continue for a period of not more than seven (7) days provided the LTC facility agrees to hold the bed for the resident. Medicaid reimbursement is available for no more than seven (7) days within any thirty-day period. The thirty-day count begins with the first day of hospitalization. If payments are suspended because recipient remains hospitalized more than seven (7) days and the thirty-day count expires, a new thirty-day count starts with readmission to the LTC facility. In other words DMMA will not pay seven (7) days out of every thirty (30) days for people who remain in the hospital for weeks at a time.

#### **20650.4 ~~20650.2~~ Temporary Absence from ~~Nursing a Long-Term Care~~ Facility for Reasons Other Than Hospitalization**

20650.2.1 A recipient may be absent from the ~~nursing a long-term care~~ facility for reasons other than hospitalization for a period of ~~48~~ eighteen (18) days per year without interruption of payment to the ~~nursing long-term care~~ facility, as long as such absences are provided for in the recipient's plan of care.

20650.2.2 If a recipient's physical condition is being negatively impacted by his or her emotional need to be in a family setting, prior approval may be obtained for a waiver of the ~~48-day~~ eighteen-day leave of absence limitation (for other than acute care hospitalization) from the Title XIX Medical Consultant in order to allow the patient more time to visit with his or her family.

To obtain approval, a written request must be submitted by the ~~nursing~~ long-term care facility to the Long-Term Care Coordinator and must include:

20650.2.2.1 ~~reason~~ Reason for the request;

20650.2.2.2 ~~medical~~ Medical summary;

20650.2.2.3 ~~statement~~ Statement from the ~~nursing~~ LTC facility's medical director regarding the medical necessity of the patient being absent from the ~~nursing~~ LTC facility in excess of ~~18~~ eighteen (18) days per year;

20650.2.2.4 ~~anticipated~~ Anticipated frequency of absence; and

20650.2.2.5 ~~number~~ Number of days the recipient was absent from the ~~nursing~~ LTC facility during the previous ~~six-month~~ six-month period.

If the approval is given, the ~~18-day~~ eighteen-day restriction will be waived for six (6) months from the date of approval. Any request for a waiver after the ~~six-month~~ six-month limit must be resubmitted and approved for payments to be continued.

---

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### **Long-Term Care Facilities - Post-Eligibility Treatment of Institutionalized Individuals Personal Needs Allowance**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Post-Eligibility Treatment of Institutionalized Individuals, specifically, *standards for payment of personal needs allowance for individuals residing in long-term care facilities*.

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 Kimberly Xavier, Planning, Policy and Quality 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 May 2, 2016.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Post-Eligibility Treatment of Institutionalized Individuals, specifically, *standards for payment of personal needs allowance for individuals residing in long-term care facilities*.

#### Statutory Authority

- §1902(a)(50), (q) of the Social Security Act, *A State Plan for medical assistance must*
- §1924(d)(1) of the Social Security Act, *Allowances to be offset from income of institutionalized spouse*
- 42 CFR §435.725, *Post-eligibility treatment of income of institutionalized individuals in SSI States: Application of patient income to the cost of care*
- 42 CFR §435.733, *Post-eligibility treatment of income of institutionalized individuals in States using more restrictive requirements than SSI: Application of patient income to the cost of care*

- 42 CFR §435.832, *Post-eligibility treatment of income of institutionalized individuals: Application of patient income to the cost of care*

## Background

Under §1902(a)(14)(I) of the Social Security Act medical assistance recipients that are institutionalized in long-term care facilities are required to apply their income toward the cost of institutional care. The individual must contribute income to pay for institutional services, deducting only certain allowable amounts, such as a personal needs allowance (PNA). A PNA is defined under Medicaid regulations in 42 CFR 435.725(c)(1) as follows:

(c) Required deductions. In reducing its payment to the institution, the agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

- (1) Personal needs allowance. A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least--
  - (i) \$30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability;
  - (ii) \$60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and
  - (iii) For other individuals, a reasonable amount set by the agency, based on a reasonable difference in their personal needs from those of the aged, blind, and disabled.

In reducing its payment to the institution, the agency must deduct a personal needs allowance. A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least \$30 a month for an aged, blind, or disabled individual; \$60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and for other individuals, a reasonable amount set by the agency, based on a reasonable difference in their personal needs from those of the aged, blind, and disabled.

## Summary of Proposal

### *Rationale and Justifications*

State Plan provisions require the Delaware Medical Assistance Program (DMAP) to provide a personal needs allowance (PNA) to Medicaid recipients residing in long-term care facilities. This PNA is intended to provide for clothing and other personal needs. The current PNA is \$44/month for individuals and \$88/month for couples and was set in 2002. DMMA recognizes that the cost-of-living has increased since 2002 and proposes to increase the PNA to offset some of the increased costs of personal needs for recipients.

### *Purpose*

This amendment to the State Plan and DSSM adds a provision that allows DMAP to increase the personal needs allowance for individuals residing in long-term care facilities from \$44/month to \$50/month for individuals, and from \$88/month to \$100/month for couples.

### *Summary of Proposed Changes*

Effective for services provided on and after July 1, 2016, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 2.6-A, Page 4 and Page 4 Addendum of the Medicaid State Plan provisions to increase the Personal Needs Allowance for individuals residing in long-term care facilities from \$44/month to \$50/month for individuals, and from \$88/month to \$100/month for couples.

Also effective for services provided on and after July 1, 2016, DMMA proposes to make changes to policy sections 20620 Patient Pay Amount Deductions, 20620.1 Personal Needs, and 20995.1 Post-Eligibility Deductions, and applicable sub-sections of the Division of Social Services Manual (DSSM) to reflect the proposed changes to the State Plan.

### *Public Notice*

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

Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the agency's decision to increase the personal needs allowance for individuals institutionalized in long-term care facilities. Comments must be received by 4:30 p.m. on Monday May 2, 2016.

### *CMS Review and Approval*

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

### *Provider Manual Update*

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

### **Fiscal Impact Statement**

The following represents the potential increase in expenditures if the monthly Personal Needs Allowance for Medicaid recipients residing in long-term care facilities is increased from \$44 to \$50 for individuals and \$88 to \$100 for couples.

The following fiscal impact is projected:

	Federal Fiscal Year 2016 <sup>1</sup>	Federal Fiscal Year 2017
General (State) funds	\$15,125	\$60,500
Federal funds	\$18,360	\$71,596

1. Represents July - September 2016 only

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

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 893RFA 04-01-16.pdf>

**DMMA PROPOSED REGULATION #16-007a  
REVISIONS:**

ATTACHMENT 2.6-A  
Page 4

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE

ELIGIBILITY CONDITIONS AND REQUIREMENTS

42 CFR 435.725; 43 CFR 435.733; 42 CFR 435.832

### B. Post-Eligibility Treatment of Institutionalized Individuals

The following amounts are deducted from the gross income when computing the application of an individual or couples income to the cost of institutionalized care:

1. Personal Needs Allowance.
  - a. Aged, blind, disabled -

# PROPOSED REGULATIONS

Individuals	\$44	\$50
Couples	\$88	\$100

For the following individuals with greater need -

**See Page 4 Addendum**

b. AFDC related -

Children	\$44	\$50
Adults	\$44	\$50

c. Individuals under age 21 covered in this plan as specified in Item B.7. of ATTACHMENT 2.2-A Page 16. \$44 \$50

**DMMA PROPOSED REGULATION #16-007b  
REVISIONS:**

ATTACHMENT 2.6-A  
Page 4 Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE

ELIGIBILITY CONDITIONS AND REQUIREMENTS

42 CFR 435.725; 43 CFR 435.733; 42 CFR 435.832

~~B.1.a. For the following individuals with a greater need—~~

B. Post-Eligibility Treatment of Institutionalized Individuals (continued)

For the following individuals with a greater need (continued)

- d. \$50/month for NF and ICF/MR residents engaging in frequent and regular rehabilitation out-of-facility activities.
- e. For nursing facility residents who are participating in gainful employment, the following amounts, not to exceed the adult foster care rate (SSI benefit amount + \$140), will be deducted from gross earned income:
  - i. Mandatory payroll deductions that are a condition of employment including, but not limited to:
    - \* 1. Federal, State, and Local taxes
    - \* 2. FICA
    - \* 3. Union Dues
    - \* 4. Insurance Premiums
    - \* 5. Pension Contributions.
  - ii. Transportation costs as paid to and from employment.
  - iii. Clothing and personal needs allowance of \$75/month.

The maximum amount of income to be protected will not exceed the amount required to maintain an individual in adult foster/residential care. This amount is currently the SSI benefit plus \$140.

**DMMA PROPOSED REGULATION #16-007c  
REVISION:**

**20620 Patient Pay Amount Deductions**

42 CFR §435.725; 42 CFR §435.733; 42 CFR §435.832

The total income to be used in the post-eligibility process will include all amounts that meet the definition of income. This includes ~~both~~ income that is counted for eligibility, ~~and~~ as well as income that is excluded for eligibility.

~~Take the following deductions from the Medicaid recipients total gross income in the following order:~~

The following amounts are deducted from the gross income when computing the application of an individual or couples income to the cost of institutionalized care:

- ~~1. personal needs~~
- ~~2. expenses incurred for necessary medical care~~
- ~~3. community spouse income allowance or \$75 home maintenance disregard (if applicable)~~
- ~~4. family allowance (if applicable)~~

20620.1 Personal Needs Allowance:

20620.2 Necessary Medical Care Expenses:

20620.3 Community Spouse Income Allowance/Home Maintenance Disregard (if applicable); and

20620.4 Family Allowance (if applicable).

## **20620.1 Personal Needs Allowance**

a) ~~20620.1.1 \$44.00~~ \$50.00 per month of available income is to be protected for the Medicaid recipients recipient's direct personal needs; or

b) 20620.1.2 If the recipient regularly attends a rehab/educational program off the grounds of his ~~nursing~~ or her long-term care facility, including employment for the purpose of rehabilitation in a sheltered workshop ~~off the grounds of the facility~~, \$50.00 per month (~~rather than \$44~~) will be protected; or

e) 20620.1.3 For ~~nursing~~ long-term care facility residents who are participating in substantial gainful activity (SGA) (20 CFR 416.971), the following amounts, not to exceed the Adult Foster Care rate will be deducted from gross earned income:

20620.1.3.1 Mandatory payroll deductions that are a condition of employment including, but not limited to:

- Federal, State and Local Taxes
- FICA
- Union Dues
- Insurance premiums
- Pension contributions
- Transportation costs as paid to & from work
- Clothing and personal needs allowance of \$75/month.

20620.1.3.2 If earnings average more than \$700 a month in a calendar year, this is considered SGA and ~~DSS~~ Department of Social Services (DSS) can allow a personal needs allowance of up to the AFC rate.

20620.1.3.3 If earnings average less than \$300 a month in a calendar year, this is not ordinarily considered SGA and DSS can allow the ~~\$44~~ or \$50 personal needs allowance.

20620.1.3.4 If average earnings are between \$300 and \$700, DSS must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to unimpaired people in the community performing similar jobs.

## **DMMA PROPOSED REGULATION #16-007d REVISION:**

### **20995.1 Post - Eligibility Deductions**

42 CFR §435.725; 42 CFR §435.733; 42 CFR §435.832

# PROPOSED REGULATIONS

Post-eligibility determination is revised to allow the following deductions from the income of the institutional spouse. The deductions must be taken in the following order:

a. 20995.1.1 Personal Needs Allowance for the institutional spouse

The personal needs allowance amount is \$30 per month for SSI recipients, and \$44 ~~\$50~~ per month for all others. If the institutionalized spouse is employed, personal needs may range from \$50 up to the Adult Foster Care rate per month.

b. 20995.1.2 Community Spouse Income Allowance

~~The community spouse monthly income allowance is the amount of income necessary to bring the spouse's monthly otherwise available income up to:~~

~~the applicable percent of the FPL for two, plus~~

~~an additional amount for excess shelter~~

20995.1.2.1 The community spouse monthly income allowance is the amount of income necessary to bring the spouse's monthly otherwise available income up to the applicable percent of the FPL for two, plus an additional amount for excess shelter.

20995.1.2.2 The total amount available to the community spouse may not exceed "Cap for Minimum Monthly Maintenance Standard. This standard usually changes each January based on the Consumer Price Index for Urban Consumers.

c. 20995.1.3 Family Allowance

d. 20995.1.4 Items for which protection of income has been approved by the ~~Long Term~~ Long-Term Care Operation's Administrator and/or incurred medical expenses of the institutionalized spouse.

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Medical Care and Other Types of Remedial Care - Services to Treat Autism Spectrum Disorder

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Medical Care and Other Types of Remedial Care, specifically, *to establish coverage and reimbursement for treatment services for Medicaid recipients up to age twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder.*

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 Kimberly Xavier, 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 May 2, 2016. Please identify in the subject line: Service to Treat Autism Spectrum Disorder.

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan regarding Medical Care and Other Types of Remedial Care, specifically, *to establish coverage and reimbursement for treatment services for Medicaid recipients up to age twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder.*



## Statutory Authority

- §1905 of the Social Security Act (a)(4)(B), *Early and Periodic Screening, Diagnostic, and Treatment Services*
- §1905 of the Social Security Act (a)(6), *Remedial Care and any other type of remedial care (services of other licensed practitioners)*
- §1905 of the Social Security Act (a)(13)(c), *Preventive services*
- §1905 of the Social Security Act (r)(5), *Other necessary health care, diagnostic service, and other measures as described in section 1905(a)*
- 42 CFR §440.60(a), *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.130(c), *Diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

## Background

Autism Spectrum Disorder (ASD) is a developmental disability that can cause significant social, communication, and behavioral challenges. A diagnosis of ASD now includes several conditions that used to be diagnosed separately: autistic disorder, pervasive developmental disorder not otherwise specified (PDD-NOS), and Asperger syndrome. These conditions are now all called Autism Spectrum Disorder.

Treatments for children with ASD can improve physical and mental development. Generally these treatments can be categorized in four categories: 1) behavioral and communication approaches; 2) dietary approaches; 3) medications; and 4) complementary and alternative medicine.

The federal Medicaid program may reimburse for services to address ASD through a variety of authorities. Services can be reimbursed through section 1905(a) of the Social Security Act (the Act), section 1915(i) state plan Home and Community-Based Services, section 1915(c) Home and Community-Based Services (HCBS) waiver programs, and section 1115 research and demonstration programs.

