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# Delaware Register of Regulations

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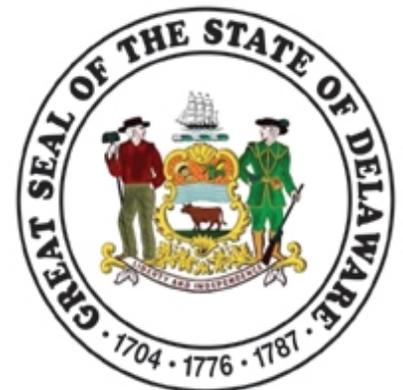
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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before July 15, 2011.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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119

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

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

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

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

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

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

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

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

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# TABLE OF CONTENTS

Cumulative Tables.....	122
------------------------	-----

---

## PROPOSED

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised .....	124
107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised .....	132
108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised .....	139
290 Approval of Educator Preparation Programs.....	146

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Public Health

4447 Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation (Hand Labor).....	154
4453 Cosmetology and Barbering.....	155
4457 Regulations Governing the Manufacture and Sale Of Ice .....	156
4460 Mattresses, Pillows and Bedding.....	156

### DEPARTMENT OF INSURANCE

1314 Health Premium Consumer Comparison.....	164
--	-----

### DEPARTMENT OF JUSTICE

#### Fraud and Consumer Protection Division

103 Consumer Protection Unit Administrative Enforcement Proceedings.....	166
--	-----

#### Victims' Compensation Assistance Program Advisory Council

301 Victims' Compensation Assistance Program Rules and Regulations.....	175
---	-----

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Air and Waste Management

1138 Emission Standards for Hazardous Air Pollutants for Source Categories.....	176
---	-----

#### Division of Water Resources

7201 Regulations Governing the Control of Water Pollution, 9.5 The Concentrated Animal Feeding Operation (CAFO).....	177
--	-----

### DEPARTMENT OF STATE

#### Division of Professional Regulation

1799 Genetic Counselor Advisory Council.....	180
2600 Examining Board of Physical Therapists.....	183

---

## FINAL

### DEPARTMENT OF AGRICULTURE

#### Plant Industries Section

803 Rules and Regulations for the Control and Supression of the White Pine Blister Rust. ....	185
---	-----

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

525 Requirements for Career and Technical Education Programs.....	188
---	-----

---

# TABLE OF CONTENTS

---

121

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### Division of Long Term Care Residents Protection

3201 Skilled and Intermediate Care Nursing Facilities.....	192
3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants..	192
3225 Assisted Living Facilities.....	192
3230 Rest (Residential) Home Regulations.....	192
3301 Group Home Facilities for Persons with AIDS.....	192
3315 Rest (Family) Care Homes.....	192

### Division of Medicaid and Medical Assistance

<b>DSSM:</b> Amendments relating to the use of respectful language as required by House Bill 91 .....	202
---	-----

### Division of Public Health

4304 Pre-Hospital Advanced Care Directive.....	211
4402 Regulations for Adult Day Care Facilities.....	220
4406 Home Health Agencies - Aide Only (Licensure).....	220
4410 Skilled Home Health Agencies (Licensure).....	220
4469 Personal Assistance Services Agencies.....	220

### Division of Social Services

<b>DSSM:</b> 11002.9 Definitions and Explanation of Terms.....	222
Child Care Subsidy Program, DSSM 11006.5.1, Terminating Providers.....	223

## DEPARTMENT OF STATE

### Division of Professional Regulation

5100 Board of Cosmetology and Barbering.....	224
--	-----

## STATE EMPLOYEE BENEFITS COMMITTEE

2001 Group Health Care Insurance Eligibility and Coverage Rules.....	225
--	-----

---

## CALENDAR OF EVENTS/HEARING NOTICES

<b>State Board of Education</b> , Notice of Monthly Meeting.....	241
<b>Dept. of Health and Social Services, Div. of Public Health</b> , Notices of Public Comment Periods .....	241 - 242
<b>Dept. of Insurance</b> , Notice of Public Comment Period.....	243
<b>Dept. of Justice, Fraud and Consumer Protection Division; Violent Crimes Compensation Board</b> , Notices of Public Hearings.....	243 - 244
<b>Dept. of Natural Resources and Environmental Control, Div. of Air and Waste Management; Div. of Water Resources</b> , Notices of Public Hearings.....	244 - 245
<b>Dept. of State, Div. of Professional Regulation</b> , Notices of Public Hearings.....	245 - 246

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

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

**DELAWARE SOLID WASTE AUTHORITY**

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

**DEPARTMENT OF AGRICULTURE****Harness Racing Commission**

501 Harness Racing Rules and Regulations, Subsection 8.3.7..... 15 **DE Reg.** 58 (Final)

**Thoroughbred Racing Commission**

1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations..... 15 **DE Reg.** 60 (Final)

**DEPARTMENT OF EDUCATION****Office of the Secretary**

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised..... 15 **DE Reg.** 21 (Prop.)

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised..... 15 **DE Reg.** 29 (Prop.)

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

505 High School Graduation Requirements and Diplomas..... 15 **DE Reg.** 62 (Final)

701 Unit Count..... 15 **DE Reg.** 68 (Final)

775 New Teacher Hiring Date Reporting..... 15 **DE Reg.** 43 (Prop.)

1006 Delaware Interscholastic Athletic Association (DIAA)..... 15 **DE Reg.** 69 (Final)

1007 DIAA Sportsmanship..... 15 **DE Reg.** 72 (Final)

1008 DIAA Junior High and Middle School Interscholastic Athletics..... 15 **DE Reg.** 74 (Final)

1009 DIAA High School Interscholastic Athletics..... 15 **DE Reg.** 75 (Final)

**Professional Standards Board**

1598 Delaware Professional Development Standards..... 15 **DE Reg.** 77 (Final)

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****Division of Long Term Care Residents Protection**

3201 Skilled and Intermediate Care Nursing Facilities..... 15 **DE Reg.** 79 (Final)

3225 Assisted Living Facilities (Formerly Regulation No. 63)..... 15 **DE Reg.** 81 (Final)

**Division of Medicaid and Medical Assistance**

Diamond State Health Plan Plus 1115 Demonstration Waiver Amendment..... 15 **DE Reg.** 45 (Prop.)

State Residency..... 15 **DE Reg.** 46 (Prop.)

Title XIX Medicaid State Plan, Section 4.44 Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States..... 15 **DE Reg.** 82 (Final)

Title XIX Medicaid State Plan, Section 4.17 Adjustments or Recoveries..... 15 **DE Reg.** 84 (Final)

**DSSM** 14540 Estate Recovery Protections..... 15 **DE Reg.** 84 (Final)

**Division of Social Services**

**DSSM** 5001 Fair Hearings; General Purpose..... 15 **DE Reg.** 86 (Final)

5100 Legal Base..... 15 **DE Reg.** 86 (Final)

5200 Statewide Fair Hearings..... 15 **DE Reg.** 86 (Final)

5400 Fair Hearing Requirements..... 15 **DE Reg.** 86 (Final)

5500 Decisions by the Final Hearing Authority..... 15 **DE Reg.** 86 (Final)

11003.4 Cooperating with Child Support..... 15 **DE Reg.** 92 (Final)

---

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****Division of Parks and Recreation**

9202 Regulations Governing Natural Areas and Nature Preserves..... 15 DE Reg. 94 (Final)

**DEPARTMENT OF STATE****Division of Professional Regulation****Gaming Control Board**

101 Regulations Governing Bingo ..... 15 DE Reg. 48 (Prop.)

102 Regulations Governing Raffles..... 15 DE Reg. 50 (Prop.)

1770 Respiratory Care Practice Advisory Council ..... 15 DE Reg. 52 (Prop.)

1900 Board of Nursing, Sections 1.0, 2.0, 3.0, 4.0, 6.0, 7.0, 9.0, 10.0 and 14.0 .... 15 DE Reg. 53 (Prop.)

2500 Board of Pharmacy, Subsection 5.1.13..... 15 DE Reg. 99 (Final)

3700 Board of Examiners of Speech/Language Pathologists, Audiologists &  
Hearing Aid Dispensers..... 15 DE Reg. 53 (Prop.)**Office of the State Bank Commissioner**

103 Freedom of Information Act Requests..... 15 DE Reg. 100 (Final)

**Public Service Commission**

3001 Rules for Certification and Regulation of Electric Suppliers..... 15 DE Reg. 102 (Final)

**DEPARTMENT OF TRANSPORTATION****Division of Motor Vehicles**

2287 Public Carrier Regulations ..... 15 DE Reg. 55 (Prop.)

**Division of Planning and Policy**2309 Standards and Regulations for Subdivision Streets and  
State Highway Access..... 15 DE Reg. 56 (Prop.)**Division of Transportation Solutions**

2402 Delaware Manual on Uniform Traffic Control Devices ..... 15 DE Reg. 106 (Final)

**Symbol Key**

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

**Proposed Regulations**

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

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

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 106A

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include, but are not limited to: 1) changing the effective date to the more broad date of the 2011-2012 school year; 2) revising language to reflect the new state assessment; 3) adding new appraisal criteria to the Planning and Preparation and Instruction Appraisal Components; 4) changing language to reflect the current Student Record System; 5) revision to the number of Appraisal Criteria needed in order for an Appraisal Component to be Satisfactory because of the additional criteria; 6) revising the definition of "Highly Effective"; 7) providing interim provisions for the determination of Effective, Needs Improvement and Ineffective for the Summative Evaluation Rating; 8) revising the parameters around when an Improvement Plan is needed; 9) specifying in the Challenge Process that the process includes meeting with the teacher; and 10) that the Department will monitor the evaluation implementation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 2, 2011 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to teacher evaluation and should support improved student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to teacher evaluation and does not specifically address all students' receiving an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to teacher evaluation and does not specifically address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to teacher evaluation and does not specifically address all students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments do not change the authority or flexibility of decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments do not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority does not change because of the amendments.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendments are consistent with other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments do not significantly change the method for teacher evaluation which is the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the State or to the local boards or charter schools because of compliance to the regulation with the amendments.

**106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****1.0 Effective Date**

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning ~~July 1, 2011~~ with the 2011-12 school year, and shall, at such time, replace the current 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).

**2.0 Definitions**

The following definitions shall apply for purposes of this regulation:

**"Announced Observation"** shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

**"Board"** shall mean a local board of education or charter school board of directors.

**"Credentialed Evaluator"** shall mean the individual, usually the supervisor of the teacher, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

**"DASA"** shall mean the Delaware Association of School Administrators.

**"DPAS II Revised Guide for Teachers"** shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

"DSEA" shall mean the Delaware State Education Association.

"**Experienced Teacher**" shall mean a teacher who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the **Delaware Code**; or Standard or Professional Status Certificate issued prior to August 1, 2003.

"**Improvement Plan**" shall be the plan that a teacher and evaluator mutually develop in accordance with 8.0.

"**Interim assessment**" shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers and administrators at the student, classroom, school, and district levels.

"**Novice Teacher**" shall mean a teacher who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the **Delaware Code**.

"**Satisfactory Component Rating**" shall mean the teacher's performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the **Delaware Code**.

"**Satisfactory Evaluation**" shall be equivalent to the overall "Highly Effective", "Effective" or "Needs Improvement" rating on the Summative Evaluation and shall be used to qualify for a continuing license.

"**State Assessment**" shall mean the ~~Delaware Student Testing Program (DSTP)~~ or its successor Delaware Comprehensive Assessment System (DCAS).

"**Student Achievement**" shall mean

(a) For tested grades and subjects:

(1) A student's score on the ~~DSTP or successor statewide assessment~~ DCAS; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures must be approved by the Department and developed in partnership with the local collective bargaining representatives.

"**Student Growth**" shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

"**Summative Evaluation**" shall be the final evaluation at the conclusion of the appraisal cycle.

"**Unannounced Observation**" shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"**Unsatisfactory Component Rating**" shall mean the teacher's performance does not demonstrate an understanding of the concepts of the component.

"**Unsatisfactory Evaluation**" shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

"**Working Day**" shall mean a day when the employee would normally be working in that district or charter school.

### 3.0 Appraisal Cycles

- 3.1 Experienced teachers who have earned a rating of "Highly Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is

conducted. If a Highly Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.

- 3.2 Experienced teachers who have earned a rating of "Effective" and have earned "Satisfactory" ratings on at least four (4) of the components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Effective teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.3 Experienced teachers who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one (1) year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.
- 3.4 Novice teachers shall receive a minimum of two (2) Announced Observations and one (1) Unannounced Observation with a Summative Evaluation every year. Novice teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.

#### **4.0 DPAS II Guide for Teachers**

- 4.1 All school districts and charter schools shall use the manual entitled DPAS II Guide Revised for Teachers as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.
- 4.2 The manual shall contain, at a minimum, the following:
- 4.2.1 Specific details about each of the five (5) components listed in 5.1.
  - 4.2.2 All forms or documents needed to complete the requirements of the appraisal process.
  - 4.2.3 Specific procedures to implement the appraisal system.

#### **5.0 Appraisal Components and Appraisal Criteria**

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by a credentialed evaluator:
- 5.1.1 Planning and Preparation
    - 5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable.
    - 5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the instructional goals and support student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the district or charter school's curricula.
    - 5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his or her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula.

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## PROPOSED REGULATIONS

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- 5.1.1.4 Demonstrating Knowledge of Students: Teacher shows his or her knowledge of student developmental characteristics; approaches to learning, knowledge, and skills; interests; cultural heritage; and, where applicable, State Assessment performance levels.
- 5.1.1.5 Designing Student Assessments: Teacher creates and or selects assessments that are congruent with instructional goals, criteria and standards. The teacher plans for the use of formative and summative assessments of the teacher's students.
- 5.1.2 Classroom Environment
  - 5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routines that maximize learning time.
  - 5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.
  - 5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-to-student and student-to-student interactions show rapport that is grounded in mutual respect.
  - 5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and makes resources accessible to all students.
- 5.1.3 Instruction
  - 5.1.3.1 Engaging Students in Learning: Content is appropriate, clear, and linked to student knowledge and experience. Content is aligned with the district or charter school's curricula. Activities and assignments engage all students. Instructional materials are suitable to the instructional goals. The instruction is coherent and paced appropriately for all students.
  - 5.1.3.2 Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes use of them to make modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and achievement data.
  - 5.1.3.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' ages, backgrounds, and levels of understanding.
  - 5.1.3.4 Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student led discussions.
  - 5.1.3.5 Using Assessment in Instruction: Teacher makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.
- 5.1.4 Professional Responsibilities
  - 5.1.4.1 Communicating with Families: Teacher shares information about the school's educational program and expectations for student performance. Teacher develops a mechanism for two way communication with families about student progress, behavior, and personal needs or concerns.
  - 5.1.4.2 ~~Developing a~~ Recording student data in a Student Record System: Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.
  - 5.1.4.3 Growing and Developing Professionally: Teacher chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or charter school, or students.
  - 5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.

## 5.1.5 Student Improvement

- 5.1.5.1 Measuring Student Improvement: ~~Teacher's~~ Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

## 6.0 Summative Evaluation Ratings

- 6.1 Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
- 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the teacher ~~demonstrates acceptable performance by meeting at least three (3) of the four (4)~~ has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components.
- 6.1.2 A satisfactory rating for the Student Improvement component shall mean that the teacher has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement", or "Ineffective".
- 6.2.1 "Highly Effective" shall mean that the teacher has earned a Satisfactory Component rating in four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning and that the teacher's students collectively demonstrate on average achieve high rates of student growth as defined in the DPAS II Revised Guide for Teachers, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation., that is, more than one grade level improvement in an academic year.
- 6.2.1.1 Notwithstanding 6.2.1 for the 2011-2012 school year, "Highly Effective" shall mean that the teacher has earned a Satisfactory Component rating in five (5) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth as defined in the DPAS II Revised Guide for Teachers, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.
- 6.2.2 "Effective" shall mean that:
- 6.2.2.1 The teacher has ~~received~~ earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and
- 6.2.2.2 The teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.
- 6.2.2.3 Notwithstanding 6.2.2.1 and 6.2.2.2 for the 2011-2012 school year, the teacher has earned a Satisfactory Component Rating in four (4) of the first four (4) Appraisal Components, and a Satisfactory or Unsatisfactory rating in the Student Improvement Component, and
- 6.2.2.4 The teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.1.
- 6.2.3 "Needs Improvement" shall mean that:
- 6.2.3.1 The teacher has ~~received~~ earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
- 6.2.3.2 The teacher has ~~received~~ earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the teacher has ~~received~~ earned an Unsatisfactory rating in the Student Improvement Component.
- 6.2.3.3 Notwithstanding 6.2.3.1 and 6.2.3.2 for the 2011-2012 school year, the teacher has earned a Satisfactory Component Rating in 3 (three) of the first four (4) Appraisal Components, and a Satisfactory or Unsatisfactory rating in the Student Improvement Component.
- 6.2.4 "Ineffective" shall mean that:

# PROPOSED REGULATIONS

- 6.2.4.1 The teacher has ~~received~~ earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
- 6.2.4.2 The teacher ~~has received~~ earned an Unsatisfactory Component Rating in the Student Improvement Component.
- 6.2.4.3 Notwithstanding 6.2.4.1 and 6.2.4.2 for the 2011-2012 school year, the teacher has earned a Satisfactory Component Rating in no more than two (2) of the first four (4) Appraisal Components, and a Satisfactory or Unsatisfactory rating in the Student Improvement Component.
- 6.2.5 If a teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the teacher's rating shall be re-categorized as "Ineffective."

## 7.0 Pattern of Ineffective Teaching Defined

A pattern of ineffective teaching shall be based on the most recent Summative Evaluation ratings of a teacher using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective teaching. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective teaching:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

## 8.0 Improvement Plan and Evaluation Documentation

- 8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation ~~or a rating of Unsatisfactory on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.~~
- 8.1.1 An Improvement Plan shall also be developed if a teacher's overall performance during an observed lesson is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
- 8.2 The Improvement Plan shall contain the following:
- 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;
- 8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;
- 8.2.3 Specific professional development or activities to accomplish the goals;
- 8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
- 8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
- 8.2.6 Timeline for the plan, including intermediate check points to determine progress;
- 8.2.7 Procedures for determining satisfactory improvement;
- 8.2.8 Multiple observations and opportunity for feedback provided by a trained evaluator, a mentor, a lead teacher, or an instructional coach.
- 8.3 Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect must be certified by the Department and must directly relate to areas identified as needing improvement.

- 8.4 The Improvement Plan shall be developed cooperatively by the teacher and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.5 The teacher shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.6 Upon completion of the Improvement Plan, the teacher and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

## 9.0 Challenge Process

- 9.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form. To initiate a challenge, a teacher shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator unless the supervisor of the evaluator is also in the same building as the teacher. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level credentialed evaluator.
  - 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, meet with the teacher, and issue a written decision.
  - 9.1.2 If the challenge is denied, the written decision shall state the reasons for denial.
  - 9.1.3 The decision of the supervisor of the evaluator or the designated district or charter school's level credentialed evaluator shall be final.

## 10.0 Evaluator Credentials

- 10.1 Evaluators shall have successfully completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
  - 10.1.1 The Department of Education shall annually monitor evaluation implementation.
- 10.2 The training shall occur no less than once every three (3) years and shall include techniques of observation and conferencing, content and relationships of frameworks for teaching, and a thorough review of the DPAS II Revised Guide for Teachers. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

## 11.0 Evaluation of Process

The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the DPAS II Revised Guide for Teachers shall be presented to the State Board of Education for review on an annual basis.

**13 DE Reg. 1067 (02/01/10)**

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 107A

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include, but are not limited to: 1) changing the effective date to the more broad date of the 2011-2012 school year; 2) revising language to reflect the new state assessment; 3) adding new appraisal criteria to the Planning and Preparation and Instruction Appraisal Components; 4) changing language to reflect the current Student Record System; 5) revision to the number of Appraisal Criteria needed in order for an Appraisal Component to be Satisfactory because of the additional criteria; 6) revising the definition of "Highly Effective"; 7) providing interim provisions for the determination of Effective, Needs Improvement and Ineffective for the Summative Evaluation Rating; 8) revising the parameters around when an Improvement Plan is needed; 9) specifying in the Challenge Process that the process includes meeting with the specialist; and 10) that the Department will monitor the evaluation implementation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 2, 2011 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to specialist evaluation and should support improved student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to specialist evaluation and does not specifically address all students' receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to specialist evaluation and does not specifically address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to specialist evaluation and does not specifically address all students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments do not

significantly change the method for specialist evaluation which is the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the State or to the local boards or charter schools because of compliance to the regulation with the amendments.

## 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

### 1.0 Effective Date

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning ~~July 1, 2011,~~ with the 2011-12 school year and shall, at such time, replace the current 14 **DE Admin. Code** 107 Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II).

### 2.0 Definitions

The following definitions shall apply for purposes of this regulation:

**“Announced Observation”** shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

**“Board”** shall mean a local board of education or a charter school board of directors.

**“Credentialed Evaluator”** shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as Evaluator.

**“DASA”** shall mean the Delaware Association of School Administrators.

**“DPAS II Revised Guide for Specialists”** shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

**“DSEA”** shall mean the Delaware State Education Association.

**“Experienced Specialist”** shall mean a specialist who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the *Delaware Code*; or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from his or her respective licensure body.

**“Improvement Plan”** shall be the plan that a specialist and evaluator mutually develop in accordance with 8.0.

**“Interim assessment”** shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students’ knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers, administrators, and specialists at the student, classroom, school, and district levels.

**“Novice Specialist”** shall mean a specialist who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the *Delaware Code* or holds a valid and current license from his or her respective licensure body.

**“Satisfactory Component Rating”** shall mean the specialist’s performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the *Delaware Code*.

**“Satisfactory Evaluation”** shall be equivalent to the overall Highly Effective, Effective or Needs Improvement rating on the Summative Evaluation and shall be used to qualify for a continuing license.

**“Specialist”** shall mean an educator other than a teacher or administrator and includes, but is not limited to, School Counselors, Library Media Specialists, School Psychologists, and School Nurses.

**“State Assessment”** shall mean the ~~Delaware Student Testing Program (DSTP) or its successor~~ Delaware Comprehensive Assessment System (DCAS).

**“Student Achievement”** shall mean

- (a) For tested grades and subjects:
  - (1) A student’s score on the ~~DSTP or successor statewide assessment~~ DCAS; and, as appropriate,
  - (2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.
- (b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessment; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures shall be approved by the Department of Education and developed in partnership with input from the relevant specialist organizations or respective licensure body and the Delaware State Education Association (DSEA).

**“Student Growth”** shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

**“Summative Evaluation”** shall be the final evaluation at the conclusion of the appraisal cycle.

**“Unannounced Observation”** shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

**“Unsatisfactory Component Rating”** shall mean the specialist’s performance does not demonstrate an understanding of the concepts of the component.

**“Unsatisfactory Evaluation”** shall be the equivalent to the overall Ineffective rating on the Summative Evaluation.

**“Working Day”** shall mean a day when the employee would normally be working in that district or charter school.

### 3.0 Appraisal Cycles

- 3.1 Experienced specialists who have earned a rating of Highly Effective on their most recent Summative Evaluation shall receive a minimum of (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced specialists who have earned a rating of Effective and have earned Satisfactory ratings on at least four (4) of the Appraisal Components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Effective specialists shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective specialist does not achieve a Satisfactory rating on the Student Improvement Component, the specialist shall receive a Summative Evaluation the following year, regardless of whether the specialist would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.3 Experienced specialists who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative evaluation at the end of the one (1) year period. These specialists shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Specialists.

- 3.4 Novice specialists shall receive a minimum of two (2) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have earned a rating of Needs Improvement or Ineffective on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the *DPAS II Revised Guide for Specialists*.

#### **4.0 DPAS II Guide for Specialists**

- 4.1 All districts and charter schools shall use the manual entitled *DPAS II Revised Guide for Specialists* as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.
- 4.2 The manual shall contain, at a minimum, the following:
- 4.2.1 Specific details about each of the five (5) Appraisal Components listed in 5.1.
  - 4.2.2 All forms or documents needed to complete the requirements of the appraisal process.
  - 4.2.3 Specific procedures to implement the appraisal system.

#### **5.0 Appraisal Components and Appraisal Criteria**

- 5.1 The following five (5) Appraisal Components, including ~~the four (4)~~ any Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a credentialed evaluator:
- 5.1.1 Planning and Preparation
    - 5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students or clients served.
    - 5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards.
    - 5.1.1.3 Demonstrating Knowledge of Students or Clients: Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests.
    - 5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.
    - 5.1.1.5 Demonstrating Knowledge of How to Design or Use Student Assessments: Specialist creates and or selects assessments that are congruent with instructional goals, criteria and standards. The specialist plans for the use of formative and summative assessments of the specialist's students.
  - 5.1.2 Professional Practice and Delivery of Services
    - 5.1.2.1 Creating an Environment to Support Student or Client Needs: Specialist creates an environment in which student or client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.
    - 5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients.
    - 5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding.
    - 5.1.2.4 Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students or clients. The delivery of service is coherent.
  - 5.1.3 Professional Collaboration and Consultation
    - 5.1.3.1 Collaborating with Others: Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs.

- 5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school wide issues, problems, or concerns.
- 5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the resources.
- 5.1.3.4 ~~Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.~~
- 5.1.3.4 Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.
- 5.1.3.5 Use of Assessment in Planning and Delivery of Services: Specialist makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.
- 5.1.4 Professional Responsibilities
- 5.1.4.1 ~~Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns. Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.~~
- 5.1.4.2 ~~Developing a Recording student data in a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel.~~
- 5.1.4.3 Growing and Developing Professionally: Specialist chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or students.
- 5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.
- 5.1.5 Student Improvement
- 5.1.5.1 ~~Measuring Student Improvement: Specialist's s~~Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards set by the Secretary based on input from stakeholder groups.

## 6.0 Summative Evaluation Ratings

- 6.1 Each Appraisal Component shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
- 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the specialist ~~demonstrates acceptable performance by meeting at least three (3) of the four (4)~~ has no more than one unacceptable rating on the Appraisal Criteria specified in each of the five (5) components set forth in 5.1.
- 6.1.2 A satisfactory rating for the Student Improvement Component shall mean that the specialist demonstrates acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: Highly Effective, Effective, Needs Improvement or Ineffective.
- 6.2.1 Highly Effective shall mean that the specialist has earned a Satisfactory Component Rating in four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the

Student Improvement Component meaning and that the specialist's students collectively demonstrate on average achieve high rates of student growth, as defined in the DPAS II Revised Guide for Specialists, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation, that is, more than one grade level improvement in an academic year.

6.2.1.1 Notwithstanding 6.2.1 for the 2011-2012 school year, "Highly Effective" shall mean that the specialist has earned a Satisfactory Component rating in five (5) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth as defined in the DPAS II Revised Guide for Specialists, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.

6.2.2 Effective shall mean that:

6.2.2.1 The specialist has ~~received~~ earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and

6.2.2.2 The specialist does not meet the requirements for a Highly Effective rating found in 6.2.1.

6.2.2.3 Notwithstanding 6.2.2.1 and 6.2.2.2 for the 2011-2012 school year, the specialist has earned a Satisfactory Component Rating in four (4) of the first four (4) Appraisal Components, and a Satisfactory or Unsatisfactory rating in the Student Improvement Component, and

6.2.2.4 The specialist does not meet the requirements for a "Highly Effective" rating found in 6.2.1.1.

6.2.3 Needs Improvement shall mean that:

6.2.3.1 The specialist has ~~received~~ earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or

6.2.3.2 The specialist has ~~received~~ earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the specialist has ~~received~~ earned an Unsatisfactory rating in the Student Improvement Component.

6.2.3.3 Notwithstanding 6.2.3.1 and 6.2.3.2 for the 2011-2012 school year, the specialist has earned a Satisfactory Component Rating in 3 (three) of the first four (4) Appraisal Components, and a Satisfactory or Unsatisfactory rating in the Student Improvement Component.

6.2.4 Ineffective shall mean that:

6.2.4.1 The specialist has ~~received~~ earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and

6.2.4.2 The specialist has ~~received~~ earned an Unsatisfactory Component Rating in the School Improvement Component.

6.2.4.35 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

**7.0 Pattern of Ineffective Practice Defined**

A pattern of ineffective practice shall be based on the most recent Summative Evaluation ratings of a specialist using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective practice. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective practice:

	Year 1	Year 2	Year 3
Ineffective		Ineffective	
Needs Improvement		Ineffective	Needs Improvement

Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

## 8.0 Improvement Plan and Evaluation Documentation

- 8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation ~~or a rating of Unsatisfactory on any component in 5.0 on the Summative Evaluation regardless of the overall rating.~~
- 8.1.1 An Improvement Plan shall also be developed if a specialist's overall performance during an observation is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
- 8.2 The Improvement Plan shall contain the following:
- 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;
  - 8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;
  - 8.2.3 Specific professional development or activities to accomplish the goals;
  - 8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
  - 8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
  - 8.2.6 Timeline for the plan, including intermediate check points to determine progress;
  - 8.2.7 Procedures for determining satisfactory improvement.
  - 8.2.8 Multiple observations and opportunity for feedback provided by a trained evaluator, a mentor, or lead specialist, or an instructional coach.
- 8.3 The Improvement Plan shall be developed cooperatively by the specialist and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.4 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.5 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

## 9.0 Challenge Process

- 9.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions of an observation if the statement PERFORMANCE IS UNSATISFACTORY has been included on the Formative Feedback form. To initiate a challenge, a specialist shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the specialist's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator unless the supervisor of the evaluator is also in the same building as the specialist. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level credentialed evaluator.
- 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, meet with the specialist, and issue a written decision.
- 9.1.2 If the challenge is denied, the decision shall state the reasons for denial.

- 9.1.3 The decision of the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall be final.

## 10.0 Evaluator Credentials

- 10.1 Evaluators shall have successfully completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.1.1 The Department of Education shall annually monitor evaluation implementation.
- 10.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the *DPAS II Revised Guide for Specialists*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

## 11.0 Evaluation of Process

The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the DPAS II Revised Guide for Teachers shall be presented to the State Board of Education for review on an annual basis.

13 DE Reg. 1445 (05/01/10)

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 108A

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

#### 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include, but are not limited to: 1) changing the effective date to the more broad date of the 2011-2012 school year; 2) revising language to reflect the new state assessment; 3) revising the definition of "Highly Effective"; 4) providing interim provisions for the determination of Effective, Needs Improvement and Ineffective for the Summative Evaluation Rating; 5) revising the parameters around when an Improvement Plan is needed; 6) specifying in the Challenge Process that the process includes meeting with the administrator; and 7) that the Department will monitor the evaluation implementation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 2, 2011 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to administrator evaluation and should support improved student

achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to specialist evaluation and does not specifically address all students' receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to administrator evaluation and does not specifically address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to administrator evaluation and does not specifically address all students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments do not significantly change the method for administrator evaluation which is the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the State or to the local boards or charter schools because of compliance to the regulation with the amendments.

## 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

### 1.0 Effective Date

- 1.1 The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning ~~July 1, 2014~~ with the 2011-12 school year, and shall, at such time, replace the current 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).
- 1.1 For purposes of this regulation, an administrator shall be a professional employee authorized by a board to serve in a supervisory capacity involving the oversight of an instructional program(s).

### 2.0 Definitions

The following definitions shall apply for purposes of this regulation:

**"Board"** shall mean the local board of education or charter school board of directors.

**"Credentialed Evaluator"** shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 10.0. A superintendent shall be evaluated by member(s) of the local school board of education who shall also have successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

**"DASA"** shall mean the Delaware Association of School Administrators.

**"DPAS II Revised Guide for Administrators"** shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that are used to implement the appraisal process.

**"DSEA"** shall mean the Delaware State Education Association.

**"Experienced Administrator"** shall mean an administrator who has three (3) or more years of service as an administrator.

**"Formative Process"** shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences and reports as outlined in the DPAS II Guide for Administrators.

**"Improvement Plan"** shall be the plan that an administrator and evaluator mutually develop in accordance with 8.0.

**"Inexperienced Administrator"** shall mean an administrator who has less than three (3) years of service as an administrator.

**"Satisfactory Component Rating"** shall mean the administrator's performance demonstrates an understanding of the concepts of the component.

**"Satisfactory Evaluation"** shall be equivalent to the overall "Effective" or "Needs Improvement" rating on the Summative Evaluation.

**"State Assessment"** shall mean the ~~Delaware Student Testing Program (DSTP) or its successor Delaware Comprehensive Assessment System (DCAS).~~

**"Student Achievement"** shall mean

(a) For tested grades and subjects:

(1) Students scores on the ~~DSTP or successor statewide assessment~~ DCAS; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measure of student achievement that are rigorous and comparable across classrooms.

Such alternative measures shall be approved by the Department and developed in partnership with the Delaware Association of School Administrators (DASA) and the Delaware School Boards Association (DSBA).

**"Student Growth"** shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

**"Summative Evaluation"** shall be the final evaluation at the conclusion of the appraisal cycle.

**"Unsatisfactory Component Rating"** shall mean the administrator's performance does not demonstrate an understanding of the concepts of the component.

**"Unsatisfactory Evaluation"** shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

**"Working Day"** shall mean a day when the employee would normally be working in that district or charter school.

### **3.0 Appraisal Cycles**

- 3.1 Experienced administrators who have earned a rating of "Highly Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Formative Process each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective administrators shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective administrator does not achieve a Satisfactory rating on the Student Improvement Component, the administrator shall receive a Summative Evaluation the following year, regardless of whether the administrator would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced administrators who have earned a rating of "Effective" and have earned Satisfactory ratings in four (4) of the Appraisal Components found in 5.0, including Student Improvement on his or her most recent Summative Evaluation shall receive a minimum of one (1) Formative Process each year with a Summative Evaluation at least once every two (2) years. The Student Improvement

component for Effective administrators shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If an Effective administrator does not achieve a Satisfactory rating on the Student Improvement Component, the administrator shall receive a Summative Evaluation the following year, regardless of whether the administrator would otherwise be due for a Summative Evaluation pursuant to this section.

- 3.3 Experienced administrators who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Formative Process with a Summative Evaluation at the end of the one year period. These administrators shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the DPAS II Revised Guide for Administrators.
- 3.4 Inexperienced administrators shall have a minimum of one (1) Formative Process with a Summative Evaluation every year. Inexperienced administrators who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the DPAS II Revised Guide for Administrators.

#### **4.0 DPAS II Revised Guide for Administrators**

- 4.1 All districts and charter schools shall use the manual entitled DPAS II Revised Guide for Administrators as developed and as may be amended by the Department of Education in collaboration with DSEA and DASA to implement the appraisal system.
- 4.1.1 The manual shall contain at a minimum the following:
- 4.1.1.1 Specific details about each of the five (5) Appraisal Components pursuant to 5.1.
  - 4.1.1.2 All forms or documents needed to complete the requirements of the appraisal process.
  - 4.1.1.3 Specific procedures to implement the appraisal system.

#### **5.0 Appraisal Components and Appraisal Criteria**

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of an administrator shall be evaluated by a certified evaluator(s):
- 5.1.1 Vision and Goals
- 5.1.1.1 Using Data: Administrator, in collaboration with others such as the school or district improvement team or board, uses multiple sources of information and assists in analyzing data to establish rigorous and concrete school or district improvement goals in the context of student achievement and instructional programs.
  - 5.1.1.2 Implementing Vision and Goals: Administrator provides leadership for major initiatives and change efforts relative to the school or district improvement goals. Administrator is committed to doing the work required for continuous school and district improvement.
  - 5.1.1.3 Promoting Vision and Goals: Administrator promotes high expectations for teaching and learning. Administrator is committed to ensuring that all students have the knowledge and skills necessary to become successful in future educational activities.
  - 5.1.1.4 Communicating the Vision and Goals: Administrator communicates effectively to appropriate stakeholders about progress towards meeting the school or district improvement plan goals. Administrator participates in a process to regularly monitor, evaluate and revise school or district improvement goals.
- 5.1.2 Culture of Learning
- 5.1.2.1 Advocating a Culture of Learning: Administrator provides leadership for assessing, developing and improving the school or district culture and instructional program that is conducive to student learning. Administrator can articulate the desired school or district instructional program and shows evidence about how he or she reinforces the instructional program and culture.

5.1.2.2 Monitoring the Culture of Learning: Administrator participates in monitoring and evaluating the effectiveness of the curriculum, instruction or assessment of students. Administrator evaluates staff and provides on-going coaching for improvement. Administrator uses a variety of sources of information to make decisions.

5.1.2.3 Sustaining the Culture of Learning: Administrator helps to ensure that staff have professional development opportunities that enhance their performance and improve student learning. Administrator is accessible and approachable by staff, families, and community and is visible in the school or district community. Administrator supports the use of technology as appropriate in teaching and learning.

5.1.2.4 Maintaining the Culture of Learning: Administrator systematically and fairly recognizes accomplishments of staff and students towards a positive school or district culture. Administrator uses and analyzes data to instill the importance of continually developing programs and strategies to enhance opportunities for learning.