## State Plan Authorities

Under the Medicaid state plan, services to address ASD may be covered under several different section 1905(a) benefit categories. Those categories include: section 1905(a)(6) - services of other licensed practitioners; section 1905(a)(13)(c) - preventive services; and section 1905(a)(10) - therapy services. States electing these services may need to update the Medicaid State Plan in order to ensure federal financial participation (FFP) is available for expenditures for these services. In addition, for children, as discussed below, states must cover services that could otherwise be covered at state option under these categories consistent with the provisions at 1905(a)(4)(B) for Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT). The following information briefly describes these coverage categories for services to address ASD. Under these section 1905(a) benefit categories, all other state Medicaid plan requirements such as state-wideness and comparability, must also be met.

### 1) Other Licensed Practitioner Services

Other Licensed Practitioner services, defined at 42 CFR 440.60(a), are "medical or remedial care or services, other than physicians' services, provided by licensed practitioners within the scope of practice as defined under State law." If a state licenses practitioners who furnish services to address ASD, the state may elect to cover those providers under this section of their state plan even if the providers are not covered under other sections of the plan (e.g., physical therapist, occupational therapist, etc.). A state would need to submit a state plan amendment (SPA) to add the new licensed provider to their Medicaid plan. The SPA must describe the provider's qualifications and include a reimbursement methodology for paying the provider.

### 2) Preventive Services

Preventive Services, defined at 42 CFR 440.130(c) are "services recommended by a physician or other licensed practitioner of the healing arts within the scope of his practice under state law to---

- Prevent disease, disability, and other health conditions or their progression;
- Prolong life; and
- Promote physical and mental health and efficiency."

A regulatory change that took effect January 1, 2014, permits coverage of preventive services furnished by non-licensed practitioners who meet the qualifications set by the state, to furnish services under this state plan benefit as long as the services are recommended by a physician or other licensed practitioner. Under the preventive services benefit, in the state plan, the state must 1) list the services to be provided to ensure that services meet the definition of preventive services as stated in section 4385 of the State Medicaid Manual (including the requirement for the service to involve direct patient care); 2) identify the type(s) of non-licensed practitioners who may furnish the services; and 3) include a summary of the state's provider qualifications that make these practitioners qualified to furnish the services, including any required education, training, experience, credentialing, supervision, oversight and/ or registration.

### 3) Therapy Services

Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders, may be covered under the Medicaid therapies benefit at 42 CFR 440.110. Physical and occupational therapy must be prescribed by a physician or other licensed practitioner of the healing arts within the scope of his/her practice under state law and provided to a beneficiary by or under the direction of a qualified therapist. Services for individuals with speech, hearing, and language disorders include diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech pathologist or audiologist, for which a patient is referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under state law.

## Summary of Proposal

### *Purpose*

Effective July 1, 2016 Delaware Health and Social Services/Division of Medicaid and Medical Assistance proposes to adopt provisions to establish coverage and reimbursement methodologies for treatment services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder pursuant to 42 CFR §440.60(a) and 42 CFR 440.130(c).

The purpose of this proposal is to establish service descriptions and reimbursement methodologies in the Medicaid State Plan for treatment services for Medicaid recipients up to age twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder.

### *Recipient Criteria*

In order to qualify for Autism Spectrum Disorder Treatment Services, a Medicaid recipient must:

- Be under 21 years of age;
- Exhibit the presence of excesses and/or deficits of behaviors that significantly interfere with home or community activities (examples include, but are not limited to: aggression, self-injury, elopement, etc.);
- Receive a Medical/Physical Evaluation by a qualified professional, inclusive of a validated ASD screening tool, in order to rule out medical or behavioral conditions other than ASD, including those that may have behavioral implications and/or may co-occur with ASD;
- Must be medically stable and not require 24-hour medical/long-term care monitoring or procedures provided in a hospital or Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID);
- Receive a Comprehensive Diagnostic Evaluation by a qualified health care professional, using validated evaluation tools, that results in a diagnosis of ASD; and
- Be recommended for ASD Treatment Services, including, but not limited to, Applied Behavioral Analysis (ABA).

### *Covered Services*

Medicaid covered Autism Spectrum Disorder Treatment Services must be:

- Medically necessary;
- Previously authorized by the Delaware Medical Assistance Program (DMAP) or its designee; and
- Delivered in accordance with the recipient's Behavioral Support Plan that details the plan of ASD treatment services.

## Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the agency's decision to increase the personal needs allowance for individuals institutionalized in long-term care facilities. Comments must be received by 4:30 p.m. on Monday May 2, 2016.

## CMS Review and Approval

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

## Provider Manual Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

## Cost/Budgetary Impact

The following represents the potential increase in expenditures with the increased level of treatment services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder effective July 1, 2016.

The following fiscal impact is projected:

	Federal Fiscal Year 2016 <sup>1</sup>	Federal Fiscal Year 2017
General (State) funds	\$301,710	\$1,223,105
Federal funds	\$450,120	\$1,784,218

1. Represents July - September 2016 only

## \*Please Note:

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

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 898RFA 04-01-16.pdf>

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

**Medical Care and Other Types of Remedial Care - Services to Treat Autism Spectrum Disorder**

---

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(m) (16 Del.C. §122(m))  
16 DE Admin. Code 4468

## PUBLIC NOTICE

### 4468 Delivery of Hospice Services

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Delivery of Hospice Services (4468). Amendments

are being made to update the requirements to ensure patients receive safe and quality care. New requirements related to dementia care, new employees and other aspects of the regulations are being revised to help improve the services available to Delawareans. On April 1, 2016, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

## NOTICE OF PUBLIC HEARING

A public hearing will be held on Thursday, April 28, 2016, at 9:30 a.m. in the First 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, 2016, edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, May 13, 2016, at:

Jamie Mack  
 Division of Public Health  
 417 Federal Street  
 Dover, DE 19901  
 Email: [jamie.mack@state.de.us](mailto:jamie.mack@state.de.us)  
 Phone: (302) 744-4951

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

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 901RFA 04-01-16.pdf>

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

#### 3.0 Hospice Care

3.1 Hospice is an option for care which utilizes an interdisciplinary team of the patient's choice. The team shall consist of at least a physician, nurse, social worker, trained volunteer, and the patient/family.

3.2 The interdisciplinary team shall have the following qualifications:

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

3.2.3 A social worker shall mean a person who is licensed in the State of Delaware according to ~~24 Del.C. Ch. 39~~ has:

3.2.3.1 A Master of Social Work (MSW) degree from a school of social work accredited by the Council on Social Work Education; or

3.2.3.2 A baccalaureate degree in social work from an institution accredited by the Council on Social Work Education; or a baccalaureate degree in psychology, sociology, or other field related to social work; and

3.2.3.2.1 Is supervised by an MSW as described in subsection 3.2.3.1; and

3.2.3.2.2 Has one year of social work experience in a health care setting.

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

#### 4.0 Personnel/Administrative

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

##### 4.8 Health History

4.8.1 All new employees/contractors shall be required to have a physical examination prior to providing care:

- 4.8.1.1 The physical examination must have been completed within 3 months prior to employment/referral; and
  - 4.8.1.2 A copy of the physical examination shall be maintained in individual files.
  - 4.8.2 Minimum requirements for tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services:
    - 4.8.2.1 A baseline testing must be completed upon hire and, thereafter, as determined by a TB risk assessment.
    - 4.8.2.2 No person found to have active TB in an infectious stage shall be permitted to give care or service to patients.
    - 4.8.2.3 Any person having a positive skin test but a negative chest X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.
    - 4.8.2.4 A report of all TB test results and all attestation statements shall be on file at the hospice.
- (Break in Continuity of Sections)***

## 6.0 Service to Patients

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

- 6.7 Inservice training and continuing education shall be offered on a regular basis. Documentation of this training and continuing education will be maintained and available on request to the licensing authority.
- 6.7.1 In-service training and continuing education must include annual dementia specific training that includes: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons.

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

## 6.9 Discharge

- 6.9.1 The hospice may not automatically or routinely discharge patients at its discretion, even if the care promises to be costly or inconvenient.
- 6.9.2 The situations under which a hospice may discharge a patient include the following situations:
  - 6.9.2.1 The patient moves out of the hospice's service area or transfers to another hospice;
  - 6.9.2.2 The hospice determines that the patient is no longer terminally ill; or
  - 6.9.2.3 The hospice determines under a policy set by the hospice for the purpose of addressing discharge for cause, that the patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired.
- 6.9.3 The hospice must do the following before it seeks to discharge a patient for cause:
  - 6.9.3.1 Advise the patient that a discharge for cause is being considered;
  - 6.9.3.2 Make a serious effort to resolve the problem(s) presented by the patient's (or other persons in the patient's home) behavior or situation;
  - 6.9.3.3 Ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services;
  - 6.9.3.4 Document in the patient's record, the problem(s) and efforts made to resolve the problem(s).
  - 6.9.3.5 Notify the Department of the circumstances surrounding the impending discharge.
  - 6.9.3.6 Consider referrals to other appropriate and/or relevant state/community agencies (i.e., Adult Protective Services) or health care facilities before discharge.
- 6.9.4 Prior to discharging a patient for any reason stated above, the hospice must obtain a written physician's discharge order from the hospice medical director.

# PROPOSED REGULATIONS

6.9.5 If a patient has an attending physician involved in his or her care, this physician should be consulted before discharge and his/her review and decision included in the discharge.

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

**4468 Delivery of Hospice Services**

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a) and 2106(d)  
(7 **Del.C.** §§1902(a) and 2106(d))  
7 **DE Admin. Code** 3774

**REGISTER NOTICE: SAN #2016-1**

**3774 Oyster Minimum Size Limits**

**1. TITLE OF THE REGULATION:**

7 **DE Admin. Code** 3774 Oyster Minimum Size Limit

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

Delaware's Advisory Council on Shellfisheries requested the Department consider action to allow Delaware's oyster harvesters to possess *de minimis* quantities of undersized (<2.75") oysters that are inherent to the harvesting process.

Oysters typically grow in complex and densely packed reefs on Delaware's natural oyster grounds. When harvested, the oysters are brought aboard dredge vessels in asymmetrical clumps comprised of shell, varying sized oysters and other organisms that are not easily separable. Market oysters (>2.75" minimum size limit) are singled and culled from the dredged material prior to landing, but some undersized (<2.75") oysters can inadvertently remain attached to the market oysters. Some shell breakage can also occur during the bagging and handling process, rendering a market oyster illegal. Furthermore, the incidental retention of spat or small oysters (<1") attached to market oysters is practically unavoidable, particularly in years of high juvenile recruitment.

The proposed action would allow up to five percent (by number) undersized oysters per landed bushel. Attached spat or attached oysters measuring less than one inch that cannot be removed from a market oyster without destroying either oyster could be retained and would not count toward the five percent allowance.

The proposed amendment is unlikely to increase costs or place additional burdens on the affected public. The proposed amendment provides a reasonable accommodation to harvesters and establishes objective and enforceable criteria. Similar allowances are in place for conch (whelk), blue crab, and hard clam. The proposed amendment is not expected to have detectable impacts to Delaware's oyster resource.

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

None.

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

7 **Del.C.** §§1902(a) and 2106(d)

**5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:**

None.

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to 7 **DE Admin. Code** 3774 Oyster Minimum Size Limit will be open

April 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on April 21, 2016 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

## 7. PREPARED BY:

Stewart Michels    Stewart.Michels@state.de.us    (302) 739-9914

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

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 904RFA 04-01-16.pdf>

### 3765 Oysters (Break in Continuity of Sections)

#### 3774 Oyster Minimum Size Limit

(Penalty Section 7 Del.C. §1912)

- 1.0 ~~It shall be~~ Except as provided in 1.1 and 1.2, it is unlawful for any person to possess any oyster harvested for direct sale from the State's natural oyster beds that measures less than 2.75 (2¾) inches between the two most distant points on the edges of said oyster's shell.
- 1.1 Oysters measuring less than 2.75 (2¾) inches shall not comprise, by number, more than 5.0% of any landed bushel bag or bushel sample(s) obtained from any landed multi-bushel cage.
- 1.2 Notwithstanding 1.1, a person may possess oysters harvested for direct sale from the State's natural oyster beds that measure at least 2.75 (2¾) inches and have attached oysters or attached spat that measure less than one (1) inch between the two most distant points on the edges of said oyster's shell and that cannot be separated without destroying either oyster.

---

### DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)  
7 DE Admin. Code 1301

#### REGISTER NOTICE SAN # 2016-02

### 1301 Regulations Governing Solid Waste

#### 1. TITLE OF THE REGULATIONS:

Delaware's *Regulations Governing Solid Waste* (DRGSW)

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

Delaware's Department of Natural Resources and Environmental Control (DNREC), Solid and Hazardous Waste Management Section (SHWMS) is proposing amendments to current scrap tire facility regulations to address missing operational requirements and to reduce compliance and financial burdens posed by current regulations. The proposed amendments will reduce compliance requirements and financial burdens for scrap tire facilities storing scrap tires in fully enclosed trailers.

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

None

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

Amendments to DRGSW are proposed and amended in accordance with the provisions found at 7 Del.C.

§6040.

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

None

**6. NOTICE OF PUBLIC COMMENT:**

The public hearing on the proposed amendments to DRGSW will be held on April 25, 2016 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. The hearing record on the proposed modifications will be open April 1, 2016. Interested parties shall submit comments in writing by the end of the comment period, as designated by the hearing officer at this hearing and/or statements and testimony may be presented either orally or in writing at the April 25, 2016 public hearing. Written comments should be sent to: lisa.vest@state.de.us or Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

**7. PREPARED BY:**

Andrew Martin, Engineer II, Solid and Hazardous Waste Management Section - (302) 739-9403

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

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 905RFA 04-01-16.pdf>

**AMENDMENTS:**

Scrap Tire Facility provisions

Upon implementing the scrap tire facility provision effective January 1, 2016, the SHWMS identified improvements necessary for program implementation and flexibility. Specifically, the SHWMS has identified the benefit of allowing a conditional exclusion for those storing tires in an enclosed trailer. The exclusion would allow those storing scrap tires in an enclosed trailer to be subject to less stringent requirements, including eliminating the need to obtain a permit, while still ensuring the environmental risks related to fires and mosquitos are mitigated.

The SHWMS is proposing to reorganize Section 12.7 related to operational standards to help improve clarity for the regulated community and to require monthly inspections of the scrap tire facility.