### 5.1.3 Management

5.1.3.1 Solving Problems or Concerns: Administrator addresses and resolves issues as they arise in a timely manner and works to prevent potential problems. Operational procedures are designed and managed to maximize opportunities for learning for all students.

5.1.3.2 Managing Resources: Administrator manages fiscal and physical resources responsibly, efficiently and effectively. Administrator protects instructional time by managing operational procedures in such a way as to maximize learning. Administrator efficiently manages his or her time so that teaching and learning are a high priority.

5.1.3.3 Complying with Policies: Administrator complies with federal, state, and board policies. School or district contractual agreements are effectively managed. Administrator maintains confidentiality and privacy of school or district records, including student or staff information.

5.1.3.4 Protecting the Welfare and Safety of Students and Staff: Administrator works to ensure a safe and secure school or district environment and a culture that is conducive to teaching and learning. Challenges that could potentially interrupt teaching and learning are addressed and resolved.

### 5.1.4 Professional Responsibilities

5.1.4.1 Maintaining Professional Relationships: Administrator fosters and maintains positive professional relationships with staff. Administrator is respectful of other's opinions and demonstrates an appreciation for and sensitivity to diversity in the school or district community.

5.1.4.2 Promoting Family and Community Involvement: Administrator collaboratively works to establish a culture that encourages and welcomes families and community members and seeks ways in which to engage them in student learning.

5.1.4.3 Demonstrating Fairness: Administrator is fair and consistent when dealing with students and staff. Administrator demonstrates values, beliefs and attitudes that inspire all students and staff to higher levels of performance.

5.1.4.4 Growing and Developing Professionally: Administrator chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school or district.

### 5.1.5 Student Improvement

5.1.5.1 Measuring Student Improvement: ~~Administrator's~~ Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

## 6.0 Summative Evaluation Ratings

6.1 Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

## PROPOSED REGULATIONS

6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the administrator demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the components.

6.1.2 A satisfactory rating for the Student Improvement component shall mean that the administrator has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.

6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement" or "Ineffective".

6.2.1 "Highly Effective" shall mean that the administrator has a Satisfactory Component Rating in four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning and that the administrator's students collectively demonstrate on average achieve high rates of student growth, as defined in the DPAS II Revised Guide for Administrators, as the same may be amended from time to time, developed pursuant to 4.0, that is, more than one grade level improvement in an academic year.

6.2.1.1 Notwithstanding 6.2.1 for the 2011-2012 school year, "Highly Effective" shall mean that the administrator has earned a Satisfactory Component rating in five (5) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth as defined in the DPAS II Revised Guide for Administrators, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.

6.2.2 "Effective" shall mean that:

6.2.2.1 The administrator has ~~received~~ earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and

6.2.2.2 The administrator does not meet the requirement for a "Highly Effective" rating found in 6.2.1.

6.2.2.3 Notwithstanding 6.2.2.1 and 6.2.2.2 for the 2011-2012 school year, the Administrator has earned a Satisfactory Component Rating in four (4) of the first four (4) Appraisal Components, and a Satisfactory or Unsatisfactory rating in the Student Improvement Component, and

6.2.2.4 The Administrator does not meet the requirements for a "Highly Effective" rating found in 6.2.1.1.

6.2.3 "Needs Improvement" shall mean that:

6.2.3.1 The administrator has ~~received~~ earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or

6.2.3.2 The administrator has ~~received~~ earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0 and the administrator has ~~received~~ earned an Unsatisfactory rating in the Student Improvement Component.

6.2.3.3 Notwithstanding 6.2.3.1 and 6.2.3.2 for the 2011-2012 school year, the administrator has earned a Satisfactory Component Rating in 3 (three) of the first four (4) Appraisal Components, and a Satisfactory or Unsatisfactory rating in the Student Improvement Component.

6.2.4 "Ineffective" shall mean that:

6.2.4.1 The administrator has ~~received~~ earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and

6.2.4.2 The administrator has ~~received~~ earned an Unsatisfactory Component Rating in the Student Improvement Component.

6.2.4.3 Notwithstanding 6.2.4.1 and 6.2.4.2 for the 2011-2012 school year, the administrator has earned a Satisfactory Component Rating in no more than two (2) of the first four (4)

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Appraisal Components, and a Satisfactory or Unsatisfactory rating in the Student Improvement Component.

- 6.2.5 If an administrator's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the administrator's rating shall be re-categorized as "Ineffective".

## 7.0 **Pattern of Ineffective Administrative Performance**

A pattern of ineffective administrative performance shall be based on the most recent Summative Evaluation ratings of an administrator using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective administration. The following chart shows the consecutive Summative Evaluation ratings determined to be a pattern of ineffective administrative performance:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

## 8.0 **Improvement Plan and Evaluation Documentation**

- 8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation ~~or a rating of Unsatisfactory on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.~~
- 8.1.1 An Improvement Plan shall also be developed if an administrator's overall performance during the Formative Process is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator(s) on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
- 8.2 The Improvement Plan shall contain the following:
- 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;
  - 8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;
  - 8.2.3 Specific professional development or activities to accomplish the goals;
  - 8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with curriculum specialist(s) or others with relevant experience;
  - 8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
  - 8.2.6 Timeline for the plan, including intermediate check points to determine progress;
  - 8.2.7 Procedures for determining satisfactory improvement.
- 8.3 Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect shall be certified by the Department and shall be directly related to areas identified as needing improvement.
- 8.4 The Improvement Plan shall be developed cooperatively by the administrator and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.5 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.6 Upon completion of the Improvement Plan, the administrator and evaluator(s) shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

**9.0 Challenge Process**

- 9.1 An administrator may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or an administrator may challenge the conclusions of the Formative Process if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form. To initiate a challenge, an administrator shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of administrator's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator, if any.
- 9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of all documents used in the appraisal and the written challenge, meet with the administrator, and issue a written decision.
- 9.1.2 If the challenge is denied, the written decision shall state the reasons for denial.
- 9.1.3 The decision of the supervisor of the evaluator shall be final.

**10.0 Evaluator(s) Credentials**

- 10.1 Evaluators shall have successfully completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.1.1 The Department of Education shall annually monitor evaluation implementation.
- 10.2 The training shall occur no less than once every three (3) years and shall include techniques for observation and conferencing, content and relationships of ISLLC standards, and a thorough review of the DPAS II Revised Guide for Administrators. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

**11.0 Evaluation of Process**

The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the DPAS II Revised Guide for Administrators shall be presented to the State Board of Education for review on an annual basis.

**13 DE Reg. 1072 (02/01/10)**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 290

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

**290 Approval of Educator Preparation Programs****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 290 Approval of Educator Preparation Programs to establish an additional process for the approval of new alternative routes for teacher licensure and certification programs, non-applicable to those currently in place or eligible via current PSB regulation, to be

approved by the Secretary. New alternative routes under this amendment would only be formed upon request by the Secretary and a subsequent RFP process.

The intent of the amended regulation is to provide additional opportunities for high-quality teacher preparation pipelines that will directly staff critical-need subject areas per the state's current Alternative Routes to Teacher Licensure and Certification legislation. Additionally, such pipelines and their educators will be held accountable for performance by both the approved program and by the Department.

The amendments are expected to ensure that teachers in the most critical-need areas are better-equipped and highly-qualified to teach when coming through alternative-routes to certification. Further, the criteria set forth in the amended regulation create an environment where teachers who participate in new Department approved alternative-routes must demonstrate increased student achievement in order to obtain certification.

The amended regulation is also consistent with, and necessary to fulfill, the pledges that the Department made in its \$119 million Race to the Top application.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **September 2, 2011** to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

### **C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments are intended to improve student achievement as measures against state achievement standards by providing additional candidates as teachers in those traditionally hard to staff and critical need areas who are subsequently held accountable for student achievement results.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation supports students receiving an equitable education by an expansion of the pool of available teachers.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not specifically address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments do not specifically address students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the necessary authority and flexibility for decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The amendments only place reporting requirements on the DOE and any selected vendors under potential RFP processes.

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

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 amendments are consistent with and not an impediment to the implementation of other state educational policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? At this time, there are no costs to the State or to the local school boards for compliance with the regulation. The Department is intending to support any Department approved program through grant or other available state funds.

## **290 Approval of Educator Preparation Programs**

### **1.0 Definitions**

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

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## PROPOSED REGULATIONS

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- “Accreditation”** means the decision rendered by NCATE when an institution’s professional education unit meets NCATE standards and requirements.
- “Administrator”** means Department of Education Associate charged with oversight of Program Approval for college and university educator preparation Programs.
- “Associate Degree”** means a two (2) year degree conferred by a regionally accredited Institution of higher education or by a distance education Institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education.
- “Concurrent Agreement”** means the process where an NCATE review and a review by the Delaware Department of Education occur in a concurrent manner.
- “Department”** means the Delaware Department of Education.
- “Department Approval”** means the process by which a specific professional education Program is recognized by the State Department of Education as meeting state standards for the content and operation of such Programs.
- “Department of Education Program Approval Regulations”** means the regulations set forth herein.
- “Educator”** means a person licensed and certified by the State under 14 **Del.C.**, Ch 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board but does not include substitute teachers.
- “Higher Education Degree Advanced Level”** means post baccalaureate degree Programs for the advanced preparation of teachers, and the initial or advanced preparation of professional school personnel. Programs at the advanced level lead to a master’s, specialist, or doctoral degree, or they may culminate in non degree licensure at the graduate level.
- “Higher Education Degree Basic (Initial) Level”** means programs leading to the initial preparation of teachers, commonly leading to a baccalaureate degree, a master of arts in teaching, or other programs designed to prepare teachers for initial licensure.
- “Institution”** means the college or university offering baccalaureate and post baccalaureate degree teacher preparation programs.
- “Institutional Report”** means a report submitted to NCATE as part of the review process that provides the institutional and unit context, a description of the unit’s conceptual framework, and evidence that the unit is meeting the NCATE unit standards.
- “National Recognition”** means approval of a program that has met the standards of a specialized professional association that is a constituent member of NCATE.
- “NASDTEC”** means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.
- “NCATE”** means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.
- “Professional Education Unit”** means the school, college, department or other administrative body within an Institution of higher learning that is primarily responsible for the preparation of teachers and other professional education personnel.
- “Program(s)”** means the sequence of courses and experiences required by a college or university for the preparation of professional education candidates to teach a specific subject or academic area, to provide professional education services, or to administer schools; except that where used in section 9.0 of this regulation, the word “program(s)” shall mean the program(s) approved pursuant to said section.
- “Proposal for Program Approval for Education Preparation Programs Which Do Not Have Specialized Professional Association (SPA) Approval”** means the formal proposal that the Department requires higher education institutions to complete and submit in order to seek approval for

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teacher education programs in a Professional Education Unit for which there is no national Specialized Professional Association (SPA) or for which the institution has not received approval from the SPA.

“**Secretary**” means the Secretary of the Delaware Department of Education.

“**Specialized Professional Association (SPA)**” means national bodies such as the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD) and the International Reading Association (IRA) whose program review standards have been approved by NCATE.

“**State Program Proposal Review Team**” means the team assembled pursuant to section 4.4 of this regulation.

“**State Review Team**” means the team assembled by the Department of Education pursuant to section 3.3 of this regulation.

## **2.0 Prior Approval from the Department Required to Offer Programs**

Pursuant to 14 Del.C. §122(b)(22), no individual, public or private educational association, corporation or Institution, including any Institution of post secondary education, shall offer a Program for the training of educators to be licensed in this State without first having procured the assent of the Department for the offering of such a Program. In order to be approved by the Department, Programs of Educator Preparation in Delaware Institutions of higher education that lead to educator licensure and certification shall meet State and, where applicable, national standards appropriate to the Professional Education Unit and the Professional Education Unit’s individual Programs. All Professional Education Units and their Programs shall be reviewed through a fair and uniform application of standards.

- 2.1 The Department shall approve an Institution’s Educator Preparation Programs. Approval is based on an institutional self study report and an on site visit by teams, one trained and selected by NCATE and one with Department representation. Institutions seeking approval of Educator Preparation Programs in the state shall meet the Professional Education Unit Standards established by NCATE and the appropriate Program standards established by the Specialized Professional Association. All Programs shall also comply with the state’s regulations for Educator licensure and certification, the Delaware Teacher or Administrator Standards, and other applicable regulations and standards as are established by the Department or the Professional Standards Board, in cooperation and consultation with the Department and with the concurrence of the State Board of Education. Units having been accredited by NCATE and Programs receiving national recognition from a SPA will have met the above State regulations and standards.

## **3.0 NCATE State Partnership Review**

### **National Council for Accreditation of Teacher Education (NCATE) Standards, Procedures and Policies for the Accreditation of Professional Education Units and Programs.**

- 3.1 The Department shall enter into agreements with the higher education governing boards and their Institutions for the purpose of coordination of review procedures on a five (5) year cycle for Institutions receiving their initial accreditation from NCATE and on a seven (7) year cycle for Institutions seeking continuing accreditation. As established by NCATE, such agreements shall include, but are not limited to, Program review timetables; format and content of Institutional reports; selection, number, and role of review team members; and the reporting of Program results.
- 3.2 Accreditation Request
- 3.2.1 Institutions shall submit to NCATE the forms required of NCATE as per established NCATE guidelines to seek accreditation to NCATE twenty four (24) months before the scheduled visit.
- 3.2.2 Program reports submitted to Specialized Professional Associations shall follow the NCATE requirements and shall be submitted to NCATE as per established NCATE guidelines before the on site reviews.
- 3.3 The State Review Team
- 3.3.1 The state review team assembled by the Department to work concurrently with the NCATE review team shall have up to three (3) members designated by the Department and the Department shall

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## PROPOSED REGULATIONS

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agree to comply with the schedule established by NCATE in the review and on site visits of NCATE accredited Institutions.

3.3.1.1 State Review Team members shall be selected in accordance with NCATE Partnership Agreement Guidelines. A list of members shall be given to the Institution at least six (6) months prior to the site review. Substitute members may be selected and the Institution notified of the substitute members closer to the time of the review, if those initially selected are unable to serve.

3.3.1.2 State Review Team members shall be selected from the following:

3.3.1.2.1 Employees of the Department of Education, one of whom shall be the Administrator.

3.3.1.2.2 Persons who have experience in higher education or education administration.

3.3.1.3 State Review Team member(s) shall attend a training session on NCATE standards and procedures and State expectations paid for by the Department and conducted by the staff of NCATE.

3.3.1.4 The State Review Team members shall be responsible for the following:

3.3.1.4.1 Meeting with the NCATE review team and participating in informal deliberations with that group in accordance with NCATE requirements;

3.3.1.4.2 Reviewing the reports of the SPAs on those Programs covered by SPA standards, to understand the conclusions reached by the SPA;

3.3.1.4.3 Reporting to the Secretary the decisions of the SPA including a description of the conclusions of the SPA and whether the Program was recommended for national recognition, national recognition with conditions or was not recognized by the SPA.

3.3.2 Conflict of Interest: Team members from the State shall not participate on a team if they have a close, active association with the Institution to be visited. A close, active association shall be presumed where:

3.3.2.1 The member is currently in attendance at, or, within the past ten years, has received a degree from or has been forced to discontinue studies at the Institution;

3.3.2.2 The member has children or other close relatives in attendance at the Institution, and those persons are matriculated into the education Programs being reviewed;

3.3.2.3 The member has taught, consulted, or otherwise been employed in a paid position, at the Institution within the past five years;

3.3.2.4 The member has ever been denied tenure by or forced to leave a position at the Institution;

3.3.2.5 The member currently serves on, or has been nominated to, any advisory group at the Institution;

3.3.2.6 The member maintains any current close personal or professional relationship with a person at the Institution; or

3.3.2.7 The member is an employee of another Institution in the state with a teacher education Program.

### 3.4 Final Report

3.4.1 Institutions, Professional Education Units and Programs approved through NCATE accreditation and SPA recognition shall comply with NCATE self study requirements. Copies of any reports to NCATE shall also be submitted to the Administrator.

3.4.2 For Programs being reviewed by a SPA, Professional Education Units shall submit to the Administrator a copy of the materials sent to the Specialty Professional Association.

3.4.3 A final report on the reviews shall be forwarded to the Secretary for action. The report shall make recommendations for full approval, provisional approval, or disapproval of the Professional Education Unit and of each of the individual Programs. Units accredited by NCATE and Programs recognized by SPAs shall receive Department Approval.

3.4.3.1 Copies of the final report shall be sent to the chief executive officer of the Institution and to the leader of the Professional Education Unit.

- 3.4.4 The report, and the accreditation decision of the NCATE Unit Accreditation Board, and the recognition decisions of the SPAs shall be used to determine whether the Department will approve the Educator Preparation Programs.
- 3.4.5 In addition to individual Program recommendations, a recommendation on whether or not the Department should authorize the university or college to operate Educator Preparation Programs shall also be included.
- 3.4.6 Two copies of the final report and related documents shall be maintained by the Department and submitted to the State Archives as provided by the retention schedule for the State Archives.

**4.0 Procedures for Teacher Education Programs in a Professional Education Unit Seeking Approval for Programs for Which There is no Specialized Professional Association (SPA) or for Which the Institution has Not Received Approval from the SPA.**

- 4.1 Higher education institutions seeking approval for Educator Preparation Programs in a Professional Education Unit for which there is no Specialized Professional Association (SPA) or for which the institution has not received national recognition from the SPA shall complete the Department's *Proposal for Program Approval for Education Preparation Programs Which do Not Have Specialized Professional Association (SPA) Approval* and shall submit the Proposal to the Department at least six (6) months before the on site reviews.
  - 4.1.1 In the case where a Program has been submitted to a SPA and subsequently was not granted national recognition by the SPA, the Professional Education Unit shall submit the Department's *Proposal for Program Approval for Education Preparation Programs Which do Not Have Specialized Professional Association (SPA) Approval* within two (2) months of final notification that the Program has not been recognized by the SPA.
  - 4.1.2 In the case where a Program has been submitted to a SPA and no decision has been made about national recognition by the SPA, the Professional Education Unit shall submit the same Program report submitted to the SPA to the Department of Education.
- 4.2 Time lines related to the submission of data and other documentation of the Institution's compliance with Program approval criteria, the submission of Program reports, the role of Department review members, and the procedures for the reporting of Program review results shall follow NCATE guidelines.
- 4.3 At least one year before the impending review, the Institution shall contact the Department. The Institution shall appoint one person to act as liaison for all of the Programs at the Institution under this Non SPA State Review. The Administrator shall meet with the liaison to establish the review process and to report the potential Programs to be reviewed. The decisions made shall be communicated by the Administrator and the liaison to all of the Programs. This process shall be completed nine months prior to the review dates.
- 4.4 Selection, Training and Conduct of the State Program Proposal Review Team Members for the Non SPA State Review
  - 4.4.1 State Program Proposal Review Teams shall consist of at least three (3) members including the Administrator or designee, one of whom shall be the chair, who shall be selected at least six months prior to the review. The Institution shall be notified as to the members chosen for the review.
    - 4.4.1.1 If those initially selected are unable to serve, substitute members may be selected and the Institution notified of the substitute members closer to the time of the review.
  - 4.4.2 Conflict of Interest is the same as defined in 3.3.2
  - 4.4.3 Training of State Program Proposal Review Team Members
    - 4.4.3.1 State Program Proposal Review Team members shall receive training at the Department in the following areas prior to participating in any review; the purpose of the self study, the State Standards and criteria, the procedure for review of Program proposals, timelines for proposal review, the completion of team reports, and the reimbursement of expenses. Information about the NCATE accreditation process and the SPA process for national

recognition, including the evaluation of the Professional Evaluation Unit and the background of, rationale for, and the review procedures of NCATE and the SPAs will also be part of the training.

- 4.4.4 Persons taking part in State Program Proposal Review Team member training shall be reimbursed for expenses in accordance with the Department's guidelines.
- 4.5 The Program shall prepare the Proposal which shows how it meets the Department of Education Program Approval Regulations and the Delaware Licensure and Certification Regulations.
  - 4.5.1 Five (5) copies of the Proposal and all additional documentation shall be submitted as per established NCATE timelines prior to the visit of the State Review Team.
  - 4.5.2 Proposals and additional materials requested for each Program shall be reviewed by appropriate Program Proposal reviewers at the Department and the review on the content and quality of each, where possible, shall be made available to the State Program Proposal Review Team at least three (3) months prior to the on-site visit of the NCATE and State Teams. In the case of a Program submitted to a SPA in accordance with NCATE guidelines, where the SPA has not nationally recognized the Program, the Program proposal reviewers shall make their Program review available for the State Review Team at least one (1) month prior to the on-site visit. If any aspect of the Proposal is deemed inadequate, the Administrator may contact the Institution to supplement the submission or may return the Proposal to the Program.
  - 4.5.3 The State Program Proposal Review Team shall verify the accuracy of the Proposal, consider the Department review and write a draft report on the Program. The report shall make recommendations for full approval, provisional approval, or disapproval of the Program.
- 4.6 The final report of the State Program Proposal Review Team members on the Program(s) shall be due to the Administrator or the chair of the team three (3) weeks after the last day of the visit.
- 4.7 Within ten (10) weeks of the last day of the visit, the Administrator or the chair of the State Program Proposal Review Team shall submit the final draft of the report to the Program for the correction of factual errors only. The Program shall return the final draft to the Administrator with factual errors and suggested corrections noted, within two (2) weeks.
- 4.8 Professional Education Units shall submit a report for any provisionally approved Programs as requested by the Department. The report shall detail how previous weaknesses, if any, have been addressed.

## **5.0 Provisional Program Approval for New Programs**

- 5.1 An Institution that has approved educator preparation Programs may request interim provisional Program approval for new education Programs added between regularly scheduled reviews. The following documentation shall be supplied to the administrator:
  - 5.1.1 A description of the Program for which approval is sought and other administrative information;
  - 5.1.2 The curriculum for the Program, including syllabi for any new courses;
  - 5.1.3 Descriptions of the expected outcomes of the Programs and of how those outcomes will be assessed;
  - 5.1.4 Vitae for all faculty delivering the Program; and
  - 5.1.5 Descriptions of materials, media and resources available for the Program, and how technology is integrated into the curriculum or Program.
- 5.2 An Institution currently operating approved educator preparation Programs may seek approval for a new specialization in a currently operating Program in teaching, specialist services or administrative area provided the documentation submitted contains sufficient justification to warrant the new specialization. The Institution is encouraged to collaborate with the Department during the Program's initial planning. The Institution must identify the Program objectives for the new Program from which the curriculum shall be developed.
- 5.3 Experimental or innovative Programs that do not meet NCATE standards may be allowed by the Department. Such an allowance may be requested by submitting the material for new Programs, and where the standards are not met, a rationale for the exception(s). Experimental or innovative Programs

that are approved by the Department shall be given provisional approval; full approval may not be granted until a full on site review of the Program takes place, or it is recommended and approved by the Secretary.

- 5.4 Programs or specializations, such as those described in 5.1, 5.2, and 5.3 above, that have received only paper review, without full on site verification, will be granted provisional approval. Full approval may not be granted until a full on site review of the Institution takes place, or is recommended and approved by the Secretary.

## **6.0 Professional Education Units that do not Receive Accreditation by NCATE**

- 6.1 Professional Education Units that do not receive NCATE accreditation, and which have exhausted or decided not to use the NCATE rejoinder process, will have a period of time agreed upon by the Institution and the Administrator in which to submit additional materials which demonstrate how the Institution meets the NCATE Standards and SPA Program Standards. Such Units will only be eligible for provisional approval for three (3) years; renewal after that time will be contingent upon a full site review.
- 6.2 Programs that do not receive SPA recognition should submit materials to the Department in accordance with the provisions set forth in 4.0.
- 6.3 Programs that do not meet the SPA standards, Delaware Teacher or Administrator Standards, or the State's licensure and certification regulations at the full approval level, shall be given either provisional approval or not be approved to operate. All Programs given provisional approval shall:
- 6.3.1 Report annually to the Administrator on the progress made on those standards that were not met.
- 6.3.2 Undergo Program proposal review submission and site review within three (3) years from the date of provisional approval.
- 6.4 Institutions that do not receive full or provisional approval through review pursuant to NCATE Standards or Delaware Program Approval Regulations shall not be permitted to operate licensure Programs in Delaware.

## **7.0 Required Format for the State Report**

The format of the State Report shall follow the format consistent with NCATE procedures and shall include recommendations on whether the Professional Education Unit and each individual Program shall receive approval to operate in Delaware.

## **8.0 Rejoinder Process**

- 8.1 NCATE Review
- 8.1.1 If the Professional Education Unit accreditation is not granted by NCATE, the Institution may contest any of the recommendations through the NCATE rejoinder process. If a Program is not nationally recognized by a SPA, the Institution may contest any of the recommendations through the SPA rejoinder process. The Department shall accept the decision of NCATE or a SPA when their rejoinder process is followed.
- 8.2 Non SPA State Review
- 8.2.1 Within thirty (30) days after the State Review Team visit, the team chair shall prepare a report of the team visit, make a recommendation(s) on the Program(s) and send three copies to the Institution, one to the Institution's president, one to the head of the professional education unit and one to the Institution's liaison for the review process.
- 8.2.1.1 The Institution shall respond within fifteen (15) days as to the accuracy of the factual information in the report of the team visit.
- 8.2.2 Intent to contest the recommendations: A letter shall be sent from the Institution's president or the head of the professional education unit designee notifying the Secretary of the intent to contest the recommendations accompanied by a short statement explaining the rationale for contesting the

# PROPOSED REGULATIONS

review. The letter must be received in the Office of the Secretary within ten (10) days of the delivery of the reports.

- 8.2.2.1 The Secretary shall review the materials submitted by the Institution including written statements of position, documents, and comments supporting the claims.
- 8.2.2.2 The Secretary, after considering the evidence presented and the arguments made by the parties, shall make a decision and so inform the institution's president and the head of the professional education unit in writing of that decision. The decision of the Secretary is final.

## 10 DE Reg. 835 (11/01/06)

### **9.0 Alternative Routes for Teacher Licensure and Certification Programs**

- 9.1 Notwithstanding any other provision of this regulation to the contrary, any individual, public or private educational association, corporation or institution, which, pursuant to the provisions of 14 DE Admin. Code 1507 and subsection 9.2 below, is approved by the Secretary of Education to operate an Alternative Routes to Teacher Licensure and Certification Program shall be deemed to be an approved teacher preparation program.
- 9.2 Any individual, public or private educational association, corporation or institution, which is approved by the Secretary of Education to operate an Alternative Routes to Teacher Licensure and Certification Program as set forth in subsection 9.1 above, shall in addition to the provisions of 14 DE Admin. Code 1507 and any applicable statute, comply with the following requirements:
  - 9.2.1 Applications for approval will be accepted only when the Secretary of Education shall post a Request For Proposals requesting the same. The application process shall be competitive and the Secretary may elect to approve some, all or none of the applications.
  - 9.2.2 Approved applicants shall enter into a contract with the Department, on a form approved by the Department for an initial term of three (3) years, renewable for an additional five (5) years at the discretion of the Department.
  - 9.2.3 Applications shall be responsive to the Request for Proposals and, in addition to any other requirements, shall address how the applicant will determine the coursework and experiences leading to its participants' application for certification to the Department, shall include intensive pre-service training, teacher evaluations conducted by school administrators, completion of coursework, and measures of teacher effectiveness based upon student performance data.
  - 9.2.4 The Department shall evaluate approved programs based upon the terms and conditions of the Request for Proposals and the applicant's contract with the Department.

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

### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Sections 122(3) a, b, c, e, g and j  
(16 Del.C. §§122(3) a, b, c, e, g and j)  
16 DE Admin. Code 4447

### **PUBLIC NOTICE**

#### **4447 Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation (Hand Labor)**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), is proposing revisions to the State of Delaware Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation/Hand Labor Operations. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. On August 1, 2011, the Division plans to

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publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the August 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Wednesday, August 31, 2011 at:

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

## **4447 Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation (Hand Labor) Operations**

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

**[4447 Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation](#)**

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### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)v (16 **Del.C.** §122(3)v)  
16 **DE Admin. Code** 4453

### **PUBLIC NOTICE**

#### **4453 Cosmetology and Barbering**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), is proposing revisions to the State of Delaware Regulations governing Cosmetology and Barbering. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. On August 1, 2011, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the August 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

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417 Federal Street  
Dover, DE 19901  
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Phone: (302) 744-4700  
Fax: (302) 739-6659

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# PROPOSED REGULATIONS

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## 4453 Cosmetology and Barbering

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

[4453 Cosmetology and Barbering](#)

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### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(1), (3)(a,b,c,f and j)  
(16 **Del.C.** §122(1), (3)(a,b,c,f and j))  
16 **DE Admin. Code** 4457

#### PUBLIC NOTICE

### 4457 Regulations Governing the Manufacture and Sale of Ice

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), is proposing revisions to the State of Delaware Regulations Governing the Manufacture and Sale of Ice. On August 1, 2011, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the August 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Wednesday, August 31, 2011 at:

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Phone: (302) 744-4700  
Fax: (302) 739-6659

### 4457 Regulations Governing the Manufacture and Sale Of Ice

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

[4457 Regulations Governing the Manufacture and Sale Of Ice](#)

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### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3) and 2101, et seq.  
(16 **Del.C.** §§122(3) and 2101 et seq.)  
16 **DE Admin. Code** 4460

#### PUBLIC NOTICE

### 4460 Mattresses, Pillows and Bedding

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social

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Services (DHSS), is proposing revisions to the State of Delaware Regulations Governing Mattresses, Pillows and Bedding. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. On August 1, 2011, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the August 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Wednesday, August 31, 2011 at:

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Phone: (302) 744-4700  
Fax: (302) 739-6659

## 4460 Mattresses, Pillows and Bedding

### 4.0 Definitions

4.1 As used in this chapter, unless the context requires a different meaning:

**"Bedding"** shall mean ~~any mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered bed, davenport, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed, sleeping bag or any other bag, case or cover made of leather, textile or other material which is stuffed or filled in whole or in part with concealed material, which is intended for use by any human being for sleeping or reclining purposes.~~

**"Comfortable"** means ~~any cover, quilt or quilted article made of cotton or other textile material and stuffed or filled with fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material.~~

**"Mattress"** means ~~any quilted pad, mattress, mattress pad, mattress protector, bunk, quilt or box spring stuffed or filled with excelsior, straw, hay, grass, cornhusks, moss, fiber, cotton, wool, hair, jute, kapok or other soft material, to be used on a couch or other bed for sleeping purposes.~~

**"New"** means ~~any material or article which has not been previously manufactured or used for any purpose.~~

**"Pillows" "Bolster" or "Featherbed"** mean ~~any bag, case or covering made of cotton or other textile material, and stuffed or filled with excelsior, straw, hay, grass, cornhusks, moss, fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material to be used on a bed or other article for sleeping purposes.~~

**"Secondhand"** means ~~any material or article of which prior use has been made.~~

**"Shoddy"** means ~~any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up or ground up.~~

### 2.0 Sterilization and Disinfection of Materials Required

2.1 No person shall employ or use in the making or renovating of any mattress, pillow, bolster, featherbed or comfortable:

2.1.1 Any material known as "shoddy" or any fabric or material from which shoddy is constructed;

2.1.2 Any secondhand material;

~~2.1.3 Any new or secondhand feathers, unless such shoddy, secondhand material or new or secondhand feathers have been sterilized and disinfected by a reasonable process approved by the Department of Health and Social Services.~~

### **3.0 Permit for Sterilization, Disinfection, Etc.; Requirements For Issuance; Fee**

- ~~3.1 Any person engaged in the making, remaking or renovating of any mattress, pillow, bolster or comfortable in which secondhand material is used, or in the making of any new or secondhand feather or down filled article or engaged in sterilizing and disinfecting any material, feathers or article coming under this chapter, shall submit to the Department of Health and Social Services for approval a reasonable and effective process, together with duplicate plans of apparatus or auxiliary devices, for the sterilization and disinfection of secondhand material, feathers and secondhand articles enumerated in this section.~~
- ~~3.2 Upon the approval of the process for sterilization and disinfection, a numbered permit for its use shall be issued to the applicant by the Department of Health and Social Services. Such permit shall expire 1 year from date of approval and issue. Every person to whom a permit has been issued shall keep such permit conspicuously posted in the person's office or place of business. Refusal to display such permit in accordance with this chapter shall be sufficient reason to revoke and forfeit the permit.~~
- ~~3.2.1 For all permits issued as required by this chapter (not including, however, by the term "permits" the "tags" otherwise referred to in this chapter) there shall at time of issue thereof be paid by the applicant to the Department of Health and Social Services a fee of \$50.~~
- ~~3.3 Nothing in this section shall prevent any person engaged in the making, remaking, renovating or sale of any article described in this section, which requires sterilizing and disinfecting under this section, from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, provided the number of the permit shall appear in the statement on the tag attached to the article.~~

### **4.0 Inspection of Premises**

~~All places where any mattress, pillow, bolster, featherbed or comfortable is made, remade or renovated, or where materials for articles named in this section are prepared, or establishment where the articles are offered for sale or are in possession of any person with intent to sell, deliver or consign them, or establishment where sterilizing and disinfecting are performed, shall be subject to inspection by the Department of Health and Social Services to ascertain whether the materials and the finished articles enumerated in this section conform to the requirements of this chapter.~~

### **5.0 Selling or Leasing Used Mattresses; Sterilization and Disinfection**

- ~~5.1 No person shall sell, lease, offer to sell or lease, or deliver or consign in sale or lease, or have in the person's possession with intent to sell, lease, deliver or consign in sale or lease:~~
- ~~5.1.1 Any mattress, pillow, bolster, featherbed or comfortable made, remade or renovated in violation of this chapter;~~
- ~~5.1.2 Any secondhand mattress, pillow, bolster, featherbed or comfortable, unless since last used it has been thoroughly sterilized and disinfected by a reasonable process approved by the Department of Health and Social Services.~~

### **6.0 Tagging; Regulations and Prohibitions**

- ~~6.1 Each and every mattress or article covered by this chapter, other than a feather or down filled pillow, bolster, bed or comforter, shall bear securely attached thereto and visible on the outside covering a tag of cloth or other substantial material upon which shall be plainly and indelibly stamped or printed in English:~~
- ~~6.1.1 A statement showing the kind of materials used in filling the mattress or article and whether the materials used in filling are wholly new or secondhand or partly secondhand;~~
- ~~6.1.2 The word "secondhand" upon any article of which prior use has been made;~~

- ~~6.1.3 The number of the permit issued for sterilizing and disinfecting; and~~
- ~~6.1.4 The registry number used in applying and enforcing the tagging and inspection provisions of this chapter.~~
- ~~6.2 Each and every pillow or other article covered by this chapter in which feathers or down are used shall bear securely attached thereto and visible on the outside covering a substantial cloth tag upon which shall be plainly and indelibly stamped or printed in English:-~~
  - ~~6.2.1 A statement that the feathers or down have been sterilized and disinfected in accordance with this chapter;~~
  - ~~6.2.2 The number of the permit issued for sterilizing and disinfecting the feathers or down;~~
  - ~~6.2.3 The word "secondhand" upon a feather or down filled article of which prior use has been made; and~~
  - ~~6.2.4 The registry number used in applying and enforcing the tagging and inspection provisions of this chapter.~~
- ~~6.3 No additional information shall be contained in the statements. The statement of materials used in filling must be in plain type not less than one eighth inch in height. The tag required by this chapter to be attached to any article covered by this chapter shall be not less than 6 square inches in size.~~
- ~~6.4 The word "felt," or words of like import if any other than garnetted materials are used in filling, or the words "curled hair," or words of like import if other than curled hair is used in filling, shall not be used exclusively in the statement concerning any mattress, pillow, bolster or comfortable.~~
- ~~6.5 No person shall make any false, untrue or misleading statement, term or designation on the tag or remove, deface, alter or in any manner attempt to remove, deface or alter the tag required by this chapter or cause to be removed, defaced or altered any statement on a tag placed upon any article included in this chapter.~~

## **7.0 Registration and Issuance of Registry Numbers**

~~The Department of Health and Social Services shall, upon application to it by any person entitled thereto, register each applicant, issue a permit and assign a registry number by which number applicants shall thereafter be identified in applying and enforcing the tagging and inspection of this chapter.~~

## **8.0 Registration and Permit Fee**

- ~~8.1 The initial annual permit fee and subsequent annual renewal fee under this chapter for manufacturers of bedding products within the State or manufacturers of such products who ship said products into this State shall be as follows:-~~
  - ~~8.1.1 Bedding manufacturer..... \$50.00~~

## **9.0 Renewal of Permit**

~~Permits shall remain effective only during a calendar year beginning January 1, and ending December 31, or any remaining portion of a calendar year beginning on the date the permit is issued. Applications for renewal of the permit must be made within the 60 day period preceding expiration of the permit currently held by the applicant. The fee for renewal of a manufacturer's permit shall be \$50.~~

## **10.0 Disposition of Fees**

~~All fees collected under this chapter shall be paid to the Department of Health and Social Services and when so paid shall be turned over by the Department of Health and Social Services to the State Treasurer and credited to the General Fund of the State.~~

## **11.0 Inspection of Products and Plants of Nonresidents**

- ~~11.1 It is the intent of this chapter to prevent both the manufacture and the sale within this State of any of the articles enumerated in section 5.0 of this regulation, except in conformity to and in compliance with~~

# PROPOSED REGULATIONS

~~this chapter. Inasmuch, however, as some of the articles so enumerated may be made or the material used in the manufacture or renovation thereof may be processed outside of the limits of this State, it is expressly provided that where the person so manufacturing any such article or processing any such material shall have or operate a plant outside of the limits of this State the Department of Health and Social Services may, in its discretion, in lieu of a physical inspection of the plant of such nonresident person, satisfy itself by examination of the product made or possessed by such nonresident or by such other means as the Department of Health and Social Services Board deems adequate, of the propriety of issuing to such nonresident the permit required by this chapter or of renewing or keeping in force a permit so issued.~~

- ~~11.2 In the event that at any time the Department of Health and Social Services deems it necessary to make physical inspection of any plant or factory of the nonresident, it may require the payment by such nonresident of such sum as may cover the reasonable traveling charges entailed by such physical inspection and refuse to issue, or revoke or suspend, any permit until or unless such charges are so paid.~~

## ~~12.0 Enforcement; Rules and Regulations; Provisions Subject to Chapter 23 of Title 11~~

- ~~12.1 The Department of Health and Social Services, through its officers and employees, is charged with the administration and enforcement of this chapter and may take for evidence, at any trial involving violation of this chapter, any article made or offered for sale in violation of this chapter. The Department of Health and Social Services shall make and enforce reasonable rules and regulations for the enforcement of this chapter.~~
- ~~12.2 This section is subject to Chapter 23 of Title 11. If there is any conflict or inconsistency between this section and such chapter, the latter shall prevail.~~

## ~~13.0 Penalties; Appeals~~

- ~~13.1 Whoever violates this chapter or the rules and regulations adopted thereunder shall be fined for each offense not less than \$10 nor more than \$50. In default of the payment of such fine the violator shall be imprisoned for not less than 10 days for each separate offense. The total term of imprisonment at any 1 time for additional offenses shall not exceed 10 months.~~
- ~~13.2 Each mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered bed, davenport, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed or sleeping bag made or remade, or renovated, sold, offered for sale, delivered or consigned contrary to this chapter shall constitute a separate offense.~~
- ~~13.3 Any person convicted of an offense under this section, before a justice of the peace, may appeal the judgment of conviction to the Court of Common Pleas of the county.~~

## ~~14.0 Revocation of Permit~~

~~The Department of Health and Social Services may revoke any permit issued under this chapter if the person to whom the permit was issued has violated this chapter or the rules or regulations established thereunder.~~

## 1.0 Definitions

For purposes of these Regulations the following definitions shall apply:

"Bedding" means any mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered bed, davenport, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed, sleeping bag or any other bag, case or cover made of leather, textile or other material which is stuffed or filled in whole or in part with concealed material, which is intended for use by any human being for sleeping or reclining purposes.

"Comforter" means any cover, quilt or quilted article made of cotton or other textile material and stuffed or filled with fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material.

"Department" means the Delaware Department of Health and Social Services.

"Mattress" means any quilted pad, mattress, mattress pad, mattress protector, bunk, quilt or box spring stuffed or filled with excelsior, straw, hay, grass, cornhusks, moss, fiber, cotton, wool, hair, jute, kapok or other soft material, to be used on a couch or other bed for sleeping purposes.

"New" means any material or article which has not been previously manufactured or used for any purpose.

"Person" means an individual, corporation, business trust, estate trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

"Pillow", "Bolster", or "Featherbed" mean any bag, case or covering made of cotton or other textile material, and stuffed or filled with excelsior, straw, hay, grass, cornhusks, moss, fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material to be used on a bed or other article for sleeping purposes.

"Secondhand" means any material or article of which prior use has been made.

"Shoddy" means any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up or ground up.

## **2.0 Restrictions and Prohibitions**

### **2.1 Shoddy, Secondhand Material and Feathers**

2.1.1 No person shall employ or use in the making or renovating of any mattress, pillow, bolster, featherbed or comforter any of the following:

2.1.1.1 Material known as "shoddy" or any fabric or material from which shoddy is constructed;

2.1.1.2 Secondhand material; or

2.1.1.3 New or secondhand feathers.

2.1.2 A person may use shoddy, secondhand material or new or secondhand feathers if the shoddy, secondhand material or new or secondhand feathers have been sterilized and disinfected by a reasonable process approved by the Department.

### **2.2 Used Mattresses, Pillows, Bolsters, Featherbeds and Comforters**

2.2.1 No person shall sell, lease, offer to sell or lease, or deliver or consign in sale or lease, or have in the person's possession with intent to sell, lease, deliver or consign in sale or lease any of the following:

2.2.1.1 A mattress, pillow, bolster, featherbed or comforter made, remade or renovated in violation of these Regulations; or

2.2.1.2 A secondhand mattress, pillow, bolster, featherbed or comforter unless since its last use it has been thoroughly sterilized and disinfected by a reasonable process approved by the Department.

## **3.0 Operational Requirements**

### **3.1 Permits**

3.1.1 Any person engaged in the making, remaking or renovating of any mattress, pillow, bolster or comforter in which secondhand material is used; or in the making of any new or secondhand feather or down filled article; or the sterilizing and disinfecting of any material, feathers or article coming under these Regulations, shall submit to the Department for approval a reasonable and effective process, together with duplicate plans of apparatus or auxiliary devices, for the sterilization and disinfection of materials, feathers and articles enumerated in this section.

3.1.2 Upon the approval of the process for sterilization and disinfection, a numbered permit shall be issued to the applicant by the Department. Permits shall remain effective only during a calendar year beginning January 1, and ending December 31, or any remaining portion of a calendar year beginning on the date the permit is issued.

3.1.3 Every person to whom a permit has been issued shall keep such permit conspicuously posted in the person's office or place of business. Refusal to display such permit in accordance with these Regulations shall be sufficient reason for revocation of the permit by the Department.

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# PROPOSED REGULATIONS

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- 3.1.4 Nothing in this section shall prevent any person engaged in the making, remaking, renovating or sale of any article, which requires sterilizing and disinfecting under this section, from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, provided the number of the permit shall appear in the statement on the tag attached to the article.
- 3.2 Initial Permit Fee. The initial permit fee for manufacturers of bedding products within the State or manufacturers of such products who ship said products into this State shall be \$50.00.
- 3.3 Renewal of Permit
- 3.3.1 Applications for renewal of a permit must be made within the 60-day period preceding expiration of the permit currently held by the applicant.
- 3.3.2 The fee for renewal of a permit shall be \$50.00.
- 3.4 Registry Numbers. The Department shall, upon application to it by any person entitled thereto, register each applicant, issue a permit, and assign a registry number by which number applicants shall thereafter be identified.

## **4.0 Inspections**

- 4.1 Inspection of Premises.
- 4.2.1 All places where any mattress, pillow, bolster, featherbed or comforter is made, remade or renovated, or where materials for articles named in these Regulations are prepared, or establishment where the articles are offered for sale or are in possession of any person with intent to sell, deliver or consign them, or establishment where sterilizing and disinfecting are performed, shall be subject to inspection by the Department to ascertain whether the materials and the finished articles conform to the requirements of these Regulations.
- 4.2 Inspection of Products and Plants of Nonresidents
- 4.2.1 The Department may make physical inspection of any plant or factory of a nonresident whose products are manufactured or sold in this State. Inasmuch, however, as some of the articles so enumerated may be made or the material used in the manufacture or renovation thereof may be processed outside of the limits of this State, it is expressly provided that where the person so manufacturing any such article or processing any such material shall have or operate a plant outside of the limits of this State the Department may, in its discretion, in lieu of a physical inspection of the plant of such nonresident person, satisfy itself by examination of the product made or possessed by such nonresident or by such other means as the Department deems adequate, of the propriety of issuing to such nonresident the permit required by these Regulations or of renewing or keeping in force a permit so issued.
- 4.2.2 In the event that at any time the Department deems it necessary to make physical inspection of any plant or factory of a nonresident, it may require the payment by such nonresident of such sum as may cover the reasonable traveling charges entailed by such physical inspection. The Department may refuse to issue, or may revoke or suspend, any permit until or unless such charges are so paid.

## **5.0 Tagging**

- 5.1 Statement Required on Articles Not Containing Feather or Down. Each and every mattress or article covered by these Regulations, other than a feather or down filled pillow, bolster, bed or comforter, shall bear securely attached thereto and visible on the outside covering, a tag of cloth or other substantial material upon which shall be plainly and indelibly stamped or printed in English the following:
- 5.1.1 A statement showing the kind of materials used in filling the mattress or article and whether the materials used in filling are wholly new or secondhand or partly secondhand;
- 5.1.2 The word "secondhand" upon any article of which prior use has been made;
- 5.1.3 The number of the permit issued for sterilizing and disinfecting; and
- 5.1.4 The registry number used in applying and enforcing the tagging and inspection provisions of these Regulations.

- 5.2 Statement Required on Articles Containing Feather or Down. Each and every pillow or other article covered by these Regulations in which feathers or down are used shall bear securely attached thereto and visible on the outside covering, a tag of cloth or other substantial material upon which shall be plainly and indelibly stamped or printed in English the following:
- 5.2.1 A statement that the feathers or down have been sterilized and disinfected in accordance with these Regulations;
  - 5.2.2 The word "secondhand" upon a feather or down filled article of which prior use has been made;
  - 5.2.3 The number of the permit issued for sterilizing and disinfecting the feathers or down; and
  - 5.2.4 The registry number used in applying and enforcing the tagging and inspection provisions of these Regulations.
- 5.3 Specifications
- 5.3.1 The statement of materials used in filling must be in plain type not less than one-eighth inch in height.
  - 5.3.2 The tag required by these Regulations to be attached to any article covered by these Regulations shall be not less than 6 square inches in size.
- 5.4 Prohibited Statements
- 5.4.1 No additional information other than what is mentioned in Sections 5.1 and 5.2 of these Regulations shall appear on the tag.
  - 5.4.2 The word "felt," or words of like import if any other than garneted materials are used in filling, or the words "curled hair," or words of like import if other than curled hair is used in filling, shall not be used exclusively in the statement concerning any mattress, pillow, bolster or comforter.
- 5.5 False, Untrue or Misleading Statements. No person shall make any false, untrue or misleading statement, term or designation on the tag.
- 5.6 Removal, Defacing or Altering Prohibited. No person shall remove, deface, alter or in any manner attempt to remove, deface or alter the tag required by these Regulations or cause to be removed, defaced or altered any statement on a tag required by these Regulations. Nothing in this section shall prohibit the removal of such tag by the final consumer of the product.

## **6.0 Compliance**

- 6.1 Enforcement
- 6.1.1 The Department, through its officers and employees, is charged with the administration and enforcement of these Regulations and may take for evidence, at any trial involving violation of these Regulations, any article made or offered for sale in violation of these Regulations.
  - 6.1.2 These Regulations are subject to Chapter 23 of Title 11. If there is any conflict or inconsistency between these Regulations and Chapter 23, the latter shall prevail.
- 6.2 Penalties
- 6.2.1 Whoever violates these Regulations shall be fined for each offense not less than \$10.00 nor more than \$50.00. In default of the payment of such fine the violator shall be imprisoned for not less than 10 days for each separate offense. The total term of imprisonment at any one (1) time for additional offenses shall not exceed ten (10) months.
  - 6.2.2 Each mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered bed, davenport, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed or sleeping bag made or remade, or renovated, sold, offered for sale, delivered or consigned contrary to these Regulations shall constitute a separate offense.
  - 6.2.3 In addition to any fine or imprisonment imposed, the Department may revoke any permit issued under these Regulations for a violation of these Regulations.
- 6.3 Appeals.
- 6.3.1 Any person convicted of an offense under this section before a Justice of the Peace, may appeal the judgment of conviction to the Court of Common Pleas.

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# PROPOSED REGULATIONS

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311 & 2501 (18 Del.C. §§311, 2501)

### PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 1314 relating to Health Premium Consumer Comparisons. The docket number for this proposed regulation is 1530.

The proposed regulation would require health insurance companies to provide survey data to the Department of Insurance for the purposes of allowing consumers of health insurance the opportunity to compare rates from different companies. The survey data would have to be filed with the Department on an annual basis. The regulation would also require the insurers to provide direct email responses to the consumer. The Delaware Code authority for the change is 18 Del.C. §§ 311 and 2501 et seq.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at [www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml](http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml).

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Wednesday, August 31, 2011. Any such requests should be directed to:

Regulatory Specialist Rhonda West  
Delaware Department of Insurance  
841 Silver Lake Boulevard  
Dover, DE 19904  
Phone: (302) 674-7379  
Fax: (302) 739-7651  
Email: [rhonda.west@state.de.us](mailto:rhonda.west@state.de.us)

### 1314 Health Premium Consumer Comparison

#### **1.0 Authority**

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§311 and 2501 and promulgated in accordance with the Delaware Administrative Procedures Act, Title 29 Del.C. Chapter 101.

#### **2.0 Definitions**

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

"Insurer" means every insurer, health services corporation, and managed care organization licensed to offer and sell health insurance in the state of Delaware.

"Rate estimates" means the estimated annual insurance premiums produced for the Department's rate survey.

"Rate survey" means a request by the Department that insurers calculate estimated annual insurance premiums based on hypothetical consumer profiles. The rate survey shall include estimated premiums for zip codes or other geographic area identified by the Department.

#### **3.0 Scope**

3.1 Insurers, Health Service Corporations and Managed Care Organizations that market health insurance shall be required to complete the full rate survey required by this regulation.

3.2 The provisions of this regulation shall not apply to policies of insurance that only cover specified diseases or are limited health benefit plan dental plans and limited benefit plans.

## **4.0 Insurer Information**

Each insurer will be provided with an account on the Department's website to provide basic company information and to administer the submission of rate survey data.

## **5.0 Survey Completion Deadline**

5.1 The Department of Insurance shall make available the rate survey request format with hypothetical consumer profiles, coverage levels, and other information necessary for calculating rate estimates on the Department's website no later than September 15th of each year.

5.2 In 2011, all required rate survey data from insurers must be submitted to the Department on or before October 31<sup>st</sup>. In all subsequent years, all required rate survey data from insurers must be submitted to the Department on or before September 1st of each year.

5.3 Rate survey data that is incomplete or not reported according to the Department's instructions will be returned to the insurer for correction and must be resubmitted within 10 business days.

## **6.0 Survey Format**

6.1 Insurers shall provide rate estimates based on rates in effect as of August 31st of the year when the rate survey is being completed.

6.2 All rate estimates shall be rounded to the nearest dollar.

6.3 Insurers shall submit rate data utilizing an electronic spreadsheet provided by the Department or by other means specified by the Department. Insurers shall be required to upload the data to the Department via the Internet.

## **7.0 Responsibility for Information and Data**

Insurers shall be responsible for the accuracy of company information and rate data submitted to the Department for publication. As part of the submission process, insurers will be subject to examination to verify the accuracy of the data being submitted.

## **8.0 Consumer Quote Requests**

8.1 Insurers shall provide a single electronic mail message to the Department for the purpose of allowing consumers to request a personalized health insurance premium quote as part of the rate comparison process.

8.2 The insurer shall be required to provide a direct email response to the consumer, confirming receipt of the quote request.

8.3 The insurer shall be required to maintain an electronic log of all email responses to consumer requests for rate quotes for a period of one year after the request. The electronic log shall be capable of being transferred to the Department upon request.

## **9.0 Penalties**

Insurers that do not comply with this regulation are subject to the provisions of 18 Del.C. §329.

## **10.0 Severability**

If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

**11.0 Effective Date**

This regulation shall become effective on October 11, 2011.

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**DEPARTMENT OF JUSTICE**  
**FRAUD AND CONSUMER PROTECTION DIVISION**  
**CONSUMER PROTECTION UNIT**

Statutory Authority: 29 Delaware Code, Section 2521 (29 Del.C. §2521)

**PUBLIC NOTICE**

**103 Consumer Protection Unit Administrative Enforcement Proceedings**

The Attorney General in accordance with 29 Del.C. §2520, et seq., has proposed to adopt amendments to the rules and regulations for administrative enforcement of the various consumer protection statutes.

A public hearing will be held at 10:00 a.m. on Wednesday, September 21, 2011, in the Attorney General's conference room on the 6th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, where members of the public may offer comments. Anyone wishing to receive a copy of the proposed amendments to the rules and regulations may obtain a copy from the Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5th floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to submit written comments will be at the public hearing.

The proposed changes are intended to:

1. provide for the appointment of hearing officers who are members of the Delaware Bar but not employees of the Department of Justice,
2. provide for alternative means of service of process, including personal delivery and service under the "long-arm" statute,
3. provide for default orders where the respondent fails to respond, and 4) eliminate extended treatment of the pre-hearing conference and pre-hearing submission provisions, which procedures in many cases may be unnecessary.

**103 Consumer Protection Unit Administrative Enforcement Proceedings**

**1.0 Construction of rules of practice and procedure.**

- 1.1 Unless otherwise provided, these Rules of Practice govern Consumer Protection Unit ("CPU") administrative proceedings brought under 29 Del.C. §2523.
- 1.2 For purposes of these rules: (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; and (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate.

**2.0 Appearance and practice in administrative proceedings.**

- 2.1 *Representing oneself.* In any proceeding, an individual may appear on his or her own behalf.
- 2.2 *Attorneys.* In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the State of Delaware. Attorneys who are not so admitted must apply for admission *pro hac vice* through Rule 2.3 below.
- 2.3 *Appearance pro hac vice.* Pursuant to Rule 72(a) of the Delaware Supreme Court Rules, attorneys who are not members of the Delaware Bar may be admitted *pro hac vice* in a proceeding in the discretion of the administrative hearing officer upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"). Pursuant to Delaware Supreme Court Rule 72(c), Delaware Counsel for any party shall appear in the matter for which admission *pro hac vice* is filed and shall sign or receive service of all notices, orders, pleadings

or other papers filed in the matter and shall attend all proceedings before the hearing officer, unless excused by the hearing officer.

**2.4** *Designation of address for service; notice of appearance; withdrawal.*

2.4.1 *Representing oneself.* When an individual first makes any filing or otherwise appears on his or her own behalf before a hearing officer in a proceeding, he or she shall file with the hearing officer or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

2.4.2 *Attorneys.* When an attorney first makes any filing or otherwise appears in a representative capacity before a hearing officer in a proceeding, he or she shall file with the hearing officer, and keep current, a written notice of appearance stating the name of the proceeding; the attorney's name, bar identification number, business address, telephone number, and electronic mail address; and the name and address of the person or persons represented.

2.4.3 *Withdrawal.* Withdrawal by any attorney shall be permitted only by written order of the hearing officer. A motion seeking leave to withdraw shall state with specificity the reason for such withdrawal.

**3.0** **Appointment of a hearing officer.**

3.1 The Attorney General shall designate a Deputy Attorney General or a Special Deputy Attorney General (as set forth in subsection 3.3 below) outside the Fraud and Consumer Protection Division to act as the hearing officer in a particular CPU administrative case or indefinitely until the authority is transferred. ~~If no hearing officer has been designated, a Deputy Attorney General in the CPU initiating a complaint shall proceed in accordance with Rule 12.1 below.~~

3.2 This authority of the Attorney General to name a hearing officer may be delegated to any Deputy Attorney General outside the Fraud and Consumer Protection Division.

3.3 The Attorney General may appoint any member of the Delaware Bar as a Special Deputy Attorney General to act as an administrative hearing officer in any case brought by the CPU.

**4.0** **Disqualification and recusal of administrative hearing officer.**

4.1 *Notice of disqualification.* If at any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

4.2 *Motion for withdrawal.* Any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not biased or otherwise disqualified, he or she shall so rule and shall continue to preside over the proceeding.

**5.0** **Ex parte communications.**

5.1 No party to a proceeding, or counsel to or representative of a party to a proceeding, shall make or knowingly cause to be made an *ex parte* communication relevant to the merits of that proceeding to the administrative hearing officer.

5.2 No administrative hearing officer with respect to a proceeding shall make or knowingly cause to be made to a party to that proceeding, or counsel to a party to that proceeding, an *ex parte* communication relevant to the merits of that proceeding.

**6.0** **Motions.**

6.1 *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied

by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with Rule 7.0, be filed in accordance with Rule 8.0, meet the requirements of Rule 9.0, and be signed in accordance with Rule 10.0. The hearing officer may order that an oral motion be submitted in writing. No oral argument shall be heard on any motion unless the hearing officer otherwise directs.

- 6.2 *Opposing and reply briefs.* Briefs in opposition to a motion shall be served and filed within 10 days after service of the motion. Reply briefs shall be served and filed within three days after service of the opposition.
- 6.3 *Length limitation.* A brief in support of or opposition to a motion shall not exceed 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of 10 pages are disfavored.

## 7.0 Service of papers by parties.

- 7.1 *Service initiating a proceeding.* At the outset of an administrative proceeding, the complaint and ~~any accompanying papers~~ a notice of the filing of the action shall be served on each respondent by:

7.1.1 personal hand delivery;

7.1.2 certified mail, return receipt requested, and by United States first class mail at the respondent's last known address. ~~The return of a return receipt signed by the respondent is not required for service to be effective;~~ or

7.1.3 any form of service of process effective under Delaware Superior Court Civil Rule 4(f); or (d) service under Rule 7.2 below.

- 7.2 "Long-arm" service of process to initiate a proceeding. Any service of process that would be effective to create personal jurisdiction in the Superior Court under 10 Del.C. §3104 shall be effective to create personal jurisdiction in the Department of Justice administrative forum under these Rules.

### 7.23 Service of all other filings.

7.23.1 When required. In every administrative proceeding, each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in the proceeding in accordance with the provisions of this section.

7.23.2 Upon a person represented by counsel. Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to Rule 2.0, service shall be made pursuant to paragraph 7.23.3 of this section upon counsel, unless service upon the person represented is ordered by the hearing officer.

7.23.3 How made. Service shall be made by delivering a copy of the filing. "Delivering" means:

7.23.3.1 Personal service by handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed, or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;

7.23.3.2 Mailing the papers through the U.S. Postal Service by first class, registered, or certified mail or Express Mail delivery addressed to the person;

7.23.3.3 Sending the papers through a commercial courier service or express delivery service; or

7.23.3.4 Transmitting the papers by facsimile machine or electronic mail transmission where the following conditions are met:

7.23.3.4.1 The persons serving each other by facsimile transmission or electronic mail transmission have agreed to do so in a writing, and

7.23.3.4.2 Receipt of each document served is confirmed electronically or by a manually signed receipt.

7.23.4 *When service is complete.* Personal service, service by U.S. Postal Express Mail or service by commercial courier or express delivery service is complete upon delivery. Service by mail is

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complete upon mailing. Service by facsimile or electronic mail transmission is complete upon confirmation of transmission.

**8.0 Filing of papers with the hearing officer: procedures.**

- 8.1 *When to file.* All papers required to be served by a party upon any person shall be filed with the hearing officer at the time of service. Papers required to be filed with the hearing officer must be received within the time limit, if any, for such filings.
- 8.2 *Where to file.* Filing of papers shall be made by filing the original papers with the hearing officer.
- 8.3 *To whom to direct the filing.* All motions, objections, applications or other filings made during a proceeding shall be directed to and decided by the hearing officer.
- 8.4 *Certificate of service.* Papers filed with the hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address, facsimile telephone number, or electronic mail address to which service was made, if not made in person.

**9.0 Filing of papers: form.**

- 9.1 *Specifications.* Papers filed in connection with any administrative proceeding shall:
  - 9.1.1 Be on one grade of unglazed white paper measuring 8-1/2 x 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;
  - 9.1.2 Be typewritten or printed in either ten or twelve-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;
  - 9.1.3 Include at the head of the paper, or on a title page, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;
  - 9.1.4 Be paginated with all margins at least one inch wide;
  - 9.1.5 Be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and
  - 9.1.6 Be stapled, clipped or otherwise fastened in the upper left corner.
- 9.2 *Signature required.* All papers must be dated and signed as provided in Rule 10.0.
- 9.3 *Suitability for record keeping.* Documents which, in the opinion of the hearing officer, are not suitable for computer scanning or microfilming may be rejected.

**10.0 Filing of papers: signature requirement and effect.**

- 10.1 *General requirements.* Every filing of a party represented by counsel shall be signed by Delaware Counsel of record in his or her name and shall state that counsel's bar identification number, business address, electronic mail address, and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing.
- 10.2 *Effect of signature.*
  - 10.2.1 The signature of counsel or a party shall constitute a certification that:
    - 10.2.1.1 the person signing the filing has read the filing;
    - 10.2.1.2 to the best of his or her knowledge, information and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
    - 10.2.1.3 the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.
  - 10.2.2 If a filing is not signed, the hearing officer shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

**11.0 Computation of time.**

- 11.1 *Computation.* In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the hearing officer, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or State legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday or State legal holiday. Unless otherwise specified, intermediate Saturdays, Sundays and State legal holidays shall be excluded from the computation when the period of time prescribed or allowed is 10 days or less, not including any additional time allowed for service by mail in paragraph 11.2 of this section. If on the day a filing is to be made, weather or other conditions have caused the designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, Sunday nor State legal holiday.
- 11.2 *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response.

**12.0 Complaints: general and summary proceedings.**

- 12.1 *General.* If the Director of Consumer Protection ~~of the CPU~~ or a Deputy Attorney General acting under his or her authority believes that any person is violating or has violated any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the CPU may issue a complaint as provided herein. The service and filing of the complaint constitutes the commencement of the administrative proceeding. ~~If no hearing officer has been generally designated, the Director of Consumer Protection or the Deputy Attorney General filing the complaint shall give notice to the Attorney General, Chief Deputy Attorney General, or the State Solicitor requesting the appointment of a hearing officer for the proceeding.~~
- 12.2 *Summary proceedings.* See Rule 25.1.3 for procedure in summary proceedings.

**13.0 Complaints: form and content.**

- 13.1 Each complaint shall be in writing and signed by a Deputy Attorney General. The complaint shall specify in reasonable detail the conduct alleged to constitute the violation and the statutory provision, rule or regulation the respondent is alleged to be violating or to have violated.
- 13.2 If the complaint consists of several claims, each claim shall be stated separately.

**14.0 Complaints: amendment and withdrawal.**

- 14.1 At any time prior to the filing of a responsive pleading or the commencement of a hearing (whichever is earlier), the Deputy Attorney General who initiated the proceeding may amend the complaint. After the filing of a responsive pleading or the commencement of a hearing, upon motion by the Deputy Attorney General who initiated the proceeding, the hearing officer may permit amendment of a complaint.
- 14.2 At any time prior to the filing of a responsive pleading or the commencement of a hearing (whichever is earlier), the Deputy Attorney General who initiated the proceeding may withdraw the complaint. Such withdrawal shall be without prejudice to refiling, and the Deputy Attorney General who initiated the proceeding shall be permitted to file a complaint based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. The Deputy Attorney General who initiated the proceeding may withdraw the complaint after the filing of a responsive pleading or commencement of a hearing, and in the absence of a motion the withdrawal shall be without prejudice; however, upon motion of the respondent, the hearing officer, after considering the facts and circumstances of the withdrawal, shall determine whether the withdrawal shall be with prejudice.

**15.0 Answers to complaints.**

- 15.1 *Form, service, notice.* Pursuant to Rule 7.2, each respondent named in a complaint shall serve an answer to the complaint on the Deputy Attorney General who initiated the proceeding, all other parties, and the hearing officer within 20 days after service of the complaint on such respondent. The hearing officer may extend such period for good cause.

- 15.2 *Content, affirmative defenses.* Unless otherwise ordered by the hearing officer, an answer shall specifically admit, deny, or state that the respondent does not have and is unable to obtain sufficient information to admit or deny each allegation in the complaint. When a respondent intends to deny only part of an allegation, the respondent shall specify so much of it as is admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied shall be deemed admitted. Any affirmative defense shall be asserted in the answer.
- 15.3 *Amendments to answer.* Upon a motion by a respondent, the hearing officer may permit an answer to be amended.
- 15.4 *Extension of time to answer amended complaint.* If a complaint is amended pursuant to Rule 14.0, the time for filing an answer or amended answer shall be extended to 20 days after service of the amended complaint.
- 15.5 *Failure to answer; default.* ~~If the a respondent does not file an answer to the complaint within the time required, the hearing officer shall send a second notice and copy of the complaint shall be sent to such respondent at his or her last known address requiring an answer within 10 days after service of the second notice, or within such longer period as the hearing officer in his or her discretion may order. The failure of the respondent to answer shall not prevent the hearing officer, in the exercise of his or her discretion, from scheduling a hearing.~~
- 15.6 *Default orders.* If the respondent fails to answer the second notice and complaint, after failing to answer the first, the Deputy Attorney General prosecuting the matter may move that the hearing officer issue an order finding the respondent in default and granting any lawful relief requested in the complaint or the motion. This subsection does not apply to summary orders.

## **16.0 Scheduling a hearing.**

- 16.1 *Hearing officer order requiring hearing.* Upon the filing of a complaint, the hearing officer should promptly schedule a hearing to be held between 40 and 60 days after the date the complaint was filed. See Rule 25.1.3 for hearing procedures in summary proceedings.
- 16.2 *Notice of hearing.* Upon scheduling a hearing, the hearing officer shall issue a notice stating the date, time and place of the hearing, and shall serve such notice on the parties.

## **17.0 Pre-hearing conferences.**

- 17.1 *Purpose of conferences.* ~~The purpose of pre-hearing conferences includes, but is not limited to:~~
- ~~17.1.1 Expediting the disposition of the proceeding;~~
  - ~~17.1.2 Establishing early and continuing control of the proceeding by the hearing officer; and~~
  - ~~17.1.3 Improving the quality of the hearing through more thorough preparation.~~
- 17.2 *Procedure.* On his or her own motion or at the request of a party, the hearing officer may, in his or her discretion, direct counsel or any party to meet for an initial, final or other prehearing conference. ~~Such conferences may be held with or without the hearing officer present as the hearing officer deems appropriate. Where such a conference is held outside the presence of the hearing officer, the hearing officer shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.~~
- 17.3 *Subjects to be discussed.* ~~At a pre-hearing conference consideration may be given and action taken with respect to any or all of the following:~~
- ~~17.3.1 Simplification and clarification of the issues;~~
  - ~~17.3.2 Exchange of witness and exhibit lists and copies of exhibits;~~
  - ~~17.3.3 Stipulations, admissions of fact, and stipulations concerning the contents, authenticity or admissibility into evidence of documents;~~
  - ~~17.3.4 Matters of which official notice may be taken;~~
  - ~~17.3.5 The schedule for exchanging prehearing motions or briefs, if any;~~
  - ~~17.3.6 The method of service for papers;~~
  - ~~17.3.7 Summary disposition of any or all issues;~~

~~17.3.8 Settlement of any or all claims;~~

~~17.3.9 Determination of hearing dates;~~

~~17.3.10 Amendments to the complaint or answers thereto; and~~

~~17.3.11 Such other matters as may aid in the orderly and expeditious disposition of the proceeding.~~

~~17.4 *Pre-hearing orders.* At or following the conclusion of any conference held pursuant to this section, the hearing officer shall enter a ruling or order which recites the agreements reached and any procedural determinations made by the hearing officer.~~

## 18.0 Pre-hearing submissions.

18.1 *Submissions generally.* In connection with the pre-hearing conference, the hearing officer, on his or her own motion or at the request of a party, may order any party to furnish such information as deemed appropriate, including any or all of the following:

~~18.1.1 An outline or narrative summary of the party's case or defense;~~

~~18.1.2 The legal theories upon which the party will rely;~~

~~18.1.3 Copies and a list of documents that the party intends to introduce at the hearing; and~~

~~18.1.4 A list of witnesses who will testify on the party's behalf, including the witnesses' names, occupations, addresses and a brief summary of their expected testimony.~~

~~18.2 *Expert witnesses.* Each party who intends to call an expert witness shall submit, in addition to the information required by paragraph 18.1.4 of this section, a *curriculum vitae* or statement of the expert's qualifications and a written summary of the expert's opinions on the topic of the intended testimony. The hearing officer may in his or her discretion order an expert witness to produce a listing of other proceedings in which the expert has given expert testimony and a list of publications authored or co-authored by the expert.~~

~~18.32 *Timing of production.* The hearing officer may modify the time limits for production of evidence set by these rules.~~

## 19.0 Administrative hearings.

19.1 *Hearings.* Hearings for the purpose of taking evidence shall be held upon order of the hearing officer. Except for summary proceedings, hearings should generally be scheduled not less than 40 days nor more than 60 days after the issuance of a complaint.

19.1.1 All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

19.1.2 All hearings, except *ex parte* applications for a summary order, shall open to the public.

19.2 *Continuance.* Any motion for a continuance of the hearing date shall be filed as far in advance of the hearing date as practicable. Motions must be for good cause and state with specificity the reason for the continuance request. Any motion for a continuance filed within 10 days of a scheduled hearing is disfavored and will be denied in the absence of extraordinary circumstances.

19.3 *Exchange of evidence and witness list.* Unless otherwise ordered by the hearing officer, no later than 20 calendar days prior to the date of the hearing the CPU shall submit to each respondent and to the hearing officer copies of all documentary evidence and the names of the witnesses the CPU intends to present in its case-in-chief at the hearing. Unless otherwise ordered, no later than 10 calendar days prior to the date of the hearing each respondent shall submit to the CPU and to the hearing officer all documentary evidence and the names of the witnesses the respondent intends to present at the hearing. If a party intends to use the testimony of an expert witness, that party shall include as part of its documentary production a *curriculum vitae* or statement of the expert's qualifications and a written summary of the expert's opinions on the topic of the intended testimony.

19.4 *Hearing procedure.* In the hearing, each party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the hearing officer, may be required for a full and true disclosure of the facts.

19.5 *Testimony.* Witnesses shall testify under oath or affirmation. The oath or affirmation may be administered by a Deputy Attorney General, court reporter, notary public or any other officer authorized to administer oaths and affirmations under Delaware law.

**20.0 Evidence.**

20.1 *Admissibility.* The hearing officer shall receive relevant evidence and may exclude all evidence that is irrelevant, immaterial or unduly repetitious.

20.1.1 The hearing officer may make reference to and be guided by the Delaware Uniform Rules of Evidence. Notwithstanding those rules, the hearing officer may admit any evidence that reasonable and prudent individuals would commonly accept in the conduct of their affairs, and give probative effect to that evidence.

20.1.2 Evidence may not be excluded solely on the ground that it is hearsay.

20.2 *Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling.

20.3 *Offers of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record.

**21.0 Proposed findings of fact, conclusions of law, and post-hearing briefs.**

21.1 At the discretion of the hearing officer, the parties may be ordered to file proposed findings of fact and conclusions of law, or post-hearing briefs, or both. The hearing officer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.

21.2 Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.

21.3 In any case in which the hearing officer has ordered the filing of proposed findings of fact and conclusions of law, or post-hearing briefs, the hearing officer shall, after consultation with the parties, prescribe the period within which proposed findings of fact and conclusions of law and/or post-hearing briefs are to be filed. Such period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 30 days after the conclusion of the hearing unless the hearing officer permits a different period and sets forth in an order the reasons why a longer period is necessary.

21.4 Unless the hearing officer orders otherwise, no post-hearing submission shall exceed 25 pages, exclusive of cover sheets, tables of contents and tables of authorities.

**22.0 Final decision after a hearing.**

22.1 In any administrative proceeding in which a hearing is held, the hearing officer shall issue a final written decision. Such decisions should generally be issued within 60 days after the last day of the hearing or the filing of any post-hearing submission, whichever is later. The decision shall include:

22.1.1 A brief summary of the evidence;

22.1.2 Findings of fact based on the evidence;

22.1.3 Conclusions of law; and

22.1.4 A statement of any sanctions, where applicable.

22.2 The hearing officer may order any remedy authorized by 29 Del.C. §2524.

**23.0 Failure to appear at hearing.**

23.1 A party's failure to appear at a hearing that has been duly noticed shall not be cause to continue the hearing. If the hearing officer so orders, the hearing shall proceed in the party's absence, which shall be noted in the record.

23.2 The hearing officer, in his or her discretion, may choose to treat a respondent's failure to appear at the hearing as a default and issue an order pursuant to Rule 15.6.

**24.0 Disruptive conduct.**

If a party, counsel to a party or witness engages in conduct in violation of an order of the hearing officer, or other disruptive conduct during an administrative proceeding, the hearing officer may impose non-monetary sanctions therefor, including the issuance of an order: (i) excluding the party and/or his or her counsel from any further participation in the proceeding; (ii) striking pleadings or evidence from the record; (iii) providing that certain facts shall be taken to be established for purposes of the proceeding; or (iv) providing for such other relief as is just and equitable under the circumstances.