Additionally, the SHWMS is proposing an exemption from Section 12 for farmers utilizing scrap tires for beneficial purposed related to farming.

**1301 Regulations Governing Solid Waste**

*(Break in Continuity of Sections)*

**2.0 Scope and Applicability**

*(Break in Continuity Within Section)*

**2.3 Exemptions**

The following activities are exempted from these regulations:

*(Break in Continuity Within Section)*

2.3.6 Farmers actively using whole scrap tires not exceeding 25 pounds each for beneficial purposes related to farming shall be exempt from Section 12.0 provided written approval is obtained from the Department and water accumulation within the tires is prevented by boring, punching, or drilling holes in each tire.

*(Break in Continuity Within Section)*

**3.0 Definitions**

The following words, phrases, and terms as used in these regulations have the meanings given below:

*(Break in Continuity Within Section)*



"Enclosed by a trailer" means an unaltered, prefabricated metal structure, fully enclosed, sound in construction, and designed for use as a shipping container (e.g., a semi-truck trailer).

*(Break in Continuity Within Section)*

## 12.0 Scrap Tire Facilities

### 12.1 Scope and Applicability

12.1.1 This section applies to new and existing areas established for scrap tires that are associated with a qualifying business. A qualifying business is a business that generates and accumulates scrap tires but whose primary purpose is not to accumulate scrap tires. Examples of qualifying businesses may include but are not limited to: tire retreading businesses; automobile graveyards or junkyards; local and state governmental agencies and/or facilities such as county maintenance, police, and fire; military institutions and/or facilities; farmers; and other automotive businesses. This section does not apply to owner/operators who have a current and valid resource recovery facility permit (or other approval issued pursuant to these regulations) that addresses scrap tire management. This section also does not apply to persons who are registered with, and actively participating in, the Scrap Tire Management Program, administered by the Department. All transporters of solid waste, including scrap tires, must comply with any applicable provisions in Section 7.0. All scrap tire facilities whose primary purpose is to accumulate scrap tires must comply with any applicable provisions in Sections 9.0 and 10.0, as applicable.

### 12.2 Scrap Tire Facility Categories

12.2.1 All scrap tire facilities must either fall into one of ~~two~~ three groups, as defined below. A property may have only one scrap tire facility. All other scrap tires facilities are prohibited.

*(Break in Continuity Within Section)*

12.2.1.3 Group 3: scrap tires enclosed by a trailer, not to exceed the use of two (2) trailers, neither having dimensions greater than 53 feet x 8.5 feet x 10 feet.

### 12.3 Implementation Date

12.3.1 ~~Each scrap tire facility in existence prior to the effective date of these regulations must apply for a permit issued by the Department pursuant to these regulations no later than 90 days for Group 1 and 180 days for Group 2 and comply with these regulations.~~

12.3.1.1 Scrap tire facilities meeting the requirements of Group 1 must apply to the Department for a permit pursuant to these regulations no later than June 30, 2016.

12.3.1.2 Scrap tire facilities meeting the requirements of Group 2 must apply to the Department for a permit pursuant to these regulations no later than September 30, 2016.

12.3.1.3 Scrap tire facilities meeting the requirements of Group 3 may operate without a permit provided that no later than 90 days from the effective date of these regulations, the facility achieves compliance with the requirements of subsection 12.3.2.2.

12.3.2 ~~Each scrap tire facility created after the effective date of these regulations must comply with subsection 4.1.1.3 of these regulations.~~

12.3.2.1 For Groups 1 and 2, prior to commencing operation, the scrap tire facility must comply with subsection 4.1.1.3 of these regulations.

12.3.2.2 For Group 3, prior to commencing operation, the scrap tire facility must:

12.3.2.2.1 Obtain a Site Identification Number by completing and submitting a notification to the Department. The form is available from the Department.

12.3.2.2.2 Maintain scrap tires in a facility enclosed by a trailer(s).

12.3.2.2.3 Maintain compliance with subsections 12.5, 12.6, 12.7, and 12.10.

12.3.2.2.4 Maintain compliance with the requirements of subsection 12.3.2.2 or within 30 days either:

12.3.2.2.4.1 Comply with subsection 4.1.1.3 of these regulations; or

12.3.2.2.4.2 Comply with subsection 12.11.1.1 of these regulations.

### 12.4 Permit Application Requirements

# PROPOSED REGULATIONS

12.4.1 At least 45 days for Group 1 and 90 days for Group 2 before commencement of any construction or operation of a new scrap tire facility, or for a preexisting scrap tire facility, subject to Subsection 12.3, the applicant owner/operator shall submit to the Department a "~~Scrap Tire Facility Permit Form~~" complete permit application for a scrap tire facility and the following documentation:

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

12.4.5 Operations Manual

12.4.5.1 An Operations Manual prepared in accordance with subsection 12.7.42.

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

12.5 Siting and Design Standards

12.5.1 To qualify for a permit, the siting and design standards of this subsection must be met, with distances being measured using the closest tire to the setback object. In the instance where applicable zoning requirements are more stringent than the requirements in these regulations, then the more stringent requirements must be met.

12.5.1.1 Setbacks

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

12.5.1.1.3 The following setbacks must be maintained for Group 3:

12.5.1.1.3.1 Owners/operators of one (1) trailer must comply with the setbacks in subsection 12.5.1.1.

12.5.1.1.3.2 Owners/operators of two (2) trailers must comply with the setbacks in subsection 12.5.1.2.

12.5.1.2 Floodplain

12.5.1.2.1 A new or existing scrap tire facility shall not be located within the 100-year floodplain, based on flood data generated by the Federal Emergency Management Agency, unless Department approved measures are taken to mitigate environmental impacts.

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

12.5.1.4 Fire Prevention Measures

12.5.1.4.1 All grasses, weeds, brush, debris, and other combustible material must not be present in or on the scrap tire facility.

12.5.1.4.2 No activities involving the use of open flames, blow torches, or highly flammable substances shall be conducted within the scrap tire facility or within the required fire break. Smoking is also prohibited within the scrap tire facility and within the required fire break.

12.5.1.4.23 For Group 1, a 20 foot ~~mineral strip~~ fire break consisting of either a mineral strip free of combustible materials or well maintained, regularly mowed grass must be constructed around the ~~ground surface~~ perimeter of the scrap tire facility. ~~All grasses, weeds, brush, debris, and other combustible material must not be present on the fire break, with the exception of well maintained and regularly mowed grass.~~

12.5.1.4.34 For Group 2, a 50 foot ~~mineral strip~~ fire break consisting of either a mineral strip free of combustible materials or well maintained, regularly mowed grass must be constructed around the ~~ground surface~~ perimeter of the scrap tire facility. ~~All grasses, weeds, brush, debris, and other combustible material must not be present on the fire break, with the exception of well maintained and regularly mowed grass.~~

12.5.1.4.5 For Group 3, owners/operators of one (1) trailer must maintain a 20 foot fire break around the perimeter of the trailer. Owners/operators of two (2) trailers must maintain a 50 foot fire break around the perimeter of the trailers. The fire break shall consist of either a mineral strip free of combustible materials or well maintained, regularly mowed grass.

12.5.1.4.6 The owner/operator must attempt to make arrangements with the local fire department to familiarize them with the layout of the facility and places where facility personnel would normally be working.

*(Break in Continuity Within Section)*

12.6 Mosquito Control

- 12.6.1 The owner/operator of a scrap tire facility must implement and maintain mosquito control by either:
- 12.6.1.1 Removing any water held in scrap tires immediately ~~upon receipt at~~ prior to placement in the facility via hole punching, boring, or drilling throughout tires or other sufficient means, and storing scrap tires in such a way that water does not accumulate in the scrap tires or containers where scrap tires are held; or
  - 12.6.1.2 If any scrap tires hold water that is not removed within 24 hours of ~~receipt~~ placement in the scrap tire facility or within 24 hours of a precipitation event, a larvicide that is registered for use for mosquito control by the U.S. Environmental Protection Agency must be effectively applied to the water-holding tires within 48 hours of ~~receipt~~ placement in the scrap tire facility. The owner/operator or a private contractual professional pesticide applicator, at the owner/operator's expense, can perform the initial and/or follow-up larvicide applications, provided that the applications are safely done in accordance with all product label instructions and federal or state regulations. If a Restricted Use pesticide is utilized, it must be purchased and applied by a Delaware Certified Pesticide Applicator (who could be the owner/operator if appropriately certified) in accordance with Delaware Department of Agriculture regulations. The Department's Mosquito Control Section, if requested by the owner/operator, can also perform the larvicide applications at the Section's discretion. The owner/operator shall then reimburse the Mosquito Control Section for all costs of any such treatments as determined or assessed by the Department.

*(Break in Continuity Within Section)*

12.7 Operational Requirements Standards

- ~~12.7.1 The owner/operator must develop and implement an operations manual for the scrap tire facility prepared in accordance with the requirements of Subsection 12.7. A paper copy of the Operations Manual must be readily available on-site. In addition to Subsection 12.7 requirements, this manual must include:~~
- ~~12.7.1.1 Procedures for clean-up and maintenance of the facility;~~
  - ~~12.7.1.2 Information that would enable supervisory, operating personnel, and persons evaluating the operation of the scrap tire facility to determine what requirements must be followed for a safe, orderly, and environmentally sound operation on a daily and yearly basis; and~~
  - ~~12.7.1.3 Emergency procedures and emergency contacts, including, but not limited to, the Department's emergency number (1-800-662-8802) and 9-1-1.~~
- ~~12.7.2 The owner/operator shall take whatever measures are necessary to familiarize all personnel responsible for operation of the scrap tire facility with relevant sections of the operations manual, including training on the procedures to be followed in case of an emergency, including, but not limited to, fires. Documentation of personnel training must be maintained on-site for three years.~~
- ~~12.7.3 The siting and design standards as required by Subsection 12.5 must be met and maintained.~~
- ~~12.7.4 Only scrap tires may be stored in the designated scrap tire facility.~~
- ~~12.7.5 Only scrap tires generated by or from the qualifying business may be present on the scrap tire facility of said qualifying business.~~
- ~~12.7.6 The scrap tire facility is required to be secured at all times except when adding or removing tires. For completely enclosed containers, such as trailers, security can be achieved by locking the trailer. For all other situations, the facility must be enclosed by a locked security fence.~~
- ~~12.7.7 Scrap tires cannot stay on-site indefinitely: each calendar year, the amount of scrap tires removed from the facility must equal at least 75% (by weight, volume, or number) of the amount of scrap tires accumulated on-site on January 1st of that calendar year. Documentation demonstrating the percentage of turnover must be kept for a period of at least three years and all documentation must be available for inspection by the Department upon request.~~

---

## PROPOSED REGULATIONS

---

~~12.7.8 The owner/operator shall keep copies of all documentation demonstrating lawful management of all scrap tires added to the facility for a period of at least three years and all documentation must be available for inspection by the Department upon request.~~

~~12.7.9 Any scrap tire(s) removed from the facility must be properly transported to an authorized treatment, storage, disposal, or recycling facility (TSDRF). Documentation demonstrating delivery (e.g., tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Department) to the TSDRF must be kept for a period of at least three years and all documentation must be available for inspection by the Department upon request.~~

### 12.7.1 On-Site Operations

12.7.1.1 The owner/operator shall take whatever measures are necessary to familiarize all personnel responsible for operation of the scrap tire facility with relevant sections of the operations manual required in subsection 12.7.2, including training on the procedures to be followed in case of an emergency, including, but not limited to, fires.

12.7.1.2 The siting and design standards as required by subsection 12.5 must be met and maintained.

12.7.1.3 Only scrap tires may be stored in the designated scrap tire facility.

12.7.1.4 Only scrap tires generated by or from the qualifying business may be present on the scrap tire facility owned/operated by the qualifying business.

12.7.1.5 The scrap tire facility is required to be secured at all times during non-business hours. For completely enclosed containers, such as trailers, security can be achieved by locking the trailer. For all other situations, the facility must be enclosed by a locked security fence.

12.7.1.6 Scrap tires cannot stay on-site indefinitely: each calendar year, the amount of scrap tires removed from the facility must equal at least 75% (by weight, volume, or number) of the amount of scrap tires accumulated on-site on January 1st of that calendar year.

12.7.1.7 Any scrap tire(s) removed from the facility must be properly transported to an authorized treatment, storage, disposal, or recycling facility (TSDRF).

12.7.1.8 The following inspections must be conducted at least monthly:

12.7.1.8.1 The owner/operator must inspect the scrap tire facility for litter and unauthorized materials. All litter and unauthorized materials must be removed from the scrap tire facility.

12.7.1.8.2 The owner/operator must inspect the fire break constructed around the perimeter of the scrap tire facility to ensure it meets the requirements in subsection 12.5.4.

12.7.1.8.3 The owner/operator must inspect the scrap tire facility and the surrounding area to ensure emergency equipment identified in its Operations Manual as required by subsection 12.7.2.1.3.2 is available and accessible.

12.7.1.8.4 The owner/operator must inspect the scrap tire facility to ensure the perimeter is secure in accordance with subsection 12.7.1.5.

### 12.7.2 Operations Manual

12.7.2.1 The owner/operator must develop and implement an operations manual. A paper copy of the operations manual must be readily available on-site. The manual must include:

12.7.2.1.1 Procedures for clean-up and maintenance of the facility;

12.7.2.1.2 Procedures to ensure compliance with the operational requirements of subsections 12.7.1 and 12.7.3.

12.7.2.1.3 Emergency procedures, including, but not limited to:

12.7.2.1.3.1 A list of names and telephone numbers of persons to be contacted in an emergency, including, but not limited to, the scrap tire facility's emergency coordinator, the Department's emergency number (1-800-662-8802) and 9-1-1.

12.7.2.1.3.2 A list of emergency response equipment present at the scrap tire facility or available for use at the facility and the location of the equipment;

12.7.2.1.3.3 Procedures to be followed by facility personnel from discovery of the emergency until the situation is corrected;

12.7.2.1.3.4 Location of known water supplies, fire hydrants, dry chemical extinguishers, or other materials that may be used for fire fighting purposes;

## 12.7.3 Recordkeeping

12.7.3.1 The following records must be maintained for a period of three (3) years and made available for inspection by the Department upon request.

12.7.3.1.1 Documentation of personnel training required in subsection 12.7.1.1.

12.7.3.1.2 Documentation demonstrating the percentage of turnover as required in subsection 12.7.1.6.

12.7.3.1.3 Documentation demonstrating delivery (e.g., tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Department) to the TSDRF as required by subsection 12.7.1.7.