**25.0 Cease and desist orders; summary proceedings.**

25.1 Cease and desist orders may be issued by agreement, administrative order, or summary administrative order.

25.1.1 *By agreement.* Where it appears to the Director that a person has engaged in, is engaging in, or is about to engage in a practice declared unlawful by any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the Director may enter into a written agreement with that person and issue a cease and desist order ordering the immediate discontinuance of that practice. Consistent with the agreement, the order may also order any relief or remedy authorized under any statute enforced by the CPU. A cease and desist order by agreement may be issued in the absence of a complaint initiating an administrative or civil action, or it may be issued in connection with the settlement of an administrative or civil action.

25.1.2 *By administrative order.* Upon the finding of a violation of any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the administrative hearing officer may issue a cease and desist order. The prohibited conduct in the order should be reasonably related to the conduct constituting the violation.

25.1.3 *By summary administrative order.* Where the Director, in his or her discretion, perceives an immediate threat to the public interest as a result of a violation of any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the Director may issue a summary cease and desist order ordering an immediate discontinuance of the unlawful practice identified in the order.

25.1.3.1 Before issuing the summary order, the Director or his or her designee shall attempt to obtain voluntary compliance from the alleged violator by telephone call or letter. A failure to comply with any aspect of the request for voluntary compliance shall be deemed non-compliance with the request. Any person who is the subject of a summary order shall promptly be given notice of that order and of the reasons therefor.

25.1.3.2 A complaint detailing the specific allegations against the alleged violator shall accompany any summary cease and desist order served upon the alleged violator. The complaint and summary cease and desist order shall be served upon the alleged violator by first class and certified mail to the alleged violator's last known address. Service shall be deemed effective upon mailing.

25.1.3.3 A hearing shall be scheduled by the Director or his or her designee at the time of the issuance of the complaint and summary cease and desist order. The CPU shall provide a hearing on the charges in the complaint within 10 days after the issuance of the complaint and the cease and desist order.

25.1.3.4 A written opinion and order, containing findings of fact and conclusions of law, shall issue within 10 days after the close of the hearing.

25.1.3.5 If no hearing has been provided within 10 days after the issuance of the summary cease and desist order, the order shall expire at the end of the tenth day after it was issued unless the alleged violator waives his or her right to a prompt hearing. If there is a hearing but no decision is issued within 10 days after the close of the hearing, the summary cease and desist order shall expire at the end of the tenth day after the close of the hearing. An order that has expired in accordance with the restrictions of this subparagraph may not be reissued as a summary order.

- 25.1.3.6 The order issued after the hearing may provide for any administrative remedy contained in 29 **Del.C.** §2524.
- 25.1.3.7 Any person who willfully violates a cease and desist order may be sanctioned as provided in 29 **Del.C.** §2524(b) or §2526.

**26.0 Appeals.**

- 26.1 In any administrative proceeding, any person aggrieved by a final order of the hearing officer may file an appeal to the Superior Court no later than 30 days after the date of the order, as provided in 29 **Del.C.** §2523(d). A copy of the notice of appeal shall be promptly filed with the hearing officer in the administrative proceeding.
- 26.2 Upon the filing of an appeal to the Superior Court, the administrative record shall be filed with the Court in accordance with Superior Court Civil Rule 72.
- 26.3 Any party that files an appeal to the Superior Court shall be responsible for filing with the Court in a timely manner the transcript of that portion of the administrative proceedings in which error allegedly occurred. Each party on appeal shall bear his, her or its own costs of transcription.

**14 DE Reg. 577 (12/01/10)**

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**VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL**  
Statutory Authority: 11 Delaware Code, Section 9004(a) (11 **Del.C.** §9004(a))  
**1 DE Admin. Code 301**

**PUBLIC NOTICE**

**301 Victims' Compensation Assistance Program Rules and Regulations**

**Title of Regulations:**

Amend 1 Delaware Admin. Code 301, Victims Compensation Assistance Program Rules and Regulations, by adding Rule 30.0.

**Brief Synopsis of the Subject, Substance and Issues:**

The Department of Justice Victims Compensation Assistance Program proposes to add an additional regulation, Rule 30.0, to section 301 relating to payment of claims. VCAP has recently adopted regulations providing for reimbursement of medical professionals at 80% of the usual and customary charges for such services [Rule 28.0], and for reimbursement of mental health professionals at 80% of usual and customary charges for such treatment [Rule 29.0]. VCAP currently reimburses victims who lack applicable insurance for the cost of dental procedures attributable to a covered violent crime. VCAP is the payer of last resort for these dental claims. Both private dental insurance plans and any available Medicaid or Medicare benefits are primary. To the extent that the victim is responsible for a deductible or co-pay amount, VCAP benefits may be available to cover such deficits.

This regulation would require that VCAP pay all dental providers at 80% of the established usual and customary charge for such services or procedures. This amount would be deemed payment in full, and the dental provider would be unable to collect any additional monies from the victim, or from third parties, through so-called "balance billing". VCAP would cover any co-pay or deductible amounts, in the event of a covered victim. Enactment of this proposed regulation would help preserve and extend the Victims Compensation Assistance Program funds and bring VCAP more in line with the practices of insurers and other governmental programs in paying dental claims.

**Statutory Basis or Legal Authority to Act:**

Title 11 Delaware Code, Chapter 90, Section 9004(a).

**Notice of Public Comment:**

The Department of Justice Victims Compensation Assistance Program will hold public hearings on these

# PROPOSED REGULATIONS

proposed amendments on August 23, 2011 at 10:00 am at the Dover Police Department Public Assembly Room, 400 S Queen St, Dover, Delaware. Interested persons may submit comments in writing to Lisa Ogden, Director, VCAP, 900 King Street, Suite 4, Wilmington Delaware. Statements and testimony may be presented either orally or in writing at the public hearings.

July 14, 2011 Lisa Ogden, Director 302 255-1770

## 301 Victims' Compensation Assistance Program Rules and Regulations

*(Break in Continuity of Sections)*

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

[301 Victims' Compensation Assistance Program Rules and Regulations](#)

### **30.0 Payment of Dental Claims**

- 30.1 Expenses for dental services [including periodontal and orthodontic care and oral surgery] shall be paid on behalf of the victim to a licensed dental practitioner at a rate and in an amount set by VCAP. If VCAP accepts a claim, the dental practitioner shall accept the VCAP payment as payment in full, and may not attempt to collect from the victim or third parties any amount exceeding the amount of reimbursement made by VCAP. VCAP payments shall be accompanied by a notice that provider acceptance constitutes acknowledgement of payment in full.
- 30.2 VCAP will pay a dental provider at the rate of 80% of the usual and customary charge for such services. When a third party has made payment, and the victim is responsible for a co-payment, VCAP may reimburse for amount of the co-payment. VCAP may pay a lesser amount, if payment under this section would exceed a statutory or regulatory cap.
- 30.3 If the usual and customary charge cannot readily be established, or in special circumstances, VCAP may, in its discretion, determine the reasonable charge for the procedure performed or the service rendered.

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)  
7 DE Admin. Code 1138

#### PUBLIC NOTICE

SAN # 2010-24

### 1138 Emission Standards for Hazardous Air Pollutants for Source Categories

#### 1. Title of the Regulations:

Amendment to Regulation 1138 Emission Standards for Hazardous Air Pollutants for Source Categories

#### 2. Brief Synopsis of the Subject, Substance and Issues:

In 2001, Delaware adopted by reference the federal Maximum Achievable Control Technology (MACT) standard applicable to halogenated solvent cleaning operations (40 CFR Part 63 Subpart T) into Section 8.0 of Regulation 1138. Since that initial adoption, the EPA has revised this federal MACT standard several times. The most significant of these revisions was the adoption of facility-wide 12-month rolling total halogenated solvent emission limits (72 FR

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25138, May 3, 2007). This more stringent requirement was incorporated after the EPA determined that following the full implementation of the MACT requirements, the original MACT requirements did not protect the public's health with an ample margin of safety.

Delaware is proposing to amend Section 8.0 of Regulation 1138 by adding the facility-wide emission limits and their associated monitoring, recordkeeping and reporting requirements that the EPA promulgated on May 3, 2007. The purpose of this proposed amendment is to protect the public's health with an ample margin of safety and to provide greater consistency between Delaware's air toxics standards for halogenated solvent cleaning operations and the revised federal standard (40 CFR Part 63 Subpart T).

**3. Possible Terms of the Agency Action:**

None

**4. Statutory Basis or Legal Authority to Act:**

7 Delaware Code, Chapter 60

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

None

**6. Notice Of Public Comment:**

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, August 24, 2011 beginning at 6:00 PM in DNREC's Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720.

**7. Prepared By:**

James R. Snead (302) 323-4542 james.snead@state.de.us June 30, 2011

**1138 Emission Standards for Hazardous Air Pollutants for Source Categories**

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

[1138 Emission Standards for Hazardous Air Pollutants for Source Categories](#)

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**DIVISION OF WATER RESOURCES**

**Surface Water Discharges Section**

Statutory Authority: 7 Delaware Code, Section 6000 (7 Del.C. §6000)  
7 DE Admin. Code 7201

**SAN # 2011 - 10**

**7201 Regulations Governing the Control of Water Pollution, 9.5 The Concentrated Animal Feeding Operation (CAFO)**

**1. Title of the Regulations:**

Section 9.5: Concentrated Animal Feeding Operations of 7201 Regulations Governing the Control of Water Pollution (Title 7, Delaware Administrative Code 7200, §9.5)

**2. Brief Synopsis of the Subject, Substance and Issues:**

These proposed regulations have been developed pursuant to **3 Del.C. §2201-2290** and **7 Del.C. §6000** et.al. and under DNREC's delegated authority. These statutory and regulatory authorities establish the requirement that a National Pollutant Discharge Elimination System (NPDES) permitting program for Concentrated Animal Feeding Operations (CAFOs) be implemented. These proposed regulations amend the current regulations and will function

as the baseline CAFO standards for compliance of NPDES CAFO permits applicable to certain farms. The Delaware Department of Natural Resources and Environmental Control (DNREC) will administer these regulations with the assistance of the Delaware Department of Agriculture (DDA). In general, NPDES CAFO permits, as provided in these regulations, are effective for five years. These regulations were developed by the Delaware Department of Agriculture and the Delaware Department of Natural Resources and Environmental Control.

**3. Possible Terms of the Agency Action:**

The revised regulation will clarify the current application, approval and reporting requirements for CAFO NPDES permits. Failure to promulgate revised regulations compliant with requirements of the Clean Water Act may result in forfeiture of the State NPDES program and subject Delaware farmers to federal enforcement action and third party lawsuits.

**4. Statutory Basis or Legal Authority to Act:**

7 Del.C. §6000 et. al.; 3 Del.C. §2200 et. al, and 40 CFR 122 and 412.

**5. Other Regulations that may be Affected by the Proposal:**

Delaware Nutrient Management Regulations 3 Del.C. §2200

**6. Notice of Public Comment:**

The proposed regulations are posted on the Delaware Department of Agriculture website ([www.dda.delaware.gov](http://www.dda.delaware.gov)) and the DNREC website at [www.dnrec.delaware.gov](http://www.dnrec.delaware.gov). Hard copies of the proposed regulations may be obtained from the Delaware Department of Agriculture. Comments may be submitted in writing and/or e-mail to the Mark Davis, Nutrient Management Program Administrator ([mark.davis@state.de.us](mailto:mark.davis@state.de.us)), at the Delaware Department of Agriculture, on or before 4:30 PM on August 31, 2011, and/or in person at a public hearing to be held on August 25, 2011 at 7pm at the Department of Agriculture, 2320 South DuPont Highway, Dover, DE 19901. Statements and testimony may be presented either orally or in writing at the public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Mark Davis  
Department of Agriculture  
2320 South DuPont Highway  
Dover, DE 19901  
[Mark.davis@state.de.us](mailto:Mark.davis@state.de.us)

**7. Prepared by:**

Brain Churchill, 302.739.9946, 14 June 2011  
[brian.churchill@state.de.us](mailto:brian.churchill@state.de.us)

**Regulatory Flexibility Act Analysis:  
"Regulations for Concentrated Animal Feeding Operations (CAFO)"  
July 2011**

**Regulatory Action:**

The Delaware Department of Natural Resources and Environmental control, and the Delaware Department of Agriculture are proposing to adopt amended regulations, which will amend requirements to reduce point source pollution from farms where poultry, swine, beef cattle, dairy cattle and horses are raised also known as Animal Feeding Operation (AFO). Such farms can be substantial contributors to the pollution of the State's waterways if manure and other waste products are not properly managed. The actions proposed by the Departments are necessary to achieve Delaware's water quality goals and to comply with US Environmental Protection Agency directives.

**Background on the Proposed Regulation:**

Part 122, Sub Section 122 and 412 of the Clean Water Act require States to develop regulations governing the discharge of nutrients from farms into nearby waterways. Farms (AFOs) identified to have such discharges are

required to obtain a National Pollutant Discharge System (NPDES) permit, more specifically and Concentrated Animal Feeding Operation (CAFO) permit. Under these proposed regulations the Delaware Department of Natural Resources and Environmental Control (DNREC) will administer such permits with the assistance of the Delaware Department of Agriculture. The proposed state regulations are required in order to keep our "at least equal to" status with USEPA. Failure to do so may result in federal enforcement actions against Delaware agricultural producers and withdraw of the Delaware's delegated authority to administer the NPDES program.

### **Regulatory Flexibility Act Considerations**

#### **1. Nature and cost of reporting.**

In order to assess and track implementation efforts to reduce the loads of nutrients reaching the waters of the State and to ensure compliance with these Regulations, the Commission is requiring farmers to file an annual report. These reports detail nutrient application rates to crop land during the preceding crop year as well as crop yields (which indicate nutrient removal). The 1999 Delaware Nutrient Management Law already requires such annual reports. The new regulations do have additional record keeping requirements, but the state agencies have obligated to provide technical assistance to help meet those additional requirements. Therefore there will be minimal cost to farmers from this requirement.

#### **2. The nature and cost of required measures or investment.**

In order to protect and improve water quality, these Regulations may require farmers to implement various best management practices (BMP) to prevent nutrient laden storm-water from leaving their farms. Such BMPs can include riparian buffers, storm-water control structures, grassed waterways, covered manure storage structures and mortality composters. There are approximately 1,400 farm operations in the state with livestock and/or poultry. Of that total, we predict approximately 370 will be subject to the proposed NPDES CAFO regulations. There is extensive cost share funding for such BMPs from both State and Federal sources. NRCS provided cost share funds of \$7 million in 2009 and \$8 million in 2010 to assist farmers with BMP implementation. Due to increased emphasis on the watershed, the federal government plans to provide additional funding to help all agricultural producers in the Chesapeake Bay watershed to implement additional BMPs designed to help achieve more stringent water quality standards. Farmers will also need to practice good house-keeping and manure handling on their farms. Technical assistance to achieve this is already available from the Department of Agriculture, The University of Delaware Cooperative Extension and NRCS. In addition, the state provides manure relocation assistance funding to help redistribute nutrients from areas which may have an overabundance of nutrients to areas with nutrient deficiencies. Utilizing federal, state, and private funding, \$849,870 was spent on relocation in 2009.

#### **3. The nature and cost of legal, consulting and accounting services.**

There are no requirements in the proposed Regulations that would necessitate a need for legal and/or accounting services, however, in order to improve water quality, these Regulations may result in farmers needing to secure consulting services. Such technical assistance can be obtained from NRCS, The Delaware Department of Agriculture, and the University of Delaware Cooperative Extension at no cost to the farmer. The Commission/ State provides cost share funds for the writing of nutrient management plans (NMPs). In 2010, over \$450,000 of state funds were provided to producers to offset the cost of drafting NMPs.

#### **4. The ability of the entity to absorb or recover the added costs without suffering economic harm and without adversely affecting competition in the marketplace.**

These Regulations are based on solid environmental science, but also take into consideration and accommodate a variety of factors, including the ability of farmers to absorb or recover any added costs without suffering economic harm and without adversely affecting competition in the marketplace. As indicated above there is extensive cost share assistance from both State and Federal sources to implement any BMPs that might be required to contain a farm's nutrient laden storm-water. Additionally technical guidance is available at no cost from a variety of sources. It is also important to note that the proposed regulations are required by EPA and similar regulations are being or have been implemented nation-wide. If Delaware does not adopt and implement said regulations, then EPA will implement and enforce similar federally based regulations in Delaware.

## 5. The added cost to the Department if exemptions or lesser requirements were promulgated.

The actions proposed in these Regulations are necessary to achieve water quality goals therefore any lessening would adversely affect the health and well being of people, animals, and plants living within the State. Failure to implement these regulations could lead to enforcement action by EPA against both the State and Delaware Farmers. This could include fines and the withholding of grants and other funding. There are currently 372 CAFO permit holders in Delaware, which may submit new applications as a result of the expiration of their current permits and promulgation of the new proposed regulations. Due to funding and recent staff turnover, the staff capacity to administer and enforce 372 permits may present a challenge to the programs and Department of Agriculture and Department of Natural resources and Environmental Control.

## 6. The impact on the public interest of exempting or setting lesser requirements of compliance.

The actions proposed in these Regulations are necessary to achieve water quality goals, which will benefit the health and well being of people, animals, and plants living within the State. If the exemptions and lesser requirements are allowed, there will be less assurance that water quality standards will be achieved, which may result in increased occurrences of excessive macro algae growth (sea lettuce and other species), phytoplankton blooms (some potentially toxic), large daily swings in dissolved oxygen levels, loss of submerged aquatic vegetation, reduced populations of fish, shellfish, and other aquatic life, and fish kills. These symptoms of environmental degradation and habitat loss threaten the future of the Waters of the State and their significant natural, ecological, and recreational resources, which may result in adverse impacts to the local and State economies leading to reduced tourism, a decline in property values, lost revenues and a diminished quality of life, as well as violations of federal law.

## 7. What accommodations, if any, have been made in the regulations to address individual or small business concerns identified above?

These Regulations contain reasonable reporting requirements to ensure monitoring and compliance, but do not impose an undue regulatory or financial burden on farmers. In most situations reporting requirements are already required under the 1999 Delaware Nutrient Management Law. In addition, the NM Commission with the help of state and federal agency staff, and University of Delaware staff will provide written guidance through State Technical Standards to assist the regulated community with compliance.

As stated previously, these proposed Regulations may require additional measures and investments in order to protect and improve water quality; however, there is extensive federal and state cost share assistance available to meet the terms of these Regulations. In addition, the proposed Regulations do not create a need for legal and/or accounting services, while they may result in farmers securing consulting services, there is cost share available to cover such costs, which has been outlined previously in this document.

### 7201 Regulations Governing the Control of Water Pollution

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

[7201 Regulations Governing the Control of Water Pollution](#)

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**Genetic Counselor Advisory Council**

Statutory Authority: 16 Delaware Code, Section 1799I(c) (16 Del.C. §1799I(c))

**PUBLIC NOTICE**

Consistent with a recent statutory amendments creating the Genetic Counselor Advisory Council (the "Council"), of the Board of Medical Licensure and Discipline (the "Board" and providing for the licensing and regulation of genetic counselors, the Council in accordance with 24 Del.C. §1799I(c) and 29 Del.C. Ch. 101, has

developed and is proposing to recommend to the Board the approval of regulations regarding the practice of genetic counseling in the State of Delaware.

A public hearing will be held on Friday, September 9, 2011 at 3:15 p.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Practice, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Council may vote on whether to promulgate the proposed regulations subject to the approval of the Board immediately following the public hearing.

## **1799 Genetic Counselor Advisory Council**

### **1.0 Source of Authority**

The Rules and Regulations herein contained constitute, comprise, and shall be known as the Rules and Regulations of the Genetic Counselor Advisory Council of the Board of Medical Licensure and Discipline, and are hereby promulgated, pursuant to 24 Del.C. §1799I(c).

### **2.0 Definitions**

Whenever used in these Rules and Regulations unless expressly otherwise stated, or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated.

"Board" means Delaware Board of Medical Licensure and Discipline.

"Council" means the Genetic Counselor Advisory Council of the Board of Medical Licensure and Discipline.

"Crime Substantially Related to the Practice of Genetic Counseling" means those crimes identified in Rule 29 of the Rules and Regulations of the Board of Medical Licensure and Discipline.

### **3.0 Purpose**

The purpose of the rules and regulations is to establish minimal acceptable levels of safe practice to protect the general public and to serve as a guide for the Council and Board to evaluate the safe and effective practice of genetic counseling.

### **4.0 Renewal of License**

4.1 Each license shall be renewed biennially. The failure of the Council and/or Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the regulations of the Council and 24 Del.C. Ch. 17, Subchapter 11.

4.2 Renewal may be effected by:

4.2.1 filing a renewal application on the prescribed online application approved by the Council and provided by the Division of Professional Regulation. License renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov);

4.2.2 providing other information as may be required by the Council to ascertain the licensee's good standing;

4.2.3 attesting on the renewal application to having completed the continuing education required by Rule 5.0;

4.2.4 payment of fees as determined by the Division of Professional Regulation.

4.3 Failure of a licensee to renew his/her license shall cause his/her license to expire. A licensee whose license has expired may renew his/her license within one (1) year after the expiration date upon fulfilling items 4.2.1 - 4.2.4 above, certifying that he/she has not practiced genetic counseling in

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## PROPOSED REGULATIONS

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Delaware while his/her license has expired, and paying the renewal fee and a late fee as determined by the Division of Professional Regulation.

- 4.4 No licensee will be permitted to renew his/her license once the one (1) year period has expired.
- 4.5 The former licensee may re-apply under the same conditions that govern applicants for new licensure under 24 Del.C. Ch. 17, Subchapter 11.
- 4.6 No genetic counselor shall practice in the State of Delaware during the period of time that his/her Delaware license has expired.

### **5.0 Continuing Education**

#### **5.1 Continuing Education Credit Hours Required for Renewal**

- 5.1.1 Licensees are required to complete five (5) Continuing Education Units (CEU) biennially. A continuing education unit is equivalent to ten contact hours (a contact hour is 60 minutes). Licensees shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (5) five years.
- 5.1.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of Rule 5.0.
- 5.1.3 Attestation must be completed electronically at the time of renewal.
- 5.1.4 Licensees selected for random audit pursuant to Rule 6.0 will be required to supplement the attestation with attendance verification.
- 5.1.5 CEU hours shall be prorated for new licensees. A licensee for renewal shall follow the following schedule of reporting CEUs: if, at the time of renewal, you have been licensed for less than one year, NO continuing education is required; licensed for more than one year, but less than two years, half of the continuing education (2.5 CEUs) is required; licensed for two or more years, the full amount (5 CEUs) is required.

#### **5.2 Exemptions**

- 5.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Licensure and Discipline for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.
- 5.2.2 A request for a waiver may be submitted up to the time of renewal

#### **5.3 Acceptable Activities /Continuing Education Program Offerings**

- 5.3.1 The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to professional competence in the practice of Genetic Counseling
- 5.3.2 Licensees shall demonstrate that they have obtained CEUs in the categories and according to the criteria established by the American Board of Genetic Counselors (ABGC) for recertification, as may be amended from time to time.
  - 5.3.2.1 CEUs must be completed during the biennial renewal cycle.
  - 5.3.2.1 The percentage of CEUs obtained in each category designated by ABGC should be scaled to fit the biennial renewal period.

### **6.0 Audit of Continuing Education Unit Hours**

#### **6.1 Audits Each Biennium**

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

#### **6.2 Documentation.**

- 6.2.1 When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various CEUs claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Council shall attempt to verify the CEUs shown on the documentation provided by the licensee. Upon completion of the review, the Council will decide whether the licensee's CEUs meet the requirements of these regulations.
- 6.2.2 Any continuing education not meeting all provisions of these regulations shall be rejected in part or in whole by the Council.
- 6.2.3 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.
- 6.2.4 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.
- 6.3 Council Review and Hearing Process.
- 6.3.1 The Council shall review all documentation requested of any licensee shown on the audit list. If the Council determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Council determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these regulations. Unjustified noncompliance with these regulations shall be considered unprofessional conduct and grounds for discipline pursuant to 24 Del.C. §1799P(a)(5), subject to final approval of the Council's written recommendation by the Board.

## **7.0 Crimes Substantially Related to the Practice of Genetic Counseling**

Pursuant to 24 Del.C. §1799P(a)(6) the crimes determined by the Board to be substantially related to the practice of medicine are also determined to be substantially related to the practice of genetic counseling and may result in the denial of a license and/or disciplinary action against a licensee.

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### **DIVISION OF PROFESSIONAL REGULATION**

#### **2600 EXAMINING BOARD OF PHYSICAL THERAPISTS**

Statutory Authority: 24 Delaware Code, Section 2612 (24 Del.C. §2612)

**24 DE Admin. Code 2600**

#### **PUBLIC NOTICE**

Pursuant to 24 Del.C. §2604(a)(1), the Examining Board of Physical Therapists and Athletic Trainers has proposed revisions to its rules and regulations.

A public hearing will be held on September 27, 2011 at 5:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes the re-organization of the rules and regulations for greater clarity for both licensees and members of the public. Rules 1.2.3 and 1.2.8 are modified with respect to the requirements for supervision. Rule 12.1.23 is added to state that a licensee is required to report to the Division of Professional Regulation any licensee who is in violation of the Board's laws or rules. Rule 13.0, pertaining to continuing education, is amended to add requirements for ethics hours and completion of a CPR course. In addition, Rule 13.2.2 specifies that course approval is good for three years, unless the course is modified. Rule 13.4.4 is added to make explicit that

## PROPOSED REGULATIONS

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the Board has the authority to conduct continuing education audits and sanction licensees not in compliance with continuing education requirements. Finally, the revisions correct typos and grammatical errors.

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

### **2600 Examining Board of Physical Therapists**

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

**[2600 Examining Board of Physical Therapists](#)**

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**Symbol Key**

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

**Final Regulations**

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

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

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**DEPARTMENT OF AGRICULTURE  
PLANT INDUSTRIES SECTION**

Statutory Authority: 3 Delaware Code, Section 1102 (3 **Del.C.** §1102)

**ORDER****803 Rules and Regulations for the Control and Supression of the White Pine Blister Rust**

Persuant to the authority provided by 3 Delaware Code, Chapter 11 §1102, the Delaware Department of Agriculture (DDA) issues this Order adopting amended regulations governing the cultivation of Ribes species plants within the state. Following public notice of the proposed amended regulation, DDA makes the following findings and conclusions.

**Background and Procedural History**

The Delaware Department of Agriculture proposes these amended regulations in accordance with the General Assembly's mandate to enforce Chapter 11 of Title 3 of the Delaware Code and to specify the means by which citizens of the State of Delaware may cultivate plants of the genus Ribes within the state. DDA published the proposed amended regulations in the June 1, 2011 *Delaware Register of Regulations*. The public comment period remained open from June 1 to June 30, 2011. No written public comments were received. A public hearing was not held.

**Findings of Fact and Conclusions**

1. The public was given notice and the opportunity to provide DDA with comments in writing concerning the proposed regulation.
2. After considering the regulation amendments as proposed, the Department hereby adopts the regulation as final.
3. The effective date of this Order will be ten (10) days from the publication of this Order in the Register of

Regulations on August 11, 2011.

So ordered as of July 15, 2011  
Ed Kee, Secretary Delaware Department of Agriculture.

#### Rules and Regulations for the Control and Supression of the White Pine Blister Rust

It has been determined that White Pine Blister Rust, Cronartium ribicola Fischer, an injuriously dangerous plant disease, has been found in the State of Delaware. Since this disease is capable of killing or seriously damaging valuable white pine trees, by virtue of authority vested in me by Delaware Code, Title 3, Chapter 11, Section 1101, I hereby promulgate the following rules and regulations:

#### SECTION I

The entire State is hereby declared a White Pine Blister Rust Control Area.

#### SECTION II

1. Since it is an established fact that this disease requires alternate host plants of the Genus Ribes, (gooseberries and currants), in order to perpetrate itself and spread from one white pine tree to another, and that the white pines are of greater value to the State than are plants of the Genus, the importation of plants, or parts thereof, of any Ribes species into the State of Delaware is prohibited except as hereinafter provided.

2. The propagation and transportation of any plants of any plants of any plants of the Genus Ribes within the State of Delaware is prohibited except as hereinafter provided.

3. The importation, propagation and transportation of plants of the Genus Ribes will be permitted in that portion of the State lying south of the Chesapeake—Delaware Canal provided a permit authorizing shipment into this area and planting and propagation within the area is obtained from the office of the State Plant Pathologist and provided that other requirements prescribed by the State Plant Pathologist as deemed necessary are satisfied.

4. Plants may be brought into the State of Delaware while dormant and packaged for reshipment while dormant provided the plants are not planted, grown, or propagated in the State during the interim except as provided for in these rules and regulations and provided the plants are not sold for planting or propagating within the prohibited area of the State except as provided for in the following paragraph.

5. Plants to be used for experimental, educational, or scientific purposes on such conditions are under such safeguards as may be prescribed by the State Plant Pathologist are excepted from foregoing paragraph of this section.

6. Any plants found to have been transported or propagated in violation of these regulations shall be destroyed, according to law, by this Department or its authorized agents in addition to such penalties as may be provided by law.

7. Any plants of the Genus Ribes now growing within the State may be destroyed, according to law, where in the opinion of the State Plant Pathologist they are a definite and immediate hazard to valuable White Pine trees.

#### SECTION III

The State Department of Agriculture authorized its duly appointed agents to cooperate with other agencies of the State of Delaware, counties or municipalities of the State of Delaware, corporations, individuals, or Federal agencies in carrying out the purposes of these rules and regulations.

#### SECTION IV

These rules and regulations shall take effect the fifth day of April 1972.

APPROVED This 5<sup>th</sup> day of April, 1972  
Secretary, Department of Agriculture

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## 803 Rules and Regulations for the Control and Supression of the White Pine Blister Rust

### 1.0 Authority

These regulations are promulgated pursuant to the authority of Section 1102 of Title 3 of the Delaware Code.

### 2.0 Purpose

2.1 It is an established fact that White Pine Blister Rust requires alternate host plants of the genus *Ribes* to perpetuate itself and spread from one white pine tree to another, and that White Pine trees are valued as a landscape and ornamental tree. Therefore, the importation and cultivation of *Ribes* species is prohibited except as outlined in this regulation.

2.2 These regulations govern the permitting process and cultivation of plants of the genus *Ribes* within the State of Delaware. The Plant Industries Administrator or her or his designee shall have the authority to administer these regulations and shall be solely responsible for making the determinations required herein. These regulations have been developed to allow, as a permitted activity, the cultivation of *Ribes* species in a way that intends to minimize the potential for an outbreak of White Pine Blister Rust, *Cronartium ribicola*.

### 3.0 Definitions

"Department" means the State of Delaware Department of Agriculture and includes, but is not limited to, its officers, inspectors, employees, agents, or representatives.

"Person" means any individual, governmental entity, firm, partnership, corporation, company, society, association, or any organized group of persons, and every officer, agent, or employee thereof.

"Plant" refers to all plant parts, including whole plants, roots, scions, seeds and/or cuttings.

### 4.0 Quarantine

4.1 No person shall possess or transport the plants *Ribes aurium* (golden currant) or *Ribes nigrum* (black currant) within the State of Delaware. No permits shall be issued for the plants *Ribes aurium* or *Ribes nigrum*.

4.2 No person shall possess or transport plants of the genus *Ribes* sp. without a valid permit from the Department of Agriculture.

### 5.0 Permitted Activities

5.1 A permit authorizing shipment, planting and propagation within a specified area may be obtained from the Delaware Department of Agriculture, Plant Industries for *Ribes* sp as specified in Section 4.0 of this regulation.

5.2 The permit must include the following information:

5.2.1 name, address, and telephone number of person applying for the permit

5.2.2 number of plants to be grown or imported during permit period, listed by cultivar

5.2.3 detailed map showing where *Ribes* cultivars will be grown during the permit period.

5.3 Conditions for the permit are as follows:

5.3.1 the permit shall expire five years from the date of issuance

5.3.2 at the end of the permit period, the permittee shall remove and destroy all permitted plants, unless the permit is amended and approved by the Department.

5.3.3 If any additional *Ribes* plants are received by the permittee during this period, the permittee shall notify the Department in writing, and include variety information and location of plants.

5.3.4 the permit may be revoked at any time, if the Department determines that the permittee did not follow permit conditions, if plants appear to be a risk of spread of white pine blister rust, or if white pine blister rust is discovered near the permitted location.

5.4 The application is not valid as a permit, unless signed by an authorized Department official.

## **6.0 Inspections**

6.1 Inspections by the Department of Agriculture shall proceed as follows:

6.1.1 the permittee must allow Department access to site where the plants are grown.

6.1.2 the Department may inspect plants at least once each year during the permit period to ensure freedom from white pine blister rust disease.

6.1.3 If, upon inspection, white pine blister rust is found on the *Ribes* plants, the Department will issue a Control or Destruction order, in accordance with Title 3, Chapter 11, and at the permittee's expense.

6.2 Plants used for experimental, educational or scientific purposes are not exempted from these regulations.

## **7.0 Violations**

Any *Ribes* species plants found to have been transported or propagated in violation of these regulations shall be destroyed at the owner's expense by the Department of Agriculture, and the owner assessed a civil penalty, in accordance with §1109(e).

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## **DEPARTMENT OF EDUCATION**

### **OFFICE OF THE SECRETARY**

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

### **REGULATORY IMPLEMENTING ORDER**

#### **525 Requirements for Career and Technical Education Programs**

#### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 525 Requirements for Career and Technical Education Programs to provide flexibility in the scheduling of courses in approved skilled and technical sciences education pathways.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2011, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens requesting further information on the rationale for the change. As noted, this provides additional flexibility for schools in the scheduling of courses. Prior to the amendments, the regulation did not address block scheduling. Many of the high schools have moved to a block scheduling format where a course may not be held for the entire year, but rather fulfilled in a semester. Additionally, the amendments provide for the development of skilled and technical trade course pathways that are less than six credits. This provides flexibility to permit the future offering of skilled and technical pathways in all high schools.

#### **II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 525 Requirements for Career and Technical Education Programs in order to Programs to provide flexibility in the scheduling of courses in approved skilled and technical sciences education pathways and to encourage the development of skilled and technical courses for traditional high school settings.

#### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 525 Requirements for Career and Technical Education Programs. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 525 Requirements for Career and Technical Education Programs attached hereto as *Exhibit "B"* is

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hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 21, 2011. 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 21st day of July 2011.

**Department of Education**

Lillian M. Lowery, Ed.D., Secretary of Education  
Approved this 21st day of July 2011

**State Board of Education**

Teri Quinn Gray, Ph.D., President	Gregory Coverdale
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	James L. Wilson, Ed.D.
Barbara B. Rutt	

**525 Requirements for Career and Technical Education Programs****1.0 Career and Technical Education Programs**

All Career and Technical Education Programs (CTE) shall meet the provisions of Delaware's State Plan for Career and Technical Education and meet the provisions of the content standards approved by the Department of Education or, if there are no approved state content standards, meet local program standards approved by the Department of Education.

**6 DE Reg. 955 (2/1/03)**

**12 DE Reg. 936 (01/01/09)**

**2.0 All Local School Districts and Charter Schools that Offer State Approved Career and Technical Education Programs Shall:**

- 2.1 Meet the requirements within the state plan for the Carl D. Perkins Career and Technical Education Act of 2006.
- 2.2 Have the approval of the Department of Education before implementing new CTE courses and or pathways.
  - 2.2.1 The determination for the minimum number of credits for a pathway shall be based on the content standards as approved under 14 **DE Admin. Code** 501.
- 2.3 Adequately fund, support and sustain the instructional program.
- 2.4 Ensure all teachers are certified in the Career and Technical Education Program areas in which they teach.
- 2.5 Ensure that all teachers meet the Delaware Department of Education (DE DOE) Skilled and Technical Science Standards for the specific career area in which they teach.

- 2.5.1 Such standards may include, but are not limited to, holding a state professional license in the area to be taught; holding an industry recognized certification of technical competence or journeyman status in the specific career area; or additional work experience.
- 2.6 Where appropriate and applicable, ensure that all teachers meet certification requirements for administering the end of Pathway Assessment in the specific career area in which they teach.
- 2.7 Make provisions for meeting the unique needs of all students.
- 2.8 Establish and maintain an active CTE advisory committee which includes labor and management personnel to assist in the development and operation of the program.
- 2.9 Use Department of Labor market projections to determine the need for new and continuing Career and Technical Education Programs.
- 2.10 Assess occupational needs and the availability of placement and employment opportunities for program completers with input from the local CTE advisory committee.
- 2.11 Use the information derived from the Student Success Plan (SSP) portfolio to determine student occupational interests, needs and educational program.
- 2.12 Organize and financially support Career and Technical Student Organizations as integral components of Career and Technical Education Programs in public schools that complement and enrich instruction. The following career and technical student organizations are affiliated in Delaware:
- 2.12.1 Business Professionals of America (BPA)
  - 2.12.2 Technology Student Association (TSA)
  - 2.12.3 DECA, an association of marketing students
  - 2.12.4 Family, Career and Community Leaders of America (FCCLA)
  - 2.12.5 The National FFA Organization
  - 2.12.6 Skills USA
  - 2.12.7 The Delaware Career Association (DCA)
- 2.13 Integrate related academic content into individual career and technical education courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals as documented in the student's SSP.
- 2.14 ~~Schedule skilled and technical sciences (trade and industrial) education programs, when offered, for a minimum of two consecutive periods a day or the equivalent, five days a week for two or more years. For an approved skilled and technical sciences education pathway, beginning with the 2011-12 school year, courses shall be scheduled for a minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled, according to the following schedule:~~
- 2.14.1 Nine (9) Credit Pathway – a minimum of six (6) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled.
  - 2.14.2 Six (6) Credit Pathway – a minimum of four (4) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled; or
  - 2.14.3 Four (4) Credit Pathway – a minimum of two (2) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled; or
  - 2.14.4 Three (3) Credit Pathway – a minimum of two (2) of the pathway course credits shall meet the minimum of two full consecutive periods each day or the equivalent block-scheduled period of no less than 90 minutes each day the course is scheduled.
- 2.15 Establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a Career and Technical Education Program in a career and technical school district.
- 2.16 Use equipment and facilities comparable to that used by local business and industry for which the Career and Technical Education Program is preparing students.