12.7.3.1.4 Documentation of arrangements with fire departments, as required in subsection 12.5.4.6.

12.7.3.1.5 Mosquito control records in accordance with subsection 12.6.1.2.2.

12.7.3.1.6 Documentation of inspections as required by subsection 12.7.1.8.

## 12.7.4 Reporting

12.7.4.1 The owner/operator must prepare and submit an annual report to the Department by March 1st of each calendar year. The report shall be submitted on a form provided by the Department and is to cover scrap tire facility activities during the previous calendar year.

12.7.4.2 In the event of a fire or other emergency related to the scrap tire facility, the owner/operator shall immediately notify emergency services by calling 9-1-1 and the Department by calling 1-800-662-8802. Within seven (7) calendar days of reporting an emergency situation at the scrap tire facility, the owner/operator shall submit to the Department a written report detailing the emergency. The report must include:

12.7.4.2.1 A description of the type of emergency;

12.7.4.2.2 Date and time of the emergency;

12.7.4.2.3 A description of the origins of the emergency;

12.7.4.2.4 A description of the actions taken to respond to the emergency;

12.7.4.2.5 The results of the actions that were taken to date; and

12.7.4.2.6 An analysis of the success or failure of the actions.

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

## 12.11 All other scrap tire facilities

12.11.1 All other scrap tire facilities not complying with the requirements of Group 1, ~~or~~ Group 2, or Group 3 or owner/operators who do not have a current and valid resource recovery facility permit (or other approval issued pursuant to these regulations) that addresses scrap tire management; or persons who are not registered with, and actively participating in, the Scrap Tire Management Program are prohibited and all scrap tires must be removed in accordance with this subsection and the facility shall be closed in a manner that will eliminate the need for further maintenance of the facility. The following conditions apply:

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

**1301 Regulations Governing Solid Waste**

# PROPOSED REGULATIONS

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

### 5500 BAIL ENFORCEMENT AGENTS

Statutory Authority: 24 Delaware Code, Section 5504(e) (24 Del.C. §5504(e))  
24 DE Admin. Code 5500

#### PUBLIC NOTICE

#### 5500 Bail Enforcement Agents

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 Del.C. Ch. 55 proposes to adopt/amend the Rules & Regulations. These adoptions/amendments will improve the safety of the public and the bail enforcement agents and professionalize the industry. If you wish to view the complete Rules & Regulations, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by May 2, 2016, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, May 26, 2016, 10:00am, at the Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, Delaware.

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

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 912RFA 04-01-16.pdf>

#### 5500 Bail Enforcement Agents (Break in Continuity of Sections)

#### 2.0 Badges, Patches, Advertisements

- 2.1 No individual licensed under ~~Title 24 Chapter 55~~ 24 Del.C. Ch. 55 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Board of Examiners. Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.
- 2.1.1 All ~~bail enforcement agents~~ BEA's shall ~~display their badge~~ at all times during the lawful performance of their duties pursuant to 24 Del.C. Ch. 55 and the regulations set forth herein use or display the following:
- 2.1.1.1 Their assigned badge on the front of the outer most garment; and
- 2.1.1.2 Wearing of a ballistic vest; and
- 2.1.1.3 Some form of "Bail Enforcement Agent" must be displayed on the back of the outer most garment, the use of "BEA" only is NOT acceptable, and with the option of wording on the front of the garment.
- 2.2 All advertisements, including vehicle markings, or other forms of publication, subsequent to their use, are subject to review by the Board of Examiners for potential misrepresentation. If the Board of Examiners does not approve the advertisement or publication, the concerns shall be forwarded to the licensee. Failure to correct the advertisement or publication shall be considered a violation of these Rules & Regulations.
- 2.3 The use of auxiliary lights or sirens on vehicles is prohibited.

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

**5500 Bail Enforcement Agents**

---

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1000 BOARD OF PILOT COMMISSIONERS**

Statutory Authority: 23 Delaware Code, Section 102 (23 Del.C. §102)  
24 DE Admin. Code 1000

**PUBLIC NOTICE**

**1000 Board of Pilot Commissioners**

The Delaware Board of Pilot Commissioners, pursuant to 23 Del.C. §102(1), proposes to revise subsection 5.5 by making additions as shown in underline and deletions as shown in strike-through. The changes are necessary to put all regulated licensees on notice of the specific required refresher trips for pilots not practicing their profession for any given number of days.

The Board will hold a public hearing on the proposed regulation change on May 20, 2016 at 1:00 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Melanie Alexander, Board Liaison for the Delaware Board of Pilot Commissioners, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until June 6, 2016 pursuant to 29 Del.C. §10118(a).

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

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 913RFA 04-01-16.pdf>

**1000 Board of Pilot Commissioners**  
*(Break in Continuity of Sections)*

**5.0 All Delaware Licensed Pilots must:**

- 5.1 Maintain all licenses they have in hand as of 5 May 1986 throughout the remainder of their Pilot career.
- 5.2 Hold a valid radar certificate. ARPA certification is also required.
- 5.3 Provide a copy of all licenses and certificates to the Commission Secretary.
- 5.4 Notify the Commission Secretary on the form provided each Pilot that the "Rules of the Nautical Road" have been read.
- 5.5 Any pilot who fails to exercise his or her profession for any consecutive 90-day period is forbidden from piloting vessels. Such pilot may resume piloting vessels only ~~upon certification to the Board that~~ after he or she has made ~~such refresher trips over the route as shall be deemed necessary by the Board to assure that he or she is fully familiar with conditions along the route~~ refresher trips as outlined in this regulation. Refresher trips shall be made in the company of a first class pilot.
  - 5.5.1 A pilot who fails to exercise his or her profession for 90 to 119 days must complete one round trip at least one ship of which shall be to or from at least Packer Avenue Marine Terminal.
  - 5.5.2 A pilot who fails to exercise his or her profession for 120 to 149 days must complete two round trips at least one ship of which shall be to or from at least Packer Avenue Marine Terminal.
  - 5.5.3 A pilot who fails to exercise his or her profession for 150 to 179 days must complete three round trips at least one ship of which shall be to or from at least Packer Avenue Marine Terminal and at least one ship of which shall be a westbound transit through the C&D Canal to Chesapeake City.
    - 5.5.3.1 A pilot on the active Special Duty list who fails to exercise his or her profession for 150 to 179 days must complete one up river Special Duty transit as part of the three round trips.
  - 5.5.4 A pilot who fails to exercise his or her profession for 180 days or more shall address the Board to determine refreshers required to assure he or she is fully familiar with the conditions along the route.

---

# PROPOSED REGULATIONS

---

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

**1000 Board of Pilot Commissioners**

---

## **DIVISION OF PROFESSIONAL REGULATION**

### **1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL**

Statutory Authority: 24 Delaware Code, Section 1775(c) (24 **Del.C.** §1775(c))  
24 **DE Admin. Code** 1770

#### **PUBLIC NOTICE**

### **1770 Respiratory Care Practice Advisory Council**

Pursuant to 24 **Del.C.** §1775(c), the Respiratory Care Practice Advisory Council (“the Council”) of the Board of Medical Licensure and Discipline has proposed revisions to its regulations. Section 8.0, setting forth the Council’s continuing education requirements, is revised for greater clarity for licensees. A new Section 11.0 is added to implement standards for the practice of respiratory care through telehealth. Finally, certain revisions address inconsistencies in the regulations.

A public hearing will be held on May 11, 2016 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Respiratory Care Practice Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be May 26, 2016. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.

**\*Please Note:**

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

[http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 914RFA 04-01-16.pdf](http://regulations.delaware.gov/register/april2016/proposed/19%20DE%20Reg%20914RFA%2004-01-16.pdf)

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

**1770 Respiratory Care Practice Advisory Council**

---

## **DIVISION OF PROFESSIONAL REGULATION**

### **2100 BOARD OF EXAMINERS IN OPTOMETRY**

Statutory Authority: 24 Delaware Code, Section 2104(a)(1) (24 **Del.C.** §2104(a)(1))  
24 **DE Admin. Code** 2100

#### **PUBLIC NOTICE**

### **2100 Board of Examiners in Optometry**

The Delaware Board of Examiners in Optometry, pursuant to 24 **Del.C.** §2104(a)(1), proposes to revise its regulations. The proposed regulatory overhaul seeks to clarify and provide more detailed information regarding the use of telehealth for the provision of optometry services.

The Board will hold a public hearing on the proposed rule change on April 28, 2016 at 4:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments must be received by May 13, 2016, and should be sent to Lisa Smith, Administrator of the Delaware Board of Examiners in



Optometry, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904.

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

<http://regulations.delaware.gov/register/april2016/proposed/19 DE Reg 914aRFA 04-01-16.pdf>

## 2100 Board of Examiners in Optometry (Break in Continuity of Sections)

### **9.0 Telehealth**

- 9.1 Telehealth is the use of electronic communications to provide and deliver a host of health-related information and health-care services, including optometry-related information and services, over large and small distances. Telehealth encompasses a variety of health care and health promotion activities, including education, advice, reminders, interventions, and monitoring of interventions.
- 9.2 The Optometrist or Optometry Intern (referred to as "licensee" for the purpose of this Board Rule) who provides treatment through telehealth shall meet the following requirements:
- 9.2.1 Location of patient during treatment through telehealth
- 9.2.1.1 The licensee shall have an active Delaware license in good standing to practice telehealth in the state of Delaware.
- 9.2.1.2 Licensees understand that this rule does not provide licensees with authority to practice telehealth in service to clients located in any jurisdiction other than Delaware, and licensees bear responsibility for complying with laws, rules, or policies for the practice of telehealth set forth by other jurisdictional boards of optometry.
- 9.2.1.3 Licensees practicing telehealth shall comply with all of these rules of professional conduct and with requirements incurred in state and federal statutes relevant to the practice of optometry.
- 9.2.2 Informed consent
- 9.2.2.1 Before services are provided through telehealth, the licensee shall obtain written, informed consent from the patient, or other appropriate person with authority to make health care treatment decisions for the patient. At minimum, the informed consent shall inform the patient and document acknowledgment of the risk and limitations of:
- 9.2.2.1.1 The use of electronic communications in the provision of care;
- 9.2.2.1.2 The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of care; and
- 9.2.2.1.3 The potential disruption of electronic communication in the use of telehealth.
- 9.2.3 Confidentiality: The licensee shall ensure that the electronic communication is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices and technology, including disposal of electronic equipment and data.
- 9.2.4 Competence and scope of practice
- 9.2.4.1 The licensee shall be responsible for determining and documenting that telehealth is an appropriate level of care for the patient.
- 9.2.4.2 The licensee shall comply with the Board's law and rules and regulations and all current standards of care requirements applicable to on-site care.
- 9.2.4.3 The licensee shall limit the practice of telehealth to the area of competence in which proficiency has been gained through education, training, and experience.
- 9.2.4.4 All evaluations, including initial evaluations, examination and refraction, and re-evaluations and scheduled discharges shall be performed face to face and not through telehealth or internet.

## PROPOSED REGULATIONS

---

9.2.4.5     The licensee shall document in the file or record which services were provided by telehealth.

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

**2100 Board of Examiners in Optometry**

---

## Symbol Key

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

## Final Regulations

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

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

---

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 745

### REGULATORY IMPLEMENTING ORDER

#### 745 Criminal Background Check for Public School Related Employment

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

The Secretary of Education intends to amend 14 DE Admin. Code 745 Criminal Background Check for Public School Related Employment. This regulation is being amended to update regulation language due to changes in Titles 11, 16 and 31 of the Delaware Code related to Background Checks for Child Serving Entities.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 1, 2016, in the form hereto attached as Exhibit "A". One comment was received requesting that the definition of student teaching be expanded to include student teaching in higher education programs such as student nursing and student mental health counselors completing clinical experience in elementary or secondary schools. The Department notes that the definitions of employee, contractor and volunteer in the regulation encompasses these groups and therefore no change was made to this regulation.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 745 Criminal Background Check for Public School Related Employment in order to update regulation language due to changes in Titles 11, 16 and 31 of the Delaware Code related to Background Checks for Child Serving Entities.

---

# FINAL REGULATIONS

---

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment in the *Administrative Code of Regulations* for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on March 17, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 17<sup>th</sup> day of March 2016.

Steven H. Godowsky, Secretary of Education

Approved this 17<sup>th</sup> day of March 2016

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2016 issue of the *Register* at page 699 (19 DE Reg. 699). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**745 Criminal Background Check for Public School Related Employment**

---

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 746

## REGULATORY IMPLEMENTING ORDER

**746 Criminal Background Check for Student Teaching**

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching. This regulation is being amended to update regulation language due to changes in Titles 11, 16 and 31 of the Delaware Code related to Background Checks for Child Serving Entities.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 1, 2016, in the form hereto attached as Exhibit "A". No comments were received for this regulation.

### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 746 Criminal Background Check for

---

Student Teaching in order to update regulation language due to changes in Titles 11, 16 and 31 of the Delaware Code related to Background Checks for Child Serving Entities.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching in the *Administrative Code of Regulations* for the Department of Education.

### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on March 17, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 17<sup>th</sup> day of March 2016.  
Steven H. Godowsky, Secretary of Education

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2016 issue of the *Register* at page 706 (19 DE Reg. 706). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**746 Criminal Background Check for Student Teaching**

---

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 775

### REGULATORY IMPLEMENTING ORDER

**775 New Teacher Hiring Date Reporting**

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 775 New Teacher Hiring Date Reporting. This regulation is being amended to align teacher hiring date collection with annual reporting done within the Teacher and Leader Effectiveness Unit of the Department of Education, and as required by 14 **Del.C.** §1725. This regulation was published in the November *Register of Regulations* and due to comments received was republished.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 1, 2016, in the form hereto attached as Exhibit "A". Comments were received from the State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) and a staff member suggesting a revised title for the regulation to "New Educator Hiring Data Report" instead of "New

# FINAL REGULATIONS

Teacher Hiring Date Report," and likewise, the definition of educator be broadened to include specialists, such as school nurses. The Department notes the intent of this regulation is specifically for teachers, and not inclusive of all types of educators. Therefore it will not change the word "teacher" within the regulation. Likewise, the Department believes that specialists, such as school nurses, would be captured by this report under the "Hard to Staff Position," and therefore no further change is needed to this regulation. The Department does agree that the word "date" should be changed to "data" to clearly identify that more than just the teacher hiring date is being reported.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 775 New Teacher Hiring Date Reporting in order to align teacher hiring date collection with annual reporting done within the Teacher and Leader Effectiveness Unit of the Department of Education, and as required by 14 **Del.C.** §1725.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 775 New Teacher Hiring Date Reporting. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 775 New Teacher Hiring Date Reporting attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 775 New Teacher Hiring Date Reporting hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 775 New Teacher Hiring Date Reporting amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 775 New Teacher Hiring Date Reporting in the *Administrative Code of Regulations* for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on March 17, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 17<sup>th</sup> day of March 2016.  
Steven H. Godowsky, Secretary of Education

### 775 New Teacher Hiring [~~Date~~ Data] Reporting

\*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2016 issue of the *Register* at page 712 (19 DE Reg. 712). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at:

**775 New Teacher Hiring Date Reporting**

---

### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))  
14 **DE Admin. Code** 1502

### REGULATORY IMPLEMENTING ORDER

**1502 Professional Growth Salary Increments**

---

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1502 Graduate Level Salary Increments. The regulation concerns the requirements for salary increments for educators for graduate level coursework, pursuant to 14 **Del.C.** §1305(a). This regulation is being reviewed under a five year cycle. Several changes have been deemed necessary to update language and to detail requirements for applicable coursework for salary increases.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on January 1, 2016. The notice invited written comments. No comments were received.

## II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1305(a), the regulation attached hereto as Exhibit "A" is hereby amended. Pursuant to the provision of 14 **Del.C.** §1305(a), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1502 of the *Administrative Code of Regulations* of the Professional Standards Board.

## V. EFFECTIVE DATE OF ORDER

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

### **APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>rd</sup> DAY OF MARCH, 2016**

Bryon Murphy, Chair	Cristy Greaves (absent)
Diane Albanese (absent)	Darren Guido
Amber Augustus	David Kohan
Linda Brown	Rosaria Macera
Jennifer Burton (absent)	Darlene O'Neill
Stephanie DeWitt	Mary Pinkston
Nelia Dolan (absent)	Stephanie Smith
Laura Glass	Sue Smith (absent)

**IT IS SO ORDERED this 17<sup>th</sup> day of March, 2016.**

### **Department of Education**

Steven H. Godowsky, Secretary of Education

**Approved this 17<sup>th</sup> day of March, 2016.**

**State Board of Education**

Teri Quinn Gray, Ph.D., President  
Jorge L. Melendez, Vice President  
G. Patrick Heffernan  
Barbara B. Rutt

Gregory B. Coverdale, Jr.  
Terry M. Whittaker, Ed.D.  
Nina Lou Bunting

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 549 (19 DE Reg. 549). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1502 Professional Growth Salary Increments**

---

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Chapter 25 (16 **Del.C.** Ch. 25)  
16 **DE Admin. Code** 4304

**ORDER****4304 Delaware Medical Orders for Scope of Treatment (DMOST)****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Medical Orders for Scope of Treatment (4304). The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Ch. 101 and authority as prescribed by 16 **Del.C.** §2506A.

On April 1, 2016 (Volume 19, Issue 11), DHSS published in the Delaware *Register of Regulations* its notice of final regulations, pursuant to 29 **Del.C.** §10115. The revisions are technical in nature and are being made to correct typographical errors observed in the current regulations.

**FINDINGS OF FACT:**

Minor changes were made to the existing regulations to correct typographical errors. These changes are technical in nature and do not impact the intent of the regulations.

**THEREFORE, IT IS ORDERED**, that the proposed State of Delaware Medical Orders for Scope of Treatment (4304) is adopted and shall become effective April 11, 2016, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

**\*Please Note: Changes to the DMOST form are not being published here. A copy of the regulation and Form is available at:**

**4304 Delaware Medical Orders for Scope of Treatment (DMOST)**



---

## DEPARTMENT OF INSURANCE

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 332, 6408, 6416 and 6417  
(18 Del.C. §§311, 332, 6408, 6416 & 6417)  
18 DE Admin. Code 1301

ORDER  
Docket No. 2999-2015

### **1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims**

Proposed amended Regulation 1301 relating to Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims was published in the Delaware *Register of Regulations* on January 1, 2016. The comment period remained open until February 1, 2016. There was no public hearing on proposed amended Regulation 1301. Public notice of the proposed amended Regulation 1301 was published in the *Register of Regulations* in conformity with Delaware law.

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

Comments were not received on the proposed amended Regulation 1301. No changes were made to the proposed amended Regulation 1301.

#### **FINDINGS OF FACT**

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

1. 18 Del.C. §§311, 332, 6408, 6416, and 6417 require a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed amended Regulation 1301 best serve the interests of the public and of insurers and comply with Delaware law, and are not likely to impose additional costs or burdens upon individuals and/or small businesses.

#### **DECISION AND EFFECTIVE DATE**

Based on the provisions of 18 Del.C. §§311, 332, 6408, 6416, and 6417; and 29 Del.C. Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 1301 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

#### **TEXT AND CITATION**

The text of proposed amended Regulation 1301 last appeared in the *Register of Regulations* Vol. 19, Issue 7, on page 564.

**IT IS SO ORDERED** this 1<sup>st</sup> day of April, 2016.  
Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

\*Please note that no changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 564 (19 DE Reg. 564). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims**

---

**FINAL REGULATIONS**

---

**OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Sections 311, 333 and 6408 (18 **Del.C.** §§311, 333 & 6408)  
18 **DE Admin. Code** 1313

**ORDER****1313 Arbitration of Health Insurance Disputes Between Carriers and Providers**

Proposed amended Regulation 1313 relating to Arbitration of Health Insurance Disputes Between Carriers and Providers was published in the Delaware *Register of Regulations* on January 1, 2016. The comment period remained open until February 1, 2016. There was no public hearing on proposed amended Regulation 1313. Public notice of the proposed amended Regulation 1313 was published in the *Register of Regulations* in conformity with Delaware law.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

While the Department did not receive any comments on proposed amended Regulation 1313, the Department removed certain amendments to the proposed Regulation 1313 regarding filing fees for arbitrations to ensure that the proposed amendments did not impose additional costs or burdens upon individuals and/or small businesses.

**FINDINGS OF FACT**

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

1. 18 **Del.C.** §§311, 333, and 6408 require a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed amended Regulation 1313 best serve the interests of the public and of insurers and comply with Delaware law, and are not likely to impose additional costs or burdens upon individuals and/or small businesses.

**DECISION AND EFFECTIVE DATE**

Based on the provisions of 18 **Del.C.** §§311, 333, and 6408; and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 1313 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

**TEXT AND CITATION**

The text of proposed amended Regulation 1313 last appeared in the *Register of Regulations* Vol. 19, Issue 7, pages 564-568.

**IT IS SO ORDERED** this 1<sup>st</sup> day of April, 2016  
Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

**1313 Arbitration of Health Insurance Disputes Between Carriers and Providers**  
*(Break in Continuity of Sections)***4.0 Procedure**

## 4.1 Petition for Arbitration

*(Break in Continuity Within Section)*

4.1.3 At the time of delivering the Petition for Arbitration to the Department, a health care provider or his authorized representative must also:

*(Break in Continuity Within Section)*

4.1.3.3 deliver to the Department a non-refundable filing fee~~[-The fee shall be \$50 for claims of \$1,000 or less, in all other cases the fee shall be \$100 of \$100, per Petition filing. The fee shall be \$50 for claims of \$1,000 or less, in all other cases the fee shall be \$100].~~

*(Break in Continuity Within Section)*

4.2 Response to Petition for Arbitration

*(Break in Continuity Within Section)*

4.2.2 At the time of delivering the Response to the Department, the carrier must also:

4.2.2.1 send a copy of the Response and supporting documentation to the health care provider or his authorized representative by first class U.S. mail, postage prepaid; ~~and and~~

4.2.2.2 deliver to the Department a Proof of Service confirming that a copy of the Response was mailed to the health care provider or his authorized representative~~[. and.]~~

~~4.2.2.3 Deliver to the Department a non-refundable filing fee. The fee shall be \$100 for each Petition filing.~~

\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 564 (19 DE Reg. 564). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1313 Arbitration of Health Insurance Disputes Between Carriers and Providers**

---

## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 332 (18 Del.C. §§311 & 332)

### ORDER

#### **1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers**

Proposed Regulation 1315 relating to Arbitration of Health Insurance Disputes Between Individuals and Carriers was published in the Delaware *Register of Regulations* on January 1, 2016. The comment period remained open until February 1, 2016. There was no public hearing on proposed Regulation 1315. Public notice of the proposed Regulation 1315 was published in the *Register of Regulations* in conformity with Delaware law.

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

No comments were received on the proposed Regulation; and no changes are being made to the proposed Regulation 1315.

#### **FINDINGS OF FACT**

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

1. 18 Del.C. §§311 and 332 require a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed Regulation 1315 best serve the interests of the public and of insurers and comply with Delaware law, and are not likely to impose additional costs or burdens upon individuals and/or small businesses.

#### **DECISION AND EFFECTIVE DATE**

Based on the provisions of 18 Del.C. §§311 and 332; and 29 Del.C. Ch. 101, and the record in this docket, I

hereby adopt proposed Regulation 1315 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

#### TEXT AND CITATION

The text of proposed Regulation 1315 last appeared in the *Register of Regulations* Vol. 19, Issue 7, pages 569-573.

**IT IS SO ORDERED** this 1st day of April, 2016  
Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 569 (19 DE Reg. 569). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers**

---

#### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 3349, 3565 and 6408  
(18 Del.C. §§311, 3349, 3565 & 6408)

#### ORDER

#### **1316 Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services**

Proposed Regulation 1316 relating to Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services was published in the Delaware *Register of Regulations* on January 1, 2016. The comment period remained open until February 1, 2016. There was no public hearing on proposed Regulation 1316. Public notice of the proposed Regulation 1316 was published in the *Register of Regulations* in conformity with Delaware law.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received on the proposed Regulation 1316 from:

- Lisa Levine, Associate General Counsel; UnitedHealthcare Shared Services Legal

The collective comments were reviewed and considered, and no changes were made to the proposed Regulation 1316. The intent of this proposed regulation is to reorganize provisions that were previously included in 18 DE Admin. Code 1301. The Department has simply moved provisions related to arbitrations under 18 Del.C. §§3349 and 3565 to this stand-alone regulation.

#### FINDINGS OF FACT

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

1. 18 Del.C. §§311, 3349, and 3565 require a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed Regulation 1316 best serve the interests of the public and of insurers and comply with Delaware law, and are not likely to impose additional costs or burdens upon individuals and/or small businesses.

---

## DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §§311, 3349, and 3565; and 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed Regulation 1316 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

## TEXT AND CITATION

The text of proposed Regulation 1316 last appeared in the *Register of Regulations* Vol. 19, Issue 7, pages 573-578.

**IT IS SO ORDERED** this 1st day of April, 2016  
Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 573 (19 DE Reg. 573). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1316 Arbitration of Health Ins. Disputes Between Carriers And Non-Network Providers of Emer. Care Svcs.**

---

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 788, 796 and 801 (7 **Del.C.** §§788, 796 & 801)  
7 **DE Admin. Code** 3900

## ORDER

### 3900 Wildlife

Secretary's Order No.: 2016-F-0014

**RE: Approving Final Regulations to Amend 7 DE Admin. Code §3900, to wit:  
Section 4.0, Seasons; and Section 23.0, Non-native/Invasive Wildlife**

**Date of Issuance: March 17, 2016**

**Effective Date of the Amendment: April 11, 2016**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

### Background, Procedural History and Findings of Fact

This Order relates to proposed *revised* regulation Amendments to 7 **DE Admin. Code** §3900, as follows, to wit: Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife* ("Amendments"). The Department's Division of Fish and Wildlife ("Division") commenced the regulatory development process with Start Action Notice 2015-07 dated August 12, 2015. The Department published its initial proposed regulation Amendments in the September 1, 2015 Delaware *Register of Regulations*. The Department then held a public hearing on September 22, 2015. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment initially through October 7, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to enable the Department to establish reporting requirements for gray fox taken, killed or captured (i.e., harvested), and to clarify and standardize the timeframe and methodology for reporting coyote and nutria

harvests.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on September 22, 2015. Members of the public attended the above referenced hearing, and comment was received by the Department concerning these proposed Amendments, both verbally at the time of the hearing and via email thereafter. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. It should be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The hearing record formally closed with regard to public comment at close of business on October 7, 2015. Following the close of the hearing record for public comment on October 7, 2015, the Department's Division of Fish and Wildlife performed a thorough review of all public input that had been received up through that time and, at the request of this Hearing Officer, a Technical Response Memorandum ("TRM") was subsequently prepared by the Division in response to the same. It should be noted that all comments received pertained solely to the harvest reporting framework for gray fox; no comments were received pertaining to the harvest reporting proposals for either coyotes or nutria. The aforementioned TRM, dated October 30, 2015, discussed the extensive review of the comment received by the Division in this matter, and noted that the vast majority of comments received were in opposition to the Department's proposal to require the reporting of harvested gray fox to the Division by the next business day following the harvest.

The Department was previously granted the authority by the 148th General Assembly to establish reporting requirements for harvested gray fox. In order to evaluate the gray fox harvest, the Department had required in its initial proposed Amendments that anyone harvesting a gray fox must report the harvest to the Division by the next business day following the harvest. Harvest reporting provides a mechanism for the Division of Fish and Wildlife to collect data on the number of gray foxes harvested, harvest location, and when such harvest is occurring. The Department's aforementioned TRM notes that many individuals who provided comment in this matter indicated that reporting harvests by the end of the next business day would be burdensome, or could result in some individuals not reporting their harvests if they were unable to report within the required short time frame. If an individual failed to report harvest within the required daily timeframe, he or she may be unwilling to file a harvest report, due to the fear of being in violation of the regulation. As such, some commenters indicated a desire to have a longer allowable time frame in which to report gray fox harvests.