- 2.17 Schedule Department of Education and Delaware Advisory Council on Career and Technical Education Program review and monitoring visits upon request.
- 2.18 Report CTE program data as required by the Delaware Department of Education.
  - 1 DE Reg. 1196 (2/1/98)**
  - 6 DE Reg. 955 (2/1/03)**
  - 8 DE Reg. 1603 (5/1/05)**
  - 9 DE Reg. 1070 (01/01/06)**
  - 12 DE Reg. 439 (10/01/08)**
  - 12 DE Reg. 936 (01/01/09)**

### **3.0 Cooperative Education Programs**

- 3.1 Cooperative Education Programs provide senior Career and Technical Education Program students with coordinated on the job training not ordinarily available in the classroom. During the student's senior year, or under unique circumstances as approved by the Department of Education, employers may provide this on the job training in occupations directly related to the Career and Technical Education Program in which the student is enrolled. For the purpose of granting credit during the school year two hours of Cooperative Education Work Experience shall equal one hour of instructional time. In a summer Cooperative Education Work Experience Program one half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.
- 3.2 In order to qualify for Career and Technical Education funding units the Career and Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Cooperative Education Work Experience Program in order to make at least quarterly visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 3.3 In order to qualify for career and technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 3.4 Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Cooperative Education programs without senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.
- 3.5 In order to qualify for career and technical education funding units the students shall:
  - 3.5.1 Possess minimum occupational competencies specified by the Career and Technical Education Teacher Coordinator before being placed in cooperative employment;
  - 3.5.2 Be in their senior year or otherwise approved pursuant to 3.4;
  - 3.5.3 Be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed Career and Technical Education pathway;
  - 3.5.4 Meet the requirements of 3.1 through 3.4; and
  - 3.5.5 Be supervised through on site visits by an assigned Career and Technical Education Program Teacher Coordinator or Career Guidance Counselor.

- 2 DE Reg. 111 (07/01/98)**
- 6 DE Reg. 955 (02/01/03)**
- 9 DE Reg. 1070 (01/01/06)**
- 12 DE Reg. 439 (10/01/08)**
- 12 DE Reg. 936 (01/01/09)**

### **4.0 Diversified Occupations Programs**

- 4.1 Diversified Occupations Programs provide students with coordinated on the job training not ordinarily available in the classroom. During the student's junior or senior year or under unique circumstances as

approved by the Department of Education, employers provide this on the job training. For the purpose of granting credit during the school year, two hours of work experience in a Diversified Occupations Work Experience Program shall equal one hour of instructional time. In a summer Diversified Occupations Work Experience Program one half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.

- 4.2 In order to qualify for career and technical education funding units a Career Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Diversified Occupations Work Experience Program in order to make at least quarterly on site visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 4.3 In order to qualify for career and technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 4.4 Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Diversified Occupations programs without junior or senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.
- 4.5 In order to qualify for career and technical education funding units the students shall possess minimum readiness competencies as specified by the Career Technical Education Program Teacher Coordinator before being placed in a Diversified Occupations Work Experience Program employment situation, meet the requirements of 4.1 through 4.4 and be actively enrolled in a Diversified Occupations Work Experience Program that meets for at least one class period per week.

**2 DE Reg. 111 (07/01/98)**

**6 DE Reg. 955 (02/01/03)**

**9 DE Reg. 1070 (01/01/06)**

**12 DE Reg. 439 (10/01/08)**

**12 DE Reg. 936 (01/01/09)**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 **Del.C.** §7903(10))

16 **DE Admin. Code** 3201; 3220; 3225; 3230; 3301 & 3315

### ORDER

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Long Term Care Residents Protection initiated proceedings to provide information of public interest with respect to adding provisions to require certain persons to receive dementia specific training. The Department's proceedings were initiated pursuant to **29 Delaware Code Section 101** and its authority as prescribed by **29 Delaware Code Section 7903(10)**.

The Department published its notice of public comment pursuant to **29 Delaware Code Section 10115** in the April 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

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## SUMMARY OF PROPOSED CHANGES

The proposal amends policies regarding Long Term Care Residents Protection to require certain persons to receive dementia specific training as required by the amendment to **29 Del.C. §7903** which added a paragraph (10) directing the DHSS Secretary to adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia.

The proposed changes affect the following policy sections:

- 3201 Skilled and Intermediate Care Nursing Facilities;
- 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants;
- 3225 Assisted Living Facilities (Formerly Regulation No. 63);
- 3230 Rest (Residential) Home Regulations;
- 3301 Group Home Facilities for Persons with AIDS (Formerly Regulation No. 62);
- 3315 Rest (Family) Care Homes

### Statutory Authority

29 Del.C. §7903(10), Powers, duties and functions of the Secretary

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Long Term Care Residents Protection (DLTCRP) has considered each comment and responds as follows.

The proposed regulations for nursing facilities (§5.6.1); assisted living facilities (§5.11); and group home for persons with AIDS (§7.11) omit any requirement that covered providers participate in training "each year."

**Agency Response:** Thank you for your suggestion. The words "each year" are added to the final regulations identified in the comment. The amended regulations are indicated by **[Bracketed Bold Text]**.

"Fourth, it is unclear why the regulation does not address training in the following contexts: 1) group home facilities for persons with mental illness (part 3305); and 2) group home facilities for persons with developmental disabilities (Part 3310). Both types of facilities could house individuals with dementia, including persons with TBI, i.e., dementia due to head trauma (DSM IV, §294.1). The Department may wish to consider whether amendments to these regulations should also be proposed."

**Agency Response:** Thank you for your suggestion. In interpreting HB 159, DHSS identified regulations where we are most likely to have persons providing "direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia." (HB 159). We did not add the dementia training requirement to group home facilities for persons with mental illness and/or developmental disabilities because most often, no one in those group homes will have that diagnosis and staff in the group homes should already be trained to work with the people living in the homes. However, as we learn from the implementation of this requirement, we will consider adding it to these additional regulations.

Carol Lovett offered the following observations and recommendations.

Thank you for all the your work incorporating HB 159 into the regulations I am particularly impressed by the recitation of the several domains for training and I am hopeful that administrators will realize that training will take more than 1 to 2 hours.

**Agency Response:** Thank you for your support.

I recall that at one time we discussed including Hospice Organizations under the scope of HB 159.

It is great that the aides will be trained but I understand from aides that if senior staff is not also trained it becomes difficult for them to use what they have learned. I think there are nurses, LPNs, social workers, clergy etc that work in hospice organizations. It has been the experience of family caregivers with who I have spoken that they also need to be trained. In fact many caregivers have provide dementia training them selves to these folks when they come into their homes.

In 3230 Rest and residential Homes is there staff other than Aides and does the dementia training apply to

other staff. I am not familiar with this venue so I don't know.

Also with the Home Health Agencies and Skilled home Health Agencies are staff other than the Aides required to complete an orientation and continuing education which includes the dementia training.

I think both of these agencies employ LPNs and nurses and the skilled agencies have speech therapists, physical therapists, social workers etc. It was not clear when I read the regulation if all staff was included.

**Agency Response:** Thank you for your suggestion. In interpreting HB 159, DHSS identified regulations where we are most likely to have persons providing "direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia." (HB 159). DHSS staff did not realize there was an intention to include Hospice under HB 159. In reviewing regulations where this requirement would fit, we did not include the training requirement in the Hospice regulations. However, as we learn from the implementation of this requirement, we will consider adding it to these additional regulations. Regarding the questions about what staff exist in different settings and which staff are required to receive the dementia training, the answer varies by provider and setting. Also, DHSS does not have the authority to regulate people in the professions you list. As such, the regulations use the exact language from **29 Del.C. §7903(10)** (HB 159) to make sure that any staff at the facilities or in the agencies who fall under the law's requirement are required to receive the training.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2011 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Long Term Care Residents Protection regulations with respect to adding provisions to require certain persons to receive dementia specific training is adopted and shall be final effective August 1, 2011.

Rita M. Landgraf, Secretary, DHSS

**Please Note: Only those sections of the regulations that are being amended are reproduced below. The complete regulation can be viewed in the Administrative Code.**

### 3201 Skilled and Intermediate Care Nursing Facilities

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

#### 5.0 Personnel/Administrative

- 5.1 The administrator(s) shall be responsible for complying with all applicable laws and regulations.
- 5.2 Each nursing facility shall have a full-time administrator. When an administrator will be temporarily absent for a period of two weeks or more, a management employee shall be designated to be in charge. The Division shall be notified in writing upon such designation.
- 5.3 The nursing facility shall designate a physician to serve as the medical director who shall be responsible for implementation of resident care policies and the coordination of medical care in the facility.
- 5.4 Nursing facilities shall provide professional nursing, nursing services direct care and other services as follows:
  - 5.4.1 Nursing facilities subject to 16 **Delaware Code**, §1161 to §1165 shall provide professional nursing, nursing services direct care and other services in accordance with statutory requirements.
  - 5.4.2 Nursing facilities not subject to 16 **Delaware Code**, §1161 to §1165 shall provide professional nursing, nursing services direct care and other services as follows:
    - 5.4.2.1 The facility shall provide a sufficient number of nursing services direct care staff to provide a minimum of 2.25 hours of direct care and treatment per resident per day.
    - 5.4.2.2 In addition to the requirement above, the nursing facility shall have a full-time director of nursing who is a registered nurse. The director of nursing shall have overall responsibility for the coordination, supervision and provision of nursing services.

- 5.4.2.3 At a minimum, a registered nurse or licensed practical nurse shall be on duty at all times during the first and second shifts.
  - 5.4.2.4 At a minimum, in the absence of a nurse on the third shift, a registered nurse or licensed practical nurse shall be on call.
  - 5.4.2.5 Facilities not subject to 16 **Delaware Code**, §1164 may increase the level of care and services for a current resident whose condition requires such an increase in the level of care and services as an alternative to discharge to another facility. Such increased care and services shall be provided by a qualified caregiver(s) whose scope of practice includes the provision of such care and services, and shall be available during any shift when the resident's needs require such care and services.
  - 5.4.2.6 All other nursing services direct caregivers shall be certified nursing assistants.
  - 5.4.2.7 The facility shall employ an activities director who shall ensure the provision of activities as described in these regulations.
- 5.5 The facility shall have written personnel policies and procedures. Personnel records shall be kept current and available for each employee, and include the following:
- 5.5.1 Results of tuberculosis screening
  - 5.5.2 Documentation of annual influenza vaccination or refusal.
  - 5.5.3 Results of criminal background check
  - 5.5.4 Results of mandatory drug testing
  - 5.5.5 Result of Adult Abuse Registry check
  - 5.5.6 Titles and hours of in-service training
  - 5.5.7 If applicable, license number and expiration date
  - 5.5.8 If applicable, certification expiration date
- 5.6 Dementia Training
- 5.6.1 Nursing facilities that provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall provide dementia specific training [each year] to those healthcare providers who must participate in continuing education programs. This section shall not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 of the Delaware Code.
  - 5.6.2 The mandatory training must include: 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.

**13 DE Reg. 1322 (04/01/10)****3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants***(Break in Continuity of Sections)***2.0 General Training Requirements And Competency Test**

Each Nursing Assistant/Certified Nursing Assistant employed by any nursing facility either as contract/ agency or facility staff shall be required to meet the following:

- 2.1 An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.
- 2.2 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.
- 2.3 Nursing Assistants shall take the competency test within 30 days of completion of an approved program. Nursing assistants who fail to obtain a passing score may repeat the test two additional times. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test. The certificate of completion of an approved program,

a prerequisite to testing, must be dated within 24 months of the available testing date. Nursing assistants who are trained in a facility and are counted for staffing purposes pursuant to 16 Del.C. §1162(f) must pass the test within 90 days of completion of the facility program to continue to be counted in staffing calculations.

- 2.4 In order to qualify for recertification, a CNA must, during each 24 month certification period: (1) complete 24 hours of approved continuing education, and (2) perform at least 64 hours of nursing related services for pay under the supervision of a licensed nurse or physician. A CNA who does not perform at least 64 hours of nursing related services in a certification period or fails to complete the required continuing education must pass the competency test again. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before additional testing will be permitted.
- 2.4.1 A CNA who provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall annually receive dementia specific training that must include: 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.
- 2.5 A Certified Nursing Assistant trained and certified outside the State of Delaware in a program that equals or exceeds the federal nurse aide training program requirements in the Code of Federal Regulations §483.152 cannot work in Delaware without a Delaware certificate. Delaware certification is required prior to being employed as a CNA. The Department will grant reciprocity if the following conditions are met:
- 2.5.1 The CNA must have a current certificate from the jurisdiction where he or she currently practices, except that candidates from the State of Maryland must hold a current Geriatric Nursing Assistant certificate.
- 2.5.2 The CNA must have 3 months of full-time experience as a CNA performing nursing related services for pay under the supervision of a licensed nurse or physician, or have completed a training and competency evaluation program with the number of hours at least equal to that required by the State of Delaware.
- 2.5.3 The CNA must be in good standing in the jurisdiction where he/she is currently certified.
- 2.5.4 The CNA submits \$30 to the Department to cover the costs associated with granting the reciprocity.
- 2.6 Nursing students who are currently enrolled in a nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a 75 hour clinical component in a long term care setting will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.
- 2.7 Nursing students who have graduated from an RN or LPN program within 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training and competency evaluation program requirements and are eligible for certification upon submission of a sealed copy of their diploma. Individuals who have graduated from an RN or LPN program more than 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training program requirements and are eligible to take the competency test upon submission of a sealed copy of their diploma.
- 2.8 For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program may be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.
- 2.9 A nursing assistant who is employed by, or who has received an offer of employment from, a federally certified nursing facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program including tuition, any tests taken and fees for textbooks or other required course materials.

- 2.10 If a Certified Nursing Assistant who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a federally certified nursing facility not later than 12 months after completing a nurse aide training and competency evaluation program, the federally certified nursing facility shall reimburse all documented personally incurred costs in completing the program. Facilities shall accept as documentation canceled checks, paid receipts, written verification from a training program or other written evidence which reasonably establishes the CNA's personally incurred costs. Such costs include tuition, tests taken and fees for textbooks or other required course materials. Such costs shall be reimbursed in equal quarterly payments with full reimbursement to coincide with the CNA's completion of one year of employment including the orientation period.
- 2.11 Any nursing facility which reimburses a Certified Nursing Assistant for documented personally incurred costs of a nurse aide training and competency evaluation program shall notify the Division of Long Term Care Residents Protection of such reimbursement. Notice of such reimbursement shall be entered in the CNA Registry database and information regarding such reimbursement shall be available to facilities upon request.

**6 DE Reg. 1505 (5/1/03)**

**8 DE Reg. 1014 (1/1/05)**

**14 DE Reg. 169 (09/01/10)**

### **3225 Assisted Living Facilities**

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

#### **5.0 General Requirements**

- 5.1 All written information provided by the assisted living facility including the written application process shall be accurate, precise, easily understood and readable by a resident, and in compliance with all applicable laws. If an applicant is rejected the facility shall provide clear reasons for the rejection in writing upon request.
- 5.2 All records maintained by the assisted living facility shall at all times be open to inspection and copying by the authorized representatives of the Department, as well as other agencies as required by state and federal laws and regulations. Such records shall be made available in accordance with **16 Del.C. Ch. 11, Subchapter I.**, Licensing by the State.
- 5.3 The assisted living facility shall adopt internal written policies and procedures pursuant to these regulations. No policies shall be adopted by the assisted living facility which are in conflict with these regulations.
- 5.4 The assisted living facility shall establish and adhere to written policies and procedures regarding the rights and responsibilities of residents, and these policies and procedures shall be made available to authorized representatives of the Department, facility staff, and residents.
- 5.5 The assisted living facility shall develop and adhere to policies and procedures to prevent residents with diagnosed memory impairment from wandering away from safe areas. However, residents may be permitted to wander safely within the perimeter of a secured unit.
- 5.6 The assisted living facility shall arrange for emergency transportation and care.
- 5.7 Inspection summaries and compliance history information shall be posted by the facility in accordance with **16 Del.C. Ch. 11, Subchapter I.**, Licensing by the State.
- 5.8 An assisted living facility shall recognize the authority of a representative acting on the resident's behalf pursuant to Delaware law, as long as such representative does not exceed his/her authority. The facility shall request and keep on file any documents such as an advance directive, living will, do not resuscitate, and power(s) of attorney.
- 5.9 An assisted living facility shall not admit, provide services to, or permit the provision of services to individuals who, as established by the resident assessment:
- 5.9.1 Require care by a nurse that is more than intermittent or for more than a limited period of time;

- 5.9.2 Require skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or reasonable potential of, an acute episode unless there is an RN to provide appropriate care;
- 5.9.3 Require monitoring of a chronic medical condition that is not essentially stabilized through available medications and treatments;
- 5.9.4 Are bedridden for more than 14 days;
- 5.9.5 Have developed stage three or four skin ulcers;
- 5.9.6 Require a ventilator;
- 5.9.7 Require treatment for a disease or condition which requires more than contact isolation;
- 5.9.8 Have an unstable tracheostomy or have a stable tracheostomy of less than 6 months' duration;
- 5.9.9 Have an unstable peg tube;
- 5.9.10 Require an IV or central line with an exception for a completely covered subcutaneously implanted venous port provided the assisted living facility meets the following standards:
  - 5.9.10.1 Facility records shall include the type, purpose and site of the port, the insertion date, and the last date medication was administered or the port flushed.
  - 5.9.10.2 The facility shall document the presence of the port on the Uniform Assessment Instrument, the service plan, interagency referrals and any facility reports,
  - 5.9.10.3 The facility shall not permit the provision of care to the port or surrounding area, the administration of medication or the flushing of the port or the surgical removal of the port within the facility by facility staff, physicians or third party providers;
- 5.9.11 Wander such that the assisted living facility would be unable to provide adequate supervision and/or security arrangements;
- 5.9.12 Exhibit behaviors that present a threat to the health or safety of themselves or others, such that the assisted living facility would be unable to eliminate the threat either through immediate discharge or use of immediate appropriate treatment modalities with measurable documented progress within 45 days; and
- 5.9.13 Are socially inappropriate as determined by the assisted living facility such that the facility would be unable to manage the behavior after documented, reasonable efforts such as clinical assessments and counseling for a period of no more than 60 days.
- 5.10 The provisions of section 5.9 above do not apply to residents under the care of a Hospice program licensed by the Department as long as the Hospice program provides written assurance that, in conjunction with care provided by the assisted living facility, all of the resident's needs will be met without placing other residents at risk.
- 5.11 The Assisted Living facility shall cooperate fully with the state protection and advocacy agency, as defined in 16 **Del.C.** §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.
- 5.12 An assisted living facility that provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall provide dementia specific training [each year] to those healthcare providers who must participate in continuing education programs. The mandatory training must include: 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. This paragraph shall not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 of the Delaware Code.

8 DE Reg. 85 (7/1/04)

13 DE Reg. 1328 (04/01/10)

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

**7.0 Personnel/Administrative**

- 7.1 Administrator:
- 7.1.1 All administrators must be licensed by the Board of Examiners of Nursing Home Administrators. The administrator must be a full-time employee in facilities of 25 beds or more. Facilities with less than 25 beds but more than 8 must have an administrator on duty at least 4 hours per day, 5 days per week. Supervision by a licensed Nursing Home Administrator is not required for facilities with 4 to 8 beds inclusive. When a facility provides two or more categories of care, the criteria for the highest level of care would determine the administrator requirements for the entire facility.
  - 7.1.2 The administrator enforces the rules and regulations relating to the level of health care and safety of residents, and to the protection of their personal and property rights.
  - 7.1.3 The administrator plans, organizes and directs the overall responsibilities of the facility.
  - 7.1.4 The administrator of resident care facilities shall be physically and mentally capable of performing his duties and responsibilities, and not guilty of a felony or misdemeanor which might affect the operation of the facility.
  - 7.1.5 In the absence of the administrator, an employee shall be authorized in writing, to act on the administrator's behalf.
- 7.2 A staff of persons sufficient in number and adequately trained to meet the requirements of the residents shall be employed, to maintain at least 1.75 hours direct care per twenty-four (24) hour period, per resident.
- 7.3 The institution shall have written personnel policies and procedures that support sound residential care. An application for employment and personnel records shall be maintained for all employees.
- 7.4 Each person, including volunteers, who is involved in the care of residents shall have a screening test for tuberculosis as a prerequisite to employment. Either a negative intra-dermal skin test or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement. A report of this test shall be on file at the facility of employment.
- 7.5 No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the County Health Officer.
- 7.6 Separate bathroom facilities shall be provided for the staff.
- 7.7 Adequate facilities shall be provided for the orderly storage of employee's clothing and personal belongings.
- 7.8 Nurse Aide/Nurse Assistant Requirements
- Each nurse aide/nurse assistant employed by any nursing home either as contract/agency or facility staff as of October 1, 1990, shall be required to meet the following:
- 7.8.1 Training/Testing
    - 7.8.1.1 Nurse aide/nurse assistant shall complete a nurse aide training course approved by Delaware State Board of Nursing and by the Division of Public Health.
    - 7.8.1.2 Nurse aide/nurse assistant is required to pass competency evaluation test approved by State of Delaware.
    - 7.8.1.3 Employees of Delaware nursing homes shall be duly certified within 4 months of employment.
    - 7.8.1.4 Contract aides must be certified prior to placement in any nursing home.
  - 7.8.2 A nurse aide/nurse assistant who has not performed nursing related services for pay for a continuous 24 month period after completion of a training and testing program, must complete and pass a new training and competency evaluation (testing) program.
  - 7.8.3 A nurse aide/nurse assistant who has not been employed in a health care setting for three years will be required to meet the requirements in section 7.8.1 above.
  - 7.8.4 A nurse aide/nurse assistant trained and certified outside the State of Delaware may be deemed qualified to meet the Board of Health requirements based on a case by case review and approval.
  - 7.8.5 Employees hired as nurse aide/nurse assistant who are currently enrolled in a nursing program and have satisfactorily completed the fundamentals of nursing course with a clinical component will be deemed to meet the training and testing requirements. These individuals will be approved

with submittal of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.

- 7.8.6 A nurse aide/nurse assistant who provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall annually receive dementia specific training that must include: 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.

### 3301 Group Home Facilities for Persons with AIDS

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

## 7.0 Personnel/Administrative

- 7.1 There must be a licensee of the facility. The licensee must:
- 7.1.1 Exercise general policy, budget, and operating direction over the facility;
- 7.1.2 Appoint the administrator of the facility who shall have:
- 7.1.2.1 An associates degree or higher from an accredited college or university plus three (3) years experience in a health or human services field; or
- 7.1.2.2 A bachelor's degree or higher in a health, business, or related field and a minimum of one year's work experience in a health or human service field.
- 7.1.2.3 Insure all operations of the group home facility are conducted in accordance with these regulations and applicable Federal, state and local laws and requirements.
- 7.2 The licensee and the administrator shall be responsible for complying with the regulations herein contained. In the absence of the administrator, a qualified substitute shall be authorized, in writing, to be in charge.
- 7.3 The administrator must be on duty and on site in the home a minimum of four (4) hours a day, five (5) days a week.
- 7.4 In addition to the staff engaged in the direct care and treatment of residents, there must be sufficient personnel to provide basic services such as: food service, laundry, housekeeping and plant maintenance. Nursing service personnel shall not be engaged in food service, laundry, housekeeping and plant maintenance.
- 7.5 All personnel shall submit to and pass a criminal background check and drug testing in accordance with **16 Del.C. Ch. 11, Subchapter IV.**, Criminal Background Checks and Mandatory Drug Testing.
- 7.6 No employee shall be less than 18 years of age and no person shall be employed who has been convicted of a disqualifying crime as set forth in the Criminal Background Check regulations of the Division of Long Term Care Residents Protection.
- 7.7 The facility shall have written personnel policies and procedures that adequately support sound resident care. Personnel records of each employee shall be kept current and available upon request by the Division representatives and shall contain sufficient information to support placement in the positions to which assigned.
- 7.8 Minimum requirements for employee physical examinations include:
- 7.8.1 The facility shall have on file results of tuberculin tests performed annually for all employees, including volunteers who are involved in the care of residents. The tuberculin test to be used is the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to employment or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement for asymptomatic individuals. A report of this skin test shall be kept on file.

- 7.8.2 Employees who do not have a significant reaction to the initial tuberculin test (those individuals who have less than 10 mm induration) should be retested within 7 - 21 days to identify those who demonstrate delayed reactions. Tests done within one year of a previous test need not be repeated in 7 -21 days.
- 7.8.3 No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care and service to residents.
- 7.9 Each applicant of a group home must have a medical evaluation for tuberculosis before being admitted to a group home. Any resident found to have active tuberculosis in an infectious stage may not be admitted or continue to reside in a group home.
- 7.10 The licensee shall approve written policies and procedures pertaining to the services the group home provides. Such policies and procedures should reflect the philosophy and objectives of the home to provide on a continuing basis good medical, nursing and psychosocial care for all persons admitted to the home who require such care, Such policies and procedures shall reflect the requirements of Section 62.7 and include:
- 7.10.1 Admission, transfer and discharge policies
  - 7.10.2 Categories of residents accepted or not accepted
  - 7.10.3 Physician services
  - 7.10.4 Nursing services
  - 7.10.5 Food and nutrition services including kitchen sanitation, food handling and storage
  - 7.10.6 Rehabilitative services
  - 7.10.7 Pharmaceutical services
  - 7.10.8 Diagnostic services
  - 7.10.9 Housekeeping services
  - 7.10.10 A written policy and procedure denoting care of residents
    - 7.10.10.1 In an emergency
    - 7.10.10.2 During a communicable disease episode
    - 7.10.10.3 In case of critical illness or mental disturbance
  - 7.10.11 Dental services
  - 7.10.12 Social services
  - 7.10.13 Resident activities, recreational, social, religious
  - 7.10.14 Clinical records
  - 7.10.15 Fire and safety policies
  - 7.10.16 Advance directives to include:
    - 7.10.16.1 On admission, inform residents in writing of their right 1) to accept or refuse treatment, 2) to give written instructions concerning their care and 3) to appoint an agent or proxy to make health cue decisions.
    - 7.10.16.2 Documenting in medical records whether or not residents have executed advance directives.
    - 7.10.16.3 Ensuring compliance with requirements of state law on advance directives.
    - 7.10.16.4 Providing education for staff on issues concerning advance directives.
  - 7.10.17 Infection control.
- 7.11 A group home that provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall provide dementia specific training [each year] to those healthcare providers who must participate in continuing education programs. The mandatory training must include: 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. This paragraph shall not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 of the Delaware Code.

**5 DE Reg. 1079 (11/1/01)**

## 3315 Rest (Family) Care Homes

*(Break in Continuity of Sections)***4.0 General Requirements**

- 4.1 Each resident shall be given a physical/medical examination within ninety (90) days prior to placement and at least every three (3) years thereafter and/or more frequently as required by the Affiliated Social Agency/Program or the Division of Public Health.
- 4.2 A statement of level of care of the resident will be issued prior to placement and at least yearly thereafter. Determination of level of care will be done by a nursing representative of the Division of Public Health.
- 4.3 All required records maintained by the home shall be open to inspection by authorized representatives of the Division of Public Health and/or affiliated agency.
- 4.4 The term "Rest (Family Care) Home" shall not be used as a part of the name of any institution in this State unless it has been so classified by the Division of Public Health.
- 4.5 A home classified under these regulations shall not admit any person under the age of eighteen (18) as a resident unless approved by the State Board of Health.
- 4.6 The care provider family members shall not utilize the same sleeping quarters as the residents.
- 4.7 No rules shall be adopted by the licensure or care provider and/or Affiliated social Agency/Program of any home which are -in conflict with these regulations.
- 4.8 The Division of Public Health shall be notified in writing of any changes in ownership or care provider.
- 4.9 Each licensed home shall have a care provider and/or separate designee who will be responsible for the supervision of that home.
- 4.10 All Rest (Family Care) Homes will be under the supervision of a full-time care provider. The care provider will not leave the premises for a sustained period of time (greater than 12 hours) without delegating necessary duties to a responsible adult whose name is known on file. The Office of Health Facilities Licensing and Certification, Division of Public Health, is to be notified in case of extended absence (over one (1) week).
- 4.11 Each licensed home shall cooperate fully with the state protection and advocacy agency, as defined in 16 **Del.C.** §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.
- 4.12 A care provider that provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall receive 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.

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 13000, 14000, 16000, 17000 & 20000

**ORDER**

**DSSM: Amendments relating to the use of respectful language as required by House Bill 91**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding *respectful language*. The Department's proceedings to amend its regulations were initiated pursuant to **29 Delaware Code Section 10113** and its authority as prescribed by **31 Delaware Code Section 512**.

**NATURE OF THE EXEMPT REGULATION:**

The proposed is an exempt regulation that provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend certain provisions of the Division of Social Services Manual (DSSM) to align with House Bill 91 relating to the use of *respectful language* when referring to individuals with disabilities.

**Exempt Regulation**

The following regulatory action is exempt from the Administrative Procedures Act in accordance with 29 Delaware Code, Ch 101, §10113(b)(4), which exempts from the procedural requirements of the Administrative Procedures Act (APA) regulations for nonsubstantive changes in existing regulations to alter style or form or to correct technical errors.

**Citation**

**29 Del.C. §10113**, *Adoption of Regulations; Exemptions*

**Statutory Authority**

This regulatory action is in compliance with the legislative intent of the 146<sup>th</sup> General Assembly's House Bill 91 affecting various administrative rules of the state of Delaware.

**Summary of Proposal**

Consistent with House Bill 91 and the Department's focus on respectful language, the Division of Medicaid and Medical Assistance proposes replacing obsolete terminology as clerical revisions to the Administrative Code. For example, previous references to "disabled person" and "developmentally disabled individuals" now say "individual with a disability" and "individuals with a developmental disability". These changes do not alter the sense, meaning or intent of the rules.

The proposed changes affect the following policy sections:

**13110**, *National Perspective*

**13433**, *Recipients of Mandatory State Supplementary Payments*

**13436**, *1619(b) Eligibles*

**13438**, *Disabled Widows/Widowers (Age 50-59)*

**13439**, *Adult Disabled Children*

**13441**, *Disabled Children*

**13640**, *The Social Security Administration*

**13760**, *The Division of Developmental Disabilities Services (DDDS)*

**14100.5**, *Timely Determination of Eligibility*

**14530**, *Medicaid Eligibility/Disability*

**14920.5**, *Retroactive Eligibility Determination*

**16240**, *Composition of Budget Units*

**17130**, *1619(b) Eligibles*

**17140**, *"Pickle Amendment" – Loss of SSI Benefits Due to COLA Increases*

**17140.1**, *Eligibility Determination*

**17155**, *Disable Widows/Widowers (Age 50-59)*

**17160**, *Adult Disabled Children*

**17170**, *Section 4913 Disabled Children*

**17909**, *Earned Income Exclusions*

**20102.2.2**, *Medical Review Team*

**20350.1.6**, *For the Sole Benefit of*

**20350.10.2**, *Exceptions to Transfer of an Asset*

**20400.9.1.1**, *Treatment of Special Needs Trust*

**20400.9.2**, *Pooled Trust for the Disabled*

**20400.9.2.1**, *Conditions to Qualify as Exempted Pooled Trust*

**20400.10**, *Treatment of Funds Entering and Leaving an Exempted Trust for a Disabled Individual*

**20400.10.1**, *Exempted Trust for a Disabled Individual Established with the Individuals Own Income; and,*

**20400.10.2**, *Exempted Trust for a Disabled Individual Established in Part or in Whole with Resources.*

**Fiscal Impact Statement**

The proposed revisions impose no increase in cost on the General Fund.

**FINDINGS OF FACT:**

The Department finds that these changes are exempt from the procedural requirements of the Administrative Procedures Act (Title 29 Chapter 101).

**THEREFORE, IT IS ORDERED**, that the proposed revisions to make minor, technical and conforming changes to replace obsolete terminology with *people first - respectful language* be adopted informally as an exempt regulation and shall become effective August 10, 2011.

Rita M. Landgraf, Secretary, DHSS

**DMMA PROPOSED REGULATION #11-31  
REVISION:****13110 National Perspective**

In 1933, the Federal Relief Administration made funds available to states to pay for the medical expenses of the unemployed in need of medical care. When the Social Security Act was passed in 1935, it did not include any dollars specifically targeted for medical care. By the end of the 1930's, the Social Security Act had been amended to provide federal funds for medical care to specific segment of the population such as maternal and child health and aid to the aged.

The Social Security Act was amended in 1965 to include Medicare and Medicaid. The Medicaid program was created by Title XIX of the Social Security Act "for the purpose of enabling each State to furnish medical assistance on behalf of families with dependent children and of aged, blind or ~~disabled~~ individuals with a disability whose income and resources are insufficient to meet the cost of necessary medical services...".

At its inception, the Medicaid program defined eligible groups and services that were mandated for coverage in order to receive any Federal funding. In addition, individual States could elect to cover a limited number of optional groups and services for which they would receive a federal match on State dollars. With the passage of years, the Federal government has expanded the pool of mandatory and optional groups and services for Medicaid coverage.

*(Break in Continuity of Sections)*

**13433 Recipients Of Mandatory State Supplementary Payments**

When the Federal SSI program was implemented in 1974, states were mandated to provide supplemental payments to individuals aged, blind ~~and or disabled~~ ~~individuals~~ who would get less money under SSI than they got under the Old Age Assistance (OAA), Aid to the Blind (AB), and Aid to the Disabled (AD) programs formerly administered by the states. Delaware still has a few individuals who get mandatory state payments and they are eligible for Medicaid.

*(Break in Continuity of Sections)*

**13436 1619(B) Eligibles**

Prior to 1981, some ~~severely disabled~~ individuals with severe disabilities lost SSI and Medicaid due to employment. The loss of Medicaid often meant that the individuals could no longer afford their medical care and were forced to quit their jobs and go back on SSI to assure Medicaid coverage. An amendment to the Social Security Act, Section 1619(b) was passed to allow these individuals to retain their Medicaid coverage while they continued working. These clients are referred to as "1619(b)s." The Social Security Administration determines eligibility for this group.

*(Break in Continuity of Sections)*

**13438 ~~Disabled~~ Widows/Widowers with Disabilities (Age 50-59)**

These are certain ~~disabled~~ widow(er)s with disabilities who lose SSI/SSP because they began receiving Title II

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Social Security disabled widows benefits. They are deemed to be SSI recipients for Medicaid purposes until they are entitled to Medicare. They must meet SSI income and resource limits. The widow/widower benefit is disregarded.

**13439 ~~Adult Disabled~~ Children with Disabilities**

Individuals eligible under this category are over age 18 and became disabled before the age of 22. They lost SSI due to income drawn from the SSA account of an aged, blind disabled or deceased parent.

Eligibility is the same as for SSI except that the SSA benefit is disregarded for Medicaid eligibility.

*(Break in Continuity of Sections)*

**13441 ~~Disabled~~ Children with Disabilities**

~~Disabled~~ Children with disabilities under age 19 who require an institutional level of care, but can be cared for cost-effectively at home, may be covered.

*(Break in Continuity of Sections)*

**13640 The Social Security Administration (SSA)**

The Social Security Administration (SSA) is responsible for determining Medicaid eligibility under Section 1634 of Title XVI of the Social Security Act for individuals aged, blind ~~and or~~ disabled ~~individuals~~. This is accomplished by determining eligibility for Supplemental Security Income (SSI) which automatically qualifies an eligible individual for Medicaid in Delaware. SSA also determines eligibility for State Supplementary Payments (SSP) for individuals residing in adult residential care arrangements.

In addition, DHSS has an agreement with SSA for Medicaid to purchase Medicare coverage on behalf of certain Medicaid eligible persons. This is known as the "Buy-In Agreement."

SSA's responsibilities include providing any needed information on an SSI or SSP applicant to:

- A. determine retroactive Medicaid eligibility,
- B. make appropriate payments for Medicare Part B, and in some cases, Part A premiums,
- C. assure that Medicaid has complete third party insurance information, and
- D. give DHSS accurate and up-to-date information on the amount of SSA, SSI and SSP benefits for each eligible individual.

*(Break in Continuity of Sections)*

**13760 The Division of Developmental Disabilities Services (DDDS)**

This division is administratively responsible for the care of patients in Stockley Center ICF/MR Group Homes. Medicaid is primary funding source for much of this care. The Division also manages the Home and Community-Based Waiver for the ~~Mentally Retarded~~ developmentally disabled, a Medicaid funded program that has as its goal the deinstitutionalization of ~~developmentally disabled~~ individuals with a developmental disability who can be maintained in a supportive community setting.

*(Break in Continuity of Sections)*

**14100.5 Timely Determination Of Eligibility**

The following Federal standards have been established for determining eligibility and informing applicants of the decision:

a. Ninety days for applicants who apply for Medicaid on the basis of disability. This includes long term care and ~~Disabled Children~~ Children's Community Alternative Disability Program.

b. Forty-five days for all other applicants.

These standards equal the period from the application filing date or stamping of application to the date that the notice of decision is mailed. The standards must be met except in unusual circumstances, such as:

a. A decision cannot be made because the applicant, his representative or his physician delays or fails to take a required action.

b. There is an administrative or other emergency beyond the Division's control.

The time standards must not be used as a waiting period before determining eligibility or as a reason for denying eligibility (because a decision has not been reached within the required time). Decision on applications should be made as quickly as possible, but if the final determination does not fall within the prescribed limits, the record must have documentation of the reasons for delay.

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

**14530 Medical Eligibility/Disability**

Certain eligibility groups require a medical professional to certify that an applicant meets the specific program definition of medical need or disability. Examples are:

- pregnant women must have proof of pregnancy
- ~~disabled~~ children with a disability must meet disability and level of care requirements
- long term care applicants must meet level of care requirements

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

**14920.5 Retroactive Eligibility Determination**

If the client is potentially eligible for or enrolled in the *Diamond State Health Plan* or *Diamond State Partners*, the worker will not do an eligibility determination.

If the individual is eligible for retroactive coverage, the worker must determine that the date of service falls within the three months prior to the month of application and that the individual meets the financial and technical eligibility requirements under MAO, TANF/AFDC, SSI, or GA. The individual does not have to meet the TANF/AFDC requirement to cooperate with child support. Retroactive coverage for ~~disabled children~~ Children's Community Alternative Disability Program must be approved by the Medical Review Team. Verify income or resources on DCIS if available. If information is not on DCIS, accept the individual's declaration on the application.

Obtain information about third party liability information and forward to the TPL Unit.

A notice of Retroactive Medicaid Approval or Denial will be used to inform the client of the agency's disposition of the request for retroactive coverage. The client should be aware that even those bills submitted for payment may not be reimbursed by Medicaid (i.e., service not covered by Medicaid).

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

**16240 Composition of Budget Units**

The budget unit is composed of various adults who are legally/financially responsible for each other and various children (related or unrelated) for whom the adults have legal responsibility or for whom the adults have accepted parental-like responsibility.

One family and/or household may be composed of one or more budget units and an individual may belong to more than one budget unit. The budget unit must exclude any individual who is receiving SSI. Any individual who is receiving assistance under TANF, GA, ~~Disabled Children~~ Children's Community Alternative Disability Program, HCBS, QMB, SLMB, or other Medicaid only group may be included or excluded from the budget unit. If the income of the individual who is receiving medical assistance under another eligibility group makes another individual ineligible, we will exclude the individual who is receiving assistance under another eligibility group.

- The budget unit may be modified to exclude related individuals with income except:
- a parent is always financially responsible for the minor (under age 18) natural/adopted, non-emancipated child,
- a spouse is always financially responsible for a spouse,
- unmarried partners with a mutual child (child in common) are always financially responsible for the child. Neither partner is responsible for the other, even though both parents are responsible for their mutual child.

NOTE: The parent, spouse, or partner may be excluded from the poverty level budget unit if he or she is receiving assistance under another Medicaid group.

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

**17130 1619 (b) Eligibles**

~~Disabled~~ Individuals with Disabilities\* who lose their financial eligibility for SSI due to obtaining employment may continue to be eligible for Medicaid if:

- the individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be eligible for SSI, and
- the individual, except for his earnings, continues to meet all non- disability- related requirements for eligibility for SSI, and
- the loss of Medicaid benefits would seriously inhibit his ability to continue employment, and
- the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits available under Medicaid.

\*Effective May 1991, the age restriction was lifted. 1619(b)'s will not lose their Medicaid eligibility at age 65.

*(Break in Continuity of Sections)*

**17140 "Pickle Amendment" - Loss of SSI Benefits Due to COLA Increases**

Medicaid benefits are continued for certain aged, blind or ~~disabled~~ persons with disabilities who become ineligible for SSI benefits or State Supplementary Payments (SSP) due to cost of living adjustments (COLA) in RSDI benefits paid under Title II of the Act.

For purposes of this provision, "supplementary payments" include any optional or mandatory State Supplementary Payments.

**17140.1 Eligibility Determination**

Effective July 1, 1977, Medicaid coverage will be provided (under the same terms and conditions as for SSI/SSP recipients in the State) to an aged, blind or ~~disabled~~ person with a disability who:

- is currently eligible for RSDI benefits under Title II of the Act,
- becomes ineligible for SSI benefits or State Supplementary Payments (SSP),
- received SSI and Title II (SSA) benefits concurrently, and
- would still be eligible for SSI/SSP benefits if the amount of his/her (or spouse's) COLA were deducted from income.

Benefits under this regulation are limited to persons who received SSI/SSP and SSA concurrently and who would still be eligible for SSI/SSP but for their SSA COLAs received since they lost eligibility for SSI/SSP.

Only COLAs are disregarded; any other increase in RSDI benefits must not be disregarded.

Only those COLAs which occurred after April 1977, and which were received since loss of SSI/SSP eligibility will be disregarded in determining continuing Medicaid eligibility.

\* Any COLA received by an ineligible spouse or responsible relative of the aged, blind or ~~disabled~~ person with a disability, since that individual lost SSI eligibility must also be disregarded.\*

*(Break in Continuity of Sections)*

**17155 ~~Disabled~~ Widows/Widowers with Disabilities (Age 50-59)**

Section 5103 of the Omnibus Budget Reconciliation Act (OBRA) 1990 created this group of Medicaid eligibles effective January 1, 1991. These are certain ~~disabled~~ widow(er)s with disabilities who lose SSI/SSP because they began receiving Title II Social Security disabled widows benefits. They are deemed to be SSI recipients for Medicaid purposes until they are entitled to Medicare.

*(Break in Continuity of Sections)*

**17160 Adult ~~Disabled~~ Children with Disabilities**

Section 1634(c) of the Social Security Act states:

"(c) If any individual who has attained the age of 18 and is receiving benefits under this title on the basis of blindness or a disability which began before he or she attained the age of 22--

- becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 202(d) on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and
- ceases to be eligible for benefits under this title because of such child's insurance benefits or because of the increase in such child's insurance benefits,
- such individual shall be treated for purposes of title XIX as receiving benefits under this title so long as he or she would be eligible for benefits under this title in the absence of such child's insurance benefits or such increase."

The policy allows for certain former recipients of Supplemental Security Income (SSI) to continue to receive Medicaid after their SSI benefits have terminated.

*(Break in Continuity of Sections)*

**17170 Section 4913 ~~Disabled~~ Children with Disabilities**

Section 4913 of the Balanced Budget Act (BBA) provides that children who were receiving SSI payments on August 22, 1996, and who but for the enactment of the new disability definition under § 211(a) of the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA), would continue to be paid SSI, are mandatory categorically eligible for Medicaid. This provision is effective for those children who lose their SSI payment on or after July 1, 1997.

*(Break in Continuity of Sections)*

**17909 Earned Income Exclusions**

Monthly earned income exclusions are applied in the following order:

1. Earned income of ~~disabled student~~ children with disabilities that are also students (under age 18) up to the student earned income exclusion monthly limit, but not more than the student earned income exclusion yearly limit. These limits are updated annually by the Social Security Administration.
2. \$20.00 general income exclusion
3. \$65.00 of earned income
4. Earned income of ~~disabled~~ individuals with disabilities used to pay impairment-related work expenses. Expenses must be directly related to the individual's impairment. These are the costs paid by the individual for certain items and services that he or she needs in order to work even though such items and services are also needed for normal daily activities. Examples include but are not limited to the cost of certain attendant care services, dog guide, modified audio/visual equipment, specialized keyboards, and vehicle modification. The expense cannot be one that a similar worker without a disability would have, such as uniforms. The expenses are subject to reasonable limits. The amount paid will be considered reasonable if it does not exceed the standard or normal cost for the same item or service in the individual's community.
5. One-half of remaining earned income

*(Break in Continuity of Sections)*

**20102.2.2 Medical Review Team**

The Medical Review Team determines the level of care for the following groups:

- individuals seeking out of state inpatient rehabilitation hospital care,
- superskilled Reimbursement level of care,
- ~~Disabled Children's Program~~ Children's Community Alternative Disability Program.

A MAP-25 (Comprehensive Medical Report) is completed by the attending physician and is submitted to the State Office Medical Review Team along with any supporting documentation for approval.

*(Break in Continuity of Sections)*

**20350.1.6 For the Sole Benefit of Requirement**

A transfer is considered to be for the sole benefit of a spouse, child who is blind or disabled child, or an disabled individual with a disability if the transfer is arranged in such a way that no individual or entity except that spouse, child who is blind or disabled child, or an disabled individual with a disability can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

A transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse, child who is blind or disabled child, or an disabled individual with a disability is not considered to be established for the sole benefit of one of these individuals. In order for a transfer to be considered to be for the sole benefit of one of these individuals, the instrument document must provide for the spending of the funds involved for the benefit of the individual on a basis that is actuarially sound based on the life expectancy of the individual involved.

An exception to the "for the sole benefit of" requirement exists for certain trusts. Under these exceptions, the trust instrument must provide that any funds remaining in the trust upon the death of the individual must go to the State, up to the amount of Medicaid benefits paid on the individual's behalf. In these instances, it is a requirement that the State is also a beneficiary of the trust.

*(Break in Continuity of Sections)*

**20350.10.2 Exceptions To Transfer Of An Asset**

The transfer provision does not apply to ANY asset transferred:

- a. to the individual's spouse, or to another for the sole benefit of the individual's spouse;
- b. from the individual's spouse to another for the sole benefit of the individual's spouse (OBRA 93);
- c. to the individual's child that is blind or totally and permanently disabled child;
- d. to a trust containing the assets of an individual under age 65 who is disabled as defined by the SSI program and which is established for the benefit of the individual by a parent, grandparent, legal guardian of the individual or a court if the trust contains a provision that upon the death of the individual the State will receive all amounts remaining in the trust up to an amount equal to the total medical assistance paid on behalf of the individual (OBRA 93);
- e. to a pooled trust containing the assets of an individual who is disabled as defined by the SSI program and that is established and managed by a non-profit association if the trust contains a provision that upon the death of the individual the State will receive all amounts remaining in the trust up to an amount equal to the total medical assistance paid on behalf of the individual (OBRA 93).

A transfer of assets or an establishment of a trust is considered to be for the sole benefit of a spouse, disabled child with a disability, or individual under age 65, if the transfer is arranged in such a way that no individual except the spouse, child or individual can benefit from the assets in any way, either at the time of the transfer, or at any time in the future. If a beneficiary is named to receive the asset at the time of the individual's death, the transfer or trust will nevertheless be considered to have been made for the sole benefit of the individual if Medicaid is named as the primary beneficiary of the asset, up to the amount paid for services provided to the individual.

To determine whether an asset was transferred for the sole benefit of a spouse, child, or disabled individual with a disability, obtain a legally binding, written document (such as a trust document). The document must clearly define the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the spouse, child, or disabled individual with a disability, since there is no way to establish, without a document, that only the individual will benefit from the transfer.

Where it is alleged that an asset was transferred to or for the benefit of an individual who is blind or totally and permanently disabled, a determination must be made that the individual in fact meets the definition of blindness or disability used by the SSI program. If the individual is receiving either SSI or Title II benefits, accept the disability determination made for those programs. If the individual is not receiving those benefits, a separate disability determination must be made. The individual who is claiming the disability must submit acceptable medical evidence he has been determined disabled according to the standards used by the SSI program (Title XVI). The individual will be given a reasonable amount of time to provide the medical evidence.

**10 DE Reg. 558 (09/01/06)**

*(Break in Continuity of Sections)***20400.9.1.1 Treatment of Special Needs Trusts**

For individuals under age 65 the exceptions to the Medicaid eligibility rules continue even after the individual becomes age 65. No additional assets may be added to the trust after the individual reaches age 65. If assets are added they will not be exempted and are subject to penalties. To qualify as a special needs trust, the following conditions must exist:

- The trust must be established solely for the needs of an ~~disabled~~ individual with a disability who is under age 65.
- The individual is disabled as defined by the SSI program in 1614(a)(3) of the Act.
- The trust must be established by the ~~disabled individual's~~ parent(s), grandparent(s), legal guardian(s) of an individual with disabilities or a court.

In addition to the above criteria, the trust **must state** that upon the individual's death all remaining assets and funds should be paid to the State agency up to the amount paid in Medicaid benefits on the individual's behalf.

**10 DE Reg. 1302 (02/01/07)**

**20400.9.2 Pooled Trusts for ~~the Disabled~~ Individuals with Disabilities**

A pooled trust contains the assets of an ~~disabled~~ individual with disabilities as defined by the Supplemental Security Income (SSI) Program and meets the following conditions:

The trust is established and managed by a non-profit association

A separate account is maintained for each beneficiary of the trust; for purposes of investment and management of funds, the trust pools the funds in these accounts.

Accounts in the trust are established solely for the benefit of the ~~disabled~~ individual with disabilities, by the parent, grandparent, legal guardian of the individual, or by the court.

To the extent that the amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State the amount remaining in the account up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary. The trust must include a provision specifically providing for such payment to the State.

**20400.9.2.1 Conditions to Qualify as Exempted Pooled Trust**

- a. The trust account must be established for an ~~disabled~~ individual with disabilities.
- b. The individual is receiving either Title II or SSI benefits as an ~~disabled~~ individual with disabilities. (In this case we would accept the disability determination made for those programs.)
- c. The Medical Review Team (See Section 20102.2.2 ) has determined that the individual is disabled using the State of Delaware's Determination of Disability for Medicaid procedure.

**20400.10 Treatment Of Funds Entering And Leaving An Exempted Trust For an ~~Disabled~~ Individual with Disabilities**

While trusts for ~~the disabled~~ an individual with disabilities are exempt from treatment under the trust rules, funds entering and leaving them are not exempt from treatment under the rules of the appropriate cash assistance program. The following are rules applicable to funds entering and leaving both kinds of exempt trusts for ~~the disabled~~ an individual with disabilities. (see DSSM 20400.1.1, trusts established with income and DSSM 20400.10.2, trusts established with resources).

**20400.10.1 Exempted Trust For ~~Aan Disabled~~ Individual with Disabilities Established With The Individual's Own Income**

- For eligibility purposes, do not count income before it is placed in the trust.
- If a transfer of assets into a trust for an ~~disabled~~ individual with disabilities is not exempted under the exceptions to the transfer of assets' rules, a penalty must be enacted.
- Post-eligibility income rules may be applied to income placed in the trust.
- Funds paid out of the trust to or for the benefit of the individual would count as income
- Spousal impoverishment provisions are also applicable as they apply to exempted trusts.

**Note: When the right to income placed in a trust actually belongs to the trust and not the individual, the**

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**income does not count under SSI rules as income received by the individual.**

Most trusts for ~~the disabled~~ an individual with disabilities are created using the individual's resources; some may be created using the individual's income or a combination of income (Income as defined by the SSI program.) and resources. When income is placed in the trust see Section 20400.11.1- Income Trusts (Miller Trusts) for treatment of income.

**20400.10.2 Exempted Trust for an ~~Disabled~~ Individual with Disabilities Established in Part or in Whole With Resources**

- Resources placed in an exempt irrevocable trust for an ~~disabled~~ individual with disabilities are counted as resources only during the months in which they are in the possession of the individual. Beginning with the month the resources are placed in the trust, they are exempt from being counted as resources to the individual.
- Resources placed in an exempted trust for an ~~disabled~~ individual with disabilities are subject to imposition of a penalty under the transfer of assets provisions unless:
  - the transfer is specifically exempt from penalty,
  - or unless the resources placed in the trust are used to benefit the individual,
  - and the trust purchases items and services for the individual at fair market value.

NOTE: These rules apply to both income and resources placed in an exempt trust.

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**DIVISION OF PUBLIC HEALTH**

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

**ORDER****4304 Pre-Hospital Advanced Care Directive****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Public Health initiated proceedings to provide information of public interest with respect to changes in regulations regarding Pre-Hospital Advanced Care Directives. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 101 and its authority as prescribed by 16 **Del.C.** Ch. 25.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the May 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSED CHANGES**

There is a need to address the recognition of Pre-Hospital Advanced Care Directives in conjunction with Advanced Care Directives as provided for in 16 **Del.C.** Ch. 25, in the pre-hospital emergency environment. These regulations require the use of a specific form of individual identification that can be readily recognized and verified during a pre-hospital emergency. The regulations also detail the legislated immunity for certified providers honoring this order.

**Statutory Authority**

16 **Del.C.** Ch. 25

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with

Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Long Term Care Residents Protection (DLTCRP) has considered each comment and responds as follows.

First, GACEC and SCPD recommend amending the title, definition in §1.0 and any other references to “advanced” by substituting “advance”.

**Agency Response:** Thank you for your suggestion. It was our intention to change “advanced” to “advance,” however, we are not making that change where the phrase “Pre-Hospital Advanced Care Directives” occurs because that is the term by which those documents are known. The amended regulations are indicated by **[Bracketed Bold Text]**.

Second, in §1.0, the definitions of “Emergency Medical Services (EMS) Provider” and “Emergency Medical Services (EMS) Provider Agency” are repeated on pp. 1197 and 1198. The duplicate definitions on p. 1198 should be deleted.

**Agency Response:** Thank you, the repeated definitions appear in the published version in error and are not in the final regulations.

Third, in §1.0, definition of “Health Care Decision”, Par.2, some words appear to have been omitted. It reads: “Acceptance or refusal of diagnostic tests, surgical procedures, program of medical resuscitation; . . .”

**Agency Response:** We believe that this definition is correct as written “Acceptance or refusal of diagnostic tests, surgical procedures, programs of medication, resuscitation; and”.

Fourth, in §3.3.1., DPH may wish to add a §3.3.1.2 to read as follows:

3.3.1.2. Permanent unconsciousness.

**Agency Response:** Thank you for this suggestion. It was our intention to have this exact language in the proposed regulations. We do not know why it did not appear in the published proposed regulation and have made certain it is in the final regulation.

Fifth, in §1.0, definition of “permanent unconsciousness”, DPH may wish to consider whether it should explicitly incorporate a requirement that the diagnosis be from a neurologist or neurosurgeon. See Title 16 Del.C. §2501r

**Agency Response:** Thank you for this suggestion. We have added the language from the Statute to the final regulations. The amended regulations are indicated by **[Bracketed Bold Text]**.

Sixth, in §3.2 recommend substituting “e.g.” for “i.e.” since the parenthetical references are not exclusive but examples of communication.

**Agency Response:** Thank you for this suggestion. We have made this change. The amended regulations are indicated by **[Bracketed Bold Text]**.

Other Typographical corrections are being made in the final regulations.

In 1.0, the word “or” is being added to the term being defined so that it now reads “Supervising health care provider or Health Care Provider”. The amended regulations are indicated by **[Bracketed Bold Text]**.

In 3.2, the “l” in “Individual” is being made lower case. The amended regulations are indicated by **[Bracketed Bold Text]**.

In 5.0, delete the word “Advanced”.

In 5.1, delete the word “directive”.

In 5.1.2.2.7, delete the word “out”.

In 6.1, the words “to” and “the” are being added so that the sentence reads “Provided there is a signed MOLST, PACD, or other approved Division of Public Health signed form, the following are acceptable for implementing methods to identify to the EMS the existence of a MOLST or PACD form and to implement the MOLST/PACD protocol.” The amended regulations are indicated by **[Bracketed Bold Text]**.

In 7.1.1.1, delete the double periods after “individual” and replace with a semicolon. The amended regulations are indicated by **[Bracketed Bold Text]**.

In 7.1.1.2, delete the period after “resuscitation” and replace with a semicolon and the word “or”. The amended regulations are indicated by **[Bracketed Bold Text]**.

In 7.2.2, adding the word “or” between “MOLST Order” and an “EMS PACD”. The amended regulations are indicated by **[Bracketed Bold Text]**.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the May 2011 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Department of Public Health regulations Pre-Hospital Advanced Care Directives is adopted and shall be final effective August 1, 2011.

Rita M. Landgraf, Secretary, DHSS

**4304 Medical Orders for Life-Sustaining Treatment or Pre-Hospital Advanced Care Directives****Purpose:**

There is a need to update the existing 2003 Pre-Hospital Advance Care Directive (“PACD”) regulations (7 Del. Reg. 85, July 1, 2003) to address the recognition of ~~Pre-Hospital Advance Care Directives in conjunction with Advanced Care Directives as provided for~~ advance care directives across all health care settings, including, but not limited to, hospitals, long-term care facilities, hospices, emergency medical transport, and home care. As provided in Chapter 25 of Title 16 of the Delaware Code, advance care directives permit individuals to give instructions about their own health care in Delaware Code Title 16, Chapter 25, in the pre-hospital emergency environment. ~~case they later lack the capacity to do so.~~

These regulations require the use of a specific designated form of individual identification that which can be readily recognized and verified during a pre-hospital emergency. ~~The regulations also detail the legislated immunity for certified providers honoring this order~~ an emergency situation. Since the creation of the PACD form, the practice and use of similar forms has evolved in states across the country. The Medical Orders for Life-Sustaining Treatment (“MOLST”) form reflects the dominant national trend and is being adopted as an updated version of the PACD form.

~~While such legal instruments serve individuals well in clinical settings such as hospitals and Delaware’s current PACD loses its authority when a patient changes locations. Patients at the end of life often move from home to hospital to nursing homes, they pose practical problems in life-threatening situations when emergency medical home and with each move, forms and orders must be redone.~~

~~Emergency medical services (EMS) individuals are called personnel work under the license of the State EMS Medical Director. In order for assistance EMS personnel to honor an individual’s request related to end of life decisions, the EMS must have a medical order. The MOLST form serves both as the summary of the individual’s advance care planning decisions and as the medical order.~~

~~Living wills, power of attorney and other advance directives have material limitations. They are often long and complex, can vary greatly in form and content, are subject to various interpretations, and do not apply to the pre-hospital environment constitute a medical order. Many are hand-written and are impossible to verify on the scene of an emergency. Furthermore, in most states, if an EMS provider is called to the scene, they are legally required to perform life-saving techniques (CPR) even if the individual’s heart has stopped and they are clinically expired. And, they cannot stop these efforts based on a living will or appointed proxy’s request, because advance directives may not apply in EMS related medical emergencies. A Delaware Pre-Hospital Advanced Care Directive. In contrast, a Delaware MOLST is a specific order set initiated by the individual and signed by a physician or other authorized health care professional stipulating a specific order set initiated for individual non-resuscitations scope of medical treatment.~~

~~A Pre-Hospital Advanced Care Directive regulation authorizes~~ These MOLST/PACD regulations authorize the Division of Public Health/Office of Emergency Medical Services in conjunction with the Board of Medical Practice Licensure and Discipline, the Delaware Fire Prevention Commission, and other key groups within the State to develop and implement an EMS Pre-Hospital Advanced Care Directive (PACD) a MOLST/PACD protocol for EMS providers. This law and These regulations, protocol, and form standardize the legal advanced advance care directive documentation so EMS that EMS and all health care providers have a readily recognizable format upon

~~which they may make a decision. This would also form which sets forth the patients' preferences regarding provision of life-sustaining treatments. The MOLST/PACD forms allow EMS and other health care providers both to identify and to honor the an individual's wishes to the greatest extent possible and to grant the individual individuals the dignity, humanity, and compassion they deserve. Consistent with this intent, other health care providers may choose to honor this form.~~

## 1.0 Definitions

**"Advanced Health Care Directive"** shall mean an individual instruction or power of attorney for health care, or both.

**"Agent"** shall mean an individual designated ~~in~~ as power of attorney for health care to make a health care decisions for the individual granting the power.

**"Artificial Nutrition And Hydration"** means supplying food and water through a conduit, such as a tube or intravenous line where the recipient is not required to chew or swallow voluntarily, including, but not limited to, nasogastric tubes, gastrostomies, jejunostomies and intravenous infusions. Artificial nutrition and hydration does not include assisted feeding, such as spoon or bottle-feeding.

**"Capacity"** shall mean an individual's ability to understand the significant benefits, risks and alternatives to proposed health care and to make and communicate a health care decision.

**"Declarant"** shall mean an individual who executes an advance health care directive.

**"Division"** shall mean the Division of Public Health.

**"DNR"** shall mean Do Not Resuscitate.

**"Emergency Medical Services (EMS) Provider"** shall mean individual providers certified by the Delaware State Fire Commission or the Office of Emergency Medical Services, within the Division of Public Health, Department of Health and Social Services or emergency certified medical dispatchers by the National Academy of Emergency Medical Dispatch.

**"Emergency Medical Services (EMS) Provider Agency"** shall mean a provider agency certified by the Delaware State Fire Prevention Commission or the Office of Emergency Medical Services, or an emergency medical dispatch center under contract with the Department of Public Safety.

**"EMS Prehospital Advanced Care Directive Order (PACD)"** shall mean an advanced health care directive signed by the individual's physician on forms approved by the Director of the Division of Public Health.

**"EMS PACD Program"** shall mean the regulations and administrative guidelines promulgated by the Division of Public Health for the administration of this Act.

**"Guardian"** shall mean a judicially appointed guardian or conservator having authority to make health care decisions for an individual.

**"Health Care"** shall mean any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

**"Health Care Decision"** shall mean a decision made by an individual or the individual's agent, surrogate or guardian regarding the individual's health care, including:

1. Selection and discharge of health care providers and institutions;
2. Acceptance or refusal of diagnostic tests, surgical procedures, programs of medication ~~and orders not to resuscitate~~ resuscitation; and
3. Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care.

**"Health Care Institution"** means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of profession.

**"Individual"** means ~~an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity~~ an individual person, legally adult.

“**Individual Instruction**” means an individual’s direction concerning a health-care decision for the individual.

“**Life-sustaining Procedure**” means:

1. Any medical procedure, treatment or intervention that:
  - 1a. Utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and
  - 2b. Is of such a nature as to afford an individual no reasonable expectation of recovery from a terminal illness condition or permanent unconsciousness.
2. Procedures that can include, but are not limited to, assisted ventilation, renal dialysis, surgical procedures, blood transfusions and the administration of drugs, antibiotics and artificial nutrition and hydration.

“**Medical Orders for Life-Sustaining Treatment**” (“**MOLST**”) means a specific order set for scope of medical treatment and provided on the MOLST form approved by the Division of Public Health.

“**Medically Ineffective Treatment**” means that, to a reasonable degree of medical certainty, a medical procedure will not:

1. Prevent or reduce the deterioration of the health of an individual: or
2. Prevent the impending death of an individual.

“**Office**” shall mean the Office of Emergency Medical Services (EMS) within the Division of Public Health.

“**PACD**” means an EMS prehospital advanced care directive signed by the individual and the individual’s physician, on forms approved by the Director of Public Health.

“**Permanent Unconsciousness**” means a medical condition that has existed for at least 4 weeks and that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma. [This condition must be certified in writing in the patient’s medical record by the attending physician and by at least 1 other physician who shall be a board-certified neurologist and/or neurosurgeon.]

“**Physician**” means an individual licensed to practice medicine under Chapter 17 of Title 24 of the Delaware Code.

“**Power Of Attorney For Health Care**” means the designation of an agent to make health care decisions for the individual granting the power.

“**Primary Physician**” or “**Attending Physician**” shall mean a physician designated by an individual or the individual’s agent, surrogate or guardian to have primary responsibility for the individual’s health care or, in the absence of a designation, or if the designated physician is not reasonably available, a physician who undertakes the responsibility for the individual’s health care.

“**Reasonably Available**” shall mean readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the individual’s health care needs.

“**Supervising Health Care Provider [or Health Care Provider]**” shall mean the primary physician, or if there is no primary physician or the primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual’s health care.

“**Surrogate**” means an adult individual or individuals who (1) have capacity; (2) are reasonably available; (3) are willing to make health care decisions, including decisions to initiate, refuse to initiate, continue or discontinue the use of a life sustaining procedure on behalf of a individual patient who lacks capacity; and (4) are identified by the individual’s identification attending physician in accordance with this chapter 16 Del.C. §2507 as the individual person or individuals persons who are to make those decisions in accordance with this chapter.

“**Terminal Illness Condition**” means any disease, illness or condition sustained by any human being for which there is no reasonable medical expectation of recovery and which, as a medical probability will result in the death of such human being regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes.

## 2.0 Right to Self-Determination

An individual, legally adult, who is mentally competent, has the right to refuse medical or surgical treatment if such refusal is not contrary to existing public health laws.

## 3.0 Medical Prerequisites

- 3.1 Any individual with legal capacity may execute a Medical Order for Life-Sustaining Treatment (MOLST) or a Pre-Hospital Advanced Care Directive (PACD); however, this Directive will not become effective unless, after diagnosis of a terminal condition, or a determination of permanent unconsciousness, it is signed by a physician after diagnosis of a terminal illness or other health care provider permitted by state law.
- 3.2 ~~An [hi]~~ individual with legal capacity, who is able to communicate by some reliable, proven means (~~[i.e. e.g.] verbally, verbalization,~~ eye blink, finger tap) but is physically unable to sign, may execute a MOLST or PACD through an agent or, surrogate, or guardian. ~~To be effective upon the diagnosis of a terminal illness from a physician in Delaware~~ Conditions that may prevent physical signing of the MOLST or the PACD include, but are not limited to:
- 3.2.1 Blindness or illiteracy
  - 3.2.2 Severe arthritis
  - 3.2.3 Amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease)
  - 3.2.4 Quadriplegia
  - 3.2.5 Paralysis of the writing hand
  - 3.2.6 Amputation
- 3.3 ~~An i~~ individual who no longer has capacity may be issued a MOLST or PACD through an agent, guardian or surrogate and the individual's physician or authorized health care provider.
- 3.3.1 Conditions for which a MOLST or PACD may be issued are:
- 3.3.1.1 ~~Terminal Illness Condition~~
  - [3.3.1.2 Permanent Unconsciousness]**

## 4.0 Medical Orders for Life-Sustaining Treatment

- 4.1 Medical Orders for Life-Sustaining Treatment may contain the following options
- 4.1.1 Cardiopulmonary Resuscitation or No Cardiopulmonary Resuscitation (If person has no pulse and is not breathing)
  - 4.1.2 Medical Interventions (If person has a pulse and/or is breathing.)
    - 4.1.2.1 Comfort Measures Only (The use of medications by any route, positioning, wound care, and other measures to relieve pain and suffering. Use of oxygen, oral suctioning and manual treatment of airway obstruction as needed for comfort. Do not transfer to the hospital for life-sustaining treatment. Transfer if comfort needs cannot be met in current location).
    - 4.1.2.2 Limited Additional Interventions. (Includes care described above, IV fluids, and cardiac monitoring as indicated. Do not use intubation or mechanical ventilations. May use non-invasive airway support, [e.g. CPAP, BIPAP]. Transfer to hospital, if indicated.)
    - 4.1.2.3 Full treatment. (Includes care described above, use of intubation, advanced airway interventions, mechanical ventilation, and cardioversion, as indicated. Transfer to hospital, if indicated. Includes intensive care, Additional orders [e.g. dialysis, etc.]
    - 4.1.2.4 Antibiotics
      - 4.1.2.4.1 No antibiotics. Use other measures to relieve symptoms.
      - 4.1.2.4.2 Limited use of antibiotics to provide comfort.
      - 4.1.2.4.3 Use antibiotics to prolong life. (Additional Orders: \_\_\_\_\_)
    - 4.1.2.5 Artificially administered nutrition: (Always offer food and liquids by mouth, if feasible.)
      - 4.1.2.5.1 No artificial nutrition by tube.

- 4.1.2.5.2 Defined trial period of artificial nutrition by tube. (Goal: )  
4.1.2.5.3 Long-term artificial nutrition by tube. (Additional orders: )

## **45.0 Prehospital Advanced Care Directives**

### **45.1 Prehospital Advanced Care Directives Options**

#### **45.1.1 Option A (Advanced Life Support) – “Maximal (Restorative) Care Before Arrest, Then DNR”**

- 45.1.1.1 When this option is selected on an EMS PACD, the individual shall receive the full scope of restorative interventions permissible under the Delaware Statewide ALS treatment protocol (including intubation for respiratory distress, cardiac monitoring, synchronized cardioversion for pulse-present ventricular or supra ventricular tachycardia, cardiac pacing for pulse-present symptomatic bradycardia, insertion of IV's, and drug therapy), in an attempt to forestall cardiac or respiratory arrest (see Delaware Statewide ALS treatment protocol for full description of permissible interventions).

#### **45.1.2 Option B (Basic Life Support) – “Limited (Palliative) Care Only Before Arrest, Then DNR”**

- 45.1.2.1 Palliative care is defined as supportive care for control of signs and symptoms.

- 45.1.2.1.1 This includes opening the airway using non-invasive means (e.g. chin lift, jaw thrust, finger sweep, nasopharyngeal airway, oropharyngeal airway and abdominal thrust, O2 administration, suctioning, positioning for comfort, control of external bleeding using standard treatments (dressing, elevation, direct pressure, pressure points, cold packs, tourniquets, etc.), ~~immobilize~~ immobilizing fractures, and family or other health care provider administered medications for pain control.

- 45.1.2.1.2 Existing IV lines may be in place and, if so, shall be monitored to the extent possible according to the provider's level of certification and licensure.

- 45.1.2.2 Inappropriate Care for a Palliative Care Individual includes:

- 45.1.2.2.1 Pacing, cardioversion, and defibrillation  
45.1.2.2.2 Initiation of IV therapy  
45.1.2.2.3 EMS Initiated Medications - Except passive oxygen  
45.1.2.2.4 CPR  
45.1.2.2.5 Intubation (EOA, endotracheal, nasotracheal, or gastric tube)  
45.1.2.2.6 Pneumatic anti-shock garment (PASG)  
45.1.2.2.7 Active ventilatory assistance, unless on an out individual ventilator.

#### **45.1.3 Option C (Do Not Resuscitate) – “No Care Administered Of Any Kind”.**

- 45.1.3.1 This option permits an individual to reject care of any kind provided there is a signed order clearly stating this course of action. Where this option is in place, no form of life saving efforts, including but not limited to, the opening of the airway, the administration of oxygen, or any other form of life-saving efforts will be administered by EMS personnel under any circumstances, unless the individual provides some form of communication as indicated in Section 3.2.

- 45.1.4 Nothing in this regulation will require an EMS provider to comply with a Pre-Hospital Advanced Care Directive for reasons of conscience.

## **56.0 Methods of Identification**

- 56.1 Provided there is a signed MOLST, PACD, or other approved Division of Public Health signed form, the following are acceptable for implementing methods to identify [to] the EMS [the] existence of a MOLST or PACD form and to implement the MOLST/PACD protocol:

- 56.1.1 Delaware MOLST or EMS PACD Form

- 56.1.2 Delaware MOLST or EMS PACD Wallet Card

- 56.1.3 Delaware MOLST Wrist Bracelet to include Medic-Alert Bracelet or other bracelet approved by the Director of the Division of Public Health.

56.1.4 Other State EMS PACD or MOLST Form

56.2 Even if a signed PACD, MOLST, or other approved Division of Public Health signed form is present, the following are not acceptable for implementing the EMS PACD or MOLST protocol:

56.2.1 Advance directives without an EMS PACD or MOLST form

56.2.2 Facility specific PACDs DNR forms

56.2.3 Notes in medical records

56.2.4 Prescription pad orders

56.2.5 PACD stickers

56.2.6 Any oral request.

56.2.7 Any other device or instrument not listed above as acceptable.

56.3 The Delaware MOLST or EMS PACD must be completed for all individuals on a standard form approved by the Division of Public Health, and the form must be present.

56.4 If any question exists as to the identity of the individual identified on the Delaware MOLST or EMS PACD form, the EMS provider shall seek to identify the individual through another form of positive identification.

56.4.1 If in doubt as to the identification of the individual, the EMS provider shall initiate resuscitative efforts.

## **67.0 Revocation of MOLST/PACD**

67.1 An Revocation by a Patient

7.1.1 A MOLST or EMS PACD may be revoked at any time by: an individual with capacity by:

67.1.1.1 A written cancellation signed by the individual[**;** **or**]

67.1.1.2 An oral statement or gesture of any manner by the individual in the presence of two (2) witnesses, one of whom is a health care provider, requesting only palliative care or resuscitation[**;** **or**]

7.1.1.3 A new MOLST/PACD constitutes a revocation of a previously dated MOLST/PACD.

7.1.2 If the individual revokes a MOLST form or an EMS PACD orally, the EMS PACD notification devices do not need to be destroyed. EMS providers should thoroughly document the circumstances of the revocation. An oral revocation by an individual is only good for the single response or transport for which it was issued.