As it continued its review of the hearing record in this matter, the Division then considered establishing the requested end-of-year harvest reporting requirement, and determined that, while an end-of-year harvest reporting requirement would be feasible for trappers, it would not provide complete harvest data from hunters and other individuals harvesting gray fox. The Division notes in its TRM that all licensed and registered trappers are currently sent a comprehensive voluntary Trapper Mail Survey at the end of the trapping season, which includes questions related to the number of each species trapped by each trapper. Mandatory reporting of gray fox harvest could be performed in conjunction with the annual Trapper Mail Survey. Similar to the Trapper Mail Survey, the Division sends a Hunter Mail Survey to hunters each year, but, unlike the trapper survey, only a subset (20%) of known hunters are mailed a survey. Hunters are subsampled because of their large numbers and the cost associated with sampling such a large population. Since every hunter does not receive a survey, this method would not obtain complete harvest data from all hunters that harvest a gray fox.

As a result of its exhaustive review of the public comment received in this matter, the Division determined that a *revision* of its previously proposed harvest reporting requirement was necessary, to wit: to allow reporting gray fox harvest to occur within seven (7) calendar days of harvest (i.e., reporting within a week). This revision would, according to the Department's TRM of October 30, 2015, provide ample opportunity for individuals to report their harvests without undue burden, while still allowing the Division to collect harvest data on this species in a timely fashion. Additionally, this revision to the aforementioned proposed Amendments would not create two different reporting mechanisms for different types of gray fox harvest.

Due to the fact that the above revision constituted a substantive post-hearing change to the initially proposed promulgation which was vetted to the public at the time of the public hearing of September 22, 2015, the *revised* proposed regulatory Amendments were re-published for public review in the Delaware *Register of Regulations* on January 1, 2016. The hearing record was re-opened at that time in order to receive additional public comment, and comment was once again received by the Department from January 1, 2016 through February 1, 2016. After the hearing record closed again for public comment on February 1, 2016, the Division of Fish and Wildlife once more performed a thorough review of all public input received to date in this matter, and, accordingly, the Department's

Division of Fish and Wildlife provided this Hearing Officer with a *supplemental* TRM dated March 10, 2016. This supplemental TRM not only re-affirmed all information previously set forth in the initial TRM dated October 30, 2015, but also provided a brief summary of the second round of comments received by the Department in this matter.

Pursuant to the supplemental TRM noted above, the position of the Division of Fish and Wildlife remains that the reporting of gray foxes within seven (7) calendar days of harvest (i.e., reporting within a week) provides ample opportunity for individuals to report their harvests, and would not be an undue burden on individuals, while still providing timely reporting information for the Division that is necessary to meet the *intent of 7 Del.C. §796, Limitations on Harvesting Gray Fox*. Furthermore, the aforementioned proposed reporting timeframe would allow the agency to collect detailed harvest information that may be otherwise forgotten by the hunter or trapper if several weeks or months have passed since the harvest, or, if an individual harvested multiple gray foxes throughout the allowable timeframe. Thus, no additional changes to the Department's *revised* proposed Amendments to 7 **DE Admin. Code** §3900: Section 4.0, *Seasons*, and Section 23.0, *Non-native/Invasive Wildlife*, as published in the January 1, 2016 Delaware *Register of Regulations*, are recommended by the Division at this time.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 15, 2016 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed *revised* Amendments as attached to the Report as Appendix "B".

## Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed *revised* regulatory Amendments to 7 **DE Admin. Code** §3900, as follows, to wit: Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed *revised* regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these *revised* regulatory Amendments. The adoption of these *revised* regulatory Amendments will allow Delaware to establish reporting requirements for gray fox taken, killed or captured (i.e., harvested), and to clarify and standardize the timeframe and methodology for reporting coyote and nutria harvests;

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed revised Amendments to 7 **DE Admin. Code** §3900, Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife*, pursuant to 7 **Del.C.** §§788, 796, and 801;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed *revised* regulatory Amendments as final;

3. The Department provided adequate public notice of the initial proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on said Amendments, including at the time of the public hearing held on September 22, 2015, and held the record open through close of business on October 7, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;

4. Due to substantive changes made to the proposed regulatory language, the Department caused the *revised* proposed regulatory amendments to be re-published in the State of Delaware *Register of Regulations* on January 1, 2016, provided the public with an additional 30 days to comment on the same, and held the record open through close of business on February 1, 2016, in order to consider all public comment on these proposed *revised* regulatory amendments before making any final decision;

5. The Department's Hearing Officer's Report, including its established record and the recommended proposed *revised* regulatory Amendments as set forth in its Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;

6. The adoption of these proposed *revised* regulatory Amendments will allow Delaware to (1) establish reporting requirements for gray fox taken, killed or captured (i.e., harvested); and (2) clarify and standardize the timeframe and methodology for reporting coyote and nutria harvests;

7. The Department has reviewed these proposed *revised* regulatory Amendments in the light of the

Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all proposed regulations initially submitted to the Delaware Register of Regulations on or before December 31, 2015), and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

8. The Department's proposed *revised* regulatory Amendments, as re-published in the January 1, 2016 Delaware *Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final *revised* regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

9. The Department shall submit this Order approving as final the proposed *revised* Amendments to 7 **DE Admin. Code** §3900, Section 4.0, *Seasons*; and Section 23.0, *Non-native/Invasive Wildlife*, 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.

David S. Small, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2016 issue of the Register at page 583 (19 DE Reg. 583). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3900 Wildlife**

---

### **DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

Statutory Authority: 7 Delaware Code, Chapters 60 and 63; (7 **Del.C.**, Ch. 60 and 63)  
7 **DE Admin. Code** 1302

#### **ORDER**

#### **1302 Regulations Governing Hazardous Waste**

**Secretary's Order No.: 2016-WH-0011**

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1302:**

**Delaware Regulations Governing Hazardous Waste**

**Date of Issuance: March 15, 2016**

**Effective Date of the Amendment: April 21, 2016**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, and 7 **Del.C.** §6301 *et seq.*, and any other relevant authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

#### **Background, Procedural History and Findings of Fact**

This Order relates to proposed regulation amendments to 7 **DE Admin. Code** 1302, *Delaware Regulations Governing Hazardous Waste* ("DRGHW"). The Department's Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section ("SHWMS"), has conducted this regulatory development process consistent with the requirements of 29 **Del.C.** Ch. 101, and has commenced said process with Start Action Notice 2015-06 dated July 22, 2015. The Department published its initial proposed regulation amendments in the January 1, 2016 Delaware *Register of Regulations*. The Department then held a public hearing on January 21, 2016. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through February 5, 2016.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to the existing DRGHW to enable the Department to provide greater environmental protection and to



reduce human health risks. Specifically, the proposed action will allow DNREC to modify the characteristics of ignitability to mirror federal ignitable compressed gas provisions, and to also correct existing typographical and reference errors. It should be noted that the proposed Amendments are required by the United States Environmental Protection Agency ("U.S. EPA") in order for Delaware to maintain its program authorization concerning such matters.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on January 21, 2016. Members of the public attended the aforementioned hearing, and comment was received by the Department at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. Although the record remained open through February 5, 2016, no additional comment was received by the Department concerning this proposed action. It should be noted that, while the public comments received in this matter did pertain to Delaware hazardous waste concerns in general, they did not concern the specific Amendments currently being proposed by the Department, and thus were outside of the scope of the subject matter of this proposed promulgation. The fact that the comments were not relevant to the proposed promulgation is confirmed by the Technical Response Memo from the Solid Hazardous Waste Management Section. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 15, 2016 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

## Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 1302: *Delaware Regulations Governing Hazardous Waste* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory amendments be promulgated as final.

I find that the Department's experts in the Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section, fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to modify the characteristics of ignitability to mirror federal ignitable compressed gas provisions, and to also correct existing typographical and reference errors.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 1302, pursuant to 7 **Del.C.** Ch. 60 and 63;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on January 21, 2016, and held the record open through close of business on February 5, 2016, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed regulatory amendments to 7 **DE Admin. Code** 1302: *Delaware Regulations Governing Hazardous Waste*, will enable the Department's SHWMS to (1) modify the characteristics of ignitability to mirror federal ignitable compressed gas provisions; and (2) correct existing typographical and reference errors;
6. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published

on or before December 31, 2015), and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed regulatory amendments, as published in the January 1, 2016 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect twenty days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code 1302: Delaware Regulations Governing Hazardous Waste** 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.

David S. Small, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 584 (19 DE Reg. 584). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1302 Regulations Governing Hazardous Waste**

## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

#### 3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

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

#### NATURE AND STAGE OF THE PROCEEDINGS

On January 1, 2016, the Delaware Board of Mental Health and Chemical Dependency Professionals published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 19, Issue 7. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 27, 2016 at a regularly scheduled meeting of the Delaware Board of Mental Health and Chemical Dependency Professionals to receive verbal comments regarding the Board's proposed amendments to its regulations.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

**Board Exhibit 3** - Letter dated February 10, 2016 from A.I. DuPont Hospital for Children supporting the regulations as proposed.

There was no verbal testimony given at the public hearing on January 27, 2016. No written comments were received by the Board during the initial thirty day public comment period; one public comment was submitted following the hearing in support of the proposed regulations during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

---

## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the first written public comment period, or the public hearing. There was one public comment submitted following the hearing that supported the regulations as proposed.
3. Pursuant to 24 **Del.C.** §3006(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes seek to clarify and provide more detailed information regarding the use of telehealth services for the provision of Mental Health Counseling, Chemical Dependency Counseling, or Marriage and Family Therapy.
5. The Board finds no reason to amend the regulations as proposed.

## DECISION AND EFFECTIVE DATE

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A.

**SO ORDERED** this 24<sup>th</sup> day of February, 2016.

### BY THE DELAWARE BOARD OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Dr. Gregg Drevno, LPCMH (President)	Irvin Bowers, Public Member (Vice President)
Dr. Rosemary Madl-Young, LCDP, (Secretary)	Dr. William Northey, Jr., LMFT
Daniel Cherneski, LMFT	Ruth Banta, Public Member
Dr. Julius Mullen, LPCMH (absent)	Elizabeth Vassas, Public Member
James Elder, LCDP (absent)	Sherry Lambertson, Public Member (absent)
Daniel Cooper, LPCMH	

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 592 (19 DE Reg. 592). 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**

---

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

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

## ORDER

### 3800 State Board of Dietetics/Nutrition

The Delaware Board of Dietetics/Nutrition pursuant to 24 **Del.C.** §3805(1), proposed to revise its regulations. The proposed amendments to the regulations seek to further clarify the scope of practice of a Dietitian/Nutritionist by defining various terms set forth in the Board's enabling statute.

## SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on July 1, 2015, a public hearing was held on August 14, 2015. Written comment periods were held open for thirty days, and an additional fifteen days following

the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. The Board further marked the following public comments as Board Exhibits:

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

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

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

**Board Exhibit 3** - A summary of the public comments provided by Ana Maria Puente and Susan Testa during the May 8, 2015 Board meeting. Ms. Puente is a first year student at University of Maryland, Integrated Health Program, and Ms. Testa developed the University of Maryland, Integrated Health Program;

**Board Exhibit 4** - May 8, 2015 written public comments provided by Ginger Hodulik, certified nutrition specialist (CNS) in New Jersey and Pennsylvania;

**Board Exhibit 5** - May 14, 2015 written public comment from Karen Siclare, CNS, Associate Director of the Nutrition Institute at the University of Bridgeport;

**Board Exhibit 6** - May 8, 2015 written public comments from Krista Noelle, LDN from the University of Maryland, Integrated Health Program;

**Board Exhibit 7** - August 14, 2015 written public comments provided by Donna Trader of the Delaware Academy of Nutrition and Dietetics during the fifteen day 29 **Del.C.** §10118(a) second public comment period;

**Board Exhibit 8** - Written public comment from Judy Stone, Legislative Policy Director for the Board for Certification of Nutrition Specialists, provided during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

There was no verbal testimony given at the public hearing on August 14, 2015. The public comments provided during the May 8, 2015 Board meeting were summarized and marked as exhibits at the time of the hearing as were the written public comment received during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

### **FINDINGS OF FACT AND CONCLUSIONS**

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. Ms. Puente commented that she believes Delaware should include other credentials for licensure, such as CNS. The Board noted that the proposed regulations do not address credentials for licensure.
3. Ms. Testa testified that the definition of "Nutrition Assessment" mentions parenteral nutrition and noted that parenteral nutrition is not an assessment tool, but a dietary tool.
4. The Board found that a nutrition assessment of an individual receiving parenteral or enteral nutrition should include an evaluation of how such nutrition impacts how nutrition will be provided to that individual, as such, although parenteral enteral nutrition is a dietary tool, it is a dietary tool that should be considered when performing a nutrition assessment.
5. Ms. Hodulik commented that she is concerned that the proposed language is a way to deny licensure to applicants who do not have training in enteral/parenteral nutrition or in administration of food and nutrition care systems. She suggested that the Board include language such as "may include" rather than the more definitive "includes." Finally, Ms. Hodulik suggested that the Board change Regulation 2.3, which was not included in the proposed changes to the regulations.
6. The Board found that language such as "may include" could be interpreted to mean that a nutrition assessment only needs to include one or two of the tools set forth in the definition when such conduct would not be a sufficient nutrition assessment.
7. Ms. Siclare recommended that the two definitions that include dietetic specific job activities, "Nutrition Assessment" and "Nutrition Care Plan" be reworded to indicate the list of specific skills may be included. In addition, Ms. Siclare noted her opposition to any language that could be interpreted to require non-RD nutritionists to demonstrate skills "not required of them in practice." As such, Ms. Siclare requested that the Board re-write the definitions to clarify that dietetic specific skills will not be

- required of applicants who are not dietitians. Finally, Ms. Siclare requested that the Board recognize CNS practice experience along with the CNS exam.
8. Ms. Noelle requested that the Board amend its regulations to grant licensure to holders of the CNS credential.
  9. Ms. Stone commented that the Board should add language such as "may include" to the definition of nutrition assessment and eliminate "enteral and parenteral nutrition" from the definition. Ms. Stone suggested that the Board eliminate its proposed definition for "Nutritional Care Plan" and instead utilize a shorter, more broad definition.
  10. In regard to the comments from Ms. Siclare, Ms. Noelle, and Ms. Stone, the Board pointed out that a change regarding the CNS credential was not addressed by the proposed regulations and would have to take place in the statute, not the regulations. The Board does not have the power to amend the statute, as such power lies with the Delaware General Assembly. In addition, the Board noted that it proposed to clarify the scope of practice to ensure that only competent licensed professionals are partaking in the activities set forth in the statutory and regulatory scope of practice. By clarifying the scope of practice, the Board is in no way altering the qualifications for licensure. In other words, the Board is not requiring that all applicants for licensure be qualified to perform every task set forth in the defined scope of practice; rather, the Board is ensuring that anyone who performs such tasks in Delaware must be a licensed dietitian/nutritionist, regardless of whether such person is an RD or a CNS.
  11. Ms. Trader suggested that the Board change the term "medical nutrition therapy" to "dietetic and nutrition therapy" to mirror the statute.
  12. The Board noted that the term "medical nutrition" was set forth in a different definition and the Board sought to clarify what that meant.
  13. Ms. Trader suggested minor technical changes such as removing a comma and adding the word nutrition before intervention, education and counseling in the definition of "medical nutrition therapy."
  14. The Board agreed with these suggestions and will incorporate them into the proposed regulations pursuant to 29 **Del.C.** §10113(b)(4), which allows for "[n]onsubstantive changes in existing regulations to alter style or form or to correct technical errors."
  15. Ms. Trader suggested that the Board add a definition for "nutrition intervention" but the Board found that such a definition would be no different than the definition for "nutrition assessment."
  16. Ms. Trader suggested that the Board add the term "ordering" to the definition of "nutritional care plan."
  17. The Board agreed with this suggestion but found that it could add "ordering" to the definition at a later date, and insofar as the Board has been attempting to implement the proposed regulations for at least one year, it did not want to delay the process further by having another hearing on the same regulations to effectuate only that change.
  18. Pursuant to 24 **Del.C.** §3805(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
  19. The proposed changes amend Board's Regulations seek to further clarify the scope of practice of a Dietitian/Nutritionist by defining various terms set forth in the Board's enabling statute.
  20. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
  21. For the reasons stated above, the Board finds no reason to amend the regulations as proposed.

## DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* on April 1, 2016.

**IT IS SO ORDERED** this 12<sup>th</sup> day of February, 2016 by the Delaware Board of Dietetics/Nutrition.  
Maryann Eastep, L.D.N., President Jackie Griffith, Public Member  
Jaime Sherman, L.D.N., Vice President Lucinda Mancuso, L.D.N.  
Timothy Bane, Public Member (absent)

**\*Please note that no changes were made to the regulation as originally proposed and published in the July 2015 issue of the *Register* at page 27 (19 DE Reg. 27). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3800 State Board of Dietetics/Nutrition**

---

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF MOTOR VEHICLES**

Statutory Authority: 21 **Delaware Code** §§2708 and 2709 (21 **Del.C.** §§2708 & 2709)  
**2 DE Admin. Code 2222**

**ORDER**

**2222 School Bus Driver Qualifications and Endorsements**

Proposed changes to Regulation 2222 relating to School Bus Driver Qualification and Endorsements was published in the Delaware *Register of Regulations* on January 1, 2016. The changes proposed in Regulation 2222 is pursuant to Senate Bill 39 with Senate Amendment 1 of the 147th General Assembly, which brings Delaware into compliance with the Federal Motor Carrier Safety Administration's commercial driver license and commercial learner permit issuance standards. This bill added new definitions and commercial learner permit specifications to Delaware law, including limiting certain endorsements to the commercial learner permit and adding new restrictions to the commercial driver license. Written comments were to be accepted regarding this proposal until January 30, 2016; however, no comments were received during this time. There was no public hearing on proposed Regulation 2222. Public notice of the proposed Regulation 2222 was published in the *Register of Regulations* was in conformity with Delaware Law.

No comments were received on the proposed Regulation 2222; however, an adjustment was made to subsection 5.1.1.2.2 of the proposed Regulation 2222 correcting the hours of on-bus training.

**EFFECTIVE DATE OF ORDER**

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

**TEXT AND CITATION**

The text of proposed changes to Regulation 2222 last appeared in the *Register of Regulations* Vol. 19, Issue 7, pages 597-603.

**IT IS SO ORDERED** this 29<sup>th</sup> day of February, 2016

Jennifer Cohan, Secretary  
Department of Transportation

**2222 School Bus Driver Qualifications and Endorsements**  
**(Break in Continuity of Sections)**

## 5.0 Substance of Policy

### 5.1 Procedures.

#### 5.1.1 Basic Requirements:

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

- 5.1.1.2 Exceptions. These exceptions are only for drivers undergoing school bus training and evaluation.

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

- 5.1.1.2.2 45-Day Temporary (S) Endorsement for Classroom Training Unavailability. If a driver has completed all DMV CDL requirements, including the DMV road test, and the DOE [64] hours of on-bus training, the DMV may, upon specific written DOE request, issue a CDL license along with a one-time only temporary (S) endorsement for a period not to exceed 45 days. This temporary (S) endorsement allows the driver to carry students ~~without a CDSBDT~~ upon successful completion of the last 2 hours of DOE on-board training, if all other (S) endorsement requirements have been met. This temporary (S) endorsement is intended for the driver who, due to exceptional circumstances, has been unable to complete the DOE classroom training. This temporary (S) endorsement will only be issued one time and cannot be extended.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 597 (19 DE Reg. 597). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**[2222 School Bus Driver Qualifications and Endorsements](#)**

---

## **DIVISION OF MOTOR VEHICLES**

### **DRIVER SERVICES**

Statutory Authority: 21 **Delaware Code** §§302, 2711, 2715 & 2718; 11 **Delaware Code** §§8593-8595 (21 **Del.C.** §§302, 2711, 2715 & 2718; 11 **Del.C.** §§8593-8595)

### **ORDER**

#### **[2225 Delaware Driving Privilege Permit and Driving Privilege Card](#)**

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

Proposed Regulation 2225 relating to Delaware Driving Privilege Permit and Driving Privilege Card was published in the Delaware *Register of Regulations* on January 1, 2016. This proposed Regulation 2225 is pursuant to Senate Bill 59 of the 148th General Assembly, which creates the means for an undocumented immigrant to apply for and obtain valid driving privileges in the State of Delaware. Written comments were to be accepted regarding this proposal until January 30, 2016; however, no comments were received. There was no public hearing on proposed Regulation 2225. Public notice of the proposed Regulation 2225 was published in the *Register of Regulations* was in conformity with Delaware Law.

No comments were received on the proposed Regulation 2225. No amendments or changes were made to the proposed Regulation 2225.

#### **EFFECTIVE DATE OF ORDER**

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

## TEXT AND CITATION

The text of proposed Regulation 2225 last appeared in the *Register of Regulations* Vol. 19, Issue 7, pages 603-611.

**IT IS SO ORDERED** this 29<sup>th</sup> day of February, 2016

Jennifer Cohan, Secretary  
Department of Transportation

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 603 (19 DE Reg. 603). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2225 Delaware Driving Privilege Permit and Driving Privilege Card**

---

**DIVISION OF PLANNING AND POLICY**

Statutory Authority: 17 Delaware Code, Sections 132(e), 507, 508 and 29 Delaware Code, Section 8404(8) (17 **Del.C.** §§132(e), 507 & 508; 29 **Del.C.** §8404(8))  
**2 DE Admin. Code 2309**

**ORDER****2309 Development Coordination Manual**

Pursuant to the authority provided by 17 **Del.C.** §§132(e), 507, and 508, as well as 29 **Del.C.** §8404(8), the Delaware Department of Transportation (DelDOT) adopted the Development Coordination Manual. The Department issues this Order adopting revisions to regulations regarding development coordination.

The Department published the proposed revisions in the February 1, 2016, Delaware *Register of Regulations*, pages 737-738.

The Department took written comments on these proposed revisions from February 1, 2016, through March 2, 2016. No comments were received.

**Summary of the Evidence and Information Submitted**

The current regulations were enacted in March of 2015 and were amended in July of 2015 and in October of 2015. The revisions proposed in February address procedural changes, add or modify technical requirements, clarify and amend design criteria, and generally clarify the role of external technical references and guidance materials (as supporting documentation for design firms that are implementing the regulations). These collective changes are both technical and administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

**Findings of Fact and Conclusions of Law**

1. The public was given notice and the opportunity to provide comments in writing concerning the proposed revisions.
2. The proposed revisions are useful and proper and the Department believes that the adoption of these revisions is appropriate.

**Decision and Order Concerning the Regulations**

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, the



Secretary of the Delaware Department of Transportation does hereby ORDER that these revisions to the Development Coordination Manual be adopted and promulgated as set forth below.

The effective date of this Order is (10) ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(g).

**IT IS SO ORDERED** this 14<sup>th</sup> day of March, 2016.

Jennifer Cohan, Secretary  
Delaware Department of Transportation

**Please Note: Due to the size of the final regulation it is not being published here. The following links to the final regulation are provided below:**

Preface (<http://regulations.delaware.gov/register/april2016/final/Preface.pdf>)

Chapter 1 Access Standards (<http://regulations.delaware.gov/register/april2016/final/Chap1.pdf>)

Chapter 2 Traffic Analysis and Improvements (<http://regulations.delaware.gov/register/april2016/final/Chap2.pdf>)

Chapter 3 Record Plan Design (<http://regulations.delaware.gov/register/april2016/final/Chap3.pdf>)

Chapter 4 Construction Plans (<http://regulations.delaware.gov/register/april2016/final/Chap4.pdf>)

Chapter 5 Design Elements (<http://regulations.delaware.gov/register/april2016/final/Chap5.pdf>)

Chapter 6 Construction Administration (<http://regulations.delaware.gov/register/april2016/final/Chap6.pdf>)

Chapter 7 Residential Access (<http://regulations.delaware.gov/register/april2016/final/Chap7.pdf>)

Chapter 8 Miscellaneous Access Guidelines (<http://regulations.delaware.gov/register/april2016/final/Chap8.pdf>)

Chapter 9 Manual Updates (<http://regulations.delaware.gov/register/april2016/final/Chap9.pdf>)

---

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF ENERGY AND CLIMATE**

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

**Director's Determination under 26 Del.C. §354(i) & (j) and 7 DE Admin. Code 104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions****March 15, 2016****Summary**

The Director of the DNREC Division of Energy & Climate is required under 26 Del.C. §354(i) & (j) and 7 DE Admin. Code 104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions to review the calculations of the costs and benefits of Delaware's Renewable Portfolio Standards (RPS), consult with the Public Service Commission, and determine whether to freeze the RPS and the solar PV carve-out of the RPS.

For Compliance Year 2014/15 (June 1, 2014 to May 31, 2015) the benefits exceeded the costs of compliance for the RPS and the solar PV carve-out.

The externality benefits and the economic benefits of solar PV used to satisfy DPL's solar carve-out of the RPS totaled 4.58 percent, far greater than the 1.50 percent cost of solar PV compliance. Based on this analysis, and exercising my statutory discretion, I have determined to not freeze the solar PV carve-out of the RPS.

Further, the externality benefits and the economic benefits of renewable energy used to satisfy DPL's RPS requirement totaled 7.29 percent, far greater than the 3.93 percent cost of RPS compliance. Based on this analysis, and exercising my statutory discretion, I have determined to not freeze the RPS.

**Background**

The Division of Energy & Climate has reported on the cost of RPS compliance as required under Section 4.0 of 7 DE Admin. Code 104 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions promulgated under 26 Del.C. §354(i) & (j). The Director of the Division may, in consultation with the PSC, decide to freeze the RPS as provided in Section 5.0 of the Regulation. Thomas Noyes, the responsible staff member in this matter, has reported on the costs and benefits of RPS compliance.

I and Mr. Noyes briefed the Public Service Commission on the calculations on the costs and benefits of RPS compliance on February 23, 2016. Mr. Noyes has revised the calculations in response to comments received before the PSC briefing. His memorandum with the revised calculations of the costs and benefits, with supporting appendices, is available online at <http://www.dnrec.delaware.gov/energy/information/otherinfo/Pages/Renewable.aspx>.

**Calculation of the Costs and Benefits of Solar PV Carve-out**

The solar PV cost of compliance has been calculated as follows:

*Section 4.3 Solar Renewable Energy Cost of Compliance*

The Solar Energy Cost of Compliance in Compliance Year 2014/15 was \$9,857,168, or 1.50 percent of the total retail cost of electricity of \$655,626,991. The benefits have been calculated as follows:

*Section 5.4.1 Overall energy market conditions*

Overall market energy conditions have not changed sufficiently enough to significantly affect this analysis.

*Section 5.4.2 Avoided cost benefits from solar PV carve-out*

Avoided cost benefits are those market benefits known as price suppression effects attributable to reduced demand because of distributed renewable energy generation in PJM, which leads to lower capacity and energy prices particularly at times of peak demand. Since the methods for calculating these benefits are still being developed and no calculation has been performed.

*Section 5.4.3 Externality benefits due to solar PV carve-out*

Externality benefits of the RPS totaled \$21,828,158, or 3.16 percent of the total retail costs of electricity in CY 2014/15. Of the total externality benefits, 14.25 percent are attributed to solar PV based on the ratio of MWh generated of solar PV to all renewable energy generated during the compliance year. The solar PV portion of the externality benefits totaled \$2,948,628, or 0.45 percent of the total retail cost of electricity.

*Section 5.4.4 Economic impacts of the deployment of renewable energy in Delaware.*

The Division, working through the Maryland-D.C.-Virginia Solar Energy Industries Association (MDV-SEIA), surveyed the local solar energy industry in Delaware. The survey reported 300 jobs totaling \$21 million in salaries. The Division gave the survey results to the Delaware Economic Development Office (DEDO), which ran the numbers through its IMPLAN software package. The IMPLAN results show that the total direct, indirect and induced economic benefits are \$37,637,711, which would be 5.74 percent of total retail costs of electricity.

In response to some comments received by the Division, Division staff researched the question of how many of the 300 solar jobs in Delaware support the development of solar PV in state, and how many support the development of solar PV in neighboring states (Maryland, Pennsylvania and New Jersey). Staff consulted with the MDV-SEIA and spoke directly with large and small solar energy companies on a confidential basis to review their sales and employment figures. Based on this research, staff concluded that the economic impact analysis should be adjusted by a factor of 0.72 to reflect the amount of work performed to build solar PV in neighboring states by employees located in Delaware. This reduces the economic impact of the PV industry in Delaware from \$37,637,711 to \$27,099,152 in direct, indirect and induced economic effects.

The results summarized below clearly show that the benefits of the solar PV carve-out exceed the costs:

<b>Solar PV</b>	<b>Cost in \$</b>	<b>% of Retail</b>
<b>Total Retail Costs of Electricity</b>	\$ 655,626,991	
<b>GEF used to support PV</b>	\$ 2,391,217	
<b>DPL SREC procurement</b>	\$ 7,465,951	
<b>Solar Cost of Compliance</b>	\$ 9,857,168	1.50%
<b>Benefits</b>		
<b>Market conditions</b>	n/a	n/a
<b>Avoided costs capacity in MW</b>	n/a	n/a
<b>Avoided costs energy in MWh</b>	n/a	n/a
<b>Externalities NOx and SO2</b>	\$ 2,282,483	0.35%
<b>Externalities CO2</b>	\$ 666,145	0.10%
<b>Economic impacts</b>	\$ 27,099,152	4.13%
<b>Total benefits</b>	\$ 30,047,780	4.58%
<b>Net Cost (Benefit) of PV Compliance</b>	\$ (20,190,613)	(3.08%)

**Calculation of the Costs and Benefits of RPS Compliance**

The RPS cost of compliance is calculated as follows:

*Section 4.2 Renewable Energy Cost of Compliance*

The Cost of RPS Compliance in Compliance Year 2014/15 was \$25,780,907, 3.93 percent of the total retail costs of electricity. The benefits to have been calculated as follows:

*Section 5.4.1 Overall energy market conditions*

Overall market energy conditions have not changed sufficiently enough to significantly affect this analysis.

*Section 5.4.2 Avoided cost benefits from the RPS*

Avoided cost benefits are described in more detail above. This calculation has not been performed for CY 2014/15.

*Section 5.4.3 Externality benefits due to the RPS*

Delmarva Power calculated the externality benefits of renewable energy in its 2014 Integrated Resource Plan (IRP). This externality benefit calculation incorporates the avoided mortality costs for NOx and SO2 and the social cost of CO2 emissions. DPL calculated the externality benefits of reduced emissions of NOx and SO2 due to

## GENERAL NOTICES

renewable energy in Delaware to be \$16,019,038 based on the assumption that renewable energy displaced 50 percent of the PJM generation mix (which can be considered a conservative estimate due to the efficiency of the grid).

The cost of CO<sub>2</sub> is calculated to be \$4,675,171. DPL set the cost of CO<sub>2</sub> to be \$1 per metric ton, the low end of the EPA/OMB range of the social cost of carbon (SCC) at the time the IRP was prepared. The EPA/OMB social cost of carbon (SCC) has been updated since then. Using these updated figures, Division staff took the figure of \$36.00 per metric ton for 2015, which assumes a 3.0 percent discount rate of future costs in 2007 dollars. The figure in 2007 dollars has been adjusted using the CPI, resulting in a SCC of \$32.19 in 2015 dollars. As with DPL's other externality calculations, it is assumed that renewable energy displaced 50 percent of the PJM generation mix.

The Regulation includes "improvements to habitat" as part of the definition of externality benefits. We have not developed methods for calculating habitat benefits of renewable energy.

Externality benefits of the RPS in Delaware in CY 2014/15 totaled \$20,694,209, or 3.16 percent of the total retail costs of electricity.

*Section 5.4.4 Economic impacts of the deployment of renewable energy in Delaware.*

The economic impacts of solar PV in Delaware are described above, and the results are incorporated into the overall RPS calculations.

The results summarized below clearly show that the benefits exceeded the cost of compliance:

All Renewable Resources	Cost in \$	% of Retail
<b>Total Retail Costs of Electricity</b>	\$ 655,626,991	
<b>GEF to support renewable resources</b>	\$ 2,391,217	
<b>DPL REC and SREC procurement</b>	\$ 23,389,690	
<b>Renewable Energy Cost of Compliance</b>	\$ 25,780,907	3.93%
<b>Benefits</b>		
<b>Market conditions</b>	n/a	n/a
<b>Avoided costs capacity in MW</b>	n/a	n/a
<b>Avoided costs energy in MWh</b>	n/a	n/a
<b>Externalities NO<sub>x</sub> and SO<sub>2</sub></b>	\$ 16,019,038	2.44%
<b>Externalities CO<sub>2</sub></b>	\$ 4,675,171	0.71%
<b>Economic impacts</b>	\$ 27,099,152	4.13%
<b>Total benefits</b>	\$ 47,793,361	7.29%
<b>Net Cost (Benefit) of RPS Compliance</b>	\$ (22,012,455)	(3.36%)

### Conclusions

The externality benefits and the economic benefits of the solar PV used to satisfy DPL's solar carve-out of the RPS totaled 4.58 percent, far greater than the 1.50 percent cost of solar PV compliance. Based on this analysis, and exercising my statutory discretion, I have determined to not freeze the solar PV carve-out of the RPS.

The externality benefits and the economic benefits of renewable energy used to satisfy DPL's RPS requirement total 7.29 percent, far greater than the 3.93 percent cost of RPS compliance. Based on this analysis, and exercising my statutory discretion, I have determined to not freeze the RPS.

Members of the public may submit comments up until 4:30 p.m. on April 22, 2016 to:

Thomas Noyes

Principal Planner for Utility Policy

Department of Natural Resources and Environmental Control  
Division of Energy & Climate  
100 W. Water Street, Suite 5A  
Dover, DE 19904  
thomas.noyes@state.de.us  
Fax: (302)739-1840

Approved:  
Philip T. Cherry, Director  
March 15, 2016

---

## DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code, Section 4702(c) (7 **Del.C.** §4702(c))  
7 **DE Admin. Code** 9201

Secretary's Order No.: 2016-P-0006

### 9201 Regulations Governing State Parks

Date of Issuance: March 9, 2016

Revised Effective Date of the Amendment: April 1, 2016

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Whereas, Secretary's Order No. 2016-P-0006 (the "Original Order") was issued on February 15, 2016, with an effective date of March 11, 2016; and

Whereas, subsequent to the Original Order's issuance date, the Department was advised that additional time (i.e., beyond the Original Order's effective date of March 11, 2016) would be required to enable DELJIS to fully and completely update the official law file for the State of Delaware in order to properly reflect the aforementioned declassification of said violations; and

Whereas, Senate Bill 114 becomes effective following the publication of final regulations consistent with the bill, or on April 1, 2016, whichever occurs first; and

Whereas, in order to provide the most time possible for DELJIS to be completely updated to properly reflect said declassification of these violations and still maintain the effective date of April 1, 2016 as set forth in Senate Bill 114; and

Therefore, the Original Order is hereby Amended, with the following terms and conditions:

1. The "Effective Date" of the aforementioned adoption of said Amendments by the Department shall now be **April 1, 2016**, as set forth in this Amendment to Order No. 2016-P-0006; and
2. The Original Order in all other respects regarding the adoption and promulgation of the *revised* proposed regulatory Amendments to 7 **DE Admin. Code** 9201, *Regulations Governing State Parks*, stands as previously promulgated; and
3. The Department shall provide notice of this Order 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.

David S. Small, Secretary

---

**CALENDAR OF EVENTS/HEARING NOTICES**

---

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

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the Qualifying Days Rule, reference 7.1.3.3.2 and 7.1.3.3.3.

On March 3, 2016, the DHRC Rules Committee approved rule amendments related to qualifying days and voted to send the proposed rule change to the full Commission for review. After discussion and public input, the DHRC voted to approve this rule amendment on March 10, 2016 at its regular, monthly meeting. Subsequent to a 30-day comment period from April 1 to May 9, 2016 and noticed in the *Register of Regulations*, the DHRC will finalize the regulations on May 10, 2016 during its regularly scheduled monthly meeting. The DHRC monthly meetings are public and noticed on the state meeting notice website. Those meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00 am. Written comments must be received by COB May 9, 2016. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

---

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

The State Board of Education will hold its monthly meeting on Thursday, April 21, 2016 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

---

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Prescription Drug Supplemental Rebate Agreement**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance proposed to amend the Title XIX Medicaid State Plan regarding the State's Prescription Drug Supplemental Rebate Agreement, specifically, *to amend Delaware's supplemental drug rebate agreement and place Delaware in "The Sovereign State Drug Consortium (SSDC)" Medicaid multi-state purchasing pool.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 2, 2016. Please identify in the subject line: Prescription Drug Supplemental Rebate Agreement.

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****PUBLIC NOTICE****Long-Term Care Facility Services - Standards for Payment of Reserved Beds During Absence from Long-Term Care Facilities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Standards for Payment of Reserved Beds during Absence from Long-Term Care Facilities, specifically, *standards for payment of reserved beds during absence from Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)*.

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 Kimberly Xavier, Planning, Policy and Quality 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 May 2, 2016.

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****PUBLIC NOTICE****Long-Term Care Facilities - Post-Eligibility Treatment of Institutionalized Individuals Personal Needs Allowance**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding Post-Eligibility Treatment of Institutionalized Individuals, specifically, *standards for payment of personal needs allowance for individuals residing in long-term care facilities*.

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 Kimberly Xavier, Planning, Policy and Quality 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 May 2, 2016.

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****PUBLIC NOTICE****Medical Care and Other Types of Remedial Care - Services to Treat Autism Spectrum Disorder**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Medical Care and Other Types of Remedial Care, specifically, *to establish coverage and reimbursement for treatment services for Medicaid recipients up to age twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder*.

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 Kimberly Xavier, 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 May 2, 2016. Please identify in the subject line: Service to Treat Autism Spectrum Disorder.

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**  
**PUBLIC NOTICE**  
**4468 Delivery of Hospice Services**

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Delivery of Hospice Services (4468). Amendments are being made to update the requirements to ensure patients receive safe and quality care. New requirements related to dementia care, new employees and other aspects of the regulations are being revised to help improve the services available to Delawareans. On April 1, 2016, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

A public hearing will be held on Thursday, April 28, 2016, at 9:30 a.m. in the First 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, 2016, edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, May 13, 2016, at:

Jamie Mack  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [jamie.mack@state.de.us](mailto:jamie.mack@state.de.us)  
Phone: (302) 744-4951

---

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL**  
**DIVISION OF FISH AND WILDLIFE**  
**PUBLIC NOTICE**  
**3774 Oyster Minimum Size Limits**

Delaware's Advisory Council on Shellfisheries requested the Department consider action to allow Delaware's oyster harvesters to possess *de minimis* quantities of undersized (<2.75") oysters that are inherent to the harvesting process.

Oysters typically grow in complex and densely packed reefs on Delaware's natural oyster grounds. When harvested, the oysters are brought aboard dredge vessels in asymmetrical clumps comprised of shell, varying sized oysters and other organisms that are not easily separable. Market oysters (>2.75" minimum size limit) are singled and culled from the dredged material prior to landing, but some undersized (<2.75") oysters can inadvertently remain attached to the market oysters. Some shell breakage can also occur during the bagging and handling process, rendering a market oyster illegal. Furthermore, the incidental retention of spat or small oysters (<1") attached to market oysters is practically unavoidable, particularly in years of high juvenile recruitment.

The proposed action would allow up to five percent (by number) undersized oysters per landed bushel. Attached spat or attached oysters measuring less than one inch that cannot be removed from a market oyster without destroying either oyster could be retained and would not count toward the five percent allowance.

The proposed amendment is unlikely to increase costs or place additional burdens on the affected public. The proposed amendment provides a reasonable accommodation to harvesters and establishes objective and enforceable criteria. Similar allowances are in place for conch (whelk), blue crab, and hard clam. The proposed amendment is not expected to have detectable impacts to Delaware's oyster resource.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3774 Oyster Minimum Size Limit will be open



April 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on April 21, 2016 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

---

**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES****PUBLIC NOTICE****1301 Regulations Governing Solid Waste**

Delaware's Department of Natural Resources and Environmental Control (DNREC), Solid and Hazardous Waste Management Section (SHWMS) is proposing amendments to current scrap tire facility regulations to address missing operational requirements and to reduce compliance and financial burdens posed by current regulations. The proposed amendments will reduce compliance requirements and financial burdens for scrap tire facilities storing scrap tires in fully enclosed trailers.

The public hearing on the proposed amendments to DRGSW will be held on April 25, 2016 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. The hearing record on the proposed modifications will be open April 1, 2016. Interested parties shall submit comments in writing by the end of the comment period, as designated by the hearing officer at this hearing and/or statements and testimony may be presented either orally or in writing at the April 25, 2016 public hearing. Written comments should be sent to: lisa.vest@state.de.us or Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

---

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY****DIVISION OF STATE POLICE****5500 BAIL ENFORCEMENT AGENTS****PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to adopt/amend the Rules & Regulations. These adoptions/amendments will improve the safety of the public and the bail enforcement agents and professionalize the industry. If you wish to view the complete Rules & Regulations, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by May 2, 2016, to Delaware State Police, Professional Licensing Section, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, May 26, 2016, 10:00am, at the Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, Delaware.

---

**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****1000 BOARD OF PILOT COMMISSIONERS****PUBLIC NOTICE**

The Delaware Board of Pilot Commissioners, pursuant to 23 **Del.C.** §102(1), proposes to revise subsection 5.5 by making additions as shown in underline and deletions as shown in strike-through. The changes are necessary to put all regulated licensees on notice of the specific required refresher trips for pilots not practicing their profession for any given number of days.

The Board will hold a public hearing on the proposed regulation change on May 20, 2016 at 1:00 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Melanie Alexander, Board Liaison for the Delaware Board of Pilot Commissioners, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until June 6, 2016 pursuant to 29 **Del.C.** §10118(a).

---

**CALENDAR OF EVENTS/HEARING NOTICES**

---

**DIVISION OF PROFESSIONAL REGULATION**  
**1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §1775(c), the Respiratory Care Practice Advisory Council (“the Council”) of the Board of Medical Licensure and Discipline has proposed revisions to its regulations. Section 8.0, setting forth the Council’s continuing education requirements, is revised for greater clarity for licensees. A new Section 11.0 is added to implement standards for the practice of respiratory care through telehealth. Finally, certain revisions address inconsistencies in the regulations.

A public hearing will be held on May 11, 2016 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Respiratory Care Practice Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be May 26, 2016. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.

---

**DIVISION OF PROFESSIONAL REGULATION**  
**2100 BOARD OF EXAMINERS IN OPTOMETRY**  
**PUBLIC NOTICE**

The Delaware Board of Examiners in Optometry, pursuant to 24 **Del.C.** §2104(a)(1), proposes to revise its regulations. The proposed regulatory overhaul seeks to clarify and provide more detailed information regarding the use of telehealth for the provision of optometry services.

The Board will hold a public hearing on the proposed rule change on April 28, 2016 at 4:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Lisa Smith, Administrator of the Delaware Board of Examiners in Optometry, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904.

---