7.2 Revocation by an agent, guardian, or surrogate.

67.2.1 During an emergency, when the authorized decision maker is not the individual, this ~~individual~~ decision maker cannot revoke a MOLST order or an EMS PACD. Under no circumstances, can a person or entity, other than the individual, revoke a MOLST order or an EMS PACD during an emergency.

7.2.2 Because of the difficulty in identifying authorized decision makers in emergent situations, it is incumbent upon an authorized decision maker who has authority to revoke a MOLST order [**or**] an EMS PACD to do so prior to the emergency if they wish resuscitation for the individual.

## **78.0 Section Prohibited Conduct**

16 Del.C. §2513(b) makes willful concealment, destruction, falsification or forging of an advance directive, without the individual's or authorized decision maker's consent, a class C felony.

## **89.0 Field Termination**

89.1 Nothing in these regulations shall eaffect the power of EMS providers to do the paramedic field termination of resuscitation protocol as approved by the Delaware Board of Medical Practice Licensure and Discipline.

~~89.2~~ A life-sustaining procedure may not be withheld or withdrawn from a patient known to be pregnant, so long as it is probable that the fetus will develop to be viable outside the uterus with the continued application of a life-sustaining procedures. ~~(70 Del. Laws, c.392, § 3. 16 Del.C. §2503(i))~~

## **910.0 MOLST Protocol**

~~910.1~~ The Division of Public Health, in consultation with the Board of Medical Practice Licensure and Discipline and the Delaware Fire Prevention Commission, shall develop and publish a protocol for EMS providers to comply with the requirements of this regulation.

~~10.2~~ The MOLST form will be available online, in order to maintain continuity throughout Delaware, please copy or print the MOLST form on purple or violet paper.

~~10.2.3~~ Faxed copies and photocopies are also valid MOLST forms.

~~10.2.4~~ Once this regulation has taken effect and the new MOLST forms are available online, health care providers and patients should no longer use the PACD form, but should use the MOLST form instead.

~~10.2.4.1~~ Although new PACD forms should not be created after the MOLST form becomes available, any PACD forms already completed with be honored.

## **11.0 Periodic Review of the MOLST Form**

~~11.1~~ The MOLST form does not expire, but it should be reviewed periodically whenever:

~~11.1.1~~ The person is transferred from one care setting or care level to another, or

~~11.1.2~~ There is a substantial change in the person's health status, or

~~11.1.3~~ The person's treatment preferences change.

~~11.2~~ To void the MOLST form, draw a line through "Medical Orders" and write "VOID" in large letters. Any changes require a new MOLST.

## **102.0 Limitations of Liability**

~~102.1~~ In addition to other immunity that may be provided for in law, 16 Del.C. §2510 provides the specific immunity in cases involving the provision, withdrawal, or withholding of care which may be life sustaining in nature.

~~102.1.1~~ EMS providers are not subject to criminal prosecution or civil liability or deemed to have engaged in unprofessional conduct as determined by the appropriate licensing, registering, or certifying authority as a result of withholding or withdrawing any healthcare under authorization obtained in accordance with 16 Del.C. Ch. 25.

## **143.0 Data Collection/Program Evaluation**

~~143.1~~ The Division of Public Health shall provide appropriate information, education and training on the EMS PACD Program to health care providers.

~~143.2~~ The Division of Public Health shall provide forms for Delaware licensed physicians and hospices, or other authorized health care providers.

~~41.3~~ The Division shall monitor the use of MOLST or EMS PACDs as presented to EMS providers.

~~143.43~~ The Division shall take such measures as necessary to assure individual confidentiality.

## **124.0 Reciprocity**

~~124.1~~ Standardized EMS-Do Not Resuscitate (DNR) or MOLST or POLST (Physician Order for Life-Sustaining Treatment) orders from another State approved by the Director of the Division of Public Health shall be honored.

~~12.2~~ EMS providers shall treat out of state EMS DNR orders as Limited (Palliative) Care Only Before Arrest PACD individuals, unless otherwise specified by the out of validly executed and in compliance with the laws of that state Do Not Resuscitate (DNR) order shall be honored subject to the limitations in these regulations.

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7 DE Reg. 85 (7/1/03)

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 Del.C. §7903(10))  
16 DE Admin. Code 4402, 4406, 4410 and 4469

**Health Systems Protections**

**ORDER**

Delaware Health and Social Services ("Department") / Division of Public Health initiated proceedings to provide information of public interest with respect to adding provisions to require certain persons to receive dementia specific training. The Department's proceedings were initiated pursuant to 29 Delaware Code Section 101 and its authority as prescribed by 29 Delaware Code Section 7903(10).

The Department published its notice of public comment pursuant to 29 Delaware Code Section 10115 in the April 2011 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSED CHANGES**

The proposal amends policies regarding Health Systems Protections to require certain persons to receive dementia specific training as required by the amendment to 29 Del.C. §7903 which added a paragraph (10) directing the DHSS Secretary to adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia.

The proposed changes affect the following policy sections:

- 4402 Regulations for Adult Day Care Facilities;
- 4406 Home Health Agencies -Aide Only (Licensure);
- 4410 Skilled Home Health Agencies (Licensure);
- 4469 Personal Assistance Services Agencies.

**Statutory Authority**

29 Del.C. §7903(10), Powers, duties and functions of the Secretary

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Long Term Care Residents Protection (DLTCRP) has considered each comment and responds as follows.

First, the law requires the training to be provided "each year". The proposed §13.17, which is applicable to adult day care facilities, does not specifically require that the training be provided on an annual basis. Section 13.14.3 contemplates annual training but §13.17 is a "stand-alone" provision which omits any frequency of training standard.

**Agency Response:** Thank you for your suggestion. The words "each year" are added to the final regulations identified in the comment. The amended regulations are indicated by [Bracketed Bold Text].

Second, proposed §5.8.12 is ostensibly misplaced, incomplete, and lacking an annual training reference. Each preceding section (§§5.8.1 through 5.8.11) is a complete sentence. Section 5.8.12 is a clause. There is no reference to the frequency of training. These deficits could be easily resolved by incorporating the text of proposed §5.8.12 into a bullet under §5.8.6.

**Agency Response:** We agree with this comment. It was our intention to propose what was published as

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§5.8.12 as a bullet under §5.8.6 and that is what our records indicate we submitted. We are unsure where the numbering change occurred but will submit as final, the text of what was published as §5.8.12 as a bullet under §5.8.6.

Carol Lovett offered the following observations and recommendations.

Thank you for all the your work incorporating HB 159 into the regulations

I am particularly impressed by the recitation of the several domains for training and I am hopeful that administrators will realize that training will take more than 1 to 2 hours

**Agency Response:** Thank you for your support.

I recall that at one time we discussed including Hospice Organizations under the scope of HB 159.

It is great that the aides will be trained but I understand from aides that if senior staff is not also trained it becomes difficult for them to use what they have learned.

I think there are nurses, LPNs, social workers, clergy etc that work in hospice organizations. It has been the experience of family caregivers with who I have spoken that they also need to be trained. In fact many caregivers have provide dementia training them selves to these folks when they come into their homes.

In 3230 Rest and residential Homes is there staff other than Aides and does the dementia training apply to other staff. I am not familiar with this venue so I don't know

Also with the Home Health Agencies and Skilled home Health Agencies are staff other than the Aides required to complete an orientation and continuing education which includes the dementia training.

I think both of these agencies employ LPNs and nurses and the skilled agencies have speech therapists, physical therapists, social workers etc.

It was not clear when I read the regulation if all staff was included

**Agency Response:** Thank you for your suggestion. In interpreting HB 159, DHSS identified regulations where we are most likely to have persons providing "direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia." (HB 159). DHSS staff did not realize there was an intention to include Hospice under HB 159. In reviewing regulations where this requirement would fit, we did not include the training requirement in the Hospice regulations. However, as we learn from the implementation of this requirement, we will consider adding it to these additional regulations. Regarding the questions about what staff exist in different settings and which staff are required to receive the dementia training, the answer varies by provider and setting. Also, DHSS does not have the authority to regulate people in the professions you list. As such, the regulations use the exact language from 29 Del.C. §7903(10) (HB 159) to make sure that any staff at the facilities or in the agencies who fall under the law's requirement are required to receive the training.

#### **FINDINGS OF FACT**

The Department finds that the proposed changes as set forth in the April 2011 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED,** that the proposed regulation to amend Department of Public Health regulations the with respect to adding provisions to require certain persons to receive dementia specific training is adopted and shall be final effective August 1, 2011.

July 17, 2011, Rita M. Landgraf, Secretary, DHSS

#### **4402 Regulations for Adult Day Care Facilities**

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

13.17 An Adult Day Care facility that provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall provide dementia specific training [each year] to those healthcare providers who must participate in continuing education programs. The mandatory training must include: 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. This paragraph shall not apply to persons

certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 of the **Delaware Code**.

**\*Please Note: As the rest of the sections were not amended since the proposal in the April 2011 *Register*, they are not being published here. A complete copy of the final regulation is available at:**

**[4402 Regulations for Adult Day Care Facilities](#)**

### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 11002.9

### **Child Care Subsidy Program: 11002.9 Definitions and Explanation of Terms**

#### **NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *Definition and Explanation of Terms*. The Department's proceedings were initiated pursuant to **29 Delaware Code Section 10114** and its authority as prescribed by **31 Delaware Code Section 512**.

The Department published its notice of public comment pursuant to **29 Delaware Code Section 10115** in the June 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### **SUMMARY OF PROPOSED CHANGE**

As a reminder, the proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Definition and Explanation of Terms*.

#### **Statutory Authority**

45 CFR §98.40, *Compliance with applicable State and local regulatory requirements*

#### **Summary of Proposed Change**

**DSSM 11002.9, *Definition and Explanation of Terms*:** The purpose of the rule change is to clarify 'In-Home' Care and to update the Division of Social Services Manual with long-standing policy. Specifically, language is added to clarify that in-home care refers to one household's children. The intent is to better protect the health and safety of the children in this type of unlicensed care.

#### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observation summarized below. DSS has considered the comment and responds as follows.

The amendment clarifies that in-home care is limited to children residing in the household, ostensibly to obviate circumvention of day care licensing standards. The proposed regulation was published as **14 DE Reg. 1304** in the June 1, 2011 issue of the *Register of Regulations*.

SCPD and GACEC endorse the proposed regulation.

**Agency Response:** DSS thanks the Councils for their endorsement.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the June 2011 *Register of Regulations* should

be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Child Care Subsidy Program policies regarding *Definition and Explanation of Terms* is adopted and shall be final effective August 10, 2011.

Rita M. Landgraf, Secretary, DHSS

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2011 issue of the *Register* at page 1304 (14 DE Reg. 1304). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[Child Care Subsidy Program: 11002.9 Definitions and Explanation of Terms](#)**

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 11006.5.1

### ORDER

#### Child Care Subsidy Program, DSSM 11006.5.1, Terminating Providers

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *Terminating Providers*. The Department’s proceedings were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by **31 Delaware Code Section 512**.

The Department published its notice of public comment pursuant to **29 Delaware Code Section 10115** in the June 1, 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSED CHANGE

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Terminating Providers*.

#### Statutory Authority

- 45 CFR §98.40, *Compliance with applicable State and local regulatory requirements*
- 11 Delaware Code, Ch 85, *State Bureau of Identification*

#### Summary of Proposed Change

DSSM 11006.5.1, *Terminating Providers*: The purpose of the rule change is to revise language and to correct the number of training hours required by relative care providers. Specifically, the Division of Social Services (DSS) changes the phrase ‘convicted of fraud against DHSS’ to ‘commits fraud against DHSS’ as a reason for provider termination. DSS also changes the number of mandatory training hours for relative care from 45 hours to 47 hours to reflect the additional hours needed for the First Aid and CPR classes.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

No public comments were received.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2011 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend Child Care Subsidy Program policies regarding *Terminating Providers* is adopted and shall be final effective June 10, 2011.

Rita M. Landgraf, Secretary, DHSS

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2011 issue of the *Register* at page 1308 (14 DE Reg. 1308). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[Child Care Subsidy Program, DSSM 11006.5.1, Terminating Providers](#)**

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## **DEPARTMENT OF STATE**

### **DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 5106(a)(1) (24 **Del.C.** §5106(a)(1))  
24 **DE Admin. Code** 5100

#### **ORDER**

#### **5100 Board of Cosmetology and Barbering**

The Board of Cosmetology and Barbering ("the Board") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. **24 Del.C. §5100**. The Board is authorized, by **24 Del.C. §5106(a)(1)**, to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to **24 Del.C. §5106(a)(1)**, the Board has proposed numerous revisions to the rules and regulations. A number of revisions implement amendments to the Board's licensing law, Chapter 51 of Title 24 of the Delaware Code, which went into effect on June 26, 2010. In particular, certain rules have been revised to implement the enhanced education requirements for nail technicians and aestheticians.

Further, in Rule 2.0, the requirements for temporary work permits are amended to ensure that a permanent license is obtained in a timely manner. The apprenticeship requirements, in Rule 3.0, are also revised to enable the Board to more effectively monitor apprentices and their status pertaining to completion of the required hours. Rule 11.0, pertaining to the requirements for schools, makes clear that all instructors must be licensed. Finally, Rule 14.7 specifies that nail technicians are prohibited from performing any type of hair removal.

The Board originally published proposed revisions to the rules and regulations in the Delaware *Register of Regulations* on November 1, 2010, Volume 14, Issue 5. A public hearing was held on November 29, 2010. After deliberations, the Board decided to make substantive revisions to the proposed amendments.

Pursuant to **29 Del.C. §10115**, notice of the second public hearing and a copy of the proposed regulatory changes were published in the Delaware *Register of Regulations*, June 1, 2011, Volume 14, Issue 12.

#### **Summary of the Evidence and Information Submitted**

A public hearing on the proposed rule revisions was held on June 27, 2011. No written comment was submitted. Theresa Whiteman-Watson stated that Rule 11.1 provides that the Board will accept a high school transcript only. Ms. Whiteman-Watson stated her view that the Board should accept a high school diploma.

#### **Findings of Fact**

The Board carefully reviewed and considered the proposed rule revisions.

As noted, the rules and regulations are amended to implement changes to the Board's licensing law, including enhanced education requirements. One amendment serves to ensure that permanent licenses are obtained in a timely manner, so that licensees are not practicing pursuant to temporary licenses on a long term basis. Further amendments emphasize that instructors must be licensed and that nail technicians are not authorized to perform

hair removal.

With respect to the public comment, the Board found that Rule 11.1's requirement of a high school transcript is the appropriate verification of education and provides greater protection to the public in terms of ensuring applicant qualifications.

The Board concluded that the proposed amendments will serve to protect the public from unsafe practices and enhance practitioner competence.

Therefore, the Board finds that adopting the amended rules and regulations as proposed is in the best interests of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

#### **Decision and Effective Date**

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

#### **Text and Citation**

The text of the revised rules and regulations remains as published in the Delaware *Register of Regulations*, Volume 14, Issue 12 on June 1, 2011.

**IT IS SO ORDERED** this 27th day of June 2011 by the Delaware Board of Cosmetology and Barbering.

Kathryn Lord, President, Professional Member

Jordana Naftzinger, Public Member

Donna Baynard, Professional Member

Albert Niezgodna, Professional Member

Deborah Bolden, Professional Member

Derrick Reed, Professional Member

Carol Guilbert, Secretary, Public Member

Arlene Scanlon, Professional Member

Cecilia Jones, Vice President, Public Member

Melinda Schaeffer, Professional Member

Thien Le, Professional Member

Linda Wilson, Professional Member

Leila Lord, Professional Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2010 issue of the *Register* at page 437 (14 DE Reg. 437). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[5100 Board of Cosmetology and Barbering](#)**

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### **STATE EMPLOYEE BENEFITS COMMITTEE**

Statutory Authority: 29 Delaware Code, Sections 5210(4) and 9602(b)(4)

(29 Del.C. §§5210(4) and 9602(b)(4))

19 DE Admin. Code 2001

#### **ORDER**

#### **Employees Eligible to Participate in the State Group Health Insurance Program Eligibility and Enrollment Rules**

Effective on August 1, 2011, under the authority of Title 29 of the Delaware Code, Section 9602(b)(4), the State Employee Benefits Committee is amending the Eligibility and Enrollment Rules regarding the Employees Eligible to Participate in the State Group Health Insurance Program to read as provided below. These amended rules were prepared by the Statewide Benefits Office and have been approved by the State Employee Benefits Committee with the consent of the State Employee Benefits Advisory Council. The amended rules are effective upon publication in the Register of Regulations in accordance with House Bill 190, Section 31.

### 2001 Group Health Care Insurance Eligibility and Coverage Rules

#### 1.0 Authority

Pursuant to the authority vested in the State Employee Benefits Committee (SEBC) by 29 **Del.C.** §§ 5210(4), 9602(b)(4), the SEBC adopts these eligibility and coverage rules for the State of Delaware Group Health Insurance Program ("State Plan"). In the event of a conflict between these rules and the Delaware Code, the Delaware Code takes precedence over these rules.

- 1.1 An Employee or pensioner must meet one of the following definitions to be eligible for coverage under the State's plan:
- 1.1.1 a permanent full-time employee (regularly scheduled 30 or more hours per week or 130 or more hours per month);
  - 1.1.2 an elected or appointed official as defined by 29 **Del.C.** §5201;
  - 1.1.3 a permanent part-time employee (regularly scheduled to work less than 130 hours per month);
  - 1.1.4 a limited term employee (as defined by Merit Rule 10.1);
  - 1.1.5 a pensioner receiving or eligible to receive a pension from the State;
  - 1.1.6 a per diem or contractual employee of the Delaware General Assembly who has been continuously employed for 5 years.
  - 1.1.7 a temporary employee (regularly scheduled 30 or more hours per week or 130 or more hours per month) as defined by 29 **Del.C.** §5207.
- 1.2 Those employees who meet the definition outlined in rule 1.1.1, 1.1.2, 1.1.4 and 1.1.5 are considered "regular officers and employees", or "eligible pensioners" as provided by 29 **Del.C.** §5202 and are to receive State Share contributions.
- 1.3 Short term disability beneficiaries receiving benefits under 29 **Del.C.** §5253(b) will be treated as "regular officers and employees" under these regulations. Long term disability beneficiaries receiving benefits under 29 **Del.C.** §5253(c) will be treated as "eligible pensioners" under these regulations.
- 1.4 Casual and seasonal and substitutes are not eligible for the State Plan.
- 1.5 Newly employed school teachers become eligible employees when they start employment not when they sign their contract. (Review the Eligibility Table, see Appendix "A", for coverage start date dependent upon the September hire date). Temporary teachers who are re hired in September are eligible to elect coverage when re hired. Temporary teachers who are re hired in the next contract year are eligible to elect coverage when re hired without fulfilling another 3 month waiting period.
- 1.6 Employees or pensioners who are enrolled in Medicare Part D may not have prescription coverage in the State Plan.
- 1.7 Enrollment in State plan is not indicative of eligibility to receive State Share contributions.

**6 DE Reg. 690 (11/1/02)**

**12 DE Reg. 986 (01/01/09)**

#### 2.0 Dependents Eligible to Participate

- 2.1 Dependents must meet one of the following definitions to be eligible for enrollment in the State plan:
- 2.1.1 A regular officer's or employee's or eligible pensioner's:
    - 2.1.1.1 legal spouse (Delaware law does not recognize common law or same sex marriage). Ex spouses may not be enrolled in the State's group health insurance program - even if a divorce decree, settlement agreement or other document requires an employee to provide coverage for an ex spouse
- IMPORTANT NOTE:** Spousal Coordination of Benefits Policy has been in effect since 1/1/93. The policy applies to a spouse who is eligible for health coverage through his/ her own employer. Spouses who work full time and are eligible for health coverage through their employer, but do not enroll under their employer's health plan, will have a reduction in benefits under the State Plan. A new Spousal Coordination of Benefits form must be completed each year during Open Enrollment or anytime throughout the year if the

spouse's employment or insurance status changes. Employees should refer to the Statewide Benefits Office's website at <http://ben.omb.delaware.gov/documents/cob/index.shtm> or individual benefit booklets for each plan for more detailed information.

- 2.1.1.2 ~~unmarried child/ren under age 2426 (age 24 if a full time student); born to or legally adopted or lawfully placed for adoption by a regular officer's, or employee or eligible pensioner or a regular officer or employee's or pensioner's legal spouse, as defined in 29 Del.C. §5201(a);~~
- 2.1.1.3 ~~unmarried dependent child/ren who do not meet the requirements of section 2.1.1.2 above, who is unmarried, under age 2419 (age 24 if a full time student), not born to or legally adopted, but residing with a regular officer or employee or eligible pensioner in a regular parent child relationship, and who is dependent upon the regular officer or employee or eligible pensioner for at least fifty (50) percent support, and who would be considered the regular officer's or employee's or pensioner's "dependent" under Section 105(b) of the Internal Revenue Code.~~ A statement of support form must be completed by the regular officer or employee or eligible pensioner and forwarded to the employee's Benefit Representative or Human Resources Office with the request for coverage together with a copy of the legal guardianship, permanent guardianship or custody order for the dependent child. If a natural parent resides in the same household as the insured regular officer or employee or eligible pensioner, it will be deemed that a regular parent-child relationship does not exist unless the regular officer or employee or eligible pensioner has legal guardianship documents or has legally adopted the dependent child.
- 2.1.1.4 ~~unmarried dependent child/ren who meet the criteria of sections 2.1.1.2 or 2.1.1.3 above, but who is over age 2426 or older and incapable of self-support because of a mental or physical disability which existed before the child reached age 2426. The child/ren must have been covered under employee's contract immediately preceding age 2426, or age 24 if a full time student.~~
- 2.1.1.5 ~~unmarried dependent child/ren who meet the criteria of section (c) above, but who is age 19 (age 24 if full-time student) or older and incapable of self-support because of a mental or physical disability which existed before the child reached age 19 (age 24 if full-time student). The child/ren must have been covered under employee's contract immediately preceding age 19 (age 24 if full-time student).~~

**IMPORTANT NOTES:** The Administration of Dependent Coverage to Age 26 policy became effective July 1, 2011 and provides for coverage of adult dependents until age 26 under the State Plan. As a "grandfathered" health care plan, the State Plan shall exclude adult dependents who are eligible to enroll in an employer-sponsored plan available through the adult dependent's employer until the plan year beginning July 1, 2014. The Adult Dependent Coordination of Benefits form must be completed by the regular officer, employee, or eligible pensioner on an annual basis at Open Enrollment or anytime throughout the year that the adult dependent's employment or health care status changes, except if enrolled in one of the non-grandfathered Consumer-Directed Health Plans.

A separate Dependent Coordination of Benefits (child/ren) form must be completed for each enrolled dependent regardless of age upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office to determine if the dependent is covered by any other health plan.

- 2.2 Eligible dependent child/ren covered under the health insurance plans of both parents will be primary to the parent's plan whose birthday is the first to occur during the calendar year. In the event the birth dates are the same, the dependent child will be primary to the parent with the longest employment service. In the event birth dates and length of service are the same, the dependent child will be primary to the male parent's plan.
- 2.3 ~~Adult Dependent Program — Provides a period of health care coverage up to age 24, if an adult dependent's coverage was terminated or will terminate due to his/her age; i.e., dependent was~~

terminated from coverage effective December 31 in the year he/she turned 21 and is not a full time student, or the end of the month in which he/she graduated from college and is not yet 24.

2.3.1 Eligibility Requirements. An Adult Dependent eligible to be covered under this program is a covered person's (employee's or pensioner's) child by blood or by law who meets all of the following:

2.3.1.1 Is less than 24 years of age;

2.3.1.2 Is unmarried;

2.3.1.3 Has no dependents of his/her own;

2.3.1.4 Is either a resident of the State of Delaware or is enrolled as a full time student at an accredited institution of higher learning; and

2.3.1.5 Is not actually provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, or church plan, or entitled to benefits under a state's Medical Assistance program.

2.3.2 If an Adult Dependent is no longer eligible to be covered under the health plan of the parent or legal guardian (referred to as covered person) because of his/her age, he/she is eligible to enroll in this program provided the covered person continues to have health care coverage through the State of Delaware. The Adult Dependent must contact the health care carrier within 30 days of their loss of coverage to enroll or may enroll during an Open Enrollment period. If an Adult Dependent is between the ages of 21 and 24 and is enrolled as a full time student at an accredited institution of higher learning he/she is eligible to be covered under the health care coverage of the covered person and does not need to enroll in this program.

2.3.3 Program Requirements

2.3.3.1 Employee or pensioner must remain actively enrolled in a State of Delaware Group Health Insurance plan provided by one of the State designated health care providers.

2.3.3.2 Adult Dependent must enroll in the same health care plan, which provides coverage to their parent or legal guardian who is an employee or pensioner with Group Health Insurance through the State of Delaware.

2.3.3.3 Health care premiums must be paid directly to one of the State designated health care providers.

2.3.3.4 Payroll deductions from the paycheck of the parent or legal guardian with group health insurance through the State are not an option.

2.3.4 End of Coverage. Coverage of an eligible Adult Dependent who enrolls in this Adult Dependent Program is provided until the earlier of the following:

2.3.4.1 Adult Dependent child no longer meets the definition of an Adult Dependent because he/she:

2.3.4.1.1 Reaches 24 years of age;

2.3.4.1.2 Marries;

2.3.4.1.3 Has his/her own dependents;

2.3.4.1.4 Is not a resident of the State of Delaware or is not enrolled as a full time student at an accredited institution of higher learning; or

2.3.4.1.5 Has his/her own coverage as a named subscriber, insured, enrollee, or covered person under another group or individual health benefits plan, group health plan, or church plan, or entitled to benefits under a state's Medical Assistance plan;

2.3.4.2 Date on which coverage ceases under the contract by reason of failure to make a timely payment of premium required under the contract. Payment of any premium is considered to be timely if made within 30 days after the due date; or

2.3.4.3 Date upon which coverage under the State Plan is terminated for the covered person (parent or legal guardian) of the eligible Adult Dependent.

2.3 Employing agencies shall maintain files that include such documents as SEBC determines appropriate to administer the State Plan; files shall be subject to audit by the SEBC.

6 DE Reg. 690 (11/1/02)  
12 DE Reg. 986 (01/01/09)

## 3.0 Coverage

3.1 Coverage of an eligible regular officer or employee and his/her eligible dependents will become effective on the first of the month following date of hire provided the employee submits a signed application within 30 days of the employee's date of hire or within 30 days of the employee becoming eligible for the State Share. Refer to Eligibility Table for specific coverage date options for employees who elect coverage when eligible for State Share.

3.1.1 Coverage may become effective on date of hire provided the employee submits a signed application within 30 days of the employee's date of hire. Premiums are not pro-rated.

**IMPORTANT NOTES:** Spousal Coordination of Benefits Policy became effective 1/1/93 for a spouse who is eligible for health coverage through his or her own employer. Spouses who work full time and are eligible for health coverage through their employer, but do not enroll under their employer's health plan, will have a reduction in benefits under the State Plan. Employees should refer to the individual benefit booklets for each plan for more detailed information or see <http://ben.omb.delaware.gov/documents/cob/index.shtml>.

Adult Dependent Coordination of Benefits form must be completed for each enrolled adult dependent between ages of 21 to 26 upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office, except if enrolled in a Consumer-Directed Health Plan.

A separate Dependent Coordination of Benefits (child/ren) form must be completed for each enrolled dependent regardless of age upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office to determine if the dependent is covered by any other health plan.

3.2 Employees of the State of Delaware who are enrolled in a health insurance benefit plan must re-enroll in a plan of their choice during the Open Enrollment period as determined by the SEBC. Should such employee(s) neglect to re-enroll in the allotted time, said employee/s and any spouse or dependents shall be automatically re-enrolled in their previous plan as long as verification of employment is provided by the employee and the Statewide Benefits Office.

3.3 Employees or pensioners who cover their spouse on the State Plan must complete a Spousal Coordination of Benefits Policy Form during each annual Open Enrollment period as well as anytime there is a change in the spouse's employment or an insurance status change. Failure to supply the Spousal Coordination of Benefits form shall result in the spouse's medical claims being reduced to 20 percent and inability to have prescriptions filled.

~~**IMPORTANT NOTE:** Dependent Coordination of Benefits (child/ren) form must be completed for each enrolled dependent upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office.~~

3.4 If an employee elects not to enroll in the State Plan, the employee must complete and sign an application/enrollment form acknowledging the desire not to enroll by noting "waive" on the appropriate form.

3.5 Eligible employees who fail to submit a completed and signed application/enrollment form within 30 days of their date of hire or their date of eligibility for State Share may not join the State Plan until the next open enrollment period (usually May), unless the employee meets the requirements of Eligibility and Enrollment Rule 3.6.

3.6 Pursuant to a federal law, Health Insurance Portability and Accountability Act (HIPAA), if an employee declines enrollment for him or herself or their dependent/s (including the spouse) because of other health insurance coverage and later involuntarily loses the coverage, the State employee and/or spouse may be eligible to join the State Plan, without waiting for the next Open Enrollment period, as long as the request to enroll is made within 30 days of the loss of coverage. Necessary forms must be completed within 30 days of the request to enroll. If such a change is not made in the time period specified, the eligible employee/and or spouse must wait until the next Open Enrollment period.

- 3.6.1 The following list includes examples of loss of coverage or loss of eligibility for coverage rules under which an employee may request enrollment for him/her-self and for dependent/s:
- Loss of eligibility for coverage as a result of legal separation, divorce, death, termination of employment or reduction in the hours of employment;
  - Loss of eligibility for coverage provided through a Health Maintenance Organization (HMO) because the individual no longer resides, lives, or works in an HMO service area (regardless of whether the choice of the individual) and no other benefit package is available to the individual;
  - Loss of eligibility for coverage due to the cessation of dependent status;
  - Loss of coverage because an individual incurs a claim that meets or exceeds a lifetime limit on all benefits under the plan;
  - A plan discontinues a benefit package option and no other option is offered;
  - If the employer ceases making contributions toward the employee's or dependent's coverage, the employee or dependent will be deemed to have lost coverage and does not need to drop coverage to have special enrollment rights;
  - Exhaustion of Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, except that an employee/dependent losing coverage under another plan is not required to elect COBRA under that plan before using their special enrollment rights to enroll with the State.
- 3.6.2 An increase in employee contribution, change of benefits or change of carrier of the spouse's plan shall not constitute loss of coverage, except where the other plan terminates employer contributions. Employees should contact their Benefit Representative or Human Resources Office and pensioners should contact Pension Office to ask specific questions about eligibility.
- 3.7 If an employee declines enrollment for him/her-self or his/her dependents (including the spouse) and later has a new dependent as a result of marriage, birth, adoption, or placement for adoption, the employee may be able to enroll him/her-self and his/her dependents provided that he/she request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption. Necessary forms must be completed within 30 days of the request to enroll.
- 3.8 The eligible employee who is currently enrolled in a group health plan, may change his/her benefit plan upon the dependent's involuntary loss of coverage, pursuant to Eligibility and Enrollment Rule 3.06, and addition to the State's Plan, provided the request for enrollment is made within 30 days of the loss of dependent's coverage and necessary form must be completed within 30 days of the request. In addition, if the employee has a new dependent as a result of marriage, birth, adoption, or placement for adoption, the employee may change his/her benefit plan upon the addition of the dependent to the State Plan provided the request for enrollment is made within 30 days after the marriage, birth, adoption, or placement for adoption and the necessary paperwork is completed within 30 days of the request.
- 3.9 When husband and wife are eligible State employees, the two employees, or each eligible pensioner, and all eligible dependents may elect to enroll under one family contract. When the employees are both active, and an employee and spouse or family contract is chosen, the spouse whose birthday occurs earlier in the calendar year shall sign an application for coverage form requesting coverage. A change of agency is considered re-enrollment. (In the event the birth dates are the same, length of service and/or gender will be applied as described in Eligibility and Enrollment Rule 2.2.) Beginning with the effective date of these rules, State Share contributions for all new enrollments will be charged to the agency or organization whose employee enrolls for employee, employee and spouse, employee and child/ren or family coverage. Enrollments prior to February 1990 shall continue to be charged to the agency or organization as was previously determined.
- 3.9.1 Each regular officer or employee or each eligible pensioner may elect to enroll under a separate contract, but no regular officer or employee or eligible pensioner may be enrolled more than once under the State plan. Eligible dependent/s may be enrolled under either contract, but no dependent shall be enrolled more than once under the State Plan.
- 3.9.2 The increment of cost of the options selected by the two regular officers or employees or eligible pensioners, which exceeds the cost of two First State Basic family plans, shall be deducted by the

Director of the Office of Management and Budget (OMB) from salary, pension or disability payments or checks.

- 3.10 When the spouse of an eligible regular officer or employee is a retired State of Delaware employee receiving a pension, and enrolled under separate individual contracts, the employing agency and the Pension Office will carry the coverage for their respective employee/pensioner. If an Employee & Spouse, or a Family contract is chosen, the coverage will continue to be carried through the active employee's agency until such time that the Pensioner turns 65. The over age 65 spouse may continue to have the State Plan as primary payor of benefits with the contract to continue under the active employee's agency, or the spouse may choose Medicare as the primary payor through the Pension Office. Also see Eligibility and Enrollment Rules 4.8 and 4/12.

**6 DE Reg. 690 (11/1/02)**

**12 DE Reg. 986 (01/01/09)**

**13 DE Reg. 126 (07/01/09)**

#### **4.0 Changes In Coverage**

- 4.1 An eligible employee who elects to be covered on his/her EMPLOYMENT COVERAGE DATE may change coverage when the employee first becomes eligible for the State Share payment. (Examples: (1) An employee who at hire enrolls in the "First State Basic" plan may change to "Comprehensive PPO" (or another optional coverage) when beginning State Share contribution, without waiting for the next open enrollment period. (2) An employee who at hire enrolls for "Employee" coverage may change to "Employee and Child/ren", "Employee and Spouse", or "Family" coverage when he/she begins to receive State Share, without waiting for the next open enrollment period.
- 4.2 When a covered regular officer or employee or eligible pensioner marries, coverage for the spouse will become effective on the date of marriage, or first of the month following the date of marriage provided the regular officer or employee or eligible pensioner requests enrollment of the new spouse within 30 days of the date of the marriage and provides the necessary paperwork within 30 days of the request to enroll. A copy of valid marriage license must be provided. (Delaware law does not recognize common law or same sex marriage). Premiums are paid on a monthly basis and not pro rated; therefore, if a regular officer or employee or eligible pensioner adds the new spouse effective the date of the marriage, the regular officer or employee or eligible pensioner must remit the difference in employee contribution for the entire month. The regular officer or employee or eligible pensioner may submit a signed application within thirty (30) days prior to the date of marriage. If a request to enroll is not made within 30 days after the marriage, a covered regular officer or employee or eligible pensioner must wait until the next open enrollment period to add the spouse. A Spousal Coordination of Benefits Policy form must be completed when adding spouse to coverage.
- 4.3 Coverage for a child/ren born to a regular officer or employee or eligible pensioner or legal spouse who is covered under the State Plan will begin on the date of birth provided a request to enroll the child is made within 30 days of the date of birth and provided the necessary paperwork is received within 30 days of the request to enroll. A copy of a valid birth certificate must be provided. Premiums are paid on a monthly basis and not pro rated. If such a change is not made in the time period specified, a covered employee must wait until the next Open Enrollment period to add the child/ren. For an employee who has an existing Employee and Child, or Family type contract, the 30 day time period does not apply. However, the application to add the newborn child/ren must be made within a reasonable time period and copy of valid birth certificate provided.

**IMPORTANT NOTES:** Adult Dependent Coordination of Benefits form must be completed for each enrolled adult dependent between ages of 21 to 26 upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office, except if enrolled in a Consumer-Directed Health Plan.

A separate Dependent Coordination of Benefits (child/ren) form must be completed for each enrolled dependent regardless of age upon enrollment, any time coverage changes, or upon request by the Statewide Benefits Office to determine if the dependent is covered by any other health plan.

- 4.4 Coverage for a child/ren legally adopted or placed for adoption with a regular officer or employee or eligible pensioner or legal spouse who is covered under the State Plan will begin on the date of

adoption or placement for adoption provided a request to enroll for the child/ren is made within 30 days of the date of adoption or placement for adoption and provides the necessary paperwork within 30 days of the request to enroll.

- 4.4.1 A copy of a valid legal document attesting to the adoption or placement for adoption must be provided. Premiums are paid on a monthly basis and not pro rated. If such a change is not made in the time period specified, a covered employee must wait until the next Open Enrollment period to add the child. For an employee who has an existing Employee and Child/ren, or Family type contract, the 30 day time period does not apply. However, the application to add the newly adopted child must be made within a reasonable time period.
- 4.5 Coverage for an eligible dependent, other than a newborn child/ren, who becomes an eligible dependent after the employee has been enrolled, becomes covered on the first day of the month following eligibility provided the regular officer or employee or eligible pensioner requests enrollment within 30 days of eligible status. The necessary paperwork must be completed within 30 days of the request for enrollment. A copy of valid documentation of dependent status must be provided, i.e. legal guardianship, permanent guardianship, custody order. Applicable premiums must be paid.
- 4.6 An employee who transfers to another agency or school district may change his/her plan and coverage without waiting until the next Open Enrollment period if the transfer impacts the employee contribution to health benefits provided the employee makes the required change within 30 days of the transfer.
- 4.7 Changes in coverage can only be made at the annual Open Enrollment period, except:
- 4.7.1 A regular officer or employee or eligible pensioner is making a change due a qualifying event or Special Enrollment Right as previously outlined in Eligibility and Enrollment Rules 3.6 through 3.8;
- 4.7.2 In the case of divorce, if there is a "qualifying event" under Eligibility and Enrollment Rules 3.6 through 3.8, the regular officer or employee or eligible pensioner's coverage status may change, but the plan cannot unless Double State Share (DSS) is applicable;
- 4.7.3 The spouse of a regular officer or employee or eligible pensioner has become a State of Delaware employee entitled to State Share in which case the plan may be changed if an Employee and Spouse or Family contract is chosen;
- 4.7.4 A regular officer or employee or eligible pensioner may change coverage and/or plan if no longer entitled to DSS, provided application is made within 30 calendar days of the qualifying event; or
- 4.7.5 A regular officer or employee or eligible pensioner electing to drop health coverage or drop one or more dependents (including the spouse of such regular officer, employee, or eligible pensioner) from health coverage may drop coverage of dependents, under the following limited circumstances as per Section 125 of the Internal Revenue Service Code:
- “1. Change in status.
    - (i) Due to death of spouse.
    - (ii) Due to changes in employment status of the employee, the employee's spouse or dependent (e.g., commencement of employment, change of worksite or return from an unpaid leave of absence).
    - (iii) Change in the eligibility conditions for coverage under the spouse's or dependent's employer's plan.
    - (iv) Events that cause the employee's dependent to cease to satisfy the plan's eligibility requirements. (e.g. age, student status or similar circumstance).
    - (v) Change in the place of residence of the employee, spouse or dependent provided that in each of the circumstances described in subparagraphs (i) through (v), inclusive, the cessation of coverage for the dependent is on account of and corresponds with a change in status that affects eligibility for coverage under the plan.
  2. Judicial Order, Decree, or Judgment. Health coverage for one or more of dependent children may be dropped if a judicial order, decree, or judgment permits the cancellation of dependent child coverage, provided that the spouse, former spouse or another individual is required to cover such child and such coverage is in fact provided.

3. Medicare or Medicaid Eligibility. If an employee, spouse, or dependent who is enrolled in an accident or health plan of the employer becomes entitled to coverage (i.e., becomes enrolled) under Part A or Part B of Title XVII of the Social Security Act (Medicare) (Public Law 89-97 (79 Stat. 291) or Title XIX of the Social Security Act (Medicaid) (Public Law 89-97 (79 Stat. 343), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), the regular officer, employee or eligible pensioner may for themselves or for their dependents make a prospective election change to cancel or reduce coverage of that employee or dependent under the health plan.
  4. Change in Costs or Coverage. If the cost charged to an employee for health coverage significantly increases during a period of coverage, the regular officer, employee or eligible pensioner may make a corresponding change in election under the plan, including commencing participation in an option with a decrease in cost, or, in the case of an increase in cost, revoking an election for that coverage and, in lieu thereof, either receiving on a prospective basis coverage under another benefit package option providing similar coverage or dropping coverage if no other health plan option providing similar coverage is available. (For purposes of this paragraph, a cost increase or decrease refers to an increase or decrease in the amount of the elective contributions under the cafeteria plan, whether that increase or decrease results from an action taken by the employee (such as switching between full-time and part-time status) or from an action taken by an employer (such as reducing the amount of employer contributions for a class of employees).”
- 4.8 An eligible regular officer or employee or a legal spouse (eligible to receive State Share) who reaches age 65 and becomes eligible for Medicare shall continue to be covered under the State Plan as the primary payor of benefits.
- 4.8.1 Regular officers or employees and dependents eligible for Medicare, by reason of age or disability, must apply for Medicare Part A when first eligible regardless of their coverage under the State Plan. Also see Eligibility and Enrollment Rule 3.10.
  - 4.8.2 If an employee or dependent covered under the State Plan becomes eligible for Medicare Parts A and B due to End Stage Renal Disease (ESRD), the covered individual must enroll in Medicare Parts A and B and these plans will be primary to the State Plan for the period of time as outlined in the Medicare guidelines. Employees with ESRD should contact their State Plan insurance carrier to discuss coverage options.
- 4.9 An employee who becomes eligible for pension or Long-Term Disability (LTD) may change their plan at the onset of receiving pension or LTD.
- 4.10 A regular officer or employee or eligible pensioner who is required by Court or Administrative Order to provide health insurance coverage for a child/ren shall be permitted to enroll under family or employee and child/ren coverage, any child/ren who is eligible for such coverage (without regard to any Open Enrollment restriction). If the employee is enrolled, but fails to make application to obtain coverage of the child/ren, the child/ren shall be enrolled under such family or employee and child/ren coverage upon application by the child/ren's other parent, the Division of Child Support Enforcement or Division of Social Services. The employee shall not disenroll (or eliminate coverage of) any child/ren unless the employer is provided satisfactory written evidence that:
- 4.10.1 The Court or Administrative Order is no longer in effect, or
  - 4.10.2 The child/ren is or will be enrolled in comparable health coverage, which will take effect no later than the effective date of such disenrollment.
- 4.11 When a covered regular officer or employee or eligible pensioner divorces, coverage for the ex spouse will terminate on the day following the date of divorce. Premiums are paid on a monthly basis and not prorated. The regular officer or employee or eligible pensioner must remit the employee contribution for the plan, which included the spouse for the entire month. The regular officer or employee or eligible pensioner must submit a signed application within 30 days prior to or 30 days following the date of

divorce. If DSS terminates as a result of the divorce, the regular officer or employee or eligible pensioner must pay the employee contribution for the entire month that the divorce occurred.

- 4.12 Pensioners and dependents eligible for Medicare, by reason of age or disability, must also enroll in Medicare Part A and B when first eligible for these plans and may enroll in the Medicare Supplement plan provided by the State Group Health Plan through the Pension Office. No pensioner or their dependent eligible for Medicare, by reason of age or disability, may be enrolled in a non-Medicare plan through the State. Also see Eligibility and Enrollment Rule 3.10.

**6 DE Reg. 690 (11/1/02)**

**12 DE Reg. 986 (01/01/09)**

**13 DE Reg. 126 (07/01/09)**

## 5.0 Cost Of Coverage

(Used to determine the amount of State Share contributed toward an employee's coverage and the amount of employee contributions required, if any.)

- 5.1 "Regular officers and employees" begin earning State Share contributions on the first of the month following three full months of employment. See Eligibility Table for specific information regarding State Share payments and employee payroll deductions for employees who elect coverage when eligible for State Share.
- 5.2 Permanent part-time, temporary per diem and contractual employees of the General Assembly as described in Eligibility and Enrollment Rule 1.01 are eligible to participate in the State Plan, but are not eligible for State Share. Therefore, any such employee joining the State Plan must pay the full cost of the health plan selected. Payment must be collected by the organization and forwarded to the Statewide Benefits Office by the first day of the month for which the employee's coverage becomes effective.
- 5.2.1 If an existing full time state employee takes a limited term position, State Share shall continue.
- 5.2.2 Casual and seasonal employees and substitutes are not eligible to participate in the State Plan, nor are they eligible for State Share.
- 5.3 When a husband and wife are both permanent full time active employees, they shall earn State Share contributions in accordance with the following:
- 5.3.1 If they elect to enroll in two individual contracts, the increment of cost of the options selected by the two employees which exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments.
- 5.3.2 If they elect to enroll in one employee and spouse or family contract, the increment of cost of the option selected by the employee that exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments.
- 5.4 When the spouse of an eligible employee is a retired State of Delaware employee receiving a monthly pension or a Disability Insurance Program (DIP) LTD beneficiary receiving an LTD check, each may enroll as two individual contracts, employee and spouse contract or a family contract. The increment of cost of the option selected by the employee that exceeds the cost of two First State Basic family plans, shall be deducted by OMB from salary, pension or disability payments. (A notation should be made in the employee's file that the spouse is a State of Delaware Pensioner or DIP LTD beneficiary). The Pension Office should be notified when the active employee terminates State Service.
- 5.5 An eligible employee who elects to be covered prior to becoming eligible for State Share must pay the full cost of coverage, State Share and employee share, until State Share begins.
- 5.6 If a regular officer, employee, eligible pensioner, or beneficiary selects coverage under any plan other than the First State Basic Plan, the employee is responsible for paying the additional cost, if any, over and above the cost of the same coverage class (individual, employee & child, employee & spouse, or family) under the First State Basic plan.
- 5.7 A regular officer or employee or eligible pensioner who is eligible for the State Share contribution may not receive the cash equivalent in lieu of the coverage itself.

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- 5.8 Health coverage premiums are collected on a lag basis. (Example: January coverage is paid by deduction in the second pay of January plus deduction in the first pay of February). Each agency/school district/sub group is responsible for reconciling premiums to ensure that proper payment has been remitted. Payments, other than those made through OMB's automated payroll system, and all adjustments must be submitted in a timely manner to the Statewide Benefits Office. The State Plan will not be responsible for payment of premiums and/or claims if a signed enrollment form/confirmation statement/waiver is not in the employee file.
- 5.9 An eligible employee who returns from an authorized unpaid leave of absence is entitled to State Share payments upon return without fulfilling another three month waiting period. The employee must request enrollment by contacting their Human Resources Office within 30 days of return from leave of absence. State Share and coverage (if it has lapsed) begin on the date of return from leave of absence.
- 5.10 Any regular officer or employee or eligible pensioner who fails to make payment for his/her share of the cost of health coverage when he/she is eligible to continue coverage and does not have sufficient salary from which payment can be deducted will have coverage canceled on the first day of the month that a regular officer or employee or eligible pensioner fails to pay the required share for the coverage selected.
- 5.10.1 Family and Medical Leave Act (FMLA) regulations provide that employees have a 30 day grace period for late premium payments. The employer's obligation to maintain health coverage ceases if an employee's premium payment is more than 30 days late. Benefit Representative or Human Resources Offices should continue the employee's health coverage for the 30 day period provided under FMLA. The Benefit Representative or Human Resources Offices can then do a retroactive cancellation if the required employee contribution was not paid by the end of the 30 day grace period.
- 5.11 An employee who has a break in active employment due to authorized leave of absence, suspension, termination or unauthorized leave of absence without pay for a full calendar month, shall not be eligible for State Share for that calendar month and any subsequent calendar month that the employee is in a non pay status for the entire calendar month. In the case of an authorized leave of absence, an intermittent return to work or use of paid leave of less than five full days in one month, the employee shall not be entitled to State Share contributions. Full payment must be made for the month in order to retain coverage. Upon return, the employee is eligible for State Share without fulfilling another three month waiting period, provided the break was the result of any of the following:
- 5.11.1 an authorized leave of absence;
- 5.11.2 a suspension without pay;
- 5.11.3 termination or unauthorized leave of absence for a period less than 30 calendar days.  
Coverage begins on the date of employee's return to work.
- 5.12 State Share will be paid for employees drawing Workers' Compensation, provided the employee is not eligible for coverage from a subsequent employer. Such an employee must submit payment for the share of the coverage that would normally be deducted from his/her salary.
- 5.13 State Share will be paid for employees who are approved for Short Term and/or Long Term Disability through the State's DIP.
- 5.13.1 Employee's share of premium shall be deducted by OMB from employee's salary or DIP LTD check.
- 5.13.2 Employees whose STD claims are in a pending status are entitled to receive State Share. If STD claim is denied, the employee is responsible for the State Share paid on his/her behalf while the claim was in a pending status.
- 5.13.3. Employees who are appealing a STD termination and/or benefit denial are eligible to receive State Share. If the appeal results in a denial, the employee is responsible for the State Share paid on his/her behalf while the claim was in a pending appeal status.
- 5.14 Any refund of State Share or employee share is subject to the following requirements:

- 5.14.1 An employee who has paid the State Share in order to insure continuation of health coverage and then later is found to have been eligible for receipt of State Share, is to be refunded the amount that was not paid by the State. The employee must make application for the refund within one calendar year of the date the employee paid the State Share to be refunded;
- 5.14.2 An employee who has paid the employee share then later is found to have been eligible for receipt of DSS is to be refunded the amount paid for employee share for a period not to exceed one calendar year. The employee seeking a refund must make application for the refund within one year of the date the employee paid the employee share to be refunded;
- 5.14.3 An employee who has paid the employee share for an ineligible dependent (for example following a divorce, death or exceeding the dependent age limits) is to be refunded the amount paid for employee share for a period not to exceed 60 days, provided that the employee seeking a refund must make application for the refund within 60 days of the date the employee paid the employee share to be refunded and further that the employee shall be liable for any amounts paid by the State Plan on behalf of the ineligible dependent until the employee provides notice to the Statewide Benefits Office of the dependent's ineligibility;
- 5.14.4 If an employee is terminated from employment and does not pay the employee share for the second half of the month in which terminated, coverage under the Plan is terminated as of the first of the month, any claims paid for that month will be reversed and a refund will be given, if employee makes request for refund within 60 days.
- 5.14.5 In any event, refunds of less than \$1.00 will not be made.
- 5.15 Teachers who are granted a sabbatical leave of absence are eligible for State Share while they are on such leave. Also see Eligibility and Enrollment Rule 6.3.
- 5.16 All employees whose positions are involuntarily terminated after they have been employed for a full calendar year who return to full time State employment within 24 months of their termination will be eligible for State Share without fulfilling another three month qualification period.
- 5.17 A temporary, casual, seasonal employee, or substitute who becomes a "Regular Officer or Employee" shall have his/her unbroken temporary, casual, seasonal, or limited term, provisional or permanent part time "Aggregate State Service" applied toward the three month qualification period for State Share contributions. The "Aggregate State Service" must immediately precede becoming a "Regular Officer or Employee". The temporary, casual, seasonal employee, or substitute must have worked each pay cycle for the three months prior to hire eligibility to be eligible for State Share or last three full months of the school year prior to September hire.
- 5.18 State Share shall continue for a "Regular Officer or Employee" who is temporarily appointed to a position that results in a dual incumbency.
- 5.19 Any active employee who is also receiving a survivor's pension through the State of Delaware shall receive DSS. The increment of cost, which exceeds the cost of two First State Basic family plans, shall be deducted from employee's salary.
- 5.20 A regular officer or employee called to active duty with the National Guard or Reserve for other than training purposes shall continue to receive state share toward health insurance coverage for a period of up to two years. Employee's share must be remitted to Benefit Representative or Human Resources Office for further processing.
- 5.21 In the event that the State has paid the employee share or any co-pays, coinsurance, deductibles or other amounts that OMB determines should have been paid by the regular officer or employee or covered spouse or dependent of the regular officer or employee upon prior written notice to such regular officer or employee (which shall not be less than sixty (60) days), the State, to the extent permissible under applicable law, may recover such amounts from such regular officer or employee by deducting the amount paid by the State from the after tax pay due to the regular officer or employee
- 5.21.1 the regular officer or employee shall be provided an opportunity to dispute such amounts owed to the State to the Statewide Benefits Office and
- 5.21.2 if the amount owed by the regular officer or employee exceeds \$1,000 then the regular officer or employee shall be provided an opportunity to have the amount owed deducted in monthly installments over a period of time not less than twelve (12) months.

**6 DE Reg. 690 (11/1/02)**  
**12 DE Reg. 986 (01/01/09)**  
**13 DE Reg. 126 (07/01/09)**  
**13 DE Reg. 683 (11/01/09)**

## **6.0 Continuation Of Coverage**

- 6.1 To continue coverage other than the First State Basic Plan, a covered employee must pay the difference between the State Share contribution and the cost of the coverage selected. Coverage will be terminated on the first day of the month employee did not make required payment.
- 6.2 An employee granted an unpaid authorized leave of absence can maintain membership in the group health plan by paying the full cost of coverage (State Share plus employee share) during the period of the leave as long as that leave of absence does not exceed two years. An employee who returns from an authorized leave of absence, whether he/she maintains coverage or not while on leave of absence, is authorized to receive State Share immediately upon return. (Eligibility for State Share begins upon return without fulfilling another three month qualification period). An employee on FMLA leave is entitled to have pre existing health insurance benefits (including the State Share) maintained while on an FMLA leave. If an employee was paying State Share and/or employee share of the premium payments prior to leave, the employee would continue to pay the same share during the leave period. Failure to make such payment within 30 days of the due date will result in termination of coverage.
- 6.3 Coverage other than the First State Basic Plan continues for teachers who are granted sabbatical leave provided they make the required payments for their share of the cost of their coverage; otherwise, their coverage reverts to the First State Basic Plan. (State Share continues while employee is on sabbatical leave.) Also see Eligibility and Enrollment Rule 5.15.
- 6.4 Employees leaving State employment, except for termination due to gross misconduct or whose application for LTD benefits under the DIP has been approved, are eligible for continuation under COBRA. Employees should contact their Benefits Representative or Human Resources Office for details of this continuation option.
- 6.5 An eligible employee or eligible dependent that loses coverage under the State Plan may continue coverage under COBRA. If a COBRA qualifying event occurs, the employee or the employee's dependent(s) must notify the employee's Benefit Representative or Human Resources Office or the State's COBRA Administrator to provide notice of the qualifying event within 60 days of its occurrence.
- 6.6 Upon expiration of the covered individual's COBRA eligibility, the individual may apply directly to the insurance company for a direct billed health insurance contract.

**12 DE Reg. 986 (01/01/09)**

## **7.0 Termination Of Coverage**

- 7.1 Coverage ends on the last day of the month in which the employee terminates employment. A public school or higher education employee (less than 12 month employee) whose employment during a school year continues through the last scheduled work day of that school year shall retain coverage through August 31 of the same year so long as the required employee share has been paid. In the event an employee fails to make the required payment for any optional coverage selected, coverage will be terminated. If an employee works one day in the month in which he/she terminates, he/she shall earn State Share for the entire month. Coverage will be terminated on the first day of the month employee did not make required payment.
- 7.2 Coverage (and dependent coverage, if applicable) ends as of the end of the month in which the employee ceases to be an eligible employee for coverage (due to some change such as a reduction in the number of hours the employee works).
- 7.3 Coverage of dependents, except for dependents of pensioners and dependents eligible for a survivor's pension, ends as of the last day of the month of the employee's death. Dependents who lose coverage as a result of the employee's death are eligible for continuation under COBRA. Contact the State's COBRA administrator for details of this continuation option.

- 7.4 Ex spouses not employed by the State of Delaware are not eligible for coverage under the State Plan - even if a divorce decree, settlement agreement or other document requires an employee to provide coverage for an ex spouse. Coverage for the ex spouse will terminate on the day after the date of divorce. Premiums are paid on a monthly basis and not prorated. The regular officer or employee or eligible pensioner must remit the employee share for the plan which included the spouse for the entire month. The regular officer or employee or eligible pensioner must submit a signed application within 30 days prior to or 30 days following the date of divorce. If DSS terminates as a result of the divorce, each regular officer, employee or eligible pensioner must pay the employee contribution for the entire month that the divorce occurred. The State Plan will not be responsible for payment of claims when a dependent is no longer eligible for coverage.
- 7.5 Coverage for a dependent child/ren will end the earlier of the following:
- 7.5.1 ~~December 31st of the year in which he/she reaches age 21. If a full time student, coverage will end on the earlier of the following: (1) the end of the month in which the dependent child is no longer a full time student, or (2) The end of the month in which the dependent child/ren as defined in Section 2.1.1 attains age 24~~26. ~~Student certification must be updated each year between ages 21 and 24.~~
- 7.5.2 ~~The last day of the month in which the child/ren marries~~ end of the month in which the dependent child/ren as defined in Section 2.1.2 marries or attains age 19 (or age 24 if full time student); or
- 7.5.3 ~~The date the child/ren ceases to be dependent on you or your spouse~~ the regular officer or employee or eligible pensioner for at least 50% fifty (50) percent support per Sections 2.1.1.3 and 2.1.1.4 and 2.1.1.5.
- 7.5.4 ~~Adult Dependent Program coverage is as provided in Section 2.3.~~
- 6 DE Reg. 690 (11/1/02)**  
**6 DE Reg. 1515 (5/1/03)**  
**12 DE Reg. 986 (01/01/09)**

## 8.0 Reinstatement of Coverage

- 8.1 Once a regular officer or employee or eligible pensioner has requested that his/ her coverage be canceled, he/she cannot rejoin the State Plan until the next annual Open Enrollment period unless such regular officer or employee or eligible pensioner qualifies for re-enrollment under the applicable exceptions to these Eligibility and Enrollment Rules.
- 8.2 An employee who returns from an authorized leave of absence not exceeding 24 months in duration who does not maintain coverage while on leave of absence, is permitted to enroll immediately upon return without waiting for the next Open Enrollment period, provided the employee requests enrollment within 30 days of return and completes the necessary paperwork required to enroll within 30 days of the request. Coverage will begin as of the date the employee returns from leave following completion of the necessary paperwork and payment of any required employee share. Premiums are paid on a monthly basis and are not prorated.
- 8.3 Employees whose positions are involuntarily terminated after they have been employed for a full year (or full school year) will be eligible for State Share immediately if they return to full time State employment within 24 months of termination.
- 6 DE Reg. 690 (11/1/02)**  
**12 DE Reg. 986 (01/01/09)**

## 9.0 Miscellaneous

- 9.1 It is the responsibility of the regular officer, employee or eligible pensioner to keep his/her Benefit Representative or Human Resources Office informed of any change of address or change in status which results in the adding or dropping of dependent/s (marriage, divorce, birth, death, adoption, etc.) that affects his/her health care coverage. In turn, it is the responsibility of the Benefit Representative or Human Resources Office to make the necessary changes in the appropriate payroll system, or to notify the Statewide Benefits Office of these changes. Failure to do so may affect eligibility of coverage

or extent of coverage for any participant and could impose an extreme hardship on a regular officer or employee or eligible pensioner. The State Plan will not be responsible for payment of premiums and/or claims in the event of ineligibility and/or the absence of a signed enrollment form/confirmation statement in the regular officer or employee or eligible pensioner's file.

- 9.2 If any provision of these Rules and Regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Rules and Regulations which can be given effect without the invalid provision or application, to that end the provisions of these Rules and Regulations are declared to be severable

**6 DE Reg. 690 (11/1/02)**

**12 DE Reg. 986 (01/01/09)**

**13 DE Reg. 126 (07/01/09)**

## **10.0 Dental and Vision Plans**

- 10.1 Employees electing to pay for and receive coverage under one of the Dental and/or Vision Plans should be aware of the following terms:
- 10.1.1 Dental and Vision Plans ~~is are~~ not affected by Double State Share (DSS) and Dental and/or Vision ~~insurance~~ plans cannot be changed upon eligibility for DSS;
  - 10.1.2 Employees may enroll in a Dental and/or Vision plan during the first of month after being hired, becoming eligible, or 90 days after the first of the following month after being hired;
  - 10.1.3 The Dental and Vision Plans' effective date is always the first of the month and not on event date as for the health plan;
  - 10.1.4 Dental and Vision Plans' refund rules are limited to 60 days or less because the Dental and Vision Plans ~~is are~~ fully insured;
  - 10.1.5 Dental and Vision Plans' term dates are limited to 60 days or less;
  - 10.1.6 Dental and/or Vision Plan will be terminated in the event that employee is 60 days delinquent in payment of Dental and/or Vision Plans' premium and any paid claims in the same period will be reversed;
  - 10.1.7 If an employee is terminated from employment and does not pay the Dental and/or Vision Plans' premium for the second half of the month in which terminated, coverage under the Dental and/or Vision Plans is terminated as of the first of the month, any claims paid for that month will be reversed and a refund will be given, if employee makes request for refund within 60 days;
  - 10.1.8 School district employees (except those of Delaware Technical and Community College) who are offered school district dental and vision coverage are not eligible for coverage under the State Dental or Vision Plans;
  - 10.1.9. Terminations in Dental and/or Vision coverage can only be made during the annual Open Enrollment period, except that a regular officer or employee or eligible pensioner may elect to drop Dental or Vision coverage for one or more dependents within the plan year due to same circumstances as noted in Section 4.7.5.
  - 10.1.10 The employee's election of a Dental and/or Vision ~~insurance~~ plan is binding for the plan year.
  - 10.1.11 An employee on approved leave of absence without pay may waive participation in the Dental and/or Vision Plan. Employee must notify his/her Benefit Representative or Human Resources Office of request as waive must be designated in the appropriate enrollment system. When employee returns to work, participation must be reinstated in the appropriate enrollment system to be effective the first of the month following employee's return to work.
  - 10.1.12 An employee on approved leave of absence without pay may continue to participate in the Dental and/or Vision Plan by making full payment of premium by end of each month or coverage will be terminated. Employee must make payment to Benefit Representative or Human Resources Office for further processing.

**12 DE Reg. 986 (01/01/09)**

# FINAL REGULATIONS

## STATE OF DELAWARE GROUP HEALTH INSURANCE PROGRAM ELIGIBILITY TABLE

Employee Start Date	Coverage Start Date (Employee pays the full cost)	Eligible for State Share
January 2 <sup>nd</sup> through February 1 <sup>st</sup>	February 1 <sup>st</sup>	May 1 <sup>st</sup>
February 2 <sup>nd</sup> through March 1 <sup>st</sup>	March 1 <sup>st</sup>	June 1 <sup>st</sup>
March 2 <sup>nd</sup> through April 1 <sup>st</sup>	April 1 <sup>st</sup>	July 1 <sup>st</sup>
April 2 <sup>nd</sup> through May 1 <sup>st</sup>	May 1 <sup>st</sup>	August 1 <sup>st</sup>
May 2 <sup>nd</sup> through June 1 <sup>st</sup>	June 1 <sup>st</sup>	September 1 <sup>st</sup>
June 2 <sup>nd</sup> through July 1 <sup>st</sup>	July 1 <sup>st</sup>	October 1 <sup>st</sup>
July 2 <sup>nd</sup> through August 1 <sup>st</sup>	August 1 <sup>st</sup>	November 1 <sup>st</sup>
August 2 <sup>nd</sup> through September 1 <sup>st</sup>	September 1 <sup>st</sup>	December 1 <sup>st</sup>
September 2 <sup>nd</sup> through October 1 <sup>st</sup>	October 1 <sup>st</sup>	January 1 <sup>st</sup>
October 2 <sup>nd</sup> through November 1 <sup>st</sup>	November 1 <sup>st</sup>	February 1 <sup>st</sup>
November 2 <sup>nd</sup> through December 1 <sup>st</sup>	December 1 <sup>st</sup>	March 1 <sup>st</sup>
December 2 <sup>nd</sup> through January 1 <sup>st</sup>	January 1 <sup>st</sup>	April 1 <sup>st</sup>

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

The State Board of Education will hold its monthly meeting on Thursday, August 18, 2011 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF PUBLIC HEALTH****4447 Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation (Hand Labor)**  
**PUBLIC NOTICE**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), is proposing revisions to the State of Delaware Regulations Governing the Sanitation of Migratory Agricultural Labor Housing Camps and Field Sanitation/Hand Labor Operations. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. On August 1, 2011, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the August 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Wednesday, August 31, 2011 at:

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

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**DIVISION OF PUBLIC HEALTH**  
**4453 Cosmetology and Barbering**  
**PUBLIC NOTICE**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), is proposing revisions to the State of Delaware Regulations governing Cosmetology and Barbering. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. On August 1, 2011, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the August 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Wednesday, August 31, 2011 at:

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

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**DIVISION OF PUBLIC HEALTH**  
**4457 Regulations Governing the Manufacture and Sale of Ice**  
**PUBLIC NOTICE**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), is proposing revisions to the State of Delaware Regulations Governing the Manufacture and Sale of Ice. On August 1, 2011, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the August 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Wednesday, August 31, 2011 at:

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

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**DIVISION OF PUBLIC HEALTH**  
**4460 Mattresses, Pillows and Bedding**  
**PUBLIC NOTICE**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), is proposing revisions to the State of Delaware Regulations Governing Mattresses, Pillows and Bedding. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published. On August 1, 2011, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the August 1, 2011 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Wednesday, August 31, 2011 at:

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

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**DEPARTMENT OF INSURANCE**  
**1314 Health Premium Consumer Comparison**  
**PUBLIC NOTICE**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 1314 relating to Health Premium Consumer Comparisons. The docket number for this proposed regulation is 1530.

The proposed regulation would require health insurance companies to provide survey data to the Department of Insurance for the purposes of allowing consumers of health insurance the opportunity to compare rates from different companies. The survey data would have to be filed with the Department on an annual basis. The regulation would also require the insurers to provide direct email responses to the consumer. The Delaware Code authority for the change is 18 **Del.C.** §§ 311 and 2501 et seq.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at [www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml](http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml).

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Wednesday, August 31, 2011. Any such requests should be directed to:

Regulatory Specialist Rhonda West  
Delaware Department of Insurance  
841 Silver Lake Boulevard  
Dover, DE 19904  
Phone: (302) 674-7379  
Fax: (302) 739-7651  
Email: [rhonda.west@state.de.us](mailto:rhonda.west@state.de.us)

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**DEPARTMENT OF JUSTICE**  
**FRAUD AND CONSUMER PROTECTION DIVISION**  
**103 Consumer Protection Unit Administrative Enforcement Proceedings**  
**PUBLIC NOTICE**

The Attorney General in accordance with 29 **Del.C.** §2520, et seq., has proposed to adopt amendments to the rules and regulations for administrative enforcement of the various consumer protection statutes.

A public hearing will be held at 10:00 a.m. on Wednesday, September 21, 2011, in the Attorney General's conference room on the 6th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, where members of the public may offer comments. Anyone wishing to receive a copy of the proposed amendments to the rules and regulations may obtain a copy from the Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5th floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to submit written comments will be at the public hearing.

The proposed changes are intended to:

1. provide for the appointment of hearing officers who are members of the Delaware Bar but not employees of the Department of Justice,
2. provide for alternative means of service of process, including personal delivery and service under the "long-arm" statute,
3. provide for default orders where the respondent fails to respond, and 4) eliminate extended treatment of the pre-hearing conference and pre-hearing submission provisions, which procedures in many cases may be unnecessary.

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**VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL**  
**301 Victims' Compensation Assistance Program Rules and Regulations**  
**PUBLIC NOTICE**

The Department of Justice Victims Compensation Assistance Program proposes to add an additional regulation, Rule 30.0, to section 301 relating to payment of claims. VCAP has recently adopted regulations providing for reimbursement of medical professionals at 80% of the usual and customary charges for such services [Rule 28.0], and for reimbursement of mental health professionals at 80% of usual and customary charges for such treatment [Rule 29.0]. VCAP currently reimburses victims who lack applicable insurance for the cost of dental procedures attributable to a covered violent crime. VCAP is the payer of last resort for these dental claims. Both private dental insurance plans and any available Medicaid or Medicare benefits are primary. To the extent that the victim is responsible for a deductible or co-pay amount, VCAP benefits may be available to cover such deficits.

This regulation would require that VCAP pay all dental providers at 80% of the established usual and customary charge for such services or procedures. This amount would be deemed payment in full, and the dental provider would be unable to collect any additional monies from the victim, or from third parties, through so-called "balance billing". VCAP would cover any co-pay or deductible amounts, in the event of a covered victim. Enactment of this proposed regulation would help preserve and extend the Victims Compensation Assistance Program funds and bring VCAP more in line with the practices of insurers and other governmental programs in paying dental claims.

The Department of Justice Victims Compensation Assistance Program will hold public hearings on these proposed amendments on August 23, 2011 at 10:00 am at the Dover Police Department Public Assembly Room, 400 S Queen St, Dover, Delaware. Interested persons may submit comments in writing to Lisa Ogden, Director, VCAP, 900 King Street, Suite 4, Wilmington Delaware. Statements and testimony may be presented either orally or in writing at the public hearings.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**  
**DIVISION OF AIR AND WASTE MANAGEMENT**  
**1138 Emission Standards for Hazardous Air Pollutants for Source Categories**  
**PUBLIC NOTICE**

In 2001, Delaware adopted by reference the federal Maximum Achievable Control Technology (MACT) standard applicable to halogenated solvent cleaning operations (40 CFR Part 63 Subpart T) into Section 8.0 of Regulation 1138. Since that initial adoption, the EPA has revised this federal MACT standard several times. The most significant of these revisions was the adoption of facility-wide 12-month rolling total halogenated solvent emission limits (72 FR 25138, May 3, 2007). This more stringent requirement was incorporated after the EPA determined that following the full implementation of the MACT requirements, the original MACT requirements did not protect the public's health with an ample margin of safety.

Delaware is proposing to amend Section 8.0 of Regulation 1138 by adding the facility-wide emission limits and their associated monitoring, recordkeeping and reporting requirements that the EPA promulgated on May 3, 2007. The purpose of this proposed amendment is to protect the public's health with an ample margin of safety and to

provide greater consistency between Delaware's air toxics standards for halogenated solvent cleaning operations and the revised federal standard (40 CFR Part 63 Subpart T).

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, August 24, 2011 beginning at 6:00 PM in DNREC's Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720.

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**DIVISION OF WATER RESOURCES****Surface Water Discharges Section****7201 Regulations Governing the Control of Water Pollution, 9.5 The Concentrated Animal Feeding Operation (CAFO)****PUBLIC NOTICE**

These proposed regulations have been developed pursuant to 3 **Del.C.** §2201-2290 and 7 **Del.C.** §6000 et.al. and under DNREC's delegated authority. These statutory and regulatory authorities establish the requirement that a National Pollutant Discharge Elimination System (NPDES) permitting program for Concentrated Animal Feeding Operations (CAFOs) be implemented. These proposed regulations amend the current regulations and will function as the baseline CAFO standards for compliance of NPDES CAFO permits applicable to certain farms. The Delaware Department of Natural Resources and Environmental Control (DNREC) will administer these regulations with the assistance of the Delaware Department of Agriculture (DDA). In general, NPDES CAFO permits, as provided in these regulations, are effective for five years. These regulations were developed by the Delaware Department of Agriculture and the Delaware Department of Natural Resources and Environmental Control.

The revised regulation will clarify the current application, approval and reporting requirements for CAFO NPDES permits. Failure to promulgate revised regulations compliant with requirements of the Clean Water Act may result in forfeiture of the State NPDES program and subject Delaware farmers to federal enforcement action and third party lawsuits.

The proposed regulations are posted on the Delaware Department of Agriculture website ([www.dda.delaware.gov](http://www.dda.delaware.gov)) and the DNREC website at [www.dnrec.delaware.gov](http://www.dnrec.delaware.gov). Hard copies of the proposed regulations may be obtained from the Delaware Department of Agriculture. Comments may be submitted in writing and/or e-mail to the Mark Davis, Nutrient Management Program Administrator ([mark.davis@state.de.us](mailto:mark.davis@state.de.us)), at the Delaware Department of Agriculture, on or before 4:30 PM on August 31, 2011, and/or in person at a public hearing to be held on August 25, 2011 at 7pm at the Department of Agriculture, 2320 South DuPont Highway, Dover, DE 19901. Statements and testimony may be presented either orally or in writing at the public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Mark Davis  
Department of Agriculture  
2320 South DuPont Highway  
Dover, DE 19901  
[Mark.davis@state.de.us](mailto:Mark.davis@state.de.us)

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****Genetic Counselor Advisory Council****1799 Genetic Counselor Advisory Council****PUBLIC NOTICE**

Consistent with a recent statutory amendments creating the Genetic Counselor Advisory Council (the "Council"), of the Board of Medical Licensure and Discipline (the "Board" and providing for the licensing and

regulation of genetic counselors, the Council in accordance with 24 **Del.C.** §1799(c) and 29 **Del.C.** Ch. 101, has developed and is proposing to recommend to the Board the approval of regulations regarding the practice of genetic counseling in the State of Delaware.

A public hearing will be held on Friday, September 9, 2011 at 3:15 p.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Practice, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Council may vote on whether to promulgate the proposed regulations subject to the approval of the Board immediately following the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION**  
**2600 Examining Board of Physical Therapists**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2604(a)(1), the Examining Board of Physical Therapists and Athletic Trainers has proposed revisions to its rules and regulations.

A public hearing will be held on August 23, 2011 at 5:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes the re-organization of the rules and regulations for greater clarity for both licensees and members of the public. Rules 1.2.3 and 1.2.8 are modified with respect to the requirements for supervision. Rule 12.1.23 is added to state that a licensee is required to report to the Division of Professional Regulation any licensee who is in violation of the Board's laws or rules. Rule 13.0, pertaining to continuing education, is amended to add requirements for ethics hours and completion of a CPR course. In addition, Rule 13.2.2 specifies that course approval is good for three years, unless the course is modified. Rule 13.4.4 is added to make explicit that the Board has the authority to conduct continuing education audits and sanction licensees not in compliance with continuing education requirements. Finally, the revisions correct typos and grammatical errors.

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